

01 April 2022

Final report by the Complaints Commissioner**Complaint number FCA001553***The complaint*

1. On 14 January 2022 you asked me to review a complaint against the FCA.

What the complaint is about

2. You say that you contacted the FCA several months ago

with what I thought was a simple question. I had previously attempted to telephone the FCA but had been passed from pillar to post many times.

This was: “was a bank permitted to telephone customers, asking for confidential information about passwords and pin numbers for electronic banking without the call being recorded for T&Q purposes?”

At the time, a directive of the FCA appeared to apply. This was COBS (Conduct of Business Sourcebook) 11.8. It seems as if, in the interim COBs 11.8, which was certainly still on the FCA website (although it had now been removed. Here, I should like to know when.)Moreover, during covid, the banks had been adjured to be particularly careful to avoid scams <https://www.fca.org.uk/coronavirus/information-firms>.

My initial calls to the FCA were frustrating – to put it mildly. The response I received from the FCA dated 22-1-22 was defensive, obscure and patronising.

I should like:

- a. A full, simple and clear response to my initial inquiry (Element One)
- b. An investigation into how the FC handled the matter. (Element Two)

What the regulator decided

3. The FCA did not uphold your complaint. It said it had answered your query and handled its correspondence with you appropriately.

My analysis

Element One

The FCA's response to your query 'was a bank permitted to telephone customers, asking for confidential information about passwords and pin numbers for electronic banking without the call being recorded for T&Q purposes?'

4. On 11 January 2022 the FCA emailed you to say 'The FCA does not require firms to record every interaction with their customers/clients by telephone. However, there are some rules that require the recording of telephone calls in certain circumstances and we have set these out in our letter to respond to the points you raised and were discussed in your interactions with the FCA. *The circumstances you describe do not appear to be covered by these requirements. (my emphasis)*
5. In my view the FCA has answered your query. Further, the FCA wrote to you extensively on 6 January 2022 to provide background information to you about the circumstances in which banks are expected to record telephone calls with their customers and answered your queries in relation to COBS and its pandemic messaging to banks. The information it provided you clearly explains the background to the legislation, and what the requirements are of banks in this respect.
6. For the reason above, I do not uphold your complaint.
7. You have said to me you do not agree with my judgement, because you feel it is 'horrifying' that the circumstances you describe appear not to be covered by FCA requirements for recording a phone call. I note your point, however, your complaint to the FCA and to me was that the FCA had not answered your query about its rules and guidance, rather than about the adequacy of these rules. In my view, the FCA has answered your query, and you are now unhappy with the answer. Your view, expressed to the FCA in a call dated 8 September 2021 is that all calls should be recorded. Normally under paragraph 3.5 of the Scheme

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.

8. There is no allegation of misconduct here on the part of your bank, or the FCA, so although I appreciate you have a different view about which calls should be recorded, I think the current rules and guidance are within the reasonable discretion of the FCA bar any evidence to the contrary.

Element Two

The FCA's handling of your complaint.

9. I can see your interaction with the FCA was prolonged. The FCA decision letter on your complaint dated 6 January 2022 explains in good detail exactly what happened during your interaction with it. To save repeating the events that occurred, I have provided the relevant extract in Appendix 1.
10. You have said you are not happy with how the FCA handled your complaint, although you have not provided any specific reasons. I have therefore reviewed your interaction with the FCA as described in Appendix 1 in the round.
11. I agree with the FCA's decision as set out in its letter of 6 January 2022 for the reasons it gives. I concur with the FCA that various members of staff from different departments made good efforts to provide you with helpful and courteous and timely information, apart from two specific instances where the FCA apologised for providing less than accurate information and for not returning a phone call as promised. I agree with the FCA's decision to apologise to you for these instances. However, my view is that overall, the FCA handled your complaint in a reasonable way, and I do not consider the FCA letter dated 6 January 2022 to be defensive, patronising or otherwise inappropriate. Rather, it sought to accurately summarise its interactions with you and provide you with the information you requested.

My decision

12. For the reasons above, I do not uphold your complaint.

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Complaints Commissioner

01 April 2022

Appendix 1

Extract from FCA decision letter dated 6 January 2022

Your complaint

Part One

On 8 September 2021, you called the Supervision Hub three times to discuss issues that you were experiencing with Bank X. You are unhappy with how all three calls were handled.

