

31 May 2023

Final report by the Complaints Commissioner**Complaint number 202201746***The complaint*

1. On 1 March 2023 you asked me to review a complaint about the FCA.

What the complaint is about

2. The FCA set out in its decision letter dated 27 February 2023 the following:

Our understanding of your complaint is that you are unhappy with service the FCA's Executive Casework Unit (*ECU*) has provided you, in relation to a complaint you brought to them about Firm X trading as Firm Y. You have provided detailed correspondence referring to the issues you have had with Firm Y.

You have also provided a letter dated 9 January 2023 and 23 December 2022 detailing the issues you have had with the FCA, in particular, an FCA Associate from the ECU department. You are disappointed in what you have described as *nonchalant* and *evasive* behaviour from the FCA Associate and feel there are issues of discrimination around the definition of a consumer and consumers being treated fairly.

To resolve your complaint, you are asking the FCA to look into your correspondence with the ECU department and would like the concerns you raised to be addressed.

What the regulator decided

3. The FCA concluded its decision letter dated 27 February 2023 setting out the following:

.... firstly taking into account the service from ECU and your Caseworker, it is my view that the service was sufficiently acceptable and that you were provided with accurate information and guidance on all matters raised. Further, you were also told to approach the Ombudsman Service on a number of occasions, which was the correct route to take. With regret, I am also in full agreement with ECU discontinuing correspondence with you under the above policy. This is because I consider the nature, tone and wording of your emails were confrontational in nature. The FCA will not accept such behaviour in accordance with this policy.

I have noted the circumstances from your correspondence you claim arise to the aforementioned allegation being made:

1. Not having access to accounts/rates offers with a particular lender, whereby a justifiable or understandable reason is not conveyed; and
2. Issues around the definition of a consumer and consumers being treated fairly.

I have addressed the above issues in turn. For Point one, access to new accounts/rates/offers is a commercial decision with any regulated Lender, and not something the FCA can intervene on. Further, if you are not happy with your current Lender, then you may be able to seek other deals with other Lenders. I would suggest reviewing the following link that takes you to the MoneyHelper website and provides the relevant guidance you may be seeking.

If you believe a particular lender's policies are discriminatory, then you would firstly need to complain to the firm as the FCA do not deal with individual disputes. If you are not happy with the firm's response or they do not respond, then you may be able to complain to the Ombudsman Service. You can also gain advice

on this from the Citizens Advice Bureau (CAB), CAB's website or seek independent legal advice on your options.

For Point two, the FCA's role is defined by the Financial Services and Markets Act 2000 (FSMA) and is accountable to the Treasury, which is responsible for the UK's financial system, and to Parliament. The FCA's Handbook sets out the scope of FCA's legislative and other provisions made under powers given to them by FSMA. If you have issues around the definition of consumer which is derived from the FSMA, then I would suggest contacting your Member of Parliament (MP).

With respect to the issues raised directly with the Complaints team regarding your dispute with the firm, it is my view that these were covered in the various responses sent to you by ECU. All concerns and material which you provided was forwarded onto the relevant supervisory team to consider as part of their ongoing work. As I have mentioned previously, we are unable to provide feedback on any action we do or do not take due to our policy on sharing information. You had also contacted the Hub previously about the same issue and they also made the information available to the relevant supervisory team.

For these reasons set out above, I have not upheld your complaint.

Why you are unhappy with the regulator's decision

4. In your complaint email to me dated 1 March 2023 you set out that you did not accept the FCA's decision letter and that you are very unhappy about its contents. You set out that the core matters of concern were set out and expressed in your email to the complaints investigator sent on the same date. From that email I have summarised your complaint into two key elements.
5. The first element is that you were not happy with the Complaint Team's decision letter. You felt that the way it was written painted you in a derogatory manner. You also took specific exception to the FCA addressing the decision letter to

you under your company name as you have at no point referenced the company in your correspondence.

