

9 February 2021

Final report by the Complaints Commissioner**Complaint number FCA00732***The complaint*

1. You have asked me to review two complaints about the FCA.

What the complaint is about

2. The FCA issued two decisions.
3. The first decision was issued on 8 April 2020.
4. The FCA summarised your complaint as follows:

'You have complained that the FCA released confidential information relating to you as part of the data breach in November 2019. You mentioned that you have done everything that has been asked of you by the FCA in relation to Firm X. You complained that it is unacceptable for the FCA to publish your information on our website.

Part two:

To resolve your complaint, you have requested financial compensation in respect of the data breach. You have requested that we consider the following points:

- *We're the FCA, and we're meant to be helping you - not publishing your data.*

You expressed concern that we're making your life a misery.

- *You want compensation for the amount that you have invested with Firm X, as we regulated that firm. You feel that the disclosure of your data has made this go from bad to worse.'*

5. You sent me this complaint (Complaint One), but given that you had another outstanding complaint with the FCA, we agreed that I would wait until you had received your response from the FCA so I could review the totality of the matters if you were dissatisfied with the outcome of the second complaint.
6. The second decision letter was issued on 21 October 2020 and the FCA summarised your complaint (Complaint Two) as follows:

'You called the Supervision Hub (The Hub) and asked to speak to Mr Y, you are unhappy that you couldn't be put through to Mr Y or Mr Y's manager. You didn't like that way the Associate handled your call and that she didn't apologise. You are also unhappy that you have not had a response from Mr Y.'

What the regulator decided

7. In its first decision letter, dated 8 April 2020, the FCA upheld part one of your complaint but did not uphold part two. It explained that, in response to a Freedom of Information Request about the number of complaints received by the FCA, the FCA had published data on its website. Unfortunately, the data still had links to the names of complainants (including you), and some details of the complaints (although the details were not immediately apparent). The FCA found out about this error three months after the posting on the website: it immediately removed the information, reported the breach to the Information Commissioner's Office (ICO), and took steps to find out whether the data had been misused. It also put in place procedures to prevent a recurrence.
8. The FCA offered you an apology for stress and inconvenience which the error had caused. It said that given the limited nature of the information that was disclosed about you and the steps the FCA has taken to prevent harm, as well as indications that any third parties hold or have taken action in respect of the data, it did not think an ex gratia payment was justified. With respect to Firm X, the FCA explained that the investigation into that complaint was deferred.
9. In its second decision letter dated 21 October 2020, the FCA did not uphold your complaint. It explained that although the specific individual you wished to speak to was not available, another member of staff had called you to discuss your concerns. The FCA felt the member of staff Z had handled the call well.

Why you are unhappy with the regulator's decision

10. You have referred your complaints to me as you are not happy with the FCA's decision.

My analysis

Complaint One

11. The facts behind your complaint are not in doubt. Amongst many other people, you have been the victim of an FCA data breach. That breach ought not to have happened, and I have sympathy for your situation.

12. I have been briefed about this incident. It is clear that, as soon as the matter was drawn to the FCA's attention, it took swift action, including removing the information from its website and reporting itself to the Information Commissioner's Office. (It also informed my Office.)

13. The FCA has drawn your attention to your right to complain to the Information Commissioner's Office, which is the organisation with principal responsibilities for these matters. Although I understand your concerns, in the circumstances, I agree with the FCA that this matter is more appropriately dealt with by the Information Commissioners Office. You would also have the option of pursuing the FCA for compensation – there is information about this on the ICO's website at <https://ico.org.uk/your-data-matters/data-protection-and-journalism/taking-your-case-to-court-and-claiming-compensation/>.

14. The FCA did not draw your attention to your right to refer the matter to me, although you have done so. The previous Complaints Commissioner recommended that the FCA ensure it tells all complainants about their right to refer complaints to me – this is a matter which is still under discussion between the FCA and my office, but it has no bearing on your complaint, which I consider is best dealt with by the ICO.

15. The FCA has explained that your complaint about Firm X is currently deferred. I agree with the deferral, for the reasons I have given you in my cover letter.

Complaint Two

16. You are unhappy with how the FCA member of staff Z handled the phone call with you on 14 April 2020, and that you could not reach another, specific member of staff.
17. I appreciate you wished to speak to a specific member of staff, probably because they had signed your decision letter. This member of staff was not available and someone else called you back in order to avoid further delay. In the circumstances I think the FCA was trying to be helpful to you. Staff member Z was aware of your case and authorised to speak on behalf of the FCA.
18. I have listened to the phone call between you and staff member Z. I found the staff member was courteous and patient throughout the call, although I appreciate you were frustrated because you believe that '*as the FCA has done something wrong, it should pay for this*'. What you mean is the FCA should offer you (an ex gratia) compensatory payment, which it had not. You were also disappointed to hear that no one at the FCA would be 'sacked' over this data breach.
19. I have already addressed the issue of the data breach in saying it is more appropriately dealt with by the ICO. For my part, I welcome that the FCA has offered you an apology, and that it is taking steps to ensure this type of breach does not occur again.
20. I appreciate the staff member Z did not offer you the remedy you were hoping for. However, I think they handled the call courteously and appropriately for the circumstances. Therefore, I am minded not to uphold this complaint.

My decision

21. The FCA has already upheld your complaint about the data breach but has not offered you compensation. It has also offered you an apology and referred you to the ICO. I agree that that your complaint is better dealt with by the ICO.
22. The FCA has deferred your complaint about Firm X. I agree with this decision for the reasons given above.
23. The FCA has not upheld your complaint (two) about the phone call you had with staff member Z. For the reasons above, I agree that this complaint should not be upheld.

24. I appreciate you remain unhappy with my decision, but I can't help you any further under the Complaints Scheme. As I have mentioned above, the ICO is the correct body to deal with your complaint about the data breach.

Amerdeep Somal
Complaints Commissioner
9 February 2021