

30 August 2018

Final report by the Complaints Commissioner**Complaint number FCA00465***The complaint*

1. You wrote to me on 16 May 2018 to complain about the FCA's response to information which you had sent to it about your bank.

What the complaint is about

2. In its decision letter of 4 May 2018, in response to your complaint, the FCA described your complaint as follows:

Part One

You contacted the FCA, initially on 9 November 2017, to report banking malpractice specifically related to the actions of [bank X]. In their responses to you, the FCA's Customer Contact Centre ("CCC") informed you that the matter would be escalated to the relevant FCA department responsible for the supervision of [bank X] ("Supervision"). You are unhappy that the FCA will not provide an update with regards to the information you submitted about [bank X]. You allege that by not acting on the information you provided about [bank X], the FCA has allowed [bank X] to get away with illegal practices.

Part Two

You were advised by the CCC that the FCA would request further information from you about this matter, should this be required. Since this has not happened, you claim the FCA is not interested in investigating your concerns.

Part Three

You explain that the responses from the CCC have not provided you with relevant information or guidance, have not answered your questions fully, and failed to respond to all of your emails. You feel this is a deliberate attempt to cause delay, frustration and protect FCA executives from unwanted reports.

What the regulator decided

3. In its decision letter, the FCA said it had not upheld part one of your complaint: the Complaints Team was satisfied that the information which you had sent to the CCC had been properly forwarded to the FCA's Supervision Department, and that that Department had properly assessed and dealt with it. For confidentiality reasons, which it explained, the FCA was not able to tell you what the outcome of that assessment was.
4. The FCA also rejected part two of your complaint: the Complaints Team said that the CCC had requested additional information from you. Supervision had given that adequate consideration, and was not required to seek any further information from you.

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5. The Complaints Team partially upheld the third part of your complaint, on the grounds that the CCC had missed an opportunity to ask you for further information, had not met two of its service standard deadlines, and had not been as helpful as it could have been in its first response to you. The Complaints Team also identified that the CCC had failed to pass on to supervision additional significant material which you had supplied. The FCA apologised for this, and said that it had taken the necessary remedial action, including passing the additional information to supervision for further analysis.

Why you are unhappy with the regulator's decision

6. In your first email to me, you summarised your dissatisfaction as follows:

The bottom line is that FCA and FOS have permitted [bank X] to

a] breach contractual obligations

b] fail to accept a settlement offer made by [me] to get rid of them before wasting their time, my time and the Crown Court's time

c] provide a false witness statement (i.e. lied) to the Crown Court, to get their way

d] cynically use the power of big business with unlimited resources to cause harm to an insignificant individual, to the extent of £160 (a figure subsequently revised substantially upwards)

So much for a protective regulatory system to reign [sic] in banks which behave illegally.

Preliminary points

7. As you have acknowledged, this Complaints Scheme is concerned with the actions or inactions of the FCA. It cannot deal with complaints against banks, or against the Financial Ombudsman Service (FOS), nor is it a redress service for individual consumer complaints. You have asked me where in statute it is set out that the FCA cannot investigate individual claims. The answer to that is that the Financial Services and Markets Act 2000 explicitly provides for a consumer redress service separated from the FCA.
8. That does not mean that the FCA cannot investigate concerns arising from information about individual complaints, but it investigates in the context of considering whether or not regulatory action is justified, rather than whether or not the individual requires redress. The fact that a bank may have done something which justifies redress does not automatically mean that regulatory action is justified – that would depend upon the scale of the problem, and the risk of recurrence.
9. My role is not to establish whether or not your complaint against your bank was justified, but to consider whether the FCA's regulatory response to the information which you supplied was reasonable.
10. Like the FCA, I am required to respect confidentiality (there is a good explanation of the statutory and FCA policy restrictions on information sharing at <https://www.fca.org.uk/freedom-information/information-we-can-share>). This means that sometimes I cannot report fully on the confidential material to which I have access (I can see all the FCA's documents connected with a complaint).

However, even if there is information which I cannot disclose, I can report on whether or not I am satisfied that the FCA's decisions were ones which it was reasonable for it to take.

