

19 November 2018

Preliminary report by the Complaints Commissioner**Complaint number FCA00518***The complaint*

1. In your letter of 9 October 2018, you asked me to consider a complaint against the FCA.

What the complaint is about

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

You previously provided the FCA with a report prepared by a firm specialising in forensic accounting which you stated proves that [Bank X in Ireland] has been overcharging on the Euro Interbank Offered Rate (EURIBOR). The report was based on your accounts with [Bank X] but you have been informed that the EURIBOR would have been set by [Bank Y] in the UK. In addition to this, on 31 December 2010, the assets and liabilities of [Bank X] transferred to [Bank Y], adding to your cause for raising the matter with the FCA.

You indicated that your evidence implies widespread criminal activity and you are not happy because you state that the FCA has not taken action nor obliged the bank to make restitution to affected customers, such as yourself. As a remedy to your complaint, you would like to ensure you receive a refund of the money you were overcharged (plus any costs associated with the preparation of your report), or alternatively, you would like the FCA to demonstrate why the report is incorrect.

What the regulator decided

3. The FCA did not uphold your complaint about its response to the information which you had supplied. It said that the information you had provided had been appropriately considered by the supervisor of Bank Y, but that the FCA could not

FCA00518

tell you what had been done with the information. It drew your attention to the industry-wide review of tracker mortgages which the Central Bank of Ireland had undertaken, which had resulted in 37,000 customers being identified for redress, including customers of Bank Y.

Why you are unhappy with the regulator's decision

4. You have asked me to look at your complaint. You have said that your main complaint is about the FCA's alleged failure to respond adequately to a report written by 'a highly respected firm of Forensic Accountants, based in the United Kingdom', which demonstrated overcharging.
5. You have also told me that the FCA's reference to the industry-wide review of tracker mortgages (see paragraph 3) is a 'red herring', since it has nothing to do with the issue of the setting of the EURIBOR rate.

My analysis

6. You originally approached the FCA in June 2017, enclosing a report from your accountants which you say showed that Bank X and Y had been undertaking 'systemic overcharging...by means of an increased EURIBOR rate'. You told the FCA that you had also approached the Central Bank of Ireland. You said that you understood that the FCA would 'investigate the matter in direct consultation with the bank concerned'.
7. In July 2017, the FCA's Customer Contact Centre (CCC) told you that your concerns had been referred to the appropriate supervisory department of the FCA, who would contact you if they required any further detail.
8. In February 2018 you wrote again to the FCA saying that, while you understood that the FCA was constrained by confidentiality restrictions from telling you what was happening, you wondered whether 'it would be in order for the FCA to instruct' Bank Y to contact the affected customers. You also asked whether you ought to contact the European Central Bank (ECB), given its responsibilities.
9. The following month, the CCC replied saying that, although the FCA could not comment on what it was doing in relation to Bank Y, you might wish to contact the Financial Ombudsman Service (FOS), and that you could also contact the

ECB and the Finance Committee of the Oireachtas 'if you believe that these additional organisations would be able to assist you'.

10. On 24 May 2018, you complained to the FCA that you would have received some compensation if the FCA had acted promptly. The CCC responded on 7 June setting out the general circumstances in which the FCA could undertake redress exercises, giving you the address of the Central Bank of Ireland, the address of Bank Y, and the address of the FOS. The CCC's response also explained the FCA's supervisory role.
11. On 29 June, you complained again, this time to the complaints team, with the result explained in paragraph 3 above.
12. My analysis of this sequence of events is that, while the FCA did its best to respond to you promptly and fully, there was a mismatch of expectations between you and the FCA. You were expecting a focussed investigation of the material which you had supplied, whereas the FCA were treating the information as general intelligence about Bank X/Y. I think this could have been explained to you more fully.
13. The FCA's reference to the work which had been done on tracker rate mortgages appears to have been intended to demonstrate that the Central Bank of Ireland could undertake exercises to remedy systemic problems, though I agree that it may not have been directly relevant to your case.
14. There was a further difficulty in that the FCA's locus in the regulation of your loans was unclear. You were living outside the UK; the loans which you had taken were of a kind which may not have been 'regulated products'; and the loans had been issued by a bank which had – until merged with a UK entity – been based in Ireland. The result was that there was some uncertainty about what – if any – action the FCA could take, even if it were to conclude that the information which you had supplied merited its intervention; and this in turn led to the rather non-committal replies which you received to your correspondence. You have asked me to approach Bank Y for further information about the respective responsibilities of it and Bank X for setting the EURIBOR rate, but I

am afraid that my role is simply to consider the actions of the FCA, not those of the banks.

15. Nonetheless, despite these shortcomings, I can see from the confidential papers that the FCA did give careful consideration to the information you had supplied, including the jurisdictional issues described above. I do not consider that its actions were unreasonable.

My decision

16. The FCA's correspondence with you could have been clearer in explaining that its role was not to provide individual consumer redress, and in explaining what the respective responsibilities of Irish and UK authorities were in the particular circumstances of your case. In response to my preliminary report, the FCA has said that the CCC is rolling out a programme of 'training initiatives that incorporates the language that should be used to describe the FCA's use of intelligence and how we should set expectations with consumers who are reporting harms to us'. I welcome this development.
17. However, I do not consider that the FCA's response to the information which you supplied was unreasonable, and for that reason I cannot uphold your complaint. In response to your comments on my preliminary report, I should make it clear that my decision relates solely to the reasonableness of the FCA's responses to you, and how it handled the information which you supplied: I have made no 'finding' about the contents of the accountants' report which you supplied to the FCA.
18. I am sorry to have to give you a disappointing reply.

Antony Townsend
Complaints Commissioner
19 November 2018