

12 May 2020

Final report by the Complaints Commissioner**Complaint number FCA00714***The complaint*

1. You complained to me on 9 March 2020 about the FCA's decision on your complaint.

What the complaint is about

2. The FCA described your complaint in this way:

You consider the motor insurance industry is conspiring with accident management companies, engineers and body shops to inflate the cost of repairs to vehicles when conducting work on non-fault accident claims. You also say the cost of replacement vehicles is being inflated. You allege this amounts to fraud on the part of the insurers and consider that, in turn, this has caused the cost of insurance policies and premiums to increase – impacting everyone in the UK with a motor policy.

What the regulator decided

3. The FCA excluded your complaint under paragraphs 1.1 and 3.6 of the Complaint Scheme (the Scheme). It said:

Paragraph 1.1 of the Scheme explains that the Complaints Scheme is concerned with the “investigation of complaints arising in connection with the FCA’s exercise of, or failure to exercise, any of their ‘relevant functions’.” The FCA’s ‘relevant functions’ are set out in legislation, namely, section 85(2) of the Financial Services Act 2012. These do not include any of the FCA’s functions under the Theft or Fraud Acts. Therefore, any functions we may have to investigate or take action in relation to allegations of fraud are not one

*of our 'relevant functions' and as such are not within the scope of the Scheme.
For this reason, I am unable to investigate your complaint of fraud.*

4. The FCA also said that fraud was better dealt with by the police or Serious Fraud Office.

Why you are unhappy with the regulator's decision

5. You are not happy with the FCA's decision as you believe what they are doing "appears a clear example of nonfeasance in a Public Office by the FCA".
6. I also note your comments in your response to my preliminary report, dated 29 April 2020. I believe they have largely been dealt with by the FCA's letter to you, dated 4 May 2020, but where additional comment is required, I have included it in my report below.

My analysis

7. Paragraph 1.1 of the Scheme states that the complaints team will carry out "investigation(s) of complaints arising in connection with the FCA's exercise of, or failure to exercise, any of their 'relevant functions'." The FCA's 'relevant functions' are set out in legislation, namely, section 85(2) of the Financial Services Act 2012.
8. The FCA correctly stated that investigation under the Theft or Fraud Acts is not a relevant function of the FCA for the purposes of the Scheme, which has been set up by legislation, enacted by Parliament. The FCA does investigate certain types of fraud, a power given to it under legislation that is not covered by this Scheme, it is the role of the police to investigate more general allegations of fraud.
9. The FCA's decision letter unhelpfully described your complaint as 'a complaint of fraud falling outside of the FCA's remit'. There is a persistent tendency in the FCA - to which I have previously drawn attention – to give the impression that fraud is not a matter in which it has an interest. In fact, the FCA has powers to prosecute fraud in certain circumstances, and even in matters where the police take the lead, the FCA as regulator has an obvious duty to consider allegations of fraud against those it regulates. If a member of the public (or anyone else) makes allegations, supported by some form of evidence / information, about wrongdoing at regulated firms, the information should be forwarded to the

relevant supervisory team within the FCA for it to be considered in light of the relevant regulations and the FCA's work.

10. In this case you alleged a number of things, including an allegation that a number of insurance companies are not treating their customers fairly, but I could not see any evidence on the file provided to me by the FCA that the concerns raised by you were referred to the relevant supervisory area. I **recommended** that the FCA ensures the information provided by you is forwarded to the supervisors of the firm(s) in question for their consideration and provides me with confirmation in its response to this preliminary report that this was done.
11. I have also seen some internal discussions which referenced work the FCA has done in the insurance sector, which is in the public domain and may be of assistance to you, but this information was not included in the final decision issued to you. I also **recommended** that the FCA considers whether it could provide any further information which may be of assistance to you in understanding what work the FCA is doing. The FCA accepted both of these recommendations.
12. It is generally best practice to provide complainants with as much information as possible in order to help them gain a better understanding about the work of the regulator and what its limitations are. Excluding a complaint on the grounds that the FCA is not responsible for investigating frauds without explaining that it does welcome any information which may assist it in its work of regulating firms and that this information will be sent to the relevant departments is likely to leave the complainant feeling confused about the regulator's apparent lack of interest in protecting consumers. It also does not do justice to the work the FCA **is** doing in the background and how it uses information from all sources to achieve its statutory objectives, including protecting consumers.
13. In line with my recommendations the FCA sent you a letter, and provided me with a copy, with information about how the relevant department is considering the issues you raised and its general supervisory approach to firms. I welcome the level of detail the FCA went into in its letter and I hope you can now see that the information you provided is being appropriately considered.

14. Had it been made clear to you in the initial complaint response by the FCA that your concerns would be forwarded to the relevant teams and that you would be provided with some feedback, you might have been persuaded that the regulator is taking its objective of consumer protection sufficiently seriously and that it genuinely welcomes information from members of the public that may assist it in carrying out its work.
15. It should be noted, however, that the FCA cannot generally share the details of its regulatory work with consumers (under s 348 of the Financial Services and Markets Act 2000 and for policy reasons) and you are unlikely to receive any more detailed feedback from the FCA about what happened to the information you provided.

My decision

16. While the FCA was right to say that its functions under the Theft and Fraud Acts are excluded from this Complaints Scheme, it does have responsibilities in relation to fraud, and considering information about misconduct (including fraud) of firms which it regulates one of the functions under the Financial Services and Markets Act 2000 which falls under this Scheme. For that reason, I do not think that your complaint should have been wholly excluded from the Scheme but I consider that by sending you a letter and also asking you for further information to be able to take matters forward this mistake has been rectified.
17. The FCA should have forwarded the information you provided to the relevant areas. I therefore upheld this element of your complaint and I **recommended** that the information which you have provided is forwarded to the FCA's Supervision. The FCA accepted this recommendation and it has now confirmed that it complied with it.

Antony Townsend
Complaints Commissioner
12 May 2020