

08 May 2024

Final report by the Complaints Commissioner**Complaint number 202300608***The complaint*

1. On 22 November 2023, you submitted a complaint to my office about the FCA.

What the complaint is about

2. The FCA said your complaint is that:

“You are dissatisfied that the FCA has been grossly negligent in not fulfilling its mandated legal obligations under the Money Laundering Regulations - Regulations 46 and 17, by not requiring banks to inform their customers in a constructive manner that receiving payment into their bank account for a 3rd-party may be money laundering and lead the customer to a fine or prison sentence.....the remedy you are seeking is for the FCA to monitor that banks are informing their customers in a constructive manner that receiving payment into their bank account for a 3rd-party may be money laundering and lead the customer to a fine or prison sentence”.

What the regulator decided

3. The FCA declined to review your complaint. It said:

“After carefully considering the information you have provided, we have concluded that this is not a complaint we would investigate under the Complaints Scheme.

Paragraph 3.5 of the Complaints Scheme provides that we will not investigate complaints that we reasonably consider amount to no more

than dissatisfaction with our general policies or with the exercise of, or failure to exercise, a discretion where no unreasonable, unprofessional or other misconduct is alleged.

Your complaint relates to the FCA negligence in applying laws under Money Laundering Regulations 2017 in relation to account mules, which we consider amounts to being dissatisfaction with our regulatory decision-making/ oversight of Anti Money Laundering Regulations. Accordingly, this is not something we will investigate under the Scheme”.

Why you are unhappy with the regulator’s decision

4. You have said to me that your complaint is about a specific issue, as outlined above, not about general policies. Furthermore, your allegation is that the FCA have been “grossly negligent in not meeting a specific obligation imposed on the FCA by the Payment Services Regulations 2017”.

My analysis

5. The complaint is clearly not general in nature – it is highly specific; nor does it relate to general policies. It also alleges misconduct in the form of an “unreasonable” decision not to make a regulatory intervention.
6. You have alleged that the FCA is not applying or misapplying various regulations in not asking banks to have explicit messaging to their customers about account mules.
7. You also make a suggestion that in any event, the FCA ought to require banks to make this messaging explicit because in your view customers are largely unaware that accepting third party payments into their accounts is problematic. You feel if customers were advised explicitly about this, it would lead to a reduction in account mules.
8. The FCA Complaints Team has effectively dismissed your suggestion without any consideration, on the basis that it reflects general dissatisfaction and that, presumably, no “unreasonable, unprofessional or other misconduct is alleged”. It seems to me that your complaint is both specific and is indeed alleging conduct which grossly negligent and, therefore, is at best “unreasonable”. In my

view, this should not have happened. Given this, I did not think your complaint should have been excluded, I invited the FCA to investigate it.

9. The FCA did not accept my recommendation: it agreed it ought not to have excluded your complaint under the 'general dissatisfaction' paragraph of the Complaints Scheme, but said it cannot investigate your complaint as it does not fall within its relevant functions...it also says "the regulations do not create the customer notification requirements outlined by the complainant."
10. The FCA is referring to the fact that complaints about rule making are excluded from the Complaint Scheme.

My decision

11. I am afraid the FCA has still not answered your suggestion in paragraph 7 above. The point is whether there is any merit in the FCA considering the approach you suggest, and the FCA has still not considered it. It is, however, the FCA's practice to give consideration to suggestions when it receives them: see for example <https://frccommissioner.org.uk/wp-content/uploads/FCA00319-FD-07-08-17.pdf>. I recommend the FCA considers your suggestion.

Rachel Kent
Complaints Commissioner
08 May 2024