

27 September 2018

Final report by the Complaints Commissioner

Complaint number FCA00488

The complaint

1. On 1 August 2018 you asked me to investigate a complaint about the FCA. I have carefully reviewed the papers sent to me by you and by the regulator. My preliminary report was issued on 28 August 2018 and both you and the FCA have had the opportunity to comment.

What the complaint is about

2. You complained to the FCA after its Customer Contact Centre (CCC) told you that it would not respond further to your enquiries about the conduct of a firm.

What the regulator decided

3. On 18 July 2018 the FCA Complaints Team told you that it could not formally investigate your complaint under the Complaints Scheme (the Scheme) because it related to the actions or inactions of a firm and not to the exercise of, or failure to exercise, any of the FCA's relevant functions. The complaint response went on to say that your concerns about the firm had now been referred to the relevant Supervision team and that the investigator was satisfied that they had reviewed and dealt with the information appropriately. However, due to confidentiality obligations set out in the Financial Services and Markets Act 2000, and also for policy reasons, the FCA was not able to provide you with feedback about any action taken in response to the information you had provided.

Why you are unhappy with the regulator's decision

4. You have told me that you consider the FCA has "perversely failed in its remit to deal with [the firm's conduct], which for some obscure reason has been deemed irrelevant". You consider that instead you "have been blanked with a blatantly rude refusal to deal with my detailed complaint at all without being given any true

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cause or explanation". You consider that there may have been a "collaborative effort" between the FCA and the Financial Ombudsman Service to silence you, which in your view leaves no control over conduct. You would like to know why the firm's conduct remains unquestioned and allowed and why you are denied recourse. You would like "a fair reasoned objective and unbiased outcome".

Preliminary points

Financial Ombudsman Service

5. Complaints about the actions, or inactions, of the Financial Ombudsman Service (FOS) are excluded from the Scheme (paragraph 3.4.e). I have seen no evidence of any contact between the FOS and the FCA about your complaint.

Chronology

6. From the file supplied by the FCA I can see that you contacted CCC on 8 May 2017. You said that you were making a complaint to the FOS but had been told it could not consider your concerns about the firm's conduct. You received a reply on 10 May 2017 explaining that the FCA could not become involved with individual complaints about firms but was *interested in receiving information about their conduct. This is extremely valuable as it helps us with their supervision of them and helps us to identify any concerns or breaches of our rules.* Details of how to report a firm's conduct were provided.
7. You had further exchanges with CCC between May and October 2017 and on 24 November 2017 CCC acknowledged safe receipt of papers you had sent for the FCA to assess the firm's conduct. You were told that this information would be made 'available' to Supervision but were reminded that the FCA does not deal with individual cases and that you would not receive any feedback.
8. You asked further questions and on 6 December 2017 the advice previously given was repeated. You were told that the FCA does not get involved with individual cases but uses information provided about firms to assist its regulatory functions. It will not provide feedback on what it has done with this information due to confidentiality restrictions. Any action taken against a firm is made public. The email concluded that there was nothing further the FCA could usefully add to provide you with further guidance.

9. On 17 May 2018 you contacted CCC again and on 21 May received a response from a Team Leader saying that the FCA had already given you as much information as was possible and had nothing to add. You were told that this was a final response and that further communications from you would be filed. Your reply to this email was ignored, leading you to contact the Complaints Team.

My analysis

10. I can appreciate how frustrating it must be not to know in detail what has happened about the information you have provided to the FCA. I note that the FCA complaint response included some information about the approach of the Supervision Team who received your report. Because I can access the FCA's confidential files I have been able to verify that the information you supplied was referred to Supervision and appropriate checks made. I hope that this provides you with some reassurance.
11. As it told you, the FCA as regulator welcomes information from individuals like you who bring forward issues for consideration. However, the FCA will not generally provide feedback on what action has been taken in response to the information that it receives. This is because section 348 (s.348) of the Financial Services & Markets Act 2000 (FSMA) classes some information the FCA holds about firms as confidential and places restrictions on how that information is dealt with. In addition to this, any information that is not restricted by s.348 FSMA may be restricted due to the FCA's policy on sharing information about regulated firms and individuals, who also have legal protections. Under this policy, the FCA will not normally disclose the fact of ongoing action without the agreement of the firm concerned. As a result, there is no general right for members of the public to know the outcome of reports that they make.
12. As part of the Complaints Scheme, I have access to all the FCA's complaints papers, including confidential material. This is so that I, as an independent person, can see whether I am satisfied that the FCA has behaved reasonably. Sometimes this means that all I can say to complainants is that, having studied the confidential material, I am satisfied that the FCA has (or has not) behaved reasonably – but I am unable to give further details. This can be frustrating for complainants, but it is better that I am able to see the confidential material. I am

satisfied that in your case the FCA has acted reasonably and that there is nothing further that can or should be provided to you.

13. In conducting my review, however, I noted that there were two options available to CCC when it received your information about the firm's conduct. The first was to simply flag the information as of potential supervisory interest; the second was a direct referral to the relevant Supervision team. Although your complaint was not formally investigated, as a result of the Complaints Team's enquiries, CCC agreed that a direct referral should have been made and, because of your complaint, this was done. I consider that this was a good example of the FCA's internal complaints process working well. Although the FCA Complaints Team was entitled not to include this information in its complaint response to you, as it did not affect the outcome, it might have been helpful to you and shown the FCA's commitment to greater transparency and learning from complaints.
14. In addition, your exchanges with CCC were not helped by having a different staff member respond to you each time. I note that this was acknowledged as one of the factors that contributed to CCC's failure to make the direct referral to Supervision prior to the Complaints Team's enquiries. The FCA may wish to consider whether there is a more effective way to ensure that relevant information is referred appropriately. This is not the first case I have seen where there have been problems in referrals from CCC to the Supervision team. I am pleased to note that, in response to my preliminary report, the FCA has confirmed that CCC has accepted this feedback and is reviewing the process with a commitment to providing me with a further update in due course.
15. Overall, however, my review of the FCA's files shows that CCC staff were consistent in explaining the FCA's position to you and answered all the questions you raised.
16. I do not agree with you that there is no mechanism for the regulator to consider a firm's conduct, although I recognise your frustration that you are unable to receive feedback. I am satisfied that the FCA provided you with as much information as it could do. Essentially you would like the FCA to investigate your individual complaint about a firm, which it is unable to do. I have concluded that the FCA's Complaints Team's response was correct.

My decision

17. For the reasons stated I do not uphold your complaint. I realise that you are likely to be disappointed by my decision, but I hope you will understand how I have reached it.

Antony Townsend

Complaints Commissioner

27 September 2018