

16 March 2023

**Final report by the Complaints Commissioner****Complaint number 202201662***What the complaint is about*

1. The FCA set out in its decision letter dated 18 November 2022 that you are unhappy with FCA conduct in relation to an alleged lack of intervention which you say has resulted in a five year delay and an enquiry which has a restricted remit.
2. The FCA set out that to resolve your complaint you are seeking a new enquiry with no restriction of remit.

*What the regulator decided*

3. The FCA decided that your complaint was not a complaint that it could look at under paragraph 3.3 of the Complaint Scheme which sets out that:  
“complaints should be made within 12 months of the date on which the complainant first became aware of the circumstances giving rise to the complaint. Complaints made later than this will be investigated under the Scheme only if the complainant can show reasonable grounds for the delay”.
4. The FCA’s decision letter set out that ‘the information you provided in your complaint, the circumstances giving rise to this complaint would appear to be matters you were first aware of around June 2021 yet this complaint was not submitted until more than 12 months later’.

*Why you are unhappy with the regulator’s decision*

5. You emailed you complaint to me on 28 November 2022 in which you set out that you believe that the FCA should not have time barred your complaint in its

decision letter dated 18 November 2022 and that you have provided reasonable grounds for the delay in making your complaint to the FCA. (Element One)

6. You have waited five years for the Dame Linda Dobbs Review, but you consider that the ongoing delay of that review corroborates your complaint that the FCA should have intervened in 2017 and commissioned its own review (Element Two).

*Preliminary points (if any)*

7. I can accept complaints which are out of time if I feel there is good justification. That being said it is not practical for the Complaints Scheme to have an indefinite open time frame for lodging complaints. That is why the Scheme requires complainants to lodge a complaint within twelve months of becoming aware of the circumstances giving rise to their complaint. This ensures that an investigation into the complaint can be conducted at the time of, or close to the originating events of a complaint, and people within the organisation can be located to provide first hand knowledge about the matters and locate and obtain relevant documentation. It also ensures that steps can be taken to address current issues and steps can be taken to resolve and improve issues at that point in time, rather than historical issues where the regulator may have already introduced changes to regulation and processes that are at question in the complaint. The Complaints Scheme does not have unlimited resources and whilst it is important to understand where there have potentially been historical issues and take lessons from them, this must be balanced with the available resources. However, I can assure you that I always carefully consider cases where Paragraph 3.3 has been used to ensure that it has been used appropriately and not being used to avoid addressing complaints, and I have done so in your case.
8. It should be noted that the initial events that your complaint stem from date back to 2008. The events relating to HBOS have been highly publicised with previous reviews and reports having already been published. There is an ongoing review, the Dame Linda Dobbs Review, that has been underway for over five years at the time of this preliminary report and has not got a definitive end date at this time.

## *My analysis*

### Element One

9. I have reviewed the information provided to me by both you and the FCA including the FCA's decision letter and complaint file and both of your responses to my preliminary report. From the information initially provided to me it was not clear exactly why the FCA considered that your awareness around the circumstances giving rise to your complaint would have come about around June 2021. Accordingly, I asked the FCA to advise on what basis it had chosen this date as being the point at which your awareness began in its decision letter.
10. The FCA responded that alongside your complaint to the FCA you provided a trail of correspondence which included an email dated 21 June 2021 addressed to HBOS's executives. The FCA have set out that based upon this email, the FCA considered that you were aware of the grounds for your complaint made in October 2022 back in June 2021 when you sent the email. It is the FCA's position that should have raised your complaint within 12 months of that date.
11. Further to this, the FCA in its response to my preliminary report provided me further details of correspondence you had sent to the FCA in relation to HBOS. The summary of correspondence detailed 8 emails that you had sent between March 2021 and June 2021.
12. I am pleased that the FCA in its response to my preliminary report also acknowledged that it could have provided more information to you in its decision letter regarding the reasoning for its decision to not investigate your complaint because it was lodged outside the time frames set out under the complaints scheme. I am pleased to see that it said that it would endeavour to do so in future.
13. Whilst it was disappointing that the FCA did not take a little more care in its decision letter to you to explain more clearly to you why June 2021 was the relevant date for you to have made a complaint from. I am pleased that it has now taken the time to provide the relevant details to support its position that your complaint was out of time and acknowledged that it must provide more reasoning to complainants in future.

14. I note that in my preliminary report I also invited you to detail any reasons why you decided to lodge your complaint with the FCA's about the circumstances around reviewing the matters relating to HBOS at this particular point in time and not earlier. You responded that you could not in fairness to the FCA make a complaint until the delay of the Dame Linda Dobbs Review had exceeded five years thereby corroborating that the FCA were at fault in not conducting their own review at first instance without the restrictions which have caused delay.
15. I am sorry whilst I appreciate that you felt that you needed to wait until Dame Linda Dobbs review had exceeded five years to raise a complaint with the FCA, I cannot agree that this was needed. I have not been able to conclude that there was any basis for waiting for the review to exceed five years. You have set out that you consider that the FCA were at fault for not carrying out its own review at first instance. This being the case I feel that your awareness of the issues was apparent in 2021 when you started to contact the FCA in relation to these matters. I cannot see why you did not lodge a complaint at this time, there appears to be no reason that you could not have lodged a complaint whilst the Dame Linda Dobbs review was still open.
16. In summary, I am satisfied that the FCA has now been able to demonstrate its position that it considers that you had an awareness of the matters relating to your complaint over 12 months before you lodged your complaint with the FCA. In view of the correspondence you sent to the FCA between March 2021 and June 2021 I feel that it was a reasonable position for the FCA to take, that you had awareness of the matters relating to your complaint over 12 months before you lodged your complaint with it. On this basis, I do **not uphold** your complaint.

#### Element Two

17. In view of Element One I have **not investigated** Element Two of your complaint, it follows on from Element One that you are out of time under the Complaints Scheme to raise this complaint.

*My decision*

18. This is my final report about your complaint. For the reasons set out above I have not upheld Element One of your complaint and I have not investigated Element Two.

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Complaints Commissioner

16 March 2023