

19 January 2017

Dear Complainant

Complaint against the Financial Conduct Authority
Our reference: FCA00256

Thank you for your letter of 5 December 2016 and a subsequent letter dated 5 December 2016 but received in my office on 14 December 2016, enclosing documents dated 12 December 2016. I have reviewed all the papers you and the regulator have sent to me. Before finalising this decision, I invited comments from you and the FCA on 15 December 2016 on my preliminary decision. I have considered carefully the points that you made in response, though they have not changed my decision.

How the complaints scheme works

Under the complaints scheme, I can review the decisions of the FCA 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.

Your complaint

You complained to the FCA on 4 November 2016 as follows:

‘The FCA, under the Financial Services and Markets Act 2000, has a statutory responsibility to ensure that the Financial Ombudsman Service, is, at all times, capable of exercising its statutory functions, which include an obligation to provide a fair and reasonable outcome in each case. It is quite wrong then for the FCA, when the FOS fails to deliver that, by deliberately choosing to overlook evidence, just as is happening at the Legal Ombudsman, to deny any responsibility for it. The FCA is making no provision for compensation in cases of misconduct/malpractice, either to make recompense for the original error/misdemeanour, or for the serious failings in the handling of the complaint, both of which I seek on behalf of the estate of my uncle, namely myself and my three siblings.’

The FCA did not uphold your complaint and you approached me for an independent review on 5 December 2016.

My decision

Under the Financial Services and Markets Act 2000 (FSMA 2000), the Financial Conduct Authority (FCA) and the Financial Ombudsman Service (FOS) have two distinct roles.

The FCA operates as the financial conduct regulator. The FCA does not investigate individual complaints against the firms it regulates and cannot deal with a complaint on behalf of individual consumers. This is the role of the FOS. The FOS and the FCA are operationally independent of each other.

The memorandum of understanding between the FCA and the FOS refers to the legislation and explains the distinct roles of both, namely that the FCA has a statutory objective to ensure the FOS is capable of exercising its statutory functions but does not get involved in individual complaints; and that the FOS determines disputes on the basis of what it believes to be fair and reasonable in all the circumstances of the case, taking into account certain matters including the relevant law, regulations, regulator's rules, guidance and standards, relevant codes of practice and good industry practice.

The legislation does not place a requirement on the FCA to make, as you state, 'provisions for compensation in cases of misconduct/malpractice, either to make recompense for the original error/misdemeanour, or for the serious failings in the handling of the complaint'.

Individual complaints against financial services providers are reviewed by the FOS. The FCA decision letter to you correctly identifies that it is for the individual ombudsman to determine what is fair and reasonable in the circumstances of each case, not the FCA. The FCA does not have a statutory responsibility 'to make provisions for compensation in individual cases of misconduct/malpractice', (that is the role of the FOS), nor does it have a statutory responsibility to review the FOS findings on individual complaints. In fact, FSMA 2000 precludes it from doing so.

Conclusion

For the reasons above, I do not uphold your complaint, and I agree with the FCA's response. I understand you may be disappointed with my decision, but I hope you will understand why I have reached it.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Antony Townsend', with a large loop at the end of the name.

Antony Townsend
Complaints Commissioner