

3rd April 2018

Final report by the Complaints Commissioner

Complaint number FCA00409

The complaint

1. Your original complaint to the FCA followed extended correspondence with the regulator and an unfavourable decision by the Financial Ombudsman Service (FOS). The complaint was broken down into three parts.
2. Part One was that the FCA (and the Payment Systems Regulator) did not act on the reports you made about bank X, which you believe breached a number of provisions of the Payment Services Regulations (PSRs).
3. Part Two was that while you accept that the FCA cannot investigate individual complaints, you believe they should have investigated the matters you raised as a payment service user.
4. Part Three of the complaint concerned the FOS and alleged that they failed to correctly apply the Payment Services Regulations (PSR) and were determined to evade their responsibility to you as a vulnerable payment service user.

What the complaint is about

5. You believe bank X breached a number of the Payment Services Regulations. You believe questioning the authenticity of the Standing Order Mandates your customers completed when signing up to pay for your most expensive portrait package by instalment, and which you presented to the bank yourself, was in breach of the regulations. Furthermore, you allege that the bank breached the regulations by not informing you about why they stopped the payments and not re-instating them after you confirmed that they were in fact valid.
6. You believe that bank X's refusal to carry out your payment instructions amounted to them preventing you from accessing payment services, which was compounded by their refusal to tell you why they were taking these steps.
7. You reported your concerns to the FCA and the Payment Systems Regulator (who decided that this matter sits within the FCA's remit) and you wanted to raise a complaint with them under s91 of the PSR.

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What the regulator decided

8. The FCA excluded Part Two of your complaint on the grounds that it was not the FCA's function to intervene in complaints between a customer and a bank; and it excluded Part Three of your complaint because it related to the actions or inactions of the Financial Ombudsman Service, which are excluded from the Scheme.
9. The FCA did not uphold Part One on the grounds that they had acted reasonably in response to the information you provided them with.

Why you are unhappy with the regulator's decision

10. You believe that your complaint should be treated as regulatory complaint made by a small payment institution (SPI) and not one made by a consumer, a fact you say the FCA's Consumer Contact Centre (CCC) failed to recognise. You also believe that it is the FCA's duty to intervene when a complaint is made by an SPI about a bank withholding payment services in contravention of s 97 (1) and (3) of the PSR.

My analysis

11. The background to this complaint is that you were running a company which took photographs for people and offered a range of products and packages to customers with a price range of around £50 to £200. To allow people to purchase your more expensive packages, you offered credit in line with your Consumer Credit Licence from the Office of Fair Trading (OFT).
12. Your company started experiencing serious financial difficulties when bank X contacted their account holders to verify that the standing order mandates produced by your firm and authorised by the customers were in fact valid. A proportion of customers did not verify the authenticity of the standing order mandates and these were not honoured by bank X.
13. Additionally, other people who used your services and were related to or in other ways connected with bank X's customers also cancelled their mandates with other banks, causing you further losses.
14. You believe that bank X breached a number of the PSRs, as they should have honoured the standing order mandates once you confirmed to them that your business was legitimate, which was also verified by your local Barclays business manager, and that you had valid consumer credit agreements with these individuals. You also believe that the Regulator should have taken action against bank X for not doing so.
15. I have carefully considered all the points you raised in your complaint, including specific sections of the legislation you have quoted. My Complaints Investigator contacted you over the telephone to ask a number of questions to clarify some issues.
16. In relation to raising a complaint about potential breaches of the Regulations, I can confirm that I have reviewed the FCA's records and I can see that information you provided to the regulator through the Contact Centre was forwarded to the correct departments within the FCA for their consideration of the issues you have raised in order to determine whether any action is required.
17. Section 91 of the PSR 2009 states:

*(1) The Authority must maintain arrangements designed to enable payment service users and other interested parties to **submit complaints***

to it that a requirement imposed by or under Parts 2 to 6 of these Regulations has been breached by a payment service provider.

(2) Where it considers it appropriate, the Authority must include in any reply to a complaint under paragraph (1) details of the ombudsman scheme established under Part 16 of the 2000 Act (the ombudsman scheme).

18. It is not my role to interpret legislation. However, this paragraph seems to provide that payment service users are allowed to submit “complaints” about breaches of the Regulations, but it is not set out what the Regulator must do with these complaints and how it must respond.
19. As stated by the FCA in its response to you, in the course of carrying out its regulatory duties, it does not investigate individual complaints but it does look into allegations of breaches of the rules. Individual complaints here does not just mean complaints from consumers but also complaints by firms against firms.
20. Whether a complaint about a potential breach by a firm was made by a consumer or by a regulated firm, the information received would be logged and dealt with in line with the regulator’s “risk tolerance”, but no feedback would be given to the person or firm making the report and the regulator would not make a ruling on the issues that caused the report. That is simply not within their statutory role.
21. I do not believe that the FCA’s response to you would have been any different, had they considered your report to have been made by a firm rather than as an individual.
22. You have quoted extensively from the PSRs and you allege that bank X has breached a number of these. Your allegations were examined by the FOS and it concluded that bank X did not breach the Regulations, and only exercised its commercial judgement when it requested its account holders to confirm that the standing order mandates were correct.
23. In your letter dated 8th January 2018, addressed to this office, you explained that you believe that bank X should have executed the Standing Order Mandates because it did not have any concerns about their account holders being legitimate, but had worries about your company and once these worries were disproved by your company, the instructions should have been carried out.
24. You also stated in your response to my preliminary report that you still believe that once you had advised the bank that the standing orders were in relation to consumer credit contracts and were legitimate, and as the business relationship manager had verified your business as legitimate when you transitioned to bank X, the bank should have honoured these mandates, even if its account holders did not confirm that they wanted the payments to be made to you.
25. It seems to me, based on your responses to my preliminary report, that you do not accept that in the case of standing orders, the bank’s duty is to **the payers**, who in this case were the clients of your business.
26. When a payment services institution is not certain that a payment instruction was made by its account holder, it is its **duty** to clarify with the account holder whether the instruction was indeed made by them or not. The business in whose favour the standing order is cannot confirm on behalf of the account holders that the standing

orders are valid. If the bank carried out an instruction without the necessary checks, the bank would become liable for the money lost by the account holders if the account holder later on claimed not to have authorised the payments. In your case, we know that many account holders did not confirm that they wanted money to be paid to your firm, but the bank duly carried out the transactions for those who did.

27. If an account holder does not confirm to the bank that they authorised the payment instruction, the bank does not have authority from the payer to carry out that transaction. Furthermore, under section 55 of the Regulations, a payer may withdraw their consent to a payment transaction at any time.
28. In my view, the FCA has acted appropriately in this case. It was reasonable for it to conclude, not least because of the FOS decision, that there were not sufficient grounds for it to take regulatory action. It seems to me that the fundamental problem in this case is that your customers have not paid you by choice. I recommend that you seek advice from the Citizens Advice Consumer Helpline (03454 04 05 06) on how you might recover what you are owed by customers. You operated a small firm and you would not be precluded from seeking their assistance. Alternatively, you may seek free legal advice about how you may recover the money from your customers directly. You do not have to be a debt recovery firm to apply for a County Court Judgment.

My decision

29. In light of all the information available to me, I consider that the regulator acted correctly in relation to the information you provided them with and forwarded your correspondence to the relevant teams internally. The FCA has explained its position to you on several occasions.
30. I recognise that you and your partner, who is indirectly affected by the situation you find yourself, are in a very difficult position, for which I have sympathy, but I cannot uphold your complaint.

Antony Townsend
Complaints Commissioner
3rd April 2018