

6 November 2018

Final report by the Complaints Commissioner**Complaint number FCA00300***The complaint*

1. In a number of emails between April and June 2017, you raised complaints about the Financial Conduct Authority (FCA).

What the complaint is about

2. The background to your complaint was the decision by your bank to cancel your bank card while you were abroad. This led to a complaint to the Financial Ombudsman Service (FOS), and you then had extensive correspondence with the FCA in 2016 and 2017. It is the FCA's handling of your concerns which is the subject of this complaint. Further details of your complaint are set out in the analysis section, below.

What the regulator decided

3. In his letter of 18 January 2017, the Chief Executive of the FCA apologised for an error in one of the explanations in the earlier correspondence, and for a delay, but otherwise did not uphold your complaint.

Why you are unhappy with the regulator's decision

4. You consider that the FCA's handling of your concerns and complaint, including the Chief Executive's letter, show:
 - a. mistakes and lack of care;
 - b. unreasonable delay;
 - c. unprofessional behaviour;
 - d. bias; and
 - e. lack of integrity.

Preliminary points

5. Before I turn to the details of your complaint, I should explain that – as you are aware - this Complaints Scheme does not deal with complaints against financial organisations such as banks, complaints against the Financial Ombudsman Service (FOS), or matters to do with data protection (which are for the Information Commissioner, whom you have approached separately). I should also say that this Complaints Scheme considers complaints against the regulatory organisations (in this case, the FCA), not individuals working in them. Finally, you have referred to broader complaints against your bank made by the SME Alliance: I have not dealt with those, since my role is to consider your individual complaint.
6. After I issued my preliminary report, you asked for an extension of time before you commented, because you were pursuing Subject Access Requests with the FCA, this office, and a complaint to the Information Commissioner's Office about alleged falsification of records by the bank in relation to your complaint with the FOS and

other matters. I agreed to that request. I should make it clear that this decision letter does not touch upon those proceedings. It is concerned only with the FCA's actions.

My analysis

7. In the undated letter which you emailed to me on 17th April 2017, you described your complaints as allegations of mistakes and lack of care (including poor customer service), unreasonable delay, unprofessional behaviour, bias, and lack of integrity. You helpfully included a timeline with that letter and then, on 24th April, your detailed comments on the letter of 18th January 2017 from the FCA Chief Executive in which he set out the reasons why the FCA was not upholding your complaint.
8. Given that my role is to establish whether or not the FCA's investigation into your complaints and its conclusions were reasonable, I shall use the headings in the Chief Executive's letter and your commentary as the basis for my analysis of your complaints. I have carefully read all of your arguments, but what follows is inevitably a summary.

Your Complaint – refreshed remit dated 19 December 2016

Element A

9. This element relates to the request by the FCA Supervision Team to share information with the bank.
10. The FCA's response to your complaint is that the bank would have needed your case details in order to respond to the FCA's request for further information, and that it was right for the Team to seek your permission to disclose.
11. Your view is that the fact that the FCA wanted to disclose the information to the bank shows "a profound cultural bias", and that the drafting of the FCA's response to you on this matter shows "dishonesty, bias and an extreme lack of integrity".
12. **My view:** I can see no evidence to support your allegations on this matter. Had the FCA gone straight to the bank without seeking your permission, they would have been rightly criticised. It is a matter of judgement whether the FCA should have made further inquiries before seeking to approach the bank, and/or involved other authorities, but I can see nothing to suggest that the FCA acted improperly.

Element B

13. This element relates to the bank's previous practice of using a particular form of confidentiality wording when disclosing customer records to the FOS. You considered that the bank's practice of using this wording enabled the bank to cover up falsification of records; and you asked the FCA to explain the discrepancy between the FCA's earlier explanation that the use of the standard wording had been agreed between the bank and the FOS, and the FOS's statement that there was no such agreement.
14. The FCA explained to you that its earlier explanation had been a misunderstanding – in fact, there had been no such agreement. The FCA apologised for its error, but said that the error had had no effect upon the handling of your complaint. It also said that the description of "stamp" was inaccurate, since from the papers they had seen, "what the bank did was include standard wording".
15. Your view is that the FCA's statement that the standard wording was not in the form of a stamp was wrong, since you had supplied them with evidence of stamped documents, the FCA's use of inverted commas around "stamp" is misleading, and that "this represents dishonesty and an extreme lack of integrity".

