

25 January 2016

Dear Complainant,

**Complaint against the Financial Conduct Authority
Reference Number: FCA00120**

Thank you for your email. 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 email and the papers submitted to me by the FCA I understand that you initially approached the FCA about Bank A's practice in relation to the handling of ISAs by its wealth management service. You received a standard acknowledgment letter saying that the information had been received but you would not hear anything further. You complained to the FCA's Complaints Team about what you considered to be "the secrecy that the FCA reserve over a complaint I have made to them in writing about [Bank A's] practice."

The response from the FCA was that section 348 of the Financial Services and Markets Act 2000 (FSMA) imposes confidentiality restrictions that limit the information it can disclose to consumers. The FCA also said that your complaint fell outside its scope because, under paragraph 3.5 of the Complaints Scheme, your concerns amounted to dissatisfaction with the FCA's general policies or with the exercise of, or failure to exercise, discretion where no unreasonable, unprofessional or other misconduct is alleged. The FCA decision letter gave

you further information about its approach and also told you that the information you had provided about Bank A had been forwarded to the relevant FCA Supervisory team for consideration. However, feedback could not be given to you about any action that may, or may not, have been taken due to section 348 of the FSMA.

Your complaint to me is about “the right of a member of the public to know whether or not the FCA has investigated an industry malpractice they have reported.”

My position

I can appreciate how frustrating it must be not to know in detail what has happened about the information you have provided to the FCA. The regulator welcomes information from public-spirited individuals like you who bring forward issues for consideration. However, as you have been advised by the FCA, there are confidentiality restrictions in place under section 348 of the FSMA which limit what consumers can be told. This is the way that Parliament, rather than the FCA, has decided that the system will operate. As a result, there is no right for members of the public to know the outcome of reports that they make. As Complaints Commissioner I am satisfied that your complaint - that the FCA would not inform you of any action to be taken, or not taken, in relation to the information you provided about (Bank A) - was not one that the FCA could uphold. In effect, you were complaining about the fact that the FCA were obeying the law.

You have also said that you found some of the language used by the FCA in responding to your complaint to be unclear. The letter said that your complaint was outside the scope of the complaints Scheme and had not been investigated. You found this confusing because you did not know whether it referred to your complaint about the FCA’s failure to inform you or the substantive matter in respect of which the FCA was saying it could not tell you whether it was investigating or not.

The FCA’s position is that complaints about section 348 are effectively outside the scope of the Scheme and therefore a complaints investigation has not taken place. However, I agree with you that the language used was somewhat confusing and I suggest that the FCA might usefully consider the way in which it words its correspondence in future to ensure precision and clarity.

Although the FCA concluded that it could not consider your complaint, it did inform you that it has passed on details of your complaint about Bank A to its Supervision Division. Because I am allowed to look at the FCA’s confidential information, I have requested and received information from the FCA to confirm that this has been done. Although I cannot give you details, I am satisfied that your complaint was properly considered. The 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 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 your concerns with Bank A and/or the Financial Ombudsman Service (FOS) or take legal action. My understanding is that compensation for your personal situation is being discussed between you, Bank A and the FOS.

Finally, in my opinion, it would be helpful if the FCA approached the FOS to see if there are any issues arising from your complaint to the FOS and the FOS's inquiries that should inform the FCA's regulatory activities. However, I must reiterate that this will not mean that you will be kept informed about any action that may or may not be taken.

Conclusion

Although I understand that you are unhappy with the FCA's decision not to investigate your complaint about its failure to inform you of action taken or not taken in respect of Bank A, 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.

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