

17 May 2021

Final report by the Complaints Commissioner**Complaint number FCA00773***The complaint*

1. On 7 July 2020 you asked my office to investigate your complaint about the FCA and my predecessor explained that you would need to wait for the FCA to complete its investigation first. You contacted me again on 4 March 2021 and asked me to review the FCA's response to your complaint. I have carefully reviewed the information sent to me by you and the FCA. My preliminary report was issued on 22 April 2021 and both you and the FCA have had the opportunity to comment.

What the complaint is about

2. On 2 June 2020, you complained to the FCA about two issues:
 - a. its alleged failure to take action against firms in Northern Ireland that are offering regulated advice without being authorised by the FCA;
 - b. its data breach of your personal details.

What the regulator decided

3. The FCA's Decision Letter dated 4 December 2020 said that:
 - a. Part One of your complaint was not upheld because processes had been followed in respect of the specific firm you had named in March 2020 and the confidentiality regime within which the FCA operates means that further detail and feedback cannot be provided to those who report concerns;
 - b. Part Two of your complaint was excluded from the Complaints Scheme (the Scheme) but was nevertheless upheld and you were offered an apology and ex gratia payment of £100;

- c. You were also offered a further ex gratia payment of £100 for the FCA's complaints handling delays.

Why you are unhappy with the regulator's decision

4. You have told me that you are 'utterly disgusted' with the FCA's response and have asked me to investigate further.

My analysis

Part One

5. You run a small firm and are FCA authorised. You have had concerns for a number of years about unregulated firms who are not subject to this regime but nevertheless offer unauthorised advice, particularly in relation to debt counselling and management. You consider that this amounts to unfair competition and 'makes a mockery' of financial regulation. Although the FCA will not give you an outcome, you see the firm is still operating, which 'tells me all I need to know'.
6. The FCA did not uphold this aspect of your complaint either about firms in general nor about the specific firm you named in March 2020. This was because it said it had followed its processes in relation to that firm and was unable to tell you more due to the confidentiality regime imposed by s.348 of the Financial Services and Markets Act 2000 (FSMA) and FCA policy guidance. This means that, as you were told, there is no general right for members of the public to know the outcome of reports that they make.
7. Like the FCA, I am required to respect confidentiality, which means that sometimes I cannot report fully on the confidential material to which I have access. However, as part of the Complaints Scheme, I have access to all the FCA's complaints papers, including confidential material. This is so that I, as an independent person, can see whether I am satisfied that the FCA has behaved reasonably. Sometimes this means that all I can say to complainants is that, having studied the confidential material, I am satisfied that the FCA has (or has not) behaved reasonably – but I am unable to give further details. This can be frustrating for complainants, but it is better that I am able to see the confidential material. In your case, I am satisfied that from the FCA's complaint response, it had taken the information you provided seriously and had followed its processes and was reasonable in the circumstances. I note that the firm you named was in

fact authorised by the FCA on 18 November 2020 and can be found by searching on the FCA's Register: <https://register.fca.org.uk/s/>.

Part Two

8. The FCA accepted that it had breached your data rights but explained that your complaint about this was excluded from the Scheme on the basis that the FCA's obligations in this regard are not 'relevant functions' as set out in the Scheme and Part 6 of the Financial Services Act 2012. I am satisfied that this was a reasonable response. I note that the FCA nevertheless offered you a remedy and also gave you details of your referral rights to the Information Commissioner's Office.

My decision

9. I have concluded that the FCA's response to your complaint was reasonable but that it could have potentially reassured you by providing you with confirmation when the firm you had specifically complained about was authorised and placed on the FCA's Register.

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Complaints Commissioner

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