

19 June 2017

Dear Complainant

**Complaint against the Financial Conduct Authority (FCA)**

**Our reference: FCA00287**

Thank you for your email of 28 February 2017 setting out your complaint against the FCA and subsequent emails. Before finalising this decision, I invited comments from you and the FCA on my preliminary decision. I have considered carefully the points that you made.

**How the complaints scheme works**

Under the complaints scheme, I can review the decisions of the FCA Complaints Team. If I disagree with their decisions, I can recommend that the FCA should apologise to you, take other action to put things right, or make a payment.

**Your complaint**

You have been in correspondence with the FCA over a number of years about Bank X (the Bank) in connection with your EFG loan. You have alleged file falsification, record keeping inaccuracies, and fraud by the Bank. This culminated in your complaint to the FCA. The FCA issued a decision letter to you on 25 November 2016.

The elements of complaint which the FCA investigated were:

- (1) You allege the FCA has improperly disclosed information to the Bank
  - a. Tipping off the Bank into an investigation into central file falsification by
    - (i) quoting to the Bank part of a confidential email you sent to the FCA;  
and
    - (ii) referring the Bank to a press article; and
  - b. Disclosing the identity of a whistle-blower to the Bank
- (2) You allege that the FCA acted unreasonably in the actions taken in response to your allegations against central file falsification against the Bank, culminating in a letter to you of 5 February 2016 from Employee X of the FCA.

The FCA decision letter attached as an annex your email of 26 September 2016 in which you requested that element 2 above be investigated and gave more background into your complaint, namely that

*'I would like you to investigate the FCA's conduct and in particular [Employee X & Employee Y] in dismissing the central file falsified letters. This also relates to the allegation (1) that you will be looking into. I received under DSAR a differing version of a letter held on file that was sent to me this evidence was given to the FCA however i have also had evidence from current [Bank] staff to contradict what the FCA stated as attached.'*

The FCA did not uphold the two elements of your complaint.

You then referred your complaint to me.

### **My consideration of your complaint**

Your complaint of 28<sup>th</sup> February to me does not refer to element one of your complaint to the FCA, although you have made reference to a wide range of matters in subsequent correspondence: it is focussed on element two, and that is what I have investigated.

The FCA decision letter of 25 November 2016 deals with a) and b) of your complaint to me. Element c) has been addressed by the FCA in other correspondence with you and elements d) – k) constitute new allegations of file falsification and/or inaccuracies which were not part of the original investigation which resulted in the FCA decision letter to you of 25 November 2016. I understand you raised a number of these points subsequently. The FCA considered these further allegations of file falsification and wrote to you that the information provided does not lead it to a conclusion that it would be proportionate for the FCA to open an investigation into your case. I attach that email as annex 2 to this decision letter.

The basis of the decision taken by the FCA not to further investigate your complaint is that the FCA has corresponded extensively with you on matters relating to your EFG loan with the Bank, allegations of file falsification and fraud at the Bank and inaccuracies and inconsistencies in records held by the Bank, has undertaken investigations into your allegations, is aware that the police are looking into some of the matters you have raised, and has concluded that further investigations are not warranted.

I need to determine whether the FCA was reasonable in its response to you regarding element two of your complaint and its subsequent decision not to investigate elements d)-k) of your new complaint.

I turn first to the elements which the FCA formally investigated, namely a) and b) of your complaint to me and element c) which it discussed with you in separate correspondence. The crux of the issue in a) and b) is whether the Bank's systems allow for draft letters to be retained: the FCA investigation confirmed that it is possible to hold more than one version of a document on the Bank's systems. I appreciate you dispute this fact due to information you have obtained from individuals who claim differently. However, from the evidence available to me, it is clear the FCA investigated this matter and it seems to me that their conclusion was reasonable.

Element c) of your complaint - '[the Bank] falsifying dates a company went into SRM GRG' - was dealt with in separate correspondence. I attach the FCA email to you which addresses this point as annex 3 to this report. The main point to arise from this correspondence is that the FCA does not condone the inaccuracies which are clearly evident in the record keeping of the Bank but it does not, however, believe that they establish fraud or file falsification.

