

17<sup>th</sup> July 2015

Dear Complainant,

**Complaint against the Financial Conduct Authority  
Reference Number: FCA00080**

Thank you for your email of 15<sup>th</sup> May 2015. I have completed further inquiries of the Financial Conduct Authority (FCA), and am able to write to you.

**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 recommend that the FCA should apologise to you, take other action to put things right, or make a payment.

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.

**What we have done since receiving your complaint**

Since I received your complaint I have considered all of the comments and evidence presented to me, and where necessary seeking further information from the FCA. I have now completed my investigations and provide you with my final decision.

**Your complaint**

Your complaint is that the FCA's mishandling of the briefing on its business plan which it gave to the Daily Telegraph in March 2014 'caused you to lose money'. The Telegraph article reported that the FCA's business plan for 2014/2015 would include an inquiry into 30 million insurance policies colloquially known as 'zombie funds'. The rapid reduction in share values of companies which specialise in potentially affected insurance policies following publication led you to sell shares in affected companies at a reduced price. You sold 8000 Friends Life (FLG) and 4000 Phoenix Group (PHNX) shares at 2.14 pm on 28<sup>th</sup> March 2014, resulting in a loss which you calculate as £9,447.53.

As a result of its stage 1 investigation into your complaint, the FCA offered you an ex gratia payment of £4,578.46. You do not feel this is sufficient and are seeking to recover the full amount of your loss from the FCA.

### **Background to the complaint**

In considering this case, I have carefully reviewed both your complaint and the regulator's arguments for not offering you an ex gratia payment of the full sum which you are seeking.

By way of general background, following an FCA briefing the Telegraph newspaper ran an article on its website at or around 10 pm on 27<sup>th</sup> March 2014 and again in the morning of 28<sup>th</sup> March 2014 which indicated that the FCA would conduct a review of 30 million policies sold between 1970 and 2000, colloquially known as zombie funds, as part of an inquiry into the possible mistreatment of customers.

The effect of this article was to depress the share prices of companies trading in such policies when the market opened on the following day, 28<sup>th</sup> March 2014.

At 2.30 pm on 28<sup>th</sup> March 2014 the FCA issued clarification of its plans, and this announcement led to a recovery in the affected shares during the course of the day, though not to the levels seen at the end of the preceding day.

Subsequently, the FCA Board acknowledged the concerns of the market and appointed an external law firm, Clifford Chance, to undertake an independent inquiry into the FCA's handling of the briefing and its aftermath. Simon Davis of Clifford Chance conducted the inquiry, and concluded that a 'false market' and possibly a disorderly market existed for the shares of affected companies on 28<sup>th</sup> March until 2.30 pm, when the FCA issued its clarification statement, following which the relevant shares prices recovered. The FCA has accepted that its mishandling of the briefing, and the delays in correcting the matter, caused disruption to the market and losses, and it has offered ex gratia payments to a number of individuals, including you.

The particulars of your case are that you purchased 6000 shares in FLG (for £3.242 per share) and 3000 shares in PHNX (for £7.3682 per share) on 26<sup>th</sup> March 2014 (i.e. before the Telegraph published its information).

On 28<sup>th</sup> March at 8.14 am (i.e. after the Telegraph's publication) you purchased an additional 2000 shares in FLG (for £3.02463 per share) and 1000 shares in PHNX (for £6.9999 per share).

At 2.14 pm on 28<sup>th</sup> March 2014 (i.e. shortly before the FCA issued its clarification statement) you sold all 12,000 shares and incurred a combined loss of £9,447.53.

You complained to the FCA who accepted your complaint within the Complaints Scheme and offered you an ex gratia payment of £4,578.46 (including brokerage fees), using the share price of both companies at close of business on 28<sup>th</sup> March 2014 as a benchmark against which to calculate investor losses.

You feel that the FCA ought not to have used the closing price on 28<sup>th</sup> March 2014 as a benchmark and should, instead, re-imburse you for the entirety of your loss.

## My findings

In reviewing your complaint, I have focussed on what I believe are the two main issues: namely, is it reasonable for you to claim reimbursement for the entirety of your portfolio losses in FLG and PHNX on 28<sup>th</sup> March 2015, and is the FCA methodology for calculating ex gratia payments based on the closing price of the relevant shares on 28<sup>th</sup> March 2014 reasonable? I will examine these two issues in turn.

(i) Eligibility of your portfolio losses for an ex gratia payment

It is a matter of fact that the Telegraph article published at 10 pm on 27<sup>th</sup> March and featuring again on the front page of the Telegraph on the morning of 28<sup>th</sup> March 2014 led to investor panic both immediately before and after the markets opened at 8 am that morning. This was reflected in the share price of the insurance companies affected by the statement. Given that sufficient information was available overnight on 27<sup>th</sup>/28<sup>th</sup> March to indicate to investors that share prices of companies such as FLG and PHNX would be adversely affected, and given that investors purchasing shares on the morning of 28<sup>th</sup> March purchased their shares at a price which already reflected concerns about possible FCA investigation, I think there is an argument that your purchases on 28<sup>th</sup> March should not be eligible for an ex gratia payment, though that is not the position which the FCA has adopted.

(ii) The reasonableness of the FCA methodology for calculating ex gratia payments

Share prices are volatile and fluctuate according to a large number of underlying factors. It can be difficult to isolate the impact one particular factor, in this case the contribution the press coverage of the FCA business plan, made to the market price of FLG and PHNX, although it is clear from the Davis Report that the effect was significant. For that reason, the FCA needed to choose a benchmark time close to the Daily Telegraph publication and the release of the FCA's clarification statement as the basis for calculating reasonable compensation.

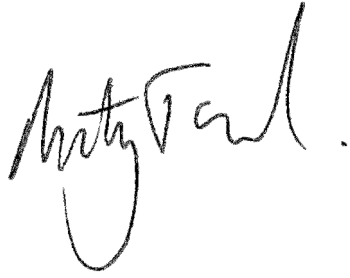
From the papers I have seen, the FCA considered the merits of a number of options in setting the benchmark according to which losses would be assessed. Their final decision was to use the share prices of the affected companies at close of business on 28<sup>th</sup> March 2015, and this is the basis upon which it has assessed your, and others', losses. The reasoning behind this decision was that share prices in affected companies, including FLG and PHNX, responded favourably to the FCA announcement at 2.30 pm, and recovered significantly by close of business on 28<sup>th</sup> March 2015. Using later dates would have entailed benchmarking prices which may have factored in other subsequent market events, and not represent as 'pure' a benchmark as the closing price on 28<sup>th</sup> March 2015. I do not consider that this decision was unreasonable, even though the adoption of the closing price on 27<sup>th</sup> March or 31<sup>st</sup> March might have resulted in a higher offer. .

I should make it clear at this point that my role is not to say what I would have decided had I been the regulator. My task is to assess whether or not the decision is one which the regulator could reasonably have taken, in light of its statutory duties and policies, and bearing in mind that – save in very limited circumstances – the FCA is immune in law from actions for damages.

For the reasons I have explained, I consider that you have received a reasonable offer, particularly since the FCA included the totality of your portfolio in their assessment when - for the reasons I gave above - there was a case for excluding the 3000 shares you purchased on 28<sup>th</sup> March 2015.

I recognise 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', with a large, stylized flourish at the end.

Antony Townsend  
Complaints Commissioner