

12 April 2018

Final report by the Complaints Commissioner

Complaint number FCA00428

The complaint

1. On 31 January 2018 you asked me to investigate a complaint about the FCA. I have carefully reviewed the papers sent to me by you and by the regulator.

What the complaint is about

2. You asked the FCA to clarify rule 6.1.5 of the Insurance Conduct of Business Sourcebook (ICOBS 6.1.5) in relation to no claims discounts on your motor insurance policies. You complained because the FCA's Customer Contact Centre (CCC) told you that the FCA does not interpret rules and that you should seek independent advice. You asked to speak to the person who wrote the rule but were told this was not possible.

What the regulator decided

3. On 21 November 2017 the FCA complaints team told you that it had not upheld your complaint because it considered the CCC had answered your enquiry correctly. The response letter said that the FCA cannot provide you with an interpretation of this rule because the FCA is "*a principle based regulator and the rules are not prescriptive in relation to the disclosure of no claims discount information*" but depend on individual circumstances.
4. You queried this response and the complaints team made further enquiries of the Insurance Policy team. A second decision was issued on 19 December 2017; your complaint was again not upheld. The FCA's second response letter reiterated that the FCA cannot review individual complaints about a firm, which is the remit of the Financial Ombudsman Service. You were given further information about the FCA's policy approach to the issue you had raised and the reasons for it.

Why you are unhappy with the regulator's decision

5. You are dissatisfied with the FCA's response because you consider that ICOBS 6.1.5 is prescriptive and that you supplied evidence of this to the FCA. You do not understand how insurance companies can abide by rules, as they must, when the rule maker will not clarify exactly what a rule means. You consider that the FCA's response is not consistent with its ethos and aims.
6. You are also dissatisfied because emails you sent to the FCA's CEO Andrew Bailey have not been acknowledged or answered.

My analysis

7. Under a sub-heading that reads "Ensuring customers can make an informed decision" ICOBS 6.1.5 states:

A firm must take reasonable steps to ensure a customer is given appropriate information about a policy in good time and in a

comprehensible form so that the customer can make an informed decision about the arrangements proposed

This is known as the ‘appropriate information’ rule. ICOBS 6.16 goes on to state that *the rule applies pre-conclusion and post-conclusion, and so includes matters such as mid-term changes and renewals. It also applies to the price of the policy.*

ICOBS 6.1.12a, states: *(3) the firm must provide to the consumer the following information in good time before the renewal: (a) the premium to be paid by the consumer on renewal...*

8. The FCA says that the appropriate information rule does not prescribe what information must be provided to customers about no claims discounts; it will depend on the circumstances. Firms are not obliged to explain how they have calculated a particular price, only the ultimate price to be paid for the insurance policy. The FCA considers that its policy approach is appropriate and has no plans to change this. It believes “competition is often a more effective way of delivering positive consumer outcomes than prescriptive regulatory requirements”.
9. However, you consider that ICOBS 6.1.12a makes it clear that the price of a policy and the premium paid are two distinctly different items. From this you conclude that the price of a policy is the price prior to discounts being applied, and the premium to be paid is the amount due after discounts. You also drew the FCA’s attention to the following statement in a 2007 FSA document: *This does not mean we will be a purely principles-based regulator. In certain areas we will continue to need to rely on detailed rules and prescriptive processes to ensure adequate consumer protection or sufficient consistency and comparability between regulated entities, for example so that consumers can compare information provided by firms... in reality therefore there will always be a mixture of detailed rules and principles in our regime.* <http://www.fsa.gov.uk/pubs/other/principles.pdf>
10. Although you disagree with the FCA’s approach on this matter, I am satisfied that you were ultimately provided with details of the FCA’s policy approach and the reasons for this, which I find reasonable. I cannot comment on the CCC’s apparent response to another caller, referred to in your response to my preliminary report, that all ICOBS with an R in a small box beside them are prescriptive, save to note that the FCA Handbook distinguishes between Rules (designated with an R) and Guidance (G). So, for example, in paragraph 7 above, ICOBS 6.1.5 is the rule (appropriate information) and ICOBS 6.1.6 is guidance. This does not mean that the appropriate information rule is interpreted prescriptively: the FCA’s position in its complaint response to you is that it is not. Nor do I consider that the 2007 document you quoted provides evidence that the ICOBS rules are prescriptive or intended to be interpreted in the ways that you suggest.
11. I note from your comments on my preliminary report that you continue to take a different view but I am afraid that this is as far as it is possible to take these matters under the Complaints Scheme. The FCA’s published information makes it clear that it operates a mixed approach of rules and principles and firms must accept and comply with that approach, as you rightly point out. If you wish to argue a point of law, you would have to take the matter to the courts.
12. On 28 November 2017 you wrote to the FCA’s CEO, Andrew Bailey, expressing your disappointment at the FCA’s complaint response. You received a response dated 8 December from the casehandler who had dealt with your complaint in the

Complaints Team. I can understand why that would have caused you surprise and I consider it would have been better practice for that response to have come from the Complaints Team manager.

13. You did then make contact with the manager and received a further decision from him on 19 December. On 22 December, you emailed Andrew Bailey again but did not receive a response. The FCA says that this appears to have been caused by an oversight over the holiday period. This was unfortunate and clearly should not have happened. However, I accept that the points you were raising had been responded to previously and that you were aware of your right to come to my Office if you remained dissatisfied. This information was repeated to you in a personal response sent to you from the Chairman of the FCA Board in January 2018. I note that, due to a change of postal address of which the FCA was unaware, you did not receive that letter until I sent you a copy during my investigation.
14. I asked the FCA to comment on its general practice for emails sent by individual complainants to the CEO. It says that it is not practical for him to personally draft a response to each individual communication and that he will often commission assistance from relevant parts of the organisation when preparing draft responses or will pass the matter on to the relevant area to respond directly, as happened here. In your particular case, that FCA comments that your correspondence to the CEO arose as a result of your dissatisfaction with the FCA's response to your complaint. The appropriate route for your concerns was therefore to contact my Office directly as Andrew Bailey would not have been able to undertake any further review of your complaint. I am satisfied that this response is reasonable.

My decision

15. I am satisfied that the FCA's response to your concerns was reasonable and I do not uphold your complaint. I realise that you will be disappointed by my decision but I hope that you will understand how I have reached it.

Antony Townsend

Complaints Commissioner

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