

20 January 2020

Final report by the Complaints Commissioner**Complaint number FCA00590***The complaint*

1. You complained to me on 28 November 2018 that the FCA failed to act on information you provided about bank X. I have carefully reviewed the papers sent to me by you and by the regulator.

What the complaint is about

2. The FCA investigated your complaints as follows:
 - a. *You allege the FCA failed to act on information you provided from 2014 regarding allegations of money laundering, precious metal price-rigging and fake audits at [bank X].*
 - b. *You believe [bank X] was either withholding or destroyed your trading bullion receipts and would like the FCA to intervene.*
 - c. *You made further allegations about [bank X] on the same issues in 2016. You are complaining that you did not receive a response to your email to Andrew Bailey, FCA CEO, of 21 September 2016.*

What the regulator decided

3. The FCA did not uphold your complaint. It said that:
 - a. The information you provided had carefully considered, and appropriate action had been taken in 2014. In 2016, the FCA, having considered the information you provided, together with other information, communicated to you their conclusion was to not to open a case specifically in relation to your concerns.

- b. It is not the role of the FCA to intervene in personal disputes and therefore it cannot be involved in helping you retrieve your personal bullion receipts from bank X.
- c. The FCA did not need to respond to your letter of 21 September 2016.

Why you are unhappy with the regulator's decision

- 4. You feel that as the FCA has not taken formal regulatory action against bank X, it has inadequately investigated bank X in response to the information you provided. You believe the National Crime Agency (NCA) may have exerted influence on the FCA in order to 'quash' the investigation, and/or the FCA is taking sides with a bank to cover up fraud. (Element one)
- 5. You believe the FCA ought to have determined whether your bullion receipts were destroyed, because if they were, and if it were the case other receipts were destroyed as well, you allege that would constitute 'money laundering issues'. (Element two)

Preliminary points

- 6. First, I should explain what I can and cannot investigate. My role is to review the actions or inactions of the FCA. I cannot investigate the actions of the NCA, bank X or other organisations.
- 7. I should also explain that it is not my role to interfere with the FCA's reasonable exercise of its discretion on regulatory issues. This means that there will be some issues where it decides to take no action at all because the risk or impact is very low; some where it may decide that informal action is sufficient to persuade regulated entities to come into compliance; and others where it decides to use its formal powers. There will often be scope for debate about whether the regulator has made the right call in a particular case, but the mere fact that I might have done something differently would not be a reason for me to uphold a complaint: the question which I have to address is whether the FCA's actions fall within the range of actions which a reasonable regulator could take.

My analysis

8. You had a bank account with bank X in Germany, which you used in transactions to purchase precious metals. In 2014 you became concerned that you might be losing money because you felt the bank had been manipulating the price of metal markets, and you wrote about your concerns to the FCA among others, including the bank's home regulator Bafin.
9. You continued to write to the FCA intermittently: the FCA decision provides a detailed account of your correspondence with it. You became increasingly frustrated with the FCA for not taking formal regulatory action against bank X, which resulted in your complaint against the FCA in 2019.
10. While there is a lot of background information relevant to your complaint and I appreciate that you have been through a long process with the FCA, it is not necessary for me to set this out in greater detail in order to make a decision about your complaint.

Element one

You are concerned about what you perceive to be a lack of action by the FCA with respect to bank X.

11. By way of background, the FCA uses a range of tools to carry out its responsibilities and meet its objectives. Formal regulatory action is just one of the tools available to the FCA. The FCA assessment of which tool to use includes considering whether using alternative tools to enforcement action is more appropriate taking into account the overall circumstances of the person or firm concerned and the wider context. The FCA's choice as to the use of a regulatory tool is therefore a question of how the FCA uses its resources effectively and efficiently and how it ensures that it is an effective regulator.
12. The fact that the FCA has not used formal regulatory action against a firm does not mean that it has taken no action to bring the firm into compliance.
13. As part of my investigation, I have reviewed the relevant records of FCA's supervision of bank X with respect to metal market manipulation. 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.

14. 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 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.
15. I have carefully studied the FCA's records. From those records I can say that: I am satisfied consideration was given to issues arising in the precious metal markets, and bank X among others. It is not my role to second-guess the FCA's regulatory judgements, but I consider that its actions were reasonable.
16. Your view is that the NCA influenced the FCA not to investigate Bank X and take regulatory action against it. I have not seen any evidence that the NCA or any other organisation or person tried to influence the FCA. I cannot look at the actions of the NCA under this scheme. However, if you feel the NCA has acted inappropriately in response to the information you provided to it, you should complain to it directly.
17. For the reasons above, I do not uphold your complaint.

Element Two

You believe the FCA ought to have determined if your bullion receipts were destroyed.

18. By way of background, the FCA has a statutory duty to secure an appropriate degree of protection for consumers. It does so by regulating the financial industry through the setting of standards which firms must meet, and by taking enforcement action where that is justified. It does not investigate individuals' complaints against the firms it regulates: that is the role of the FOS and/or the courts.

19. That does not mean that the FCA cannot investigate concerns arising from information about individual complaints, but it investigates those in the context of considering whether or not regulatory action is justified, rather than whether or not the individual requires redress. Any action the FCA may or may not take as a result of the information you provided would not lead to redress for you personally.
20. The fact that a bank may have done something which justifies redress for you personally does not automatically mean that regulatory action is justified – that would depend upon the scale of the problem, and the risk of recurrence.
21. In so far as the public interest is concerned, I am satisfied the FCA has acted reasonably with respect to issues arising in the precious metal markets, money laundering and bank X. Although the FCA's actions did not produce the results which you hoped for, I am satisfied that your information was not ignored.
22. In so far as the specific circumstances about your personal transactions which you allege the bank manipulated to your detriment, that is not a matter for this Scheme, and may be better dealt with through legal action.
23. For the reasons above, I cannot uphold your complaint.

My decision

24. I appreciate you are very unhappy with my decision not to uphold your complaint. However, the Complaints Scheme is not the vehicle to assist you with the retrieval of your bullion receipts from bank X in Germany. You also still consider that the FCA should take formal regulatory action against bank X. However, from the evidence before me, I remain satisfied that the FCA has acted reasonably with respect to bank X.
25. The FCA took over six months to review your complaint, for which it has apologised to you. I am afraid that yours is far from the only delayed FCA complaint case. I drew attention to the FCA's delays in my published annual report, laid before Parliament in July. Since then, the situation has deteriorated. I have written to the FCA Board to express my serious concerns, and have been given details of the steps they are taking – principally a significant increase in the

number of investigators – to deal with the problem. The current situation is wholly unsatisfactory, and I am continuing to monitor it.

Antony Townsend

Complaints Commissioner

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