

21 December 2016

Dear Complainant

**Complaint against the Financial Conduct Authority**  
**Reference Number: FCA 00225**

Thank you for your emails of 1 September 2016. I have now completed my review of the Financial Conduct Authority's (FCA) investigation into the complaint you have made on behalf of company C. 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 referred to some of them in this decision letter.

**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 your clients, take other action to put things right, or make a payment.

**Your complaint**

Between 5 September 2013 and 22 April 2015 the FCA erroneously listed company C on the FCA's 'warnings' webpage, indicating that the firm was unregulated. You complained to the FCA on behalf of your client, seeking financial compensation, and the complaint was upheld on 19 November 2015. In its decision letter, the FCA invited you to supply 'evidence to support some of the statements in your letter of 7 July 2015'. In particular, the FCA sought further evidence on the following points:

- you have said that "C" and "C Plc" are searched via Google approximately 60 times a month and that your client would expect five new clients through their website; and
- your letter also says that each client's initial fee is worth approximately £3,000, then £3,000 per year following the initial fee and that all customers remain with your client for the remainder of their life, which averages at 20 years.'

You responded to the FCA on 10 February 2016 stating that you believed that, had the warning not been put up on the FCA website, company C would have had 17 additional clients during the period 2013-2015, worth £2,486,470. You explained you had reached the figure of 17

additional clients based on the actual figures of clients for the firm (12 in 2013, 15 in 2014 and 29 in 2015). You discounted other factors for the increase in the client base in 2015 and alleged the removal of the warning sign accounted for the doubling of clients in 2015 from the previous year. Your calculations were that had there been no warning notice, the additional clients would have been 17 (the difference between the figures for 2013 and 2015).

The FCA wrote back to you on 2 June 2016 and included the following information gathered from its web publishing team:

‘the number of visits to the alert page between 5 September 2013 and 22 April 2015 was 103 visits. Of these, 74 were by unique users and 54 were on 22 April 2015 when the FCA was notified of the issue. Information to demonstrate this can be seen in Annex 1. We consider it likely that the spike of 54 visits on 22 April 2015 is due to different teams at the FCA being made aware of the complaint. FCA staff would have viewed the webpage a number of times to view and ultimately rectify the problem.

Of the 20 remaining unique visits, it is reasonable to assume two or three visits were by the IFA who notified your client of the issue and your client.’

The FCA stated that it was reasonable to assume that 17 unique visitors visited the website during the period in question. However, they asked you to produce proof of actual loss incurred by the firm, as they considered that your calculations had not provided evidence of actual loss. They offered you an *ex gratia* payment of £500 for distress and inconvenience.

You then submitted your complaint to me, in which you said that £500 was a derisory offer given the possible losses incurred by company C.

You also complained about the length of time it took the FCA to investigate your complaint.

### **My position**

I turn to the first and principal element of your complaint, namely the financial compensation sought from the FCA for possible loss of business by company C in the period 5 September 2013 to 22 April 2015. The FCA has already offered you a £500 payment for distress and inconvenience, and has accepted in principle that it might offer an additional *ex gratia* payment for direct financial loss, but has not offered one on the grounds that you have not supplied it with evidence of actual loss.

There are three aspects to consider here. One is what evidence might be required before a payment would be justified; the second is the assumptions which should be made in calculating any loss; and the final aspect is the limitations of the Complaints Scheme in relation to compensation.

#### *What evidence should be required?*

I have some sympathy with the FCA’s position that, despite requesting evidence to demonstrate direct financial loss, Company C had not supplied sufficient evidence. However, I consider that the FCA might have made it clearer what evidence was required. I have posed this question to the FCA, and they have explained that in order to consider the matter further they would need more evidence in the following two areas:

- a. evidence to support the figure provided for new clients received by way of the website. To allow for proper analysis, the FCA would request that figures and

evidence include the 12 months prior to the alert going up on the FCA website and six months after the alert was amended.

b. Company C states that they had fewer 'walk in' clients that converted prior to the Warning Alert being removed in 2015. The FCA would like to see evidence to support this. In addition, the FCA would like to know whether Company C have any evidence of prospective clients or IFAs mentioning the Warning Alert as a reason for not instructing them?

### *Assumptions for calculation*

Clearly, in the circumstances of this case, there is unlikely to be absolute proof of 'actual loss'. However, would be possible, based on the figure of 17 unique visits, for an estimate to be made as to what a possible conversion rate might have been, but it is not an exact science and there are many factors which may or may not be taken in to account when assumptions are made for the formulas.

### *Limitations of the Complaints Scheme in relation to compensation for financial loss*

It is important to emphasise that the Complaints Scheme does not offer compensation of the kind or quantum sometimes awarded by the Courts. Parliament explicitly protected the financial services regulators from awards for damages (except in very limited circumstances), and the Complaints Scheme requires the regulators and me to have regard to the source of funding when considering making awards for compensation.

### *Delays*

I now turn to the second element of your complaint: the delay you experienced during the investigation of your complaint by the FCA.

I have reviewed the files the FCA have provided me with, and I consider that the Complaints Team undertook a thorough review of your complaint. This involved liaison with a number of areas within the FCA and the analysis of various data, which unfortunately lengthened the process. Although I appreciate your frustration with the delay you experienced, and although I consider that the complaint might have been concluded earlier, in my view length of time at each stage of their investigation was in large part due to their determination to consider an unusual issue thoroughly. Therefore, I am unable to uphold this element of your complaint.

### **Conclusion**

The FCA undertook a thorough investigation into your complaint and openly admitted its errors. It offered a payment for distress and inconvenience, but concluded that it did not have sufficient evidence of direct loss to consider a payment for financial compensation. While I consider that it was right to reach that conclusion, I also consider that the FCA could have specified more clearly the evidence which it considered was missing. In the light of all the above factors I recommend that the FCA undertakes to write to you clearly setting out:

- a. that it is prepared to consider further your claim for compensation for loss;
- b. the evidence which it considers that it requires;
- c. the assumptions which it would use to calculate any possible payment, if the evidence is provided;

d. the limitations upon any possible payment under the Scheme.

Finally, in your response to my preliminary decision, you state 'it is important to say that it would be rare for a small business to fastidiously record every detail of each enquiry it receives'. I have some sympathy for this position, and urge the FCA to take this into account in implementing my recommendations.

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