

09 May 2024

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

### **Complaint number 202300637**

1. The FCA issued a decision letter on your complaint reference 210400522 on 23 October 2023. On 11 December 2023, you referred this decision for an independent review to the Office of the Complaints Commissioner (OCC).
2. Your complaint to the OCC has been assigned reference 202300637.
3. By way of background, the FCA's decision letter says "You have complained previously to the FCA under reference 207649433 where you were unhappy with how the Financial Ombudsman dealt with your underlying complaints, ignoring evidence of fraud and perceiving themselves immune from legislative responsibility".
4. It also said it had addressed these matters under reference 207649433. You were not satisfied with the outcome and referred the decision to the OCC.
5. My predecessor, whose term finished on 31 December 2023 was conflicted in reviewing your complaint and therefore the FCA appointed an alternative solicitor to review your complaint independently. He issued his decision on your complaint on 30 August 2022.
6. The alternative investigator was not an employee of the OCC, nor did he report to the Commissioner. He was appointed by the regulators, following a nomination by the Law Society. His Majesty's Treasury (HMT) approved the appointment of the alternative investigator as being an appropriately independent person. The then Complaints Commissioner had no dealings with your case. You have referred some information from that complaint to me, however, that complaint is now concluded under the Complaint Scheme (the Scheme), and I will not be reviewing it as part of your current complaint.

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7. In your current complaint to the FCA, it says you referred to some of the matters related to your previous complaint, but that “You have said that this new complaint is linked to the concerns you raised under case 207649433 but you have reiterated that it is regarding a significantly different point of law.”
8. The FCA summarised your complaint to be that “you are unhappy about a misleading statement made to the Treasury Parliament Select Committee (TPSC) on 7 November 2022 by the FCA’s CEO Nikhil Rathi regarding consumer protection, consumer duty, the FCA’s objectives and the Financial Services Market Act (FSMA)… To resolve your complaint you are seeking for the FCA to acknowledge that the consumer protection objective has been a requirement since 2000.”
9. The FCA declined to review your complaint on the basis of Paragraph 3.2 of the (2016) Complaints Scheme which explains that a complaint “can be made by anyone who is directly affected by the way in which the regulators have carried out their functions, or anyone acting directly on such a person’s behalf provided that the complaint meets the requirements of the Scheme. To be eligible to make a complaint under the Scheme, a person must be seeking a remedy (which for this purpose may include an apology) in respect of some inconvenience, distress or loss which the person has suffered as a result of being directly affected by the regulators’ action or inaction.”
10. The FCA’s view was that you had not provided sufficient evidence of how you had been directly affected by the FCA’s CEO statements about Consumer Duty. The FCA said:

“you mentioned in this complaint that you have suffered at least £23,000 in unnecessary legal costs, your ex-wife divorced you have been subject to significant distress as a result of the errors made by the Financial Ombudsman and the FCA because they ignored the consumer protection objective. This complaint you have bought to us is about the misleading statements made to TPSC and I do not feel the details of how you have been affected is directly related to this allegation. I can see that these points were considered under your previous case bought in 2021 reference 207649433”.

11. You referred your complaint to my office and said:

“Some of the comments made by Nikhil Rathi, Chief Executive, Financial Conduct Authority, to the "Treasury Parliament Select Committee", "TPSC", on 7 November 2022 are at least "misleading" regarding the "Consumer Duty" in response to question 324 on pages 6/7 is copied "Absolutely. It is worth remembering that the introduction of the consumer duty came following the most recent Financial Services Bill and the amendment adopted in Parliament inviting us to make such rules by the end of July this year. Going back to the earlier conversation, that is quite an important example of how we are responding to the democratic signals that we get from Parliament.”

You say “the protection of consumers has been a legal requirement since 2000/ and “The Consumer Duty has applied since 2001 at the latest. The phrase may have changed over the years, but the principle has been constant as have other objectives to reduce financial crime....”

