

04 February 2022

Final report by the Complaints Commissioner**Complaint number FCA001538***The complaint*

1. On 30 December 2021 you asked me to review a complaint about the FCA on behalf of your client.

What the complaint is about

2. The FCA summarised your complaint as follows:

My understanding of your complaint is that you are unhappy the FCA has not taken action against a regulated firm. You provided the FCA with information about potential money laundering in October 2020 and you consider that the FCA is using Covid-19 as a reason not to investigate the regulated firm.

What the regulator decided

3. The FCA did not investigate your complaint as it relied on paragraph 3.6 of the Complaints Scheme which says that the regulators will not investigate a complaint under the Scheme which they reasonably consider could have been, or would be, more appropriately dealt with in another way (for example by referring the matter to the Upper Tribunal or by the institution of other legal proceedings). The FCA said your complaint is better dealt with by the firm and if your client remains dissatisfied with the firm's response, they may be able to complain to the Financial Ombudsman Service (FOS).

Why you are unhappy with the regulator's decision

4. You are unhappy with the FCA's decision and have asked me to review your case.

My analysis

5. You have explained the background to your case to be that your client, a firm based in Pakistan, entered into a trade negotiation with a company Y based in the UK for the import of copper wire scrap into Pakistan. A letter of credit was confirmed by Bank X in the UK. Unfortunately, although your client paid for the goods, they never arrived. You feel Bank X should reimburse your client for their losses of USD 50,600 as you allege Bank X failed to spot that various documents were fake before releasing the funds to company Y.
6. You feel Bank X has not been responsive to your letters of complaint, and you would like the FCA to order Bank X to reimburse your client and to investigate Bank X for money laundering offenses.
7. The FCA was right to say that it cannot get involved in your client's dispute with Bank X, but it was wrong to tell you that you may be able to complain to the FOS in the UK. This is because the FOS can review complaints about regulated products and services. Your client's dispute centres on commercial transactions involving letters of credit, and these are not eligible for review at the FOS.
8. The FCA has told you that the information you have passed to it about Bank X will be passed to the regulatory areas but that due to confidentiality reasons it cannot tell you what action if any it is taking with respect to Bank X.
9. This Complaints Scheme is concerned with the actions or inactions of the FCA. It cannot deal with complaints against banks, individual firms [or against the Financial Ombudsman Service (FOS)], nor is it a redress service for individual consumer complaints. The Financial Services and Markets Act 2000 explicitly provides for a consumer redress service separated from the FCA.
10. That does not mean that the FCA cannot investigate concerns arising from information about individual complaints, but it investigates for the purpose of considering whether or not regulatory action is justified, rather than whether or not the individual or firm requires redress. The fact that a bank may have done something which justifies redress does not automatically mean that regulatory action is justified – that would depend upon the scale of the problem, and the risk of recurrence.

11. I am sorry, but the remedy you seek for your client: that his losses are reimbursed by Bank X, is not available to you under the Complaints Scheme. I am afraid the FOS is also not an option in your client's circumstances. You may wish to review your options regarding legal proceedings.

My decision

12. I am unable to uphold your complaint under the Complaints Scheme for the reasons above.

13. I considered the FCA should not have referred you to the FOS as your complaint is about an alleged fake letter of credit with respect to international shipping of goods. The FCA has not accepted this recommendation on the basis that it is up to the FOS to determine jurisdiction. That is a pity as it means you will almost certainly now have a very long wait before you are told by FOS that it cannot help you and a pragmatic approach by FCA might have saved you the time and trouble.

Amerdeep Somal

Complaints Commissioner

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