

26 August 2020

Final report by the Complaints Commissioner

Complaint number FCA00758

The complaint

1. On 16 June 2020 you asked me to investigate a complaint about the FCA, which the FCA had not upheld.

What the complaint is about

2. The FCA summarised your complaint as follows:

Part One

You have raised several concerns about the conduct of [firm X], including that the firm failed to properly assess your client status when opening your trading account; that you have evidence that prices displayed by [firm X] did not reflect live market prices; that you were unable to contact the firm to execute trades at key times; and that the firm used pressured sales tactics to persuade you to place further trades after you suffered investment losses.

You believe the FCA failed to take appropriate action in response to intelligence you shared in March 2019 about the activities of [firm X], trading as [firm Y]. You raised concerns about the trading platform operated by [firm X] for spread betting, a type of 'Contracts for Difference' (CFDs), after suffering high and unexpected investment losses. You believe the firm was advised by the FCA to enhance its risk warning disclosures in direct response to the concerns you raised about the firm's activities.

Part Two

You believe the FCA ought to have prohibited firms from offering speculative investment products, to mirror the regulatory approach taken by regulators in the United States of America (the 'US'). You believe the FCA has failed to

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adequately protect the interests of UK consumers against firms offering speculative investment products. You allege the FCA is sympathetic towards firms like [firm X].

Part Three

You believe that FCA employees are biased in favour of firms like [firm X] and that this stems from a lack of diversity among the FCA's employees. You have made similar allegations about the employees of the Complaints Commissioner and firms regulated by the FCA.

You have asked whether the FCA holds data on the ethnicity and religious beliefs of FCA employees, firms and the Complaints Commissioner, to ensure that there is no obvious bias.

Part Four

You are unhappy with the FCA's response to a previous complaint you raised on 21 December 2018, which was logged under case reference number 205686923.

What the regulator decided

3. In relation to Part One, the FCA did not uphold your complaint. It said that for reasons of confidentiality it was unable to tell you what the FCA had done in response to the information about firm X which you had supplied, but that it was satisfied that the information had been considered properly. It explained that the FCA did not deal with individual consumer complaints (which were handled by the Financial Ombudsman Service (FOS)), but that information of the kind which you had supplied was used to inform the FCA's regulation of firms.
4. In relation to Part Two of your complaint, the FCA said that it was excluded from the Scheme because it related to the FCA's 'legislative functions' – i.e. the making of rules. However, the FCA did give you an extensive explanation of the steps which it had been taking in relation to the regulation of Contracts for Difference (CFD) providers.
5. In relation to Part Three, the FCA said that matters concerning 'the relationship between the FCA and its employees' were excluded from the Scheme. However, it drew your attention to the FCA's Annual Diversity Report. It also said that it

was not responsible for issues to do with the employees of my Office, or those of regulated firms.

6. Finally, in relation to Part Four, the FCA said that if you were dissatisfied with its decision on your earlier complaint, you should raise that matter with me.

Why you are unhappy with the regulator's decision

7. In your email to me, you make the following principal points:
 - a. The FCA's regulation is ineffective. The FCA has a 'lack of will' and is biased towards financial services organisations;
 - b. It is wrong that the FCA does not have to tell people what action it takes in response to information which they provide. This undermines confidence, and discourages people from making complaints;
 - c. The FCA should be fully transparent with its 'recruitment/appointment and selection practices', and not use misleading data.

My analysis

8. Your complaint arises from your bad experience with a CFD provider. As has already been explained to you, this Complaints Scheme cannot consider the dispute between you and firm X. What I can consider, however, is the FCA's actions, or inactions, in response to the information which you supplied.
9. I understand your frustration with not being told what, if any action, was taken by the FCA. Unfortunately, this is a feature of the regulatory regime. Section 348 of the Financial Services and Markets Act 2000 places restrictions on what the FCA (and I) can disclose, and the FCA also has policies which it considers are necessary in order to encourage regulated firms to share information with the regulator. There is a good description of this at <https://www.fca.org.uk/freedom-information/information-we-can-share>.
10. There is a legitimate debate to be had about whether this balance between on the one hand protecting confidential information and encouraging co-operation, and on the other showing consumers what the regulator is doing, is correct. You have argued that the current regime does not inspire confidence or encourage reporting. Unfortunately, that is a matter of FCA policy, which I cannot investigate under the Scheme.

11. What I can do, however, is to look at the FCA's confidential papers to see whether I am satisfied that the FCA's response to your information was or was not reasonable. I have reviewed the papers, and I can see that the information which you supplied was sent to the right department, and was assessed. I cannot say more about it, for reasons of confidentiality.
12. Turning to Part Two of your complaint, you consider that the FCA's approach to the regulation of providers of CFDs compares unfavourably with that of regulators in other jurisdictions. I recognise that that is a legitimate point of view, but again I am afraid that I cannot deal with complaints about the FCA's policies. The FCA has given you a very full explanation of various steps which it has taken in this area: you clearly consider these inadequate, but I cannot adjudicate on that matter.
13. On Part Three of your complaint, I do not agree with the FCA's view that it is unable to investigate it because it is excluded from the Scheme as it is 'a complaint about the FCA's relationship with its employees'. Paragraph 3.4 (a) of the Complaints Scheme seems to me to be designed to exclude employment disputes, whereas your complaint is saying that the FCA's employment practices have led to bias in the discharge of its duties. However, the FCA has drawn your attention to its published data on its workforce, and you have not provided any evidence to show that what you see as bias in its regulation is linked to the make-up of its workforce. For that reason, I do not uphold this aspect of your complaint.
14. For completeness, I should say that my office comprises four part-time staff, one of whom (myself) is appointed by the regulators with Treasury approval. For that reason, we do not publish data on the ethnic monitoring of our workforce, although we strive to ensure that our recruitment and employment processes reflect good practice on equality and diversity issues.
15. Finally, on Part Four of your complaint, I am afraid that that is well out of time. The decision letter on your earlier complaint was sent to you on 6 February 2019, and included clear information that you could ask me to review your complaint, but that you should do so within three months. You have not given me any reason why you were not able to refer the matter to me within those three

months, and in those circumstances I do not propose to investigate the matter further.

My decision

16. In response to the analysis above, which I set out in my preliminary report, you made a number of comments. In particular, you consider that I should be able to express concerns, and bring about change. You are also especially concerned about the availability of data for consumers to enable them to challenge the regulatory system.
17. You may be interested to read my recent Annual Report, in which I draw attention to a number of issues relating to FCA complaints and the issues raised by them – see <https://frccommissioner.org.uk/wp-content/uploads/OCC-Annual-Report-2019-2020.pdf>.
18. However, my role is defined by the Part 6 of the Financial Services Act 2012 and the Scheme made under it - <https://frccommissioner.org.uk/complaints-scheme/>. And I am constrained by the confidentiality provisions in the Act. You may be interested in the consultation on the Complaints Scheme which the FCA (and the other regulators) have recently issued – see <https://www.fca.org.uk/news/news-stories/fca-pra-and-bank-england-launch-complaints-scheme-consultation>. You might wish to respond to that with any comments on what you see as deficiencies in the current Scheme.
19. I recognise that you have strong views about the adequacy of the FCA's regulation of CFD providers and of the but, for the reasons I have given, I cannot uphold your complaint.

Antony Townsend
Complaints Commissioner
26 August 2020