

29th September 2015

Dear Complainant,

**Complaint against the Financial Conduct Authority
Reference Number: FCA00100**

Thank you for your email of 8th September 2015. I have now completed 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. If you need further information, or information in a special format, please contact my office at 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 records you and the regulator have sent us. My decision on your complaint is explained below.

As the rules of the scheme under which I consider complaints can be found on our website at www.fsc.gov.uk, I do not intend to set them out fully below.

Your complaint

I understand that you are unhappy with the FCA's decision to reject your complaint, which concerns the fact that, in your view, you were not given adequate information about enhanced annuities at the time you were buying an annuity. You say:

I am not satisfied that the matter has been dealt with satisfactorily and believe that as a result neither the provider, Clerical Medical, nor the FCA have treated their customer (myself) fairly. Furthermore, throughout my correspondence with both parties and with the Financial Ombudsman, each party has been very quick to tell me that my complaints cannot be resolved by them and need to be considered by someone else. Either those rules have been designed, in combination, to deter people from complaining, or the people who administer the process attach more importance to the rulebook than they do to helping customers. At the heart of my complaint is that customers should be treated fairly; it does seem that the true position of the industry is that customers who have not been treated fairly should be frustrated for as long as possible until they give up.

You add that in its response

the FCA state that my complaint cannot be considered because it is outside the scope of their complaints procedure. Clerical medical state that they were simply following FCA guidelines. The FCA have taken 7 years to implement a solution to the problem that was known about in the industry for decades and when they have implemented a solution they have chosen not to apply it retrospectively, even though their previous reports, one from 2008, clearly required firms to address the issue and to treat their customers fairly....FCA rules at the time of the annuity sale required the provider to enclose the MAS leaflet. The FCA have recognised themselves that this requirement was ineffective and inadequate and have now required firms to make a prominent and explicit statement in the body of their letter to the client, a requirement that was so obviously necessary in 2008 but was trusted to each firm to implement under TCF rules”.

You go on to say that although you

recognise that the Ombudsman and FCA have collectively chosen not to apply current rules retrospectively, I would question the legitimacy of that decision. They defend the decision by stating that such a measure would require firms to comply with rules that were not in place at the time. However, in 2008 it was recognised in a thematic review that firms were not doing enough to alert clients to the availability of enhanced annuities and firms have continued to sell standard annuities to people who might have benefited from an enhanced annuity....I feel very frustrated that the provider and the FCA appear to be able to dance around the issue and hide behind each others inaction, leaving the individual client not knowing who to turn to in order to seek redress.

My position

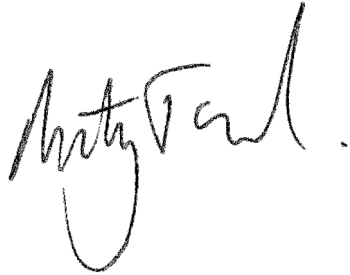
In considering this case, I have reviewed the regulator’s investigation records and the arguments it put forward.

I appreciate that you are unhappy with the FCA’s decision that your complaint was not something which it could consider under the Complaints Scheme. However, having carefully considered the matter, regrettably I have to tell you that I agree with the FCA’s decision that this is not something I can consider under the Complaints Scheme – as the FCA has explained, paragraph 3.4 of the Complaints Scheme specifically excludes complaints about the FCA’s legislative functions, which include the making of rules and policies.

I appreciate that you feel that the FCA and the Financial Service Authority (FSA) before it took a long time to act, and have some sympathy with your concern. I can also understand why you are unhappy that the FCA will not impose its current requirements in a retrospective matter, but I share the FCA’s view that, as a matter of law, it cannot require firms to comply with requirements which were not in existence at the time they interacted with consumers. I do, however, note that when you took your annuity in 2012 you did receive the MAS leaflet which clearly highlighted the possible option of an enhanced annuity.

For all these reasons, I consider that the FCA's decision on your complaint was the correct one. 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', with a large, stylized flourish at the end.

Antony Townsend
Complaints Commissioner