

22<sup>nd</sup> May 2015

Dear Complainant,

**Complaint against the Financial Conduct Authority  
Reference Number: FCA00059**

Thank you for your telephone call of 10<sup>th</sup> March 2015 asking me to review the decision of the Financial Conduct Authority (FCA).

**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 make a recommendation to them about what they should do to put things right.

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

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 telephone conversation with my Senior Investigator I understand that your complaint relates to the following:

- The FCA did not act upon the information which you have presented to it since 2010 surrounding the actions and conduct of a mortgage broker. Having reviewed the FCA's complaint file I believe that your specific allegation relates to your comments that a mortgage broker fraudulently completed a number of self-certification mortgage applications and arranged for the funds to be paid to him. You feel that the FCA has failed to regulate both the mortgage lender and the mortgage broker.

- When considering your complaint the FCA ignored and omitted information which was contained within its files and which you believe was relevant to your complaint. You have not however explained which pieces of information the FCA ignored and failed to consider.
- You are also disappointed that the FCA complaint handler could not fully define our role and confirm whether we would undertake a criminal investigation.

### **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. Before I comment further I believe that it may be useful if I clarify my role in the process.

I, like the FCA, can only consider complaints under the rules of the Complaints Scheme. The Complaints Scheme is a document which set out the types of complaints which can be considered under the scheme and also sets out, in general terms, how complaints will be investigated.

I cannot consider criminal matters and cannot undertake criminal investigations. I am also unable to investigate complaints against the Police as this is the role of the Independent Police Complaints Commissioner (who you have already contacted). Whilst the FCA does have powers, in certain situations, to undertake criminal investigations, criminal investigations usually have to be completed by the police.

When the FCA considered your complaint it felt that your complaint related generally to your dissatisfaction with the manner in which it supervised Lender U (and its parent Lender N). In view of this the FCA felt it could not investigate your complaint and relied upon paragraph 3.5 of the Complaints Scheme to support its decision.

When contacting my office you have clarified that your complaint does not relate directly to the supervision of Lender U (and its parent Lender N) but the failure of both the FSA and the FCA to take action against Lender U (and its parent Lender N) in relation to mortgage fraud. Whilst this was not something which was directly considered in the FCA's investigation of your complaint, the FCA has provided you with considerable information surrounding its consideration of this issue.

From papers the FCA has presented to me I understand that in 2009 or 2010 you contacted the Financial Service Authority (FSA) to notify it that between October 2001 and December 2005 a mortgage Broker, Mr B, had operated without authorisation and that he had arranged approximately five fraudulent mortgages. You added that, although Mr B was arranging mortgages through a number of lenders, your main concerns related to the mortgage arranged for Mr O'N (who has since died) through Lender U as you believe that Mr B took advantage of Mr O'N's vulnerable state. You are also unhappy with Lender U's conduct during repossession proceedings of a property.

Before I comment on the issues at the heart of your complaint it may be useful if I provide you with some general background on the regulation of the mortgage industry. Before 31<sup>st</sup> October 2004 the provision of all mortgage advice was not a regulated activity and, as such, the firms and individuals who provided advice did not need approval from the financial services regulator.

Where the firm was not conducting activities which fell within the regulator's legal jurisdiction, the regulator had no oversight of the firm. From 31<sup>st</sup> October 2004, the provision of certain types of mortgage advice became a regulated activity. As a result, most of the firms which provided mortgage advice needed to be authorised. However the individuals who provided advice on behalf of the firms did not need to be individually approved by the regulator. I should also add here that, until 1<sup>st</sup> April 2014 not all firms providing mortgage advice needed to be authorised.

I appreciate that you do not believe that the FSA adequately considered your concerns when you contacted it in 2009. I also understand that you continue to be unhappy that the FSA invited you to contact Sussex Police if you believed that fraud had been committed. Whilst the FSA was able to consider your concerns about Mr B and his employer, the FSA was not (like the FCA is not now) a fraud prosecution body. Having carefully studied the papers, my view is that many of the matters which you raise are ones with which only the police can properly deal. However, it might have been helpful if the regulator had explained to you more clearly why it reached that conclusion.

Whilst I know that you do not believe that the FSA, as the regulator at the time, considered adequately your concerns the information provided to me shows that consideration was given to your concerns. The FCA has confirmed to you (through the response it sent to Andrew Tyrie MP who had contacted the FCA's Chief Executive on your behalf), that your concerns were escalated internally to its Unauthorised Business Division and subsequently with the Supervision Teams responsible for Lender U (and its parent Lender N).

What action the regulator takes when it is alerted to potential wrong doing is inevitably often a matter of judgement. My role is not to substitute my judgement for the regulator's but to assess whether or not the regulator's exercise of its discretion was reasonable and rational. The FCA, like the FSA before it, operates a risk based approach to regulation which means that when assessing whether action should be taken the regulator will consider a number of factors. When arriving at its decision, the factors the regulator will consider will include, but are not limited to, the scale of the alleged wrong doing, the potential continuing consumer detriment involved, the strength of the evidence, the likelihood of success, proportionality (including an assessment about whether the required result could be obtained by other action) and the resource requirement.

In this case, having studied the papers, I am satisfied that the regulator (both the FCA and the FSA) exercised its discretion appropriately and has taken a course of action which is both reasonable and rational.

It is unfortunate that the FCA felt that it could not provide you with further information but, as the FCA has previously explained, the provisions of Section 348 of the Financial Services and Markets Act 2000, together with its policy of confidentiality, prevent it providing you with full information on what action it may have taken or the enquiries it may have made of all of the firms you have referred to. The fact that the FCA considers that it is unable to comment further does not mean that the FCA (or the FSA before it) failed to act upon your concerns or consider all of the available information you have provided.

When you contacted my office you also raised concerns over the information which was provided by the FCA's Complaint Handler. It does not appear that this was something that was formally considered by the FCA during its investigation into your complaint. If you feel that the FCA's Complaint Handler provided you with incorrect or misleading information then this is something which you should raise with the Manager of the FCA's Complaints Team.

I appreciate that you will be disappointed with my decision but hope that you will understand why I agree with the FCA's decision that there is nothing to show that it failed to assess respond adequately to your referrals.

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