

23rd June 2014

Dear Complainant,

Complaint against the UK's Financial Services Regulators
Reference Number: FSA01611

Thank you for your email of 19th May 2014 about your complaint against the Financial Services Authority (FSA) and the Financial Conduct Authority (FCA).

The rules of the scheme under which I consider complaints can be found on our website at www.fsc.gov.uk – it appears from your correspondence that you are already familiar with them.

Before I set out my understanding of your complaint, and my response, I should explain what I can, and cannot, do. I *can* consider whether you have suffered because of what the regulators (in this case the FSA and now FCA) have or have not done. I *cannot* consider how you were treated by the bank which employed you. It is clear from your correspondence that you have been going through a very difficult period, and I do not wish to do anything to exacerbate that. For that reason, I thought it particularly important to set out the limits of my role.

Your complaint

The papers you (and others on your behalf) have sent to me, and those passed to me by the FCA, relate to your concerns about the FSA's and FCA's alleged inactions in response to the conduct of the bank by which you were employed. You have supplied a large volume of material. Having carefully considered all the material, my understanding of the key grounds for your complaint are that the regulator has failed to apply its regulatory policies and principles in relation to the following matters:

1. the bank's handling of a grievance you raised. You suggest that the bank's actions breached the Regulator's rules and should therefore have prompted intervention by the Regulator. Included in your allegations is the suggestion that the bank's compliance department falsified customer complaints about you.
2. you allege that the bank misled both consumers and staff over its capital position shortly before it received substantial financial support from the Government. In making this claim you have specifically referred to a communication which was placed on the bank's intranet which asked staff to reassure customers that the bank had sufficient capital to withstand a potential credit crunch.

3. the alleged failure of the bank's senior management to take action in response to your concerns, or to co-operate in these matters with the regulator.

Additionally, you are unhappy that the Regulator is relying upon section 348 of FSMA in order not to disclose to you what action it has taken as a result of your disclosures.

My Position

The aim of the Complaints Scheme is to allow the investigation of complaints about the actions or inactions of the Regulators from those who have been directly affected. For that reason, I hope that you will understand that I cannot intervene in the employment dispute between you and the bank. Whilst I recognise that you would like the Regulator to take action against those involved in the grievance proceedings (and the board members who, you allege, failed to take the appropriate action despite being alerted to the situation), it is not the Regulator's role to intervene in disputes between individuals and regulated firms. If you continue to feel that the bank's actions in relation to you were inappropriate then I can only suggest that you seek legal advice about whether the terms of the compromise agreement that I believe that you signed would allow you to pursue the bank through the Courts or an Employment Tribunal process.

Despite the fact that neither I nor the Regulator can intervene in the employment matters between you and the bank, I can consider whether, in respect of any of the issues raised in the material which you have supplied, you have a legitimate complaint against the FSA and FCA.

First of all, I should say that I have no doubt that some of the matters which you have described are ones which would be of legitimate concern to the Regulator. In particular, your concerns about what you claim were incorrect assurances about its capital position given by the bank on its internal intranet, and your allegations about senior management inaction, are clearly potentially matters of legitimate regulatory concern.

However, it needs to be understood that, in considering what action to take in response to information about the firms which it regulates, the FCA has to take into account a wide range of factors, including the time since the alleged events took place, the extent to which there is a continuing risk, and the other demands upon its resources.

The FCA explained to you in its letter of 13th May that it had considered the issues which you have raised. Unfortunately, under section 348 of the Financial Services and Markets Act the FCA is unable to disclose information about what action it did or did not take against a firm or individual (and the reasons for that decision), other than in limited circumstances.

Given this, the Regulator felt that your complaint about its failure to disclose fully what action it had taken or was intending to take against the Banking Group, amounted to "*no more than dissatisfaction with [its] general policies*", and it was unable to investigate your complaint.

In arriving at this view the Regulator has relied upon paragraph 3.5 of the rules of the Complaints Scheme which states:

"3.5 Circumstances where the regulators will not investigate

The regulators will not investigate a complaint under the Scheme which they reasonably consider amounts to no more than dissatisfaction with the regulators' general policies or with the exercise of, or failure to exercise, a discretion where no unreasonable, unprofessional or other misconduct is alleged".

To the extent that you are unhappy with the general policy which the Regulator has adopted in relation to how it considers information it receives under a disclosure, I believe that the Regulator can rely upon the provisions of paragraph 3.5 of the rules of the Complaints Scheme not to investigate your complaint. The Regulator assured you on a number of occasions that, although it was considering your comments, it would be unable to comment further on the matter. I therefore consider that the Regulator was justified in not investigating your complaint.

Nonetheless, although the Regulator cannot disclose to you what action it may have taken in response to your complaint, I am permitted to study the regulator's confidential papers. I have therefore made some further inquiries, from which I am satisfied that the FCA has properly considered the matters which you have brought to its attention. I recognise that it must be unsatisfactory from your point of view not to be told what action has or has not been taken in response to the information which you have supplied, and the reasons, but I can assure you that in my independent view I have found no evidence to suggest that in its handling of your complaint the Regulator has been guilty of mistakes and lack of care, unreasonable delay, unprofessional behaviour, bias, or lack of integrity. I consider its actions to have been reasonable.

I appreciate that you will be disappointed that I have not overturned the Regulator's decision that it should not investigate further your complaint. I equally appreciate that you will be frustrated that, although information has been provided to me, I have been unable to provide you with any further information about what action, if any, the Regulator took as the result of the disclosure you made to it.

I have sympathy for your position as you are clearly very unhappy with the manner in which you were treated by the bank, but my decision is that I should take no further action in respect of the Regulator.

I am sorry to have to send what is inevitably a disappointing reply. I am copying this letter to the Regulator and I am filing my papers.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Antony Townsend'.

Antony Townsend
Complaints Commissioner