



Complaints Commissioner

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Dear Complainant,

Complaint against the Financial Services Authority (FSA)

Reference Number: GE-L01328

I write with reference to your correspondence with my office in relation to your further complaint against the Financial Services Authority (FSA).

At this stage, I think it would be worth explaining my role and powers. I am charged, under Paragraph 7 of Schedule 1 of the Financial Services and Markets Act 2000 (the Act), with the task of investigating those complaints made about the way the FSA has itself carried out its own investigation of a complaint that falls within the complaints scheme. The investigations I undertake are conducted under the rules of the Complaints Scheme (Complaints against the FSA - known as COAF). I have no power to enforce any decision or action upon the FSA. My power is limited to setting out my position on a complaint based on its merits and then, if I deem it necessary, I can make recommendations to the FSA. Such recommendations are not binding on the FSA and the FSA is at liberty not to accept them. It rarely declines to do so however. Full details of Complaint Scheme can be found on the internet at the following website; <http://fsahandbook.info/FSA/html/handbook/COAF>.

Your Complaint

1. You believe that information contained on the FSA's website pertaining to cheque clearing times is incorrect and misleading. You hold this view as the FSA's website implies that banks must comply with the FSA's guidelines which the FSA has now confirmed to you is not the case.
2. Although you have complained to the FSA, and the FSA has considered your complaint on two occasions resulting in it upholding your complaint), you still feel that information on the FSA's website remains potentially incorrect and misleading.
3. Specifically you have highlighted that there are discrepancies between two of the FSA's webpages and one of its publications (a booklet entitled "*Bank accounts know your rights*"). Specifically you are unhappy that the FSA, by using the words such as "*will*" and "*can*", gives consumers the impression that banks and building societies must adhere to the cheque clearance timescales the FSA sets. You also add that the fact that, on a different webpage, the FSA uses the word "*should*", suggests that banks and building societies do not have to adhere to the cheque clearance timescales the FSA sets out, and therefore creates ambiguity for consumers.

4. You are disappointed that, although you have raised your concerns with the FSA, and it has taken some action, it has only addressed part of the problem. At the time of your referral to my office, you say the FSA had failed to address fully all of the issues you had raised and clarify to consumers that the information relating to cheque clearance times set out on the FSA's website and in its publications are not rules to which banks and building societies must adhere. You do not feel that the FSA makes it sufficiently clear to consumers that the time scales shown are simply recommendations relating to the time these institutions should take to credit funds to a consumer's bank account and when interest should start to be paid.

My Position

I have now had the opportunity to consider the issues you have raised and to review the FSA's investigation file. Following an examination of this I also asked the FSA to provide me with some additional information surrounding its decision.

Firstly I would say that it is unfortunate that the FSA did not address all of the issues you have raised when it originally considered your complaint. Although it is clear that the FSA noted and took action in relation to your concerns, it is extremely disappointing that the matter had to be referred back to the FSA and that, despite considering your concerns on two occasions, it did not identify and correct all of the contradictory material which you referred to in your correspondence. This is something which I will return to at the end of this, my Preliminary Decision, under the heading of "*Recommendations*".

Following a review of the issues you raised, specifically the contradictions which I have referred to above, I asked the FSA to provide me with its comments. I understand that whilst doing this the FSA reviewed the webpages concerned and accepts that there were contradictions which potentially made the recommended cheque clearance time scales unclear to consumers. As a result of this I understand that the FSA has already taken steps to ensure that the webpages concerned have been altered to reflect the fact that the cheque clearance time scales shown on the webpages are simply recommendations and are not requirements the FSA imposes upon the industry.

To do this, I understand that the FSA has altered the webpage concerned to indicate that banks and building societies "*should*" do something, rather than "*will*" or "*must*" do something. I believe that this change will clarify the position to consumers that this is general guidance. I welcome the fact that the FSA has now done this.

However, despite the FSA addressing your concerns relating to the information contained in the tables on the webpages, it does not appear that it has made the corresponding changes to the information contained on page 13 of its publication entitled "*Bank accounts know your rights*". I have set out the information contained in publication below:

"When you deposit a cheque into a current account, think 2-4-6. If you deposit a cheque into a savings account, think 2-6-6.

