

25 February 2019

Final report by the Complaints Commissioner**Complaint number FCA00537***The complaint*

1. On 2 January 2019 you complained to me about the FCA's supervision of your bank, which had declined to give you an overdraft on the grounds that your income was solely derived from benefits payments. I was sorry to hear about the difficulties which you had experienced.

What the complaint is about

2. In its decision letter to you, the FCA described your complaint in this way:

My understanding is that your complaint is about your bank's decision to decline your application for an overdraft. You are disabled and your income is derived from benefits. Your bank has told you that its policy excludes people whose sole income is benefits and you consider its policy is discriminatory. You complained to the Financial Ombudsman Service which said it was unable to take on a complaint about the bank's policy and recommended you complain to the FCA. I have summarised your complaints about the FCA below:

Part One

You believe the FCA has allowed your bank to breach the Equality Act 2010 and discriminate against disabled people and people whose income is solely derived from benefits.

Part Two

You believe the FCA has failed to supervise your bank by allowing it to have such a policy in place.

Part Three

You are unhappy the FCA's lending criteria rules do not prevent this. In order to resolve your complaint, you would like the FCA to assess whether your bank's policy is fair and lawful.

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What the regulator decided

3. The FCA did not uphold your complaint. It said that part one would not be investigated because the FCA considered that the matter would be better dealt with in another way - through the bank's complaint procedures, through the Financial Ombudsman Service (FOS), and if necessary through the courts.
4. On part two, the FCA said that this was the first occasion on which the matter had been drawn to its attention, and that the FCA was now 'considering the matter seriously' (although, for reasons of confidentiality, it would not be able to tell you what, if any, further action was being taken).
5. The FCA said that part three was excluded from the Complaints Scheme because making rules was one of the FCA's 'legislative functions' which the Scheme did not cover.

Why you are unhappy with the regulator's decision

6. You have sent me a helpful description of your dissatisfaction with the FCA's response, which I can summarise as follows:
 - a. The FCA has told you that it is the FOS which deals with individual complaints, but
 - b. The FOS says that it is the FCA which regulates the banks and, if your bank is following its own policy then that is a matter for the FCA to deal with, and
 - c. It is not good enough for the FCA to say that it was not previously aware of your bank's lending policy for people reliant on benefits – it ought to have been aware.

Preliminary point

7. You have provided me with details of your interactions with your bank, which were very useful in helping me to understand your complaint but, as you may know, my role is simply to consider the actions or inactions of the FCA. I cannot consider what the bank itself has done, nor can I consider the role of the FOS.

My analysis

8. It is important to say that the banks have considerable discretion in how they manage their businesses. The FCA does not (and could not) approve every

bank's policies. However, when it receives information which suggests that a bank's policies or practices may be causing harm to consumers, it can investigate and take further action – including issuing further rules or guidance. A recent example of this is the FCA's current consultation on high-cost credit (which you can find at <https://www.fca.org.uk/publications/consultation-papers/cp18-42-high-cost-credit-review-overdrafts-consultation-paper-and-policy-statement>).

9. I have looked carefully at the FCA's records, and made some further inquiries. Although I am unfortunately unable to disclose details of confidential material, what I can say is that I am satisfied that the FCA has not ignored the information which you have provided, and I consider that its approach has been reasonable.

My decision

10. In response to my preliminary decision, which set out the points above, you have repeated your dissatisfaction with the fact that no one organisation seems to take responsibility for your concerns; your view that the FCA should have been aware of this problem sooner; you have made the point that legal action is unaffordable for you; and you have expressed the view that bringing the matter to the FCA's attention has been a 'complete waste of everyone's time'.
11. I understand your frustration that there has been no change in the position for you, or for others, as matters stand. However, I do not consider that that means that the whole business has been a waste of time, since I am satisfied that the FCA is looking at the issue – although I cannot say what the outcome of that will be.
12. I recognise that it is unsatisfactory that I am having to ask you to accept my assurance, but I am satisfied that the FCA looked at your complaint appropriately, and has responded to the information reasonably. For that reason, I am afraid that I cannot uphold your complaint.

Antony Townsend
Complaints Commissioner
25 February 2019