

06 June 2022

**Final report by the Complaints Commissioner****Complaint number FCA001672***The complaint*

1. On 10 March 2022 you asked me to investigate a complaint about the FCA.

*What the complaint is about*

2. The FCA summarised your complaint as follows:

You have explained that you registered for service X, but you didn't want to. You asked for a refund, this went onto your expired Visa card with Bank X. You state that you were told by Bank X that you need to raise a dispute in order to receive a refund. You were unhappy with this and raised a complaint which was ultimately upheld by the Financial Ombudsman Service (FOS).

You are unhappy that the FCA is not taking note and monitoring Bank X's actions. You state that Bank X is stealing people's money and the FCA is not doing anything about it. You feel the fact that the Financial Ombudsman Service upheld your complaint is evidence that Bank X is acting incorrectly and believe that the FCA should act.

You want the FCA to log this and take action.

*What the regulator decided*

3. The FCA did not investigate your complaint, they advised you:

After carefully considering the information, you have provided, we have concluded that this is not a complaint we would investigate under the Complaints Scheme.

Paragraph 3.5 of the Complaints Scheme provides that we will not investigate complaints that we reasonably consider amount to no more than dissatisfaction with our general policies or with the exercise of, or failure to exercise, a discretion where no unreasonable, unprofessional or other misconduct is alleged.

Your complaint relates the FCA not monitoring Bank X, which we consider amounts to a dissatisfaction with our regulatory oversight of Bank X but without any unreasonable, unprofessional or other misconduct being alleged. Accordingly, this is not something we will investigate under the Scheme.

Whilst we haven't looked at our complaint, we have taken on board the feedback and shared it with the relevant area.

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

4. You have asked me to review the FCA's decision

*Preliminary points (if any)*

5. It is important for me to highlight, matters which are excluded from the Scheme which I am unable to investigate.

6. Section 3.5 of the Complaints Scheme provides:

[Exclusions to the Scheme](#)

3.5 Excluded from the Scheme are complaints:

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.

*My analysis*

7. You have told me:

I made no complaint I had telephoned to say that after three months I wasn't given any reference number or email confirmation re -

September 2021, that all I wanted to know was that my case was understood and was taken to the department concerned.

Visa, new debit cards, Bank X's refund dispute service is the only way its customers can obtain their refunds when they were sent to their expired debit card by appointment within a set time period, is I would have thought a concern for the FCA.

As (the FCA investigator) has created a simpleton story out of context of how I was not happy with service X's refund (not as she says, didn't want service X,) and the way Bank X dealt with it...The opposite of my point and my complaint about Bank X an extremely serious one affecting every member of public ..no other bank refuses to continue to pay visa for ..... Automatically selecting your new card's 16 digit number from your old debit cards 16 digit number then returning the refund that is due.

The Ombudsman has upheld the Bank X complaint but thought they could close it by saying I accept £100, So it is reopened again.... Together it looks like both Ombudsman & FCA are afraid to call a spade a spade?

8. Firstly, the FCA investigator was right to tell you your complaint is excluded from the Scheme, as such I am unable to investigate your complaint.
9. Whilst I cannot investigate your complaint, I have listened to the telephone conversations you had with the FCA on 29 September 2021, 24 February and 3 March 2022.
10. In September 2021, the advisor you spoke to at the FCA told you to raise your complaint with your bank in the first instance. If you did not receive an outcome after 8 weeks or remained unhappy with your bank's decision, the advisor told you to take your complaint to the FOS. The advisor informed you she would make a log of the information you provided about Bank X, but you were not provided with a reference or follow up as this concluded the matter with the FCA at this time.
11. You called again in February 2022 and left a voicemail, a member of the FCA complaints team returned your call. You advised you did not believe the FCA

took onboard the seriousness of the issue when you called in September 2021. The FCA advisor confirmed you had taken the correct course of action by taking your complaint to the FOS. You explained your complaint is not an individual complaint as what your bank is doing impacts everybody, and you believed the FCA should have taken notice of it.

12. During this call you advised that your bank does not automatically credit refunds to a customer's new bank card if the refund has been made to an expired card. You explained the process you had to go through to convince your bank you were entitled to your refund. The member of the FCA complaints team advised she would arrange for your complaint to be set up and confirmed you would receive an acknowledgement email with a reference number within 5 working days.

13. The regulator welcomes information from people who report concerns. However, the FCA does not generally say what action has been taken in response to the information that it receives. 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. In addition to this, 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. Under this policy, the FCA will not normally disclose the fact of continuing action without the agreement of the firm concerned. [There is a good explanation of the statutory and FCA policy restrictions on information sharing at <https://www.fca.org.uk/freedom-information/information-we-can-share>.] This means that, as you were told, there is no general right for members of the public to know the outcome of reports that they make.

14. 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. On occasions, I have persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible. I shall continue to pursue this matter with the FCA.

15. In your case, I am satisfied on balance that the FCA would not inform you of any action to be taken, or not taken, in response to the information you provided about your bank. I recognise that there's a difficult balance to be struck between protecting confidential information to enable us to do our job and encourage potential informants, and the need to give consumers sufficient information and confidence to judge whether or not the regulatory system is operating effectively.
16. 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.
17. 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 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.
18. I note you have already referred your complaint to FOS, you have advised they have upheld your complaint, although you have asked them to re-open it.

*My decision*

19. For the reasons set out above I do not uphold your complaint.

Amerdeep Somal  
Complaints Commissioner  
06 June 2022