Complaints Commissioner

Office of the Complaints Commissioner
3rd Floor
48–54 Moorgate
London EC2R 6EJ

Tel: 020 7562 5530
Fax: 020 7256 7559
E-mail: complaintscommissioner@fscc.gov.uk
www.fscc.gov.uk

FINAL DECISION

Background

1. This document sets out my Final Decision in relation to the complaint and representations made by you, and on your behalf by Mr H, against the decision by the Financial Conduct Authority (FCA) not to uphold your complaints. In reaching my decision I have considered the extensive documents supplied by you, Mr H, and the FCA, including Mr H's observations on my provisional decision, set out in his letter of 10th April.

2. I am considering this matter as the Complaints Commissioner under the complaints scheme set up under Part 6 of the Financial Services Act 2012. I shall not rehearse the details of that scheme, which can be found on my website at http://fscc.gov.uk/complaints-scheme/. There are, however, two jurisdictional issues which I should address at the outset.

3. The first relates to the fact that, although the origins of your complaint stem from the actions or inactions of the Financial Services Authority (FSA), your complaint now encompasses the actions or inactions of the Financial Conduct Authority since it assumed many of the FSA's responsibilities. Strictly speaking, complaints relating to the FSA fall to be considered under the transitional complaints scheme, while complaints relating to the FCA must be dealt with under the main scheme. However, given that the provisions under which I investigate matters are essentially the same under both schemes, as are my powers to make recommendations to the regulators, it seems to me that it would be confusing and unnecessary to make a distinction between the schemes for the purpose of considering this matter. I do not consider that the positions of either party are prejudiced by treating the matter as if it were a single complaint under the new scheme, and that is how I have approached the issue.

4. The second jurisdictional issue concerns the extent to which you are "seeking a remedy…….in respect of some inconvenience, distress or loss which the person has suffered as a result of being directly affected by the regulators' actions or inactions" – which is one of the criteria for a complaint to be considered under the scheme. There are clearly matters in your complaint which fall within this criterion; but some others relating to the regulator's general actions long after the events which led to your loss might be argued to be matters beyond the scope of the scheme. However, this is not a point which has been taken by the FCA in its decision letter of 4th July 2014, and I propose to follow its approach. It is clear that the protracted nature of your dealings with the FSA and FCA have been the cause of further stress to you in an already stressful situation, and therefore the fullest explanation possible within the statutory constraints should be provided to you. Strict issues of jurisdiction would become more relevant were I to conclude that you deserved some form of remedy.

The Complaint

5. The main factual matters (which are uncontentious) giving rise to the complaint are that between July 2005 and September 2008 you used the services of two foreign exchange firms to convert sterling into euros and send them to a Greek bank account for the purpose of developing property in Greece. Towards the end of that period, the payments from the firms to the Greek bank started to be delayed, and finally payments totalling £565,000 failed to be transferred at all, leading you to lose that sum. You subsequently took action in the High Court against a Director of those firms, and it was ruled that you had been the victim of a deceit. It became apparent that the bank account into which you had paid the money for the purposes of exchange and transfer – which you had understandably believed to be a client account – had been operated as a business account and had been allowed to become overdrawn, thus facilitating the deceit.

6. In its decision letter of 4th July 2014, the FCA articulated your complaints as follows:

    - The allegation that the Authority had failed to act where both [Banks B and C] had negligently facilitated an earlier fraud carried out by [the Director] JOL and then failed to assist the liquidators/victims of the fraud. One specific allegation here was that two foreign exchange dealers, FXS and GFX, both managed by JOL, held client accounts with firstly Bank X and then Bank Y which were allowed to become overdrawn. Subsequently FXS and GFX went into administration in September 2008 owing money to a number of customers. At that point Bank Y exercised rights of set off against the account resulting in the assets of the insolvent firms available to the complainant and other customers being reduced by in excess of £500,000.

    - The allegation that the Authority had allowed JOL to continue to operate in the FX Market, despite an earlier prohibition order made against him……..