You have explained that you were unhappy with the level of service provided, in particular:

- you felt your questions were not properly answered;
- you are unhappy that it was not possible to speak to a manager immediately when you requested to do so; and
- you are unhappy the supervisors you spoke to were unable to transfer you to Nikhil Rathi (FCA Chief Executive Officer) or the relevant department which were responsible for the question you wanted answering.

Part Two

You are unhappy with the conduct of the Complaints Team manager during your call on Friday 19 November 2021.

Part Three

You are unhappy with the delay in dealing with your complaint. You say that you were sent an email explaining that the Complaints Team were “very busy” and that, notwithstanding the delays you had experienced, you were then told that there would be an eight week wait.

Part Four

You are unhappy that the Complaints Team Head of Department did not call you back on Friday 19 November 2021, which you say is contrary to what you were promised. You also say that you did not receive your complaints team reference number, again contrary to what you were promised.

Part Five

You are unhappy that the FCA has a policy not to provide direct dial numbers for its staff.

Part Six

You are unhappy that the FCA’s Chief Executive Officer, or his team, did not reply to your correspondence that you sent for his attention. You are unhappy with the service level you received in your interactions with the Chief Executive Officer’s team.

Part Seven

You are unhappy that the Complaints Team intends to allocate an investigator from within its own team to investigate its own staff.

Decision

My letter explains, below, that I have made the following determinations in respect of your complaint allegations:

Complaint allegation Decision

Part One

Not upheld

Part Two

Not upheld

Part Three

Not upheld

Part Four

Partially upheld

Part Five

Out of scope

Part Six

Partially upheld

Part Seven

Out of scope

Background

On 8 September 2021, you made three telephone calls to the Supervision Hub to discuss an issue you were experiencing. Further to those telephone calls, you expressed your dissatisfaction at the way your calls had been handled and you asked to make a complaint.

That complaint was investigated by the Supervision Hub, as the area were best placed to respond to your complaint, and they wrote to you providing their response on 13 October 2021.

You advised you were unhappy with the Supervision Hub's response to your complaint and, on 15 October 2021, you asked that your complaint be escalated.

On 15 November 2021, a colleague from the Complaints Team wrote to you to summarise your complaint.

On 19 November 2021, further to a request to speak to a manager, you spoke to one of the Complaints Team's managers about your complaint.

Investigation

To investigate your complaint, I have listened to the three telephone calls that you held with the Supervision Hub. I have reviewed the emails that have been exchanged on this case, considered our policies and approach to matters, and I have also reviewed internal records. Finally, I have liaised with relevant stakeholders within the FCA to understand your complaint in the context of the expertise that is held by those stakeholders.

Findings

I respond to your complaint underneath the separate allegations that you made so that it is easier to understand my findings in respect of each allegation.

Part One

On 8 September 2021, you called the Supervision Hub three times to discuss issues that you were experiencing with Bank X. You are unhappy with how all three calls were handled.

You have explained that you were unhappy with the level of service provided, in particular:

- you felt your questions were not properly answered;*
- you are unhappy that it was not possible to speak to a manager immediately when you requested to do so; and*
- you are unhappy the supervisors you spoke to were unable to transfer you to Nikhil Rathi*

(FCA Chief Executive Officer) or the relevant department which were responsible for the question you wanted answering.

I listened to all three calls that you held with the Supervision Hub on 8 September 2021.

Call One

In the first call, arising from a set of circumstances relating to your personal banking affairs with Bank X, you asked the Supervision Hub team member if banks were required to record calls.

The team member put you on hold whilst they went to check and, when they returned, they told you that the FCA has no specific rules relating to call recordings, and that there used to be rules around conversation recordings, but those rules appear to no longer be applicable.

At this point in time, you challenged that team member and asked them about a particular part of the FCA Handbook, COBS 11.8. You also referred to an article published by a news agency which referenced a requirement for bankers to record calls during the pandemic and whilst working at home.

You questioned the capability and competence of the team member and asked to be put through to a manager. The team member advised that they would put you through to a team leader, and you were then put on hold for ten minutes.

You then asked to be transferred to the Complaints Team and the team member transferred you to the Complaints Team's telephone number where there was the opportunity to leave a voicemail for the team.

You again spoke with the team member and this time asked that you are transferred to the Chief Executive, after asking his name, and the team member said that they did not have the direct dial for our Chief Executive, nor his email address, but that the team member would put you through to the switch board if you wanted.

You asked for your call to be transferred again to the Complaints Team which the team member did. Again, you received the Complaints Team's voicemail and the call was then terminated.

