

9 September 2022

Final report by the Complaints Commissioner**Complaint number 202201144***The complaint*

1. On 11 July 2022 you asked me to investigate a complaint against the FCA.

What the complaint is about

2. In its decision letter to you dated 26 April 2022 the FCA described your complaint as follows:

You are unhappy about the time that the Financial Ombudsman Service took to look into your complaint against the Bank A. You state that the actions of both the Financial Ombudsman Service and Bank A have caused you and your family significant harm. You believe that the Financial Ombudsman Service is not audited or held accountable for its actions. You feel it is the FCA's duty to respond to the fact that the Financial Ombudsman Service is not accountable for its decisions or delays.

What the regulator decided

3. The FCA concluded that it could not investigate your complaint under the Complaints Scheme. It explained the Complaint Scheme covers the investigation of complaints that arise in connection with the exercise of, or failure to exercise, any of the FCA's relevant functions.
4. The FCA stated that your complaint related to the actions, or inactions, of the Financial Ombudsman Service and therefore was excluded from being considered under the Complaints Scheme, as set out in paragraph 3.4 (e) of the Complaints Scheme.

Why you are unhappy with the regulator's decision

5. You mention in your complaint to me,

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The basis of my complaint against the FCA, is that the FOS is supposed to ensure the FCA codes are monitored however the system, the FCA has in place to do that is informal and is not fit for purpose and it does not regulate on behalf of consumers. In practice the FOS does not uphold or observe the law as it audits itself and the FCA feel they are not answerable to me as a consumer for their failures in terms to offer any remedy for how either the Bank or the FOS treated me.

I am confident from my experience that the whole financial industry is not regulated and there is no mechanism in place for redress and it is impossible for me due to this system to have my case measured against FCA codes or against Financial legal instruments.

Preliminary points (if any)

6. I have reviewed all the material you have provided to me. I have also been provided with the FCA case file. It is my intention in this investigation to review and look at your main complaint points and evidence, which is appropriate and closely connected under the Complaints Scheme.
7. The Complaints Scheme was established for the investigation of complaints against Financial Regulators arising in connection with the exercise of, or failure to exercise, their relevant functions. In the case of the FCA, the relevant functions are its functions under the [Financial Services and Markets Act 2000 \(FSMA\)](#) other than its legislative functions. The Complaints Scheme cannot resolve complaints or claims by customers against firms that the FCA regulate. You mention in your complaint to me,

In practice the FOS does not uphold or observe the law as it audits itself and the FCA feel they are not answerable to me as an consumer for their failures in terms to offer any remedy for how either the Bank or the FOS treated me. I am confident from my experience that the whole financial industry is not regulated and there is no mechanism in place for redress and it is impossible for me due to this system to have my case measured against FCA codes or against Financial legal instruments.

8. The FOS is operationally independent from the FCA. In practice, this means that the FCA has no remit to intervene in decisions the FOS and its

Ombudsmen make in individual cases submitted for resolution under the ADR scheme operated by the FOS.

9. [Section 3.4 \(e\)](#) of the Complaints Scheme provides,

Exclusions to the Scheme

3.4 Excluded from the Scheme are complaints:

- a) about the regulators' relationship with their employees;
- b) connected with contractual or commercial disputes involving the regulators and not connected with the exercise of to their relevant functions;
- c) in relation to the performance of the regulators' legislative functions as defined in the 2012 Act;
- d) about the actions, or inactions, of the Bank that do not relate to its functions under Part 18 of FSMA as amended by the Act (recognised clearing houses) or under Part 5 of the Banking Act 2009 (inter-bank payment systems); and
- e) complaints about the actions, or inactions, of the Financial Ombudsman Service, the Financial Services Compensation Scheme or the Money Advice Service.

10. Further, complaints about the actions, or inactions, of the FOS - such as your point that there was no offer of any remedy for how a bank has treated a consumer, are excluded from the Complaints Scheme and points which I cannot look at. Not only are the FCA not able to interfere in the decisions which independent Ombudsman make in relation to complaints submitted for resolution under the ADR scheme operated by the FOS, as I have stated earlier, the actions and inactions of the FOS fall outside the scope of the Complaints Scheme. This is because the Complaints Scheme is concerned with the actions and inactions of the FCA and other financial regulators. I also cannot investigate issues that are not within my jurisdiction, for example complaint points connected with individual disputes about a financial business such as a bank.

