

19 February 2020

**Final report by the Complaints Commissioner****Complaint number FCA00679***The complaint*

1. On 3 December 2019 you asked me to investigate your complaint against the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

*You have a mortgage with a regulated firm. You have been charged higher interest rates than your daughter and believe this is due to your age. You have made a complaint about this to the Financial Ombudsman Service [FOS].*

*Part One*

*You are unhappy that the FCA has done nothing about an alleged age discrimination against older borrowers in the mortgage industry.*

*Part Two*

*The FCA has failed to ensure the regulated firm [X] sent information in a timely manner to the Financial Ombudsman Service.*

*What the regulator decided*

3. The FCA did not uphold your complaints.
4. The FCA explained under Part One that it had not identified age discrimination in the mortgage market as a systemic issue. It had conducted a Mortgages and Market study in 2016 and recently announced that it had removed barriers that stop some mortgage customers from switching to a more affordable mortgage which benefits older consumers. However, ultimately it was a business decision

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for mortgage lenders to consider the various risks posed by a consumer when considering whether to offer a mortgage and what price to charge.

5. The FCA explained under Part Two that the FCA does not become involved in individual disputes between consumers and financial services providers. However, the information you had provided about firm X had been assessed by Supervision but you would not be told what action the FCA had taken, if any, due to confidentiality reasons.

*Why you are unhappy with the regulator's decision*

6. You believe the FCA ought to intervene in your continuing dispute with firm X at the Financial Services Ombudsman by asking the firm to provide information more expeditiously, as your case at the FOS has been going on for over eighteen months and you feel firm X is stalling. (Element One)
7. You feel the FCA is not doing enough to address the issue of age discrimination which you believe is prevalent in the UK mortgage market (Element Two)

*Preliminary point*

8. 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 firm X or the FOS.

*My analysis*

Element One

9. I appreciate you are frustrated because your case against firm X at the FOS is not being resolved as quickly as you would like, and that this may be affecting you. However, the FCA is correct in saying that it cannot become involved in your case.
10. 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 action where that is justified. It does not resolve individuals' complaints against the firms it regulates: that is the role of the FOS and/or the courts.

11. That does not mean that the FCA cannot investigate concerns arising from information about individual complaints, but it investigates those to decide 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.
12. As you were told, the FCA does not generally say what action has been taken in response to the information that it receives. This is 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. Under this policy, the FCA will not normally disclose the fact of continuing action without the agreement of the firm concerned. There is a good explanation of the statutory and FCA policy restrictions on information sharing at <https://www.fca.org.uk/freedom-information/information-we-can-share>. This means that, as you were told, there is no general right for members of the public to know the outcome of reports that they make.
13. However, having studied the FCA's records I can say that I am satisfied that the FCA has given the information you provided about firm X proper consideration. Like the FCA, I am also required to respect confidentiality. Unfortunately, I cannot say any more than that, and I recognise that that will be frustrating for you.

#### Element Two

14. As a result of my investigation of your complaint, the FCA has provided additional information, which I can share with you:

*The Mortgage Market Study [conducted by the FCA in 2016] did not specifically look at age discrimination. The Market Study aimed to consider:*

- *consumers' ability to make effective choices given the tools available;*
- and*

- *commercial arrangements between firms leading to possible conflicts of interest.*

*These topics were arrived at following consultation on the terms of reference, and in the light of previous FCA work. When agreeing the Market Study's terms of reference we were also midway through a project that ultimately resulted in the publication of Occasional Paper OP31 on an Ageing Population.*

*This work was intended to, amongst other things,:*

- *challenge financial exclusion;*
- *ensure firms proactively recognise the potential vulnerabilities associated with older consumers and act with appropriate levels of care; and*
- *encourage firms to consider the issues posed by demographic change, and take steps to mitigate potential risks or harm.*

*The Occasional Paper (OP) did not identify age discrimination. Instead, it noted that: "In response to the changing nature of our ageing society, lenders have increased or even removed upper age limits in the mortgage market. They have also introduced specialist teams to assist customers who have non-standard needs".*

*However, it also noted that there are risks that older consumers' financial services needs are not being fully met, resulting in exclusion, poor customer outcomes and potential harm. We committed in the OP to keep under review "how the financial services industry is adapting to meet the needs of older consumers".*

*..... it would be right to say that we have not identified evidence of age discrimination being a systemic issue in the mortgage market. We do though, as the OP mentioned above bears out, have a strong interest in how regulated markets are meeting the needs of older borrowers.*

*We have been considering the issues further in the context of the intergenerational issues discussed in DP19/02. We will be following up this on this work, which explored a number of mortgage market implications, in 2020.*

*My decision*

15. For these reasons, I am afraid that I do not uphold your complaints. I believe that the FCA has taken appropriate action in response to the information you provided about firm X. However, it cannot become involved in your individual case at the FOS for the reasons given above.
16. I believe that the FCA is monitoring the issue of how older consumers financial needs are being met. There may be a debate to be had about whether the FCA has gone far enough or fast enough in its actions with respect to this issue, but that is not a matter for me.

Antony Townsend  
Complaints Commissioner  
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