

15th December 2015

Dear Complainant,

**Complaint against the Financial Conduct Authority
Reference Number: FSA01618**

As you are aware, your MP wrote to us and asked us to review the Financial Conduct Authority (FCA)'s investigation and decision not to uphold your complaint against both it and its predecessor the Financial Services Authority (FSA). I have now completed my review of the FCA's investigation. I apologise for the length of time which this has taken – as explained below, I needed to make some further inquiries. I have also considered the comments made on your behalf by your MP when responding to my preliminary decision.

How the complaints scheme works

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

You can find full details of how I deal with complaints at www.fsc.gov.uk. If you need further information, or information in a special format, please contact my office at complaintscommissioner@fsc.gov.uk, or telephone 020 7562 5530, and we will do our best to help.

What we have done since receiving your complaint

We have now reviewed all the papers you and the regulator have sent us. My decision on your complaint is explained below.

Your complaint

You allege that the FSA's (now the FCA and from here referred to as the "regulator") action against Pritchard Stockbrokers Limited (Firm P) resulted in a direct loss to you as it prevented Pritchard from selling your shares. You state that Firm P's administrator, Administrator M, signposted you to the Financial Services Compensation Scheme (FSCS) who in turn stated that it would not "pay out because it was the [regulator] who froze the assets of Firm P".

Background to the FSA's action

As part of the regulator's monitoring of Firm P it became aware that, due to losses, the firm had capital resource issues. As a result of further investigations, in February 2012 the firm admitted to the regulator that it had used a considerable amount of client money to meet its own costs and expenditure, and that it had capital resource issues

As a result of these concerns, on 10th February 2012 the regulator issued Firm P with a Supervisory Notice which prevented it from carrying out any regulated activity, and froze the assets the firm held for both itself and those who had invested with it. As Firm P had used client assets to meet its ongoing expenditure the only way in which the regulator could protect consumers generally was to freeze the assets held by Firm P.

On 9th March 2012, Administrator M was appointed as Firm P's administrator and Firm P entered the Special Administration Regime (which gave the regulator powers to direct the administrator's actions, specifically ensuring that the reconciliation of client assets and the reconciliation and return of client money took priority over interests of other creditors). Freezing the assets held by Firm P was also necessary to allow Administrator M to complete a reconciliation exercise to ascertain how much client money had been misused by Firm P, to prevent further consumer detriment, and to ensure that all consumers whose assets were held by Firm P were treated equally.

My position

As part of my investigation into your concerns I have obtained and reviewed the FCA's investigation file. I have also considered the comments you have made when corresponding with the FCA.

Although I have great sympathy for your position, where firms have used client assets to meet their own expenditure, consumer detriment will have already occurred before the regulator has become involved and the regulator's priority is to act to prevent further consumer detriment occurring. Had the regulator not frozen the assets, there was the possibility that further client money would have been used to meet Firm P's ongoing operational expenses and consumers would have experienced further losses. The fact that the freezing of assets may, as in your case, have adverse consequences is very unfortunate, but it does not follow that the regulator acted inappropriately.

I appreciate that, when responding to my preliminary decision, you have stated that Administrator M "should have taken over and explained to customers of [Firm] P that they were "The New Enforcers" that they were the new administrator, going through their new terms of agreement and then given the customers of [Firm] P the option to partake with Administrator M to complete any transactions. This was when my shares should have been sold as I had not any outstanding balance also the new administrator [Administrator M] would have made money out of the transaction with me".

Regrettably, the situation was not as simple as this. As I have explained, Firm P had used money and assets belonging to its clients to meet its operational expenses. As such, it was unclear which clients had been affected and had lost out as a result of Firm P's actions. The regulator had to ensure that all of Firm P's customers were treated as fairly as possible and that a consumer or a group of consumers did not benefit at the expense of other customers. The only way in which this could be achieved was to undertake a reconciliation exercise which, given the size of the assets held by Firm P, took some time to complete and required the freezing of all of the assets held by Firm P.

Conclusion

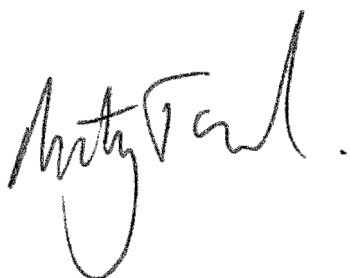
I have sympathy for the position you find yourself in, but from the information presented to me by both you and the FCA, it is clear that the regulator's concerns about Firm P's use of client assets (both client money and client share holdings) meant that it had to take action to prevent further and wider consumer detriment. The limitations the regulator imposed upon Firm P reflected these concerns and were taken to allow it to undertake a reconciliation exercise to establish what client assets Firm P actually held (and what client assets had been used by Firm P). Such an exercise would not have been possible if Firm P had been allowed to continue trading (either on its own or its clients' behalf).

I would also add that had the regulator not acted (by freezing Firm P's assets) it would have meant that not all consumers were being treated equally as some consumers would have been able to benefit at the expense of others. There is nothing to suggest that the regulator acted inappropriately: the fault lies clearly with Firm P who used money passed to it by its clients to meet its operational expenses. It is my decision that the FCA has reached the correct decision when assessing your complaint.

While I do not find that the regulator was at fault, I do consider that your case raises a wider issue about the interactions between the FCA and the FSCS when dealing with firms which are in default and have entered the Special Administration Regime. This case is not unique, and there may be an argument for considering whether, as a matter of policy, people who are – through no fault of their own – caught in your position should in future be eligible for compensation.

I have attempted to obtain a clear explanation from the FCA of the reasons for the limitations of the FSCS in cases such as yours, but have not succeeded – hence the delay, for which I again apologise. I am afraid that that is a policy issue which goes well beyond the scope of this Complaints Scheme. You might wish to consider asking your Member of Parliament – to whom I am copying this letter – to take this matter up, although it is unlikely that this would affect your own position.

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