Complaints Commissioner

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Dear Complainant

Complaint against the Financial Conduct Authority

Reference Number: FCA00320

Thank you for your email of 30 May 2017 on behalf of your clients Mr X and Ms Y.

I have now completed my review of the Financial Conduct Authority's (FCA) investigation into your clients' complaint. Before finalising my decision, I invited comments from you and the FCA on my preliminary decision, and I refer 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 clients' complaint

Your clients were clients of a firm X. As a result of a skilled person's review ordered by the FSA in 2010, the FSA identified that your clients were among a number who might have received unsuitable advice, and wrote to the firm in February 2011 to ask it to enquire of Mr X if he had received compensation from the FCSC for his Keydata Investments for the purposes of establishing redress as part of a firm wide exercise.

You claim that the firm never contacted your clients, and, when the firm went into liquidation, the liquidator similarly never contacted your clients.

You allege that the FSA did not take sufficient care to monitor and ensure that the firm and subsequently the liquidator had contacted your clients. You say that the delays in contacting your clients meant that their claims for compensation were made too late. As a result, you wish your clients to be compensated according to the provisions of paragraph 6.6 of the Complaints Scheme.

In your letters to the FCA dated 6 May 2015, 3 March 2016 and 29 June 2016 (which you have asked me to review):

- You claim the FSA should have alerted your clients to the fact they would not be eligible for FSCS cover: had it done so your clients would have lodged a claim against the PII insurer sooner. You also queried why no one at the FSA, once the firm had gone into liquidation, contacted your clients and advised them to seek compensation from the firm's insurers.

- You feel that had the FSA advised your clients accordingly in 2011, they would have submitted their claim to the PII insurer immediately and not delayed until June 2012 by which time you feel they had joined the 'queue' too late as the fund was exhausted.

In general, your view is that the FSA should have taken more steps to monitor compliance, given their knowledge of the firm's precarious position.

In its decision letter of 1 May 2017, the FCA did not uphold your clients' complaint on the grounds that it considered that the regulator had acted appropriately. In summary, the FCA's position is that the responsibility for contacting clients of firm X to alert them to the problems which had arisen lay with the firm itself and, subsequently, the liquidators.

My assessment

I have looked carefully at the sequence of events. The skilled person's review identified a number of clients of the firm who might have received unsuitable advice in general.

The FCA was in contact with the firm between February and June 2011 to discuss a redress programme for all of the clients who might have been affected. I am satisfied there was no delay by the FCA in pursuing the matter with the firm during this period. The FCA has explained to you that the firm was co-operating in the client review process. Unfortunately, the firm went into liquidation in July 2011. You have commented that neither the FCA nor I have provided evidence to you as to what actions the FCA took with respect to the firm so you can satisfy yourself that the FCA acted reasonably and without delay, and you have asked me to disclose the documents which have informed my decision.

I have access to all documents relating to FCA complaints The FCA and I are limited in what information we can disclose due to confidentiality restrictions, in particular those under s348 of the Financial Services and Markets Act 2000. More detail on what information the FCA can and cannot share can be found here: https://www.fca.org.uk/freedom-information/information-we-can-share/. If you are seeking disclosure of documents, you should approach the FCA.

From my review of the files, I can see that the liquidators contacted the clients of the firm in August 2011 to announce their appointment. At this juncture, your clients should have been aware the firm was in liquidation.

The FCA continued to work with the liquidator and the former director of the firm for client contact purposes, as the FCA explained to you. I can see that the client contact letters were meant to be sent out in December 2011 or early January 2012. The client contact letter points out that 'even though that company has been rendered materially insolvent, then where a client has a legitimate claim assistance will be provided to attempt to secure redress via the Liquidator, the Professional Indemnity Insurance cover the company holds and the Compensation Scheme'. It is, of course, possible that other clients approached the firm earlier, having received the liquidator's appointment letter in August 2011.

I understand from your correspondence that when your clients approached the PII insurers in June 2012 they discovered that the firm's cover had been exhausted.

I believe you are suggesting that your clients did not receive the client contact letter which would have been sent out in December 2011 or January 2012. If that is the case, it is unfortunate but not the fault of the FCA. It is a matter you should take up with the liquidator.

The FCA's responsibilities

There is no doubt that your clients have suffered, but the question for me is whether the FSA acted reasonably in its response to the unfolding events. It is important to remember that the FCA is a regulator, and is not responsible for individual consumer redress.

It is clear from the events described above that the FSA took steps – in commissioning the s166 review, and in its dealings with the firm and the liquidators – to try to protect the interests of those who might have suffered as a result of the problems in the firm. The records I have seen confirm that there was considerable activity in the period in the run-up to the liquidation. Following the liquidation, there was further correspondence leading up to the issuing of the client letters by the liquidators at the end of the year. It might have been preferable if those letters had been issued sooner, but the principal responsibility for this lay with the firm/liquidators, and I see no evidence of unreasonable delay by the regulator.

You have suggested that the FSA ought to have personally contacted your clients after the firm went into liquidation to advise them to seek compensation from the insurers. In its response to you, the FCA explained that it is not its role to personally contact consumers. I agree with that position.

In your response to my preliminary decision you clarified your complaint to be that the FSA did not follow up their case to see if the steps the FSA had required the firm to take had been implemented by inviting the firm to provide evidence it had done so.

The FCA addressed this point in its decision letter to you, explaining that there was no evidence to indicate the firm had provided misleading information or invalid data; the firm provided documentation to the FSA to demonstrate its work with its customers which was later provided to the liquidators to enable them to progress a client contact exercise; and that the FSA had face to face conversations with the firm in which the firm committed to following through with its actions to assist clients in seeking recompense where due.

I find the FCA's position reasonable in the circumstances.

Conclusion

In my view, the FCA's decision not to uphold your clients' complaint was correct and – with one exception – I agree with its description of events. The exception relates to the statement that in May 2011 "[The firm] notified the FSA that your clients had either raised a complaint against [the firm] or had been advised by [the firm] to complain". The evidence I have reviewed does not support that statement: my reading of the documents is that a very small number of clients had at that stage either complained or been invited to by the firm, but your clients were not among that number.

That does not, however, affect my overall view. Your clients' complaint depends upon the assumptions that the FSA acted unreasonably, that it had a duty to contact clients directly, and that it was liable for clients' losses. In my view, none of those assumptions is correct.

The FCA acted reasonably in engaging with the firm to ensure that there was a mechanism to help clients pursue redress. The day to day management of that mechanism was the responsibility of the directors. It is regrettable they did not contact your clients before the firm went into liquidation, but that is not the fault of the FCA.

Mr X and Ms Y were amongst many affected clients who had a claim against the insurance provider. I understand they eventually did claim in June 2012 but that in November 2013 the insurer contacted them to say that the limit of indemnity had been reached and they would not receive compensation. This is unfortunate, but again not the fault of the regulator. Mr X was advised to approach the FSCS which he duly did, but his claim was not made out due to a close relative rule. This again is unfortunate, but also not the fault of the FCA.

I have sympathy for your clients who have lost out in this case, but I do not consider the FCA is responsible for the loss of your clients and cannot uphold your complaint.

Yours sincerely

Antony Townsend

Complaints Commissioner