    - The allegation that the Authority had failed to provide certain information to [you] and others that would assist them with their private actions against the banks.

7. In the submission on your behalf made on 4th August 2014, Mr H set out why he considers that the position taken by the regulator (currently the FCA and previously the FSA) in rejecting the complaint is incorrect:

    General Submission

    This document responds to the letter from the FCA to Mr L dated 4th July 2014 in which (in terms) the FCA reject his entire complaint, originally submitted to the commissioner on 19th October 2012. For the reasons set out in this submission, the reasoning of the complaints team in reaching its decision is flawed in law and mistaken in fact and cannot be permitted to stand.

    It is a matter of public concern that the FCA has failed to comprehend the nature or the particulars of the complaint submitted by Mr L or the applicable legal principles. All reasonable overtures to discuss the case with the FCA and to elaborate the particulars of the complaint with representatives of the FCA have been refused. The grounds for refusal are not rational or reasonable, and are flawed in law by misunderstanding of the application of the relevant statutory provisions. The FCA has fallen into error, and is reluctant to fall out of it.

By its refusal to receive and act upon an informed complaint, the FCA failed to fulfil its public duty under the Act as applied at the time, and has failed to act in accordance with the regulatory objectives of the Act of maintaining Market Confidence (s.3); Protection of Consumers (s.5) and the prevention of Financial Crime (s.6). The previous commissioner Sir Anthony Holland clearly saw the need for review at first instance. This matter must now be referred directly to the present commissioner Mr Anthony Townsend for further review.

Specific Submissions

This response addresses the relevant paragraphs of the letter by heading etc.

Error in the FCA perception of "The points requiring further investigation"

The points identified by the FCA as relevant and set out in paras 1-3 on the second page did not fully and properly articulate the nature of the complaint advanced by Mr L. In particular the summary of position set out in point 3, referring to the perceived complaint about "the provision of information by the FCA" was wholly incorrect and failed to grasp the purpose of meeting for discussion. Only point 2 was precise in the description of the complaint. It follows that the FCA have failed to address the issues in the complaint because of its continuing misunderstanding of the history of events; the conduct of the banks; and why Mr L asserts that there has been a failure of duty of gravity warranting FCA intervention. Given that the failures on the part of the banks appear to be clearly systemic; that regulation of money transmission at the relevant time was inadequate, and that the repercussions of the inadequacy are life changing for some of the losers, the failure of the FCA to act in this case is unsupportable on grounds of merit or resources.

The need for a joint case conference with the FCA

It was plain from the manner in which the early complaints had been dealt with by the FCA, and the terms of response from the FCA to Mr L, that those delegated with the task of investigation failed to understand the nature of the complaint and the relevant background facts. The grounds for rejecting the complaint to which this document is addressed indicate continuing failure to comprehend the applicable legal principles or the relevant background facts.

The factual matrix of this case is incapable of brief summary due to the enormity of the facts and particulars of detail. One of the several purposes of a requested joint conference was to ascertain precisely:

a. *What factual information was in the possession of the FCA;*
b. *What further information could be provided;*
c. *What had been wrongly ignored or misunderstood;*
d. *What legal principles were said to apply and why.*

The conference between FCA and Counsel for Mr L was requested in order to identify any misconceptions of fact held by the investigating arm of the FCA, to ensure that the FCA was properly applying its resources efficiently and to a meritorious complaint, and to convey to the FCA the public interest issues warranting the application of time and funds because of the failings of the banks demonstrated within this scandal and their conduct in dealing with the matter afterwards. The response from the FCA indicates that its capacity and incentive to properly investigate this complaint has been adversely influenced by its failure to comprehend the facts.

It is submitted that the refusal to hold a case conference and to discuss the issues arising is not in fact case specific but reflects an FCA standing policy that warrants re-appraisal. A refusal to permit liaison between experts acting for a complainant and those carrying out the investigation for the FCA is undoubtedly a weakness in the FCA's structure. In this case it has resulted in an undoubted injustice, as the issues remain improperly dealt with long after the events in question and the first complaint. It remains clear that the FCA will continue in error unless "put right" by a focussed and detailed discussion of the role of the two banks in the collapse of Firm F and Firm G and the bank's conduct thereafter. It is unrealistic to perceive that this could be dealt with by written submissions and progress in the matter was clearly only possible by face to face exchange between the relevant parties.

