

22nd June 2017

Dear Complainant

Complaints against the Financial Conduct Authority (FCA)**Our reference: FCA00290 and FCA00298**

Thank you for your letters of 2nd March (received 6th March) and 31st March 2017 (received 4th April). I have completed further enquiries of the FCA, I have considered the comments you made in your letter of 16th June 2017 in response to my preliminary decision, and I am now able to write to you with my final decision.

How the complaints scheme works

Under the complaints scheme, I can review the decisions of the FCA 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 complaints

You have made two complaints against the FCA. Your first complaint was summarised by the FCA as follows:

Element one

You are unhappy with the supplementary FSCS levy that your firm is being asked to pay. You are unhappy with the increase in the levy.

Element two

You believe the communication which you have received about the increased levy was sent without any prior notice. Your main concerns are the lack of explanation of how your fee was calculated and the short length of time that firms have to pay their invoice.

The FCA's summary of your second complaint was:

Element One

You believe that the FCA does not conduct enough firm visits and that there should be an annual visit for every firm. You believe the lack of firm visits is resulting in many risks going unnoticed in the mortgage/investment market.

Element Two

You believe that it should be easier for firms to calculate the FSCS levy. You have spoken to the Revenue Department and an investigator in the complaints team and neither was able to provide an explanation on how your fee was calculated.

Element Three

You believe that the FCA has not considered how the grouping of investments and mortgage firms in an FSCS class will affect firms such as yours. You are unhappy that you have to pay for the misconduct of pension advisors and believe your firm may be continuously asked for FSCS supplementary fees.

In response to your first complaint, the FCA decided that:

- a. Element one was excluded from the Scheme because it related to one of the regulator's "legislative functions", which the Scheme does not cover;
- b. Element two was not upheld because the communication about the increased levy came from the Financial Services Compensation Scheme, not the FCA.

In response to your second complaint, the FCA decided that:

- a. Element one should not be investigated because it amounted to "no more than dissatisfaction with the FCA's general policies or with the exercise of, or failure to exercise, discretion where no unreasonable, unprofessional or other misconduct is alleged";
- b. Element two was not investigated on the grounds that it had been addressed in the response to element two of your first complaint;
- c. Element three was excluded on the grounds that it concerned the making of rules.

Although the FCA did not uphold any elements of your complaint, they did provide you with further details of the way in which the levy was calculated, a consultation on possible changes to the way in which the levy is made, and details of how the FCA supervises firms.

You are dissatisfied with the FCA's decisions. You consider that you are being asked to pay for the FCA's failure to regulate properly, that the system for calculating levies remains unclear, and that you should not be faced with bills "out of the blue" calculated on an obscure basis.

My findings

I can understand how difficult it must be to be faced with significant levies on an unpredictable basis, particularly when you consider that you are paying for the poor practice of other people. However, having carefully considered all the documents, I have to conclude that the FCA were right not to uphold your complaints under the rules of this Complaints Scheme. This is because the Scheme specifically says that complaints about legislative functions such as the making of rules and policies are excluded from the Scheme, and that general dissatisfaction with the regulator's approach will not be investigated.

In your response to my preliminary decision, you have made a series of points about why you consider that the apportionment of the levy is unfair, in particular because you consider that firms like yours (which do not give advice on SIPP) are in effect cross subsidising firms which do; about why you consider that the communications about the increased levy should have started earlier; and why you consider that I should have investigated what you think is lack of supervision by the FCA.

In its decision letters, the FCA directed you to a considerable amount of further information about the calculation of fees and fee-setting policy, and its approach to the supervision of firms. These issues are ones which are the subject of legitimate debate – how should costs be apportioned, how often should firms be visited? – and you have every right to raise them for discussion, but they are not subjects for this Complaints Scheme.

The FCA directed you to a consultation on fees levies, to enable you to contribute your views. You might also wish to consider approaching the Smaller Business Practitioner Panel – further details are at <https://www.fca-sbpp.org.uk/background-smaller-business>. You have queried the make-up of that Panel, which is appointed by the FCA. I suggest that you should pursue that point with the Panel itself.

In your letter of 16th June, you raised two further questions. In response to the first, you can find my final decisions at <http://fsc.gov.uk/publications/>, under “Final Reports”.

In response to your second query, although this Office is not covered by the Freedom of Information Act, I can tell you that in the 12 months ending 31st March 2017 my Office concluded 116 complaints against the FCA (including the former FSA). Of those, 17 were excluded, 17 were reviewed without formal investigation, and 82 were formally investigated. In 47 the regulator’s decision was fully upheld, in 61 the decision was upheld but suggestions for improvement were made, in six the regulator’s decision was partly overturned, and in two the decision was fully overturned. It is important to note that these statistics only relate to complaints considered by my Office: most complaints dealt with by the FCA are not referred to me by the complainant.

Conclusion

I am sorry to disappoint you, but I have concluded that the FCA were right not to uphold or investigate your complaints under this Scheme.

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