

4th July 2017

Dear Complainant

Complaint against the Financial Conduct Authority**Our reference: FCA00304**

Thank you for your letters of 20th and 27th April 2017, and telephone call of 4th May. Thank you, also, for your letter of 21st June with your comment on my preliminary decision. The FCA did not comment on my preliminary decision.

I have considered all the material which you and the FCA have sent me, have completed my investigation, and can now write to you with my final 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

On 8th March 2017, the UK Listings Authority (UKLA - a department of the FCA) sent you a response to a query you had raised about the announcement made by bank X of a settlement with certain groups of shareholders. Your concern was that, because the settlement did not include all shareholders of that class, it was in breach of established principles including Premium Listing Principle 5. The UKLA said that they did not consider that the principle had been breached because:

- *The settlement would appear to have been reached with claimants in a litigation case in their capacity as claimants and thus does not appear to be a distribution to shareholders.*
- *Premium Listing Principle 5 provides that holders of listed equity shares “that are in the same position” should be treated “equally in respect of the rights attaching to those listed equity shares”.*
- *As the settlement is not a right which attaches to the listed equity shares, but has been concluded with certain claimants in a litigation case, we do not consider that Premium Listing Principle 5 is applicable in relation to that settlement.*

You were dissatisfied with this answer, and complained to the FCA. In their response to you on 10th April 2017, the FCA Complaints Team said that they had not upheld your complaint. They had checked the answer you had been given by the UKLA, including a check with the FCA’s General Counsel Division, and were satisfied that it was correct.

You then complained to me, saying that the FCA had “deliberately misunderstood” your complaint against bank X and that they had “completely [missed] the point that a ‘settlement’ without the admission of any liability is a distribution and should be offered to all shareholders... All shareholders of the same class suffered from these legacy issues and deserve equality of treatment.”

My findings

The first thing I should say is that my role is to consider complaints about the FCA: I do not consider complaints about banks (that is the role of the Financial Ombudsman Service). The settlement to which you have objected is one between the bank and some shareholders, and the terms of that are a matter for the banks, the shareholders, and the courts. All I can look at is the actions of the FCA.

I have looked carefully at the papers which you and the FCA have given me. I have found no evidence to suggest that the FCA “deliberately misunderstood” your complaint. I am satisfied that they were doing their best to answer it.

The explanation which they set out in the email of 8th March was a legal interpretation. I recognise that the answer they gave to you was not the one you wanted, since it did not say that the settlement breached Premium Listing Principle 5; and I understand that you believe strongly that shareholders of the same class should be treated equally. However, all the FCA were doing was to set out their understanding of the legal position. I can see nothing to show that they were careless in this: indeed, they sought advice, and explained the matter as clearly as they could.

This Complaints Scheme cannot settle matters of law. If, despite what I have said above, you consider that the FCA was wrong in what it told you, you would need to take legal advice.

Conclusion

I am sorry to disappoint you, but for the reasons I have given, I do not uphold your complaint. While I recognise that you continue to consider that the FCA’s interpretation is wrong, I do not consider that the FCA has acted unreasonably.

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