

08 October 2021

**Final report by the Complaints Commissioner****Complaint number FCA001166***The complaint*

## 1. The FCA summarised your complaint as follows:

In your letter of 4 January 2021, you have explained that though your letters of 2017 covered a number of concerns related to interest rate hedging products (IRHP) and the FCA's interaction with firms on IRHP, this complaint merely relates to the FCA's responses (of 22 August 2017, 11 December 2017 and 12 January 2018) with regard the status of the borrowing taken by your Company. Specifically, you consider there were mistakes made within the FCA's correspondence as:

- The FCA did not confirm your belief that your Company's borrowing with the Bank was by way of a regulated mortgage contract (rather than a commercial loan).
- The FCA's rule making powers were overstated and it was suggested they would overrule an Act of Parliament.
- The FCA failed to support your claim that the borrowing was sold by an individual who was neither an authorised person or an exempt person.

*What the regulator decided*

## 2. The FCA set out that it would not investigate your complaint under the Complaints Scheme (the Scheme). This is because paragraph 3.3 of the Scheme states complaints should be made within 12 months of the date on

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which the complainant first became aware of the circumstances giving rise to the complaint.

3. It said:

From your letter of 4 January 2021, it appears you became aware of the circumstances in relation to your complaint in January 2018, over 12 months ago. However, we can look at complaints after this 12-month time bar if you have reasonable grounds for the delay in complaining. If you do have evidence showing this, I'd be grateful if you could send it to me and I will consider whether your complaint should remain time barred, or be investigated.

*Why you are unhappy with the regulator's decision*

4. In your letter to my office received on 12 July 2021, you asked me to examine your complaint to see that the rule of law is upheld. You are unhappy that the FCA has not upheld your complaint and feel that Mr. Bailey, CEO of FCA, and Mr. Davidson, Executive Director of Supervision at the FCA were derelict in their duty to protect consumers when they rejected your complaint.

*Preliminary points*

5. Under paragraph 3.3 of the Complaints Scheme complaints should be made within 12 months of the date on which the complainant first became aware of the circumstances giving rise to the complaint. Complaints made later than this will be investigated under the Scheme only if the complainant can show reasonable grounds for the delay.

*My analysis*

6. Firstly, I want to acknowledge your response to my preliminary report dated 15 September 2021. In your response you set out that you and your wife have experienced significant health issues since 2018 and that these issues have caused the delay which has occurred with your complaint and have asked that I continue with my investigation. I am very sorry to hear about the issues that both you and your wife have experienced since 2018.

7. As set out in my preliminary report I agree with the FCA's letter of 29 June 2021 in which they set out that they would not investigate your complaint under paragraph 3.3 of the Complaints Scheme.
8. Whilst it is my preference to investigate matters, the time limit for the Complaints Scheme is in place for a reason. As the time elapses from the time of the originating events of a complaint, it becomes more difficult to investigate the matters, more difficult to locate people within the organisation who can provide first hand knowledge about the matters and obtain relevant documentation. This can result in a disproportionate amount of resources being allocated to investigate a matter for potentially inconclusive findings. Accordingly, time limits are required to avoid these issues. However, I can assure you that I always carefully consider cases where Paragraph 3.3 has been used to ensure that it has been used appropriately and not being used to avoid addressing complaints.
9. I note that your complaint originates from events that relate to the mortgage that your company obtained from the Bank in 2006. In 2013 you complained to the Financial Ombudsman Service about the Bank and you also raised your issues with the FCA in 2017.
10. I have reviewed FCA's file in relation to your complaint which contained your previous letters to the FCA dated 26 July 2017, 12 November 2017, and 18 December 2017 about the issues you had in relation to the Bank and the mortgage your company obtained in 2006. The file also contained the FCA's previous responses dated 22 August 2017, 11 December 2017 and 12 January 2018 referred to in your complaint letter to my office.
11. I have also reviewed the FCA's decision letter dated 29 June 2021, and as it set out, it responded to your previous letters and directed you in both its responses dated 11 December 2017 and 12 January 2018 that you could raise a complaint if you were unhappy about the FCA's actions or inactions. From the information I reviewed at the time of my preliminary report I could not see any reason to explain the delay of almost three years in lodging your complaint about the FCA's responses of 2017/2018.
12. I can accept complaints which are out of time if I feel there is good justification. I have now considered the circumstances that you have set out in your letter to

me dated 15 September 2021 in which you set out that you and your wife have experienced significant health issue, along with the FCA's original decision letter. Whilst you have set out to me the reasons you consider that there are reasonable grounds for your delay, it does not appear that the FCA was provided this information at the time it made its decision. On that basis I feel that the FCA's decision to time bar your complaint at the time it wrote the decision letter was a reasonable position given the time that elapsed from your original communications with the FCA, and as such I uphold that decision.

13. I noted in paragraph 3 above, that the FCA set out in its decision letter that if you had reasonable grounds for the delay in making your complaint, you could provide it with evidence to support your grounds for the delay, it would then consider whether your complaint should still be time barred or investigated.
14. Consequently, I do not think that it is either practical or justified for me to investigate this case. I believe in this situation, where the FCA have time barred your complaint and not investigated the elements of your complaint the most practical approach forward is, as set out in its decision letter, for the FCA to be provided with, and given the opportunity to consider what you believe to be your reasonable grounds for the delay in making your complaint. If the FCA does decide to investigate your complaint, it is better placed and resourced to investigate your complaint at the first instance. As such I have not investigated the individual elements of your complaint.
15. Please note that if the FCA does decide to investigate your complaint and following its investigation you are unhappy with its decision, you will be able to make a new complaint with me which I would then consider at that time.

*My decision*

I know that my decision will disappoint you, but for the reasons set out above I have not investigated your complaint.

Amerdeep Somal  
Complaints Commissioner  
8 October 2021