

Final report by the Complaints Commissioner**Complaint number FCA00301***The complaint*

1. On 19 September 2017 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.

What the complaint is about

2. You complained about several aspects the FCA's regulatory and supervisory actions in respect of Bank A.

What the regulator decided

3. The FCA identified five separate elements to your complaint as follows:
 - 1) The FCA/Bank of England investigated Bank A and were involved in a cover up about technology issues the Bank was having.
 - 2) The FCA published an incorrect partial section 166 report regarding Bank A that ignored 'swap loan victims'.
 - 3) Bank A issued a report that did not allow you the chance to 'have the truth told'.
 - 4) The FCA refused to answer questions about a meeting it held with Bank A's CEO.
 - 5) Your concern that Bank A's new complaints procedure is covering up the truth.
4. The FCA Complaints Team did not uphold your complaint. It concluded that:
 - 1) Elements 1 and 2 could not be investigated due to paragraph 3.5 of the Complaints Scheme (the Scheme), which provides that the regulators will not investigate complaints which amount to no more than dissatisfaction with the FCA's general policies or with the exercise of, or failure to exercise, discretion where no unreasonable, unprofessional or other misconduct is alleged.
 - 2) Elements 3 and 5 related to actions taken by Bank A which, under paragraph 1.1 of the Scheme, could not be investigated because they did not arise from the exercise of or failure to exercise, any of the FCA's relevant functions. The report you refer to was an independent review commissioned by Bank A with which the FCA had no involvement.

- 3) Element 4, which related to a Freedom of Information request, could not be investigated due to paragraph 3.6 of the Scheme, which states that the regulators ‘cannot’ (this should have said ‘will not’) investigate complaints which they reasonably consider can be more appropriately dealt with another way, in this case through following the FCA’s separate internal review process followed by referral to the Information Commissioner.

Why you are unhappy with the regulator’s decision

5. You have asked me to review your complaint but have not provided any specific details about why you are dissatisfied with the FCA’s decision. I have therefore considered the FCA’s case file and complaint response as a whole.

My analysis

6. With regard to elements 1 and 2, I do not think that the FCA was right to say that your allegations “amount to no more than dissatisfaction with the FCA's general policies or with the exercise of, or failure to exercise, discretion where no unreasonable, unprofessional or other misconduct is alleged”. Your allegations clearly specified a “cover-up” and the publication of an “incorrect” report. For those reasons, elements 1 and 2 of your complaint did not in my view fall under paragraph 3.5 of the Complaints Scheme.
7. However, although it did not formally investigate your complaint, the FCA gave you details of regulatory action that it had taken, including against Bank A. It is also in the public domain that the FCA’s regulatory supervision of Bank A is continuing. The FCA’s file shows that the information you provided was forwarded to the relevant supervisory team. In those circumstances, I do not think that the allegation of a cover-up is made out. You may consider that the FCA should have taken tougher action, but that is a matter for its discretion.
8. The FCA also explained to you why it had published a summary of the skilled person’s report into Bank A, and forwarded to you an invitation from the Bank of England to supply any evidence to support your complaint against the Prudential Regulation Authority.
9. I do not, therefore, uphold elements 1 and 2 of your complaint.
10. With regard to elements 3 and 5 I consider that the FCA was correct to say that these complaints were not covered by the Scheme. The Scheme was created to allow those who are unhappy to challenge the regulators’ conduct without incurring the significant expenses associated with the legal process and the courts. The Scheme was not designed to allow consumers who are unhappy with the conduct of a regulated firm to challenge the conduct of that firm (that is the role of the Financial Ombudsman Service).
11. I also agree with the FCA’s decision to decline to investigate element 4 of your complaint since there is a separate procedure, through the Information Commissioner, for complaints about freedom of information matters.
12. I note that the FCA’s complaint response is dated 5 June 2017 but was not sent to you until 5 July. This led me to question whether you had referred your complaint to me on time. The internal evidence from the FCA’s file shows that the complaint response is incorrectly dated. The FCA should take steps to ensure that its complaint decisions are correctly dated since they start time running for a referral to my office.

My decision

13. In relation to elements 1 and 2, while I consider that the FCA were wrong not to formally investigate them under the Scheme, I am satisfied that their explanation was a reasonable one, and I do not uphold those elements of your complaint.
14. I am also satisfied that the FCA considered the other elements of your complaint appropriately under the Scheme and that its decision not to investigate your concerns, although of considerable disappointment to you, was reasonable in the circumstances. Therefore, I do not uphold your complaint.
15. In response to my preliminary decision you submitted further information about Bank A's technology issues and the effect on its customers, as well as information relating to the FCA's exchanges with the Treasury Select Committee. I acknowledge your strong belief that the FCA has not told the truth about these matters. However, this does not change my decision that the FCA has acted appropriately for the reasons stated above.
16. In my preliminary report, I made the following observations on the FCA's complaint response:
 - 1) When referring to the Scheme the FCA Complaints Team should quote correctly the relevant wording (paragraph 4 (3) above);
 - 2) When considering a decision not to investigate a complaint under paragraph 3.5, the FCA should be careful to look at the specific nature of the allegation before making its decision;
 - 3) Complaint response letters should be correctly dated (paragraph 12 above).
17. I am pleased to note that the FCA has accepted my observations.

Antony Townsend

21 November 2017