

23rd January 2015

Dear Complainant,

Complaint against the Financial Conduct Authority
Reference Number: FCA00042

Thank you for your email of 20th December 2014.

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

Your complaint

From your email I understand that you are unhappy with the outcome of the FCA's investigation into your complaint. Specifically you are unhappy that the regulator failed to respond to the emails you sent to it on 27th September 2010 and 11th March 2011 in relation to your concerns regarding the administration and financial stability of Firm A (an international maritime insurance broking firm). These concerns arose following the purchase of a US broker by one of your main clients and the discovery of your client's intention to open its own UK based maritime insurance brokerage which would reduce considerably the business which your client would place with you.

You add that when you first contacted the regulator on 27th September 2010 you were the managing director of Firm A. However, I understand that when you contacted the regulator on 11th March 2011 you informed it that you had appointed a new Joint Managing Director, who immediately suspended you and stripped you of all of your board position and responsibilities pending disciplinary proceedings.

I understand that Firm A subsequently dismissed you and attempted, unsuccessfully, to sue you for a considerable amount of money. Unfortunately, although Firm A was unsuccessful and redress was ordered by the Court, you allege that is refusing to pay your costs and you are now looking for the FCA's assistance in obtaining payment of your legal fees from Firm A.

My position

In considering this case, I have carefully reviewed both your complaint and the regulator's arguments for excluding your complaint from the scheme.

It is clearly unsatisfactory that the regulator failed to acknowledge your letters in 2010 and 2011. However, having viewed the letters, it appears that when you contacted the regulator on 27th September 2010 you appear to have simply been alerting the regulator to potential concerns about the future financial position of Firm A and did not ask for the regulator's immediate involvement. Other than an acknowledgement, it is unclear what response you wanted from the regulator.

Likewise when you contacted the regulator on 11th March 2011 it appears that you were simply alerting it to changes of management within Firm A and that you had concerns about the way the board were acting in relation to you personally. Again, while it would clearly have been desirable for you to have received an acknowledgement, it is not clear to me what else you would have expected from the regulator. The regulator is bound by strict legal confidentiality requirements, and is therefore generally unable to disclose details of any follow-up action which it may take in response to information of the kind which you supplied.

I appreciate that you are disappointed that the FCA chose to reply upon paragraph 3.3 of Complaints Scheme not to investigate your complaint. Paragraph 3.3 of the Complaints Scheme states:

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.

In this case as the regulator's errors occurred in September 2010 and March 2011 and you did not raise the complaint with the FCA until 21st November 2014 (over three and a half years later). I therefore consider that the FCA has correctly chosen not to investigate why these errors occurred. I would however add that, although the FCA has confirmed that it would not investigate why the error occurred, it has nevertheless accepted that the error occurred, has confirmed that your letters were added to its intelligence system (under Firm A), and has correctly apologised for the FCA's failure in not acknowledging your letters.

I know that you would like the FCA to intervene in this matter and instruct Firm A to make the required costs payment but this is not something which the FCA can do. Your dispute with Firm A is a personal one resulting from an employment issue and is not something which falls under the jurisdiction of the FCA.

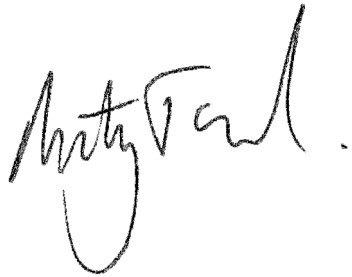
However, although the FCA is unable to intervene in a personal employment dispute, as the failure of a regulated firm to comply with a Court order (relating to costs or redress) could be an early indication that things with a firm are not as they should be, the matter has been raised with the FCA Supervision Division which is responsible for the oversight of Firm A. I would add that your concerns regarding the general conduct (and systems and controls in place within Firm A) have also been referred to Supervision for consideration as part of the general monitoring of Firm A.

Unfortunately, as the FCA has explained to you in its letter of 16th December 2014, whilst your concerns have been referred to Supervision the confidentiality provisions in Section 348 of the Financial Services and Markets Act 2000 (the FSMA)¹ restrict what the FCA (and I) can disclose. What I can say is that I am satisfied that the FCA has considered the information you have provided.

¹ as amended by provisions contained within ss16 to 24 of Part 2 of the Financial Services Act 2012

In conclusion, I consider that the FCA's response to your complaint was correct, and I do not therefore uphold your complaint to me. I appreciate that you will be disappointed with my decision but hope that you will understand why I have reached it.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Antony Townsend', written in a cursive style.

Antony Townsend
Complaints Commissioner