

18April 2016

Dear Complainant,

**Complaint against the Financial Conduct Authority
Reference Number: FCA00152**

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 (the 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

On 29 January 2016 you wrote to the Chair of the FCA, John Griffith-Jones, in the context of the FCA's Financial Advice Market Review (FAMR). You stated your view that the current FCA and FSCS fees and levies allocation system is not fit for purpose and is in need of radical reform. You outlined the personal impact on you as an independent financial adviser and said that you would be unlikely to be able to continue in the profession this year without significant change. You said that the current system penalises individual advisers who provide good financial advice in the best interests of their clients and that this is unfair and disproportionate to the risk posed. You asked a number of questions about the impact on you of the current system and about measures taken in general since the financial crash of 2008.

The FCA decided to treat your letter as a complaint against the FCA under the Complaint Scheme (the Scheme). On 7 March 2016 you received a letter from the Complaints Team informing you of this. The letter went on to say that the issues you had raised were excluded under paragraph 3.4 of the Scheme because they "relate to the performance of the regulators"
FCA00152

legislative functions as defined in the Financial Services Act 2012”. The complaint response nevertheless went on to provide you with some information about the questions you had asked about the fees system and the FSCS levy. It also made reference to the FAMR and provided you with links to information about how the FCA supervises firms.

You were unhappy with this response and on 15 March 2016 referred your complaint to my Office. You said that:

1. *The current FCA and FSCS fee system is wrongly designed, punishes and steals from the honest, good and most importantly not guilty independent financial advisers. It is not fair, affordable or fit-for-purpose.*
2. *Additionally, the fines imposed on guilty intermediaries are collected and syphoned across to HM Treasury instead of being used to pay compensation to those mis-sold. The Fees and Levies collected from innocent, honest independent financial advisers are used to fund compensation awards.*
Put very simply, I am personally paying for all mis-selling even when I have never been a party to it.

You attached the FCA and FSCS responses to your letters to John Griffith-Jones and FSCS Chief Executive Mark Neale. You observed that the FSCS response “acknowledges” the current system is unfair and wrong. You would like a full reimbursement of the 2016 new additional amount in FSCS fees/levies because you cannot afford it and do not wish to be forced out of your chosen profession.

My position

I have reviewed all of the complaint papers supplied by you and the FCA. I am satisfied that your complaint to me raises matters that relate to the performance of the FCA’s legislative functions, including how it regulates, and sets fees and levies for, financial advisers. Such matters are, as you were informed by the FCA, excluded under paragraph 3.4 of the Scheme, which states:

3.4 Excluded from the Scheme are complaints:

- ...
- c) in relation to the performance of the regulators’ legislative functions as defined in the 2012 Act;
- ...
- e) complaints about the actions, or inactions, of the Financial Ombudsman Service, **the Financial Services Compensation Scheme** or the Money Advice Service (**my emphasis**).

In so far as your letter of 29 January 2016 can be said to be a complaint about the FCA I am satisfied that paragraph 3.4 (c) applies and that the FCA was correct to exclude it under the Scheme. Complaints about the FSCS are also excluded under paragraph 3.4 (e). For these reasons, I am unable to uphold your complaint.

From your complaint email, I realise that you will be dissatisfied with this outcome. You do not wish to be “fobbed off with an all-too-convenient and entirely wrong ‘it’s exempt’ response.”

I appreciate how frustrating this must be. As part of my review of your complaint I have considered whether it was appropriate for the FCA to treat your letter of 29 January as a complaint and whether that was the most helpful approach to take. I can understand that it might have been irritating to be told your letter had been treated as a complaint that was immediately excluded. In my view, the matters you raised with the FCA – quite legitimately – were really a contribution to the debate on the FCA’s policies, rather than a complaint suitable for the Complaints Scheme, and it might have been better for the FCA to have treated them in that way. Nevertheless, the Complaints Team’s response did include additional information and attempted to answer the questions you had posed.

I am sorry that I cannot assist you further. It is of course up to you to take up this matter through other channels should you wish – one option you might wish to consider is approaching the FCA Smaller Business Practitioner Panel – see <https://www.fca-sbpp.org.uk/>.

As previously advised there is no further right of appeal against my decision under the Complaints Scheme.

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 I am unable to help you further 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