

7<sup>th</sup> July 2015

Dear Complainant,

**Complaint against the Financial Conduct Authority  
Reference Number: FCA00016**

Thank you for your various emails clarifying the matters which you wish me to consider. I am sorry for the time it has taken to complete my review of the Financial Conduct Authority's (FCA) investigation into your complaint.

**How the complaints scheme works**

Under the complaints scheme, I can review the decisions of the FCA's Complaints Team. If I disagree with their decisions, I can recommend that the FCA should apologise to you, take other action to put things right, or make a payment.

You can find full details of how I deal with complaints at [www.fsc.gov.uk](http://www.fsc.gov.uk). If you need further information, or information in a special format, please contact my office at [complaintscommissioner@fsc.gov.uk](mailto:complaintscommissioner@fsc.gov.uk), or telephone 020 7562 5530, and we will do our best to help.

**What we have done since receiving your complaint**

We have now reviewed all the papers you and the regulator have sent us. We have also obtained further information from the FCA on the issues which have given rise to your complaint. My decision on your complaint is explained below.

**Your complaint**

From your emails and the papers submitted to me by you and the FCA I understand that your complaint can be summarised as follows:

1. you believe that as a result of the FCA's lack of action it is failing in its statutory consumer protection objective
2. you feel that Firm F is conducting business to the detriment of consumers and it is using terms of contract contrary to sections 4.4 and 5 of the Unfair Terms in Consumer Contract Regulations (UTCCR)
3. you have also raised concerns about the content of a letter which was sent to your MP by the Chief Executive of the FCA.

## **My position**

I note the comments you have made to the FCA together with the further clarification which you have provided to my office. I can understand your concerns over the conduct of Firm F and can also understand why you are disappointed that, following the FCA taking over responsibility for the Consumer Credit activities previously overseen by the Office of Fair Trading, it had not taken immediate steps to make the provision of second charge mortgages a regulated activity.

When the FCA considered this part of your complaint in June 2014 it told you that this was not something it could consider because your complaint was about the FCA's general policies and therefore excluded from the Scheme. I agree with the FCA's decision. However, since the FCA considered this element of your complaint it has undertaken a consultation exercise (under CP14/20) on the implementation of the European Mortgage Credit Directive (which included the provision and administration of second charge mortgages). In the Policy Statement it issued in March 2015, which set out its findings and future intentions, PS15/9 (<https://www.fca.org.uk/your-fca/documents/policy-statements/ps15-09>), the FCA set out that from 21<sup>st</sup> March 2016 the regulation of the second charge mortgage market will be transferred from the Consumer Credit Act and the high level principles and rules contained within the FCA's Consumer Credit Sourcebook and instead will be encapsulated within the FCA's Mortgage Conduct of Business Sourcebook.

I appreciate that you may feel that the FCA did not action quickly enough but the FCA was required to consult consumers and the industry about highly complex issues before making rules, and the industry has to be given time to make the necessary changes. In the circumstances, I consider that the FCA has acted promptly since assuming its new responsibilities for consumer credit. For the sake of completeness I would add that paragraph 3.4 (b) of the Complaints Scheme prevents me from considering complaints about the FCA rules (which includes the date when these will be introduced).

Although it is unfortunate that the FCA did not explain to you clearly that it was consulting on the regulation of second charge mortgages, it was already taking action when it revisited your complaint in early 2015.

I also appreciate that you feel that the FCA has failed to consider adequately the conduct of Firm F in relation to alleged breaches of the Sections 4.4 and 5 of the UTCCR. I can confirm that the FCA is aware of your concerns and has considered whether the contractual term in question complies with the UTCCR Regulations in general. In assessing the terms contained within Firm F's contracts the FCA has considered two County Court judgments which have been brought to its attention.

As part of my request for information the FCA has provided me with a full explanation of the action it has taken as a result of the decisions it has reached together with details of the continuing consideration it is giving. Although the provisions of Section 348 of the Financial Services and Markets Act 2000 (as amended) limit what the FCA and I can say in relation to the assessment of the fairness of Firm F's contractual obligations, from independent review of the FCA's actions I am satisfied that the action and decisions it has taken and continues to take are appropriate, and I can assure you that the matter has not been ignored.

Although I can understand your concern about the information the FCA has provided to your MP I am unable to comment on this in detail. My role under the complaints scheme is to consider the manner in which the FCA has considered a complaint and responded to the complainant. Usually, I am unable to investigate a complainant's concerns about the FCA's conduct where the FCA has not had the opportunity to undertake its own investigation. In this case I understand that the concerns you have raised over the Chief Executive's letter to your MP have not been raised with the FCA itself.

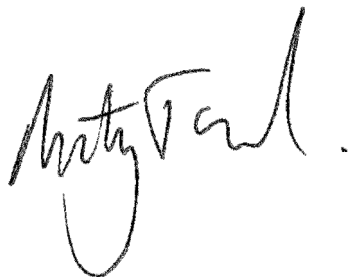
Whilst I do not wish to be unhelpful, given the role I undertake, if you would like the FCA to provide further clarification about the response which was sent to your MP I suggest that either you or your MP asks the FCA to answer the questions you have posed to me. However, whilst I cannot address in detail the points you have raised, what I can say is that the FCA possess considerably greater powers than the OFT. Having said that, where the OFT has taken action against a firm in relation to a breach of its rules unless there has been a subsequent breach of the same rule the action the FCA can take may in law be limited.

### **Conclusion**

I can understand you are unhappy with the FCA's decision but hope that the subsequent action the FCA has taken (regarding the proposed regulation of second charge mortgages) will reassure you that the FCA has taken your concerns seriously. I also appreciate that you are disappointed that the FCA will not answer clearly whether Firm F's terms comply with the UTCCR, but hope you will be at least partly reassured that I can confirm that the FCA is considering the matter and has not ignored your concerns.

I am sorry, but as a result of my investigation I am unable to find any evidence to show that the FCA has not correctly dealt with your complaint. I am therefore unable to alter the decision previously made by the FCA. I appreciate that you will be disappointed with my findings, but hope that you will understand why I have arrived at this decision.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Antony Townsend', with a large, stylized flourish at the end.

Antony Townsend  
Complaints Commissioner