

13 May 2016

Dear Complainant,

**Complaint against the Financial Conduct Authority
Reference Number: FCA00158**

Thank you for your emails. 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 emails and the papers submitted to me by the FCA I understand that your underlying concerns relate to the conduct of Bank A in respect of a loan that you took out in 2005. This was secured as a second charge on your home and you were told that it would operate "just like a mortgage". However, you are dissatisfied with the way that interest has been calculated and the terms on which your loan has been transferred to another company.

Your complaint to the FCA was that it had failed to respond to your correspondence with it about this matter. The FCA investigated your complaint and found that correspondence had been responded to until March 2015 when the FCA's Consumer Contact Centre (CCC) advised you that no further correspondence would be responded to. This was on the basis that you had previously been advised on many occasions that the FCA could not assist you with an individual complaint about an unregulated loan. The FCA Complaints Team concluded that the closure process had been properly applied and that it was reasonable for the CCC to terminate correspondence with you.

My position

You have expressed very clearly to me the level of frustration you feel about the loan product you have taken out and the inability of the FCA to take action to assist you. However the Complaints Scheme (the Scheme) was created to allow those who are unhappy with the regulators' (in your case, the FCA's) conduct to be able to challenge the regulator without incurring the significant expenses associated with the legal process and the courts. The Scheme was not designed to allow consumers who are unhappy with the conduct of a regulated firm to challenge the conduct of that firm (that is the role of the Financial Ombudsman Service (FOS)). In addition, in your case, although Bank A is a regulated firm, the FCA has advised you that the product you wish to complain about is unregulated.

I am satisfied from my review of the FCA's file that it has explained its position to you very clearly (for example, its email of 8 March 2015). I am also satisfied that it was reasonable for the FCA not to uphold your complaint about its alleged failure to respond to your correspondence, since there was nothing further that it could add. As a result, frustrating though it must be for you, I am afraid that there are no further options for you to pursue under the Scheme.

Having said this, your complaint does highlight once again my 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 the Financial Services Compensation Scheme (FSCS). 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 this is a matter of policy / giving guidance, which is excluded under the Scheme (paragraph 3.4), I urge the FCA to consider 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.

Conclusion

Although I understand that you are unhappy with the FCA's decision not to uphold 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 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. Although I appreciate that you will be disappointed with my decision but hope that you will understand why I have reached it.

Yours sincerely



Antony Townsend
Complaints Commissioner