

13th March 2015

Dear Complainant,

Complaint against the Financial Conduct Authority
Reference Number: FCA00047

Thank you for your email of 29th January 2015.

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 email and the papers you have submitted to me and the FCA I understand that your concerns relate to the fact that:

- you are unhappy with the provisions of the regulator's Mortgage Market Review (MMR) and the impact this has had upon you personally as you believe that the requirements the regulator introduced has resulted in some mortgage lenders refusing to offer mortgages to those who are over 60.

My position

In considering this case, I have reviewed the regulator's investigation papers and its arguments, and the submission that you have made to my office.

Whilst I appreciate that you work in the mortgage industry, I feel I need to set out the regulatory background to the MMR and its introduction. On 31st October 2004 the arrangement of mortgages became a regulated activity and those providing mortgages (and more specifically mortgage advice) became subject to the Financial Services Authority's (FSA) rules and supervision. However, by 2007, which represented the height of the mortgage market, it had become clear that, while the mortgage market had worked well for many people, it had been a cause of severe hardship for others.

The regulatory framework in place at the time had proved to be ineffective in constraining particularly high-risk lending and borrowing (and some lenders were offering extremely high multiple loans where the borrower's long term ability to continue with repayments was uncertain). This led to severe difficulties for a large number of borrowers. The MMR package of reforms aimed at ensuring the continued access to mortgages for the great majority of customers who can afford it, while preventing a return to the poor practices that were seen in the past.

As a member of the industry I am sure that you will be aware that the reforms the regulator introduced were subject to several public consultations.

In October 2009¹, as a result of its concerns, the FSA announced that it was to undertake a comprehensive review of mortgage market regulation. Following its review, in December 2011, the regulator issued a consultation paper² which set out its proposals for the future regulation of the mortgage market. In issuing the consultation paper the FSA asked the industry, consumers and consumer groups to comment upon its proposals.

The FSA reviewed the comments it received and, where necessary, amended its proposals to take into account the feedback. In October 2012, it issued its revised rules and requirements in a policy statement³ (which also set out details of the feedback it had received to its proposals and its response to that feedback). Although the policy statement was issued in October 2012, the majority of the reforms that were brought about by the MMR did not come into force until April 2014.

Some of the main changes that were introduced by the MMR rules were:

- the removal of the non-advised sales process,
- strengthening of the arrears charging rules, and
- responsible lending reforms which were set out in three key elements, namely:
 - an affordability assessment: a lender must verify income and be able to demonstrate that the mortgage is affordable taking into account the borrower's net income and, as a minimum, the borrower's committed expenditure and basic household expenditure.
 - an interest rate stress test: the lender must also take account of the impact on mortgage payments of market expectations of future interest rate increases.
 - revisions to the interest-only rules: the lender must also assess affordability on a capital and interest basis, unless there is a clearly understood and believable alternative source of capital repayment.

I know that you are unhappy with the position which has been adopted by Lender N which has refused to grant you a 7 year mortgage because of your age. You claim that Lender N's decision is as a direct result of the regulator's MMR rules. From the guidance the regulator sent to the industry it is clear that, whilst lenders need to lend responsibly and assess a borrower's circumstances and the long term affordability of the mortgage, the rules are not designed to prevent lending to older customers.

¹ DP09/3 (<http://www.fca.org.uk/your-fca/documents/discussion-papers/fsa-dp09-3-mortgage-market-review>)

² CP11/31 (<http://www.fca.org.uk/your-fca/documents/consultation-papers/fsa-cp11-31>)

³ PS12/16 (<http://www.fca.org.uk/your-fca/documents/policy-statements/fsa-ps12-16>)

However, the rules only set out a framework for lenders, and the FCA does not directly set the lending criteria that are used to assess mortgage applications. I would also add that in PS12/16 the regulator specifically addresses the issue of lending to older borrowers in the Equality Impact Assessment it undertook (which can be found in Annex 5 to PS12/16).

I know that you unhappy with the FCA's decision that it was unable to consider your complaint under paragraph 3.4(c) of the Complaints Scheme which sets out:

3.4 Exclusions to the Scheme

Excluded from the Scheme are complaints:

.....

- c) in relation to the performance of the regulators' legislative functions as defined in the 2012 Act;

Although you have, in effect, asked me to consider the implications the MMR has had on those seeking mortgages I am unable to do this, for the reasons already explained to you by the FCA. Unfortunately, as the definition of the FCA's legislative function as defined within the Financial Services Act 2012 (the 2012 Act)⁴, includes the making of rules (the provisions of the MMR amount to rules), I agree with the FCA's view that your complaint is not one which can be considered under the Complaints Scheme.

I can appreciate why you are disappointed that Lender N will not provide you with the loan you require, but these are commercial decisions for each lender, with criteria set according to their business models and risk appetites. When assessing an application some lenders may adopt a more conservative approach than the general terms set out by the regulator, providing that they apply this assessment policy consistently (and comply with the relevant equality and discrimination legislation). The regulator cannot intervene in these decisions as to do so could pass responsibility for non-payment of a loan to the regulator (and the due to the way it is funded the industry).

If you feel that Lender N has discriminated against you when assessing your application you may be able to complain to it and, if you remain unhappy with the outcome of that complaint, ask the Financial Ombudsman Service (FOS) to review Lender N's conduct. The FOS can be contacted as follows:

The Financial Ombudsman Service
Exchange Tower
London
E14 9SR

Telephone 0800 023 4 567 or 0300 123 9 123

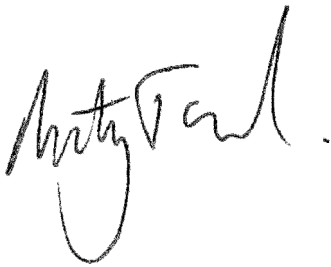
Email: complaint.info@financial-ombudsman.org.uk

Website: <http://www.financial-ombudsman.org.uk/consumer/complaints.htm>

⁴ Paragraph 85(4) of Part 6 of the Financial Services Act 2012

In conclusion, I consider that the FCA's response to your complaint was correct, and I do not therefore uphold your complaint to me. I appreciate that you will be disappointed with my decision but hope that you will understand why I have reached it.

Yours sincerely

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

Antony Townsend
Complaints Commissioner