

11 October 2021

Final report by the Complaints Commissioner**Complaint number FCA00865***The complaint*

1. On 16 June 2021 you asked me to review your complaint against the FCA.

What the complaint is about

2. The FCA reviewed your complaint in five parts as follows:
 - a. Part One: Firm X knowingly deceived you in its interactions with you.
 - b. Part Two: You are unhappy with your financial adviser.
 - c. Part Three: You are unhappy that the FCA has failed to ensure adequate supervision and the protection of consumers (including yourself) after the FCA fined Firm X for failing to issue documents to customers, and you believe the firm have not been adhering to the FCA's notice regarding this.
 - d. Part Four: You are unhappy with the FCA Supervision Hub which sent you incorrect information.
 - e. Part Five: You are unhappy with the FCA's handling of your case in that the FCA failed to process your complaint in a prompt and timely manner.

What the regulator decided

3. The FCA said that Parts One and Two of your Complaint are out of scope under paragraph 1.1 of the Complaints Scheme and that it was unable to investigate Part Three of your Complaint under paragraph 3.3 of the Complaints Scheme (i.e., your complaint is out of time).
4. The FCA upheld Part Four and Five of your complaint and offered you an ex gratia payment of £50 for the delay in investigating your complaint.

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5. The FCA also provided further information about broken links in a previous letter which you could not open.

Why you are unhappy with the regulator's decision

6. You have told me that:
 - a. The FCA's delay in answering your questions and queries (including those regarding the broken links in its letter to you) meant you received the information you requested the day after the court case for which you requested it had ended. (Element One)
 - b. You requested the FCA resend you the broken links in response to the FCA's scoping letter, but instead the FCA sent you the links as part of its final decision, which meant you could not provide further input on the scope of your complaint. (Element Two)
 - c. You are unhappy that Firm X sent an auto generated acknowledgement of your complaint and has not followed through on providing you with any further information, and that the Financial Ombudsman Service (FOS) has not found against Firm X for this. You have said that the FCA is also failing to regulate Firm X on this matter. (Element Three)
 - d. You tried to complain about the FCA's oversight of Firm X previously but were informed the FCA do not deal with complaints against the firms they regulate. This is the reason your complaint is out of time. You were told to complain to the FOS initially, which you did. You pointed out the FCA website says that:

The regulators cannot consider complaints about the firms we regulate. If you have a complaint about a firm, then you should raise this initially with the firm. If you remain unhappy with the outcome, you may be able to make a complaint to the Financial Ombudsman Service (Element Four)
 - e. The FCA upheld part Four and Five of your complaint and offered you an ex gratia payment which you accepted. However, due to what turned out to be an administrative error, they did not pay this amount to your bank account and forty days later you had to 'chase' the FCA for it. (Element Five).

Preliminary points (if any)

7. Under the complaints Scheme to which both the regulators and I operate to, complaints about the FOS and other financial services providers are excluded. This means I cannot investigate Element Three of your complaint which is about Firm X and the FOS. I have reviewed your complaint against the FCA with respect to Firm X under Element Four.

My analysis

Element One

8. The FCA has acknowledged there were delays in dealing with your case, apologised for this and offered you an ex gratia payment. The issue of FCA Complaints Handling delays has been highlighted in several Complaint Commissioner's reports, and both my predecessor and I continue to monitor the situation. The FCA has taken steps to address this, and matters are improving. I realise that this will be of little consolation to you personally, which is why I agree with the FCA's decision to apologise and offer you an ex gratia payment for the delay. You have said you needed information from the FCA for your court case. Whilst it may have been useful to you if you had received any information from the FCA in a timelier manner, the FCA is not obliged to provide you with material for your court case or to accommodate the timescales of any court proceedings. Therefore, this is not a point which I can review.

Element Two

9. In your letter of 11 January 2021 you asked the FCA to 'add links' to its letter of 8 January 2021. In its letter of 9 February 2021 the FCA added the links and tells me they were checked and working, but the FCA accepts that when you subsequently wrote to it on 26 February 2021 to say the links were not working it should have sent you the full web address rather than wait to include them in its final decision.. This was unhelpful on the part of the FCA, and I uphold this element of your complaint. I recommended that the FCA apologise to you for this and review its internal processes to ensure this isn't a recurring issue. The FCA has accepted this recommendation. You have, however, in referring your complaint to me, outlined your main concerns so you will not be disadvantaged on the matter of scope.

