

5 May 2020

Final report by the Complaints Commissioner**Complaint number FCA00602***The complaint*

1. On 12 March 2019, I issued a final report (<https://frccommissioner.org.uk/wp-content/uploads/FCA00422-FR-120319-for-publication.pdf>) on a complaint you made on behalf of your client. Although I did not uphold that complaint, I said that 'I hope that a way might be found to resolve the underlying complaint which is being investigated'.
2. From June 2019, you made periodic complaints to me, on behalf of your client, about the FCA's delays in considering the underlying complaint. I explained to you that the FCA had serious delays in its complaints handling, but asked you to await the FCA's response, although I know that you were understandably dissatisfied by this.
3. You finally received the FCA's decision on 28 February 2020, and on 11 March you asked me to investigate the complaint on behalf of your client, following the complaint's rejection by the FCA. There is a long history to this complaint, and associated complaints, to which I refer below.

What the complaint is about

4. The complaint arises from the FCA's role in overseeing the Interest Rate Hedging Products (IRHP) Redress Scheme which was administered by the banks. The FCA described your client's complaint in this way:

[Your client] is unhappy because the FCA's IRHP Supervision team has failed in its role to oversee the administration, by [Bank X], of the IRHP Redress Scheme (the Redress Scheme). Specifically, [your client] believes that the FCA has failed to make sure that [Bank X] understood

their obligations to make reasonable adjustments in his particular circumstances.

What the regulator decided

5. The FCA did not uphold the complaint. Its decision letter went into some detail to explain its reasons, but I would summarise them as follows:
 - a. The FCA's role was not to intervene in individual disputes between customers and banks;
 - b. However, the FCA had an oversight role to ensure that the IRHP arrangements were being followed;
 - c. Having reviewed the extensive correspondence, the FCA was satisfied that its IRHP Supervision Department had taken reasonable steps to address your client's concerns, and satisfy itself that Bank X was administering the IRHP Scheme properly.
6. The FCA did, however, apologise for the long delay in dealing with your client's complaint, and offered £300 as an ex gratia payment.

Why you are unhappy with the regulator's decision

7. In an email to the FCA after it had issued its decision letter, you said:
 - a. *You have taken nearly 2 years over this and ignored the basic issues at the heart of this. You mention that the Supervision team asked us what more the bank could do to make reasonable adjustments but you have ignored out original complaint issues in that the bank had refused to make any adjustments for Mr Lees for year before that and THAT is the reason we sent you a very comprehensive complaint letter. That was the period under [my client's] complaint NOT later on when the FCA became involved because quite clearly the bank thaen [sic] did try change its tack on this because they had clearly failed to allow [my client] to represent himself and they bank delayed so long.*
 - b. *Basically the bank did what they do best, they procrastinate and pull the wool over the FCAs eyes. It is well documented in Parliamentary Committees about how the FCA have failed.*

Preliminary points

8. It is important for me to stress that I can only consider the actions, or inactions, of the FCA in response to the information which you supplied to it.
9. I should also stress that – as the FCA explained in its decision letter – it is not its role to resolve individual complaints between customers and financial services firms. Its role is one of oversight, and it is against that role that I will consider this complaint.

Background

10. In order to consider this complaint, I have reviewed the extensive correspondence between you, the FCA, and Bank X between 24 May 2017 – when you sent the FCA a copy of your complaint to Bank X – and 22 June 2018, when the FCA finally agreed to investigate your complaint in its current form. It is not necessary for me to rehearse every bit of correspondence, but I will make reference to key items.
11. There were other, related, complaints which arose as a consequence of the handling of your client's original complaint. It is worth quoting the summary of the background to your client's complaint which I included in the published report dated 12 March 2019 (referred to in paragraph 1):
 - a. *Your client's interactions with the FCA started in April 2017 because he was dissatisfied with the way in which his bank was undertaking a review of an Interest Hedging Rate Product (IRHP) which it had sold him. (This was part of the general review process, overseen by the FCA, of IRHPs which had been mis-sold.) The complaint encompassed allegations of disability discrimination and concerns about the role of the bank and the independent reviewer.*
 - b. *Progress in the matter was impeded by a number of factors, including the inherent complexity of the matters being complained about and the fact that two teams within the FCA – the IRHP team and the Complaints Team – were looking at the matter. In October 2017 you complained about the way in which your client's complaint was being handled, and in January 2018 you received an apology for an element of mishandling.*

