

15 April 2024

Final report by the Complaints Commissioner**Complaint number 202300740***The complaint*

1. You complained to me on 21 January 2024 about an FCA decision to exclude your complaint about a decision made by the Financial Ombudsman Service (FOS).
2. I agree the FCA is right to exclude your original complaint to them. Expressly excluded from the Complaints Scheme, under paragraph 3.4(e), are any complaints about the actions, or inactions, of the Financial Ombudsman Service, the Financial Services Compensation Scheme or the Money Advice Service.
3. In your response to my preliminary report, however, you explained that you had different concerns and I have dealt with these in paragraph 10 onwards.

Your complaint to the FCA

4. The FCA said 'you are unhappy with a decision from the Financial Ombudsman Service. To resolve your complaint, you are seeking a personal response from each board member, and would like them to re-examine the complaint'.

What the regulator decided

5. The FCA explained that

"The Complaints Scheme covers the investigation of complaints that arise in connection with the exercise of, or failure to exercise, any of the FCA's relevant functions.

The 'relevant functions' of the FCA are defined in the Complaints Scheme and Part 6 of the Financial Services Act 2012, and broadly speaking cover

the FCA's regulatory functions that arise under the Financial Services and Markets Act 2000, or such other functions as may be ordered by HM Treasury.

Expressly excluded from the definition of 'relevant functions', under 3.4(e) of the Scheme, are any complaints about the actions, or inactions, of the Financial Ombudsman Service, the Financial Services Compensation Scheme or the Money Advice Service.

Your complaint relates to the actions of the Financial Ombudsman Service, and is excluded from being considered under the Complaints Scheme, as set out in paragraph 2.9(d) of the Scheme".

Why you are unhappy with the regulator's decision

6. You have said to me *"these relevant functions are in my view a nonsense and I would argue a most convenient way of avoiding answering my letter."*

My analysis

7. The FCA interpreted your complaint as being solely a complaint about the decision made by the FOS. As a result, the FCA, in its decision letter dated 9th January 2024, declined to investigate the complaint on the basis that it is outside the scope of the Complaints Scheme.
8. The remit of the Complaints Scheme has been set by Parliament. Part 6 of the Financial Services and Markets Act 2012 (as amended) provides that the Scheme is limited to the "relevant functions" of the FCA, as set out in the decision letter. As set out above, 'relevant functions' excludes decisions by the FOS.
9. I note that you have described the concept of "relevant functions" as *"nonsense"* and *"a most convenient way out of avoiding answering my letter."* The "relevant functions" are however the only functions of the FCA which both the FCA and my office are able to consider complaints about. These are set by Parliament and not the FCA. On this basis the FCA were correct in not upholding your complaint about a FOS decision.
10. In response to my preliminary report, however, you sent me a letter you received from Michale Gove, the Secretary of State for Levelling up, Housing

and Communities in which he advises you of your option to complain to the FCA. It is correct (in certain circumstances) that you can complain to the FCA about regulated firms.

11. My understanding of your complaint now, especially in light of the submission of your comments and additional documentation, is that whilst you feel disappointed with the outcome of your FOS case, in your view, there are additional points which have wider public interest implications and which have not been considered. You would like the FCA to consider the points (see below).
12. You are asking the FCA to consider the public interest angle, namely the negative effect of the “building safety crisis” (which unfolded following the unfortunate Grenfell fire of June 2017, claiming 72 lives) on the current value of, re-mortgageability and sale of flats which have been identified to either have been built in breach of regulations or with flammable materials, posing a risk to life. It has been well publicised that tens of thousands of flats have become un-mortgageable, and therefore unsellable to anyone other than a cash buyer at a significant loss due to not having an EWS1 (External Wall Safety) certificate or not have been remediated yet.
13. You allege this is leading to severe consumer detriment and defaults/ distressed sales occurring and affecting the value of the underlying securities (mortgaged flats) of the banks, thus potentially affecting the market itself. You further contend that the current situation is leaving many in a perilous position and is giving rise to consumer harm. You believe the FCA has an obligation to consider the situation as part of its objectives of “consumer protection” and “ensuring market integrity” and you ask the FCA to *“show some leadership and authority by examining the entire case”*.
14. In light of the above, I invite the FCA to consider the points you are raising about the potential consumer detriment and risks to the market.
15. It may also not be possible for the FCA to provide you with any information about the result of its considerations because of the confidentiality restrictions put in place by s348 of the Financial Services and Markets Act 2000 and/ or its

internal policies. These restrictions also apply to my office, but I do invite the FCA to provide you with feedback, if possible.

My decision

16. I am sorry to hear about the difficult personal circumstances you find yourself in and I am sorry disappoint you, however, I agree with the FCA's decision to exclude your complaint as related to the outcome of the FOS complaint.
17. However, as it is now clear to me that the points you were raising are wider ones, I also invite the FCA to review the information you provided and the concerns you raised about consumer detriment and market integrity in relation to mortgaged flats affected by the building safety crisis.

Rachel Kent

Complaints Commissioner

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