

14 September 2020

Final report by the Complaints Commissioner

Complaint number FCA00762

The complaint

1. On 25 June 2020 you asked me to investigate your complaint about the FCA. I have carefully reviewed the information sent to me by you and the FCA. My preliminary report was issued on 20 August 2020 and both you and the FCA have had the opportunity to comment.

What the complaint is about

2. You complained to the FCA that an insurance company had breached FCA rules and treated customers unfairly because it stopped paying you commission on non-investment term assurance policies when you retired as a broker and did not inform customers or return payments to them once they were no longer paid to you.

What the regulator decided

3. The FCA said that your complaint was a commercial dispute that fell outside the Complaints Scheme (the Scheme). Its complaint response said that there are no specific rules concerning whether an insurer should or should not pay a broker renewal commission after they have retired.
4. The FCA told you that your concerns about the firm failing to treat customers fairly had been referred to the relevant supervisory team for review. However, due to confidentiality and policy restrictions, the FCA would be unable to tell you what action, if any, is taken as a result of this.

Why you are unhappy with the regulator's decision

5. You have told me that beyond your commercial dispute with this firm (and others), your complaint is that non-payment to brokers by insurers breaches FCA rules and amounts to a very large amount of money kept by insurers.

FCA00762

6. You have asked me to focus *entirely on what happens to the extra 2.5% of every month premium that the insurers keep... this is very clearly a breach of the FCA transparency rules because the money is kept by the insurers and they haven't informed the client they would be keeping it... they haven't reduced the clients' premiums so it isn't treating customers fairly so that breaches this rule as well...Insurance companies have no rights to this money.*
7. Your view is that the FCA is not doing the right thing as regulator and that you would expect the FCA to act when they are told about a breach in their rules. You would like the FCA to instruct the firms to refund customers and reduce premiums going forward or alternatively to resolve the commercial dispute.

My analysis

8. You were an authorised broker for twenty years until you retired last year. Following this, your business was deauthorised and, under the terms of business you had with various insurance providers, payments of premiums to you ceased. Your view is that businesses should continue to pay in line with authorisation and disclosure to customers at the time the insurance contracts were taken up. Alternatively, customers should be advised and their premiums reduced.
9. The FCA was correct to tell you that, to the extent that you have a commercial dispute with an insurance firm, this does not fall within the Complaints Scheme (the Scheme). It also says that no specific rules are breached by your terms of business. Your point is that the effect of this arrangement also treats customers unfairly. In my view, that second point does fall within the Scheme and should not have been excluded although – for the reasons given below – I do not think that this affected the outcome of your complaint.
10. The FCA's complaint response informed you that it had referred those concerns to the relevant supervisory team but could not give you further information due to legal and policy restrictions on confidentiality.
11. The regulator welcomes information from people who report concerns. However, as you were told, the FCA does not generally say what action has been taken in response to the information that it receives. This is because section 348 (s.348) of the Financial Services & Markets Act 2000 (FSMA) classes some information the FCA holds about firms as confidential, and restricts how that information is

dealt with. In addition to this, any information that is not restricted by s.348 FSMA may be restricted due to the FCA's policy on sharing information about regulated firms and individuals, who also have legal protections. Under this policy, the FCA will not normally disclose the fact of continuing action without the agreement of the firm concerned. This means that, as you were told, there is no general right for people to know the outcome of reports that they make.

12. Like the FCA, I am required to respect confidentiality. This means that sometimes I cannot report fully on the confidential material to which I have access. However, as part of the Scheme, I have access to all the FCA's complaints papers, including confidential material. This is so that I, as an independent person, can see whether I am satisfied that the FCA has behaved reasonably. Sometimes this means that all I can say to complainants is that, having studied the confidential material, I am satisfied that the FCA has (or has not) behaved reasonably – but I am unable to give further details. This can be frustrating for complainants, but it is better that I am able to see the confidential material. On occasions, I have persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible. I shall continue to pursue this matter with the FCA.
13. In your case, having studied the FCA's records, I can say that I am satisfied that the FCA has not ignored the information which you have provided, and is giving it proper consideration. Unfortunately, I cannot say any more than that, and I recognise that this will be frustrating for you. I realise that this leaves you with concerns and unanswered questions but I hope you will be reassured that I have reached this conclusion after independently reviewing the confidential material.

My decision

14. I have not upheld your complaint for the reasons stated.

Antony Townsend
Complaints Commissioner
14 September 2020