Contrary to the assertion of the FCA, which appears instinctive rather than rational, the invitation to hold a case conference did not involve the disclosure of regulated information to Mr L or those acting for him in any form. It could and should easily have been convened between investigators and the legal representatives for Mr L. It would have involved mutual exploration of the FCA's understanding of the matter in order to ascertain the cause of error, and to focus the FCA investigation.

It is unrealistic to suggest that such a conference could not take place without breaching relevant confidences and statutory prohibitions. The explanation for the refusal of co-operation appears to reflect an inflexible standing policy on the part of the FCA rather than a case based assessment of practical benefit.

The flaws in the reasoning leading to rejection of the complaint by the FCA

The reasoning set out in the five bullet paragraphs is fundamentally flawed. Certain of the assumptions are wrong in fact and so the reasoning is based upon facts that were not correct. Those investigating the complaint appear to have obtained only very limited information about the history of this matter. A case conference would have enabled the FCA to take stock of the evidence in its possession; to consider what additional material could be provided by Mr L or the liquidator; and what further evidence was required from other sources.

The considerations set out in the bullet paragraphs were not rational. The content of the bullet paragraph responses reveals misunderstanding of both factual and legal issue throughout the response. Key areas of error were:

a. *The relevant regulation of the bank under the Act; Handbook and regulations; and in particular the application of the overarching rules of PRIN etc;*

b. *The wrongful assumption that Firm F and Firm G were <u>not</u> carrying out regulated activities; merely because the core business was spot FX trading;*

c. *The fundamental error of mixed fact and law that FX business was <u>not</u> within the Act, or within the remit of the FCA, and that CASS rules did not apply; notwithstanding that the FSMA 2000 (Regulated Activities) Order 2001 specifically identifies certain classes of FX business as a regulated activity within the Act and regulations;*

d. *Assuming that the FCA could not deal with the matter because events occurred prior to commencement of the Payment Services Regulations 2009;*

e. *Failure to recognise the application of the CASS rules to Firm G; being an Authorised Person under the Act which <u>was</u> carrying on certain Regulated Activities in fact;*

f. *Misunderstanding as to how the statutory and common law applied to require both Firm F and Firm G to maintain client accounts separating client money from own monies;*

g. *Misunderstanding of the legal position of the banks and the obligations that arose in consequence of actual knowledge of the bank of the above matters, or alternatively the knowledge the law will deem the bank to have had had it carried out the enquiries it ought to have done (referred to in law as "constructive knowledge");*

h. *Failure to comprehend that the knowledge of the banks (actual or imputed as constructive knowledge) imposed duties and obligations in law the banks failed to fulfil; and in particular in relation to treat the accounts as client accounts and so to separate the client money from business funds;*

i. *Failure to recognise the level of information about its customer that the banks must have gained, or ought to have gained when opening the accounts; assuming the banks had fulfilled their respective prudential obligations under the Act and otherwise;*

j. *Misunderstanding of the legal duty in the law of banking to a corporate customer; requiring the bank to have regard to possible misuse of the customer's account by directors and managers in control of corporate accounts, and to act appropriately when put on notice or enquiry of such conduct;*

k. *The correct relevance of the CASS rules to issues in this case, which applied to the banking customer not the bank, but nonetheless created obligations upon the banks that were not fulfilled in this case.*

The FCA has failed to recognise that by reason of the above:

a. *Bank X and Bank Y must have known or alternatively ought to have known (actual or constructive knowledge) that the accounts held were by necessity trust accounts;*

b. *The bank must have known or ought to have known that such accounts may never be permitted to become overdrawn;*

c. *By taking the accounts overdrawn, those in charge of the account were acting improperly and irregularly in the management of a corporate account;*

d. *The irregularity was such as to put the bank on enquiry in each case.*

Particularly significant is the failure of the FCA to recognise that the acts and omission of the bank evidenced in this case do reflect systemic failures in the systems operated by the banks. Those systems were at all times subject to regulation under inter alia SYSC; and subject to common law obligations as well. It follows that the FCA has failed to acknowledge that failure in the bank's systems of management and vigilance etc enabled the fraudulent misuse of the client accounts of the two companies by the dishonest director Mr JOL. The frauds succeeded because the bank systems failed or were inadequately operated or controlled".

