

2 October 2017

Dear Complainant

Complaint against the Financial Conduct Authority**Reference Number: FCA00347**

Thank you for your letter of 1 June 2017. I have now completed my review of the Financial Conduct Authority's (FCA) investigation into your complaint. Before finalising my decision, I invited comments from both the FCA (who did not provide any) and you, and I have addressed your main comments 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

You were asked by the executor of the estate of Mr G to review advice he received from firm K in 2002 about an equity release recommendation. You believe you have identified a number of failings in the advice, but were unable to resolve the issues with firm K, or the Equity Release Council (ERC). You subsequently submitted a complaint to the Financial Ombudsman Service (FOS). The FOS did not admit your complaint into its Scheme on jurisdictional grounds: it explained that this particular arrangement for a home reversion plan had been made in 2002, but advice about home reversion products only became regulated in 2007.

You then complained to the FCA, who did not uphold your complaint.

You submitted your complaint to me for an independent review. You have made the following four principal points:

1. The FOS "could not get away from the fact that their jurisdiction hinged on the product in question being regulated at the time the advice was given", despite the information which you had supplied which suggested that the advice might fall within their jurisdiction. (You accept the point that concerns about the FOS are outside my jurisdiction, but this point has relevance to point 4 below, which concerns the duties of the FCA);
2. In the light of the information which you had supplied, the FCA should have taken some form of regulatory action against firm K, either through s166 or some other means. That action should have been made public, in the public interest. In fact, no action was taken. You link this inaction to my findings in complaint

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FCA00101 (see <http://frccommissioner.org.uk/wp-content/uploads/FCA00101-FD-11-05-16.pdf>), and say that the FCA has failed to follow my recommendations in that case. You draw my attention to the principles of Treating Customers Fairly (TCF), which you say have been breached;

3. You sought to make the FCA take action by involving the non-executive directors of the FCA, but the accountabilities of the non-executive directors are not sufficiently clear;
4. The FCA should point out to the FOS that it ought to have identified the ‘loophole’ and referred it to the FCA, under the terms of the memorandum of understanding between the two bodies.

A preliminary point

You have asked me to specify the documents which I have considered in this case. Under the Complaints Scheme, I have access on a confidential basis to all the documents which the FCA has considered in dealing with complaints. I have reviewed an extensive range of documents, generated by the Complaints Team and other departments of the FCA and FOS, which were used in the preparation of the decision letter which the FCA sent to you. I cannot share those documents with you (it is for the FCA to decide which of its documents it can disclose), but I can say that the documents included consideration of the question of whether the fact that firm K was authorised for mortgage advice affected the FOS’s jurisdiction in relation to home reversion products.

My analysis

For the reasons given above, I have considered element 1 of your complaint in relation to element 4.

In relation to element 2, I have carefully studied the FCA documents. As the FCA has already explained to you, many details of its supervisory interactions with firms are kept confidential. I can assure you that the documents which I have seen demonstrate that the FCA has recorded and given careful consideration to the information which you provided, and I am satisfied that its actions have been appropriate. I recognise that an assurance from me without any underpinning information is unsatisfactory, but it is the best that I can do given the confidentiality restrictions. I can however confirm that all the documents you refer to in your letter dated 18 September 2017 have been provided to me by the FCA. The FCA does not issue redress, so whatever action it might take would not, in any event, cure the underlying problem about which you have complained.

You linked your allegation of FCA inaction to my findings in complaint FCA00101, which you say have been ignored, and you say that the FCA’s answers on this point are “pedantic and evasive”. With respect, I disagree. In FCA00101, I was highly critical of the FCA’s failure to follow up information which had been offered to them. In your case, however, it is clear that the information you have offered has been followed up. The problems in your complaint stem from the historic lack of regulation of home reversion products, coupled with confidentiality restrictions applying to FCA information. While I sympathise with your frustration on both those points, I do not think that they are a parallel to FCA00101.

Turning to element 3, you comment upon the non-executive majority on the FCA Board – this is not uncommon in public sector boards of this nature, and I am not sure that, of itself, it is significant in this case. The fact is that the concerns which you have raised with the Chair

of the FCA have been considered and pursued, and the Chairman was informed of the actions which were taken.

Finally, there is the question of the interactions between the FOS and the FCA. Although the FOS is operationally independent of the FCA, and the FCA cannot interfere in individual decisions relating to complaints (including issues of jurisdiction), the FCA does have an oversight role, as set out in the memorandum of understanding which you cite. As you have pointed out, it is important that the FOS supplies the FCA with relevant information to identify any weaknesses in the regulatory system. From your emails of 14th July 2017, I see that the FOS has now referred the issues raised by your complaint to the FCA. Furthermore, in response to your complaint, the FCA did analyse the jurisdictional issues in some detail.

Conclusion

For the reasons above, I cannot uphold your complaint. I recognise the significant problems which the historic regulation of home reversion products, and the related jurisdiction of the FOS, have created, but I am afraid that those cannot be solved by the Complaints Scheme. For that reason, the executor's only option is to consider legal action through the courts.

I also recognise that you feel strongly that the FCA could and should have acted more strongly in response to concerns which you raised, however, I have satisfied myself that the FCA has not ignored your concerns, or acted unreasonably.

I appreciate you will be disappointed with my decision but I hope you will understand why 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