

28th July 2015

Dear Complainant,

Complaint against the Financial Conduct Authority
Reference Number: FCA00089

Thank you for your emails. 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.

As you can find full details of how I deal with complaints at www.fsc.gov.uk I do not intend to set them out fully below. If you need further information, or information in a special format, please contact my office at 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.

Your complaint

From your emails and the papers submitted to me by the FCA I understand that your concerns relate to the conduct of Bank B. You feel that Bank B's literature is misleading as it incorrectly suggests that if you are unhappy about its actions (when using its will writing service) you can refer your concerns to the Financial Ombudsman Service (FOS). Your concerns stem from Bank B's conduct following a complaint you made to it about its will writing services and its subsequent actions when you referred your complaint to the FOS.

You are unhappy that although Bank B did not initially object to the FOS considering your complaint, after the adjudicator upheld your complaint Bank B challenged the FOS's ability to consider the complaint on a number of grounds. You are disappointed by the FOS decision to accept Bank B's objections and stop its review of your complaint. You are, I understand, looking for the FCA to investigate Bank B's behaviour

My position

I can appreciate why you are unhappy with Bank B's conduct, especially as it appears that it made mistakes when handling your late father's will which has resulted in your father's wishes not being carried out and with you, as a beneficiary, incurring a significant financial loss. I also understand that you are now taking legal action against Bank B as a result of its failures.

The Complaints Scheme was created to allow those who are unhappy with the regulators' (in your case, the FCA's) conduct to be able to challenge the regulator without incurring the significant expenses associated with the legal process and the courts. The scheme was not designed to allow consumers who are unhappy with the conduct of a regulated firm to challenge the conduct of that firm (that is the role of the FOS). Although I can understand why you would like action to be taken against Bank B, this is not something I am able to do under the Complaints Scheme. The FCA was therefore correct to decline to investigate your complaint, since it falls outside the Scheme.

However, although the FCA concluded that it could not consider your complaint, I understand that it has tried to assist you by providing further information and referring your concerns about Bank B's conduct to its Supervision Division. The FCA's Supervision Division is responsible for monitoring the conduct of regulated firms and ensuring that they comply with the FCA's rules. The FCA is a risk-based regulator and has discretion over which issues and concerns it decides to pursue. If it did decide to take any further action because of the information which you have supplied, it would not be able to provide you with any compensation or redress, and most of the actions it takes are confidential, so it is unlikely that you would receive any further information from the Supervision Division. For that reason, frustrating though it must be for you, I am afraid that your only options are to pursue legal action and/or to persuade the FOS to reconsider its position.

Although I have reluctantly concluded that this is not a matter in which the Complaints Scheme can become involved, I should make it clear that I consider that there is strong evidence from the material which you have supplied to me that you have been very badly treated by Bank B, and that it is possible that other customers of that bank are at risk of similar treatment. The fact that you were referred to the FOS, that at the end of their consideration of the case they recommended compensation, and that as a result of a last-minute intervention of the bank you have been told that the FOS cannot, after all, deal with your complaint is wholly unacceptable. I therefore urge the FCA to look at this matter, in conjunction with the FOS, to ensure that these kinds of circumstance do not recur.

I know that you would like me to provide answers to a number of other questions you have raised. As those questions relate to the requirements imposed on firms by the FCA, the FCA is best placed to answer these questions, and I expect that they will do so.

Conclusion

Although I understand that you are unhappy with the FCA's decision not to investigate your complaint, I believe it was correct to do so and, as a result, I am unable to help you 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.

I do, however, urge the FCA to work with the FOS to consider what can be done to prevent a recurrence of the unacceptable circumstances in which you have found yourself.

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