

6 February 2017

Dear Complainant

Complaint against the Financial Services Authority
Our reference: FSA01619

Thank you for your letter of 9 January 2017. I have completed further enquiries of the FCA, and can now write to you. In reaching my final decision, I have carefully considered the points you made in your letters of 26 and 27 January 2016, in which you responded to my preliminary decision, and I refer to some of them below.

Your complaint

You complained to the FCA on 18 May 2015 as follows:

1. The Financial Services Authority ('FSA') should not have been permitted to oversee the transfer of business from CM to Company F Limited during the period January – March 2013.
2. In relation the Financial Services Authority's ("FSA") oversight of the transfer of business from CM to Company F Limited during the period January – March 2013, you claim if a different regulator had been in place during the above period, there may have been a different outcome

The FCA excluded element 1 of your complaint on the grounds it related to the performance of the FSA's legislative function, and did not uphold element 2 of your complaint.

You then submitted your complaint to me.

My findings

The first element of your complaint is that you feel the FSA should not have been allowed to oversee the transfer arrangements between CM to Company F Ltd on the basis that the FSA was a 'discredited, incompetent and unfit for purpose institution'.

It may be helpful if I provide some background. In 2010, the then Chancellor of the Exchequer called for regulatory reform. The resulting changes to the regulation of financial services included separating the regulation of prudential and conduct operations which were previously regulated by FSA. These changes had to be approved by the Parliament of the United Kingdom, which was done through the Financial Services and Markets Act (FSMA) 2012, which implemented a new regulatory framework for the financial system and financial services in the UK. It replaced the FSA with two new regulators, namely the FCA and the PRA, and came into effect on 1 April 2013.

Therefore, the FSA was tasked with its legislative functions until 1 April 2013. I appreciate you would have wished to the replacement to occur sooner, as you have made clear in your latest letter, but that is not a matter for the Complaints Scheme: the date the FSA ceased to exist was decided by the UK Parliament.

I therefore agree with the FCA that this element of your complaint is excluded from the Scheme.

I now turn to the second element of your complaint about the FSA's oversight of the transfer of CM to company F Ltd. The FSA was involved in overseeing the transfer arrangements until 1 April 2013 at which point it ceased to exist and the PRA was formed. The PRA held a committee meeting to consider the transfer of engagements of company T, which owned CM, to company F Ltd on 3 April 2013, and the transfer took place on 4 April 2013. In its decision letter of 8 December 2016, the FCA investigator confirmed to you that company T sought to arrange a transfer of its business and selected company F Ltd as the appropriate partner. The FCA investigator explained that she had reviewed the Minutes of the PRA's Committee meeting on 3 April 2013, at which the FCA was represented, which considered your written objections. According to the minutes of the meeting, your objections included that policyholders were not given long enough to consider proposals from receipt of the Schedule 15 statement; that the provided booklet was too complicated; and a series of objections which, broadly summarised, suggested that the transfer should not be allowed due to the fact that the FSA had had a role in determining the issue, but was a failed regulator.

I have also reviewed these minutes and I agree with the FCA that the panel gave your objections due consideration. I have also reviewed the decision notice and find that it documents reasonably the considerations given by the regulator to the transfer arrangements. I appreciate that you remain dissatisfied, but on the evidence before me it seems clear that a thorough process was followed, and I cannot conclude that the PRA acted unreasonably. For these reasons, I do not uphold your complaint.

You have also asked me if I can answer your question about the names you list in your letter to CM dated 10 January 2013, as you believe you are entitled to an answer as a shareholder. I regret I am unable to help you with that query, as it falls outside my remit, which is to investigate complaints against the regulators.

I now turn to the FCA investigation of your complaint. Although I agree with the FCA findings, it is disappointing to note the lengthy delays in reviewing your case. The FCA took a very long time to investigate your complaint without any reasonable excuse as to why it did so, though I note that it did apologise to you for the delay.

Conclusion

I appreciate that you will be disappointed with my decision on your complaint but hope that you will understand why I have reached it.

Yours sincerely

A handwritten signature in black ink, appearing to read "Antony Townsend". The signature is written in a cursive style with a large, looping initial 'A' and a trailing period.

Antony Townsend
Complaints Commissioner