

5 August 2021

Final report by the Complaints Commissioner

Complaint number FCA00902

The complaint

1. The FCA summarised your complaint as follows:

You are unhappy with the way the FCA has addressed concerns you raised in relation to Bank X, whom you have stated committed serious offences with a bond you held with Bank Y.

What the regulator decided

2. The FCA did not uphold your complaint.

Why you are unhappy with the regulator's decision

3. You have told me that you are unhappy with the FCA's investigation into the 'systematic conduct of Bank X and DWP Crown Prosecution Service...'. You think that it is not acceptable that any action against the DWP and Bank X should be at the '...secret discretion of the FCA or dismissed due to the passage of time'.
4. You believe:

the Financial Conduct Authority is able under Article 3 to do a proper investigation and if necessary punitive measures. See extract from Commissioner of Police of the Metropolis vs DSD and others SC 2018¹ - the John Worboys case ...Lord Kerr and Lady Hale presiding...see Section 1r05..."the court considers.....".
5. You have requested that although it is not within the jurisdiction of the FCA that it should require that:

¹ *Commissioner of Police for Metropolis v DSD & another [2018] UKSC11*
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Bank X contact the Magistrates with the CPS and explain to the Justices Clerk that the data on Mr A and Mrs B joint pension bond provision held with Bank Y, had been falsely represented to assist a prosecution case to the disadvantage of the defendant.

My analysis

6. Your complaint originated from a dispute with Bank X, that you state you had no relationship with, when they provided the DWP with account details in 2003. You state that your pension investment bond was held by Bank Y and the Bank X falsely represented these to the DWP. The DWP used this information in a case that was considered by the Courts in 2004 and as a result you were forced to pay £... which you do not believe the DWP were entitled to.
7. I want to note that in your response to my preliminary report you set out a statement about the events that led to your complaint to the FCA and requested that the statement be published in my final report. For the purpose of my report I have not published the statement because it relates to the events that led up to your complaint to the FCA and is not about the actions or inactions of the FCA.
8. I should explain that the Complaints Scheme is concerned with the actions or inactions of the FCA. It cannot deal with complaints against banks, individual firms or against government departments, nor is it a redress service for individual consumer complaints. The Financial Services and Markets Act 2000 explicitly provides for a consumer redress service separated from the FCA.
9. The FCA does have 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 enforcement action where that is justified. It does not investigate individuals' complaints against the firms it regulates, that is the role of the Financial Ombudsman Service (FOS).
10. That does not mean that the FCA cannot investigate concerns arising from information about individual complaints, but it investigates for the purpose of considering 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 could not lead to redress for you personally.

11. It is on this basis that the Complaints Scheme cannot provide, the remedy set out in your email to me dated 14 March 2021 and set out in paragraph 5 above. This is not remedy that can be provided under this Complaints Scheme as it does not relate to the actions or inactions of the FCA and the Complaints Scheme is not a redress service for individual complaints.
12. I note that in your correspondence to me you set out that you think that the FCA is able under Article 3 of the European Convention on Human Rights 'to do a proper investigation and if necessary punitive measures'. As set out above, the FCA does not investigate individuals' complaints against the firms it regulates. This is the role of the FOS, so any investigations in relation to your individual complaint should be directed to them.
13. From your correspondence to the FCA, I understand you have already approached the FOS and the Information Commissioner's Office (ICO). I am sorry if neither the FOS nor the ICO have met your expectations, but that is not the fault of the FCA, and the Complaints Scheme is not an alternative to these bodies.
14. The main crux of your complaint is the FCA have failed to investigate your complaint and has hidden behind its secret discretionary powers.
15. The regulator welcomes information from people who report concerns. However, 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.

16. Like the FCA, I am required to respect confidentiality. This 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 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. On occasions, I have persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible. I shall continue to pursue this matter with the FCA.
17. In your case, having studied the FCA's records I can say that I am satisfied that the FCA has not ignored the information which you have provided it, and has passed it onto both the FCA intelligence team and the supervision hub. The FCA has advised you that it logged the information so that the wider organisation is aware of the alleged conduct of the Bank X, and that the information, potentially, could better enable the FCA to supervise the conduct of Bank X.
18. I am also satisfied on balance that the FCA's complaint response, that it would not inform you of any action to be taken, or not taken, in response to the information you provided about Bank X, was reasonable in the circumstances. I recognise that there's a difficult balance to be struck between protecting confidential information to enable the FCA to do their job and encouraging potential informants, and the need to give consumers sufficient information and confidence to judge whether or not the regulatory system is operating effectively.
19. I note that in your correspondence to me, you indicated that your complaint should not be dismissed due to the passage of time. I have read the FCA's decision letter and it has not dismissed your complaint due to the passage of time.
20. In your response to my Preliminary review, you clarified that it was the FOS who was using the FCA Rules 'to block complaints no matter how serious using discretion and time barring'. This relates to the actions of the FOS and it is not

something that I am able to investigate under this Complaints Scheme. There is an independent assessor who can review complaints about the level of service that FOS provides to complainants like yourself. The email address for the Independent assessor for FOS is independent.assessor@financial-ombudsman.org.uk.

My decision

21. I am sorry as I know that this decision will disappoint you but for the reasons set out above, I agree with the FCA's decision not to uphold your complaint.

Amerdeep Somal
Complaints Commissioner
5 August 2021