

28 July 2021

Final report by the Complaints Commissioner**Complaint number FCA001119***The complaint*

1. On 17 June 2021 you asked me to investigate a complaint against the FCA.

What the complaint is about

2. You say that the Financial Ombudsman Service (FOS) inadvertently sent your late husband copies of emails and letters sent to them from the FCA regarding the alleged fraudulent activities of your IFA (X). You wish to know what the FCA has done about the alleged fraud the IFA committed and the bank that was involved.

What the regulator decided

3. The FCA did not uphold your complaint. It said it had assessed the information you provided in 2018. It said that normally it would not have disclosed this to you due to confidentiality reasons, but as the FOS provided you with copies of emails this made you aware of the FCA's involvement and contact with IFA X.
4. The FCA said that it would not be undertaking any further investigation based on the information you provided. The FCA Complaints Team said that a more thorough investigation could have been carried out but that this 'would not have changed the situation for you and your late husband or had any material bearing on your circumstances'.

Why you are unhappy with the regulator's decision

5. You have said that you are disappointed with the decision of the FCA and that you believe that 'The FCA had been aware of this fraud (and it is fraud), as early as 2013 and were actually in Bank X offices investigating in 2013, the same year my late husband was first subject to the fraud, and again in 2015'.

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My analysis

6. You initially brought this complaint along with other complaints to my predecessor who issued a decision on your complaint published on our website (<https://frccommissioner.org.uk/wp-content/uploads/FCA00663-FR-publication-04-03-20202.pdf>). As this complaint had not been investigated by the FCA, the Complaints Commissioner invited you to submit the complaint to the FCA for an initial investigation, which you did.
7. The FCA has now issued a response to your complaint. I have reviewed the FCA file and our records which also include material from the investigation of complaint FCA00663.
8. I have sympathy for your situation and I have reviewed the case carefully. With respect to IFA X, as you are already aware, the FCA looked into the matters you raised. The FCA has disclosed some of the work it undertook, but not all, due to confidentiality restrictions. I have been able to review the entire investigation file, and my view is the FCA's decision not to investigate further is reasonable.
9. In this case, it is evident that the passage of time since the alleged fraud in 2004 and 2008 and the lack of other substantial contemporaneous records provides a difficulty in reaching firm conclusive findings, which, coupled with the fact that there would be no possibility of personal redress for you, are some of the factors which I feel are significant in why any further investigation is not proportionate.
10. The FCA is what is known in the jargon as a "risk-based regulator" – in other words, it has to sift through the large quantities of information which it receives each day, analyse its significance, and then decide whether or not any follow-up action is required. Even where no further action is taken immediately, information may be kept on record and reconsidered if further information is received which suggests that the problem may not be an isolated incident but symptomatic of a more widespread problem. It is not my role to second-guess the FCA's reasonable exercise of this discretion, bearing in mind that it has competing priorities and does not have unlimited resources.

11. I now turn to the point you raise about Bank X. In order to address this point, I refer to your complaint to my predecessor dated 12 December 2019 in which you refer to emails which show letters and *'In them the FCA say that [IFA] says that the bank lied about asking him if [my husband] had a buy to let mortgage (FCA100). Why would a bank do that? And have the FCA contacted the bank to seek clarification'*.
12. Your complaint above refers to what you believe to be a fraudulent mortgage application submitted by IFA X in 2008 to Bank Y. In other correspondence you have alleged that there was collusion between Bank Y and IFA X at that time in accepting the allegedly fraudulent application in order to enable the mortgage in 2008. My predecessor invited you to submit your complaint to the FCA.
13. When you did so, I can see that you complained about fraud, but this time it was about Bank X and connected with its repossession proceedings against your husband some years later.
14. I understand that you have submitted a complaint about Bank X to the FOS, and that the repossession proceedings have now concluded. Unfortunately, neither the FCA nor I can intervene in court decisions and FOS decisions.

My decision

15. I appreciate that you do not agree with my decision, however, I am unable to help you under the Complaints Scheme.

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Complaints Commissioner

28 July 2021