

5 July 2021

Final report by the Complaints Commissioner**Complaint number FCA00913***The complaint*

1. On 29 March 2021 you asked me to review the outcome of your complaint to the Financial Conduct Authority (FCA). I have carefully reviewed the documents that you and the FCA have sent to me. My preliminary report was issued on 11 June 2021 and both you and the FCA have had the opportunity to comment.

What the complaint is about

2. On 3 March 2021 you complained to the FCA about the rapidly rising cost of your firm's professional indemnity insurance cover (PII) which you had been told was due to a reduced number of suppliers in the market arising from concerns about future interest only mortgage claims and compensation. You wanted to know: "How can the FCA allow this to happen and what do they intend to do to correct the issue?" You also asked the FCA to take steps to improve the market.

What the regulator decided

3. The FCA said that your complaint was excluded from [the Complaints Scheme](#) (the Scheme) because it was about the performance of the regulators' legislative functions as defined in the Financial Services Act 2012. The FCA acknowledged that the PII market has hardened across many different sectors but said that firms are still expected to purchase compliant cover. You were referred to the FCA's guidance, which "sets out it is your responsibility to take out adequate cover, as set out in our rules, and to think about the effect that your PII policy's terms and conditions might have on your business".

Why you are unhappy with the regulator's decision

4. You have told me that this was: “not a direct complaint about the FCA and was written more with the intention of trying to communicate with them, ensure they are aware of the situation and to see what was being done about the matter”.
5. You consider that the situation is not sustainable and needs to be addressed by the regulator, otherwise either the PII market will collapse or cover will very quickly become too expensive to warrant being an independent mortgage broker and firms will go out of business. As independent brokers, you want to offer your clients the best value for money and you consider the FCA has a responsibility to ensure the market remains in place (ultimately) for the general public.
6. You would like to understand whether:
 - a. The FCA is aware of the situation?
 - b. What they intend to do to ensure brokers (and customers who have to have PII) have a real, honest marketplace to purchase PII from?
 - c. What are they doing to entice insurers back to the marketplace?
 - d. If they are not doing this ... will they be re-evaluating independent mortgage broker requirements to have PII?
 - e. If not, how do they see the market as sustainable?

My analysis

7. I am satisfied that you submitted a complaint to the FCA by using the FCA's complaint form to raise your concerns. It was therefore appropriate for the Complaints Team to respond to you. This has also enabled you to approach my office for an independent review of the matters that you raised.
8. I am also satisfied that the FCA was correct to say that the subject matter of your complaint is excluded from the Scheme. Part 6 of the Financial Services Act 2012 (the Act) requires the regulators to maintain a complaints scheme for the investigation of complaints “arising in connection with the exercise of, or failure to exercise, any of their relevant functions”. The “relevant functions” of the FCA are their functions other than their legislative functions. Complaints about the

performance of the regulators' legislative functions are therefore explicitly excluded from the Scheme. This includes the setting of requirements to hold PII.

9. The FCA's complaint response informed you that, although your complaint had not been investigated formally under the Scheme, the Complaints Team had liaised with the area of the FCA most closely connected to your complaint in order to provide you with a response to the matters raised. Although you do not like the response that you have received, I believe it answers the questions you have raised with me, namely that the FCA is aware of the situation and nevertheless expects firms to comply with the regulatory requirement to maintain PII cover. In response to my preliminary report you have asked a further set of questions about the nature of the PI market for independent mortgage brokers. I note your continued concerns; however, there is nothing further that I can do to assist you under the Scheme.

My decision

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

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Complaints Commissioner

5 July 2021