

12 June 2020

Final report by the Complaints Commissioner**Complaint number FCA00687***The complaint*

1. On 18 April 2020 you wrote to me because you were dissatisfied with the FCA's decision on your complaint. The complaint had been lodged with the FCA in July 2019, and you had approached my office several times in the intervening period because of your concerns about the lack of progress. I refer to this further below.

What the complaint is about

2. In its decision letter, the FCA described your complaint as follows:

Part One

On 23 July 2019, you sent an email to the FCA stating:

“With specific reference to your e-mail dated 4/7/19 I have noted your refusal to investigate my repeated Complaints regarding the operational practices of [investment firm A] which contravene the guidelines of the FCA.....please regard the content of this letter as my 1st Formal Complaint regarding this refusal....”

My understanding of your complaint is that you are unhappy with the FCA's decision to refuse your request for an update of its investigations into [Investment Firm A] following information that you had provided.

Part Two

You are unhappy that the Supervision Hub has not sent you the FCA's Complaint Handling Procedures.

Part Three

You are also unhappy that the Complaints Team has not sent you the FCA's Complaint Handling Procedures.

What the regulator decided

3. The FCA decided that Part One of your complaint could not be investigated under the Scheme. This was because paragraph 3.5 of the Scheme says that the regulators 'will not investigate complaints which amount to no more than dissatisfaction with the FCA's general policies or with the exercise of, or failure to exercise, discretion where no unreasonable, unprofessional or other misconduct is alleged.' The FCA went on to say:

The FCA's policy, as stated in its previous correspondence to you dated 12 February 2019 and 4 July 2019, is to not provide updates to consumers on the action we have or have not taken in relation to information it has received from third parties.

4. The FCA went on to say that, during its investigation, it had discovered that the information which you had supplied had not initially been forwarded to the appropriate team, but that that had now been rectified. It apologised to you for that error.
5. The FCA upheld parts Two and Three of your complaint, because both the Supervision Hub and the Complaints Team had failed to send you details of the Complaints Scheme when you had requested them. The FCA apologised to you for this.

Why you are unhappy with the regulator's decision

6. In your complaint to me, you say that the FCA has failed to disclose documents to you, has failed adequately to investigate your complaint against Investment Firm A, has failed to ask you additional questions or look at the extensive material which you have supplied, has 'failed to recognize that their duty is to enforce the correct and fair implementation of their own guidelines', and has failed to compensate you for your time, costs, grief and anguish.
7. You ask me to investigate your complaint with a view to:

A Obtaining financial compensation from the FCA to the sum of £475 for time and costs and £500 for grief and anguish.

B Obtaining the payment of interest of £863.02 from [Investment Firm A] for the period 19/12/17 to 17/3/18 and further interest thereon for the period 18/3/18 to date at the Statutory Rate of 8% per annum.

C Instructing the Financial Conduct Authority to enforce it's own Policy Statement PS14/9 against [Investment Firm A] in order to ensure the credibility of the FCA in the eyes of the public and consumers.

D Instructing Financial Conduct Authority to enforce the requirements of it's own Clients Assets Sourcebook 7 against [Investment Firm A] in order to ensure the credibility of the FCA in the eyes of the public and consumers.

E Instructing the Financial Conduct Authority to instruct [Investment Firm A] to comply with the content of their own [Investment Firm A Key Facts in order to ensure confidence in, and credibility of, [Investment Firm A] in the eyes of the public, their clients and consumers.

Preliminary points

8. The FCA's role is not to provide redress to individual consumers. Other bodies – including the Financial Ombudsman Service and the courts – are in place to do that. I know that you have already pursued both those routes, and have been dissatisfied with the outcome, but that does not mean that the FCA is responsible.
9. I cannot instruct the FCA to take actions in the way you are asking me to. I can, however, make recommendations where I consider that the regulator has acted, or failed to act, in a way which is unreasonable. You have asked me about the definition of 'unreasonable'. I interpret 'unreasonable' to mean acting in a way in which no reasonable regulator would act. Simply because I might disagree with a decision that the FCA made does not mean that I would find it unreasonable.
10. My role is restricted to looking at the actions (or omissions) of the FCA. I cannot look at the actions of financial services companies.

