



04 July 2024

Final report by the Complaints Commissioner

Complaint number 202300837

The complaint

1. You raised a complaint with the FCA because you had discovered through your own experience and at your own expense, that there seems to be a gap in the rules the FCA had set for banks to help consumers with “persistent credit card debt”.
2. After many years of raising your concerns with the relevant bank and the Financial Ombudsman Service (FOS), you realised that you should bring these issues to the attention of the FCA, as the regulator. You tried your best to explain your concerns, demonstrating the point you are making by explaining the impact of the situation on you, bearing in mind that you are a lay person with not much knowledge of financial services.
3. To investigate your complaint, I have divided the issues you raised into two elements (as set out in paragraphs 9 and 10 below). As set out in more detail below, I disagree with the FCA’s position and uphold both Elements.

Your FCA complaint

4. The FCA summarised your complaint as follows:
 - “1) *The FCA did not do enough to make the banks help you with your persistent debt.*
 - 2) *The FCA did not take into account that some people had a longer history of debt and the effects it would have on your credit rating.*
 - 3) *FCA didn’t acknowledge that banks are able to set minimum payment amounts on credit card payments.*

4) You feel you were mis sold your credit card and the repayment options were not explained to you adequately

To resolve your complaint, you are seeking for the FCA to review the rules around support for consumers with longer term persistent debt.”

What the regulator decided

5. The FCA excluded your complaint, citing paragraph 3.3 of the [Complaint Scheme](#) (the Scheme), as you had raised queries with its Supervision Hub about the same topic in 2020, making this complaint out of time as it was not made within 12 months of becoming aware of the issues giving rise to the complaint.
6. Additionally, the FCA told you that even if your complaint had been made in time, it would still be excluded under paragraph 3.5 of the Scheme as it amounts 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.”*

Why you are unhappy with the regulator’s decision

7. You raised your complaint with the FCA and my office because once you followed the complaints route prescribed by the Bank you are complaining about and also raised your concerns with the FOS, you realised that there appears to be a disconnect between the rules, their application and the realities of many consumers.
8. You found that, notwithstanding the fact that your complaints were not upheld, both the bank and the FOS “brushed off” the crucial points you are raising, which affect many consumers with “long term persistent debt”. You are concerned about consumers, including yourself, who did not understand what they were signing up to when they agreed to take a credit card and accepted their lenders setting the repayments at the “minimum” amount without being advised what that means (that is, the debt is not being reduced) and understanding the long-term implications.
9. In response to the time barring applied by the FCA under paragraph 3.3 of the Scheme, you told me that *“Although banks and other financial institutions have*

high powered lawyers and accountants who may be aware of such clauses members of the public do not. This means that people are relatively disempowered and disadvantaged in communications with organisations such as the FCA. I am pretty certain that it is in any case unreasonable to apply this deadline. As far as I remember my first enquiry to the FCA was seeking information which would help me in my complaint to the bank or their ombudsman. It was also during the pandemic which was a particularly challenging time professionally. It was only once I had completely despaired of [bank]'s response that it occurred to me to make a formal complaint to the FCA.”

The complaint about the time barring is **Element one** of your complaint to me.

10. In response to the FCA interpreting your complaint as no more than dissatisfaction with its general policies, you said that the wording “*struck me as a brilliant example of the “blanking” I have received from the bank and the ombudsman... In my view in order to be fair e.g. in their policy decisions about how banks deal with customers, it is essential to take into account the extraordinary power imbalance between a solitary customers and financial institutions such as banks. Financial vulnerability, stress and ignorance of the systems, and much else besides, mean that fair treatment should involve reflecting particularly carefully upon the needs of customers, who are likely to be the more vulnerable parties. The fact that the FCA tried to avoid taking my complaint seriously fails in this regard.*” This is **Element two** of your complaint to me.

Preliminary points

11. The aim of your complaint is to raise awareness with the regulator about the perils for people like you, through sharing your own experiences and information about how you ended up in “persistent credit card debt”, not realising what was happening, and how the current policies do not seem to be taking into consideration the fact that there are many people like you in this position who fell victims to the lack of information from lenders, and who now need help and protection.
12. You also made it clear that you are concerned because it does not seem to you like the FCA is adhering to its own Principles when setting its own policies. I

have noted your comments in relation to the way the Complaint Scheme operates and the impression this has left on you and I am sharing these with the FCA.

