

29 March 2023

## **Final report by the Complaints Commissioner**

### **Complaint number 202201676**

#### *The complaint*

1. On 12 December 2022 you asked me to investigate a complaint about the FCA.

#### *What the complaint is about*

2. You complained to the FCA on 24 October 2022 because you wanted to meet with the whistleblowing team to present information to them, in addition to the information you had already provided in relation to Bank X, and you believe you were denied this opportunity.

#### *What the regulator decided*

3. The FCA did not uphold your complaint, *stating “I am therefore satisfied that all FCA teams who dealt with your matter had diligently reviewed it and followed the correct process. It is also my view that you were supported throughout the process and essentially, the FCA are unable to assist any further on this matter now.”*

#### *Why you are unhappy with the regulator’s decision.*

4. You are not happy with the FCA’s decision and you have asked me to review the entire history of the case, starting from 2009, when you initially raised concerns about Bank X and the same issue.

#### *Preliminary points*

5. Having reviewed your complaint and the documents and the files the FCA sent me, I wrote to the FCA asking for more information to ensure I fully understand the whole history of your correspondence with the FCA about Bank X and your complaint. A detailed response was provided by the FCA, covering all the questions I raised.

202201676

6. The regulator welcomes information from people who report concerns. However, as you were told, the FCA does not generally say what action has been taken in response to the information that it receives. This is because section 348 (s.348) of the Financial Services & Markets Act 2000 (FSMA) classes some information the FCA holds about firms as confidential and restricts how that information is dealt with. In addition to this, any information that is not restricted by s.348 FSMA may be restricted due to the FCA's policy on sharing information about regulated firms and individuals, who also have legal protections. Under this policy, the FCA will not normally disclose the fact of continuing action without the agreement of the firm concerned. [There is a good explanation of the statutory and FCA policy restrictions on information sharing at <https://www.fca.org.uk/freedom-information/information-we-can-share>.] This means that, as you were told, there is no general right for members of the public to know the outcome of reports that they make.
7. Like the FCA, I am required to respect confidentiality. This means that sometimes I cannot report fully on the confidential material to which I have access. However, as part of the Complaints Scheme, I have access to all the FCA's complaints papers, including confidential material. This is so that I, as an independent person, can see whether I am satisfied that the FCA has behaved reasonably.
8. Sometimes this means that all I can say to complainants is that having studied the confidential material, I am satisfied that the FCA has behaved reasonably – but I am unable to give further details. This can be frustrating for complainants, but it is better that I am able to see the confidential material. On occasions, I have persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible. I shall continue to pursue this matter with the FCA.
9. However, having studied the FCA's records I can say that I am satisfied that the FCA has not ignored the information which you have provided, and had given it proper consideration. Unfortunately, I cannot say any more than that, and this includes not being able to respond to the questions you posed in your response to my Preliminary Report. I recognise that that will be frustrating for you.

*My analysis*

10. According to the FCA's records, you first contacted its Whistleblowing Team in 2014, complaining that Bank X had breached data protection regulations by allowing you to process sensitive personal data at your home without putting in place appropriate safeguarding measures. You were advised that the issue was unlikely to meet the threshold for regulatory action but asked to provide any additional information that may be relevant and this would also be considered.
11. In your response to my Preliminary Report, you state that your initial contact with the FCA in relation to this issue was in fact in 2009. I note this point and it is relevant as far as it provides further detail to the background of your complaint, but it is not determinative.
12. You got in touch again in 2016 and 2017, raising further concerns about the conduct of Bank X, some relating to the same issue, some to do with Bank allegedly mis-selling you a mortgage. This issue was deemed to be more relevant to the ICO as the appropriate regulator and you were advised to contact them, as well as the FOS to raise your mis-selling concerns.
13. In 2019 you asked your MP to contact the then CEO of the FCA, Andrew Bailey, who responded to confirm the FCA's view that the issues raised to date do not amount to regulatory concern it would take action about.
14. It is my understanding from the information provided that you did refer the matter to the Information Commissioner's Office (ICO), who determined Bank X breached the 7th Data Protection Principle and made you a data controller until such a time when the personal data still in your possession is handed back to Bank X in a mutually agreed manner.
15. In late 2022 you informed the FCA that the matter is still outstanding, you still hold sensitive personal data relating to customers of Bank X and you wished to meet with the FCA to share information and documents.
16. Following this, there was correspondence between you and the FCA where the Whistleblowing Team confirmed that the information you provided would be brought to the attention of the relevant teams but they would not meet you.

17. You received a final email from the FCA on 21 October 2022, stating *“The relevant teams have reviewed your recent communications and there will be no further involvement from the FCA. I have been advised that the FCA Executive Casework team wrote to you in January 2022 with a final reply and this view has not changed. This email is attached and advises that there would be no further response provided. Your only option to escalate this now would be to complain about the FCA decision.”*
18. You were provided with the information about how to make a complaint, which you eventually did.
19. Having reviewed the complaint file and further information provided by the FCA on my request, I am satisfied that the concerns you raised at various times with the regulator were shared with the relevant teams in a timely manner, allowing it to make an informed decision as to whether or not it needed to take further action.
20. Whilst it is understandably frustrating that you are still in possession of these files which should be returned to Bank X and that you cannot have a conversation in person with the FCA or be told the detail of the conversations or the reasoning behind any actions that may have been taken, in the circumstances, I do not find that there had been any shortcomings in the way the FCA handled your concerns, or that it was unreasonable for it to decline a meeting with you. The resolution of your concerns lies between you and Bank X.

*My decision*

21. For the above reasons, I do not uphold your complaint.

Amerdeep Somal

Complaints Commissioner

29 March 2023