

Dear Complainant,

28th November 2016

**Complaint against the Financial Conduct Authority
Reference Number: FCA00168**

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.

You can find full details of how I deal with complaints at www.fsc.gov.uk. 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

I have now reviewed all the information you and the regulator have provided us with, as well as yours and the FCA's comments on my preliminary decision. My final decision on your complaint is explained below. Please accept my apologies for the time it has taken to complete my final response.

Your complaint

Because your complaint has evolved since you first approached the FCA, I have commented quite widely on the matters you have raised in your correspondence with both the FCA and my office, in order to put matters into context.

Your complaint is two-fold. In **element one** of your complaint to this office you allege that the FCA's treatment of insurance provided in conjunction with car hire companies, such as S, is inappropriate.

In **element two** you allege that the FCA's Contact Centre wrongly told you that the contract in question is not a contract of insurance but is simply breakdown cover, and that the FCA demonstrated a lack of care by not even addressing this element in their initial response to you, dated 24 May 2016.

The background to your complaint

You contacted the FCA's Customer Contact Centre (CCC) to raise concerns about "*the FCA's treatment of insurance provided in conjunction with car hire*", which you believe "*is*

inappropriate". You requested that the FCA review its position on this topic and report back to you either changing their view or with an explanation as to why they believed their view to be correct. Following a number of telephone conversations and you providing further information by email, the CCC wrote to you on 6th April 2016, stating that "*From the information you have provided I cannot see that this is a contract of insurance. Fleet insurance has been taken out by S and you have benefited from the policy as a third party*".

The CCC also advised you that the FCA was not able to engage in individual disputes and that while they had forwarded the information you provided to the relevant teams within the FCA, they were not likely to be able to provide you with feedback about what would be done with this information. They also advised you to seek independent legal advice in relation to your personal circumstances and the dispute with the car hire firm.

You were not satisfied with this response and made a complaint. The FCA's complaints team excluded your complaint by virtue of paragraph 1.1 of the Complaints Scheme, stating that it fell outside of their remit, although they did provide you with some information about how they assess whether a particular activity is a regulated one in relation to the sale of contracts of insurance. You then referred the matter to me.

My findings

Element one

Having reviewed all the correspondence and the details of your complaint, I find that the FCA excluded this element on the grounds that it relates to the performance of their legislative functions, as set out in paragraph 1.2, 1.2 and 3.4 c) of the Complaints Scheme. I am not upholding this element of your complaint because it is not my role to define whether an activity is a regulated activity requiring a firm to be authorised by the FCA or, if such an activity is done alongside their main line of business, not something that meets the definition set out in s19 of the Financial Services and Markets Act 2000 (FSMA).

I have found, however, that the Complaints Team did not provide all the information available to them to the FCA legal team in the first instance. We therefore requested that all the relevant information, including the documents you had provided, was forwarded to the legal team and that they provide you with as much explanation about their rationale for their decision as allowed under the Financial Services and Markets Act 2000 (FSMA). I note from their second decision letter, dated 22nd July 2016, that they did provide a more considered response and general information about how they evaluate what falls within the FCA's remit and what does not.

I note your comments about why you strongly believe the matter you are complaining about is in fact a regulated activity, as defined by FSMA, and why you believe that car hire firms, such as S, should be regulated by the FCA. However, the interpretation of FSMA and its subordinate legislation, while often undertaken by the FCA in its day-to-day work regulating the financial services industry, is ultimately a matter for the courts to determine and is outside the remit of this Scheme.

I would also add that I requested further information about the FCA's view on all the information you provided, including your email dated 7th August 2016. The FCA provided you with some generic information about how they determine what is a contract of insurance

and which activities fall under the definition of regulated activities, but did not go into details in relation to your concerns. Unfortunately, due to confidentiality restrictions, I am unable to disclose details of the information I have received from the FCA and what specific steps they are taking. I can, however, assure you that your points are being considered. I am bound by the legislation to uphold confidentiality, though I recognise that this must be frustrating for you.

Element two

Having reviewed the second element of your complaint, it is apparent that you only complained about the email correspondence with the CCC and not the telephone calls. I find that the Complaints Team, in their original response to you, dated 24th May 2016, failed to address your concern that you were incorrectly advised by the CCC that the contract you are concerned about is not a contract of insurance.

Furthermore, having reconsidered the complaint at my request, the Complaints Team only addressed your dealings with the CCC over the telephone and not the email you specifically mentioned. This was not thorough enough, and I uphold this element of your complaint. The FCA should have acknowledged that the information contained in the email dated 4th April 2016 was incorrect, should have apologised for this and ensured that the person who gave what appears to be advice outside of his remit and competence is provided feedback to ensure that this does not happen again.

Conclusion

I do not uphold **element one** of your complaint, but find that the Complaints Team should have ensured that they had forwarded all the information provided by you to the relevant teams when seeking to establish how to progress your complaint.

I also believe that it should have been made very clear to you from the beginning that even if the FCA found that the kind of product you were sold by your car hire company was in fact a contract of insurance that falls within their remit and that the firm should be regulated for selling these products, this would not change the fact that you were not able to complain to the Financial Ombudsman Service (FOS) about your particular circumstances. This is because at the time you made this agreement, the firm was not regulated and the FOS would still not be able to look at your complaint. Simply stating that the FCA is not able to assist with individual disputes was not sufficient in these circumstances.

I partially uphold **element two** of your complaint because you were given incorrect information by the CCC. The Complaints Team then failed to address your complaint in the first instance and dealt with the wrong issue in the second. I recommend that the FCA apologises for the inconvenience caused by this and takes steps to ensure that when there is doubt in their mind about which complaint points need addressing, they take extra steps to verify the wishes of the complainant.

I recognise that you will be disappointed with aspects of 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'.

Antony Townsend
Complaints Commissioner