

26th March 2018**Final report by the Complaints Commissioner****Complaint number FCA00438***The complaint*

1. You wrote to me on 27th February 2018 to complain about the FCA's "failure to act" in relation to the activities of the Royal Bank of Scotland's (RBS) Global Restructuring Group (GRG).

What the complaint is about

2. The activities of the GRG in relation to businesses in financial difficulty have been the subject of several published reports, and have attracted criticism from Parliament's Treasury Committee. In its decision letter on your complaint, the FCA described your complaint as follows:

You are unhappy that the FCA failed to properly supervise the Royal Bank of Scotland's (RBS) Global Restructuring Group (GRG).

What the regulator decided

3. The FCA did not uphold your complaint. It gave you a full explanation, which included the following key points:
 - 1) Lending to small and medium enterprises (SMEs) for business purposes is largely "outside the regulatory perimeter" – i.e. the FCA has not been specific powers to regulate it. This limits what the FCA can do;
 - 2) When the FCA received the reports of Sir Lawrence Tomlinson and Sir Andrew Large, it considered the findings made against RBS, and in January 2014 appointed an independent person to investigate;
 - 3) In November 2016, the FCA made a statement about the outcome of the review, and RBS established a complaints review process for SMEs which considered they had been unfairly treated by the GRG, with independent oversight;
 - 4) The way in which RBS operates this process is covered by the FCA's conduct rules;
 - 5) Since these events, the FCA has acquired new powers in relation to senior managers, which may be helpful in dealing with misconduct by institutions in relation to activities which fall outside the regulatory perimeter

Why you are unhappy with the regulator's decision

4. In your letter to me, you say:

Needless to say I am unhappy that the FCA appeared powerless to protect us or better get discipline and control a renegade bank....The FCA may be

correct in that their powers fell outside their mandate, however, I do not see any early signs of them going to government to increase and widen their remit to protect SME's....Government I suspect has also wanted to protect this bank with a 70% stake in it and for that reason never allowed FCA full reign [sic], as that would be even more costly...I am now intrigued to see what a Complaints Commissioner will say about FCA ineptitude.

My analysis

5. The explanation which the FCA gave you in its decision letter was factually correct. The fundamental point is that it is Parliament which decides what powers the FCA is given, and currently commercial lending is not a regulated activity.
6. In its November 2017 final summary of the independent review of the GRG, the FCA said:

The skilled person that conducted the independent review invited the FCA and other policymakers to consider extending the protections available to SME customers in other ways, in particular for less sophisticated SMEs and vulnerable persons, and to extend the regulations covering unfair contract terms. The FCA will make a constructive contribution if invited to do so by lawmakers but ultimately it is for Parliament to consider and approve recommendations about widening our statutory remit.

7. It is clear that Parliament is taking a close interest in this matter, but the FCA is right to say that it is for Parliament to decide whether to give the FCA more powers in this area.
8. The facts set out in the FCA's decision letter show that, within the limits of its powers, the FCA did take action in response to the findings of the Tomlinson Report.

My decision

9. For those reasons, I am afraid that I cannot uphold your complaint against the FCA. I have sympathy for those who were victims of the behaviour of the GRG, and I agree that there is a case for extending the FCA's remit in such matters; but the responsibility for that lies with Government and Parliament.
10. In my preliminary report, I suggested that you contact your Member of Parliament to ask her or him to advance your arguments for reform, and in your response you confirmed that you would do so. That is the correct way to seek the broadening of powers which you seek, and to encourage the FCA to make full use of those powers.

Antony Townsend

Complaints Commissioner

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