

13 May 2016

Dear Complainant,

**Complaint against the Financial Conduct Authority
Reference Number: FCA00141**

Thank you for contacting us by telephone to raise your complaint and for confirming in writing that we understood it correctly. I have now completed my review of the Financial Conduct Authority's (FCA) decision to exclude your complaint from the Scheme, as set out in their letter of 17 February 2016. My decision on your complaint is explained below.

Before finalising this decision, I invited comments from you and the FCA on my preliminary decision. I have considered carefully the points that you made and I have included some additional wording in my decision although this does not alter the substantive outcome. The FCA has confirmed that it will now make the necessary arrangements to carry out the recommendations in my report.

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.

As you can find full details of how I deal with complaints at www.fsc.gov.uk I do not intend to set them out fully below. 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.

Your complaint

From your telephone call and the files submitted to me by the FCA I understand that your complaint relates primarily to your concern that the FCA does not have or enforce rules regarding third party insurers' obligations to consumers who deal with them. In your own case this relates to your experience following a road traffic accident and your dealings with a third party insurer (Firm B) in relation to repairs to your car. When you first contacted the FCA about this (by phone to its Customer Contact Centre (CCC)) you were told that the FCA does not have any specific rules relating to third party assistance claims but that it would expect insurance companies to follow its general rules around claims-handling and principles. You were also told that you could escalate your complaint about the third party insurer to the Financial Ombudsman Service (FOS). However, when you contacted FOS you were advised that you could not make a complaint as you were not a direct customer of the insurer.

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You complained to the FCA about these matters in October 2015. On 20 November the FCA responded to your complaint as follows:

1. Your complaint that the FCA does not have rules about the responsibilities of third party insurers was excluded under paragraph 3.4 of the Complaints Scheme (the Scheme) because it related to the performance of the regulators' legislative functions.
2. Your complaint that the FCA would not tell you about any proposed action it might take against Firm B was excluded because of the confidentiality restrictions in place under section 348 of the Financial Services & Markets Act 2000 (FSMA).
3. Your complaint that the FCA gave you incorrect information in an email about being able to escalate your complaint to FOS would be investigated.

On 17 February 2016, the FCA wrote to you again. It confirmed its response to your first two complaints and informed you that it had upheld your third complaint. The FCA accepted that you had been wrongly referred to FOS and offered you an apology for this mistake.

You are unhappy with this response and have complained to my Office as follows:

1. You are unhappy that third party insurers are allowed to contact consumers and enter into direct negotiations with them despite the fact that they are not subject to FOS adjudication as there is no direct contract between the two parties. Third party insurers do not make consumers aware of this when contacting them with offers to act on their behalf. You feel the FCA should have regulations in place which do not allow such situations to arise, as they can prove detrimental to consumers.
2. Having provided the above information to the FCA, you are not satisfied that the FCA informed you that, under s348 of FSMA, you would not be given an update about what course of action, if any, the FCA would take based on the information you provided.
3. You feel that you wasted time and energy following erroneous advice given to you by the FCA CCC on the matter referred to in 1 above. Although the FCA has apologised for the erroneous information given, you feel an ex gratia payment for distress and inconvenience would be appropriate in the circumstances. You also wish to complain about delay by the FCA in dealing with your complaint.

My position

I have reviewed all of the complaint papers supplied to me by the FCA and the FCA has also answered further questions that I raised.

Although I agree with the FCA that your first complaint is excluded under paragraph 3.4 of the Scheme, I understand your concern that you were not given a clear answer to your requests for information about the FCA's current expectations of third party insurers and any guidance and position statements about this matter.

I consider that the FCA's response could have been more helpful. Referring you to the rules and principles on claims handling was no doubt well intentioned, but required you to undertake considerable and unnecessary research to determine how they applied to your

situation. It would have been particularly helpful if the FCA had pointed out that the issue was looked at in 2009 and guidance was issued to firms. Referring you to the FSA's 2009 guidance at http://www.fsa.gov.uk/pubs/other/third_party_capture.pdf would have been particularly useful. The FCA could and should have made its current position and stance on this issue much clearer to you.

In addition, while I acknowledge that the issue you raised is a matter of policy / giving guidance, which is excluded under paragraph 3.4 of the Scheme, I urge the FCA to consider whether the existing rules and principles are sufficient to cover the situation of vulnerable consumers dealing with third party insurers, and whether they are sufficiently clear to consumers.

In response to additional questions that I raised, the FCA agrees that its high-level principles are capable of applying to insurers processing claims for third parties. It says that the CCC would have referred relevant information to the appropriate team and any follow-up action would be approached on a risk-based basis. However, as you have been told by the FCA, there are confidentiality restrictions imposed by Parliament under s348 of FSMA which limit what consumers can be told. If it did decide to take any further action because of the information you have supplied, it would not be able to provide you with any compensation or redress, and most of the actions it takes are confidential, so it is unlikely that you would receive any further information about the matters you reported. I am satisfied that the FCA was correct when it told you that feedback could not be given to you about any action that may, or may not, have been taken due to s348 of the FSMA

The FCA was correct to investigate your third complaint as you were clearly given factually incorrect information by the CCC. You had no contractual relationship with the third party insurer and were therefore unable to go through the FOS route. The FCA investigation concluded that in an email from CCC you were told that you "can" go through that route, and has offered sincere apologies on behalf of the FCA for any inconvenience this may have caused you. The FCA complaint investigator recommended that the call associate who sent you the email dated 23 October 2015 is reminded to check the content of their emails before they are sent.

On balance, I consider this was an appropriate response to the third aspect of your complaint. I note that you feel an ex gratia payment would also be appropriate because you wasted time and energy following the incorrect advice given to you by the CCC. My view on this is that there was minor inconvenience as a result of the incorrect advice, although you were clearly aware by 27 October (only four days later) that a mistake had been made.

I note that you have also complained about delay in the FCA's handling of your complaint. Having reviewed the complaint file, I am unclear why it was not possible for the FCA to conclude its investigation of your complaint sooner. The issues you raised were not complex. All the information was available to the FCA when it contacted you on 20 November 2015 and it was already clear that an error had been made by the CCC. It is not apparent to me why it took a further three months for your complaint to be concluded.

I therefore **uphold** your complaint of delay and, in view of this, and the inconvenience that the FCA accepts was caused to you by the CCC's error, I consider that the FCA should offer you a modest payment for distress and inconvenience. However, I do not accept your claim for £350 in respect of these matters nor do I consider that the FCA should offer you an ex

gratia payment for the costs of repair to your car, for which it cannot and should not be held responsible. I **recommend** that the FCA offers to pay you the sum of £50 for distress and inconvenience in the handling of your case.

Conclusion

Although I understand that you are unhappy with the FCA's decision not to investigate your first two complaints, I believe it was correct to do so. The FCA has investigated and upheld your third complaint and again I believe it was right to do so and to offer you an apology for the error made. However, I believe that it took too long to reach its decision on this matter, and you also wasted some time in approaching FOS. I have **recommended** that the FCA offers to pay you an ex gratia payment of £50 for your consequent distress and inconvenience. In addition, I urge the FCA to consider the wider points your complaint raises about the situation of third party consumers.

I realise that you will be disappointed with aspects of my decision but I 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 stylized flourish at the end.

Antony Townsend
Complaints Commissioner