

09 August 2022

**Final report by the Complaints Commissioner****Complaint number FCA001586***The complaint*

1. On 24 January 2022 you asked me to investigate a complaint about the FCA.

*What the complaint is about*

2. In its decision letter to you dated 28 October 2021 the FCA described your complaint as follows:

The FCA have allowed firms, bailed out with public money, to overcharge and exploit borrowers particularly those in arrears for decades. The FCA have allowed this to happen by way of failure to effectively supervise or regulate Firm A and others. You believe the over-charging was in breach of FCA rules and there has been a lack of oversight from the FCA and a lack of enforcement of the rules.

The remedy you are seeking is for the FCA to correct this inaction and breaches, force Firm A and others to refund, your and all overcharging, compensate borrowers for putting them and you in such positions and reparations for homes wrongly repossessed.

*What the regulator decided*

3. The FCA did not uphold your complaint.
4. The FCA first looked at the history of your contact with it and the actions that the FCA took after it had received information and intelligence from you. The FCA cited confidentiality restrictions s348 of the [Financial Services and Markets Act 2000 \(FSMA\)](#) for not being able to share more information with you. The FCA also confirmed that the information you shared had been passed to the relevant team and used in an appropriate manner.

5. With alleged rule breaches, the FCA found that on this occasion Firm A had not made any breaches of the rules. The FCA also confirmed that its rules did not prevent Firms such as Firm A from charging interest on arrears amounts. The FCA provided the relevant part of the rules of MCOB which explained the requirements. The FCA also noted that capitalisation of your arrears occurred prior to the change in rules.

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

6. You are unhappy with the FCA's reasons for not investigating the points you raised in relation to your mortgage which includes the arrears and capitalisation of arrears, higher differential rate, annual fines/additional interest.
7. You feel there is no excuse for the FCA not to investigate the breaches under FSA/FCA rules. You feel the FCA should force the Bank/s to refund and make sure practice stops.
8. You state the FCA made comments to you during a phone call that the '...FCA are a secret organisation and they must be careful in such investigations that this was a sensitive matter that may affect (i.e. wipe out value as cash cows to this Government) the new owner of these failed banks...'
9. You mention '...collusion between FCA and Treasury to exploit those it's supposed to protect and won't be accepted...'

*Preliminary points (if any)*

10. I have reviewed all the material you have provided to me. I have also been provided with the FCA case file. I have considered the material which I have found to be most relevant to your case. It is my intention in this investigation to review and look at your main complaint points and evidence, which is appropriate and closely connected under the Complaints Scheme. I have also not investigated issues that are not within my jurisdiction, for example complaint points connected with individual disputes about a financial business such as a bank.
11. I understand from reading your file, you have previously taken matters to the Building Society Ombudsman and additionally raised a complaint with the Financial Ombudsman Service (FOS) with respects to your mortgage with Bank

A and your disagreement with the various charges you have received. This is the right course of action as the FOS are the appropriate body to investigate disputes between individuals and financial businesses.

12. In your complaint you have made references to FCA individual members of staff. I should make it clear that this Complaints Scheme does not deal with complaints against individuals, but complaints against the regulators. This report does not identify individuals in the FCA.

*My analysis*

13. You are unhappy that the FCA did not investigate the points you raised connected to your mortgage and mortgage provider. You mention this with regards to the arrears and capitalisation of arrears, higher differential rate, annual fines/additional interest. As I have mentioned earlier a dispute such as this with a Bank, is not for me but for the FOS to investigate. However, I have looked at your points alongside your argument, that you feel there is no excuse for the FCA not to investigate the breaches under FSA/FCA rules. You feel the FCA should force the Bank/s to refund and make sure practice stops.
14. I am unable to see that the FCA did not investigate your allegations of breaches under FSA/FCA rules. My investigation of the FCA case file and examining the actions the FCA took, showed a thorough internal investigation to see whether there had been any breach of rules relevant to your matter. I agree with the FCA for the reasons it gave you, the capitalised arrears you referred to in 2009 (Bank A letter dated 13 November 2009 you have provided to me in your complaint submission) did not mean that Bank A at that time breached any rules.
15. I have looked at how the FCA investigated this, what it considered and the reasons for the conclusions it reached. It was not until 25 June 2010 onwards where the FCA guidance and rules changed. The FCA published guidance [FG17/4 - The fair treatment of mortgage customers in payment shortfall: impact of automatic capitalisations.](#)
16. As such the rules from 25 June 2010 onwards specifically [\(MCOB 13.3.4 AR \(1\)\(d\)\)](#) provided as follows:

