

24 June 2024

Final report by the Complaints Commissioner**Complaint number 202300807***The complaint*

1. On 8 March 2024 you submitted a complaint to my office about the Financial Conduct Authority (the FCA).

Background

2. Your complaint relates to an ongoing dispute that you have been engaged in with Firm X, and stems from a mortgage that you entered into around 24 years ago with Firm Y on the recommendation of Mortgage Broker Z (it is noted that Firm X took over your mortgage in 2016 following the collapse of Firm Y).
3. You previously complained to the Financial Services Compensation Scheme (the FSCS) about Mortgage Broker Z (who was no longer authorised), who had recommended the mortgage product to you. The FSCS found that the Mortgage Broker had recommended a mortgage product that was not suitable for you and as a result you received compensation from the FSCS.
4. Approximately 7 years ago (in or around 2017), you fell into arrears on the mortgage and Firm X has added various fees and charges to the mortgage. Since that time, you and Firm X have had various disputes in relation to the fees and charges, contract terms, arrears and default and possession orders. At times these disputes have been the subject of court proceedings.
5. In or around 2023, you made a complaint to the Financial Ombudsman Service (the FOS), that Firm X had added disproportionate and excessive fees to your mortgage and that Firm X has overcharged interest because the interest rate should have been set at a consistent margin over the Bank of England base

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rate. You also complained to the FOS that, Firm X had not applied the correct terms and conditions, and that you had relied on it telling you that you had paid your mortgage off.

6. In its 31 May 2023 decision¹, the FOS did not uphold your complaint. Whilst the decision did note that *'a court might find'* that the clauses *'were not sufficiently transparent'*, the FOS decision went on to conclude that it was not persuaded that Firm X or its predecessors have charged you unfair interest, or that Firm X had acted unfairly in adding legal fees to the loan balance. It set out that it had not seen anything that would lead it to conclude that the balance *it was seeking to recover was incorrect or unfair*, or that *it was unreasonable for Firm X to expect you to repay your mortgage*.

Your complaint to the FCA

7. The FCA set out in its decision letter dated 8 March 2024, that your complaint was as follows:

"You are unhappy with the way we have regulated a firm regarding unfair contract terms. You have explained that you believe Firm X are trying to enforce an unfair term upon you and feel like the FCA have not followed any of the FCA handbook's unfair contract regulatory guides. You find it unfair that FCA has not contacted the firm about the contract terms or liaised with the Financial Ombudsman Service about this matter.

To resolve your complaint, you are seeking FCA to take action to enforce Firm X not to use this contract term which you believe is unfair. In your email of 28 February 2024, you requested I include, the decision made in court regarding the contract term and involvement with the Financial Ombudsman Service, in my investigation. Unfortunately, that is not within the remit of the Complaints scheme, and I cannot investigate this point. The FCA does not have the dispute powers to investigate court decisions or the Financial Ombudsman Service as that is a separate entity, therefore your point falls out of scope to investigate."

What the FCA decided

8. The FCA did not uphold your complaint. It set out that whilst it appreciated that it is frustrating to provide information and then not hear what has been done in response but for confidentiality reasons it is not possible for the FCA to do so. It confirmed that the information you had been provided with by the supervisors was correct.
9. It set out that the *“FCA welcomes information from consumers and so thank you for the time and effort to identify potentially unfair contract terms in consumer contracts. The FCA considers every item that is referred and from my review of the Consumer Contracts Team’s internal files, I am satisfied the FCA acted appropriately with the information you provided.”*

Why you are unhappy with the regulator’s decision

10. In your complaint to my office on 8 March 2024, you set out that “*the FCA has not properly addressed my complaint and has only stated that they properly adhered to their communication procedures. They have said nothing about what they have not done (specifically whether they intend to adhere to their unfair contract regulatory guides (UNFCOG) which was an integral part of my complaint.”*
11. You set out your expectations that you felt that the FCA should confirm to you that they would agree to follow its Unfair Contract Terms Regulatory Guide² in particular guidelines: UNFCOG 1.1.2, UNFCOG 1.2.4(1), (2) , and (3), UNCONFIG 1.3.3, UNFCOG 1.3.4 and 4A, UNFCOG 1.3.5, UNFCOG 1.3.6 and 6A, all of UNFCOG 1.4, UNFCOG 1.35 and UNFCOG 1.6.

Preliminary points

12. Under the Complaints Scheme, I can only investigate complaints about the FCA. Complaints about other organisations are excluded. My investigation is about the actions or inactions of the FCA only.
13. The FCA welcomes information from people who report concerns about firms and unfair contract terms. However, as the FCA explained, it is not generally

¹ The Unfair Contract Terms and Regulatory Guide – Release 36. May 2024
<https://www.handbook.fca.org.uk/handbook/UNFCOG.pdf>

able to 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. 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.

14. 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. Sometimes this means that all I can say to complainants is that having studied the confidential material, I am satisfied that the FCA has (or has not) 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.

My analysis

15. I have had access to the FCA's investigation file which I have reviewed, and I can say that I am satisfied that the FCA has not ignored the information which you have provided to it, gave the information proper consideration, and the decision it took as a result was reasonable. Unfortunately, I cannot provide you with any more information. I realise that this leaves you with concerns and unanswered questions, but I hope you will be reassured that I have reached this conclusion after independently reviewing the confidential material.
16. The FCA's decision letter was correct that the information relayed to you both by the Supervision Hub and in the Webform response were correct is setting out the FCA would be unable to discuss with you any action that it may take as a result of the information you provided to it. I note that this would also include

how it considered the information in line with its own guidelines that you highlighted.

17. This is clearly a very stressful and upsetting matter for you, and I am very sorry to hear about your situation with Firm X and the possession proceedings on your property.

My decision

18. I agree with the FCA's decision, that the FCA did give the information you provided appropriate consideration, and due to confidentiality restrictions, you have not been provided with further information, including about what actions, if any, it took as a result of its review. Consequently, I do **not uphold** your complaint.

Rachel Kent

Complaints Commissioner

24 June 2024