

28 March 2022

Final report by the Complaints Commissioner**Complaint number FCA001547***The complaint*

1. On 10 January 2022 you complained to me about the FCA's investigation of your complaint.

What the complaint is about

2. In its decision letter to you dated 23 December 2021 the FCA described your complaint as follows:

Part One

You are unhappy that the FCA clearly has inadequate frameworks in place to deal with reasonable adjustments, and that staff within the FCA's Hub needed to be properly mental health trained

Part Two

You are unhappy that the FCA is not properly regulating firms around discriminatory KYC checks, specifically with regards to online checks as due to the uniqueness of names, people with ethnic names are disadvantaged

Part Three

You are unhappy that the Hub would not at least consider giving you updates on your reported concerns, as you feel this did not appropriately consider your reasonable adjustments

Part Four

You are unhappy that there is a lack of enforcement against firms relating to their KYC practices

Part Five

You feel there is a lack of guidance or rules to prevent discriminatory KYC practices.

What the regulator decided

3. The FCA excluded your complaint citing the Complaints Scheme for its reasoning.

Why you are unhappy with the regulator's decision

4. You are unhappy with the FCA's response as you feel the FCA have not taken your complaint seriously and have refused to investigate any element of it.
5. You feel there has been a misuse of paragraph 3 as it should not be used as a blanket to dismiss all complaints, particularly when relating to matters of discrimination.
6. You also mention the FCA have not taken any reasonable adjustments into account pertaining to your disability.

Preliminary points (if any)

7. I have reviewed your complaint and I agree that the FCA was right to exclude your complaint points for the reasons it gave pertaining to the Complaints Scheme. I also think the FCA have cited paragraph 3 of the Complaints Scheme appropriately in your case.

My analysis

8. I understand that you feel your complaint may not have been taken seriously by the FCA and the Complaints Scheme (particularly paragraphs 3.4 and 3.5) has been used as a blanket response to dismiss your complaint. [Paragraph 3.4 and 3.5 of the Complaints Scheme](#) provides,

Exclusions to the Scheme

3.4 Excluded from the Scheme are complaints:

- a) about the regulators' relationship with their employees;
- b) connected with contractual or commercial disputes involving the regulators and not connected with the exercise of to their relevant functions;

c) in relation to the performance of the regulators' legislative functions as defined in the 2012 Act;

d) about the actions, or inactions, of the Bank that do not relate to its functions under Part 18 of FSMA as amended by the Act (recognised clearing houses) or under Part 5 of the Banking Act 2009 (inter-bank payment systems); and

e) complaints about the actions, or inactions, of the Financial Ombudsman Service, the Financial Services Compensation Scheme or the Money Advice Service.

Circumstances where the regulators will not investigate

3.5 The regulators will not investigate a complaint under the Scheme which they reasonably consider 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.

9. In this instance I can see that whilst the FCA excluded your complaint, it did progress your complaint points as far as it possibly could. Having reviewed the FCA's actions taken in your case, the FCA proactively took steps to speak with other internal areas of the business, to ensure it made every effort to provide you with as much helpful resources and information as possible, rather than just simply excluding your complaint and closing your case.
10. Part One of your complaint was your view that the FCA had inadequate frameworks in place to deal with reasonable adjustments, and staff needed to be properly mental health trained. The FCA helpfully explained in its decision letter the training undertaken by all Supervisors and additionally the refresher sessions it does. It included that the training incorporated communication skills and a dedicated session regarding consumers in vulnerable circumstances and the Disability and Equalities Act. The FCA also highlighted the training session goes through the services and support that the FCA offer to consumers in vulnerable circumstances and when to offer this extra support.
11. I have also been made aware recently, that as well as training, FCA staff also have on hand a list of organisations that offer help and support for vulnerable

consumers and offer this to consumers where necessary. Even though the FCA excluded Part One of your complaint, I think it was good practice that it still provided you with an overview of the frameworks that it has in place to appropriately deal with vulnerable consumers. So overall, I am of the view that the FCA's training and frameworks currently in place suffice.

