

17 January 2020

Final report by the Complaints Commissioner**Complaint number FCA00672***The complaint*

1. You complained to the FCA about its failure to supervise and monitor insurance firms appropriately to protect the public, most importantly vulnerable customers and third-party claimants.

*What the complaint is about**Element one*

2. You are concerned that the FCA does not supervise insurance firms appropriately and that the rights of third-party claimants are not protected. You are aware of two specific cases, through your work, undertaken on a voluntary basis, assisting individuals with financial services matters and complaints, where vulnerable elderly consumers were not treated correctly by firms in the course of addressing their claims and you allege that a firm discriminated against one consumer.
3. Your concern is that this may be a wide-ranging practice at these firms and across the board, and you have offered to provide the FCA with the names of the firms in question as well as information and evidence to support your allegations, to enable the FCA's Supervision teams to consider the matter further.

Element two

4. You believe the FCA's DISP rules are not properly drafted and do not provide the right protections to vulnerable consumers acting as third-party claimants, because they are not permitted to bring a complaint to the FOS when a firm acts inappropriately in their case. You allege that some firms act illegally and in a discriminatory way as a result.

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What the regulator decided

5. The FCA decided to exclude both elements of your complaint under paragraphs 3.2 and 3.4c of the Complaints Scheme, because you are not directly affected by the issues you are raising (*Element one*) and complaints about the rules and policies of the regulators cannot be investigated under the Scheme (*Element two*).

Why you are unhappy with the regulator's decision

6. You are unhappy with the FCA's decision because you believe that it did not address your concerns about your complaint not being handled appropriately, used language aimed at deterring you from pursuing the complaint and it took a long time to eventually "aggressively exclude" it.
7. You asserted to the FCA that you are directly affected by the issues raised because you spent time and energy assisting the individuals who you state suffered a financial loss and have no recourse to the FOS, which has had an effect on your mental health.
8. Additionally, if the above is not sufficient to bring your complaint within the Scheme, you say that you are in a position to obtain a letter of authority from the individuals who would have been directly affected by the actions of the firms, had you not intervened, to act on their behalf. (*Element one*)
9. You also believe that you should be able to raise a complaint about the way in which the FCA drafted its DISP rules or at the very least it should take into consideration the point you are making about its detrimental impact on certain sections of consumers in order to meet its consumer protection objectives. You have made a distinction between Acts of Parliament, on the one hand, and the FCA's rules and regulations. (*Element two*)

Preliminary points

10. This is the third complaint against the FCA which you have referred to my office. I upheld both of your earlier complaints against the FCA (FCA00101 and FCA00632) on the grounds that they were excluded incorrectly, and I made several recommendations in your first complaint to address a number of other

failings. You also have a number of continuing complaints being considered by the FCA.

11. You made it clear to the FCA that due to this fraught history you do not have confidence or faith in the FCA's Complaints Team. You stated in email correspondence that "the entire complaints handling function at the FCA... appears to me to be dead set on illustrating to the FSI precisely how complaints should not be handled rather than how they should be handled." You also stated in another email to the FCA that "if your previous mail was meant to be an encouragement for me to continue my complaint by providing more information I have to advise that it failed completely". It is clear from the correspondence on file that you had doubts and sought reassurance that this complaint would be dealt with appropriately.

My analysis

Element two

12. I shall start with this element as it is the more straightforward point. The FCA correctly informed you that complaints about the performance of the FCA's legislative functions, as defined in the Financial Services Act 2012, cannot be investigated under the Scheme. In response to your question in your reply to my preliminary report (PR), the same exclusions applied under the Financial Services and Markets Act 2000, which set up the Complaint Scheme to deal with complaints about the FSA, and the FCA has inherited responsibility for dealing with complaints about the FSA. For the purposes of the Scheme, it makes no difference whether the matters complained about happened under the FSA or the FCA.
13. In your PR response you also stated that "*I am not arguing with any act of statute but a rule specified in regulation and the way in which the FSA has drafted that regulation and not how the FCA or FSA has drafted any statute.*"
14. I should clarify that the drafting of rules, codes, statements, and general guidance are clearly defined as legislative functions which are excluded under the Scheme.
15. What functions are included and excluded under the Scheme are defined by legislation, passed by Parliament, and cannot be amended by anyone but

Parliament. If you are dissatisfied with the way the Scheme is set up and what issues can be complained about, you may refer your concerns to your local MP to raise in Parliament if they think it is appropriate to do so.

16. In addition, as stated by the FCA in an email dated 19 September 2019, to enable you to raise your concerns about the DISP rules in a more straightforward and faster way, you may also contact the FCA's Policy Team to raise any concerns about the adequacy of these or any other rules. I note that this information was not specifically repeated to you in the FCA's final decision dated 15 October 2019. However, it was the correct advice to give on this element of your complaint.
17. Furthermore, I can confirm that whilst the FCA may not accept a complaint into the Scheme, should such a complaint raise concerns about its rules, processes or regulated firms, it is expected that the information would be forwarded to the relevant teams for consideration and action as appropriate, although a complainant may not be given feedback about what, if anything, ultimately results from sharing this information, because of confidentiality.
18. You have suggested that, having rejected your complaint, the FCA should have treated it as a freedom of information request; and that, when you made such a request, the FCA did not adhere to the deadlines. The process for making such requests, and complaining about them, is separate from this Scheme, and I cannot deal with it.
19. . For these reasons, I cannot uphold this complaint point.

