

12 September 2018

**Final report by the Complaints Commissioner****Complaint number FCA00487***The complaint*

1. On 30 July 2018 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. On 1 June 2018 you complained to the FCA about what you considered to be a lack of supervision by its predecessor body the Financial Services Authority (FSA) of a bank (Bank A). You said that this had led you to lose substantial sums of money for which you would like to be compensated.

*What the regulator decided*

3. On 28 June 2018 the FCA's complaint response was that your complaint was out of time under paragraph 3.3 of the Complaints Scheme and therefore could not be investigated. This was because you knew of the relevant circumstances in 2011, which was more than 12 months ago.

*Why you are unhappy with the regulator's decision*

4. You have told me that in your view the time limit should not apply in your case and have invited me to take a 'pragmatic' approach. In response to my preliminary report, you have made the following additional points:
  - a. You are not resident in the UK and were not aware of the time limit. Bank A sent you on a wild goose chase by asking you to complain to the Ombudsman.
  - b. The FSA and the FCA set the Regulations for the Banks to operate. If the Regulators, in the years 2010/2011, did not regulate that the Banks could NOT carry out transactions for a non-existing Legal Customer, then the FSA

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and FCA are negligent. Prior to year 2010 another UK Bank stopped taking your Lodgements when their Customer was struck off.

- c. You reported the matter to the Police, Bank A and the Ombudsman within 12 months, so you submit the time limit was adhered to.
- d. You would like me to reconsider my decision and fine Bank A for their negligence and use some of the fine to compensate you for the loss.

*My analysis*

5. Paragraph 3.3 of the Complaints Scheme states that:

*Complaints should be made within 12 months of the date on which the complainant first became aware of the circumstances giving rise to the complaint. Complaints made later than this will be investigated under the Scheme only if the complainant can show reasonable grounds for the delay.*

6. You have helpfully submitted a chronology of events since 2010 when you made several payments to a company via their account with Bank A. You say that despite FSA warnings in 2010 that the company may be offering financial services when not authorised, Bank A continued to process these payments, even after the company was struck off, causing you substantial loss of monies invested.
7. You became aware of these matters in March 2011 and reported the company to the police who informed you that the money had been transferred overseas and the account with Bank A closed. They were unable to help you further. In April 2011 you complained to Bank A and this complaint went on to the Financial Ombudsman Service. However, in September 2011 the Ombudsman advised you that it could not assist you because you were not a customer of Bank A. You then engaged a solicitor who corresponded on your behalf with Bank A but this was also unsuccessful. On 16 March 2017 Bank A wrote to your solicitor saying that it did not have the power to investigate the matter and suggested he approach the Treasury Solicitor or the company's liquidator. Your solicitor then advised you to complain to the FCA.
8. The information you have provided shows that you have known of the events giving rise to your complaint since March 2011. I appreciate that you contacted

the Police and Bank A as soon as you became aware and that time was taken up with what turned out to be a fruitless complaint to the Ombudsman. I also appreciate that you are not resident in the UK and are not familiar with its regulatory system. However, you were aware from late 2011 that the Financial Ombudsman could not assist you, and from March 2017 that Bank A was not prepared to investigate further. By that time you also had the benefit of legal advice. Nevertheless, you did not approach the FCA until 1 June 2018, when the substantive events had occurred more than seven years earlier.

9. You have pointed out that neither Bank A nor the Ombudsman told you about the 12-month time limit to approach the FSA/FCA. I do not consider that either organisation was required to point out to you the timescales for complaining to the FCA.
10. You have also referred to the Banking Regulations in 2010 and 2011 and said that the same Regulations apply today. Whether that is the case is not something I have considered because in my view it is not a relevant factor for deciding whether it was reasonable for you to delay bringing a complaint to the FCA.
11. Although I have every sympathy for your situation, I have concluded that it was reasonable for the FCA to decline to investigate your complaint under paragraph 3.3 of the Complaints Scheme. I do not consider that there are reasonable grounds for the delay in submitting your complaint.
12. It may be helpful if I add that, even if your complaint had not been ruled out of time, I think it very unlikely that it would have succeeded under this Complaints Scheme, since it appears to have arisen from the actions of the company in which you invested, and the actions of Bank A, rather than a systemic regulatory failing. The sums involved also go well beyond the kinds of remedies offered under the Scheme and I do not have powers to fine Bank A or order it to compensate you. To the extent that you are seeking recompense for the money you have lost, you would need to consider legal action.

*My decision*

13. For the reasons stated, I am unable to uphold your complaint. I realise that you are likely to be disappointed by my decision but I hope you will understand how I have reached it.

Antony Townsend

Complaints Commissioner

12 September 2018