Call Two

Your second call to the Supervision Hub was answered by a different member of the team. You expressed that you had a serious complaint against the team member who answered your first call, as you say that you spent forty minutes whilst they did 'nothing'. You then explained that you were then transferred to a voicemail system when you wanted to make a complaint.

You then said that you wanted to be transferred to the Chief Executive's Office.

You explained that you have been wasting your time and you wanted an answer to your original issue. The team member explained that they could arrange for you to receive a call-back from a team leader/manager. You reiterated that you had an issue you wanted to be answered.

You then said that you were 'pissed off' dealing with incompetent people who put you on hold. The team member explained that they would escalate the matter to one of the senior staff. You went on to protest that after almost an hour on the phone to the FCA you still hadn't received an answer to your question.

The team member then asked you what the question was so that they could help. You said that you didn't trust anyone in the team member's role to answer it. You instead said that you wanted it dealt with by someone senior of the relevant department.

The team member went on to explain that they would ask a team leader to call you back, but you insisted on speaking to someone that instant.

The team member again asked you if they could help with the question and you explained that it concerned the recording of telephone calls by banks, and it related to material contained on our website. You went on to provide the URL address for the FCA's webpage. You also provided information on the news agency website again.

During the call you said that you were being made to hang around and listen to 'garbage'.

You then offered to email in the two documents that were part of your query, but when the team member asked you to do that, you then said that you didn't need to do that, as the team member could just find the web page and the article using the details you had provided.

The team member explained they were going to try and get hold of a team leader to speak to you, but you said you didn't want that and you wanted to speak to the department who deals with the subject matter of your query.

The team member explained that they could not transfer you to the person who could answer your query directly, at which point you became unhappy, raised your voice, and said that you were "pissed off" again. Finally, the team member said that they would be terminating the call and you concluded by saying that you would make a complaint.

Call Three

You called for a third time and explained that you had a serious complaint about the persons who had been answering the telephone. You explained that for the last hour you had been dealing with rude and incompetent people and you said that may be why your voice may sound "somewhat excited" or may sound "pissed off", and you said that would be why.

You provided the names of the two team members who you had earlier spoke to. You then went on to provide your name and explained that you were unhappy because the team members didn't know what they were doing and were putting you on hold.

You were advised that if you wanted to make a complaint then you could do so, but you explained that the team member during your earlier call had tried that but that it doesn't work.

You said that you wanted your query raised with the relevant department and that you didn't want this query being raised with a team leader. However, you did say you were happy to have your complaint raised with a team leader about the quality of the calls you had experienced earlier.

The team member told you that they would raise this matter with a team leader, but you said you wanted an answer now. You asked the team member to be connected with the office of the Chief Executive. The team member explained that they did not have the facility to do that. You demanded that the team member put you through to the Chief Executive and again the team member explained that they cannot do that.

The team member explained that they were going to terminate the call but that they would raise this matter with a team leader for you. You said that you were fed up with evasive, incompetent, ignorant and rude people. You explained that you counted the team member as one of those people now.

You said that you wanted to speak to the Chief Executive's office and again the team member explained that they did not have the facility to do that.

You then shouted, loudly, at the team member that they were a “disgrace” when they explained that they were going to terminate the call.

I consider that this allegation of your complaint should not be upheld for the following reasons:

i. You felt your questions were not properly answered

In the conversation you had with the Hub team member, they were unable to finish their explanation about our rules nor, in my view, was I able to assess when I listened to the call, whether they would have accurately summarised the position in respect of our rules for call recordings. Whilst it is the case that the FCA has some rules relating to telephone recordings between firms and their customers, there is no rule which requires the recording of telephone calls in all circumstances. You can find further details on our rules later in this letter, on pages six and seven.

During the first call you had with the Hub, at the point in time when the team member tried to give you an answer to your question, you took issue with their view and wanted to escalate the matter. At that point, the Hub team member had not finished their explanation about our rules, so it’s not possible for me to therefore conclude that they either did not know the correct position, nor that they were not going to explain it to you, had they been given the opportunity. You then refused, in later calls, to pose the question again for it to be answered by the Hub, as you said you didn’t trust people in that role to give you the correct answer.