8. I have included this extract from Mr H's submission at some length, since it illustrates the wide scope of the complaint, and the fact that it encompasses matters ranging from regulatory failure, through misunderstanding of the legal provisions, to issues concerning the handling of the complaint. I have read and considered the detailed arguments Mr H has put forward, but I have not repeated the entirety of those arguments in this Decision.

My Position

9. My role is to review the manner in which the regulator has itself investigated a complaint and, in so doing, I need to ensure that the regulator considered all the issues that the complainant raised, and that its actions were both rational and reasonable. Although it would appear from Mr H's most recent submissions that your principal concern lies with the regulators' alleged failure to deal adequately with the banks, and alleged failure to assist you and other complainants in their legal actions, I am including the issue of the action taken in relation to the FX firms as well for completeness.

10. It is not my role to purport to rule on legal matters. Some of the issues raised in this complaint are questions of interpretation of the law where there is a difference of view between Mr H, the barrister acting on your behalf, and the legal advisers to the FCA. While I can consider whether or not the FCA's position appears to be reasonable and rational, it is not for me to determine legal disputes which are ultimately a matter for the courts.

11. In my analysis, the principal issues can be considered under three headings:

The FX firms

- did the regulator consider appropriately the concerns the complaint raised?
- was the action the regulator took sufficient and appropriate in the circumstances?
- were the conclusions the regulator reached both rational and reasonable given the significant amount of information the complainant and his representative had provided?

In particular, I shall consider whether the FSA/FCA's responses to the losses suffered by clients of FXS and GFX were sufficient, and whether the subsequent concerns that Director JOL was continuing his FX dealings in a third firm were adequately addressed. Included under this heading is the question of whether the FCA seriously misdirected themselves on the scope of regulated activities and therefore their regulatory powers.

The banks – the issues here are similar, namely

- did the regulator consider appropriately the concerns the complaint raised?
- was the action the regulator took sufficient and appropriate in the circumstances?
- were the conclusions the regulator reached both rational and reasonable given the significant amount of information the complainant and his representative had provided?

In particular, I shall consider whether the FSA/FCA's responses to concerns about the banks' handling of client money in the accounts of FXS and GFX were sufficient, and whether they seriously misled themselves about the potentially systemic nature of the problems, the legal position, and the scope of regulation at the time.

The regulators' handling of the complaint

In addition to the issues set out above, I shall consider whether the regulators were at fault in their approach to the complaints, and in particular

- in their refusal to agree to a meeting with the complainant's representative
- their reliance upon s348 of the FSMA to justify the withholding of information.

The FX firms

12. My understanding from Mr H's representations on your behalf is that your complaint is now focused upon the regulators' actions in relation to the banks, rather than in relation to the FX firms with which you placed your money. Nonetheless, I consider it important to consider the matters relating to the FX firms. As I understand it, Firm F was an unregulated firm offering foreign exchange services and currency transfer services, specifically converting Sterling to Euros on a spot trading basis (i.e. an agreement to buy a specified amount of Euros at the current market rate for settlement and transfer to the customer's bank account in a few days' time). Only Firm G was authorised to conduct regulated activity in the form of forward contracts (i.e. where there is an agreement to buy a specified amount of foreign currency at a pre-agreed rate of exchange on a specified future date).

13. The FSA could not take action against the unregulated Firm F (despite its links with Firm G) unless Firm F was conducting regulated activity as defined by the Regulated Activity Order 2001 (as amended and/or any subsequent legislation). To my knowledge, no evidence of regulated activity by Firm F was brought to the regulator's attention whilst Firm F was still active in the Foreign Exchange market. I would add for the sake of completeness that where an unregulated entity has entered administration (and ceased trading) the regulator is unable to take retrospective action against that firm.

