

21 November 2016

Dear Complainant,

**Complaint against the Financial Conduct Authority
Reference Number: FCA00212**

Thank you for your email of 15 August 2016. I have now reviewed the information sent to me by you and the Financial Conduct Authority (FCA), and am able to write to 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.

I have considered the points made to me by your MP and I have also taken into account the comments which you, and the FCA, made in response to my preliminary decision. My decision on your complaint is explained below.

Your complaint

On 9 April 2016 you wrote to the FCA's Customer Contact Centre (CCC) about high portfolio turnover in UK investment funds. You said that in your view there should be a cap on portfolio turnover or a kitemark for funds with low turnover. You provided a link to a 2011 article in the Financial Times on this topic and you also attached reports from 2002 and 2003 showing levels of portfolio turnover in UK funds.

You received an email response from CCC on 15 April 2016 thanking you for bringing this matter to the FCA's attention. The email said that the FCA understood your concern that a high turnover might result in additional hidden costs. The writer said that she would pass your letter on to the relevant FCA team and that it might be used to inform policy work but that no direct feedback would be given to you.

You were dissatisfied with this response and responded to say that you wanted direct feedback. In a phone call with CCC on 20 April you were told that Occupational Pensions were outside the FCA's remit and that fund management was a commercial decision not covered by FCA rules. On 21 April you made a formal complaint saying this was a very important topic and you had not received a proper reply. You referred to the work of the FCA and the Department of Work and Pensions (DWP) on workplace pensions and said that the DWP was apparently thinking of a cap on portfolio turnover for pensions. You thought this would be an interesting idea to extend to other funds.

On 20 May 2016 the FCA Complaints Team informed you that it would be investigating your complaint as an allegation of lack of care. On 23 May you wrote to explain that you were not just concerned about disclosure of hidden costs but that in your opinion portfolio turnover ratios (PTRs) should be reduced in any event. You said that CCC had been too low a level within the FCA to respond to your concerns and that you wanted a letter from someone more senior. You were also unhappy with the response that the FCA cannot interfere in legitimate commercial decisions.

On 20 July you received the FCA's response under Stage 1 of the complaints scheme (the Scheme). Your complaint was upheld on the basis that "the response CCC provided did not answer the question you asked about the portfolio turnover and whether it was justified". The response went on to say that "the CCC should have explained why it could not answer your question ... and given more information to assist". The FCA apologised for this and also for the delay in responding to your complaint. The response included some further information about portfolio funds, the FCA rules and the restrictions that prevent the FCA from informing you whether they are, or are not, taking any action based on the information that you provided due to section 348 (s348) of the Financial Services & Markets Act 2000 (FSMA).

You are dissatisfied with the FCA's response to your complaint and have asked me to investigate. You say that your question has still not been answered. The data you sent showed PTRs ranging from 239% to 1861% (every 2.8 weeks) for 80 funds. You asked the FCA whether such high rates can be justified, and if not what should be done about it. You have not had a reply to either question. Your conclusion is that the high rates cannot be justified and that the FCA is permitting this but is unable to say so. You would like the FCA to publish PTR values for all funds ranked from highest to lowest. You would also like an inquiry into this topic, particularly in view of the advent of workplace pensions and the DWP's proposed cap on the portfolio turnover of certain funds. Your MP has asked to be associated with this set of issues.

You are also unhappy with the delayed response to your complaint and the fact that you were not informed about the timescale within which your complaint would be addressed. This was despite your MP's involvement.

My position

My response to your complaint is in two parts, dealing first with your substantive concerns and secondly with the level of service you received when pursuing your complaint.

FCA Complaint Outcome

The FCA upheld your complaint that CCC had not answered your question and apologised for not providing the level of customer service you were entitled to expect. Although the complaint response provided you with further information, including some of the FCA rules that do apply, the substantive response is that the FCA will not be able to tell you what, if any, further regulatory action it proposes to take, or even whether it is proposing to take such action. Therefore, in upholding this aspect of your complaint the FCA, instead of answering your question, has explained why it is not going to answer it. In doing so, the FCA has made reference to the confidentiality restrictions in place under section 348 of the FSMA which limit what consumers can be told.

