

20 March 2023

Final report by the Complaints Commissioner

Complaint number 202201654

Summary of Complaint

1. In this section I have set out a very brief and simplified summary of the findings of my investigation, for ease of reading. I have set out below my full report which goes into more detail about my investigation and the reasons I have reached my positions in relation to your complaint.
2. I have reviewed the FCA's decision letter and listened to the calls you had with the FCA on 28 July 2022 and 1 August 2022.
3. I am satisfied that the FCA supervisor in her calls with you acted in a reasonable manner and that her actions were appropriate in line with the FCA policies.
4. I recognise that when the call with you was terminated on 1 August 2022 that the automatic diversion to a satisfaction survey was very upsetting and distressing for you.
5. It was appropriate for the FCA to provide details of its unacceptable behaviour policy to explain that its representative had acted in accordance with its policy.
6. I have not upheld your complaint.

What the complaint is about

7. The FCA summarised your complaint in its decision letter dated 16 November 2022 as follows:

Part One

You are unhappy with the strong Customer Authentication guidelines which require a One Time Passcode (OTP) used by Bank X.

As stated in the email on 30 August 2022, Part One of your complaint has not been investigated as this was previously investigated under complaint reference 208200056 and a Decision Letter was sent to you on 19 April 2022.

Further to that letter there has been an update to the guidance provided to firms about treating vulnerable consumers fairly. This link will take you to the page on our website which details this further <https://www.fca.org.uk/firms/treating-vulnerable-consumers-fairly>

Part Two

You are unhappy with the service we provide when you call the FCA because we have not made reasonable adjustments which take your vulnerabilities into consideration.

What the regulator decided

8. The FCA in its 16 November 2022 decision letter did not consider Part One of your complaint because this part had already been answered in correspondence on 30 August 2022.
9. In relation to Part Two of your complaint to the FCA, it set out that it did not uphold your complaint as during the calls made by you to the Supervision Hub the FCA supervisor acted as the FCA would expect.

Why you are unhappy with the regulator's decision.

10. You spoke with my office on 22 November 2022 and your support worker was also with you during this call and spoke to my office with your permission during that call.
11. You set out in this call that you wanted the Commissioner to investigate the way in which the FCA dealt with you and the lack of reasonable adjustments.
(Element One)
12. You also set out that you are upset that the FCA said that your behaviour on the call was not acceptable and sent you a link to the FCA's Unacceptable Behaviour Policy. (Element Two)

Preliminary points

13. You have another complaint that is currently with my office (202201087). You requested additional time to compile a response to the preliminary report in that complaint (202201087) which I agreed to. I will not address the issues raised in that complaint case (202201087) in this report.
14. The FCA did not consider Part One of your complaint in its decision letter dated 16 November 2022, because this part of the complaint had been addressed in earlier correspondence. As such I have also not considered Part One of the FCA's complaint as you have not specifically highlighted this in your complaint to my office.
15. I am limited in the complaints I can look into and can only look into those that fall within the remit of the Complaints Scheme as set out by the Financial Services Act 2012 and by the Financial Services Market Act 2000. This means that I can only look at complaints that relate to the relevant functions of the FCA.
16. In Element One of your complaint to my office you have asked me to look at the way in which the FCA has dealt with you and the lack of reasonable adjustment. I note that in this report I have only looked at the actions of the FCA in relation to the calls on 28 July 2022 and 1 August 2022 and the decision letter issued to you on 16 November 2022. In your first complaint (202201087) to my office, which I note is ongoing and still open, you have raised additional issues relating to reasonable adjustments and I will address those in my report relating to that complaint.

My analysis

17. Firstly, I want to acknowledge that in your calls on 28 July 2022 and 1 August 2022 you were clearly very upset and distressed. On numerous occasions you have identified that your neuro diversity issues make it very difficult for you to communicate. This was clearly the case during the calls on these dates.
18. Secondly, as noted above when you spoke to my office in November 2022 you identified that you had a support worker starting to assist you who would be helping you to go through the many complaints and issues you have with various organisations. I am aware that shortly after your support worker began, they then became unavailable for a period and I provided you with additional

time to respond to my two preliminary reports over this time. On 7 March 2023 your support worker provided your response to my preliminary report which I have considered in preparing this my final report.

