

## Final report by the Complaints Commissioner, 7<sup>th</sup> December 2017

### Complaint number FCA00402

#### *The complaint*

1. On 13<sup>th</sup> October 2017 you asked me to investigate a complaint about the FCA. Your complaint was also directed against the Payment Systems Regulator (PSR), and I have reviewed your correspondence with the PSR as well. However, because the PSR did not treat your correspondence with them as a complaint, on the grounds that the matter you complained about was in the remit of the FCA, not the PSR – a position with which I agree – I have considered your complaint under the FCA’s Complaints Scheme.
2. I have carefully reviewed the papers sent to me by you and by the FCA. I have also considered comments which you and the FCA made in response to the preliminary report I issued on 7<sup>th</sup> November.

#### *What the complaint is about*

3. In essence, your complaint is that the FCA has not reacted adequately to an allegation, made during a BBC programme, that fraudsters can steal personal identification numbers (PINs) from contactless bank cards, nor has it explained its position to you adequately.

#### *What the regulator decided*

4. The FCA decided not to investigate your complaint, on the grounds that it amounted 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.” (Under paragraph 3.5 of the Scheme – see <http://frccommissioner.org.uk/complaints-scheme/> - those are grounds not to investigate.)
5. The FCA did, however, give you an explanation of its general work with other agencies, to counter fraud, and quoted from a publication by the UK Cards Association which gave some general statements about the security systems protecting contactless cards.

#### *Why you are unhappy with the regulator’s decision*

6. In your letter to me, you say: “There appears to be no intention to get at the truth of the facility demonstrated on TV.....The FCA merely repeats the advice from The UK Cards Association without testing it.”

#### *My analysis*

7. I shall deal first with the formal position under the Complaints Scheme. I consider that the FCA were right to say that your complaint was an expression of dissatisfaction with the FCA’s exercise of its discretion, and for that reason, I think it was reasonable for the FCA not to investigate it under the Complaints Scheme.

8. Second, there is the issue of the FCA's correspondence with you. You received (from the PSR) a copy of the letter dated 2<sup>nd</sup> February 2017 sent by the Chairman of the FCA to the Chairman of the Treasury Select Committee, setting out the steps which the FCA was taking with the banks to counter contactless fraud. This was a useful statement of the regulator's activity and confirmed that the FCA was not being inactive, though it did not, of course, answer the particular question which you had raised.
9. When you raised this again with the FCA, you received a reasonably prompt and fairly full response in a letter dated 1<sup>st</sup> June, confirming that your concerns about PIN theft had been passed to the relevant area of the FCA to consider, but stating that there were limitations on what the FCA might be able to tell you in response. You pressed for a fuller answer, and were told on 6<sup>th</sup> June that "I believe that we've fully explained our position on this matter." In response to a further request from you, you received an email dated 19<sup>th</sup> June saying that there was nothing further that the FCA could add, stating that "We are unable to comment on the validity of information provided by a third party (TV demonstration)", and drawing attention to your rights under the Freedom of Information Act.
10. The problem here is that the FCA has to balance real concerns about confidentiality, and proper concerns about which issues to pursue, with the need to give the public confidence that it is pursuing risks to consumers. In your response to my preliminary report, you sought clarification about the FCA's approach to confidentiality. You may find it helpful to look at <https://www.fca.org.uk/freedom-information/information-we-can-share>.
11. It is clear from the correspondence that the FCA is alive to, and responding to, fraud risks associated with contactless payments, as has been explained to you; but what is less clear is whether the FCA is proposing to look further into the particular issue which you have raised.
12. I note that, in the letter of 1<sup>st</sup> June, the FCA did say that it was looking at whether "the team who are focusing on the issues of contactless cards and fraud [...] can provide me with any further information or details that I can share with you". It appears that the FCA did not offer any further information to you.
13. On the face of it, I cannot see why a brief statement – eg we have raised this issue with the banks for further consideration – could not be made to you. The question of whether or not there is a general security issued relating to contactless cards does not seem to me to be a confidential one.

*My decision*

14. For the reasons given in paragraph 7, I believe that the FCA had reasonable grounds not to investigate your complaint under this Scheme, and for that reason, I cannot uphold it.
15. I invite the FCA to reconsider – as set out in paragraph 13 above – whether there is any further general information which they could give you to reassure you that the information which you have supplied has not been ignored.

Antony Townsend

7<sup>th</sup> December 2017