

4 March 2020

Final report by the Complaints Commissioner**Complaint number FCA00663***The complaint*

1. On 12 December 2019 you asked me to investigate your complaint about the FCA's oversight of the Financial Ombudsman Service (FOS).

What the complaint is about

2. The FCA summarised your complaint as follows:

You were involved in a dispute with your mortgage lender / bank, which you escalated to the Financial Ombudsman Service. The Financial Ombudsman Service could not consider your entire complaint because it was raised outside the time limit, however, they could consider the firm's handling of Mr X's Subject Access Request. The Financial Ombudsman Service upheld this element of the complaint and recommended a payment of £100. They did note that their decision on your complaint was unlikely to have any bearing on the outcome of your court case. You are dissatisfied with their response because you believe that they misunderstood your complaint and 'had a lack of knowledge and understanding' of MCOB 13. You stated that you have settled your dispute with the mortgage lender / bank, but you have not received satisfactory redress from the Financial Ombudsman Service for not 'applying appropriate regulatory obligations'.

You are complaining to the FCA on the basis that FSMA requires the FCA to take steps to ensure that the Financial Ombudsman Service is, at all times, capable of exercising its statutory functions.

What the regulator decided

3. The FCA excluded your complaint on the grounds that it relates to the actions or inactions of the Financial Ombudsman Service (paragraph 3.4 (e) of the Complaints Scheme).
4. The FCA nevertheless provided some generic information about the duties of the FCA Oversight Committee, which oversees the Financial Ombudsman Service on behalf of the FCA Board, and advised you to complain to the FOS independent assessor if you are not satisfied with the standard of service which you had received from the FOS.

Why you are unhappy with the regulator's decision

5. You say that 'Whilst the dispute with the bank has been settled, there has been no satisfactory redress from the FOS for not applying appropriate regulatory obligations. This avoidable mistake is indicative of systemic failure within the Ombudsman service'. (Element One)
6. You say that you never mentioned your husband's complaint about the 'Independent Financial Adviser' (IFA) X or indeed sent the FCA a copy of the FOS findings regarding the alleged fraudulent activity of X, and you do not know why the FCA decision letter mentions it. (Element Two)
7. You raise a further complaint that the FOS inadvertently sent your husband copies of emails and letters sent to them from the FCA regarding the alleged fraudulent activities of your IFA. You wish to know what the FCA has done about the alleged fraud the IFA committed and the bank that was involved. (Element Three).

My analysis

Element One

8. I have previously criticised the FCA for using paragraph 3.4.e to exclude complaints about its FOS oversight. That paragraph excludes complaints about the FOS, but it does not exclude complaints about the FCA's oversight of the FOS. Your complaint was clearly about the FCA's failure (in your view) to fulfil its duties under the Financial Services and Markets Act 2000 (FSMA), and I therefore **do not uphold the FCA decision to exclude your complaint.**

9. By way of background FSMA requires the FCA to have oversight responsibility for the Financial Ombudsman Service. However, this only extends to the FCA taking necessary steps to ensure that the Financial Ombudsman Service is, at all times, capable of fulfilling its functions under the Act. The FCA cannot interfere in the individual decisions of the FOS.
10. Responsibility for oversight of the day-to-day operations of the Financial Ombudsman Service is for its Board, not the FCA. Your complaint about how the FOS handled your complaint is excluded under paragraph 3.4 e) of this Scheme. You have explained to me that the FOS's decision against you would have left you homeless and it was only because you hired a lawyer who contacted the FCA's Chief Executive that you were able to save your home from repossession. You say that the FCA Chief Executive wrote to your bank's chief executive about your case, which you believe led to mediation between the bank and you, as a result of which your home was not repossessed. You consider that this points to systemic failure at the FOS.
11. Your complaint about the FCA's oversight of the FOS can be considered under the Scheme. However, this only extends to whether the Oversight Committee and the FCA Board are fulfilling their general duties. The fact that there was successful mediation in your case does not necessarily point to systemic failure by the FOS.
12. In a recent complaint case, which you can read at <https://frccommissioner.org.uk/wp-content/uploads/FCA00605-FR-for-publication-16-8-2019.pdf>, I suggested that the FCA develop a system under which both the Regulatory Affairs Team and Oversight Committee receive and review a regular summary of any complaints received about the FCA's oversight of the FOS, to inform their work. The FCA has confirmed that it has passed your complaint to the relevant areas. In my view, this is an appropriate response to the information which you have supplied.

Element Two

13. On 13 October 2019 you sent an email (with attachments) to the CEO of the FOS, and you copied it to Andrew Bailey, CEO of the FCA. On 2 December you confirmed to my office that you consider this email to be a formal complaint to

the FCA. This was sent by my office with your permission to the FCA Complaints Team, who reviewed the complaint. Although the body of the email addressed your concerns about the FOS's interpretation of MCOB 13 rules, the attachments in that email referred to the independent financial adviser X in detail. You provided this information to the FCA, who inadvertently may have conflated the two different disputes you and/or your husband had with the FOS. Whilst this is unfortunate, in my view it does not have a bearing on your complaint, as the actions and inactions of the FOS are excluded from the Scheme.

Element Three

14. You have raised a new matter with me which you did not raise with the FCA Complaints Team previously – although you did raise the matter with the Chief Executive in 2019, it was not dealt with as a complaint. Under the Complaints Scheme (see <http://frccommissioner.org.uk/complaints-scheme/> for further details), the FCA usually do their own investigation first, as that is usually the best way of resolving matters. For that reason, I suggest that you send your complaint to the FCA complaints Team. The FCA has agreed to investigate your complaint if you send it to it. Once the FCA has completed its review, you can ask me for an independent investigation if you are not satisfied with the FCA's decision.
15. If you think that there is a particular reason why I should consider your complaint without waiting for the FCA to investigate it, please explain why and I will consider it, though I should explain that it is rare for me to do my own investigation without waiting for the FCA to investigate first.

My decision

16. I consider that the FCA was wrong to exclude part of Element One from the Scheme, and I have suggested that it should pass your complaint about the FOS to the Regulatory Affairs Team and FCA Oversight Committee to inform their work on the oversight of the FOS – though as I have stressed, they will not be able to investigate your individual complaint. The FCA has accepted this.
17. I do not uphold Element Two of your complaint for the reasons given above.
18. I believe you should refer Element Three to the FCA for investigation in the first instance, unless you have good reason not to.

Antony Townsend
Complaints Commissioner
4 March 2020