6. In addition to this you felt that the Complaint Team's decision letter had ignored your correspondence and that the findings section in the letter was a 'long collection of extracts and interpretations that are totally irrelevant to the questions' you have posed in your letter of 8 February 2023 (Element One).
7. The second element of your complaint flows on from element one, being that the Complaint Team did not uphold your complaint, which briefly summarised, was that you were unhappy with the correspondence you had with the ECU Team in relation to Firm X (trading as Firm Y) and that you wanted the issues you raised with ECU to be addressed. You have set out that you do not accept the FCA's decision not to uphold this complaint. (Element Two)

My analysis

Element One

8. This element relates to the FCA's Complaint Team handling of your complaint and has two parts to it, the first being how you feel you were portrayed in the decision letter and the second part relates to your belief that the complaints team ignored your correspondence and set out irrelevant information rather than addressing the questions you had posed.
9. In relation to the first part of this element you consider that the decision letter painted you in a derogatory manner and you also took exception to the FCA addressing the decision letter to you under your company name, as you have at no point referenced the company in your correspondence.
10. Firstly, I think that it is understandable that you found it upsetting that the FCA addressed your complaint to you including the company name. At no time had you or the FCA referenced the company name in any of your correspondence, so it would have been confusing to see it included for the first time in its final decision letter.
11. You expressed your upset about this in your email to the FCA on 1 March 2023 and the Complaints Team responded back setting out that:

Please accept my apologies that your firm name was used which was an oversight on my part.

12. I do consider that this was an unfortunate oversight and should not have happened. I feel that it was appropriate for the Complaints Team to acknowledge this further complaint you raised. I also feel that it was appropriate that it acknowledged and accepted this was an oversight on their part and apologised immediately for it.
13. This being said, I do not agree with you that the FCA was trying to paint you in a derogatory manner. I can see that this matter has been extremely upsetting for you and it is clear that you are incredibly frustrated by the position you have found yourself in with Firm X. Whilst I appreciate this, I can also see that there has clearly been a break down in communications between you and the FCA and the tone of the conversation has become negative.
14. Whilst I understand that it is a very upsetting matter for you, I do acknowledge and believe that it is important and appropriate that the FCA has an unacceptable behaviour policy to protect its staff when they are doing the jobs. Having reviewed the correspondence I do think that it was reasonable that the ECU team called out that it felt your behaviour had contravened its unreasonable behaviour policy when it did. I note that in you have yourself acknowledged in your email to the FCA on 1 March 2023 that you had mocked the FCA staff which you said they 'unreservedly deserved' and expressed your anger with regards to the ECU associates behaviour. In view of this breakdown in the communication I feel it was appropriate that the ECU then informed you that you had contravened the policy and implement the relevant steps in response. At that point in time the ECU considered that it had already provided you with all the relevant answers to your issues and as such made the decision that it would file any further correspondence but it would not respond to it. I consider that this was reasonable in the circumstances.
15. Your interactions with the ECU team have been central to your complaint and you raised this in your correspondence with the Complaint Team including your dissatisfaction with the ECU team suggesting your behaviour was unacceptable. As such, it was reasonable for the Complaint Team to note that your

interactions with the ECU had been concluded under the unacceptable behaviour policy in its decision letter.

16. Having noted this, I do acknowledge that that your 'aggressive tone' was mentioned on at least five occasions in the decision letter and whilst I understand that the letter was noting the chronology of events and then summarising the findings, In my preliminary report I **suggested** to the Complaints Team, that perhaps comments relating to its own opinion of the language and tone used in your correspondence should have been reserved to its findings rather than also being discussed in the background chronology of events. By repeatedly highlighting its opinion on the issues that had arisen as a result of your already heightened feelings throughout the decision letter it is understandable that this may have exacerbated your feelings and left you feeling like there was a disproportionate focus on your conduct and not on the original issues complained about. I am pleased that the Complaints Team have written in response to my preliminary report and advised that it has accepted my suggestion and that it will ensure that going forward their opinions will be reserved to the findings of the decision letter.
17. In relation to the second part of Element One of your complaint to me, being that the complaints team ignored your correspondence and set out irrelevant information rather than addressing the questions you had posed, I do not agree with you that the findings were irrelevant to the questions you posed.
18. You set out in your email to the FCA on 1 March 2023 that the Finding Section in the decision letter was a long collection of extracts and interpretation that were totally irrelevant. I do agree that there were long extracts and interpretations, but I disagree that they were irrelevant. The long extracts from the correspondence with the ECU team provided relevant evidence that the ECU had provided information to address the issues you had raised. I see no value to repeating the extracts again but consider the information set out provided a brief summary of legislation and regulations that set out the scope of the FCA, and set out the FCA's position in relation to buy-to-let mortgages and unregulated activities and provided relevant referrals in view of the FCA not being able to consider your individual complaint about the firm.