However, my understanding of your complaint, as supported by your MP, is that it is concerned with general policy, rather than the specifics of the historical data which you sent with your original complaint. In my view s348 is largely irrelevant to this. As I see it, you wanted a straightforward response to the question “does the FCA consider high PTRs to be a risk, does it monitor/control them, and if not would it consider doing so?” I don’t think the FCA has fully answered that question, and I do not see why it should not do so. I therefore uphold this aspect of your complaint.

FCA Complaint Process

The FCA acknowledged receipt of your complaint on 22 April. The email said “*We will write to you again within four weeks setting out a summary of our understanding of your complaint and whether we propose to investigate the matters you have raised*”. The FCA wrote to you on 20 May setting out its understanding of your complaint and giving you until 31 May to confirm that this understanding was correct. The letter went on to say that “*In any event, we will write to you again within four weeks to update you on progress.*”

You responded to this letter on 23 May with further comment on the nature of your complaint. Although this email was acknowledged you did not receive a substantive response and you chased matters on 23 June. You were told that you had not missed a communication from the FCA but that further enquiries were being made. You followed this up with some further questions. These were responded to on 30 June when you received an apology for the delay and further information about what would happen next, although no further timescale was given. You chased matters again on 3 July when you said: “*I should have been told "the timescale in which [my] complaint will be dealt with". Why was I not told this? How long is this going to take for an outcome/ conclusion?*” The file I have received from the FCA does not include a response to this email, so I am unable to say whether one was sent. It took a further two weeks for the FCA’s complaint response to be sent, on 20 July. This letter included a sincere apology for the time taken to deal with your complaint.

Paragraph 6.4 of the Scheme states that: “*The relevant regulator(s) will seek to resolve the complaint as quickly as possible. The relevant regulator(s) will either finish investigating a complaint within four weeks, or they will write to the complainant within this time setting out a reasonable timescale within which they plan to deal with the complaint.*” Clearly, this did not happen in your case, nor did the FCA update you on progress within four weeks as promised in its letter dated 20 May. It did not write to you after that date, apart from its automatic acknowledgement of your email dated 23 May, until you chased progress on 23 June. Even then it did not provide you with a timescale for the conclusion of your complaint and you had to press further for information about what was happening. It took a further four weeks for you to receive the final complaint response. I am satisfied that work was continuing on your complaint; however, there was clearly a failure to keep you updated or to follow the procedure set out in the Scheme to provide you with a reasonable timescale for the complaints investigation. I therefore also uphold this aspect of your complaint, although I note that the FCA has offered you a sincere apology for its delay.

Conclusion

In conclusion, for the reasons set out above, I uphold your substantive complaint that the FCA failed to answer fully your question about PTR. I recommend that the FCA policy team sends you a full and considered response to the policy issues you have raised. I also uphold

your complaint of delay; however, I have decided not to make any further recommendation in this regard. This is because I consider the FCA's apology to have been full and an appropriate response to its delays.

In response to my preliminary decision the FCA has confirmed that it accepts my recommendations and will write to you. You have also sent in a number of further submissions, including that you would like the FCA to address the issue of the publication of PTR values for all the funds which they regulate. You would like there to be several tables corresponding to different kinds of fund and you would like to discuss what these should be.

You are also concerned that this subject will not be resolved by one reply to one letter and you are concerned that the FCA will engage in delaying tactics. You would like me to set some timescales for their reply. You consider that you will need to have ongoing correspondence with the FCA and do not want to go through complaints procedures again to get a reply to a letter. In addition, you are concerned that after my final decision, you will be left to correspond with the FCA by yourself. You would like a committee to be set up which you can correspond with, and which can correspond with the FCA directly. You consider that the issue of churning is too large for you to cope with by yourself, and should not be left to the FCA

These additional requests go considerably beyond the scope of your original complaint to the FCA and are not matters that can be dealt with under the Scheme. I have set out above my recommendation that the FCA policy team sends you a full and considered response to the policy issues you have raised, and I urge them to do so without unnecessary delay, but that is the extent of the way in which I can intervene.

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