2. *Interest should be paid after 2 working days.*
4. *You can withdraw the money from a current account after 4 working days.*
6. *You can withdraw the money from a savings account after 6 working days (depending on the terms of the account). For current accounts and savings accounts, the money will then be guaranteed and your bank cannot take the amount of the cheque out of your account even if it is returned unpaid, unless you have acted fraudulently".*

In my opinion, the use of the word “*can*” in the second and third points (under think 4 and think 6) of this publication could mistakenly leave consumers with the view that under FSA rules financial institutions *must* (my emphasis) ensure that the proceeds from deposited cheques are available for withdraw after either four or six days (depending upon the type of account). As such, I am recommending that the FSA should also arrange for this publication to be altered to eliminate the contradiction, to make it consistent with the information contained on the webpages which it has already amended, and to reflect the fact that the cheque clearance time scales it shows are simply recommendations to the industry and provided to consumers for guidance purposes (and should not be interpreted by consumers to represent rules to which the banks and building societies must adhere).

I also note that you are disappointed with the manner in which the FSA addressed your previous concerns. Specifically, in your opinion, you do not believe that the link the FSA has included (by way of a foot note) is sufficient to ensure that consumers are aware that the information shown on the FSA’s website is simply guidance (or recommended cheque clearance timescales) and not rules (specifically fixing the cheque clearance timescales) by which the industry must operate.

Whilst I can understand your concerns, about the manner in which the FSA presents this clarification, ultimately the FSA has a discretion on how it presents information on its websites. When assessing how information is provided to consumers, the FSA has to remember that its statutory obligations include consumer protection and that it also has to be mindful of how it is funded (i.e. through the industry which ultimately falls on consumers) and as a result it has to be economic with how it uses its (financial and human) resources. Given that the FSA has indicated to me that it believes that it can clarify that the time scales shown are simply recommendations and that it can clarify this by including the link to an existing webpage (which allows it to fulfil its statutory obligations without incurring significant costs) there is insufficient, if any, evidence provided by you to indicate that the steps taken by the FSA in this regard are inappropriate.

I would also add that the changes which the FSA has already made to the webpages (together with those which have I recommended that it should also make) will remove any ambiguity. I would also add that, in my opinion, the changes, by removing the ambiguity, will, in most cases, make it unnecessary to refer to the link which confirms that the timescales the FSA has set out are purely for guidance purposes.

Conclusion

It is clear that from the correspondence that I have seen that you have highlighted failings in the way the FSA has provided information to consumers. It is also clear that as a result of your complaint the FSA has taken steps to correct the information shown on its website which could be regarded as either incorrect or misleading.

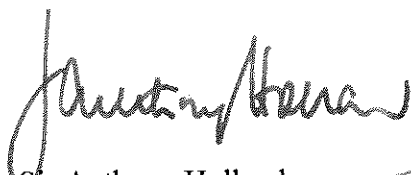
It is also clear that the FSA could, and indeed should, have considered all of the issues you raised when you first raised your concerns with it. It is disappointing that the FSA has reviewed the matter on three occasions and, at the time of my Preliminary Decision, is still to take action to address an ambiguity which exists between its website and a publication it has issued.

As such I am proposing to uphold your complaint and make the following recommendations to the FSA.

Recommendations

1. The FSA should apologise for failing to address all of the issues you raised with it and for its failure to correct all of the documents you highlighted to it which could produce a feeling of ambiguity and inconsistency for consumers.
2. To make an *ex-gratia* payment of £50.00 to you for the manner in which it dealt with your complaint, namely failing to take steps to address in full all of the potential ambiguities you raised, despite you pointing out the publications and reviewing the matter on three separate occasions. I appreciate that the amount may seem small, but in making any financial award to a complainant I have to pay regard to the nature of the FSA's actions both at the time and since and the manner in which the FSA is funded.
3. To review the publication entitled "*Bank accounts know your rights*" and to make amendments to the second and third points (namely think 4 and think 6) to reflect the changes which the FSA has made to the webpages.

Yours sincerely,



Sir Anthony Holland
Complaints Commissioner