Element Four

10. The background to your complaint is that you have a complaint against Firm X which you feel sent you incomplete account statements which did not show the full extent of account charges, and which did not acknowledge your complaints in a way which was acceptable to you. You approached the FCA which directed you to the FOS. Sometime after you found out because of a subject access request that the FSA (the predecessor to the FCA) had fined Firm X in connection to, among other matters, failure to send policyholders adequate documents. You felt that your case was similar, and this meant that Firm X had not rectified its documentation issues despite the FSA fine. You approached the FCA to complain about this but were told you are out of time to bring the complaint.
11. This is not the first time I have dealt with complainants who have pursued their case through either the FOS or the Financial Services Compensation Scheme (FSCS) in the first instance, and when they subsequently complain to the FCA they find they are out of time to submit the complaint. In my view this issue arises due to a lack of clarity for complainants that:
 - a. Complaints can be pursued simultaneously against the regulators, the FOS and the FSCS: it is not a sequential process.
 - b. Complainants have said to me that they were unaware they could complain to the FCA about its oversight of firms.
 - c. The FCA website paragraph in 6d that the FCA cannot consider complaints against the firms it regulates is misleading. Many of the reports on my website explain that the FCA does not investigate individuals' complaints against the firms it regulates that is the role of the FOS, however that does not mean that the FCA cannot investigate concerns arising from information about individual complaints, but it investigates those in the context of considering whether or not regulatory action is justified, rather than whether or not the individual requires redress.
 - d. In some cases, complainants have been through a lengthy FOS process and have been told to approach the FCA on particular points.

12. I have recently raised some of these points with the FCA, and I recommend that the regulator's website is updated with respect to 11a and 11c. I further recommend that where either the FOS or FSCS refers complainants to the regulators on any points, such complaints are not deemed out of time. The FCA's view is that you did not raise a complaint about the FCA's oversight of Firm X when you contacted the FCA in 2018, although you were aware of all the issues then. The FCA also says that there is a confusion in the matter between a complaint about the Firm and a complaint about the FCA. I agree that such confusion may have arisen, and this is not the first time I have seen such an occurrence. It appears to me more can be done to provide clarity on this, and I welcome the fact that the FCA has accepted my recommendation. It has said it will review the Complaints webpage on the FCA website. It will consider whether wording should be added to make clear to consumers that it welcomes information they provide about their experiences with firms to assist with its oversight of those firms, but that it does not provide feedback.
13. I now turn to your complaint about the FCA's oversight of Firm X. I have decided to review this element of your complaint despite it being out of time for the reasons above. Having studied the FCA's records I can say that I am satisfied that the FCA has not ignored the information which you have provided and has given it proper consideration from a regulatory point of view. I understand you have a dispute with Firm X and that you feel it is not complying with
14. section DISP 1.6.1 of the FCA handbook but for personal redress from that firm you need to approach the FOS, which I understand you have already done.

My decision

15. I appreciate you continue to feel that Firm X has not complied with the FCA regulations, and you would like to know what if anything the FCA will do about this. The regulator welcomes information from people who report concerns. However, as you were told, the FCA does not generally say what action has been taken in response to the information that it receives. This is because section 348 (s.348) of the Financial Services & Markets Act 2000 (FSMA) classes some information the FCA holds about firms as confidential and restricts

how that information is dealt with. In addition to this, any information that is not restricted by s.348 FSMA may be restricted due to the FCA's policy on sharing information about regulated firms and individuals, who also have legal protections. 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.

16. Like the FCA, I am required to respect confidentiality. This 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.

17. In your case, I am satisfied on balance that the FCA's complaint response, that it would not inform you of any action to be taken, or not taken, in response to the information you provided about your Firm X was reasonable in the circumstances, as was the consideration it gave to the information you provided about the firm.

18. On the wider issue of providing clarity to complainants on certain aspects, I welcome that the FCA has accepted my recommendations.

Amerdeep Somal
Complaints Commissioner
11 October 2021