

31st March 2017

Dear Complainant

Complaint against the Financial Conduct Authority (FCA)**Our reference: FCA00265; FCA reference 204530873**

Thank you for your letter of 23rd February 2017, and for your further email of 18th March in response to my preliminary decision.

How the complaints scheme works

Under the complaints scheme, I can review the decisions of the FCA Complaints Team. If I disagree with their decisions, I can recommend that the FCA should apologise to you, take other action to put things right, or make a payment.

Your complaint

Your complaint is a complex one, set out in your letter of 23rd February 2017, but I can summarise it as follows.

You and your wife were victims of a fraud, through which criminals obtained from you details of your bank account and then transferred over £2,000 which you have been unable to recover. You have dealt variously with your bank – who you say failed to give you details of the account to which the money was transferred (and misidentified the bank), did not refund your money (although you consider that they should have done), and have not supplied you with the detailed confirmation that they referred the matter to the police promptly; the police, who were initially unable to act because they did not have details of the destination account, but have now confirmed that they are unable to act; the Financial Ombudsman Service, which did not recommend a refund and, you say, made factual errors; and the Financial Conduct Authority, who have told you that they do not investigate individual cases, have declined to deal with your contention that the bank has failed to apply the rules on unauthorised payments, and who you consider to be more generally accountable for the failure of the banking system to tackle fraudulent activity of the kind of which you are the victim.

In your letter of 23rd February, you ask me to consider the handling of your complaint by all the organisations identified above.

My consideration of your complaint

Although it is bound to disappoint you, I must start by explaining that the rules of the Complaints Scheme under which I operate restrict my role to considering the actions, or inactions, of the regulators (in this case, the FCA). I cannot consider complaints against the banks, or the FOS.

The FCA's decision letter

For that reason, I start with the FCA's decision letters. In the first letter, dated 6th January 2017, the FCA declined to investigate four of the five complaint elements, which related to the actions of the banks. Under the terms of the Complaints Scheme, the FCA was right to do so, since your complaint was against the banks.

In the second letter, dated 21st February 2017, the FCA responded to the remaining element of your complaint, which it summarised as follows:

You are dissatisfied with the FCA's response to your enquiry about a disagreement you had with [the Bank]. In particular, you say that the FCA has not provided you with information on what action it is or is not taking. You have told us that the FCA should be accountable for ensuring banks prevent fraud and compensate their customers. In addition, you are unhappy that the FCA advised you (in writing) that [the bank] should compensate you for the financial loss you suffered as a result of a scam. In addition, you say [the bank] alleges that the information the FCA gave you was incorrect.

The FCA did not uphold this complaint, on two grounds: first, they said that they had not advised you that the bank should compensate you; and second they said that, while they had considered the information which you had supplied, they were unable to tell you what they had done with the information because of confidentiality restrictions – a matter about which you had been warned earlier in your correspondence with them.

My view

Having carefully looked at all the records, including listening to the recording of the telephone call you had with the FCA's Customer Contact Centre, I have concluded that the FCA's handling of your complaint was correct. The advice which you were given was accurate; and, frustrating though it must be for you, the FCA is prevented by law from sharing confidential details of its activities with those who supply it with information. This was made clear to you on several occasions during your correspondence with the FCA.

I understand why you feel aggrieved that, having followed the correct processes, you have not achieved what you consider to be a fair outcome. The problem here lies in the number of organisations with which you have had to deal, coupled with the confidentiality restrictions placed upon the FCA. In your view, the bank has ignored the FCA's policy on unauthorised payments, and no one has taken any action to deal with that.

The question of whether or not your payment was an unauthorised one for which the bank should reimburse you is – as the FCA advised you during your telephone call – a matter for the Financial Ombudsman Service to determine.

There is, however, the broader question of the application of the FCA's policy to the circumstances raised by your complaint. I am suggesting that the FCA consider whether, in the light of your complaint (and any others of which they are aware) any adjustments to the current policy might be desirable. I should stress that I am not recommending any particular changes, nor would any such changes affect the outcome of your complaint.

Conclusion

For the reasons given above, I am afraid that I cannot uphold your complaint. You have been the victim of criminal activity, and you have faced considerable difficulty obtaining the information which you needed to report the matter to the police. However, that was not the fault of the FCA.

There is a broader question which you raise about how the banks respond to fraud of this nature, and what they should do about “mule” accounts of the kind which appears to have been used in your case. I **suggest** that the FCA and the banks look at this as a policy issue, if they are not already doing so, including whether any adjustments might be needed to the policy on unauthorised payments, but that goes beyond the scope of this Complaints Scheme.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Antony Townsend', with a large, stylized flourish at the end.

Antony Townsend

Complaints Commissioner