13. You are particularly concerned because the FCA's Decision Letter told you that *"Most firms do not routinely intervene to address this behaviour since firms have few incentives to help customers repay more quickly because such customers are profitable."* This is exactly your point. It is your contention that strict compliance with the rules is not always sufficient if those rules do not call for fair treatment, especially in cases such as these, where the banks were fully aware of the consequence of their policy to set minimum payments so low that the debt would never be cleared, whilst many of the consumers being sold these credit cards were not told that over time this would lead to the debt stagnating or growing, rather than reducing.
14. People like you have been paying the minimum payments on your credit card debt, not understanding that you were all becoming *"a [victim] of the minimum payment trap."* You did not end up in this position because you were being financially reckless, you simply did not understand that you were becoming trapped with persistent long term debt *"Because I was doing what had been asked of me and assumed my debt was disappearing I wouldn't have recognised myself in that situation. **The description the FCA uses, and has encouraged the banks to use, implies that customers are solely to blame for a very regrettable situation [my emphasis].** Unfair victim blaming is a very unpleasant thing which can cause significant harm to people who are already struggling. In this context it perhaps makes it even easier for the banks, already the more powerful party, to conveniently ignore their responsibility. I am not at all implying that this last point is something which the FCA have consciously done. But I do think that it is very important that they choose their language very carefully, especially when communicating with people who may be already extremely vulnerable."*
15. You approached *"the FCA hoping for serious reflection about policy decisions which might be able to be improved. Instead, I got the FCA leaping into defensive mode."* You are asking, again, that the FCA take into consideration all the points you raised, for there are many people like you, badly affected by the

commercial decisions of banks which hugely benefited, whilst consumers have been paying interest on credit card debt for many years (24 in your case) without ever clearing the debt or understanding the long-term implications of this.

16. You say that the FCA stepped in when the “PPI scandal” came to light and consumers were compensated as a result and believe the FCA, instead of looking for a way to not consider the points you make, should take serious stock of what you are saying about the way in which banks had set minimum payments, potentially resulting in consumers paying many times over the original debt in interest payments, without ever clearing the original debt. In your view, the lack of action by the FCA amounts to lack of care by the regulator.

My analysis

Element one

17. The FCA said you were clearly aware of the issues that gave rise to this complaint as you contacted the FCA about them in 2020. I have not been provided with the relevant FCA files from 2020 but in response to my Preliminary Report you provided some additional information about the circumstances of your case, which was helpful.
18. I note that, for various reasons, there needs to be a limit for bringing complaints, which is determined by the Scheme, and which is currently set at 12 months after becoming aware of an issue. However, even if the FCA is correct and the questions you raised in 2020 and your current complaint are interlinked, it has to be said that there are circumstances under which the time barring could be lifted. Examples include:
 - a. when there are reasonable grounds for the delay;
 - b. when there was no actual knowledge by the complainant of the issues at hand or that they could be raised with the FCA, even if there was information in the public domain about them; or
 - c. when the investigation of the issues being raised is in the public interest.
19. In any event, it wasn't until you *“had completely despaired of [bank]’s response that it occurred to [you] to make a formal complaint to the FCA”* as you realised

there might be a wider failure of regulations. So, I think it is reasonable to start the clock running then and unless the FCA provides evidence which would show the facts to be different, I **uphold** this element of your complaint.

Element two

20. I disagree with the FCA that your concern *“amounts to no more than dissatisfaction with the regulators’ general policies or with the exercise of, or failure to exercise, a discretion where no unreasonable, unprofessional or other misconduct is alleged.”*
21. You have concerns about a specific issue which the FCA also had concerns over, to the point it *“introduced new rules requiring firms to identify credit card, store card or catalogue credit customers meeting our definition of persistent debt...following our Credit Card Market Study. Although we found that the credit card market is working well for many consumers, we found a significant minority of customers were repaying debt slowly over a long period and in doing so they were incurring significant costs. Using credit cards, store cards or catalogue credit in this way – something they were not designed for - is an expensive way to carry longer-term borrowing.”*
22. You are raising awareness of the issues you have become cognisant of through your own experiences, and you are asking the FCA to take these into consideration in its policy and rulemaking and its regulation of the bank (and other lenders) who had sold you a credit card you are still paying off, 24 years later. Whilst I am sure you would appreciate a solution for your personal problems, you are not asking for this as a resolution to this complaint (and you seem to be aware that this could not be achieved through the Scheme).
23. I also find that you make some compelling points as to why the FCA needs to give serious consideration to the issues you are raising, especially in light of the fact that you have concerns about a significant minority of consumers having been trapped into long term credit card debt through the lenders determining the minimum monthly payments to be so low that the original debt is not cleared for many years, some 24 years in your case, with the result that consumers may pay many times over the original debt amount in interest, with no reduction to what is owed.

