



9th September 2014

Dear Complainant,

Complaint against the Financial Conduct Authority
Reference Number: FCA00021

Thank you for your letter of 9th August 2014.

As the rules of the scheme under which I consider complaints can be found on our website at www.fsc.gov.uk, I do not intend to set them out fully below.

Your complaint

From your letter I understand that you are unhappy with the actions of the Financial Conduct Authority (FCA), and in particular:

- you say that the FCA’s response to your complaint “ignores the fact that the assertion that [Bank B’s] Terms and Conditions are misleading is supported by the Financial Ombudsman”.
- you go on to say that you “do not accept that, in these circumstances, confirmation that FCA have required [Bank B] to amend misleading Terms and Conditions would constitute disclosure of confidential information”.

My position

I have obtained and reviewed the FCA’s complaint file. From this I understand that you had attempted to make an investment into a bond issued by Bank B. However, despite its stated terms and conditions, Bank B had refused to accept your investment. Following this decision you exchanged correspondence with the FCA in relation to this matter. Your contact with the FCA can be summarised as follows:

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|--------------------------------|---|
| 21 st October 2013 | you contacted the FCA about Bank B’s conduct and asked it to confirm to you what action it was intending to take against Bank B. |
| 31 st October 2013 | the FCA responded to you confirming that it had referred the matter to Bank B’s supervision team. However the FCA also informed you that it is under no obligation to provide any further information to you about what action, if any, it intended to take against Bank B. |
| 12 th November 2013 | you challenged the FCA’s response as you felt that the FCA was allowing Bank B to mislead its customers. |

- 30th November 2013 the FCA responded to you confirming that its rules require firms to communicate with customers in “a manner that is clear, fair and not misleading and adhere to Principle 6 and that your concerns had been noted and passed to the bank’s supervisors”.
- 17th December 2013 you responded to the FCA indicating that you believe that Bank B was breaching the FCA’s principles.
- 17th January 2014 the FCA responded saying that bank B’s terms and conditions are a commercial matter for the bank.
- 27th February 2014 you wrote to the FCA maintaining that Bank B’s terms and conditions are misleading and that you felt the FCA must challenge them.
- 20th March 2014 the FCA responded to you confirming that it had nothing further to add.
- 16th April 2014 You wrote to the FCA asking for your continuing concerns to be considered as a formal complaint.
- 19th May 2014 the FCA completed its investigation into your complaint and wrote to you setting out its findings

As a result of your correspondence with the FCA it is clear that the concerns you raised about Bank B’s conduct have been raised with Bank B’s supervision team which is responsible for monitoring Bank B’s conduct and compliance with the FCA’s rules. The FCA’s file also shows that following careful consideration of the information you provided, Bank B’s FCA Supervision Team has taken what it believes to be the appropriate course of action.

The FCA has explained in its letter of 19th May 2014 that it takes a risk based approach to the regulation of the industry. As such, when presented with information about the conduct of a firm, the firm’s Supervision Team will consider whether it needs to challenge the firm’s conduct. This decision will be based upon a number of factors which include, but are not limited to, the nature and significance of the conduct referred to it and the likelihood and extent of any possible consumer detriment. Given this approach, and the rationale provided to me by the regulator, the approach the FCA has adopted in this instance does not appear to be unreasonable.

It is also clear from your letter that you feel that the contents of section 348 of the Financial Services and Markets Act 2000 (the FSMA) should not apply and you would therefore like me to confirm what action the regulator has taken against Bank B as a result of your letter. Although I can understand why you are unhappy with the situation, the FCA has to comply with the requirements placed upon it by the Act.

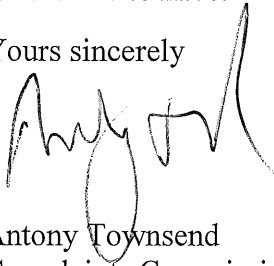
Section 348 of the FSMA, as amended by Section 18 of Part 2 of the Financial Services Act 2012 (the 2012 Act), imposes an obligation of confidentiality on the regulator when undertaking its regulatory function. The supervision of a firm and assessing its compliance with the relevant rules forms part of the regulator’s regulatory functions. Whilst I have a gateway, under Section 349 of the FSMA as amended by Section 19 of Part 2 of the 2012 Act, to see the confidential information, I am also bound by the provisions of Section 348 in relation to the disclosure of that information. Unfortunately, whilst I cannot comment further on what the FCA did, what I can say is that the decisions it made in relation to the action it should take against Bank B following the information you provided to me do not appear to be unreasonable. Under the law, neither I nor the FCA can comment further.

Conclusion

Having considered your complaint there is nothing to indicate that the FCA has failed to fulfil its statutory duty or failed to act upon the information you provided. Likewise, although I can appreciate why you would like to know what action the FCA took against Bank B, regrettably the provisions contained within Section 348 of the FSMA prevent both the FCA and me from doing this.

I hope that the reassurance I have provided that the FCA did consider the information and took what to me appears to be a reasonable course of action will provide you with some reassurance in this matter, though I recognise that it falls short of the information which you would like to have.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Antony Townsend', written over the typed name below.

Antony Townsend
Complaints Commissioner