

02 February 2016

Dear Complainant,

**Your complaint against the Financial Conduct Authority (FCA)
Reference Number: FCA00131**

Thank you for contacting us by telephone to raise your complaint and for confirming in writing that we understood it correctly. I have now completed my review of the FCA's decision to exclude your complaint from the Scheme, as set out in their letter of 8th January 2016.

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 telephone call and the files submitted to me by the FCA I understand that your concerns relate to the fact that a firm authorised and regulated by the FCA, in your case, Firm E, does not have to state to consumers that certain activities they carry out are not regulated activities falling under the remit of the FCA and as such, when something goes wrong, the consumer has no recourse to compensation through the Financial Ombudsman Service (FOS) or the Financial Services Compensation Scheme (FSCS). Their only option is to go through the courts, at a considerable and often unaffordable expense.

Background to the complaint

In considering this case, I have carefully reviewed both your complaint and the regulator's decision to exclude it from the Scheme on the grounds that it is in relation to "*the performance of the regulars' legislative functions as defined in the 2012 Act (including making rules and issuing codes and general guidance)*" - paragraph 3.4 of the Scheme.

You complain that you have suffered a financial loss in relation to an Employee Share Scheme and you have been told that you do not have recourse to compensation through the FOS as this particular activity is not regulated by the FCA. You feel that the FCA is at fault because it should have made it a requirement that firms advise their customers on which activities are regulated and which are not. The fact that Firm E state in the footer to their letter paper, on which you have received several pieces of correspondence, that it "is authorised and regulated by the UK Financial Conduct Authority", without any clarification that this is only for certain aspects of their activities, is of particular concern to you.

My findings

Although I agree with the FCA that your complaint falls under paragraph 3.4 of the Scheme, and as such it is excluded, I understand your concern that regulated firms are not required to advise consumers when a particular product or activity they carry out is not covered by the FOS or FSCS is of concern.

There are rules in the FCA Handbook requiring regulated firms to communicate in a fair, clear and non-misleading way with consumers to enable them to understand the nature and risks of the service and / or product (COBS 2.2.1).

While I acknowledge that these are measures aimed at protecting consumers and that this is a matter of policy / giving guidance, which is, as stated above, excluded under the Scheme, I urge the FCA to consider the points you have raised and assess the efficacy of the existing rules in the light of its consumer protection objective. Understanding what is **not** covered under the FOS and FSCS has an equal if not greater importance to a consumer than understanding what is covered, as there are potentially far graver consequences if something goes wrong with an unregulated product, with the consumer having no recourse to compensation, other than through the courts, at a considerable cost.

In relation to the issue of which activities are regulated and which are not, and therefore fall within the remit of the FCA and FOS, these are defined by the Financial Services and Markets Act 2000 and were decided upon by Parliament. Any changes to what does or does not fall into this category and can therefore be investigated by the FOS would have to be made by Parliament and it is not something that the FCA or my office can recommend or action. Should you wish to take the matter further, you may write to your Member of Parliament with your suggestion.

I have the following comment on the FCA's response letter dated 8th January 2016. While I am sure that the letter was intended to be helpful, it would have been better to have provided you with a straightforward explanation of the regulatory system rather than giving you several links to the FCA Handbook.

Finally, while you were advised to contact the Citizens Advice Bureau (CAB) for further assistance, I would like to add that there may be additional avenues for you to explore. It appears that you were not able to exercise your share rights as you were deemed to have resigned from your job, even though you state that your employment was terminated through

a Settlement Agreement. It is possible that you were not advised that you would not be able to redeem your shares. If that is the case, I suggest you seek help in relation to the advice you were given by the solicitors in preparation for signing the Agreement. You may wish to contact ACAS, a local Law Centre, a Trade Union if you are a member of one or contact the Law Society for information on steps you may take to complain about advice received from a solicitor.

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 consider the wider points your complaint raises about firms providing a clear indication to consumers when they will **not** be covered by the FOS and FSCS and how consumers might be protected better in future.

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