

12 March 2019

Final report by the Complaints Commissioner**Complaint number FCA00422***The complaint*

1. On 18 January 2019, after protracted correspondence between you, the FCA and, on occasions, my office, and following a decision letter from the FCA's Complaints Team, you asked me to investigate a complaint on behalf of your client.

What the complaint is about

2. In its decision letter, the FCA described your client's complaint in this way:

[Your client] alleged that the FCA has discriminated against him, on the grounds of his disabilities. This arises from the FCA's Supervision team, as the area responsible for dealing with IRHP [Interest Rate Hedging Product] matters, inviting you, as his representative, to participate in a telephone conference with them. The invitation was extended to [your client] and any of his other representatives. You explained that [your client] is unable to participate in a conference call due to his disabilities and have alleged that the FCA is discriminating against him.

What the regulator decided

3. The FCA did not uphold your complaint, though it did apologise for the delay in dealing with it. The FCA set out its understanding of the various interactions which had occurred between you and IRHP team, and concluded as follows:

The complaint is about understanding whether it appears more reasonable than not that, on its face, discrimination has occurred. Having reviewed the documentary records available to me, I am of the view that [your client] has not been treated in a way that would constitute discriminatory or unfavourable treatment. I am satisfied that it was not the intention of the IRHP Team to

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exclude [your client] and he has not been treated less favorably [sic] because of his disabilities.

I acknowledge that when the IRHP Team were seeking to establish reasonable adjustments, the team did have a basis for understanding how [your client's] disabilities affected him given the information that had already been provided. However, in offering to have a further discussion with you and extending this to [your client] and any of his other representatives, I do not believe this is evidence of unprofessional or discriminatory behavior [sic], but rather, I am of the view that the IRHP Team were using their best endeavours to accommodate both you and [your client].

If it is still believed that a breach of the equality legislation has occurred, you can obtain further advice from the EASS discrimination helpline. Further details are available on their website at - www.equalityadvisoryservice.com/app/home.

Why you are unhappy with the regulator's decision

4. Your client says that for the FCA to have taken so many months to have produced 'a general response like this is diabolical.....Basically you have directed him to use me because you would not meet him as he requested.....You have failed in every respect to act within the guidelines which are very clear.'

Preliminary points

5. This report deals only with the complaint described in paragraph 2 (and the associated delays). I am aware that there remains another complaint which the FCA is considering, and which could come to me in due course.
6. I cannot 'rule' on matters of disability discrimination. What I can do, however, is say whether or not I consider the FCA's actions (or inactions) to have been reasonable.

My analysis

7. Although, as I have explained in paragraph 5, this report deals with only one area of your client's concerns, I need to set out the background against which the complaint arose.

8. Your client's interactions with the FCA started in April 2017 because he was dissatisfied with the way in which his bank was undertaking a review of an Interest Hedging Rate Product (IRHP) which it had sold him. (This was part of the general review process, overseen by the FCA, of IRHPs which had been mis-sold.) The complaint encompassed allegations of disability discrimination and concerns about the role of the bank and the independent reviewer.
9. Progress in the matter was impeded by a number of factors, including the inherent complexity of the matters being complained about and the fact that two teams within the FCA – the IRHP team and the Complaints Team – were looking at the matter. In October 2017 you complained about the way in which your client's complaint was being handled, and in January 2018 you received an apology for an element of mishandling.
10. In January 2018 you approached my office and, following an exchange of correspondence, it was agreed that I would defer consideration of the matter of the FCA's handling of the complaint until you had received the outcome of the original complaint, which relates to the FCA's supervision of your client's bank.
11. During 2018 there was protracted correspondence between you, the FCA's supervision department, and the FCA's Complaints Team. The substantive complaint was deferred pending further inquiries by the Supervision Department. On 16 May 2018 on your client's behalf you added a formal complaint of disability discrimination against the FCA: this was also deferred while the Supervision Department considered 'what, if any, further reasonable adjustments can be made'.
12. The matter was reopened by the Complaints Team as two separate complaints in September. The first complaint – relating to the quality of the FCA's supervision of bank X, remains under investigation. The second – relating to disability discrimination, was concluded by the FCA in January 2019, and is the subject of this report.
13. There are two elements to this complaint – delay and discrimination.
14. On delay, the FCA has already apologised to you. It is clear that the complaint should have been dealt with more quickly. I have drawn the FCA's attention to the delays in the handling of a number of complaints recently, and it has

explained to me how it is bringing in additional staff to improve performance.
This does not, of course, remedy the matter from the point of view of your client.

15. The discrimination issue is the heart of your client's complaint on this matter. It is very regrettable that your client and the FCA have not been able to resolve this. My role is to consider whether or not the FCA's actions have been reasonable.
16. I have carefully studied the correspondence. In particular, I note that on 14 June 2018, the FCA's IRHP Team asked a series of questions which were designed to 'address [your client's] condition appropriately and make the necessary reasonable adjustments'.
17. Your response of the same day, on your client's behalf, asked why the FCA had 'fail[ed] to ask this earlier when you had notice of his disability and requirements to meet....The problems he has are in the papers you have and in the transcripts of the meetings. You have very clearly ignored everything...' There was then further correspondence in which you set out in some detail your understanding of the FCA's duties under the disability discrimination legislation.
18. On 30 August 2018, the FCA Complaints Team wrote to you. The email included the following:

Thank you for your most recent email. I note that you haven't provided answers to my two questions. Without this information, I am afraid we will be unable to consider the complaints any further.

We are aware that [your client] wishes for us to liaise directly with him about the complaint, but you have told us that we are unable to email him. We have requested that you let us know what other methods of communication we could use to engage with [your client], but you have not responded to this.

We asked for confirmation that we should contact [your client] directly and that you are no longer acting on his behalf. Unfortunately, you have not responded to this.

This means that we are left in a position where we are unable to contact [your client], and we are unclear whether you still have authority to act on his behalf.

19. You asked for my intervention. Following further inquiries, the FCA agreed to reopen the complaint, and I advised you that I would wait for the conclusion of the FCA's investigation, following which you could refer the matter to me (as you have now done).
20. Having carefully considered the extensive correspondence, I have concluded that the FCA's decision, as set out in paragraph 3, was correct. The FCA seems to me to have made genuine attempts to establish what reasonable adjustments your client might require. It is regrettable that these attempts were unsuccessful, but I do not see grounds for criticising the FCA's approach. In your response to my preliminary report, you draw attention to the fact that your client's disabilities had already been described in the original complaint of April 2017. The FCA has already acknowledged this (see the quotation from its letter in paragraph 3 above); but it does not seem to me that it was inherently wrong for the FCA to seek clarification.
21. However, if you still believe that your client was discriminated against, you may be able to refer the matter to court, as it is within the courts' remit to interpret disability legislation, apply it to individual cases and make a binding decision.

My decision

22. For that reason, I do not uphold your client's complaint, save for the delay in dealing with it, for which the FCA has already apologised and on which I have commented in paragraph 14. Nonetheless, I hope that a way might be found to resolve the underlying complaint which is being investigated. Your client does, of course, have the right to refer that complaint to me if, following the FCA's investigation, he remains dissatisfied.

Antony Townsend
Complaints Commissioner
12 March 2019