

13 July 2016

Dear Complainant,

**Complaint against the Financial Conduct Authority  
Reference Number: FCA00151**

Thank you for your email of 29 March 2016. I have now completed further inquiries of the Financial Conduct Authority (FCA), and am able to write to you. I apologise that it has taken this long to provide you with a final response, but as you know we had to seek further information from the FCA, and that took some time. My decision on your complaint is explained below. Before finalising this decision, I invited comments from you and the FCA on my preliminary decision. You and the FCA both responded and I have taken both sets of comments into account when finalising my decision.

**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 complained to the FCA by telephone on 18 September 2015 about comments made by an FCA staff member that were reported in the Daily Mail under the headline *"It's time to sell up your home OAPs told"*.

The background to this report was that on 17 September 2015, at the Intermediary Mortgage Lenders Association's Great Mortgage Debate Panel 2015, the Manager of the FCA's Mortgage Sector had said that

*"...we've got a big supply issue in this country and there's lots of questions about whether it is right the government should focus on the first time buyer when in fact we've got a real issue about the last time buyer... older borrowers who basically pay off their mortgage and sit quite happily in a very big house... Does there need to be thought given to try and encourage older consumers to actually move away, build appropriate housing for retired people in the right places? There is a big debate to be had about whether the government's focus is actually in the right place."*

You objected to the comments that elderly people should downsize their properties and said that you would like to downsize and take out a mortgage but are not allowed to as you are over 50. You said the FCA was not facing "the real issues and that together with BoE and the government they are 'screwing up' the pensioners". You considered that these public

comments by an FCA staff member “were completely out of order and “Not looking at the right issues facing pensioners and ‘screwing people up’ ”. You wanted the staff member concerned to be dismissed and for the FCA “to start looking at the real issues real people in real world face”.

The FCA accepted your complaint for investigation under the Complaints Scheme (the Scheme) on 19 October 2015 and said it would be treated as an allegation of ‘unprofessional conduct’ by the FCA. The FCA’s letter informed you that paragraph 3.4 a) of the Scheme excludes matters relating to the FCA’s relationship with its employees, and that therefore your request that the staff member should be dismissed could not be addressed by the Scheme. You were asked to contact the FCA before 29 October 2015 to say if its understanding of your complaint was correct. You emailed back on 19 October, saying that you “require every single item of my complaint to be investigated not just the ridiculous comments of FCA officer concerned”.

On 24 March 2016, the FCA issued its response. It said that although the FCA investigation had not found sufficient evidence of unprofessional behaviour, your complaint had been upheld on the basis that the situation which led to the staff member’s comments “should have been handled better and that there has been a lack of care by the FCA”. The response continued that “it would have been best practice for the FCA to have put into place more formal guidance so that FCA staff who attend these kinds of events have a clear understanding of the FCA’s expectations of them”. The FCA offered you a sincere apology “for the offence these comments have caused you” and also apologised for the time taken to deal with your complaint.

Although the FCA has upheld your complaint, you are dissatisfied with its response and believe your entire complaint should be investigated by the Complaints Commissioner. In particular you have made the following points:

1. You are incredulous that it has taken 6 months to finally uphold your complaint
2. You consider the report is a very inept cover up of what is a very serious failure on behalf of a very senior member of staff who should have known better
3. You are concerned that absolutely no action has been taken against the member of staff responsible
4. You consider the FCA’s response to be a very grudging upholding of your and millions of others’ complaints on the subject
5. You consider it is clear that the FCA have no intention of ever dealing with any complaint correctly or within a reasonable timescale, that not one single member of their staff is fit for purpose and you are left with no confidence that none of a long list of complaints you need to file with them will receive proper consideration or action.

### **My position**

I have read carefully all of the records supplied to me by the FCA and also conducted my own investigation. The FCA has answered additional questions that I raised. From the records supplied, I can see that the Complaints Team investigator obtained and considered a range of documents prepared by the FCA following its internal review of the 17 September event. These include emails, notes of interviews with relevant staff, and briefing documents prepared for the FCA’s Mortgage Conference, which was held on 7 September. The review’s final report with recommendations is dated 13 October 2015. The paper was not discussed by

the FCA's Executive Committee until 7 December 2015 when the majority of recommendations for change were accepted.

Having considered all the documents, I am satisfied that there has been a thorough investigation into the issues that you raised. However, in my view it would have been helpful if the FCA's response had provided you with more information about the improvements identified by its internal review. This might have reassured you that the FCA had taken seriously the event and its repercussions, even if it did not consider it could share more detailed content with you. In turn this might also have helped to address your lack of confidence in the FCA's staff and its complaint process. I will now deal with each of your additional complaints to me in turn.

#### *Delay*

As you say, it took six months for the FCA to respond to your complaint. Clearly this complaint was a matter of great concern to both you and to the FCA. It was important that the FCA carry out a thorough investigation but it was also important that the investigation was carried out in a timely manner. Although the FCA kept you informed throughout, overall I consider that it has taken far too long to deal with your complaint.

