

05 April 2019

Final report by the Complaints Commissioner

Complaint number FCA00541

The complaint

1. You approached me on 9 January 2019 to complain about what you considered to be the FCA's failure to address a complaint you had made.

What the complaint is about

2. Your complaint arose from Bank X's takeover of your mortgage lender, and therefore your mortgage. The FCA summarised it in the following terms:

'You have had an ongoing dispute with [Bank X] in relation to your mortgage. You indicated that in recent times this has resulted in you being *'under threat of repossession'*. You stated that the bank is *'doing nothing to correct a seriously dubious situation of their making'* and is refusing to respond to you.

'You are unhappy that the FCA is not *'protecting'* you against the *'deceitful, unlawful and... fraudulent behaviour by [Bank X].'*

What the regulator decided

3. The FCA decided not to investigate the complaint because in its view it did not amount to more than a dispute between you and Bank X. It explained that individual disputes were a matter for the Financial Ombudsman. For that reason, the complaint fell outside of the Complaints Scheme under para 1.1 of the Scheme.

Why you are unhappy with the regulator's decision

4. You stated that you are unhappy with this outcome because in your view the *FCA has done everything in their power not to address [your] genuine concerns regarding treatment by what is a regulated bank. (Element one).*

FCA00541

5. In your view Bank X, two years after the takeover of Bank Y, changed the terms and conditions of your mortgage, and that of every other customer of Bank Y, in a way that it was not permitted to do under your existing Terms and Conditions or the Transfer Scheme put in place by the Courts. You believe that the FCA's lack of substantive response and its seeming lack of interest in the issues you are raising amount to a failure to protect consumers and to regulate Bank X, and is not in line with its consumer protection objectives. (Element two).

My analysis - background

6. You had a mortgage product with Bank Y, when it was bought out by Bank X. At the time of this buy-out a 'Transfer Scheme' governing the transition of business and consumers from Bank Y to Bank X was approved by the Courts and it was to be overseen by the FCA. The Transfer Scheme stipulated that any changes to be made to it by Bank X had to be approved by the Courts.
7. Bank X wrote to you and other former customers of Bank Y about two years after the change in ownership and advised you that your existing mortgage product could no longer be supported by its systems, you would be given a new mortgage number, and the Terms and Conditions of your mortgage were to be changed to Bank X's standard Terms and Conditions.
8. You allege that this was done contrary to the terms of the Transfer Scheme and without your express agreement (or that of other customers affected by this change).

My analysis – your complaint

Element one

9. Your complaint against the FCA followed some correspondence between you and the FCA's Customer Contact Centre (CCC). The FCA's Complaints Team excluded your complaint under para 1.1 of the Complaint Scheme on the grounds that it did not fall within the Scheme because you were complaining about your individual disagreement with Bank X, rather than a relevant function of the FCA.
10. While it is true that you have an individual dispute with Bank X, your correspondence with the FCA referred to it 'not protecting [you as consumers]'

and made allegations that Bank X was not following the terms set out in the Transfer Scheme. You provided information in support. You also made references to other consumers in the same position as you. Your correspondence made it clear that you understood that the FCA could not pursue your individual complaint.

11. Following the FCA Complaints Team's decision letter, you expressed your disagreement with the decision to exclude your complaint and entered into extensive correspondence about why it should look in to the matter. You reiterated the point that your particular case was just an example of how consumers are affected and that you were complaining as in your view the FCA was not protecting consumers from the actions of Bank X, which is not in line with its consumer protection objectives. In your view Bank X changed the Terms and Conditions of its customers' mortgages 'illegally', as this was neither permitted by your existing agreement, nor under the Transfer Scheme, which was overseen by the FCA.
12. Instead of reconsidering its decision to exclude your complaint, the FCA repeatedly asked you to explain how you were individually affected by the changes made by Bank X, and which specific points of the Transfer Scheme you were referring to. You had clearly provided details about your concerns earlier when you stated that the Terms and Conditions of your mortgage were changed, without your concern and in your view to your detriment, and attempted to explain what sort of breach Bank X may have committed under the Transfer Scheme.
13. This back and forth correspondence resulted in frustrations on both sides. Understandably, you kept reiterating that you had already explained what your complaint and detriment was and asked that the issues be investigated. The FCA continued to believe that you had not responded to its questions in a satisfactory manner.
14. In my view, the FCA mishandled this. The FCA should not have excluded your complaint, since it raised a valid question about the adequacy of its supervision of a regulated bank. You had explained the basis of your concern very clearly – you claimed that Bank X had improperly changed the terms and conditions of

your mortgage contract in a way which potentially had implications for other customers. You drew attention to the fact that this issue had been publicised in the national media around the time that Bank X took over your mortgage. Furthermore, my examination of the FCA's files shows that the FCA was clearly aware of the issue. The regulator therefore was, or should have been, aware that the issue which you had raised was a systemic one, not an individual complaint.

15. Looking at the FCA's file, I do not consider that the FCA set out to be unhelpful. However, the mistaken decision to exclude your complaint, coupled with the subsequent failure to engage with you properly when you queried its decision, led to unnecessary aggravation, and an unnecessary failure to answer your legitimate questions. For these reasons, I uphold this element of your complaint.

Element two

16. Where the FCA has not investigated a complaint, the normal course of action would be for me to refer the matter back to the FCA to carry out a full investigation. However, I was provided with information as part of the complaint file which enables me to address your complaint without having to return it to the FCA, avoiding further delay for you.
17. I have reviewed documentary evidence from the time when the changes to your Terms and Conditions were made, which satisfies me that the FCA was aware of the issues you are complaining about at the relevant time and engaged with the bank on the issue
18. I cannot share with you the materials I reviewed, because section 348 (s.348) of the Financial Services & Markets Act 2000 (FSMA) classes some information the FCA holds about firms as confidential, and restricts 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. Like the FCA, I am required to respect confidentiality.
19. I concluded in my preliminary report that it seemed likely from the documents I had reviewed that your Terms and Conditions set by Bank Y, which you agreed to when you took out your original mortgage, allowed for the sort of changes you are complaining about to be made to its customers' accounts.

20. In response to my preliminary report, you provided me with some documentary evidence including correspondence between you and Bank X. The documents state that Bank Y used to issue new Terms and Conditions annually and when Bank X took over your mortgage, you were on the 2009 Terms and Conditions. These stipulated that the bank had a right to change the Terms and Conditions of your mortgage; a right which was acquired by Bank X when they took over Bank Y. It seems to me that the documents you have supplied tend to support the bank's position.
21. You also state that in your view the actions of Bank X are not in line with the principles of contract law. It is not within my remit to make such judgements as only a court of law could determine what is or is not legal but, as explained above, I have looked at the contractual points which you have raised.
22. Having read your correspondence, it is clear to me that the most important element of your complaint is that Bank X made changes to your (and those of other consumers in the same position as you) Terms and Conditions without your express consent. All other concerns flow from this, therefore, I cannot take this element of your complaint any further.

My decision

23. I have upheld *Element one* of your complaint because in my view it does fall within the Complaints Scheme and the FCA should have investigated it. I recommended that the FCA apologises for the distress and inconvenience caused by the way your correspondence was handled, and offer you a payment of £50. The FCA has confirmed that they accept my recommendations, although you have indicated that you are not seeking a payment of this kind.
24. While the FCA was wrong to exclude your complaint, having reviewed the documents on file, I do not find that the steps the FCA took as the regulator of Bank X were unreasonable.

25. I am sorry this is not the outcome you were hoping for, but I hope my explanation demonstrates how I have reached my decision.

Antony Townsend
Complaints Commissioner

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