The Calls

19. This complaint was raised following the decision letter issued to you on 16 November 2022. I issued my preliminary report to you on 16 January 2023. I provided you with an extended period to respond to my preliminary report. Both you and the FCA have now provided comments to my report.
20. I have listened to the three calls identified in the FCA's decision letter, one on 28 July 2022, and two calls on 1 August 2022. In the call on 28 July 2022 whilst you were clearly upset and distressed you and the FCA Supervisor were able to talk through your concerns. I agree as set out in the FCA's decision letter that the supervisor was empathetic when dealing with you and acted appropriately. I also note that you did set out in this call that the FCA deals with you and your needs appropriately, but that the banks do not.
21. In the first call on 1 August 2022, I could hear that you were in a very distressed state and that your voice was raised. You did set out that this was due to your Autism and ADHD conditions. During this call, the supervisor did try to talk to you and explain that she was unable to comprehend what you were saying, but this made you more upset. The supervisor did advise you that if you continued to shout, she would end the call, which is what happened.
22. Having listened to the call I consider that the supervisor acted reasonably when trying to speak to you and in her actions in ending the call.
23. Unfortunately, when the call was terminated, despite your clear distress, the FCA's system automatically put you through to an automated survey service to ask about the quality of your call. This clearly upset and distressed you more. I can understand why this upset you and consider that it was inappropriate that you were put through to the survey system when you were clearly in a distressed state.
24. In my preliminary report I requested that the FCA to advise me in its response whether there is any way for its operatives to end a call (with someone in distress) without that caller being put through to the automated survey system.

In its response the FCA have informed me that it does not have the functionality to not put a caller through to the automated survey. The FCA set out that the automated survey is an opportunity for consumers to leave any type of feedback be that positive or negative. Whilst I appreciate that this ensures everyone has the opportunity to provide feedback on their experience and cannot be overridden by the case handlers, I do consider that it has the unfortunate consequence that it results in a system that may not have adequate safeguards for people in already in a vulnerable state and could cause further upset and distress. Having listened to the call recording it is apparent you were very upset. I am concerned that the system that has no capability to bypass the automated system with a vulnerable person who is already upset on a call, heightens that distress and suggest the FCA look at what if anything it can do to avoid or mitigate distress that was caused.

25. In your second call on 1 August 2022, you called the FCA back to complain about your first call that day and the fact that you had been put through to the automated survey. Whilst you were will upset in this call you were calmer and you and the supervisor were able to talk through some of your complaint and she confirmed that she would pass your complaint onto the complaints team and would set out your request for 'one port of call' and agreed a time for them to try and call you back. In this call you did set out that you did not consider it was the supervisor's fault personally.
26. Again, the actions of the supervisor were reasonable during the second call and she acknowledged the adjustments you were requesting. In particular, I note that in that call you asked her to note on your file that you should not be directed to the Citizens Advice Bureau as you have already tried and exhausted this avenue. I can confirm to you that I can see that the supervisor made a note of the request on your files notes on the FCA system that day.
27. As such, I **do not uphold** Element One of your complaint. I consider that the way in which the FCA has dealt with you during these calls was reasonable, although I have noted some concerns about the automated survey system that is in place.

Unacceptable Behaviour Policy

28. You are upset that in its decision letter the FCA signposted you to its Unacceptable Behaviour Policy on its website and set out that your behaviour on the first call on 1 August 2022 was not acceptable. From the call you had with my office I feel that you consider that this shows that the FCA does not acknowledge your ADHD and Autism impact your ability to control how you communicate.
29. Whilst the FCA and all organisations should make reasonable adjustments to accommodate your needs, these do have to be balanced with the wellbeing of their own staff. In that call you were shouting and the supervisor had told you that she could not comprehend what you were saying and that she would have to end the call if the shouting continued. Unfortunately, as you have explained due to your ADHD and Autism, you were not able to cooperate with this request and the shouting continued and the supervisor ended the call.
30. Having read the Unacceptable Behaviour Policy I am satisfied that the actions of the supervisor were reasonable and in line with the FCA's policy.
31. Whilst I understand that the FCA setting out that your behaviour was not acceptable and sign posting its Unacceptable Behaviour Policy was upsetting to you, I do consider that it was appropriate for the FCA to provide you with this information, so that you understood the reasons that the call that you were complaining about was ended. As such, I **do not uphold** element two of your complaint.
32. Finally, I want to note that you have identified an FCA individual on a number of occasions as having taken the time to understand your reasonable adjustments. Reviewing the FCA's file it is clear that this individual has taken time to review the information you have provided and understand and put in place measures to meet your reasonable adjustments. It is pleasing to see that the FCA have staff who take these steps and can hopefully have these communicated to the relevant people on your cases, and perhaps use this knowledge to inform its future approach to cases with other neuro diverse complainants.

My decision

33. In summary, I have **not upheld** element one and two of your complaint, I know that this will disappoint you.

34. I do wish you the best in resolving your outstanding complaints with other organisations and I hope that you succeed the work and campaigning you continue to carry out to champion the cause for organisations to work to build frameworks to assist people with neuro diverse needs in future, so that others can avoid the experiences you have had to date.
35. This is my final report about your complaint and concludes my investigation.

Amerdeep Somal
Complaints Commissioner
20 March 2023