

4 October 2017

Dear Complainant

Complaint against the Financial Conduct Authority (FCA)**Our reference: FCA00368**

Thank you for your letter of 3 July 2017. Before finalising my decision, I invited comments from the FCA (who had none) and you. I have considered your comments carefully, and refer to them below.

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 were a victim of a fraud, through which criminals opened a bank account without verification to receive £51,454.40, much of which was disbursed abroad. You complained to the FCA, saying that “the FCA is either unwilling or unable to take any action whatsoever against high street banks that open and operate bank accounts without due care, diligence and verification”.

The FCA said that it would not investigate your complaint because it “amount[ed] to no more than dissatisfaction with the FCA's general policies or with the exercise of, or failure to exercise, discretion where no unreasonable, unprofessional or other misconduct is alleged”, and was therefore excluded from the Scheme.

In your email of 3 July 2017, you ask me to consider the “inadequate” handling of your complaint by the FCA.

My consideration of your complaint

I must start by explaining that under the rules of the Complaints Scheme I cannot consider complaints against the banks, or the Financial Ombudsman Service. I can only consider the actions or inactions of the FCA.

The FCA did not investigate your complaint formally under the Scheme, quoting paragraph 3.5 of the Scheme, ‘which provides that we will not investigate complaints which amount to no more than dissatisfaction with the FCA's general policies or with the exercise of, or failure to exercise, discretion where no unreasonable, unprofessional or other misconduct is alleged.’

It did however, provide you with additional information about a super-complaint which was submitted by Which? to the Payment Systems Regulator and the FCA on 23 September 2016. The super-complaint highlighted areas that require further consideration, and the FCA has announced that it will take forward the following actions:

- work with firms to tackle concerns around both sending and receiving banks in relation to authorised push payment fraud
- evidence received in relation to the super-complaint will be examined by FCA supervision, which will address any firm-specific issues directly
- if, following the above steps, there are unresolved sector-wide issues, the FCA will initiate further work. Any such work should consider the developments made since the thematic review of banks' defences against investment fraud

My view

You provided the FCA with information about a fraud on your bank account. From the records, I can see that this information was passed to the Supervision team at the FCA for their consideration.

It would have been helpful if the FCA had explained this to you, so that you could see that your information had not been ignored. Unfortunately, even though the FCA has considered the information, it will be unable to tell you what, if any, action it may take as a result. More detail on what information the FCA can and cannot share can be found here:

<https://www.fca.org.uk/freedom-information/information-we-can-share/>

In your view, the bank has ignored the FCA's policy on unauthorised payments, and no one has taken any action to deal with that. In your response to my preliminary decision, you repeat your view that no one is regulating the banks effectively.

The question of whether or not your payment was an unauthorised one for which the bank should reimburse you is a matter for the Financial Ombudsman Service to determine. The FCA cannot provide reimbursement. If a fraud has taken place, then it becomes a police matter. I understand you have already approached the police, which is the correct course of action.

You raise a broader question about how the banks respond to fraud of this nature, and what they should do about circumstances such as the ones you highlight in your case. I welcome the further work the FCA is undertaking as a result of the super-complaint. The work being undertaken there is designed to tackle the underlying issues which you complain about. In particular, one of the industry initiatives highlighted in the PSR's response (<https://www.psr.org.uk/psr-publications/news-announcements/which-super-complaint-our-response-Dec-2016>) to the super-complaint was 'confirmation of payee' which the strategy forum set up by the PSR is looking at implementing. Details from the PSR's response are as follows:

Assurance data – confirmation of payee

7.18 One of the solutions identified in the Forum's final strategy is assurance data, which will include both confirmation of payee and confirmation of receipt. This solution will give both payers and payees assurance, before (and after) a payment is sent, that their payment intentions were followed through. This

may avoid misdirected payments and may also reduce the risk of some types of APP scams, particularly those we have labelled maliciously misdirected.

7.19 *The Forum has prioritised the collaborative development of the necessary standards and rules, which are required for implementation of 'Confirmation of Payee'. The Forum has proposed a timeline of July to produce these for public consultation, with the work finalised by end 2017. Once these standards and rules are in place, the competitive market will be in a position to develop products and services for end-users, so there is a possibility that a 'Confirmation of Payee' solution could be available from 2018 onwards.*

7.20 *Even before the Forum's final strategy was published, a number of stakeholders commented on how a confirmation of payee concept might help with the fight against APP scams. Generally we have received positive reactions to such an initiative. However, some stakeholders warned that it is not clear at this stage what the resource requirements are or to what extent this would help prevent existing cases of fraud.*

More details about confirmation of payee can also be found in the Payment Strategy Forum's final strategy document:

https://paymentsforum.uk/sites/default/files/documents/A%20Payments%20Strategy%20for%20the%2021st%20Century%20-%20Putting%20the%20needs%20of%20users%20first_0.pdf

Conclusion

For the reasons given above, and although I know that you remain understandably dissatisfied about what has happened to you, I am afraid that I cannot uphold your complaint. You have been the victim of criminal activity. However, that was not the fault of the FCA. The FOS is the correct organisation if you are seeking reimbursement.

I hope that you will take some comfort from the fact that the FCA has not ignored the information you provided, and is looking at some of the wider issues raised by your complaint.

Yours sincerely



Antony Townsend

Complaints Commissioner