

14 August 2020

Final report by the Complaints Commissioner**Complaint number FCA00747***The complaint*

1. On 23 May 2020 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. My preliminary report was issued on 20 July 2020 and both you and the FCA have commented.

What the complaint is about

2. You complained to the FCA in March 2020 about data breaches arising from applications you made for Part IV permissions, in its complaints handling process, and in its display of information about a clone attempt on your firm.

What the regulator decided

3. The FCA divided your complaint into four parts as follows:
 - a. *Part One* - Confidential data of yours was used openly by the FCA when processing an Authorisations application in 2014.
 - b. *Part Two* - Confidential data of yours was used openly by the FCA when publishing Decision Notices and Final Notices on its website.
 - c. *Part Three* - Whilst handling your three prior complaints, the FCA violated data protection procedures.
 - d. *Part Four* - You are unhappy that a clone firm warning regarding another firm has been posted on the FS Register next to your firm. You believe that this has reflected negatively on your firm and has given the impression that you established or used the clone firm.
4. The FCA told you that Parts One to Three of your complaint fell outside the Complaints Scheme (the Scheme) and would not be investigated. Part Four of your complaint was investigated but not upheld.

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Why you are unhappy with the regulator's decision

5. You have told me that your complaint is about the FCA's organisational behaviour in *recklessly and carelessly defying the law during their handling and processing sensitive data, in the application forms, during the correspondence exchanged, and also during processing and investigation of complaints against the FCA (previously FSA) ...* You have also told me that you *would like to make additional statements regarding FCA's negligence, misconduct and mismanagement during their investigation, exchange of documents and email communications and process stages of [your] applications for permissions for mortgage advice and consumer credit advice and subsequent complaint applications.*

My analysis

6. I have already extensively considered complaints you made to me in 2016 and 2017 about the FCA's handling of your applications for Part IV permissions and your subsequent complaints about these matters. I refer you to my final reports under references FCA0014, FCA0074 and FCA00386. In my view, much of your current complaint seeks to have these matters reopened and reconsidered from a different angle. Although I recognise that you continue to feel aggrieved, reopening these matters is not an option available to you under the Scheme.

Parts One to Three

7. The FCA's complaint response dated 6 May 2020 said that these aspects of your complaint fall outside the Scheme for the following reasons:
 - a. a complaint relating to GDPR compliance would not be considered one of the FCA's relevant functions (paragraph 1.1 of the Complaints Scheme).
 - b. a complaint about use of your personal data would be more appropriately dealt with by the Information Commissioner's Office (ICO) (paragraph 3.6).
 - c. You were aware of the circumstances regarding Parts One and Two over 12 months ago and there are no reasonable grounds for your delay (paragraph 3.3).

- d. Regarding Part Two, under section 391 of the Financial Services and Markets Act (FSMA) 2000, the FCA is required to publish information about the matter a Final Notice relates to. The relevant Upper Tribunal decision made is also in the public domain. The FCA did not publish any Decision Notices referencing either you or your firm.
 - e. Regarding Part Three, you were not directly affected by the FCA's data breach in February 2020, when the confidential information of some complainants was accidentally published in response to a Freedom of Information Act request (paragraph 3.2).
8. I make the following points about this aspect of the FCA's complaint response:
- a. The FCA's 'relevant functions' are its functions conferred by or under FSMA, other than their legislative functions, and 'such other functions as the Treasury may by order provide'. The FCA's legislative functions are defined in Section 85 (4) of the Financial Service Act 2012 and these also relate to its functions as conferred by or under FSMA.
 - b. In my view, complaints about the consequences of a data breach are not automatically ruled out of consideration under the Scheme, that is they are not excluded. Whether they are better dealt with in another way, usually by the ICO, should be considered on a case-by-case basis.
 - c. Even if such complaints are excluded, all complainants should be informed of their right to come to me, even if they are also directed to the ICO.
9. It was therefore incorrect for the FCA's complaint response to state that your only recourse in relation to Parts One to Three of your complaint was to the ICO.
10. I am nevertheless satisfied that, in your case, there are no grounds for looking at your complaints about data breaches under the Scheme because:
- a. You were not personally affected by the February 2020 data breach.
 - b. You are out of time to complain about the earlier alleged data breaches and there are no reasonable grounds for delay.
 - c. The FCA's response in 7d above is reasonable and supported by the facts.
 - d. You still have the option of approaching the ICO if you wish.

Part Four

11. It is not clear to me from your correspondence with me that you are complaining about the FCA's response to this aspect of your complaint. That response said:

The FCA takes all forms of financial crime very seriously, and does everything in its powers to prevent scams happening, and to frustrate the efforts of the criminals who perpetrate them. This is the reason the FCA puts clear alerts on the FS Register. However, I have liaised with the relevant area of the FCA, who issued the clone alert in relation to your firm. In your case, you reported concerns to the FCA that individuals had used your firm's details to suggest they work for the genuine [firm]. It is the FCA's job to protect both your firm and your customers, current and future. Placing a clone alert next to your FS Register entry is part of that protection... There has now been a review of the previous case that led to the issuance of the clone alert. The relevant area has concluded that the alert about the unauthorised firm will remain live on the FCA website but, as the situation that gave rise to your firm's concerns of being cloned have since changed, the alert will be amended to remove reference to your firm as the cloned entity and its address.

12. Having reviewed the FCA's files and evidence, I am satisfied that this was a reasonable response. In my preliminary report I recommended that the FCA put in place an automatic review process for clone alerts. In response to this the FCA has provided persuasive evidence from its Unauthorised Business Department (UBD) that this would be neither feasible nor necessary, given the increasing number of clone alerts it is processing, that it always contacts the genuine firm before issuing a clone alert or making an entry on the register, and that the FCA considers firms to be best placed to inform them if there has been a change of circumstances requiring amendment or removal of the alert/register entry. UBD has however agreed to provide further information to firms, before clone alerts are issued, so that firms are aware that they can contact the FCA in future if they would like the clone alert to be reviewed/removed. I welcome this and I am satisfied that it is a suitable response to the intention behind my recommendation.

My decision

13. I have not upheld your complaint for the reasons stated, although I have noted that it was incorrect of the FCA's complaint response to state that your only recourse in relation to Parts One to Three of your complaint was to the ICO.
14. I **recommend** that the FCA takes steps to ensure that all complainants whose complaints are excluded, for whatever reason, are informed of their right to approach my office (paragraphs 8 and 9 above).

Antony Townsend
Complaints Commissioner
14 August 2020