My analysis

11. Your dealings with the FCA started in January 2019 when you reported the problems you had experienced with investment firm A. The FCA acknowledged this information promptly, and explained that it could not investigate individual disputes, but that the information would be forwarded to the relevant team which supervised Investment Firm A. The FCA also explained that, for confidentiality reasons, it would not be able to tell you what action the FCA was taking. You subsequently supplied the FCA with further information.
12. On 1 July 2019, you asked for an update. The FCA again told you that it could not give you an update, and explained why. On 23 July, you made a formal complaint.
13. It is a matter of concern that, as the FCA has already admitted and apologised for, it appears that some of the information which you had supplied was not promptly referred to the appropriate team, and I have to record that this is far from the only occasion where I have seen this happen. I again urge the FCA to ensure that information which may raise a question about a regulated firm or individual is promptly allocated.
14. Having said that, what the FCA told you was correct. It is not a consumer redress organisation and while it welcomes information from individuals like you which can inform the regulatory action it takes, it cannot generally provide updates. The FCA Complaints Team has told you that it is satisfied that the information has now been properly considered. As part of my investigation, I asked the FCA to let me see evidence that the supervision team had considered the information: I have now seen that evidence, and can confirm that the information was considered and evaluated.
15. In your response to my preliminary report, you asked me a series of questions about the FCA's approach to regulation. In particular, you say that you are not complaining about the FCA's general policies, but about what it did or did not do in response to the information which you supplied about Firm A. You have cited parts of the legislation governing the FCA.
16. I have looked at your response carefully, but it does not change my view. The acts of Parliament governing the FCA give it a wide discretion about how it

exercises its powers. In practice, it has to make decisions about what it gives priority to, taking account of risks. While it needs to consider the information it receives, it does not have a duty to respond formally to every piece of information, nor could it do so. As has been explained to you, much of the information the FCA receives is confidential, and cannot be disclosed. This can be frustrating for people who report matters to the FCA, but it does not mean that the FCA has done anything wrong.

17. It is entirely understandable that you are seeking redress for what you consider to be bad treatment by investment firm A, but the FCA is not the right organisation through which to pursue that. For that reason, I do not uphold Part One of your complaint.
18. The FCA has already upheld Parts Two and Three of your complaint, and it was right to do so.
19. However, I also have considerable concerns about the handling of your complaint. It took eight months for your complaint to be dealt with, which was clearly far too long. During that period, you received several apologies for the length of time it was taking, and you approached my office and I sought progress reports. The fact remains that from July until February it appears that no substantive work was done on your complaint. On 3 March 2020 you were told that you should get a decision 'early in the year', while on 30 March you were told to expect a decision 'in the coming weeks'. The decision letter was issued on 9 April.
20. When I reviewed the correspondence, I noted that on 3 September 2019 (and subsequently) you were told that the complaint had been assessed and could be investigated under the Scheme. However, in February, the investigator who had been allocated to the complaint was voicing doubts about whether the complaint should be investigated – and indeed, the FCA's ultimate decision was that the substantive part of your complaint (Part One) should not be.
21. Had the Complaints Scheme been working properly, you would have been told at an early stage that Part One of your complaint would not be investigated. While that decision would doubtless have been unwelcome to you, you would at

least have been spared an eight-month wait before being told that your complaint largely fell outside the Scheme.

22. The FCA's complaints handling function is currently suffering severe delays. The FCA has a programme of action to address this, but I have yet to see the results. Your complaint has fallen victim to the shortcomings in the FCA's performance.

My decision

23. The FCA was right to say that your complaint largely fell outside the Scheme, and to apologise for the administrative errors which it identified. It was also right to explain that it could not provide you with updates on any action it was taking. And it was also right to say that it is not the organisation from which you should seek redress for the actions of investment firm A. But it should not have taken eight months to tell you that. The delay has inevitably added to the stresses which you have experienced.

24. I **recommend** that the FCA offer you £150 for the unnecessary distress and inconvenience caused to you. The FCA has accepted this recommendation, and will offer you £150.

Antony Townsend

Complaints Commissioner

12 June 2020