12. In Part Two of your complaint, you had concerns about the FCA not properly regulating firms around discriminatory KYC checks, specifically with regards to online checks as due to the uniqueness of names, people with ethnic names are disadvantaged.
13. I think the FCA were correct to exclude this point under 3.5 of the Complaints Scheme due to this being a general dissatisfaction specific to firms. However, I can also see and appreciate when looking at the correspondence on your case, you also had concerns about a particular Bank who I shall refer to as Bank A. You raised concerns with the FCA about Bank A and a mortgage application. I am unable to look at concerns or complaints about firm's themselves as that is the role of the Financial Ombudsman Service. I am also subject to confidentiality obligations. The sharing of confidential information given to the FCA about firms is restricted by law under FSMA. 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.
14. The Office of The Complaints Commissioner has in the past persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible. As such and as the FCA confirmed with you, there is no general right for members of the public to know the actions the FCA may or may not take owing to confidentiality obligations. However, I can confirm that based on the FCA case file and my further

information requests sought whilst looking at your case, I am satisfied the FCA have taken on board the information you shared with them with regards to Bank A and used it appropriately where the need arises. I hope this is helpful and gives you the reassurance that concerns you raise were escalated appropriately.

15. In Part Three of your complaint, you were unhappy with the FCA not considering giving you updates on your reported concerns as you feel this did not appropriately consider your reasonable adjustments. Similar to what I have already addressed with regards to confidentiality above, it is at the FCA's discretion and within its policy whether updates on reported concerns can be provided. It must be noted that the FCA welcomes information from consumers who report concerns. However, as the FCA communicated with you in the decision letter, they are unable to let you know what is done with the information you provided to them. 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. Equally 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. The FCA shared in its decision letter the explanation of the statutory and FCA policy restriction on information sharing here <https://www.fca.org.uk/freedom-information/information-we-can-share> Overall I think the FCA dealt with Part Three of your complaint appropriately and were right to exclude it under 3.5 of the Complaints Scheme. As such, I am unable to look at this point any further.
16. In Part Four of your complaint, you were unhappy with the lack of enforcement against firms relating to their KYC practices. The FCA excluded this point and I agree with the reasons it gave citing 3.5 of the Complaints Scheme with regards to a general dissatisfaction relating to the FCA's actions or inactions in relation to enforcement against firms for alleged breaches of KYC. I am pleased the FCA went on to provide examples to you about its recent enforcement work involving instances where a firm has conducted poor KYC practices. I think the additional information the FCA provided was helpful for you to gain a better understanding of the enforcement work the FCA does in this area, specifically

that it does take action when appropriate for a firm's failings relating to poor KYC practices.

17. Part Five of your complaint was about the lack of guidance or rules to prevent discriminatory KYC practices. Again, I think this point was excluded by the FCA for the right reasons based on 3.4c of the Complaints Scheme. However, the FCA did additionally inform you that your concerns had been shared with the appropriate part of the FCA. I can confirm that based on the FCA case file and my further information requests sought whilst looking at your case, I am satisfied the FCA have taken on board the information you shared with them and used it appropriately where the need arises.
18. In response to the complaint points you raised me with I am unable to agree on this occasion that the FCA have not taken your complaint seriously, in fact the rigour applied demonstrated by the lengths the FCA went to in its decision letter, providing helpful resources where possible, despite your complaint overall being excluded.
19. I'm unable to agree that there was misuse of paragraph 3 of the Complaints Scheme relating to matters of discrimination. I think paragraph 3 was applied by the FCA appropriately and correctly in your case.
20. You informed me that you feel the FCA have not taken any reasonable adjustments into account pertaining to your disability. You mentioned this to the FCA on 24 September 2021, asked for updates and wanted your concerns dealt with as it related to your mental health and was impacting your mental health. You also stated the FCA appear to have failed to protect individuals with protected characteristics such as individuals like yourself with a disability. I'm afraid there aren't any exceptions as to the legislation and FCA policies currently in place, which would subsequently allow the FCA to provide updates on matters reported to it. This would be unlawful as the FCA is bound by the legislation and the confidentiality that applies. So, I think the FCA dealt with Part five of your complaint appropriately and I can see the information you reported to the FCA was used appropriately.
21. You contacted my office in response to this preliminary report and upon further engagement with my office, it is my understanding that you expressed your

concerns were mostly centred around paragraph 3 of the Complaints Scheme itself. I also understand from your liaison with my office you were able to better understand my position as the Commissioner. The frameworks I need to adhere to including the paragraph 3 exclusions of the Complaints Scheme, I need to abide by are due to legislation and UK law.

My decision

22. For the reasons given above, I am unable to uphold your complaint.

Nevertheless, further to your conversations with my office and my own enquiries made with the FCA, the FCA showed me in its response to my office that the FCA gave the matters you raise proper consideration. However, due to confidentiality reasons, I cannot disclose what actions, if any, the FCA took based on the information you provided, this is due to the legislation that I am required to adhere to. However, I can assure you that your concerns have been properly considered.

Amerdeep Somal

Complaints Commissioner

28 March 2022