

16 October 2020

Final report by the Complaints Commissioner

Complaint number FCA00813

The complaint

1. On 19 August 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 21 September 2020 and both you and the FCA have commented.

What the complaint is about

2. Your complaint is about the customer service you received from the FCA when you copied them in to your concerns about a firm and a financial transaction.

What the regulator decided

3. The FCA divided your complaint into two parts as follows:
 - a. Part One – You are unhappy with the length of time it took the FCA's Supervision Hub to respond to queries you sent in December 2019.
 - b. Part Two – You are unhappy with the contents of the Supervision Hub's response (dated 2 March 2020).
4. The FCA's complaint response dated 12 May 2020 partially upheld your complaint and apologised to you because:
 - a. You should have received a response to your 10 December email at the time
 - b. When you eventually received a response, on 2 March 2020, it did not meet your expectations. This was due to the Supervision Hub's failure to inform you that your concerns were being treated as consumer queries and not complaints, despite the Complaints Team asking them to do so.

Why you are unhappy with the regulator's decision

5. You remain dissatisfied with this outcome and you would like me to investigate.

Preliminary point

6. In your email to me of 19 August 2020, you asked me to investigate the transaction which led you to approach the FCA. I am very sorry to learn of the distress that this has caused you. However, it is not something I can consider under this Complaints Scheme, which only covers your complaint about the FCA. Complaints about a firm should be made first to the firm, and then to the Financial Ombudsman Service (FOS) if you remain dissatisfied.
7. In your response to my preliminary report you have said again that you *required an investigation into the conduct of all parties involved in [your] attempted purchase of a commercial property*. Unfortunately, as a member of my staff has further explained to you, what you are seeking is not possible under this Scheme. I understand your extreme frustration about this, and that you have explored many other avenues. However, I do not have the power to investigate your attempted purchase, the people involved, allegations of fraud, or your own solicitors. My report is about the customer service you received from the FCA.

Background – your correspondence with the FCA December 2019 to March 2020

8. On 2 December 2019, you copied the complaints teams of both the FCA and the FOS into an email to your insurance firm that raised concerns about your policy cover. You attached details of the events that had caused you concern.
9. On 3 December 2019, the FCA Complaints Team forwarded your email to the Consumer Contact Centre (also known as the Supervision Hub, or Hub). The subject line of the forwarding email said: *Forwarded by the Complaints Team to deal with as BAU. Please explain to the individual that the Complaints Team has passed this to your department to deal with as BAU as we do not consider it to be a complaint against the FCA*. BAU means 'business as usual'.
10. On 5 December 2019, a Supervisor in the Hub sent you an email requesting further information about your concerns. The email did not explain to you that your concerns were not being dealt with as a complaint against the FCA.

11. On 10 December 2019, you again copied the FCA and the FOS complaints teams into an email to your insurance firm. This referred to your email of 2 December and provided an update on the events that caused you concern.
12. The Complaints Team again forwarded this email to the Hub with the same subject line. A different Hub Supervisor made the decision not to respond to you because the FCA was waiting for your response to the email of 5 December.
13. On 26 February 2020, you emailed the complaints teams of both the FCA and the FOS asking for an update on your complaint. The FCA Complaints Team again forwarded this email to the Hub with the identical subject line.
14. On 2 March 2020, you received an email from a third Supervisor in the Hub, requesting further information from you about your insurance firm. This email still did not explain to you that your concerns were not being dealt with as a complaint against the FCA.
15. On 10 March 2020, you phoned the FCA Complaints Team to complain about the response you had received on 2 March. The FCA accepted this as a complaint about poor service from the Hub, taking 12 weeks to respond to your query when you thought they were dealing with your correspondence as a complaint. You wanted financial compensation for this delay as you considered that you had lost time to make your complaint to a more appropriate body.

My analysis

16. As already noted, the FCA partially upheld your complaint because your expectations were not managed properly and the Hub took too long to respond to you. I am satisfied that this was the correct outcome. However, I have two further points to make:
 - a. The Complaints Team could have considered whether it might have been more proactive, instead of simply forwarding your emails to the Hub each time. For example, the Complaints Team could have copied you into its email to the Hub on 3 December 2019. This would have informed you that your concerns were not being dealt with as a complaint about the FCA. When you continued to correspond with the Complaints Team despite their referral to the Hub, again they might have explained the position to you.

- b. It would have been helpful if the Hub's emails to you requesting further information had explained to you that the FCA could not help you with an underlying complaint about a firm and had provided information about who else you could approach. This was not explained to you until you spoke to someone in the Complaints Team on 10 March 2020. The FCA should not assume that members of the public will understand the nature of its remit.
17. I **recommend** that the FCA reviews its practice in response to these two points.
18. Although the FCA apologised to you for its service failings, it did not provide you with financial compensation as you had requested. Its Decision Letter said: *I am unable to provide you with compensation as you have requested. Under the Financial Services and Markets Act 2000, the FCA is immune from legal liability unless a court finds that the FCA has acted in bad faith or has breached your human rights. Under the Scheme, the FCA will not pay punitive damages or costs in the same way that a court or tribunal would do.*
19. This is not how compensation should be assessed under this Complaints Scheme. The FCA does indeed have immunity from legal proceedings unless bad faith or a breach of human rights can be shown. These are matters which would have to be decided by a court. However, there is provision under the Scheme for *ex gratia* payments of compensation in respect of a complaint that is found to be justified. It is not necessary to establish bad faith or a breach of human rights by the FCA before such payments are offered. I have therefore considered whether it would be reasonable for me to recommend such a payment in your case.
20. The FCA accepted that its poor service cost you time in which you could have raised the issues with a more appropriate body. I note that your emails were also sent to the FOS, so you were clearly aware of their existence. I do not know to what extent you pursued matters with the FOS as well as with the FCA. Nevertheless, you have clearly had the time and trouble of pursuing your complaint with the FCA, which has accepted that it did not handle matters well. In my view, a small *ex gratia* payment should have been offered to you for this.
21. I **recommend** that the FCA offers you the sum of £50 for its service failings and for the distress and inconvenience you experienced because of this. I appreciate

that you would like a higher amount for the time you wasted and how this made you feel, but I have concluded £50 is fair and reasonable in the circumstances.

My decision

22. I have agreed with the FCA's decision to partially uphold your complaint. I have **recommended** that:

- a. The FCA offers you the sum of £50 for its service failings and the distress and inconvenience this has caused;
- b. The FCA reviews its practice in response to the points I have made in paragraphs 16 (a) and (b) above.

23. I am pleased to say that the FCA has accepted my recommendations. It has said that, as part of its programme to improve the efficiency and effectiveness of its complaints handling, it will review its practices. You should shortly hear from them with an apology and an offer of payment.

Antony Townsend
Complaints Commissioner
16 October 2020