24. This is of particular relevance when one takes into account the points you make about power imbalance, lack of financial awareness and the trust consumers put in their banks. Your concerns about how poorly many consumers have been treated by their lenders, to the point of exploitation, are only brought into sharper focus by the FCA's statement in its Decision Letter that *"Most firms do not routinely intervene to address this behaviour since firms have few incentives to help customers repay more quickly because such customers are profitable."*
25. The rules introduced following the Credit Card Market Study and through the new Consumer Duty show that the FCA does take stock of how its rules are working for consumers and makes adjustments where needed. This is as it should be.
26. However, you allege that whilst the FCA had taken welcome steps to support vulnerable consumers going forward, it is showing lack of care in its apparent unwillingness to address these issues for others who may have suffered long term financial damage from long term credit card debt. You allege the FCA is not addressing the conduct of banks in relation to consumers who were sold credit cards with the lenders knowingly setting the amount of the minimum payment at a low amount so that the capital sum would not be paid off for many years if the consumer did not make any changes to their monthly payments, if at all, therefore trapping consumers in long term, persistent debt.
27. I note your comments to my office where you say the FCA seems to be placing all responsibility on consumers for the situation they find themselves in, rather than banks who understood all the rules and the implications for consumers on minimum payments and still set the minimum payments as they did. The FCA said in its Decision Letter to you *"The **intention of the new rules** therefore is to **encourage customers (my emphasis)** to consider whether they can afford to repay more quickly and, if so, to begin doing so to reduce their borrowing costs and repay their debt faster. The **rules are also intended to encourage customers (my emphasis)** who cannot afford to repay more quickly to discuss their circumstances with their firm and, if necessary, seek debt advice, and to warn those that cannot or do not of the steps that may come."*

28. Reading these comments, there does not seem to be any reference to requiring lenders to set minimum payments at a level that would not only cover the interest payments but would also reduce the capital amount borrowed where that is possible and appropriate.
29. Finally, in its Decision letter the FCA informed you that it welcomes comments and feedback from consumers, which it logs and disseminates to the relevant teams within the organisation. You were told that this was done with what you provided. Again, this is the correct process to follow, and based on your complaint, partially the outcome you were hoping for.
30. I can see that emails were sent to make the relevant teams aware the records indicate that the documents, which contained your feedback, were not attached and did not reach their intended recipients. Whilst it was possible that this problem was resolved after the complaint file was provided to my office, I did ask the FCA to provide me with a copy of the emails confirming that your detailed comments reached the correct teams within the FCA. In response to my Preliminary Report the confirmation emails were provided.
31. Whilst it is appropriate to send this information to the team responsible for supervising the bank you had your experiences with, I agree with you that your points need to be shared with a wider audience. I am **recommending** that the FCA ensures that your comments reach the right teams, including the teams responsible for policy making and monitoring the effectiveness of rules in place.
32. As for the substance of your complaint, I **disagree** with the FCA's assertion that your complaint is not one that can be investigated because of paragraph 3.5 of the Scheme. I am **upholding** this Element of your complaint to my office.
33. I have the discretion to investigate your complaint without referring it back to the FCA, I am **recommending** that the FCA investigates the concerns you raise as this would be more appropriate in the first instance. I **ask** the FCA provide you with information about what consideration, if any, had been given to the predicament of those consumers who were already stuck with long term credit card debt for a significant amount of time, paying the minimum payments set by the banks (set at a level that made the banks the most profit), not actually paying off the original balance with the result of paying significant amounts in

interest over a number of years and still being in debt. I ask that the FCA comments on this question in light of the fact that it felt the need to take action to protect a significant minority of credit card holders affected by these issues.

34. The FCA has confirmed that it is accepting this recommendation and it will be in touch with you shortly to inform you about the next steps. I note the FCA's comments about all the work that has been done to date, which is expected to help consumers going forward. This complaint and feedback is, however, related to a very specific group of consumers, a significant minority, who already had persistent long term debt before the rules started changing and the considerations their situation may have been, or might be given by the FCA.

Additional points made in your letter to me

35. Whilst these are not points considered by the FCA as you only raised them with me, I have taken on board your comments about the language of the Scheme, which may give the impression that the FCA is "not interested in comments or feedback [related]". It has to be noted that even when complaints cannot be investigated, information received by the FCA is generally disseminated internally and used in its day-to-day work as appropriate.
36. I invited the FCA to comment on this point if it wished to add anything further and it provided this response:

"Information about the firms we regulate brought to us from consumers via the complaints process is passed onto the relevant areas of the FCA to take into account. Whilst we may not be able to investigate the complaint being raised, the information we receive from individuals is very valuable to us.

The Scheme is in place to investigate complaints about the FCA. The FCA website provides specific contact points for consumers to report information about the firms we regulate, for example misleading financial promotions, payment or e-money firms, scams and unfair contracts. Consumers can also use the email or telephone and speak with the Supervision Hub. If the consumer is unsure where to look, they can visit our consumer section below and answer a few questions to find the information they require here

<https://www.fca.org.uk/consumers>."

My decision

37. I uphold both Elements one and two of your complaint and recommend that the FCA investigates it. In response to my preliminary report, the FCA has confirmed that it accepts my recommendations and will contact you shortly in relation to progressing matters.

Rachel Kent

Complaints Commissioner

04 July 2024