

21 December 2015

Dear Complainant,

**Complaint against the Financial Conduct Authority
Reference Number: FCA00108**

Thank you for your email of 9th November 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.

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

You complained to the FCA on 3rd October 2014 that it had failed to regulate banks properly whilst they were targeting Interest Rate Hedging Products (IHRPs) at small and medium enterprises, and later had failed to ensure that the voluntary review and redress scheme was 'transparent, inclusive and less biased towards the banks that mis-sold IHRPs'. You supported your complaint with a twenty-page personal statement outlining your thoughts about why the review and re-dress process was lacking. The remedy you sought was for the FCA to reassess and alter the review and redress scheme.

The FCA wrote to you on 24th October 2014 explaining that it would not investigate your complaint as it fell outside the scope of the scheme, referring to paragraph 3.5 which states that the regulators will not investigate a complaint under the scheme which they reasonably consider amounts to no more than dissatisfaction with the regulators' general policies or the with the exercise of, or failure to exercise, a discretion where no unreasonable, unprofessional or other misconduct is alleged.

FCA00108

- 1 -

You wrote back to the FCA on 5th November 2014 and the FCA treated that correspondence as a second complaint, which they reviewed and responded to on 30th April 2015. The FCA did not uphold your second complaint.

You then wrote to me on 9th November to say that you disagreed with the way the FCA had summarised your complaint in its decision letters, as well as the FCA's decision not to investigate your complaint; and that although you had written to the FCA on a number of occasions after the FCA issued its decision letter on 24th October 2014, you had not received a response - in particular, your emails of 27th July 2015, 8th October 2015 and 17th October 2015 remained unanswered.

My position

I turn to the first part of your complaint: that you disagree with how the FCA summarised your complaint and that you disagree with the reasons given for not investigating your complaint.

Because you disagree with the FCA's summary of your complaint, I have reviewed your original complaint to the FCA. There, you state 'my complaint concerns actions and inactions of the FCA (and previously FSA) relating to bank mis-selling of Interest Rate Hedging Products to SMEs. I am personally affected by this. Please see attached further details'.

The further details are the twenty-page supplement I referred to above, outlining your views of various aspects of the FCA's regulation of banks and the redress review.

The FCA, in its decision letter of 24 October 2014, sought to summarise the essence of your letter in a way which would allow it to manage its review of your complaint. It did so by identifying three main elements which it felt best represented the gravamen of your complaint, these being:

'Element One

You claim that the FCA has failed to pro-actively regulate banks whilst they were targeting Interest rate Hedging Products ('IHRPs') at Small and Medium Enterprises ('SMEs') and that the FCA '*...failed to act for many months and possibly years once alerted to the problems of those affected....*'

Element Two

You believe that the review and redress scheme lacks transparency and is, among other things, too restrictive and too set in stone, has no clear or effective deadlines and is not consistent across the banking industry without any transparent appeals process.

Further you claim that the review does not '*acknowledge inherent problems of IRHPs for SMEs*' and that the FCA message together with banks' has discouraged customers from seeking help from third party advisers and as such has disadvantaged those that did not receive advice.

You believe it is questionable whether the banks presented the appropriate information to the independent Reviewer and as such they are unable to effectively challenge the decision.

You are also concerned about how the element of consequential loss is dealt with.'

I understand that you are unhappy that the FCA ‘divided’ your original complaint into elements, and that by choosing these particular elements they have shown that they do not understand your complaint.

Having considered your twenty page supplement document, and in the absence of any guidance from you as to the main heads of complaint, I can find no fault with the FCA’s summary of the complaint, which seems to be to be a reasonable means of identifying the core of the issues you raise. It does not pretend to cover every detail of your complaint, but it does highlight the core concerns.

The FCA did not investigate your complaint under paragraph 3.5, and I agree with that decision. The primary route for customers who are dissatisfied with their banks is initially through the banks themselves and then, if necessary, the Financial Ombudsman Service. In the case of the IRHP issues, the regulator has intervened in its discussions with the banks to set up the voluntary redress scheme.

With respect to your views on the efficacy of the voluntary redress scheme, although the FCA did not formally investigate your complaint, it did provide extensive background information about its involvement in the redress scheme, in its letters of 24th October 2014 and 30th April 2015. I appreciate that you remain dissatisfied with the FCA involvement in the scheme; however, I agree with the FCA that this is really a complaint about the FCA’s general policies and practices. While you clearly consider that the FCA should have taken more action to prevent the problems which arose with IRHPs, and to secure redress for consumers, I do not consider that it can be said that the regulator has behaved unreasonably or unprofessionally.

The decision letters sent to you by the FCA clearly state that they will not be investigating any of the elements of your complaint further, apart from one, this being element three of your second complaint, which is

‘You allege that there has been a “...*serious regulatory failure and bias in favour of banks to the detriment of many affected customers...*” on the part of both the FSA and FCA in the design and operation of the redress scheme.’

The FCA has deferred looking at this particular allegation as there is a High Court legal action which needs to conclude first.

I now turn to the issue of your correspondence with the FCA after it issued your decision letter on 24 October 2014. In your email to me you say that you have received no replies to your emails of 27 July 2015, 8 October 2015 and 17 October 2015 from the FCA. Upon querying the matter, the FCA informed me that they had located an email from you on 27 July 2015 which had been misfiled, and therefore not responded to. They cannot locate the other two emails from you on their system. I recommend the FCA reply to this email and apologise for misplacing it. I would urge you to resend your additional emails to the FCA in the circumstances, and further recommend the FCA exert more diligence in its record keeping.

Conclusion

Although I understand that you are unhappy with the FCA’s decision not to investigate your complaints, 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 Complaints Team to reply to your email of 25 July 2015.

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