

1 February 2017

Dear Complainant,

Complaint against the Financial Conduct Authority
Reference Number: FCA00144

Thank you for your email of 15th December 2016 about your complaint against the Financial Conduct Authority (FCA). I have now considered your complaint and I am writing to you with my final decision. In doing so, I have taken account of the comments which you, and the FCA, have made in response to the preliminary decision which I sent to you earlier.

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.

Your complaint

You have made a series of complaints, on behalf of retail investors, against the FCA about alleged failings by the regulators in their oversight of the Co-operative Bank and Lloyds Bank. Some of these complaints have already been the subject of review by me, and some are continuing or deferred. Those complaints raise complex issues about the exercise of regulatory powers and discretion.

This particular complaint, however, relates to a narrower issue of the FCA's handling of correspondence with you about its regulation of the Co-operative Bank.

In its decision letter of 2nd December 2016, the FCA Complaints Team summarised your complaint as follows:

You allege the FCA made a mistake, caused unreasonable delay and displayed bias by not announcing what action, if any, the FCA was taking in relation to complaints from consumers.

You allege that the FCA has not responded to your correspondence and questions regarding the FCA seeking redress/restitution for Co-operative Bank (Co-op) investors. You have specifically cited emails that you sent on 15 January, 2 February and 11 February 2016 to Tracey McDermott.

The FCA partially upheld the first half of the complaint, and upheld the second.

The first half of the complaint – mistake and unreasonable delay in announcing what action was being taken

In July 2013, the then Chief Executive of the FCA had stated that the FCA were “bound by confidentiality restrictions.....and are therefore unable to disclose whether we are investigating the firm for misleading investors.....” However, in January 2014 the FCA announced that it was undertaking an enforcement investigation into the Bank, thus contradicting the Chief Executive’s earlier statement.

The FCA conceded that the Chief Executive should not have stated that the FCA was *unable* to disclose whether an investigation was under way. The correct position was that the FCA does not *normally* disclose such investigations, but may choose to do so when that is justified (as the FCA decided it was in January 2014).

The second half of the complaint – failure to respond to correspondence

The FCA upheld your complaint that it had failed to respond to three emails addressed to the then Chief Executive, but explained that it had been dealing with a large volume of correspondence with you on several matters, and had had to focus upon the most urgent. The FCA conceded that it should have managed your expectations better.

Your response to the FCA’s decisions on your complaint

In essence, your responses to the FCA’s decisions on your complaint (set out in your email of 15th December 2016) are:

- a. In handling your complaint, the FCA repeatedly missed its own deadlines, failed to keep you updated, and had to be repeatedly chased by you and by my office. You consider that the FCA’s procedures for handling complaints are not fit for purpose;
- b. The FCA’s apology for the delays and errors is inadequate;
- c. You are not confident that the FCA has learned from its mistakes.

You have asked for a full public apology, a commitment to provide the response you were asking for, and some consideration of your wasted time and expense on this matter.

My assessment of your complaint

- a. Mistake and delay in announcing what action was being taken against the Co-op

The FCA has already conceded that the then Chief Executive’s statement that the FCA was *unable* to disclose what action it was taking was inaccurate. You have drawn my attention to the fact that this is not the first time that I have had to report upon such inaccurate statements. I agree with you that it is essential that the FCA is clear – internally and externally – about whether it is following a requirement or whether it is exercising a discretion. In this case, the Chief Executive’s statement gave a misleading impression that the FCA’s hands were tied when they were not.

While I consider that the inaccurate statement should not have been made, I do not consider that it is evidence of “bias” by the FCA. Even though the statement was inaccurate, the decision not to disclose was one which the FCA was entitled to make.

- b. Delays in dealing with your correspondence

The FCA has already acknowledged that it failed to respond to three emails from you to the Chief Executive. Its decision letter states:

I think it unreasonable to expect the FCA senior staff to have responded to each and every one of your emails in detail... ..I do note that the FCA was dealing with a large amount of correspondence from you at the time and I think that their approach was reasonable although they should have shared this with you so that you were able to decide on your next steps.

You make the point that your correspondence was an attempt to follow up on a meeting which you had attended at the FCA's invitation, and that the reason why you had to send three emails was because you did not receive responses. I agree with you.

Furthermore, the failure to issue basic acknowledgements or to manage your expectations in relation to the emails to the Chief Executive has to be considered in the light of the subsequent handling of your complaint, where deadlines were repeatedly missed and promised updates not issued. The problems in the handling of your complaint (as distinct from the failures to acknowledge the earlier three emails) were not dealt with in the FCA's decision letter of 2nd December 2016, but I have decided to deal with them now since it seems to me unreasonable in the circumstances to expect you to wait for the FCA to undertake a further investigation.

The position in relation to the FCA's handling of your complaint is simple. Your complaint was made on 2nd March 2016. Despite making early progress in the investigation of your complaint, the investigation seems to have lost focus during the summer, and then the investigator moved to another part of the FCA, following which there was a substantial delay in finalising the matter. The decision letter was issued on 2nd December 2016. It took nine months to deal with a complaint which was not complex. This is clearly not acceptable.

My conclusions

The combination of an inaccurate statement, failures to acknowledge correspondence, and then repeatedly delays and missed deadlines in handling your complaint, amounts to a significant shortfall in the FCA's performance. I therefore make the following recommendations:

- a. The FCA should confirm publicly that it accepts the criticisms set out above and is issuing you an apology. That apology should also explain how it intends to address the points raised in your original correspondence (if that has not already been done);
- b. The FCA should offer you £500 on an *ex gratia* basis in recognition of the unnecessary trouble to which you have been put;
- c. The FCA should confirm that it is re-emphasising to its staff that it is essential that all public and internal statements should make a clear distinction between matters where the FCA is bound by law, and matters where it is exercising a discretion;
- d. The FCA should confirm that it is re-emphasising to staff the importance of acknowledging correspondence promptly and, where there are resource constraints, making that clear to correspondents in order to manage expectations;
- e. The FCA should consider whether the problems set out above suggest the need for further resources in the Complaints Team, bearing in mind my recommendations on this matter set out in my Annual Report for 2015-16 which was laid before Parliament in July 2016.

I am pleased to say that, in response to my preliminary decision, the FCA has confirmed that it accepts all of these recommendations.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Antony Townsend', with a large, stylized loop at the end of the name.

Antony Townsend
Complaints Commissioner