Complaints Commissioner

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5th January 2015

Dear Complainant,

Complaint against the Financial Conduct Authority
Reference Number: FCA00034

Thank you for your letter of 17th November 2014.

As the rules of the scheme under which I consider complaints can be found on our website at www.fscc.gov.uk/complaints-scheme/, I shall not repeat them here.

Your complaint

From your email and the papers you have submitted to me and the FCA I understand that your concerns relate to the fact that you consider that the FCA has failed to respond adequately to two questions, as follows:

- "why should I, after the introduction of the Retail Distribution Review, pay for advice twice?"
- "Why is the Financial Conduct Authority, who has a statutory duty to protect consumers, interfering and undermining the agreements made between the pension provider/adviser and the consumer?"

My position

In considering this case, I have reviewed the regulator's investigation papers and the arguments put forward by it.

I have noted that the FCA's position is that they have responded to your questions; but that they have acknowledged that there were shortcomings in the promptness of some of their replies, and they have therefore made a goodwill ex gratia payment of £100 to reflect that.

Having carefully studied the papers, I agree with the FCA's conclusion, and therefore do not uphold your complaint. While the manner in which the FCA responded to you was far from perfect, I note that, in an email to you dated 8th October 2013, Operator O of the Customer Contact Centre gave a brief explanation of the reasons behind the introduction of the RDR rules, of the steps taken by the FSA to consult, and of the post implementation review which the FCA had instigated.

It may be beneficial if I provide you with some further information about the RDR and its introduction.

As the FSA (as the then regulator) had concerns that the market for retail (consumer) investments was not working as well as it could to serve the interests of both the industry and consumers, it announced in June 2006 that it was to undertake a review of the retail investment market with the aim of identifying and addressing the root causes of problems that continued to emerge. The review was to include reviewing the products and services offered by retail banks, life insurers, financial advisers, building societies, stockbrokers and fund managers.

Further details were announced in June 2007 in a Discussion Paper[1], which set out that the FSA's general objectives for the review were:

- to maintain an industry that engages with consumers in a way that delivers more clarity for them on products and services
- to enhance a market which allows more consumers to have their needs and wants addressed
- remuneration arrangements that allow competitive forces to work in favour of consumers
- to maintain standards of professionalism that inspire consumer confidence and build trust
- an industry where firms are sufficiently viable to deliver on their longer-term commitments and where they treat their customers fairly
- to build regulatory framework that can support delivery of all of these aspirations and which does not inhibit future innovation where this benefits consumers

Following its initial review, in June 2009 the FSA issued a Consultation Paper[2] which set out its aims, which generally were to empower consumers and give them confidence and trust in the retail investment market. The review aimed to ensure that consumers were able to understand more clearly what kind of advice they were getting, how much it cost and how it was to be paid for and, critically, that consumers had confidence that their adviser was well qualified and acting in their best interests. The FSA expected that its proposals would help to reduce the negative perceptions associated with the advice process, improve consumer confidence and encourage people to seek financial advice. The proposals also presented significant opportunities for firms and individuals in the retail investment market to build trust and confidence by modernising their practices, raising their standards and treating their customers fairly.

The Consultation Paper set out that the FSA aimed to achieve its objectives by:

[1] DP07/1 (http://www.fca.org.uk/your-fca/documents/discussion-papers/fsa-dp071)
[2] CP09/18 (http://www.fca.org.uk/your-fca/documents/consultation-papers/fsa-cp0918)

- improving the clarity with which firms describe their services to consumers
- addressing the potential for adviser remuneration to distort consumer outcomes
- increasing the professional standards of investment advisers

In March 2010, following consideration of the responses it received to its Consultation Paper, the FSA issued its final guidance in the form of a Policy Statement[3] which set out how it intended to address the first two objectives. In January 2011 the FSA issued a further Policy Statement[4] which set out how the FSA aimed to achieve its final objective. The rules the FSA set for the industry as a result of the RDR came into effect on 1st January 2013.

I know that you are unhappy with the decision to remove ongoing commission payments from advisers and, as a result, you believe that consumers such as you have had to pay twice for advice and ongoing reviews during the life of a policy (i.e. originally through the policy's initial charge and now by payments to your adviser).

Unfortunately this policy is not something I am able to consider under the Complaints Scheme as the provisions contained in paragraph 3.4(c) of the Complaints Scheme state:

3.4 Exclusions to the Scheme

> Excluded from the Scheme are complaints:
>
> c) in relation to the performance of the regulators' legislative functions as defined in the 2012 Act;

As the introduction of 'charging' is a direct consequence of the rules which were introduced following extensive consultation as part of the RDR, it is not something which I can consider under the Complaints Scheme. I would however say in general terms that the regulator has a statutory objective to ensure that advisers act appropriately at all times and by removing initial and ongoing commission payments the regulator is aiming to ensure that a practice which is known as 'commission bias' (where advisers are perceived to recommend to a consumer a product which pays a higher level of commission rather than the most appropriate product) does not occur. Likewise, by introducing consumer charging, the regulator is aiming to ensure that consumers receive a better service as an adviser will have to undertake a review to be paid and cannot simply receive commission without undertaking a review for the consumer. I cannot intervene in relation to these legislative functions.

I am sorry that I am unable to help you. However, the FCA is conducting a number of post implementation reviews on the impact the RDR has had on both the financial services industry and consumers (with some post implementation reviews having already been completed). Your concerns are something that may be useful to the FCA when it undertakes its two year post implementation review as detailed in the FCA's 2014/15 Business Plan[5], and you may therefore wish to inform the FCA's RDR Post Implementation Review Team of your concerns when the review starts.

[3] PS10/06 (http://www.fca.org.uk/your-fca/documents/policy-statements/fsa-ps10-06)
[4] PS11/1 (http://www.fca.org.uk/your-fca/documents/policy-statements/fsa-ps11-01)
[5] FCA 2014/15 Business Plan (http://www.fca.org.uk/static/documents/corporate/business-plan-2014-2015-interactive.pdf)

In conclusion, I am not able to uphold your complaint. I appreciate that you will be disappointed with my decision but hope that you will understand why I have reached it.

Yours sincerely

Antony Townsend
Complaints Commissioner