

Final report by the Complaints Commissioner, 13th November 2017

Complaint number FCA00398

The complaint

1. On 22nd September 2017, on behalf of your clients, you asked me to investigate a complaint about the FCA. I have carefully reviewed the papers sent to me by you and by the regulator. On 23rd October I issued a preliminary report, on which I invited your, and the FCA's, comments. I have referred to your comments below. (The FCA had no comments.)

What the complaint is about

2. In its decision letter of 11th July 2017, the FCA described your clients' complaint as follows:

On 15 January 2015 the Swiss National Bank announced that it would remove the cap on the Euro/Swiss Franc exchange rate. This led to a market event that you have said has led to your clients losing a significant amount of money due to an alleged failure by [the firm].

You are complaining about the FCA's supervision of the firm and failure to instruct the firm to carry out a remediation exercise. You have said that you require the FCA to investigate its own failings.

What the regulator decided

3. The FCA did not uphold your complaint. It said that while, for reasons of confidentiality, it could not tell you what, if any, action the FCA had taken in relation to the firm involved, it was "satisfied that the supervisory team acted reasonably when the market event happened".

Why you are unhappy with the regulator's decision

4. You ask me to review the decision saying that you were taking Counsel's opinion on the precise nature of the grounds, but "in general terms it seem [sic] to us clear from the decision by CTFC [sic] who ordered that [the firm] should cease trading due to fraudulent activities and we can supply evidence of that infomration [sic], that FCA failed in its regulatory duties and that is evident from the CFTC's decision in the USA".
5. In your response to my preliminary report, you have repeated your original complaint, emphasising that:
 - a. The imposition by the firm of system circuit breakers (SCBs) was a breach of contract;
 - b. The failure to implement the stop loss order timeously was a breach of the Conduct of Business Sourcebook rules;
 - c. Your clients were not consulted during the FCA investigation as they should have been.

My analysis

6. The event which led to your clients' losses was widely regarded as a "Black Swan" event that affected the global CFD market, and led to widespread losses. Yours is not the first complaint in relation to this event.
7. I have carefully studied the confidential papers to which the FCA referred in its decision letter. While I cannot disclose details, I can confirm that I am satisfied that, in the

- aftermath of the event, the FCA was active in reviewing what had happened, and the arrangements in relation to clients who had lost money.
8. In relation to the CFTC decision against the firm, you have said that it “must have come to the knowledge of the FCA”, imply that the FCA should have taken action. You also criticise the FCA for not taking this (and other) points into account in its investigation. However, I note that your original complaint to the FCA did not cover this point. Since it has not been the subject of an FCA complaint investigation, I have not considered it further.
 9. In respect of your points alleging breach of conduct and breach of the COBS, the former is a matter for the courts, not this Scheme; and in respect of the latter, as I have stated in paragraph 7 above, I am satisfied from the confidential papers that the FCA thoroughly reviewed the events in question.
 10. You allege that the FCA failed to follow due process by not consulting your clients in the course of its investigation. The FCA followed its usual complaints investigation process, and seems to me to have complied with the requirements of the Complaints Scheme – there is no requirement to consult the complainant during the course of the investigation.
 11. In your original letter to the FCA, you referred to your clients’ dissatisfaction with the Financial Ombudsman Service’s (FOS) handling of your client’s complaint. The FOS is the organisation responsible for considering individual complaints against firms, and complaints about the FOS are expressly excluded from this Complaints Scheme (see paragraph 3.4 e at <http://frcommissioner.org.uk/complaints-scheme/>).
 12. In that same letter, you “remind[ed] the FCA of its power to award administrative restitution or compensation under section 348(1) of FSMA”. I should say that even if I had found evidence that the FCA had failed in its duties (which I have not), the FCA is protected from claims for damages (with a few exceptions), and in any event it seems clear to me that the principal cause of your clients’ losses was the actions of the firm (which may in turn have been cause by external events). In those circumstances, the question of a payment by the FCA does not arise.

My decision

13. For the reasons given above, I am afraid that I do not uphold your clients’ complaint.

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

Antony Townsend
Complaints Commissioner
13th November 2017