

16 March 2020

Final report by the Complaints Commissioner**Complaint number FCA00681***The complaint*

1. On 10 February 2020 you asked me to review a complaint about the FCA's oversight of bank X.

What the complaint is about

2. The FCA summarised your complaint as follows:

You raised a complaint with bank X as you believe they have failed to make appropriate changes to their servicing criteria to reflect commitments made by the United Nations relating to sustainability and health. You're unhappy that bank X failed to respond to your complaint within the 8-week timeframe and, in your view, failed to address the matters raised. You reported this to the FCA's Supervision Hub and believe the FCA should take action.

What the regulator decided

3. The FCA did not investigate your complaint. It said that

As your complaint relates to the actions/inactions of a regulated firm, it is not something that we are able to investigate under the Scheme as it would not be considered one of the FCA's relevant functions.

It is the role of the Financial Ombudsman Service (FOS) as an independent party to investigate individual disputes between consumers and regulated firms. The FCA cannot involve itself in such complaints.

4. The FCA also apologised that the Supervision Hub had not sent the information you provided to the relevant supervisory team, but said that this had now been done.

Why you are unhappy with the regulator's decision

5. You say that the FCA's response 'fails to take into account the Civil Service Code binding the conduct of every officer in public life, where public officers "must...carry out [their] fiduciary obligations responsibly (that is make sure public money [ie NHS funding by taxpayers] and other resources are used properly and efficiently)'"'. (Element One)
6. You are disappointed the FCA and Financial Ombudsman Service have chosen not to promote and enforce the commitments of the UK Government in sustainable development in the markets it oversees. (Element Two)
7. You say the FCA is evidently deficient in its fiduciary duty to ensure that public funds are used properly and efficiently as it is allowing its regulated banks to continue to finance the global hospitality sector unaffected by the invention of your company. (Element Three)

Preliminary point

8. My role is to review the actions (or inactions) of the FCA. I cannot review the actions of the FOS.

My analysis

9. The background to your complaint is that you would like bank X to support the use of your invention, which you consider would reduce demand on the NHS and support sustainability, but it has declined to do so. You complained to the bank but it took longer than eight weeks to answer your complaint, and you do not feel it addressed your complaint points.
10. Your complaint is that the bank's behaviour does not affect just you but others as well, and that the FCA is failing to ensure banks change their lending criteria in order to assist the UK Government in its commitment to the 2030 Agenda for Sustainable Development agreed by world leaders at the United Nations in 2015.
11. The FCA Supervision Hub, with whom you corresponded before the FCA complaints team, informed you that section 348 of the Financial Services and Markets Act 2000 prevented the FCA from telling you its stance on how firms are recalibrating their lending criteria in order to assist the UK Government's sustainability agenda with respect to the 2030 Agenda. It then told you that the

matter was outside the remit of the FCA. Finally, the FCA Complaints Team told you that your complaint was one that only the FOS could resolve, although you had already told the FCA the FOS had told you it was outside their jurisdiction and had sent you to the FCA; and you had made it clear to the FCA that your complaint was not simply about the dispute between the bank and you. The FCA also told you that the information you had provided would be sent to the relevant area, but you could not be told what action, if any, would be taken based on the information you have provided.

12. You have been given inconsistent messages in your dealings with the FCA. As I understand it, the position is as follows:
13. Your complaint is essentially a policy issue. You consider that the banks, which are regulated by the FCA, should be doing more to support organisations promoting sustainable products. In my view, that is more of a matter of Government policy than regulatory practice. The FCA's regulatory remit is set out in legislation (principally the Financial Services and Markets Act 2000 and the Financial Services Act 2012), and I doubt that those Acts give the FCA the powers to intervene in the lending markets in the way which you are suggesting. For that reason, my view is that the FCA was right not to uphold your complaint.
14. However, I do consider that - rather than mistakenly directing you towards the FOS – the FCA should have given you an explanation of its policy approach to questions of sustainability. In response to my preliminary report, the FCA provided its policy on climate change and green finance here: <https://www.fca.org.uk/publications/feedback-statements/fs19-6-climate-change-and-green-finance>. It is also unfortunate that the Supervision Hub failed to pass on your information to the supervisors of the bank – this is far from the first time that I have had to draw attention to such shortcomings.

My decision

15. For the reasons above, my view is that your complaint is excluded from the Scheme.. I appreciate you do not agree with my decision and that you have strong feelings about the corporate responsibility of financial service providers towards issues of sustainability. However, this Complaints Scheme is not the

mechanism through which to pursue your concerns, which are essentially matters of public policy. These are matters which you could raise with your MP.

Antony Townsend
Complaints Commissioner
16 March 2020