

23-2-2017

Dear Complainant,

**Complaint against the Financial Conduct Authority
Reference Number: FCA00249**

Thank you for your letter dated 6 November 2016, which we received on 10 November. I am sorry that it has taken some time to respond to you. I have now reviewed the information sent to me by you and the Financial Conduct Authority (FCA), and am able to write to you. Before finalising this decision, I invited comments from you and the FCA on my preliminary decision. I have considered carefully the points that were made and referred to some of them below.

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.

Your complaint

On 28 July 2016 you wrote to the FCA about your experience of trying to claim a refund of monthly fees for a packaged bank account (PBA) which you believe was mis-sold to you. You had complained to your bank and to the Financial Ombudsman Service (FOS) but your complaint had been ruled out of time and you were unable to pursue the matter or obtain a refund. The FOS told you that the time limit rules were set by the FCA.

You asked the FCA to consider the following six points (which I have summarised):

1. As with PPI, most customers were unaware they could complain about PBAs until the media began to publicise the issue.
2. Very little information was available until late 2012 at the earliest.
3. The FOS accepted your bank's word over yours about whether you had received information in 2009 and 2010 updating you about your bank account.
4. FCA guidelines clarifying a mis-sale were not apparent to you when first making a claim for a refund.
5. In your view most people are still not aware that they may have been mis-sold a PBA and the FOS ruling that you were out of time was harsh in the circumstances.
6. The FCA's time limit rules operate to the detriment of the customer and the FCA has failed to bring to the public's attention that they may have been mis-sold a PBA and be entitled to a refund.

The FCA categorised your complaint as an allegation of ‘lack of care’ by the FCA and investigated it under the Complaints Scheme (“the Scheme”). On 27 September 2016 the FCA wrote to inform you that your complaint had not been upheld. This was on the basis that individual complaints should be made directly to the firm (and from there to the FOS) and that the complaints process was clearly signposted on the FCA’s website. The FCA’s response letter also said that there was a rationale for the time limits for making a complaint. In addition, it provided further information on the FCA’s work on PBAs, including web links to two consultation papers and a Policy Statement dated December 2012.

You are dissatisfied with this response and have asked me to investigate. You have said that you only became aware that you could make a complaint of mis-selling in October 2015 due to coverage in the media (some of which you have sent to me), and approached your bank manager immediately. Your bank said that you were out of time to bring a complaint and this was upheld by the FOS, who also accepted the bank’s word that you had received refresher packs in 2009 and 2010, although you are clear that you did not. Your claim for an extension of the time limit due to exceptional circumstances caused by financial hardship was also rejected. You state that your complaint was a continuing issue from 12 October 2012 when you switched from a PBA to a fee free account.

You have asked me to look at the following matters:

- (a) The FCA failed to make everyone aware that they may have been mis-sold a PBA. The information it gave out was not accessible to everyone and you were one of these people. Your letter of 28 July 2016 asked for six points to be looked at but the FCA’s response letter dated 27 September failed to deal with items 3 to 6.
- (b) The FOS operated within the guidance of the FCA regulations but failed to look at your extenuating circumstances for a delay in making your claim. It also took the bank’s side in accepting that refresher packs were sent to you.
- (c) Your bank had a duty to you as a customer to make you aware that you were gaining no benefit from holding a PBA and failed in this obligation. It has used the loophole created by the FCA’s rules to avoid paying you a refund.

My position

My role is to consider complaints about the regulators of financial services. I am unable to comment on the actions of your bank or the FOS because complaints about individual firms and the FOS are not within my remit and are specifically excluded from the Scheme. My response to you is therefore focussed on the FCA and its response to your complaint.

Awareness of potential mis-selling of PBAs

The FCA’s response to this aspect of your complaint was to say that it has done a lot of work on PBAs, including issuing two consultation documents and a policy statement in 2012, and more recently a thematic review. It had also publicised information on its website about how to complain. The FCA’s response letter provided you with links to this information.

