

Dear Complainant,

05 December 2016

Complaint against the Financial Conduct Authority
Reference Number: FCA00181

Thank you for your correspondence about your complaint against the Financial Conduct Authority (FCA). I have now completed the investigation of your complaint. I wrote to you on 19th October 2016 with my preliminary decision, but I have not received any comments from you.

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 have not set them out here. 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.

Your complaint

You made a complaint about the FCA for acting unreasonably and not in the interests of the consumers it is supposed to be protecting, in allowing C, a financial adviser firm, to cease being authorised and dissolve. This resulted in a loss of £99,000 to you, as determined by the Financial Ombudsman Service (FOS), according to your statement. You allege that, as the firm was allowed to de-authorise, you were not able to recover the FOS award from the firm or from its insurance provider and you now stand to lose a significant amount as the Financial Services Compensation Scheme (FSCS) cannot cover all of your losses even if it does find in your favour.

The background to your complaint

In response to your complaint, the FCA Complaints Team found that the FCA did not act unreasonably when they allowed the firm to cease being authorised, with effect from 4th March 2014. They stated that the FCA is permitted to proceed with the cancellation of a firm's authorisation, even when there are outstanding complaints against the firm, in appropriate circumstances. Firm C was found to have very few assets and was unable to cover any liabilities

arising from complaints upheld against it. In those circumstances, its permissions were cancelled.

My findings

In considering your complaint, I reviewed the FCA's records relating to the cancellation of C's permissions, the rules the FCA must follow, and their internal process guide.

It is clear from the rules that whilst the FCA must have regard to outstanding complaints against a firm when considering an application to cancel Part IV a) permissions, outstanding complaints do not prevent the FCA from approving a cancellation request.

Having reviewed the notes made by the team considering C's cancellation application, I find that the information you were given by the Complaints Team in their response is correct: the FCA considered the fact that there were outstanding complaints against the firm, but by the time the firm submitted its application to cancel its permissions, it did not have assets it could have used to meet liabilities arising from the FOS upholding complaints against them. Additionally, the firm's Professional Indemnity Insurance (PII) cover had lapsed by the time the application was considered. C also notified the FCA that it intended to continue administering any claims against it, that is, manage the complaints process. As such, retaining C's Part IV (a) permissions would not have meant that consumers would have been paid redress or that the insurance provider would have covered the shortfall.

Furthermore, the way PII operates is that a firm is required to notify its insurance provider of claims against it at the time they are made in order for the insurance to be valid. It is not the FCA's responsibility to verify whether a firm followed the correct claims process in relation to PII.

Conclusion

Having reviewed all the information available to me, I find that the FCA did not act unreasonably in approving C's application for the cancellation of their Part IV (a) permissions. The firm did not have sufficient assets to meet any liabilities arising from consumer complaints.

However, in the light of your case I recommended that the FCA consider a possible improvement to their approach, which might help people in the position in which you found yourself. Since firms already have to notify the FCA of outstanding complaints and are required to hold PII, an additional step would be to require firms to demonstrate that they have notified their insurance provider of all the outstanding complaints (be that internal or external) against them, both when they submit their cancellation application and when that is assessed by the FCA. This would give complainants a better chance of recovering any awards made to them by the firm or by the FOS.

I am pleased to say that the FCA have accepted that this suggestion is a good one, and are considering adding steps into their processes to enhance the protection of consumers in such cases.

You might also be interested in a number of changes which have taken place in the way the FCA considers outstanding complaints against firms applying for cancellation of their permissions. Following a complaint made to my office, I made some recommendations to the FCA relating to this subject, which can be seen by accessing my report on the following link:

<http://fsc.gov.uk/wp-content/uploads/FCA00015-FD-24-11-14-Publish.pdf>

Those changes were made after C's application was approved, so I recognise that they, and the additional change I have suggested above, do not help you. Nonetheless, I hope they will indicate that I, and the FCA, continue to look for ways of improving consumer protection.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Antony Townsend'. The signature is written in a cursive style with a large, sweeping 'A' and 'T'.

Antony Townsend
Complaints Commissioner