

6<sup>th</sup> January 2015

Dear Complainant,

**Complaint against the Financial Conduct Authority  
Reference Number: FCA00037**

Thank you for your email of 29<sup>th</sup> November 2014. I am sorry for the delay in responding to you but my office has been liaising with the Financial Conduct Authority (FCA) about this.

As the rules of the scheme under which I consider complaints can be found on our website at [www.fsc.gov.uk](http://www.fsc.gov.uk), I shall not repeat them here.

**Your complaint**

From your email I understand that you are unhappy with what you perceive to be the FCA's failure to take action against your bank in relation to the bank's alleged failure to provide full details of your interactions with it to the Financial Ombudsman Service (FOS).

**My position**

I have obtained and reviewed the FCA's complaint file. From this it is clear that your complaint is linked to the previous complaint you referred to this office and which was considered by my predecessor. I understand that the general background to your complaint is that, following a review of your business circumstances (specifically a change in underlying nature of your business), your bank took the decision to cancel your business' banking facilities.

You complained to the bank and subsequently referred your complaint to the FOS. As a result of information provided to you by the FOS, you believe that your bank has not provided the FOS with full details of your interactions with it, and allege that the bank's failure to provide full disclosure has impacted adversely upon the FOS's decision.

You have contacted the FCA and asked it to intervene by instructing the bank to provide full disclosure of your interactions with it to the FOS. Although I can understand why you are disappointed that the FCA will not intervene on your behalf, I understand that the FCA has explained to you that it is unable to intervene directly as the underlying issue is a dispute between you and the bank.

Although I can understand your displeasure with the overall situation, the decision to remove a business' banking facilities is a commercial decision for the bank and is therefore not one in which the FCA can generally either become involved or instruct a bank to review a specific decision. Likewise, the review of a complaint between an unhappy consumer (or, in this case, a small business) and a bank is a matter for the FOS rather than the FCA.

I know that you believe that the bank has failed to comply with the FCA's rules by not providing the FOS with a full disclosure and whilst this may be a cause for concern, as you have made the FOS aware of this, this is a matter for the FOS to consider/address when arriving at its final decision. Any decision the FOS may arrive at will reflect all of the information presented to it (including allegations of failure to comply with FCA rules).

Whilst the FCA is generally unable to intervene during the FOS's investigation of a complaint, if the FOS believes that the bank concerned may not be providing it with the appropriate assistance, and therefore failing to comply with the provisions of DISP 1.4.4R, the FOS can ask the FCA for its assistance. However, it is for the FOS to decide whether the FCA's assistance is required and any involvement the FCA may have would be limited to ensuring that the bank concerned provided the correct and appropriate assistance to the FOS. The FCA would not have any involvement in the FOS's decision making process. I would add that if the FOS does not ask the FCA to intervene then it has an obligation to raise its concerns with the FCA at the conclusion of its investigation (although in this case this is not necessary as you have already raised these concerns with the FCA).

I appreciate that you feel that by failing to take immediate action the FCA is allowing the bank not to comply with the provisions of DISP 1.4.4R. I can assure you that this is not the case. The fact that the FCA did not feel that it was able to intervene in your personal dispute with the bank does not mean that the FCA will not act upon the information you have provided.

I appreciate that you would like to know what action the FCA has taken (or is intending to take) as a result of your concerns but, as the FCA has explained to you in its letters of 20<sup>th</sup> and 28<sup>th</sup> November 2014, the confidentiality provisions in Section 348 of the Financial Services and Markets Act 2000 (the FSMA)<sup>1</sup> restrict what the FCA (and I) can disclose.

I know that you feel that the FCA has misrepresented the provisions of Section 348 of the FSMA but this is not the case. The FCA has explained that it feels, correctly in my opinion, that your dispute is one for the FOS and it is therefore unable to intervene. As such, the information you have provided will not be used by the FCA in relation to your specific dispute with the bank but instead will be used to assist the FCA with its wider supervision of the bank. As the FCA will not use the information to assist the FOS with the investigation of your complaint, it cannot tell you what general action it may have taken or may intend to take as a result of this information.

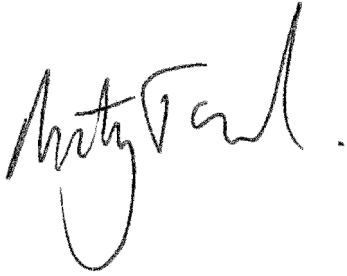
I should add that the information the FCA has provided to me has reassured me that the FCA has dealt appropriately with the information which you have provided, and has not ignored it.

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<sup>1</sup> as amended by provisions contained within ss16 to 24 of Part 2 of the Financial Services Act 2012

I appreciate that you will be disappointed that, given that I am satisfied that the FCA has both acted and considered this matter appropriately, I am unable to take any further action in relation to the conduct of the bank and the FCA's decision not to intervene in the handling of your complaint by the FOS. Unfortunately, given the conclusions I have reached following my investigation into your complaint I am unable to be of further assistance to you but I hope that my independent assessment of your complaint will offer you some comfort that the regulators' actions were reasonable.

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