

27 March 2023

Final report by the Complaints Commissioner

Complaint number 202201669 and 202201690

The complaint

1. You have asked me to review a joint complaint about the Financial Conduct Authority (FCA) reference 202201669 and the Prudential Regulation Authority (PRA) reference 202201690.

What the complaint is about

2. You allege that the regulators have failed to regulate bank X authorised in the UK with respect to its operation of its International Account or Y. You have been in protracted correspondence with the FCA and the PRA (including Bank of England's Engagement and Enquiries Group (EEG)). I can summarise your main concerns and queries as follows:
3. The background here is you have a bank account (which you sometimes refer to as a 'nominated account' with X Expat (a division of X Jersey) which is a requirement in order to open and maintain a Y account, which you also have.
4. A number of circumstances connected to how your Y account was administered led you to query (among other) which entity is responsible for record keeping and applying the trading limit on your Y account: X Jersey or X UK.
5. You first raised these concerns (among other) with the Channel Islands Financial Ombudsman (CIFO) A decision on the merits of that complaint was issued by CIFO in January 2020 which you have forwarded to me. The CIFO decision states that 'ultimate control of the trading limit rest with X UK not in Jersey' but acknowledged there was a liaison between the two entities with respect to limit changes, with X Jersey possibly recommending trading limits. The CIFO decision states that you had not been financially disadvantaged due to this.

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6. You remained concerned about which entity was ultimately responsible for setting the limits and subsequently also referred the matter to the Financial Ombudsman Service (FOS) which said that it agreed with you to the extent that, although it was accepted in the CIFO decision that X UK was responsible, it's not been made entirely clear how the process works, but that 'the limit changes most likely come about by way of a 'liaison' between the two entities (as was noted in the CIFO decision). Indeed, X UK has said that 'Expat' with reference to X Jersey – manage the limits because that's where the credit risk is. So, it seems reasonable to conclude that the process of setting and reducing/raising limits stems from actions on the part of both parties. This process is not explicitly set out in the terms and conditions of the account. But, as the investigator stressed, it's not unusual that some processes associated with operation of a service are not set out in the terms'.
7. The FOS also found that you had not been disadvantaged due to how and where the limits are ultimately set.
8. You do not appear happy with this outcome as you believe X UK have delegated trade limit setting to Jersey and think they do not have the authority to do so.
9. You then corresponded on this and related matters with both the PRA and the FCA.
10. The FCA issued a decision on your complaint on 31 October 2022. It summarised your complaint as 'you are unhappy with the actions of X, in particular their actions in relation to your Account (Y). You have asked that a criminal investigation is opened into X and the Financial Ombudsman Service'.
11. It said that it could not consider complaints about the FOS under the Complaints Scheme. That is excluded under paragraph 3.4(e). It also said it could not investigate your complaint about your dispute with X, as that is not its role: it is the role of the FOS to do so.
12. You referred your complaint to me but given you were also in correspondence with the PRA, it was agreed that it would be best if you waited for the PRA to issue its decision letter as well. The PRA issued a letter to you on 12 January

2023 which explained that it could not investigate complaints about a dispute between a regulated firm and its clients.

Why you are unhappy with the regulator's decision

13. You wrote to me to say that your complaint is that the regulators are not regulating X in particular in relation to Y. You provided me with correspondence you have had with both regulators, CIFA and the FOS.

My analysis

14. I should start by saying that the regulators are correct to say that they cannot investigate a complaint you have about your personal dispute with X, or the Ombudsman. To that extent, I agree with their decision.
15. However, your correspondence with the regulators is not just about your personal dispute with X. You mention in your correspondence that you are not satisfied that the regulators are overseeing X properly, and that that is also your complaint. Neither regulator took that onboard in summarising your complaint.
16. I can see that matters are not helped by the fact that you have written prolifically to both regulators and the correspondence is both lengthy and pursues multiple threads and points. Whilst I do not expect the regulators to answer each and every point, in my view they should not have overlooked your allegation that the regulators are not doing their jobs properly with respect to regulating X in connection to the Y, the latter which potentially falls under the Complaints Scheme, and I express my criticism that they did not do so.
17. Normally, I would refer you back to the regulators for an investigation of this complaint, or I would investigate it myself. Having said that, I am not convinced that just because your complaint may fall potentially under the Complaints Scheme, that it should necessarily be investigated, given the particular circumstances of your case.
18. In order to be eligible to submit a complaint under the Scheme, you need to have been affected by the actions of the regulators. In addition, you must provide some evidence to substantiate your complaint, rather than just general dissatisfaction.

19. As you have provided me with the CIFO and FOS decisions, I can see that your specific complaint about X has already been reviewed, and neither ombudsman felt that you were impacted by the interaction between X UK and Jersey in setting the trading limits of your Y.
20. You have been unhappy at how these limits are set, but the Ombudsman decided that the limits had been reasonably administered, even though it was acknowledged that it was less than clear to what extent the two entities collaborated on setting them.
21. It is clear that you remain interested in exactly how the collaboration between the two entities is structured, but in my view that has no bearing on your complaint about the application of the limits on your account.
22. As you have not been able to ascertain exactly how X runs its operations internally, and you remain of the view that there ought not to be any collaboration between the entities, you have concluded that the regulators are not regulating X with respect to Y.
23. It is not clear to me why you have reached the conclusion that there should not be any liaison between the X entities in determining your trading limits. But I do not consider that this is evidence that the regulators are not regulating X, or that you have been directly affected by the actions of the regulators for the reasons given above. The Ombudsmen have already determined that you have not been affected by the actions of X.

My decision

24. For the reasons given above, I am exercising my discretion not to investigate your complaint. However, I express criticism of the regulators for not identifying that you had a complaint which was potentially eligible under the Complaints Scheme.
25. I appreciate you are not happy with my decision, and that you remain interested in how the collaboration between the two entities X UK and X Jersey is structured, but that is not a matter for the complaints scheme.

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Complaints Commissioner

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