

12 April 2024

Final report by the Complaints Commissioner**Complaint number 202300488***The complaint*

1. On 28 September 2023, you asked me to review a complaint about the FCA. On 26 February 2024, I sent my preliminary report to you and the FCA and you were both given the opportunity to provide any comments.

What the complaint is about

2. The FCA set out in its decision letter to you dated 27 September 2023, that your complaint was that you were unhappy with a regulated firm (Bank X) as they are outsourcing contact centre staff in India. You say that the staff in India are not being paid UK minimum wage, and that the firm are able to avoid income tax and national insurance contributions.

What the regulator decided

3. The FCA concluded that it could not investigate your complaint under the Complaint Scheme. It set out that your complaint relates to the action of a regulated firm. That is not something that the FCA are able to investigate under the Complaint Scheme because your complaint is not arising in connection with the exercise of the FCA's relevant function. The FCA does not investigate individual complaints made about firms, as that is the role of the Financial Ombudsman Service.
4. In addition to this the FCA set out the detail of paragraph 3.2 of the Complaint Scheme and said that it was not clear how you have been directly affected by the FCA's actions, or the inconvenience, distress or loss that you allege has been caused to you as a consequence.

Why you are unhappy with the regulator's decision

5. You advised the FCA that you were unhappy with its decision letter and asked it to pass your complaint to me for consideration.

Background

6. In 2020 you took out a Coronavirus business bank loan with Bank X.
7. You have stated that you missed a number of loan repayments due to ill health. You were contacted weekly by Bank X staff to assist you with getting back on track with your loan.
8. You questioned the staff from Bank X about, where they were located, where their customer base was located, whether they were under UK or Indian contract law and what they were being paid.
9. You complained to the FCA on 4 July 2023 about your concerns about Bank X as an employer and followed up with a further email on 15 August 2023.
10. The FCA provided you with its decision letter on 27 September 2023 and informed you that your complaint was not a complaint that could be investigated under the Complaint Scheme.
11. On 28 September 2023, you asked me to review a complaint about the FCA.

My analysis

12. I have reviewed your complaint to the FCA in which you have raised some serious concerns about Bank X, and you have clearly carried out significant research into this matter. Whilst it is clear that you feel very strongly about these issues, I consider that the position set out by the FCA in its decision letter is correct. The matters you have raised relate to the actions of an individual firm and not the actions of the FCA conducting their relevant functions. As such your complaint is not a complaint that can be investigated under the Complaints Scheme.
13. Whilst I have said that I do agree that your complaint cannot be investigated under the Complaints Scheme it should be noted that this does not mean that the FCA cannot investigate concerns arising from information about individual complaints, but it investigates those in the context 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 as a result of the information you provided could not lead to redress for you personally.

14. The decision letter set out that the concerns you had raised about Bank X have been passed onto the relevant supervisory area for their consideration. I consider that this is the appropriate action for the FCA as a regulator of Bank X to take with the information that you provided to it.

15. In relation to paragraph 3.2 of the Complaint Scheme, it sets out that a complaint:

“can be made by anyone who is directly affected by the way in which the regulators have carried out their functions, or anyone acting directly on such a person’s behalf provided that the complaint meets the requirements of the Scheme. To be eligible to make a complaint under the Scheme, a person must be seeking a remedy (which for this purpose may include an apology) in respect of some inconvenience, distress or loss which the person has suffered as a result of being directly affected by the regulators’ action or inaction”.

16. I appreciate that you feel very strongly about the matters you have raised about Bank X with the FCA, but I do agree with the FCA that it is not clear how you have been directly affected by the matters that you have raised or what inconvenience, distress, or loss you allege has been caused to you as a consequence of the matters you have complained about.

17. My understanding is that you are raising these concerns as a customer of Bank X, and it is my understanding that you are not an employee of Bank X. As a customer it does not appear that you have been directly affected by FCA’s regulation of Bank X, and in regard to the actions of the staff of Bank X, you in fact stated that the staff of Bank X were polite, respectful, helpful, and generally excellent.

18. I have seen in your correspondence with the FCA that you have set out your belief that there are wider indirect consequences relating to reduced income tax and national insurance payments being paid by Bank X resulting in less money

being available for the government to spend on the public sector and that in turn that this results in there being reduced funding for the NHS which is a service that you use and have experienced inconvenience with as a result of recent strikes. Whilst I understand that you feel that you have been left inconvenienced, I do not consider that these can be viewed as directly affecting to you.