16. **My view:** it is clearly unfortunate that the FCA made a mistake in saying that the standard wording had been agreed between the FOS and the bank, but the matter has been corrected and you have received an apology. Similarly, the FCA might have acknowledged your point that the standard wording appeared in the form of a stamp. However, in my view there is no evidence that these were other than simple mistakes, nor is there any evidence to suggest dishonesty or lack of integrity.
17. In your comments on the FCA's response to this element, you raise a number of issues to do with the disclosure of documents. The question of the adequacy of the disclosure is for the ICO, not this Complaints Scheme.
18. You also suggest that the use of standard confidentiality wording is undesirable, since it could facilitate dishonest practice. While I agree that the FOS and/or FCA might wish to consider the need for good practice in this area – blanket use of confidentiality restrictions is clearly undesirable – it does not follow that the FCA's decision not to investigate your complaint further was unreasonable. Having reviewed the papers, I consider that the decision was one that the FCA could properly take.
19. I am aware that the bank's use of the standard wording, and the reasons for it, are an element of your continuing tribunal proceedings but, as explained above, that goes beyond the remit of this Complaints Scheme.

Element C

20. Element C covers a range of issues, some of which overlap with the earlier elements. However, the key elements not already covered above are your complaint that the FCA released details of your complaint to the bank without your permission, your assertion that your records were falsified, your assertion that your bank card was not in fact compromised before it was blocked, and that the FCA mistakenly described your bank card as a credit card
21. The FCA's responses on these matters were as follows. First, the information which it released to the bank about you was information of which the bank was already aware because of your complaint to the FOS. Second, having reviewed the evidence you provided, the FCA did not find evidence that your records had been falsified. Third, that the question of whether or not your card had been compromised was an argument about wording – the bank feared that your details had been cloned, but there was no evidence of actual misuse. Fourth, the FCA accepted that it had made an error in describing your bank card as a credit card.
22. Your view is that the FCA should have sought your permission before disclosing the information to the bank; that it is incontrovertible that your records have been falsified (not least because the bank has admitted having to extract information and create a new document); you accept that the issue of whether or not the card was "compromised" is "almost a moot point", but that the FCA's acceptance of the bank's explanation shows bias; and that the mis-description of your bank card as a credit card was "an extremely important error.....as it completely changes the relationship between the bank and myself" – your point being that denying a customer access to their own money is more serious than denying a customer access to credit.
23. **My view:** first, in my view, it would have been better if the FCA had explicitly sought permission before disclosing details of your complaint to the bank. The FCA's point that the bank was already aware of your complaint has some force, but it is very important for public confidence that regulators err on the side of caution in disclosing

information – a point which the Treasury Select Committee has made to the FCA. Having said that, I do not consider that you have suffered any detriment in this matter.

24. Second, there is a clear difference of opinion between you, who believe that the bank falsified records, and the FCA, who have concluded that there is no such evidence. At your request, I have looked particularly carefully at the document which you prepared for the FCA, entitled “Examples of evidence proving that [the bank] have withheld, altered and falsified my customer records”. The document certainly provides examples of information which was not initially disclosed, and there is some confusion over how data was extracted and exactly what led to the cancelling of your card; but it falls a long way short of demonstrating falsification. In your letter of 20th May 2013 to the ICO, under the heading beginning “Discrepancies between the evidence submitted to me...” you give as possible explanations for one of the discrepancies: maladministration; deliberate withholding; or falsification. In my view, all those possible explanations apply to much of the material which you have provided. In all the circumstances, I conclude that the FCA’s view that there is no evidence to demonstrate falsification was reasonable. I have looked at the attachments to your email of 9th May 2018, which contain further details of the allegation that that records were deliberately altered, but that is a matter for your continuing tribunal proceedings, and goes beyond the scope of this complaint.
25. Third, I also agree with the FCA’s conclusion that the argument about whether or not your card had been compromised was essentially one of wording. You yourself have described this as “almost a moot point”, and I agree.
26. Finally, there is the issue of the FCA’s mis-description of your card as a credit card. The FCA has already acknowledged that it made a mistake. This was unfortunate, but really has no bearing upon the handling of your complaint. You have correctly made the point to me that there is a difference between a bank denying credit to a customer and denying access to the customer’s own funds. I agree with you, but that is a matter relevant to your dispute with the bank (which has already been to the FOS), not to your complaints against the FCA.