The fact that the Manager's statement did not represent FCA policy was established the day after the comments were reported by the *Daily Mail*, and this was made clear to the media on that day. The internal review report was completed on 13<sup>th</sup> October, but was not considered by the FCA's Executive Committee until 7 December and not made available to the Complaints Team until 14 December. Although I consider that it was reasonable for the Complaints Team to seek to avoid running two investigations the net result has been that you have had to wait far too long for a response. It was two months before the internal review report was considered by the FCA's Executive Committee and it then took the FCA a further three months to issue the Stage 2 response. In my view, there was no good reason why you could not have received the FCA's response by early in the New Year at the latest. I note that the FCA's response letter sincerely apologised for the time taken.

#### *Allegation of "cover-up"*

The FCA identified your complaint as one of unprofessional behaviour by the FCA. It concluded that there was insufficient evidence of unprofessional behaviour but said that the situation should have been better handled. It said that there had been a lack of care in providing formal guidance to FCA staff attending events and the FCA's expectations of them. I find this surprising because the evidence I have seen does not support the conclusion that there was a lack of briefing provided to the staff member, in particular for the event on 7 September, which clearly remained substantially relevant for the 17 September event. In response to my Preliminary Decision the FCA has said that its view that there was a lack of briefing for its Manager was based on the internal review and in particular the recommendations made to avoid a recurrence of the events which gave rise to your complaint. It seems that the FCA and I have approached this issue somewhat differently. From the evidence I have seen, I am satisfied that there was a great deal of briefing material about the subject matter of the FCA's position available for the 17 September event and that the staff member concerned was considered sufficiently experienced to represent the FCA in public. On this basis I have concluded that the evidence did not support the Stage 1 conclusion about there being a lack of briefing. However, I accept that as a result of your complaint the FCA has identified the need to have more formal guidance in place to clarify its expectations of employees who attend public events. I welcome this.

In responding to my additional questions about this matter, the FCA has demonstrated some confusion about whether it was investigating unprofessional behaviour on the part of the organisation or by the individual staff member concerned. It is possible that this lack of clarity hindered the complaints investigation and gave you the impression that the FCA was being over defensive.

In my view the FCA could have explained more clearly why it did not consider that there was sufficient evidence of unprofessional behaviour, and the extensive work which it undertook following these events to try to prevent a recurrence. I have looked at the FCA's papers, and it is clear to me that the FCA did take this issue seriously. I think that a fuller explanation might have reassured you that there had not been a cover-up.

#### *No action against staff member*

Although I realise that you would like the FCA to take action against the staff member concerned that is something which is outside my remit, as complaints about the regulators' relationship with their employees are excluded from the Scheme under paragraph 3.4 (a).

#### *Grudging upholding of your complaint*

I note that the FCA has offered you a sincere apology for the offence the staff member's comments have caused you. In my view, you might have considered the FCA's upholding of your complaint to be less "grudging" had it paid attention to some of the issues I have raised above. The FCA could, and should, have explained more fully that it took seriously your concerns about the consequences and impact of this mistake.

#### *Lack of confidence in FCA staff and complaints process*

I have already commented on the ways in which the FCA could have given you more confidence in its complaints process.

### **Conclusion**

I have upheld your complaint of delay and noted that the FCA has sincerely apologised for this. In my view, there was no good reason why the response to your complaint was so badly delayed. This has been further exacerbated by delays in the FCA's response to the additional questions I raised during my investigation, taking 16 working days to respond and failing to react to at least one reminder.

In my Preliminary Decision I recommended a payment of £250 for this delay and the distress and inconvenience caused to you. You responded to say that you accept the outcome and the offer of a payment for delay. The FCA has responded to say that it considers its full and sincere apology is the appropriate remedy in the circumstances and that a payment for distress and inconvenience would not be appropriate. It says that your financial or other personal circumstances were not adversely affected by its Manager's comments, that the FCA very promptly and publicly clarified its policy position following the Daily Mail report and that the FCA has taken a number of actions to strengthen its approach to speaking at external events. The FCA has also said that the delay in sending the report to you "was only in the order of three months" and that if I consider that a payment for delay is appropriate this should be limited to £50 to be in line with other cases.

I have taken both your and the FCA's comments into account in finalising my views on this matter. I am concerned that the FCA should think in terms of a delay of "only" three months. It is essential that complaints are investigated in a timely manner. Furthermore, where there has been unnecessary delay a payment in recognition of this does not need to be related to any other factor than the distress and inconvenience caused by that delay.

I have added further explanation in this Final Decision above to illustrate why I consider you were affected by a delay of considerably more than three months. Taking an overall view of these delays, and having regard to other cases, I **recommend** that the FCA offers to pay you the sum of **£150** for the distress and inconvenience caused to you by these delays.

I have not upheld your complaint of a cover-up but I have given some reasons why you might have felt this to be the case and that the upholding of your complaint may have seemed 'grudging'.

I am unable to consider your complaint about action against the staff member concerned as that is excluded from the Scheme. I have however concluded that the evidence I have seen does not support the conclusion that there was a lack of briefing provided to the staff member. I consider that a more open sharing with you of what the FCA had done following the 17 September event, the steps taken and the lessons learned, could have provided you with greater confidence in the FCA, its staff and its complaints process. I strongly **recommend** that the FCA takes note of these comments for the 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