For that reason, I cannot agree with this part of your complaint.

ii. you are unhappy that it was not possible to speak to a manager immediately when requested

The Hub has an escalation process that allows consumers, and firms, who are unhappy with the service they receive to speak to a Team Leader. Sometimes owing to availability, it’s not always possible to directly connect a caller with the Team Leader. In your case, I note that those you spoke to did try and connect you to a Team Leader and also offered a call-back at a convenient time. I therefore am unable to agree with this part of your complaint.

iii. you are unhappy the supervisors you spoke to were unable to transfer you to Nikhil Rathi (FCA CEO) or the relevant department which were responsible for the question you wanted answering

The demands on Mr. Rathi’s time are such that he cannot attend to individual cases. Our Hub is designed to assist consumers and firms with queries they have so that our wider regulatory teams, within Supervision, Authorisations and elsewhere, have greater capacity to focus on the regulatory work they do. For these reasons I am unable to agree with this part of your allegation.

Part Two

You are unhappy with the conduct of the Complaints Team manager during your call on Friday 19 November 2021.

To investigate this part of your complaint I listened to the call that you had with one of the Complaints Team managers on Friday 19 November 2021.

Having listened to the call I am content that the manager was polite, as helpful as they could be and that they appropriately tried to deal with your concerns.

I am therefore unable to agree that the conduct of the manager fell below what we would expect, and it is my view that this allegation should not be upheld.

Part Three

You are unhappy with the delay in dealing with your complaint. You say that you were sent an email explaining that the Complaints Team were “very busy” and that, notwithstanding the delays you had experienced, you were then told that there would be an eight week wait.

The Complaints Scheme says that the “...relevant regulator(s) will seek to resolve the complaint as quickly as possible. The relevant regulator(s) will either finish investigating a complaint within four weeks, or they will write to the complainant within this time setting out a reasonable timescale within which they plan to deal with the complaint.”

In accordance with our agreed service level agreements, the Complaints Department agrees to respond to 75% of complaints within eight weeks and 90% within sixteen weeks. This explains why our Head of Department wrote to you, explaining that we would aim to deliver our complaint response within eight weeks.

Necessarily, complaints that are more complex take more time, and whilst we aim to deliver a complaint response as soon as we are able to, on more complex complaints with multiple allegations it does take longer to investigate.

At the date of this letter being sent to you, the Complaints Department have passed the eight week period to respond substantively to your complaint, but we are within the sixteen week period.

I also note that we have given you periodic updates on your complaint on the 22 October 2021, 18 November 2021, 19 November 2021 (including an email from our Head of Department and a telephone call with a manager on the Complaints Department) and then a further update on 22 December 2021. In the latest update, the Complaints Department advised that they would aim to send you a response to your complaint in the early part of January 2022.

In view of this, whilst we would have liked to have responded sooner to your complaint, I do not think that the service you have been afforded has fallen below our expectations, in view of the time it has taken to thoroughly investigate your concerns, which were multi-faceted. I therefore do not agree that the Complaints Department have acted unreasonably slowly in providing you with a substantive response.

Part Four

You are unhappy that the Complaints Team Head of Department did not call you back on Friday 19 November 2021, which you say is contrary to what you were promised. You also say that you did not receive your complaints team reference number, again contrary to what you were promised.

I have considered this allegation in the context of the call that you held with the manager on 19 November 2021, and also in the context of an email sent to you by our Head of Department on the same day.

Firstly, dealing with the content of your call with our manager on 19 November 2021, towards the end of that call, an agreement was made that the Head of the Complaints Department would call you back that same day. I understand that you did not receive a call back, contrary to what was agreed.

I note that we did, however, email you that day with the complaint reference number. This was sent to you by the Complaints Head of Department, on 19 November 2021 at 18.19 hours.

In view of this, I consider that this allegation should be partially upheld, because we did not call you as we agreed to, but we did email you the reference number for your complaint.

I apologise unreservedly on behalf of the FCA for any inconvenience we caused to you by not calling you when we said we would.

Part Five

You are unhappy that the FCA has a policy not to provide direct dial numbers for its staff.

Whilst I appreciate that this might not be the outcome you were hoping for, I am unable to investigate this part of your complaint because it relates to general dissatisfaction with the FCA's

policies. In relation to this allegation, you are unhappy with the FCA's policies in respect of providing, or rather not providing, direct dial numbers for senior individuals and departments within the wider business. You can read more about why I am unable to investigate this type of

complaint under paragraph 3.5 of the Scheme, here –

<https://www.fca.org.uk/publication/corporate/complaints-scheme.pdf>.

As explained elsewhere in this letter, the FCA does have the facility for consumers and firms to

speak to staff through its Supervision Hub. In certain circumstances, staff from elsewhere in the FCA will speak to firms and consumers, as our manager spoke to you, but these are typically by appointment and the Hub does not transfer consumers through to the wider FCA as it is the Hub's core role to assist consumers, and firms, with their queries.