I am satisfied that the FCA has published information about its work on PBAs, some of which was available to you in 2012 when you realised that you were not receiving value from your PBA. I also accept the FCA’s point that it is primarily up to individuals to decide whether to make a complaint.

You have told me that you were unable to access the links provided by the FCA to the two consultation papers and the Policy Statement. The FCA advises that it would have checked these links before issuing its response letter and apologises that you were not able to access them. The links do now seem to be working again and I attach another copy of the FCA's response letter in the hope that you will now be able to access this information.

In response to my preliminary decision you said that you "have now been able to access these websites and looked at them. There are 2 consultation papers and a policy statement which came into force on 31st March 2013. My packaged account closed on 11th October 2012, I therefore fail to see the relevance of these websites to my complaint." In my view they are relevant because they show that the FCA was consulting on these issues in 2012, thereby raising awareness and inviting those affected to contribute to the consultations. However, you have asked me to acknowledge your point that "not everyone has access to a computer and many of the old generation would not know how to use one".

In response to my preliminary decision, you also said "You write in your letter that 'The links do seem to be working again' however, although acknowledging that at some point they were not working you do not disclose for how long this was so." I am unable to answer this. I accept the FCA's assurance that it would have checked the links were working before issuing its decision letter to you and they were working again when I issued my preliminary decision. I am pleased to note that you have now been able to access them.

You have also pointed out that the current *How to Complain* section of the FCA's website states that it was first published on 19/4/2016 and updated on 3/10/2016 whereas your complaint was made in October 2015. I have raised this with the FCA who have confirmed that there was a previous version of this section of its website dated September 2014. You can find this here:

<http://webarchive.nationalarchives.gov.uk/20150902130544/http://www.fca.org.uk/consumers/complaints-and-compensation/how-to-complain>

I am therefore satisfied that there was information about how to complain on the FCA's website at the time you made your complaint in October 2015. In response to my preliminary decision you said that "having entered this into my computer I got the following: [Sorry, the website webachive.nationalachive.gov.uk cannot be found.](#)" Unfortunately, you appear to have left out the 'r' in 'webarchive' and 'nationalarchive', which is why you received an error message. I have just checked the link again and it is correct.

I am satisfied that the FCA has done considerable work in relation to PBAs. In my preliminary decision, I invited the FCA to consider your points about publicity for consumers on mis-selling in any future exercises of this kind which they may undertake, since there is always scope to improve, although I did not criticise the FCA in this respect. I am pleased to note that in response to this the FCA has agreed to forward my comments to its Communications Division.

Failure to respond to all elements of your complaint letter

You consider that the FCA's response to your complaint failed to address items 3 to 6 of your letter dated 28 July as set out above.

With regard to point 3 I am satisfied that the question of whether the FOS accepted your bank's word over yours was not something within the FCA's remit. I am pleased to note that, in response to my preliminary decision, the FCA has agreed that it would have been helpful if its decision letter had explained that the FCA has no remit over the FOS.

With regard to points 4 to 6 I am satisfied that the FCA's response provided you with information about the guidance it had published on PBAs and also provided you with a response about the rules about the time limits for making a complaint.

Time limits

As explained above, I cannot consider your complaints about your bank or the FOS under the Scheme and I am therefore unable to consider your points at (b) and (c) above save as they relate to the FCA's rules on time limits.

The relevant time limits are set out in DISP 2.8.2R, which states:

'a complaint needs to be referred to the ombudsman service within six years of the event complained about or, if later, within three years of the date when the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint.'

The FCA told you that the rationale for these time limits is so that complaints do not continue indefinitely and to ensure evidence is available for the FOS to consider. I do appreciate that you feel they have been applied harshly in your case but that is a matter for the FOS to decide and not something that I can consider under the Scheme. The time limits are similar to those used in court proceedings for negligence and I do not consider them to be unfair in principle.

Conclusion

In conclusion, for the reasons set out above, I do not uphold your complaint. I realise that you will be disappointed by my decision but I hope you will understand how 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