11. The FOS also has an Independent Assessor who investigates complaints about the service one has had from the FOS. They are impartial which means they are independent of the FOS and form their own view without influence. I understand from the information you have provided me with, you have already submitted a case with the Independent Assessor who issued you with their final review.
12. The FCA sets out on its website [here](#) that the Oversight Committee provides support and advice to the FCA Board on carrying out the FCA's oversight role in respect of the FOS and lists what the Oversight Committee does as follows:
 - a. reviews and challenges the Financial Ombudsman's annual budget, and recommends to the Board whether it should approve the annual budget
 - b. advises the Board on the Financial Ombudsman's qualification as an Alternative Dispute Resolution (ADR) Entity under the Alternative Dispute Resolution Regulations 2015
 - c. advises the Board on appointing and removing the directors (including the chairman) of the Financial Ombudsman (in the case of the chairman, this is done with the approval of the Treasury)
 - d. advises the Board on ensuring the directors are appointed on terms that secure their independence from the FCA in the operation of the Financial Ombudsman Scheme
 - e. provides any other advice and support the Board requires to satisfy the FCA's legal obligations, and exercise its powers, in relation to the Financial Ombudsman
13. In your complaint you have made references to '...FCA codes...' and you believe the system the FCA has in place to ensure its codes are monitored is 'informal and is not fit for purpose and it does not regulate on behalf of consumers...' You also mention that '...the FOS does not uphold or observe the law as it audits itself and the FCA feel they are not answerable to me as a consumer for their failures in terms to offer any remedy for how either the Bank or the FOS treated me...' [Section 3.4 \(c\) of the Complaints Scheme](#) provides as follows,

Exclusions to the Scheme

3.4 Excluded from the Scheme are complaints:

- a) about the regulators' relationship with their employees;
- b) connected with contractual or commercial disputes involving the regulators and not connected with the exercise of to their relevant functions;
- c) in relation to the performance of the regulators' legislative functions as defined in the 2012 Act;
- d) about the actions, or inactions, of the Bank that do not relate to its functions under Part 18 of FSMA as amended by the Act (recognised clearing houses) or under Part 5 of the Banking Act 2009 (inter-bank payment systems); and
- e) complaints about the actions, or inactions, of the Financial Ombudsman Service, the Financial Services Compensation Scheme or the Money Advice Service.

14. As to Section 3.4 (c) above the 2012 Act is the [Financial Services Act 2012](#). The FCA's legislative functions are set out in [Part 6 Section 85 \(4\) of Financial Services Act 2012](#). The most relevant legislative functions set out in the above Act for the purpose of this complaint are as follows:

(4) For the purposes of subsection (2), the following are the FCA's legislative functions—

- (a) making rules under FSMA 2000;
- (b) issuing codes under section 64 or 119 of FSMA 2000;

15. As per Section 3.4 (c) of the Complaints Scheme I cannot investigate complaints about the FCA's legislative functions as defined in the 2012 Act which includes complaints about the system the FCA has in place to ensure its codes are monitored.

16. As such I agree with the FCA's decision to exclude your complaint for the reasons it gave.

My analysis

17. Looking at your complaint I can see you have raised several concerns relating to 'Bank A'. I am pleased to see from the letter correspondence you have provided to me between the FCA and your local MP, the information you provided the FCA with regards to 'Bank A' was referred to the FCA team responsible for supervising 'Bank A'. The FCA also explained that whilst it confirmed receiving this information and using it appropriately by passing it to the relevant team, it was not able to share how this information was going to be used. This is due to the sharing of confidential information given to the FCA about firms being restricted by law under [s348 of the Financial Services Markets Act 2000](#) (FSMA). There is a good explanation of the statutory and FCA policy restriction on information sharing here <https://www.fca.org.uk/freedom-information/information-we-can-share>

My decision

18. For the reasons given above, I am sorry I am unable to uphold your complaint.

Amerdeep Somal

Complaints Commissioner

9 September 2022