

21 December 2015

Dear Complainant

**Complaint against the Financial Conduct Authority
Reference Number: FCA00116**

Thank you for your letter of 6th November 2015. I have completed inquiries of the Financial Conduct Authority (FCA), and am able to write to you.

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

I have now reviewed all the papers you and the regulator have sent us. My decision on your complaint is explained below.

Your complaint

You and your wife have been victims of fraud allegedly perpetrated by a Mr S. Mr S sold you two gilt contracts: one in 2006 which was repaid to you and one in 2007 for £20,000, which was not. It is the latter transaction which has led to your loss.

You complained to the FCA in November 2014. The gravamen of your complaint was that the FCA was aware of Mr S's fraudulent activities but 'allowed him to become a Director of a Financial Services Company and continue his fraudulent activities which have resulted in hardship and difficulties for a large number of people'.

The FCA issued its decision letter to you on 5th October 2015, and did not uphold your complaint. It explained that its internal investigation showed it had taken appropriate action with respect to Mr S, but that it could not disclose the details to you because of the confidentiality requirements imposed by section 348 of the Financial Services and Markets Act 2000.

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Background to the complaint

It may be useful if I outline the chronology of events as I see them, gathered from the correspondence between the FCA and you.

Mr S became associated with Firm D Financial Services, a regulated Sole Trader firm, in or around 2005. This was not apparent to the FCA since Mr S was not a director of that company (though he did become a director of another company Firm D Limited in 2007, but that company was not regulated by the FCA).

Mr S sold you a gilt in 2007 for £20,000 (which you subsequently found out was bogus).

Firm D Financial Services applied to have its Part IV permissions cancelled in 2012 and this was duly done on 3rd September 2012.

Mr S died in November 2013.

You complained to the FCA, the FSCS and the FOS in 2014 but the latter two organisations have not been able to help you with the redress you seek.

My findings

I have sympathy for the situation you find yourself in. However, the matter I must look into is whether the FCA, by its actions or inactions, contributed to your loss by allowing Mr S to continue fraudulent activities.

My review of the FCA file shows that Mr S was known to the FCA as he had a status of “active” on the FSA register from 2001-2003 whilst working for a company called Financial Bureau Limited which was authorised. Mr S never took on any approved person role after 2003. The FCA pointed out to you in their letter that they were told about a successful litigation claim against Mr S in February 2011. The High Court judgment was made against Mr S and Stanhope Shefford & Co. The company was subsequently dissolved and Mr S was made bankrupt in 2012. It was around this time that Firm D Financial Services cancelled its permissions to carry on regulated activities. Subsequent to this, Mr S ceased to be involved in any known activities and died in 2013.

From the evidence presented to me, it is reasonable to conclude that there is nothing the FCA could have done to prevent the perpetration of the fraud on you by Mr Sin 2007. Mr S was conducting unregulated activities through Firm D Financial Services without being authorised by the FCA or registered in Companies House as being part of that company, as a Director or otherwise. Firm D Financial Services deregistered in 2012 before you lodged your complaint. Having reviewed the extensive correspondence provided to me by the FCA, I am unable to conclude that the FCA has acted inappropriately in relation to the issues you raise. They appear to have responded appropriately to the information which they had available to them. Unfortunately, they were not aware of the fraud perpetrated by Mr S until it was too late.

It is unfortunate that the problems have been exacerbated by the fact that the FSCS have been unable to ascertain whether Mr D is insolvent or not, as per the correspondence you have shown me, and that the FOS have excluded your complaint. I appreciate how you feel you are being 'passed from pillar to post'. Unfortunately, complaints against either the FCSC or the FOS are excluded from my Complaints Scheme, and so I am unable to consider the actions of those two bodies.

I recognise that you will be disappointed with my decision, but hope that you will understand why I have reached it.

However, I note that the FCA took over 40 weeks to investigate your complaint. Even given the complexity of this case, I find the amount of time taken to investigate your complaint excessive. I note the FCA have apologised to you for this delay.

Finally, you have pointed out in your response to my Preliminary Decision that you asked the FCA a question about whether you are correct in your attempts to recover your losses from Firm D on 24 September 2015, which it does not appear to have answered. I recommend the FCA reply to you on this matter.

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