12. I will begin by saying that it would have been helpful if the FCA had addressed your request to clarify the date on which its consumer protection objective was introduced, which is the remedy you requested, regardless of whether the FCA deemed your complaint to be in the scope of the scheme or not. You asked the regulator for information and it ought to have provided you with an answer. The FCA has agreed that it ought to have answered this question.
13. I have read your submission to my office as per paragraph 11 above and in my view it may be helpful to provide you with some further information about the FCA consumer objective and the Consumer Duty. The FCA consumer objective is one of the FCA’s operational objectives first determined in the Financial Services and Markets Act 2000 (the Act). On its website <https://www.fca.org.uk/about/what-we-do/protecting-consumers> the FCA explains that ‘One of our operational objectives is to use our powers over firms and markets to protect consumers.’
14. One of the ways in which the FCA meets its objective to protect customers is through the introduction of Consumer Duty: this is a new piece of regulation (sometimes referred to as a package of regulations), which became effective on 31 July 2023 that sets higher expectations for the standard of care firms across the financial services industry give to consumers in retail financial markets. The new rules build on and enhance the existing work of firms in the financial services industry.

15. In summary:
  - a. The FCA has an objective to protect consumers: this objective was set by Parliament through the 2000 Act. The FCA is obliged to fulfil its objective through the actions it takes protect consumers.
  - b. One of the ways the FCA protects consumers is by the introduction of new regulations on 31 July 2023 called “ Consumer Duty”: these are regulations which the FCA made about what regulated firms must do better.  
“Consumer Duty” therefore are rules which the FCA made and which it says regulated firms must implement so they can provide a higher standard of care to their customers.
  - c. In summary, the FCA’s consumer objective, which was set by Parliament in 2000, and the Consumer Duty are two different things as described above.
16. The FCA CEO was correct to say that Consumer Duty is a new piece of regulation which came into effect [on 31 July 2023]. It is a regulation which the FCA applies to regulated firms. It is one of the ways in which the FCA meets its consumer objective.
17. This is not to say that firms did not have a duty to consumers before the introduction of Consumer Duty: they did. Consumer Duty however, is the name of a specific piece of regulation which seeks to enhance the standard of care firms give to consumers.
18. As I mentioned above, the FCA has had an operational consumer objective since 2000. The FCA does have a statutory duty to secure an appropriate degree of protection for consumers. It does so by regulating the financial industry through, among other, the setting of standards which firms must meet.
19. The FCA is accountable to Parliament via the Treasury with respect to its statutory objectives. More information can be found here:  
<https://www.fca.org.uk/about/how-we-operate/reporting-treasury-parliament> .
20. The FCA has also provided the following information to my office on previous occasions which I think will be helpful for you to be aware of : “The FCA is subject to a range of broad oversight mechanisms such as but not limited to: the need to publicly consult on new rules and guidance; the need to consult on the

impact of our work with four independent statutory panels, which represent the interests of consumers and practitioners, including smaller regulated firms and financial market participants; the Regulatory Decisions Committee, which takes certain decisions on behalf of the FCA relating to enforcement and supervisory actions, as well as applications by firms for authorisation and by individuals for approval; the Upper Tribunal to which those directly affected by our regulatory decisions can refer their case; and the National Audit Office”.

21. The FCA’s statutory consumer objective is fulfilled by regulating the financial industry “as a whole”. It does not investigate individuals’ complaints against the firms it regulates: that is the role of the FOS. This is how Parliament set up the roles of the two organisations.
22. Complainants who are dissatisfied with the actions of a regulated firm or the FOS is not of itself, without more, evidence that the FCA is not fulfilling its consumer objective, or that the actions of the FCA are impacting them.
23. I hope you have found this information useful. The information I have provided you is a brief synopsis and it is not my intention to cover every aspect of the rules and regulations on this matter. If you have any more queries about the FCA consumer objective or Consumer Duty, I suggest you make enquiries of the FCA. I have tried to be helpful however, this information can be better provided to you by regulators themselves.

Rachel Kent  
Complaints Commissioner  
09 May 2024