14. Firms F and G went into administration on 18th September 2008 soon after you lost your money, and JOL was subject to a prohibition order in December 2010. Thereafter, as was explained to you in the FCA's letter of 4th July 2014, in 2010 the FCA made further investigations in response to your further inquiries to determine whether JOL was effectively continuing to operate through a third firm (Firm P). Those inquiries did not succeed in establishing the matter, but the third firm had its permissions cancelled by the regulator in 2013, so there can be no continuing mischief in that respect.

15. In his provisional decision last year, my predecessor set out the various statutory objectives which the regulator had to balance in deciding what action to take in relation to information which it receives, and concluded that the regulator had taken reasonable steps to investigate the concerns which you had raised. Having studied the papers, I agree with that conclusion. With resources which are inevitably and properly limited, the regulator has to decide what priority to give to inquiries and how far to take them. Factors which the regulator will need to take into account include the age of the events giving rise to the complaint, whether there is a continuing risk to the public interest and if so the size of that risk, the adequacy of the evidence provided, and the practicality of obtaining further evidence.

16. From the material provided to me, I have seen nothing to suggest either that in advance of the loss of your money the regulator failed in its duties, or that after the loss occurred your concerns were ignored – indeed, it is clear that they were pursued to protect the public interest. For those reasons, I agree with the decision of the FCA that your complaint in relation to the FX businesses should not be upheld.

The banks

17. In relation to the banks, the key question is whether the regulator, when made aware of the alleged conduct of the two banks, considered adequately the concerns and, if it did, followed a reasonable course of action and/or arrived at what could be considered to be a rational conclusion. In Mr H's view, the FCA has "fallen into error and is reluctant to fall out of it."

18. First, there is the question of whether the regulator understood the issues. It is clear from the information that the FCA has provided to me that it did understand the nature of the allegations which were being made against the banks (namely that Bank X and Bank Y did not correctly administer a number of what are alleged to have been client accounts and thereby allowed funds held within them to be used to meet business expenses and/or the banks' own fees, together with the fact that, in the case of Bank X, alleged client accounts were allowed to become overdrawn).

19. Mr H's submission sets out, at length, his concerns about the knowledge which both Bank X and Bank Y would (or should) have possessed regarding the nature of the accounts the firms held with them. In doing this Mr H has specifically referred to the Client Money rules (as defined in the CASS handbook) applying to Firms F and Firm G and what he believes are potential breaches of these requirements facilitated by the banks.

20. Mr H feels that the overall position was not understood fully by the FCA. Although I can understand why Mr H may have reached this conclusion, the information presented to me by the regulator satisfies me that that is not the case.

21. It is clear from the regulator's file that considerable consideration was given to the matter before contact was made with the banks. This consideration assessed whether the legislation in place at the time of the alleged offences gave the regulator any oversight over the banks (in relation to the management of the accounts). It also assessed whether the regulator, in the event of the oversight of the management of the accounts falling outside of its jurisdiction, could use overarching powers which would allow it to challenge the conduct of the two banks, and ultimately whether the banks had allowed Firm F and Firm G to breach the CASS rules to the detriment of consumers.

22. Clearly there are differing views about the application of the CASS rules. Although I cannot resolve the difference of legal interpretation, this does not prevent me from considering whether the regulator's response, in the light of its interpretation of the law, was adequate and reasonable. The information the regulator has provided to me indicates that although it had concerns over whether it had any jurisdiction under both the Payment Services Regulation and indeed under the CASS rules, it recognised that it had an opportunity to consider the matter under its general Principles and in particular the expectations placed upon firms under PRIN 1. As a result of this the regulator asked Bank X and Bank Y to provide significant further information in relation to the issues in the complaint.