I now turn to the remaining points d)-k) of your complaint to me. I understand that you have a long-standing dispute with the Bank (which is also, or has been, the subject of police investigation). However, the role of the FCA under the Financial Services and Markets Act 2012 is to operate as the financial conduct regulator. Its strategic objective is ensuring that the relevant markets function well. Its operational objectives include: securing an appropriate degree of protection for consumers; protecting and enhancing the integrity of the UK financial system; and promoting effective competition in the interests of consumers in the market for regulated financial services.

Clearly, allegations of systematic fraud by a bank are a serious matter requiring investigation. The FCA has investigated allegations of file falsification at the Bank. During the course of its investigation, the FCA considered, amongst other evidence, the evidence you had supplied at the time to support your allegation that the Bank was falsifying files. It did not find evidence to justify regulatory action. The FCA wrote to you to this effect on 29 January 2016.

I have reviewed the FCA files on this matter and am satisfied that the FCA undertook a thorough investigation into the matters which you had raised, and that its conclusions were reasonable.

You were also unhappy about the way the bank removed your company's overdraft and replaced it with an Enterprise Finance Guarantee (EFG) loan. You believe this was not properly explained to you and this caused your business significant financial distress; you believe that the bank's actions in relation to your EFG and overdraft were fraudulent.

The FCA addressed your concerns in the same letter as follows:

***Enterprise Finance Guarantee loan***

*Although the Financial Conduct Authority (FCA) does not regulate the type of loan you entered into with [the Bank], we take seriously all information we receive regarding the conduct of the banks and confirmed that we had been working closely with key stakeholders, including the British Business Bank (who operates the EFG scheme). In January 2015, [the Bank] announced that it would be reviewing its EFG sales and, where appropriate, would ensure that customers were put back into the position they would have been in had they fully understood the risks of entering into an EFG (i.e. the fact that it is the bank, and not the customer, that is the beneficiary of the government guarantee in the event that the customer is unable to repay the loan). We understand that your case has been reviewed by the bank and that you have received a redress offer.*

***Fraud allegations***

*With regard to your allegations that the bank's actions were fraudulent, I acknowledge receipt of your email to me of 29 January 2016 and the legal advice that you attached. I confirm that we had previously received and considered this information. The appropriate bodies to consider these concerns are the police and/or the Serious Fraud Office. You have informed us that you have reported your concerns to North Wales Police. We cannot comment on an ongoing police enquiry – but we are, of course, interested in the outcome of this case. We would like to thank you for the regular updates you have provided us with in relation to their investigation. ‘*

From the evidence available to me, I can see that the FCA has, over a considerable period of time, addressed your concerns and allegations about the Bank. The FCA internal investigation reached a conclusion that there was insufficient evidence to justify further regulatory inquiry. The FCA has also explained to you that it cannot become involved in individual disputes between the bank and its customers, and that the police are the correct body to deal with allegations of fraud, whilst the EFG review scheme is the appropriate forum for dealing with issues arising from the offer of an EFG loan to you. If you are dissatisfied with the redress you have been offered by the bank, you may also refer the matter to court.

Whilst I appreciate you feel frustrated at the various inaccuracies you allege the Bank records hold about you, I agree with the FCA position that there is little more to be gained by further investigation into these. In summary,

1. the FCA has already acknowledged to you that there appears to be poor record keeping (albeit not falsification) in some of the examples you have brought forward after the conclusion of its investigation, and
2. the alleged fraud in your case is being dealt with by the police, and
3. your concerns about your EFG loan were dealt with by the Bank under the ERG review. The FCA does not become involved in individual disputes between individuals and their financial services providers.

In your response to my preliminary decision, you have asked me to comment on specific documents held by the Bank and determine if they are examples of file falsification or record keeping. I am afraid I cannot do this under the Complaints Scheme. My role is to determine if the FCA was correct not to further investigate your most recent allegations about file falsification at the Bank and I have determined that it was.

You also commented in response to my preliminary decision that you would also now wish me to investigate points 1 and 2 of your complaint to the FCA. When you first complained to me on 27 February 2017, you did not ask me to review these points, and I have not done so under the scope of this investigation. I am therefore issuing this decision letter based on the complaint you submitted to me. If you wish me to investigate any further points, I will do so separately.

## **Conclusion**

For the reasons given above, I am afraid that I cannot uphold your complaint.

Yours sincerely



Antony Townsend  
Complaints Commissioner