Part Six

You are unhappy that the FCA's Chief Executive Officer, or his team, did not reply to your correspondence that you sent for his attention. You are unhappy with the service level you received in your interactions with the Chief Executive Officer's team.

I have reviewed the emails that were exchanged between yourself and the Executive Casework Unit, which assists with correspondence to the Chief Executive Officer and Executive Directors.

On 8 September 2021, you emailed Mr Rathi to express your unhappiness with the service you had received further to your calls to the Hub (summarised under Part One of this complaint).

You explained why you were unhappy in your email and you went on to say that you expected a direct conversation with him, and that you held him responsible for the issues you had encountered.

On 10 September 2021, one of the team members on the Executive Casework Unit ('ECU') emailed you in response. They apologised for the difficulties you experienced and offered to arrange for one of the Hub's team to call you back. You were also provided with details about how to complain to the FCA.

On 10 September 2021, you replied to say that you would like your question answered, albeit I note that you did not, in this email, state what your question was.

The ECU team member responded to you on the same day and asked for you to explain what your question was.

In turn you responded, again on 10 September 2021, and you explained that your question was:

"...are banks required to record all calls to customers and, in particular, those concerning their accounts and their electronic banking access?"

On 15 September 2021, you followed up by email, asking for someone to answer your question.

On 16 September 2021, you received a response from the ECU. The response said that:

"I note that in your initial email to Nikhil, you attached a copy of information published on the

FCA's website<<https://www.fca.org.uk/firms/recording-telephone-conversations-electroniccommunications>>

regarding the rules in relation to the recording of telephone calls. I do not have any further information to add to what has already been published other than to say that Banks are expected to follow the rules in COBS11.8 as stated on the webpage."

As explained under our response to Part One of this letter, COBS 11.8 no longer exists in our Handbook and, therefore, the advice you were given in this email was inaccurate. Please accept our unreserved apologies for this.

On 17 September 2021, further to some emails exchanged by you and the ECU, you confirmed that you wished for your complaint to be formally escalated.

On the same day, you emailed the ECU with details relating to why you were unhappy with Bank X.

Your complaint was shared with the Complaints Team on 20 September 2021.

On 21 September 2021, you followed-up with the ECU explaining you were unhappy you had not received a response to your most recent email of 17 September 2021. I note that 17 September 2021 was a Friday.

On 21 September 2021, the ECU emailed you to thank you for the information you provided about your bank, and to explain that the concerns had been shared with the Supervision Division.

It was explained that the FCA would not be able to comment on what actions it would take, or not take, in relation to the information you shared. You were also given advice about the FCA's remit, in that it cannot intervene in disputes between firms and consumers, and the Financial Ombudsman Service is responsible for this. You were also advised to complain to the bank and, if you were unhappy with their response, you could then make a complaint to the Financial Ombudsman Service.

On the same day, you replied that you wanted to make a complaint about the ECU staff member and their manager.

On 23 September 2021, the manager within the ECU emailed you providing you with details about how to complain to the FCA and also a link to the Financial Ombudsman Service if you wished to complain about your bank.

You are unhappy that our Chief Executive Officer did not respond to you personally. The demands on Mr. Rathi's time are such that he cannot respond to individual consumers on individual matters, and that is why the ECU respond to queries on his behalf.

In this case, the ECU were at all times helpful and courteous in their dealings with you. I do not consider there was any unreasonable delay in their responses to you, and you received a good level of service.

I have identified that you were informed that banks are required to adhere to COBS 11.8. As discussed elsewhere in this letter, COBS 11.8 is no longer a part of our Handbook and, as such,

the advice you were given in this respect was not accurate.

On balance, since your correspondence was sent principally for the purposes of seeking information about our rules relating to the recording of telephone calls, I consider that this part of your allegation should be partially upheld. Whilst the service levels you received were high in respect of the timeliness of the responses you received, and the efforts made by the ECU to be helpful to you, you did receive some inaccurate information.

Part Seven

You are unhappy that the Complaints Team intends to allocate an investigator from within its own team to investigate its own staff.

Whilst I appreciate that this will not be the outcome you were hoping for, this complaint is out of scope because it relates to a complaint about the operation of the Complaints Scheme itself, which is not a relevant function for the purposes of the FCA's Complaints Scheme. You can read more about this within paragraph 1.1 of the Complaints Scheme, here –

<https://www.fca.org.uk/publication/corporate/complaints-scheme.pdf>.