

14<sup>th</sup> July 2015

Dear Complainant,

**Complaint against the Financial Conduct Authority  
Reference Number: FCA00086**

Thank you for your email of 22<sup>nd</sup> June 2015. I have now completed my review of the Financial Conduct Authority's (FCA) investigation into your complaint.

**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**

We have now reviewed all the records you and the regulator have sent us. My decision on your complaint is explained below.

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 do not intend to set them out fully below.

**Your complaint**

I understand that your concern is that the FCA has acted inappropriately and to your disadvantage through the introduction of the Mortgage Market Review (MMR), which has resulted in both banks and building societies imposing "...unreasonable lending criteria on customers wishing to move their mortgage to other lenders".

You believe that the rules the FCA introduced in April 2014 have led to your not being able to meet the affordability criteria; furthermore, the exemption to the application of the criteria does not apply in your situation. You have said that "the FSA have directly discriminated against us as customers of a government bailout scheme and forced our family to endure further financial hardship that is unnecessary and unfair. The discrimination is so poignant because the FSA have acknowledged others who are struggling and protected them with legislation but have not done so for us".

## My position

In considering this case, I have reviewed the regulator's investigation records and the arguments it put forward.

It may be helpful if I provide you with some further information about the MMR and its introduction. On 31<sup>st</sup> 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 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.

In October 2009<sup>1</sup>, 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 paper<sup>2</sup> which set out proposals for the future regulation of the mortgage market. 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. In October 2012, it issued its revised rules and requirements in a policy statement<sup>3</sup>. 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:

- 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.

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

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

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

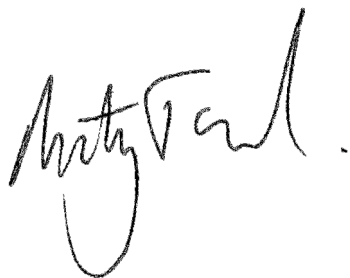
As the FCA has already explained to you, it was aware that some consumers would be unable to meet the new lending requirements. As a result, it allowed lenders to make their own decisions about making exceptions to the affordability rules, provided certain criteria were met and the lender judged that the transaction is in the customer's best interests.

The FCA has also imposed a requirement upon lenders to ensure that they do not take advantage of customers who are unable to vary their existing mortgage or enter into a new one with their existing lender. However, decisions on whether or not to grant a mortgage are the responsibility of the lenders, not the FCA

I know that you are unhappy with the FCA's decision that it could not consider your complaint. However, having carefully considered the matter regrettably I have to tell you that I agree with the FCA's decision that this is not something I can consider under the Complaints Scheme.

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

Antony Townsend  
Complaints Commissioner