19. In your response to the FCA's decision letter sent on 28 September 2023, you relayed details of an email you had sent to Julie Marson MP about Bank X. You have set out that you have concerns that the allegations you have raised relate to alleged breaches of the Employments Rights Act which you have set out are silent on whether its provisions apply to individuals outside of the UK and you consider that this is the exact reason that Bank X is exploiting overseas staff. You have also set out that you consider that there are breaches to the Modern Slavery Act 2015, and you wish for the FCA to investigate and hold Bank X accountable for these breaches.
20. I am pleased to see that you have raised your concerns with your MP about the legal and moral position of firms engaging outsourced contact centres in overseas countries such as India. The concerns you have raised relate directly to the employment legislation which is not within the remit of the Complaint Scheme. Raising these matters with a member of parliament is a more appropriate avenue to direct these concerns to as a concerned individual as your MP is not constrained by the remit of the Complaint Scheme and will be able to consider your concerns more holistically and assist you to pursue your concerns through more appropriate channels. I hope that you are able to achieve some assistance through this approach.
21. Finally, whilst I have agreed with the FCA that your complaint is not a complaint that falls within the remit of the Complaints Scheme because it relates to the actions of Bank X (and not the FCA) and you do not appear to be directly affected, I do feel I must **criticise** the FCA's decision letter for not attempting to provide additional explanation as to whether or not the specific issues you have raised to it are within its remit to consider in a wider context outside of an individual complaint by the relevant supervisory area who your information was passed onto.

22. Previous Complaints Commissioners have raised concerns about the FCA excluding complaints on the basis that do not relate to the FCA's relevant function and simply providing links to the legislative provisions where these functions are set out. This does not provide you as a complainant with any further understanding about whether the FCA or someone else is better placed to consider the issues you have raised and it is understandable that you are left feeling that the issues you have raised have not been addressed.
23. If the matters that you have raised in relation to outsourcing, employment and taxation legislation are wholly outside the FCA's remit as the regulator of Bank X and it does not have powers to investigate such issues, I would like to see the FCA explicitly set this out and signpost you to alternative avenues where you might take your concerns. If in fact the issues raised are issues that the FCA can consider in some way and could lead to potential supervisory or enforcement action being taken by the FCA against Bank X, a high level summary of potential work the FCA can take in the relevant areas would have provided you with some assurance that you had relayed the information to the relevant place.
24. Purely excluding your complaint as falling outside the Complaint Scheme leaves you in exactly the same position you were in when you came to the FCA, with no additional information or clear understanding whether you should take your concerns elsewhere. If the decision letter had set out such information you may have felt your complaint had been given relevant consideration and not just excluded and closed.
25. In its response to my preliminary report, the FCA acknowledged the criticism I had made in paragraphs 21 to 24 above. I welcome this and note that the FCA set out in its response that it could have been clearer in its response to your complaint and that it set its view of the alternative avenues where you could potentially pursue your concerns. These were as follows:

“In relation to the allegations around “employer income tax and national insurance contributions” evasion, we consider Mr Y may wish to report this to HMRC. Insofar as these allegations relate to non-compliance with UK laws, we believe this is a matter that

should be decided in a court of law. However, we believe HMRC (<https://www.gov.uk/contact-hmrc>) would be best placed to determine whether this should be referred to a relevant law enforcement agency.

- In relation to the allegations that Bank X is not complying with UK employment law, we consider that Mr Y may wish to consult Acas (<https://www.acas.org.uk/about-us>) or raise the matter with his MP.”

26. I am also pleased to note that the FCA set out in its response to my preliminary report, that in view of its failure to mention the above information to you in its decision letter it would like to issue an apology letter following the issuance of this, my final report.

My decision

27. For the reasons set out above, I agree with the FCA’s decision not to investigate your complaint under the Complaint Scheme.

28. In particular:

a) I agree that your complaint is not a complaint that can be considered under the Complaints Scheme. This is because your complaint relates to the actions of Bank X and not the FCA.

b) I also agree with the FCA’s position that you have not established that you have been directly affected by the matters that you have raised or what inconvenience, distress, or loss you allege has been caused to you as a consequence.

29. Accordingly, I find that that your complaint is not one that I can consider under the Complaint Scheme.

30. This is my final report about your complaint.

Rachel Kent
Complaints Commissioner
12 April 2024