

3 June 2021

Final report by the Complaints Commissioner

Complaint number FCA00889

The complaint

1. On 3 February 2021 you asked me to investigate a complaint about the FCA. I have carefully reviewed the information sent to me by you and the FCA. My preliminary report was issued on 29 April 2021 and both you and the FCA have commented.

What the complaint is about

2. On 26 June 2020, you complained to the FCA after having been the victim of a scam involving a cloned website, following which you invested in April 2019. You said that your bank did not do enough to avoid this happening to you and that, although the FCA knew about the clone from 9 February 2019 and published a warning on 14 May 2019, it would not tell you how the scam had occurred or who knew what when. You said that, “as a member of the public, [I] believe I have a right to establish why I have been so badly let down.”

What the regulator decided

3. The FCA did not uphold your complaint. Its Decision Letter dated 22 January 2021 said that internal guidance and process had been followed but that further detailed information could not be provided to you because of the confidentiality regime under which the FCA operates.

Why you are unhappy with the regulator’s decision

4. You have told me that the FCA’s complaint response “fails to understand what I believe I am trying to achieve...” You are not looking for “compensation, a scapegoat or a detailed explanation of anything that would compromise the FCA’s integrity”. However, you consider that the FCA took too long to issue a warning about the cloned website and you would also like to know that the FCA

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is taking your comments seriously and has or will take appropriate action. regarding the other organisations involved.

Preliminary point

5. You have told me that although your complaint about your bank to the Financial Ombudsman Service (FOS) was successful, it took ten months to reach this outcome. This is not something that I can consider under this [Complaints Scheme](#) (the Scheme) because complaints about the actions, or inactions, of the FOS, are specifically excluded (see paragraph 3.4.e of the Scheme).

My analysis

6. You discovered in July 2019 that you had been the victim of a scam arising from a cloned website, following which you had invested in April 2019. You contacted the FCA, who were initially helpful and referred you to the FOS. However, you wanted the FCA to do more about the systemic issues, including what you considered to be a lack of care by your bank in enabling the transfer to the fraudster. After making a freedom of information request you were told by the FCA in October 2019 that it first knew about the cloned website in 9 February 2019 but it could not provide you with further information. The FCA had issued a clone warning on 14 May 2019.
7. I have reviewed the complaints investigation carried out by the FCA. I am satisfied that this was thorough and asked appropriate questions of the relevant internal teams. Like the FCA, I am required to respect confidentiality, which means that sometimes I cannot report fully on the confidential material to which I have access. However, 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, especially given that there is no general right for members of the public to know the outcome of reports that they make.

8. In your case, I am satisfied that the complaint response was correct: the FCA had followed its processes and the time between first notification of a potential clone and the publication of a warning was within its usual parameters. Very unfortunately, you invested during this period. I am pleased to hear that you eventually received a full refund of the funds you had invested.
9. I am also satisfied that the Complaints Team made sure that the information you had provided about your bank and what you view as its lack of care towards you around the scam was passed onto the relevant supervision team. However, I wish to make two points about this:
 - a. First, it is not clear to me from the FCA's file whether this information had already been passed onto the Supervision Department as a result of your contact with the FCA's Supervision Hub in July 2019. Although the complaints investigator asked about this, so far as I can see from the files provided, it was not resolved at the point your Decision Letter was issued.
 - b. Secondly, there is no reference to this matter in your Decision Letter, even though it formed part of your complaint and should have been addressed. I note that the FCA did not, as indicated in its acknowledgment of your complaint dated 3 July 2020, provide you with a summary of your complaint within four weeks. Instead, its summary was provided with the Decision Letter, and focussed only on the time taken to issue a warning about the cloned website. Although the Decision Letter asks you to inform the FCA if its understanding of your complaint was incorrect, in my view it is far too late to do so after the FCA has concluded its investigation. My office has drawn attention to this poor practice in previous complaint reports and my understanding was that it had been discontinued.
10. I asked the FCA to comment on points 9 (a) and (b) above in response to my preliminary report. With regard to point 9 (a), the FCA has now provided me with further information that confirms that the complaints investigator pursued this matter correctly. With regard to point 9 (b), the FCA accepts that, through an oversight, it did not provide you with a summary of your complaint for comment. It will be offering you an apology for this error. The FCA also says that its covering email to you explained that individual complaints about a firm cannot be

considered under this Complaints Scheme and that your information had been passed to the Supervision Hub. Although I accept this, the point is that your complaint made clear that you were raising this issue with the FCA as a *regulatory* matter. This falls within the Scheme, and the FCA's complaint response should have addressed it. The FCA has told me that it has now implemented a mandatory letter setting out a summary of the complaint for every new complaint which can be investigated under the Scheme.

My decision

11. I have not upheld your complaint for the reasons stated but I consider that the FCA could have provided you with further reassurance within its complaint response about the steps it has taken to pass your concerns about your bank to the relevant supervision team.

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Complaints Commissioner

3 June 2021