In complying with MCOB 13.3.2AR(6):

(1) a firm must consider whether, given the individual circumstances of the customer, it is appropriate to do one or more of the following in relation to the regulated mortgage contract or home purchase plan with the agreement of the customer:

(a) extend its term; or

(b) change its type; or

(c) defer payment of interest due on the regulated mortgage contract or of sums due under the home purchase plan (including, in either case, on any sale shortfall); or

(d) treat the payment shortfall as if it was part of the original amount provided (but a firm must not automatically capitalise a payment shortfall where the impact would be material); or

(e) make use of any Government forbearance initiatives in which the firm chooses to participate;

(2) a firm must give customers adequate information to understand the implications of any proposed arrangement; one approach may be to provide information on the new terms in line with the annual statement provisions.

17. The rule was introduced that firms must not automatically capitalise arrears where the impact on the customer would be material.
18. It is possible there may have been a mistaken emphasis somewhere here, nonetheless it is important to highlight this rule is not retrospective and so the capitalisation of arrears in 2009 which you refer to would not be covered by this rule. I can see the FCA informed you of the same in its investigation. So, I agree with the FCA there have been no breaches under FSA/FCA rules and do not think the FCA need to do anything else in this regard. You have suggested in your complaint that there is nothing stopping the FCA flagging it up in some way in the press or bringing it to the attention of FOS, but I do not think this is required of the FCA or necessary to do so.

19. Prior to this the relevant rule applicable in 2009 was under the FSA rules under MCOB 13.3.1R as follows,

- 1 A firm must deal fairly with any customer who is in arrears on a regulated mortgage contract or home purchase plan has a sale shortfall; or is otherwise in breach of a home purchase plan.
- 2 A firm must put in place, and operate in accordance with, a written policy (agreed by its respective governing body) and procedures for complying with (1)

20. I can see from the FCA decision letter the FCA also made you aware of these rules that were applicable in 2009 and agree with the FCA that this was the most relevant rule at the time.

21. You mention in your complaint to me that you had a telephone call with the FCA. You state the following,

XXX admitted as much in their phone call to me saying... FCA are a secret organisation and they must be careful in such investigations that this sensitive matter that may affect (i.e. wipe out value as cash cows to this Government) the new owners of these failed banks.

22. I asked the FCA to provide me with all the call recordings that took place with you concerning this complaint and it provided me with one call recording which took place 21 May 2021. I have listened to the call recording which lasted just over nine minutes. The gist of the conversation is that the FCA called you following a letter it had sent to you dated 4 May 2021 to ensure that you understood what you needed to do to submit a complaint. The FCA also confirmed during the call that they understood you were disabled and wanted to know how it could make your life easier with its communications. You confirmed with the FCA that receiving a letter by post would be helpful which the FCA confirmed it would arrange. From my investigation and listening to this call recording, I am unable to agree with your comments and allegations referred to in the paragraph above and see no wrongdoing by the FCA during this call.

23. You have also made general comments in your complaint about '...collusion between FCA and Treasury to exploit those it's supposed to protect...' Whilst it is not within my remit to look at complaints against the Treasury, I can confirm

during my investigation into your complaint I was unable to see the FCA's actions fell outside the bounds of reasonableness and that there was any collusion with the Treasury to exploit those that need protecting.

*My decision*

24. I know this may be disappointing for you, but for the reasons above I have not upheld your complaint.

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Complaints Commissioner

09 August 2022