Element one

20. You were not sent an acknowledgement for this complaint. Instead, you received an email setting out the reasons why your complaint could not be accepted by the Scheme. I am sure this email was sent with the intention of moving matters forward and in order to try to manage your expectations, as reiterated by the FCA's response to my PR. However, it was not perceived by you in this way.
21. Your response email and the following correspondence made it clear that you found the FCA's responses unhelpful and you believed it aimed to exclude your complaint in very firm terms. You explained why you felt this way, using previous

examples when the FCA had not handled your complaints appropriately, and asked for reassurance that the mistakes in the past would not be repeated.

22. At this point, on 24 September 2019, you were sent a generic acknowledgement email by the FCA but no further response to the concerns you had previously raised. You responded to this email to express your dissatisfaction with the way your complaint was being processed and asked the FCA to clarify which of your complaints this acknowledgement related to. You received no response.
23. On 15 October 2019 a final decision was issued to you, excluding both of your complaint points and stating that you were not an eligible complainant as you had not been directly affected. You were also told to provide further information and/or a letter of authority, which you did not do.
24. The FCA is correct to say that the Scheme does specify that complaints can only be brought by eligible complainants and defines who may be an eligible complainant.
25. It is also correct to say that if someone is not directly affected by the alleged failings of the FCA, they cannot bring a complaint. In your response to my preliminary report you made the point that 'directly affected' is "not very definitive" and you believe that the FCA's reliance on it is somewhat of a red herring, as you had been affected directly by virtue of the fact that you had to spend time to assist these vulnerable individuals, who in your view only needed your help because the FCA failed to fulfil its duty to protect the public "as a result of a failure of supervision of a number of general insurance firms". In your view this failure is systemic, and your concerns should have been investigated.
26. In my view, the intention behind the Complaints Scheme is clear. The simple fact that there may be concerns about alleged systemic failure by the regulator, or that an individual chooses to make a complaint, does not make them 'directly affected'. Whilst the word "directly" is not defined under the Scheme, it is for the complainant to demonstrate how they are affected so that the FCA (and I) can make an informed assessment using the basic interpretation of the words. You stated that the effect on you of the FCA's failure to regulate the firms in question was that you had to spend around 20 hours of your time, free of charge, to assist vulnerable individuals to uphold their rights against these firms. I do not consider

that, for the purposes of this Scheme, a person's involvement on behalf of others (including the effects of the involvement on that person) should mean that they should be considered as being 'directly affected'. If the directly affected parties wish you to complain on their behalf, they can do so, as has been explained.

27. However, I consider that the FCA's approach and response to you fell short of what was necessary in this case. Its own actions in incorrectly excluding two previous complaints had already undermined your trust in the Scheme. You told the FCA in writing, several times, that you do not have faith in the process and that you felt it was angling to exclude or at least discourage your complaint.
28. These concerns were not addressed in correspondence with the first investigator, and the second investigator did not pick up on them either. In fact, your email asking for clarification on which complaint the acknowledgement email was for and reassurance that you would not be ignored, was in fact ignored.
29. Your explanation of why you believe you were directly affected by the alleged failings of the FCA was not addressed. The FCA has accepted its shortcomings in relation to these points in its response to the preliminary report.
30. You informed me that had the FCA taken steps to reassure you that your complaint would be appropriately dealt with, you would have provided them with letters of authority from the vulnerable consumers you are assisting and you would also have provided the names of the insurance firms in question.
31. In my view, the FCA failed to handle your complaint appropriately and failed to take all the necessary steps to give you confidence to provide the additional information for your concerns to be taken forward. While I recognise that the FCA was dealing with multiple complaints from you, and this complicated matters, I consider that it ought to have taken greater care – particularly in the light of the poor handling of your earlier complaints – to ensure that your points were adequately addressed. The FCA's failure to deal with these matters appropriately has resulted in you not feeling confident to disclose information which may be of relevance to its regulatory work.

My decision

32. I consider that the FCA was right to exclude your complaints. However, I consider that its handling of the correspondence with you fell short, particularly in the light of your earlier poor experience with the FCA.
33. I therefore **recommended** that the FCA apologises for not addressing your clearly highlighted concerns and writes to you within three weeks of the date of this report with a clear explanation about what is required from you so that the concerns you are raising can be forwarded to the relevant department(s), and a reassurance that the information provided will be handled appropriately and in line with its objectives and statutory obligations. The FCA has confirmed that it accepts my recommendation and is in correspondence with you and will be issuing a formal apology shortly.

Antony Townsend
Complaints Commissioner
17 January 2020



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