

**The FCA's response to the
Complaints Commissioner's Report
FCA001645**

Published on 7 July 2022

We have considered the Final Report of the Complaints Commissioner on complaint FCA001645.

As noted in the Final Report, the FCA accepted all three of the recommendations made in the Preliminary Report:

- **An apology has been made to the complainant by the Executive Director of Enforcement.**
- **We have shared with the Commissioner the steps the FCA has taken to ensure material is not overlooked during disclosure and will keep the Commissioner up to date on progress in this area.**
- **We have explained the breakdown of the ex gratia offer.**

We also accept the recommendations made in the Final Report and will:

- **Provide breakdowns in decision letters going forward to differentiate offers made by the Complaints Department and those made by other areas of the FCA.**
- **Increase the ex gratia offer for complaints handling to £1,000.**
- **Increase the ex gratia offer with regard to Parts One, Three, Four and Five to £3,000.**

We accept the Commissioner's recommendation that an ex gratia offer of £4,000 is the appropriate sum to pay the complainant, and have further considered the most appropriate way to make settlement. We are mindful of the following:

- **The complainant's actions caused consumer losses in excess of £50 million and FSCS compensation payments in excess of a further £50 million (funded by regulated firms and ultimately their customers);**
- **The £4,000 due to the complainant will also be funded by regulated firms and ultimately their customers;**
- **The complainant has not yet paid the financial penalty imposed by the Upper Tribunal and the FCA has not sought to enforce this penalty until the conclusion of this complaint; and**
- **There is an error in the Commissioner's Final Report at paragraph 62 which states "Notably the FCA did not decide to offset the debt owed with the costs order the Judge ordered in the Upper Tribunal matter." This is incorrect. The FCA did offset the costs awarded to the complainant against the financial penalty ordered by the Upper Tribunal.**

We have weighed these factors very carefully and concluded that offsetting the payment due to the complainant in respect of this complaint against the financial penalty ordered by the Upper Tribunal against the complainant is the appropriate outcome. While we note that by offsetting the ex gratia offer we are not accepting the Commissioner's recommendation in this regard in full, our view is that this decision is consistent with the FCA's treatment of the costs

award made by the Upper Tribunal and is the fairest outcome. We will pay £4,000 to the FCA's account for financial penalties to ensure the correct treatment of funds collected through fines.

7 July 2022