

15 July 2019

Final report by the Complaints Commissioner**Complaint number FCA00564***The complaint*

1. On 23 March 2019 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.

What the complaint is about

2. On 20 July 2018 you made a formal complaint to the FCA about its investigation into your firm (Firm A). On 20 August 2018 the FCA wrote to you and set out its understanding of your complaint and the elements it could investigate as follows:
 - a. Part One - *You are unhappy with the conduct of the FCA's Supervision team, including emailing you outside of normal working hours; requiring you to sign a s165 request for information without being given the opportunity to read it; and one of the Supervisors attending a meeting between you and Enforcement, when you say this is not usual practice at the FCA.*
 - b. Part Two - *You are unhappy that the FCA's Supervision team gave you conflicting deadlines for responding to questions they had sent to you.*
 - c. Part Three - *You are unhappy with the length of time it is taking for the FCA's Enforcement team to complete its investigation into your conduct.* The FCA deferred this part of your complaint under paragraph 3.7 of the Complaints Scheme because it related to continuing action by the FCA. You were told that you could ask the FCA to consider this part of your complaint once that action was concluded.
3. Although you had also complained on behalf of Firm A, the FCA explained that this required the consent of the liquidator, and therefore it was only investigating the complaints about the FCA's treatment of you personally.

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What the regulator decided

4. Your complaint was not upheld. The FCA's complaint response of 22 March 2019 concluded that: *the FCA's Supervision team dealt with you and this case fairly and professionally [and had not] come across any actions which suggested that there was any agenda in play other than consumer protection.*

Why you are unhappy with the regulator's decision

5. You have told me that:
 - a. You were placed under considerable pressure regarding the S.165 notice, which had 97 points requiring a response. You were: *subjected to two days back to back where all these points were raised and answers were expected of me without any forewarning of any preparation needed, [had] no opportunity [to read the S.165, and were] told to sign [by an FCA Supervision Team member] in front of my lawyer, then I went straight into the beginning of a two-day meeting with these questions being fired at me.* You feel strongly that *"if" the S.165 was properly issued and giving us time to prepare we would have saved an enormous amount of time and misunderstanding by the Supervision Team.*
 - b. You still consider the presence of a member of the Supervision Team at an Enforcement meeting highly unusual, especially since it was not mentioned in an email from Enforcement listing attendees nor when you were picked up from FCA reception on the day. You entered the room to find [the staff member] *presiding over the head of the meeting room. I therefore feel I had no opportunity at my first meeting with Enforcement to explain openly the problems I have faced since the beginning with Supervision.*
 - c. You are concerned that the complaint response says that Supervision's calls to firms are not recorded and that there are therefore no *checks and balances*, particularly over calls made to you in August 2016 and a phone call *pressurising me into signing yet another so called Voluntary Undertaking which ultimately caused (amongst various other actions by Supervision) the demise of [Firm A].*
 - d. Part 2 of your complaint was not about *conflicting deadlines* but rather *deadlines upon further deadlines from questions upon questions. This made*

it extremely confusing to map exactly what question had to be answered by what date. You consider this may have been a tactic to maximise anxiety and stress which it ultimately achieved.

- e. You accepted the FCA's offer of £100 for complaints handling delay, but you also feel strongly that the delay in concluding the Enforcement Team's investigation has caused you and your family financial hardship and stress.

Preliminary points

- 6. I am unable to consider your last point - paragraph 4 (e) above - because the time that the Enforcement Team's investigation has taken relates to Part Three of your complaint which the FCA has deferred citing paragraph 3.7 of the Complaints Scheme. I am satisfied that deferral is reasonable in these circumstances. You have the option to ask the FCA to consider this aspect of your complaint once the Enforcement Team action has concluded. If you remain dissatisfied at the complaint outcome you will be able to refer to me at that stage.
- 7. To review your complaint, I have had access to confidential material relating to Firm A. However, my report is limited to your personal interactions with the FCA. I am not able to comment on FCA decisions about what regulatory action is appropriate, although I can comment on the fairness of the process applied.

My analysis

- 8. I have reviewed the FCA's files, which include your email exchanges with the staff member from the Supervision Team. This Team was involved with Firm A from June 2016 until the referral to Enforcement in February 2017, following serious concerns about some of Firm A's activities from a consumer protection perspective. The correspondence shows that:
 - a. The S165 notice was prepared at your request and you were told in advance that it would be served on the first day of a two-day supervisory visit in August 2016. The Supervision Team explained before the visit that you should be able to answer most questions from your knowledge, plus files and correspondence, but agreed to issue a S165 notice if required. After the visit took place, you thanked the Team for its time and said it was much appreciated. Correspondence then continued. I have not seen any evidence that you were required to provide an answer to all questions during the visit.

- b. The Complaints Team established that it is not unusual for a member of the Supervision team to be present in Enforcement in cases where the bulk of the evidence arises from Supervisory work. In your case, this was considered to be necessary because a lot of the information came from the firm visit conducted by the Supervision Team member. I find this response reasonable. However, you have told me that the Supervision Team member was not on the list of attendees that you were sent by Enforcement, nor were you alerted to his presence when you arrived at reception. You did not raise this point specifically in your complaint to the FCA and I asked you to supply me with the relevant email. This is inconclusive, because it does not give an actual list of attendees. However, subsequent emails show that you were told by your legal advisers that having someone from the Supervision Team attending an Enforcement meeting was unusual and that you raised this with Enforcement. Although, I think it was reasonable in the circumstances for the staff member to attend, I consider that it would have been courteous of Enforcement to have advised you of this in advance. The evidence I have seen does not support your claim that this staff member chaired the meeting. Nor does it support your view that the staff member concerned acted unprofessionally regarding your referral to Enforcement.
- c. The Complaints Team was not able to reach a conclusion about your complaint that you were forced to sign a second undertaking because *unfortunately Supervision's calls to firms are not recorded*. Your concern about this lack of recording has not been put formally to the FCA as a complaint. I am satisfied that in your case you had advance sight of the requested undertaking and the firm also had the benefit of legal advice. However, I agree with you that it is of concern if there is no record of important conversations that lead to decisions about a firm's activities and which will affect individuals and businesses. **I recommend that the FCA considers whether it should take steps to record such calls.**
- d. In July 2016 you expressed your view that it was 'burdensome' to respond to Supervision requests *in short order with changing time frames outside business hours*. The staff member involved responded by asking you if you wanted a S165 notice (see above) and explained that there may be further

questions. Following the supervisory visit in August 2016, the staff member sent you an email with follow-up questions and said that there may be more but *we shall do our best to keep these together so they're conceptually easier for you to deal with*. I consider that this was a reasonable response. The situation was fluid as the Supervision Team gathered information and there was a level of complexity and urgency involved, with different strands to their enquiries. The correspondence shows that the staff member was attentive to this and attempted to make the situation manageable for you. It is the case that some emails were sent outside 'normal' office hours by both parties and (at your request) while you were on holiday. However, this was in the context of an urgent situation and the staff member managing their workload. I have not seen requests requiring you to respond out of hours.

My decision

9. I have concluded that the Complaints Team's response, that *the FCA's Supervision team dealt with you and this case fairly and professionally*, was reasonable. However, following that response, you raised two further points that were not considered as part of your complaint to the FCA.
10. **I have recommended that** the FCA considers whether it should take steps to record telephone calls that lead to decisions about a firm's activities and which will affect individuals and businesses.

Antony Townsend

Complaints Commissioner

15 July 2019