My analysis

Background

11. Before I turn to the FCA's actions, it is necessary to understand the background to the complaint.
12. The complaint originated in a dispute between you and bank X in 2015, which eventually went to the FOS. The key elements of this were that your overdraft was cancelled, your credit card facility was removed, and in your view the bank failed to address your complaints. This led you to take legal action, and you received a County Court judgment in your favour in 2017. The bank applied – successfully – to have the judgment overturned on the grounds that its litigation department had not been aware of the court action – a matter which you strongly dispute. You have accused bank X of supplying misleading evidence.
13. For financial reasons, you were unable to pursue the court action. Your complaint to the FOS about the bank's actions in relation to your account was ruled out of time, a second complaint was rejected, and the FOS said that it could not deal with your allegation that the bank had lied to the court.

The FCA's initial handling of your correspondence

14. I can summarise your early exchanges with the FCA as follows. You first approached the FCA in November 2017, and were dealt with by the CCC, which is effectively the gateway for information arriving at the FCA. As the FCA's decision letter explained, the CCC passed on your information to the supervision department, but did not ask for the further information which you had offered. The CCC also explained – correctly – that the FCA was not generally able to provide feedback about what (if any) action was taken in response to such information.
15. In December, you raised concerns with the CCC that the further information you had offered had not been requested, leading you to believe that nothing was being done about the information which had been provided.
16. By February, after several more exchanges with the FCA, you had become frustrated with the responses which you were receiving, which were essentially reiterations of the line that the FCA could not tell you what, if anything, it was doing about the information which you had supplied. You sent the CCC further information on 8 February 2018. This was not forwarded to the supervision team, as the FCA Complaints Team later discovered and acknowledged – though that has now been corrected.
17. The FCA Complaints Team's decision letter concluded that the CCC's "first response was not as helpful as it could have been". In my view, the shortcomings went further than that: in response to your repeated points about the systemic concerns which you were raising, the CCC's responses simply repeated statements about the general policy for handling information from individuals. The CCC did not consider whether your frustration might be well founded and, if it was, whether further action needed to be taken. Furthermore, the failure of the CCC to forward your additional information to the supervision team, where it could have been assessed, suggests that the CCC were not focussing upon the possibility that

regulatory action might be required. This is not the first complaint in which I have commented upon the failure of the CCC to pass on information to supervision.

18. In its response to my Preliminary Report, the FCA has said that it recognises that the escalation process from the CCC is an area for further improvement, and it will update me on progress. I am pleased to see the FCA's response to this.

Consideration of your information

19. As I have explained above (paragraph 10), I can review all the FCA's papers, though I have to respect confidentiality. The FCA is what is known in the jargon as a "risk-based regulator" – in other words, it has to sift through the large quantities of information which it receives each day, analyse its significance, and then decide whether or not any follow-up is required. Even where no further action is taken immediately, information may be kept on record and reconsidered if further information is received which suggests that the problem may not be an isolated incident but symptomatic of a more widespread problem. It is not my role to second-guess the FCA's reasonable exercise of this discretion, bearing in mind that it has competing priorities and limited resources.
20. However, having reviewed the papers, I have concerns about the FCA's consideration of the information which you supplied. In my view, the FCA's approach – both initially when you were reporting your concerns, and subsequently in dealing with your complaint – focussed upon finding general reasons for not taking action rather than considering whether in the particular set of circumstances there were good reasons for making further inquiries. I accept that the FCA has a difficult task in deciding which bits of information to investigate and which to retain on file in case further similar information comes to light, but I consider that the information you supplied required further investigation.
21. I have put it to the FCA that the allegations you have made are potentially serious: they encompass failure to act in response to court proceedings, misleading a court, causing your small business serious detriment, and an apparent failure to resolve the matter. There is material in your allegations which – if proved to be well founded – would raise more general questions about the bank's treatment of its business customers. I must stress that I am in no position to make a finding on whether or not the allegations are proven, but I do consider that they require further investigation.
22. I am pleased to say that, in the light of my concerns, the FCA has undertaken to make further inquiries of the bank, and to keep my office informed of its progress. Frustrating though it will inevitably be for you, there will be a limit to what I am able to report to you, though I will report what I can, together with a general assurance that I will satisfy myself that the matter is being adequately pursued.

My decision

23. I uphold your complaint. The FCA did not respond adequately to the information which you had provided, and failed to rectify the matter despite your attempts to pursue it.
24. I **recommend** that the FCA apologises to you for the shortcomings which I have identified: the FCA has already undertaken to do this.
25. I **recommend** that the FCA reports to me periodically, and in any event at least quarterly, on the progress which it makes in pursuing its further inquiries with the bank. The FCA has accepted this recommendation.

Antony Townsend

Complaints Commissioner

30 August 2018