

11 May 2018

Final report by the Complaints Commissioner**Complaint number FCA00441***The complaint*

1. On 8 March 2018 you asked me to investigate a complaint about the FCA. I have carefully reviewed the papers sent to me by you and by the regulator. My preliminary report was issued on 12 April 2018 and both you and the FCA have had the opportunity to provide comments. You commented, but the FCA did not.

What the complaint is about

2. You complained to the FCA after its Customer Contact Centre (CCC) told you that it would not be able to give you feedback on any regulatory action the FCA might take after you reported that your bank had opened an online account in your name without your knowledge.

What the regulator decided

3. The FCA Complaints Team did not uphold your complaint because it considered that the FCA had acted reasonably in the circumstances. The complaint response said that confidentiality restrictions and FCA policy do not allow the giving of feedback about any action taken in response to the information you provided.

Why you are unhappy with the regulator's decision

4. You have told me that the FCA's response leaves you wondering whether the FCA is working more for the providers and suppliers who pay its costs than buyers, customers and consumers who require its protection. You consider that "*there is nothing to protect customers here at all, as arrangements are all 'confidential'*".

My analysis

5. You made it clear to the FCA that you were not asking it to resolve your individual complaint with your bank, which had already been dealt with. Your interest was in preventing potential fraud and protecting individuals, and "*how accounts can be opened on line with no checks direct with the alleged account holder, and therefore this can give rise to accounts being used for fraudulent purposes*". You believed that the FCA's role dealt with conduct, procedures and fraud prevention and that it could make positive changes. Although you realised that current investigations could not be made public, you considered that there should be a way for the FCA "*to say for example, thanks, your information was helpful and has resulted in x*". Its failure to do this has left you wondering for whose benefit the FCA is working.
6. I can appreciate how frustrating it must be not to know in detail what has happened about the information you have provided to the FCA. I note that the FCA complaint response included some information about the approach of the Supervision Team who received your report. Because I am able to access the FCA's confidential files I have been able to verify that the information you

supplied was referred to Supervision and checks made about compliance with industry standard guidance on anti-fraud measures, in particular with regard to verification of identity and mitigation of the risk of impersonation when opening online accounts.

7. In response to my preliminary report you have said that the question you set out in paragraph 5 above remains unanswered and that 'bureaucratic ineptitude' is apparently preventing the FCA from taking steps to stop fraud. You find this frightening and it leaves you dismayed. I note that the FCA's complaint response to you on this point acknowledged that all methods of account opening can in some circumstances result in accounts being opened fraudulently. The response advised you that fraud is a matter for Action Fraud and the Police. I understand that this is the FCA's standard response to members of the public who make allegations of fraud. I can understand why you found the FCA's complaint response to be unsatisfactory on this point. In my view it could be interpreted as showing a lack of interest in your concerns.
8. Furthermore, I note that the FCA's website includes a statement that: *Fraud falls within the FCA's objective of reducing the risk of financial crime and also impacts on our consumer protection objectives... We give higher priority to the protection of consumers as potential victims of fraud than to the protection of firms themselves as potential victims.* <https://www.fca.org.uk/firms/financial-crime/fraud>. I consider that it would have been more helpful if the FCA, as well as providing information about Action Fraud, had acknowledged to you that it does have a role in addressing fraud and that it takes this seriously. I **suggest** that the FCA considers whether it should revise its approach to provide greater clarity to those who contact it about the FCA's interest in potential fraud that affects consumers and firms.
9. The regulator welcomes information from public-spirited individuals like you who bring forward issues for consideration. However, as you were advised, the FCA will not generally provide feedback on what action has been taken in response to the information that it receives. This is because section 348 (s.348) of the Financial Services & Markets Act 2000 (FSMA) classes some information the FCA holds about firms as confidential and places restrictions on how that information is dealt with. In addition to this, any information that is not restricted by s.348 FSMA may be restricted due to the FCA's policy on sharing information about regulated firms and individuals, who also have legal protections. Under this policy, the FCA will not normally disclose the fact of ongoing action without the agreement of the firm concerned. As a result, there is no general right for members of the public to know the outcome of reports that they make.
10. As part of the Complaints Scheme, I have access to all the FCA's complaints papers, including confidential material. This is so that I, as an independent person, can see whether I am satisfied that the FCA has behaved reasonably. Sometimes this means that all I can say to complainants is that, having studied the confidential material, I am satisfied that the FCA has (or has not) behaved reasonably – but I am unable to give further details. This can be frustrating for complainants, but it is better that I am able to see the confidential material. On occasions, I have persuaded the FCA to release further confidential information to help complainants

understand what has happened, but this is not always possible. I shall continue to pursue this matter with the FCA.

11. I acknowledge that there is a difficult balance to be struck between on the one hand protecting confidential information to enable the regulator to do its job and encourage potential informants, and on the other the need to give the public sufficient information and confidence to judge whether or not the regulatory system is operating effectively. Whether or not the current position strikes the right balance is a legitimate matter for debate but it is not one that can be resolved by this Complaints Scheme. On balance, I am satisfied that the FCA's complaint response, that it would not inform you of any action to be taken, or not taken, in response to the information you provided about your bank, was reasonable in the circumstances.

My decision

12. For the reasons stated I do not uphold your complaint. I have **suggested** that the FCA considers whether it should revise its approach to provide greater clarity to those who contact it about potential fraud that affects consumers and firms. I am pleased to say that the FCA's Complaints Team has informed me that it accepts this suggestion and will take it forward internally.
13. I realise that you will probably be disappointed by my decision but I hope you will understand how I have reached it.

Antony Townsend

Complaints Commissioner

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