19. As such, I felt there was relevance to the long extracts and interpretations and I consider that it was appropriate that the Complaint Team set this out to firstly evidence it had considered the correspondence you had with the ECU team and secondly to evidence that it considered the responses from the ECU team to your issues were appropriate, and finally to ensure that you had the information to address your issues.
20. In your email to the FCA on 1 March 2023 you set out that it had not addressed the questions you had asked in your letter dated 8 February 2023 to the Complaints Team. In this letter you appear to set out that you feel that you as a client of Firm Z are part of a group of people who are being discriminated against. As set out by the FCA in its decision letter it cannot investigate complaints individually but what it can and has done is pass the information you have provided about Firm X treatment of the Firm Z group of customers onto the relevant supervision team who will log the information and where appropriate may take further action. Unfortunately, due to confidentiality reasons the FCA does not provide updates on what actions the supervision team takes, if any, against firms following the receipt of information from complainants.
21. As such, I consider that it was correct for both the ECU and complaints team to direct you to the Financial Ombudsman Service to in relation to any individual complaint you may want to pursue Firm X for, it will be for the FOS to determine whether it has the jurisdiction to investigate your complaint.
22. You have acknowledged that the FCA is not able to investigate individual matters. It is my position that the questions you raised in the 8 February 2023 letter were directly related to your complaint about Firm X and Firm Y. As such I consider that it was appropriate that the complaints team did not directly answer these questions. This does not mean that they have ignored your correspondence, rather they have addressed them with a broader, more generalised approach with referrals to the FOS set out on page 4 and 5 of the decision letter if you felt the Firm X and Y had acted in a discriminatory way to you and also to seek further advice on your individual position through the citizens advice bureau.

23. Also, on page 3 of the FCA decision letter, paragraph d. states that ‘For the mortgages the FCA do regulate, the decision to offer a new deal to borrowers is a commercial decision for firms to make. Firms are not obliged to offer a follow on rate when a borrower moves onto a variable rate, even at times when the Bank of England Base Rate is increasing.’ I consider that this was highlighting the general position that borrowers regardless of whether they are categorised as a consumer under the regulation or not, are exposed to a Firm not offering a follow up rate when the borrower moves onto a variable rate, it is therefore not discriminatory per se, that it is a commercial decision for a firm to take on a case by case basis for all borrowers.
24. Taking the above into consideration, overall I have concluded that the Complaint Team appropriately addressed your complaint in its decision letter and that it did not ignore your correspondence and set out irrelevant information. Whilst I do consider that the FCA might have drafted its decision letter with a little more consideration, I did not find the letter to be derogatory. As such I have **not upheld** this element of your complaint.

Element Two

25. As I have set out in element one above, I consider that the Complaint Team has addressed the queries that you raised in your correspondence, and this includes your complaint about your correspondence with the ECU team. As I have set out in paragraphs 17 to 24, above I consider that the Complaint Team set out relevant extracts that demonstrated its position, being that it had found that the ECU team had appropriately corresponded with you and addressed your issues.
26. I have also had access to all the correspondence on file and reviewed the queries and the ECU’s responses and I agree with the FCA’s decision not to uphold your complaint. The information available shows that whilst there was an initial delay in responding to your queries between August 2022 and October 2022, which was acknowledge, the ECU team then provided relevant answers to your issues on a generalised basis. It clearly set out that it could not look at your individual complaint and it is my opinion that the responses you received were relevant to the issues you raised.

27. As such I agree with the FCA's decision and I **do not uphold** this second element of your complaint.

My decision

28. I have **not upheld** your complaint for the reasons set out above. This is my final report about your complaint.

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Complaints Commissioner

31 May 2023