23. As you are aware from the FCA's decision letter, Section 348 of the Financial Services and Markets Act 2000[1] restricts the disclosure of confidential information to third parties. However, the provisions contained within Sections 348 and 349 do not prevent the FCA providing me with full details of the information it received from the banks. I can confirm that the FCA has provided that information to me. Having considered this, I can provide the following explanation.

24. Once the FCA had received the information it required from the banks, it undertook a further assessment to establish whether the banks had acted appropriately throughout this unfortunate affair. In arriving at its decision the regulator considered a number of factors which included (but were not necessarily limited to)

    a. the allegations made and the banks' responses;

    b. whether the allegations and the banks' responses indicated a continuing systemic or widespread problem and if they did what was the extent or level of consumer detriment;

    c. whether the risks to the regulatory objectives would justify formal Enforcement action;

    d. the likely success of any such action.

25. Following a detailed assessment of the factors the regulator concluded that formal action against the banks was not justified. I would add that the enquiries the FCA made and the banks' responses were assessed by lawyers within the FCA's General Counsel Division before a final decision was made. In my opinion, the enquiries and the undertakings the FCA obtained from the banks show that the regulators ensured that the banks cooperated fully and openly with the regulator. The information also shows that regulator considered critically the information the banks provided to it: the regulator did not just accept the information 'at face value' as Mr H suggests.

26. I have considered all of the comments Mr H has made, and I am left with the task of assessing whether:

    a. the FCA made sufficient enquiries to enable it to assess whether the banks acted appropriately;

    b. the FCA's use of its discretion about whether and what further action it should take was reasonable;

    c. the FCA ought to have done any further to assist you in your pursuit of redress from the banks or Mr JOL himself.

    d. as a result of all of the above, the regulator's decision was both reasonable and rational.

[1] as amended by provisions contained within ss16 to 24 of Part 2 of the Financial Services Act 2012

27. I appreciate that you and Mr H have alleged that there are systemic failings in the account opening, administration and monitoring process of both of the banks. The definition of 'systemic' as I understand it is 'widespread' or 'system-wide' which, in this context, I take to relate to the opening of business accounts generally leading to significant consumer detriment (in both the numbers of affected accounts, the number of consumers affected and potential financial impact). Unfortunately I do not believe that the raising of concerns relating to accounts opened by a single group (as it appears that a number of the accounts relating to Firm F and/or Firm G were opened at the same time) is evidence of a systemic failing, although it might merit further inquiries.

28. The balancing considerations I have described in paragraph 15 above in relation to the FX firms issue apply equally here.

29. My conclusion is that the regulators' response and conclusions were rational and reasonable. Extensive inquiries were made, senior level meetings were held, and the decisions made were based upon a careful analysis. That is not to say that further steps *could not* have been taken – clearly, as in all such situations, they could. For example, it would have been possible to undertake a more extensive exercise to determine whether or not the two banks – or banks more generally – were adequately identifying and controlling the use of client accounts. However, the regulator determined that the evidence available – which related to a small number of accounts and was already historic – coupled with the responses from the banks did not justify further action. I do not think that it can be said that that decision was manifestly wrong.

30. I have considered Mr H's comments regarding the provisions contained within Section 382 of the Act allowing the regulator to apply to the Court for a restitution order. Whilst the regulator has the power to do this, it will usually only do so when it believes that the conduct of a firm has breached its rules and where Enforcement action is either unable to achieve the desired goal or, where the firm is not authorised by the regulator, it is unable to persuade the firm to enter into a voluntary arrangement to offer redress to affected consumers. To apply for such an order the regulator must be in possession of clear and undisputable evidence of a failure on the part of the firm in question. In this case, the regulator does not believe that it has either sufficient evidence of wrong doing by either of the banks concerned to take Enforcement action or has sufficient evidence to convince the Court that such an order should be granted.

31. For those reasons, I do not uphold that element of the complaint which relates to the adequacy of the regulators' inquiries into and action against the banks.