Element D

27. Element D concerns the wording included in a letter to you from the Information Access Team, warning you about the provisions of s348 of the Financial Services and Markets Act 2000.
28. The FCA’s response was that this was the standard wording used in these circumstances, informing you that some of the information with which you had been provided under the Data Protection Act was covered by s348, and that disclosure of that material would be a criminal offence. It was not intended to be threatening, and did not single you out.
29. In your view, it is odd that the wording was added in your case, and it caused you distress for which you seek an apology.
30. **My view:** I have seen no evidence that suggests that the inclusion of the wording was intended to be threatening. The FCA has a duty to protect confidential information, and it would be failing in its duty if it did not warn (as distinct from threaten) people receiving confidential information of the possible consequences of disclosure. In your email of 17th April 2018, you draw attention to the fact that the FCA Chief Executive used the word “threat” in a letter to your MP, but it seems clear from that letter that he

was responding to wording used in the MP's letter. I can see nothing to support your view that you have been singled out.

31. However, in my view the wording used in the Information Access Team's letter of 28th April 2016 was unhelpful. By failing to identify what material was covered by s348, it both put you in a difficult position and potentially undermined the purpose of the statement, which was to guard against improper disclosure.
32. The FCA did not initially properly acknowledged this issue in their response to your complaint, which is disappointing. I note, however, that when you raised this problem with the FCA Information Access Team on 12th May 2017, you received a prompt response (sent on 20th May) clarifying the position, so I do not consider that you suffered a significant detriment. Furthermore, in response to my preliminary report, the FCA has said that in future it will make it clear to the data subject that, should they wish to disclose 'information received' to a third party, they can contact the FCA for assistance. I consider this to be a sensible response (and a practice which this office will adopt also).
33. You have also queried my approach to identifying material which, if you disclosed it, might result in a breach of s348 of the Financial Services and Markets Act 2000. I am sorry if my position was not clear. I and my office would be prepared to assist in identifying material which we have disclosed in response to a Subject Access Request which might be subject to s348. However, what we cannot do is "rule" on whether or not disclosure would be a criminal breach – only a court could do that, and someone intending to disclose material which might be subject to s348 should consider taking independent legal advice.

Lack of integrity

34. Finally, you have drawn my attention to a number of draft documents which were released in response to your subject access request, which you consider demonstrates a lack of integrity by the FCA. I have looked carefully at these, but I can see nothing to demonstrate that the FCA was setting out to mislead you. The documents seem to me to be simply preparations for replies which were eventually sent to you.

Conclusion

35. I have looked very carefully at your complaint, and at the FCA's handling of it. I recognise that you were put to considerable inconvenience by your bank, and that your pursuit of this issue has been complex and time-consuming. However, I consider that the FCA looked at your complaint very thoroughly and, for the reasons given above, I can see no grounds for overturning their conclusions.
36. You have made the point to me that your complaint goes beyond the question of alleged falsification of records, and includes a broader concern that the FCA has failed to regulate properly when given evidence of malpractice. The FCA has already explained to you the steps it took to look at what had happened in your case, and why it considered that there were not grounds to justify further actions by the FCA. In my view, the FCA's conclusions were reasonable.
37. I have, however, made one suggestion for improving the information given to people to whom the FCA discloses confidential material, and the FCA has agreed to use more helpful wording in the future.

Antony Townsend

6 November 2018