

21 November 2016

Dear Complainant,

**Complaint against the Financial Conduct Authority  
Reference Number: FCA00118**

Thank you for your email of 8 September 2016. I have now reviewed the information sent to me by you and the Financial Conduct Authority (FCA), and am able to write to you.

**How the complaints scheme works**

Under the complaints scheme (the 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.

I have taken into account the comments which you made in response to my preliminary decision. My decision on your complaint is explained below.

**Your complaint**

On 12 November 2015 you made a complaint to the FCA about the Contracts for Difference (CFD) market and what you regarded as the FCA's failure to provide clear information about the risks associated with the sale of CFD. You said that the FCA's regulations in respect of CFD were inadequate and not fit for purpose. You also said that the FCA had failed to implement, and was non-compliant with, relevant European Union (EU) Directives.

You made further submissions about your complaint in November and December 2015 and on 23 December 2015 the FCA wrote to you under the Scheme. The FCA identified six elements of your complaint, which I have summarised below:

*Element One*

Lack of proactive investigation into firms by the FCA, which you believe has been incompetent in regulating the financial services industry.

*Element Two*

Failure to interpret or implement EU legislation properly, specifically the Markets in Financial Instruments Directive (MiFID), resulting in a failure of public protection.

*Element Three*

You had submitted a Freedom of Information (FOIA) request to the FCA and believed that the "...FCA is hiding HM Treasury Guidance..."

#### *Element Four*

You were unhappy with comments made by Martin Wheatley (former Chief Executive Officer (CEO) of the FCA) about the British Bankers Association.

#### *Element Five*

Concern that the FCA is biased in favour of the financial services industry and open to influence from the firms it regulates.

#### *Element Six*

You believe that there is no transparency from the FCA relating to CFD and spread betting. This was related in particular to your experience of a firm (Firm A).

The FCA's letter of 23 December informed you that it considered Elements One to Four were excluded from the Scheme and would not be investigated. It gave reasons for these exclusions, which I will return to below in the section headed 'My Position'. Element Five was regarded as an allegation of 'bias' by the FCA which would be investigated under the Scheme if you provided some specific examples. Element Six was regarded as an allegation of 'lack of integrity' by the FCA and would be investigated so far as it related to your FOIA request (although not the outcome of that request).

On 12 July 2016 the FCA sent you its response to your complaint. This letter reminded you that Elements One to Four had been excluded or not investigated in November 2015. Element Five had not been investigated because the FCA considered that you had not provided specific examples. Element Six had been investigated but was not upheld on the basis that the FCA's current approach is sufficiently transparent and proportionate.

You are dissatisfied with the FCA's response to your complaint and have asked me to investigate all the issues that you have raised. You say that your complaint to me "*is not about whether or not the procedures of the complaint process been followed, the FCA may have done that, this complaint is about all the evidence presented which clearly shows that the FCA does not implement or apply Mifid regulation fit for purpose as set out by the EU and yet says it does within its final response, whilst still the FCA uses an 2012 directive not to be held accountable on individual specific pieces of evidence with its failing to enforce application of the Mifid law*".

### **My position**

#### **Elements One to Four**

For the avoidance of doubt, I should say that I have considered these elements of your complaint under the Scheme despite the fact that more than three months have passed since 23 December 2015, when the FCA told you that they had been excluded. Although the FCA's letter stated that you had three months in which to come to my Office on those four elements, I consider it reasonable for you to have waited for the outcome of the totality of your complaint before approaching me.

The FCA's letter of 23 December excluded Elements One and Four of your complaint on the grounds that they fell within paragraph 3.5 of the Scheme. This states that the FCA will not investigate complaints which it reasonably considers amount to no more than dissatisfaction with general policies or with the exercise of, or failure to exercise, a discretion where no

unreasonable, unprofessional or other misconduct is alleged. I consider that the FCA was right to exclude these elements of your complaint on this basis because they expressed general dissatisfaction with the FCA's approach to regulation.

Element Two of your complaint was excluded on the grounds that it fell within paragraph 3.4 of the Scheme. This states that complaints about the performance of the regulators' legislative functions as defined in the Financial Services Act 2012 will not be investigated. I consider that the FCA was right to exclude this element of your complaint on this basis because it dealt with whether or not the FCA is complying with EU legislation. It therefore follows that I cannot address the issues that you would like me to consider regarding MiFID.

Element Three of your complaint was excluded on the grounds that it fell within paragraph 3.6 of the Scheme. This states that the FCA will not investigate complaints which it reasonably considers could have been, or would be, more appropriately dealt with in another way. As this element of your complaint related to your FOIA request, the correct route was for you to bring the matter to the Information Commissioner. I consider that the FCA was right to exclude this element of your complaint on this basis.

#### **Element Five**

The allegations of bias you made related to the actions of Firm A. You alleged that the FCA has demonstrated bias through Firm A's actions. I am satisfied that this has not been investigated by the FCA because, despite its request, it did not consider you had provided specific examples that the FCA itself has demonstrated bias in its own actions. In your response to my preliminary decision, you sent me material which, in your view, demonstrated bias by the FCA, but having carefully considered it I have concluded that the examples you have given are ones where you disagree with the FCA's general policy approach to regulation (which is excluded from the Scheme), rather than examples of actual and specific bias.

#### **Element Six**

You complained about a lack of transparency from the FCA relating to CFDs and spread betting. You said that the FCA does not disclose to the general public figures for complaints related to regulated companies and in this case CFD and spread betting companies, resulting in "zero transparency." You said that Firm A knows this, your implication presumably being that it therefore can act in this market without fear of regulatory 'comeback'.

In response to this element of your complaint the FCA provided you with information about the requirement for firms with a high volume of complaints to publish their complaint data, which is subsequently published by the FCA. It explained to you that changes from 30 June 2016 would lead to information being published by a greater number of firms. The FCA's response concluded that this is a proportionate approach and that there are no plans to change this process at the moment.

I appreciate that your concerns are wider and more general than the publication of complaints data. However, I consider that the FCA has responded appropriately to the points you raised and that it is entitled to take the policy approach that it does. I am also satisfied that, in common with other similar firms, Firm A is subject to regular supervision by the FCA.

In response to my preliminary decision you have also made a number of criticisms of the Financial Ombudsman Service. Complaints about this service are specifically excluded from the Scheme under paragraph 3.4 (e) and I am therefore unable to comment on these matters.

### **Conclusion**

Although I understand that you are unhappy with the FCA's decision not to investigate some aspects of your complaint, I believe it was correct to do so. For the reasons set out above, I am unable to uphold your complaint. In response to your request in your comments on my preliminary decision, I can confirm that my decision is not in any way influenced by any possible legal action against my decision.

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