- c. *In January 2018 you approached my office and, following an exchange of correspondence, it was agreed that I would defer consideration of the matter of the FCA's handling of the complaint until you had received the outcome of the original complaint, which relates to the FCA's supervision of your client's bank.*
- d. *During 2018 there was protracted correspondence between you, the FCA's supervision department, and the FCA's Complaints Team. The substantive complaint was deferred pending further inquiries by the Supervision Department. On 16 May 2018 on your client's behalf you added a formal complaint of disability discrimination against the FCA: this was also deferred while the Supervision Department considered 'what, if any, further reasonable adjustments can be made'.*
- e. *The matter was reopened by the Complaints Team as two separate complaints in September. The first complaint – relating to the quality of the FCA's supervision of bank X, remains under investigation. The second – relating to disability discrimination, was concluded by the FCA in January 2019.....*

12. This report relates to the first complaint referred to in e. above.

Analysis

13. As referred to in the quotation in paragraph 11, there was an inherent complexity to your client's complaint. This resulted from a number of factors, including:

- a. There was complexity in the product which had been mis-sold;
- b. There was complexity in your client's business, and the interaction between that business and the mis-sold product;
- c. There was complexity in the Redress Scheme;
- d. There were many people involved: your client, his advisers, his local bank staff, the bank staff dealing with the Redress Scheme, the Independent Reviewer, the FCA's IRHP Supervision Department, the FCA's Complaints Team and, on occasions, my office.

14. On 24 May 2017 you sent the FCA's IRHP Team a copy of a complaint you had made the previous month to Bank X. The complaint was long and detailed, and covered events from 2009 when your client first complained to Bank X about the effect the IRHP product was having on his business. It encompassed complaints about the way in which Bank X was offering loans to your client, complaints about the way in which the IRHP Redress Scheme was being administered (delays, asking for unnecessary information, a legalistic approach), complaints about the change in Independent Reviewer, and complaints about disability discrimination. On 31 May you followed up with a direct request to the FCA for it to intervene with the bank.
15. The FCA analysed the material, and you were sent a response on 12 June 2017. In my view, this response was prompt and reasonably thorough – particularly given the fact that it was not the FCA's role to intervene in individual cases. It explained why it considered that the bank appeared to be operating in accordance with the rules of the Redress Scheme. In relation to the disability discrimination issue, the FCA said that it would consider any 'clear and specific evidence' of such discrimination which you might send.
16. On 1 July, you made a full response, essentially saying that the FCA had not addressed what you saw as serious issues of unfairness. On 4 July, the FCA decided to treat your response as a complaint, and the matter was referred to the Complaints Team.
17. It was at this point that the FCA's handling of the matter became more complex and, in my view, problematic. I consider that the FCA's intention was good – you had expressed some serious concerns about the FCA's approach, and the FCA rightly identified that you were complaining. However, what happened was that two parallel streams of work – one in the IRHP Team, the other in the Complaints Team – started to be undertaken. I understand that your view at the time was that you had not wished to make a complaint – rather, you wanted your questions answered.
18. In August the Complaints Team asked you some rather general questions in order to take the complaint forward, but you responded that you had already supplied the necessary details in the earlier correspondence. Simultaneously,

the IRHP Team was obtaining further information from the bank about meetings which had taken place between you, your client, and the bank.

19. On 18 October 2017, following discussions between the IRHP and the Complaints teams, you were sent an email by the Complaints Team explaining the position. The Complaints Team said 'The Supervision Team are keen to follow-up further on [your client's] case and ensure that [Bank X] taking all reasonable steps to accommodate his disabilities and make it as straight forward as possible for him to submit evidence in support of his consequential loss claim.'
20. The Complaints Team also offered you two options: either the Complaints Team could continue its investigation of the complaint 'in tandem with' the Supervision Team's inquiries; or it could suspend its investigation until those inquiries had been completed, at which point you and your client could decide whether or not you wished to reinstate the complaint. This was a sensible suggestion. I cannot find any record of your response to that suggestion.
21. There was further interaction between you, the FCA, and the bank, and on 4 December the FCA wrote to you setting out its proposals for making progress. It said that the FCA had contacted the bank, who had confirmed that they had agreed to a face-to-face meeting with you and your client to move the redress application forward.
22. You responded on 7 December to say that the FCA had failed to address the issues which you had raised, and that the independent reviewer had a conflict of interest.
23. On 8 February 2018, the Complaints Team wrote to you to say that it had deferred your complaint because you had not responded to the options set out in its email of 18 October.
24. On 20 February 2018 you were sent a letter from the Director of Retail Banking Supervision (who was responsible for the IRHP Team). That letter set out the 'final view' of the IRHP Team which had been pursuing your concerns. The key conclusions of that letter were:

- a. The FCA considered that the bank had made reasonable efforts to accommodate your client's disabilities, and it encouraged you to make any further requests directly to the bank;
 - b. The independent reviewer was competent, and was not conflicted;
 - c. The bank had made suggestions to your client about the kinds of evidence which he might supply in support of his claim for redress, but ultimately it was a matter for him what information to supply;
 - d. You could pursue your complaint about the FCA if you wished.
25. On 8 March 2018, you responded, asking for a formal response to your complaint so that you could then approach me. You received a response from the Complaints Team on 20 March saying that, because you had raised two new issues, the investigation of your original complaint continued to be deferred until the IRHP Team had looked into the two new matters. In my view, given the long history of this complaint, this further deferral was an error. You responded on 2 April, saying that you wanted the complaint dealt with.
26. On 10 April, the Supervision Team asked you two questions to clarify matters connected with your client's accounts, and at the same time asked the bank some questions. You responded on the same day objecting to the questions which you considered unnecessary.
27. On 12 April the Complaints Team wrote to you again, reiterating that your complaint remained on hold while Supervision were looking at the new queries. You responded the next day, saying that the complaint ought to be investigated immediately, given how long ago it had originally been lodged.
28. In May, the Supervision Team suggested a telephone call with you to explore the way forward, but you did not agree to this. You lodged a disability discrimination complaint which was dealt with separately by the FCA and by me, and is not considered in this report.
29. On 6 June, you received another letter from the Director of Retail Banking Supervision. This set out the FCA's position in relation to the two new matters which you had raised, confirmed that the FCA remained open to holding a meeting with you and your client, and explained that you could revive your

original complaint. There were further exchanges in which the FCA asked you what reasonable adjustments your client needed to attend a meeting.

30. On 22 June 2018 the Complaints Team wrote to you to say that the investigation of your original complaint (and the disability discrimination complaint) would now proceed.

31. You received the FCA's decision letter on the original complaint on 28 February 2020.

My conclusions

32. The question I have to address is whether the FCA's actions have been reasonable. In relation to the FCA's decision on your complaint, my views are as follows:

- a. From the outset, there was a mismatch in expectations. You were seeking an in-depth review of the bank's interactions with your client whereas – as the FCA explained on several occasions – it is not the FCA's role to get involved in individual disputes;
- b. As the summarised chronology above shows, the FCA's IRHP Team made considerable, and prompt, efforts to interact with you and the bank to explore the problems which had arisen in relation to your client's claim for IRHP Redress;
- c. The IRHP Team analysed material supplied by you and the bank. It concluded that the bank had made reasonable efforts to manage your client's claim and to make reasonable adjustments. In my view, the FCA's conclusion was a rational one on the basis of the information supplied by the bank;
- d. Notwithstanding that, the FCA made several attempts to engage with you and your client in an effort to move matters along. These efforts went well beyond the minimum required of a regulator;
- e. It is very unfortunate that your client's redress claim has taken so long, particularly in the light of your client's difficult circumstances, but I do not consider that the FCA has been at fault.

33. My views on the handling of your client's complaint, as distinct from the decision reached, are as follows:

- a. The complaint against the bank was a complex one with a long history, making it difficult to handle;
- b. The FCA's decision in July 2017 to classify your correspondence as a complaint was an understandable one, but it gave rise to dual working between the Complaints Team and the Supervision Team and dual correspondence with you;
- c. While the initial decision to defer consideration of the complaint while Supervision completed its work was sensible, it should have become apparent to the Complaints Team by March 2018 that repeated deferrals were not going to resolve matters. I recognise that it is easy to be wise in hindsight, but in my view your complaint could, and should, have been answered in March 2018, when the Complaints Team had all the material available;
- d. The fact that your client has had to wait until February 2020 for the FCA's decision is indefensible. The FCA has already acknowledged this, and has offered your client an ex gratia payment.

My decision

34. For the reasons I have given above, I do not uphold your client's complaint, although I have great sympathy for his predicament. You have made it clear in your response to my preliminary report that you consider that the FCA failed to produce an adequate response to your client's complaint, that my review has been a 'whitewash', and that I have failed to undertake a sufficiently detailed inquiry. I am sorry about that, but I do not agree.

35. The FCA's decision on this complaint was unnecessarily delayed for the best part of two years. Given your client's circumstances, and the fact that the complaint was supposed to have been treated as a priority, I **recommend** that the ex gratia payment be increased from £300 to £500. The FCA has accepted this recommendation.

Antony Townsend
Complaints Commissioner
5 May 2020