

5 July 2017

Dear Complainant

Complaint against the Financial Conduct Authority**Our reference: FCA00294**

Thank you for your email of 15 May 2017. I have completed further enquiries of the FCA, and can now write to you. Before finalising my decision, I invited comments from you and the FCA on my preliminary decision. The FCA informed me it had no further comments. I have considered your comments carefully and refer to some of them in my decision below.

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 21 July 2016 that the FCA had failed to ensure that banks:

'Accept responsibility for the misconduct in connection with the mis-sale rate swap loans;

Accept responsibility for the misconduct of their business support division; and provide adequate redress to the owners of businesses damaged by such misconduct. Provide adequate compensation of consequential loss claims'.

You wrote again to the FCA on 14 August 2016 that the FCA had failed to ensure that banks accept their responsibility for the misconduct in connection with an unauthorised individual employed by bank X which had allegedly mis-sold your company an Interest Rate Hedging Product (IRHP). As a result of this sale, you allege that you lost your business and are now looking to the FCA to compensate you on the basis that the Bank X employee was not authorised to sell you this product.

The FCA complaints team wrote to you on 30 March 2017 and did not uphold your complaint of 21 July 2016. However, the decision letter did not address the issue of the bank X employee being unauthorised. After my Office queried this, the FCA requested that it be given a chance to do this, and I agreed to this. The FCA's final decision was issued to you on 12 May 2017. Again, it did not uphold your complaint.

You did not agree with this decision and referred your complaint to me.

My findings

The FCA's first decision letter of 30 March 2017 explained in some detail the approach which it had taken to the problems with the sale of IRHP products, including its decision to introduce the voluntary redress scheme.

The FCA wrote to you in its second decision letter on 12 May 2017 as follows:

'It might be helpful for me to explain that if an individual (who did not have prior FCA authorisation) performed a customer function (e.g. selling an Interest Rate Hedging Product (IRHP)), it does not necessarily follow that the customer was mis-sold that product. When considering whether a product is mis-sold, the sale is assessed against the relevant regulatory requirements.

The FSA (now FCA) set out in the pilot report dated March 2013, the FCA were aware that the banks systemically mis-sold IRHPs to small businesses (in around 90% of cases) and the root cause were multiple failings in the banks' systems and controls (for example, advice being given in non-advised sales, poor disclosure of the risks, etc). Further information can be found here -

<https://www.fca.org.uk/publication/archive/fsa-interest-rate-swaps-2013.pdf>

Given the poor control environment in the banks that led to the IRHP mis-selling, it would not be surprising if to find isolated instances where an IRHP salesperson was not on the FCA website as an approved person (bearing in mind that there were around 30,000 sales). On the information I have reviewed, the FCA would view these instances in the context of the wider systems and controls failings and expect the banks to consider all root causes as part of their remediation work.'

First, I should explain that the FCA's role is to regulate firms and individuals: it does not deal with individual complaints (although information from individuals such as you is often used by the FCA to see whether there is a problem which requires it to take action). Individual complaints, including claims for redress, are a matter for the Financial Ombudsman Service (FOS). For that reason, this Complaints Scheme only looks at whether the FCA has acted reasonably in its regulation of firms or individuals: I do not consider questions of individuals' redress.

I have looked carefully at the FCA's explanations in its two decision letters. It is unfortunate that the FCA took so long to answer your complaint, and that the first decision letter did not address a key element. However, I do not find the FCA's explanations to be unreasonable. The FCA has explained why it took the steps it did to introduce the voluntary redress scheme, and how it has sought to ensure that the banks have complied. It has also explained that, in cases where it is alleged that a product has been mis-sold, the particular sale is assessed against the regulatory requirements.

While I recognise the difficult position in which you find yourself, I do not consider that the FCA's decision is unreasonable. This Complaints Scheme cannot resolve individual complaints against banks. For this reason, the evidence you have provided of your telephone conversation notes with your bank does not change my decision. If you were eligible for a redress offer but were not satisfied with it, your options are to re-approach the Bank, appeal the decision by bringing your case to the FOS, or take legal action. I understand you have approached the FOS already, which is the correct course of action. I have sympathy for your situation, but unfortunately, this Complaints Scheme is not the forum to progress your claim.

Conclusion

For the reasons explained above, I do not uphold your complaint. I appreciate you will be disappointed with this 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, stylized flourish at the end.

Antony Townsend

Complaints Commissioner