The regulators' handling of the complaint

32. The final set of issues relates to the manner in which the regulators engaged with you and your representative.

33. I can understand why Mr H offered a case conference in an effort to assist the regulator with its enquiries. However, the fact that the regulator did not take Mr H up on his offer does not mean that the regulator's investigation into the conduct of the banks was flawed. Whilst on face value a case conference may have been useful, the overall question I need to ask myself is whether the decision to reject this request was unreasonable.

34. As I understand it, the complaint made by Mr H about the refusal to hold a case conference is based upon a belief that such a meeting would have helped the regulator to avoid what he perceives as its errors. Mr H also considers that the regulator's reliance upon s348 as a reason for not holding a case conference is flawed, since it would have been possible for the FCA to hold such a meeting without breaching confidence; and that the refusal of the request was simply unreasonable.

35. For the reasons I have set out above, I have concluded that the regulator did adequately consider the material which had been supplied; and while I agree with Mr H that citing s348 is not a sufficient reason for declining a case conference, the regulator was under no obligation to hold one. I therefore conclude that the regulator should not be criticised for declining the offer of a case conference, and I can see no evidence that in doing so it jeopardised the regulatory objectives.

36. Additionally, there is the question of the regulator's refusal to disclose information which you might find helpful in your litigation. In its decision letter of 4th July 2014, the regulator set out at considerable length its interpretation of the statutory restrictions upon the disclosure of confidential information, and the reasons why it did not consider disclosure appropriate in this case. It needs to be borne in mind that the relevant provisions describe circumstances in which disclosure of confidential information is permitted, but do not create a requirement for disclosure. I do not consider that the regulator's reasons for deciding against disclosure are unreasonable or illogical.

37. I do not, therefore uphold the element of your complaint which concerns the regulator's handling of the complaint.

Conclusion

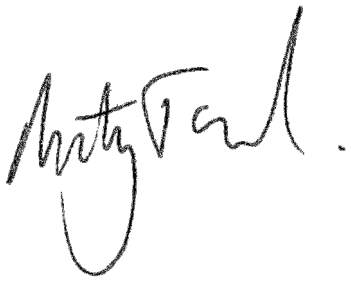
38. Your complaint is a complex one, and its focus has changed as events have evolved over a considerable period. In this Final Decision, I have sought to address all the main issues, and I have carefully considered all the material which has been supplied. For the reasons set out above, I conclude that I should not uphold your complaint.

39. I realise that this will be a disappointment to you, and I therefore wish to add the following in the hope that it will help to put my decision in context. My consideration of your complaint has, inevitably, been restricted to the issue of the behaviour and decisions of the FSA and FCA. I recognise that your concerns – which have been eloquently articulated by Mr H – go well beyond my narrow focus, to encompass the actions or inactions of the police, Serious Fraud Office, Crown Prosecution Service and Financial Services Compensation Scheme, and the behaviours of two banks. You have suffered a substantial loss and, despite considerable efforts, have not succeeded in obtaining redress. I have every sympathy with your situation.

40. The complexities of the legal provisions, the involvement of several agencies, and the confidentiality provisions applying to the regulators have made your task particularly daunting. Furthermore, in explaining to you my decision, I am aware that I am asking you to take on trust that I have carefully examined material which I am not at liberty to disclose to you. This adds a further difficulty.

41. Mr H has drawn particular attention to his concern about the absence of a dialogue between complainants and the regulator, and the reliance upon the confidentiality provisions to justify the lack of an explicit and detailed rationale for the regulator's decisions. Mr H is particularly concerned that this may enable banks and other regulated entities to mislead the regulator without challenge.

42. The regulator is faced with a real dilemma here, in that it may find itself unable to disclose to complainants material which would be helpful in persuading complainants that the regulator is acting properly and robustly. This is a feature of a number of the complaints with which I have dealt in the year since my appointment. I am, therefore, discussing with the regulator whether there may be ways, in the future, of supplying some additional explanations to complainants without breaching the statutory requirements for confidentiality. I recognise that this is of little use to you in terms of your complaint, but I hope that it reassures you and Mr H that I am well aware of the concerns you have expressed on this issue, and am addressing them.



Antony Townsend
Complaints Commissioner

21st May 2015