To the Complaints Commissioner
via email

Dear Mr Townsend

Complaint against the Financial Conduct Authority Reference Number: FCA00050

Thank you for your letter of 18 September containing your Preliminary Decision. Before I respond in detail I would like to make some general comments.

I think it is a shameful document. Every sane and rational person knows exactly what is going on - a monumental cover up of industrial scale fraud by HSBC(HFC) for political expediency, not least because HSBC may lose its banking licence in the US.

My complaint is against the FCA for colluding with HSBC to perpetuate the cover-up. My complaint is not against the OFT, which is the only authority which took any action in the matter, even if they did bury their Requirements in a press release relating to another matter entirely. I was shocked to have received this statement yesterday from Andrew Richardson:

press/2010/119-10). You will also appreciate that 3(b) of the Requirement (http://webarchive.nationalarchives.gov.uk/20140402142426/http:/www.oft.gov.uk/shared_oft/press_release_attachments/HFC-requirements.pdf) indicates that the OFT did not say that HFC could not apply charges simply that the manner in which these charges were calculated was incorrect and, as a result, it required HFC to alter the manner in which charges were calculated and added to a consumer's account.

This again is a completely distorted representation of what the OFT requirements stated. It said that if HFC wanted to add charges it had to amend its credit agreements to allow for them - ergo - they had no such terms at the time of the making of the Requirement. To have this said to me at this stage in the process is bordering on criminal.

I will deal with your decision below.

> As you are aware, I was Chief Executive of the SRA from 2006 until January 2014. In that role, I was not a decision maker in relation to disciplinary matters – the SRA has adjudicators, and there is the Solicitors Disciplinary Tribunal which rules on disciplinary cases – although I did on occasions become involved in discussions about particularly complex or difficult cases. You will appreciate that the SRA deals with many thousands of complaints in the course of each year, and I was therefore inevitably unaware of the majority of them. I do not recall being involved in the case to which you refer, although it is conceivable that I was involved in discussions about the matter and have forgotten it since. I could only establish that by checking with the SRA, and I have not contacted them about the matter. Even if there had been discussion, I would not have been the decision maker.

I am sorry, but I find it inconceivable that you were unaware of my complaint to the SRA about Weightmans practices, particularly as it took the SRA 11 months to deal with the complaint and that the outcome, if dealt with properly, could mean the depletion of the Compensation Fund. As CEO of the SRA I just cannot accept that you were not involved in the decision making.

I also think it is significant that in the SRA adjudication they found that the unlawful contingency fees were only applied in a "small number of cases". This is patently untrue and in the year of my complaint to the SRA I have calculated that Weightmans and

Restons added a total of £44m in charges , based on a FoIA request to the Ministry of Justice - http://nicholaswilson.com/44m-in-illegal-charges-in-one-year/

Although I made this offer to you, Mr Tomeo responded on your behalf to say that, as I had clarified several points relating to my past role with the SRA, you were happy for me to oversee the examination of your complaint.

Whilst it is true that I was happy for you to oversee my complaint, this was on the basis that I didn't believe you could possibly, in the full public gaze perpetuate the cover-up.

- you believe that a large number of consumers were overcharged by HFC and HSBC as a result of the way charges were added to the accounts of those who had defaulted on credit card payments. You consider that the FCA and predecessor bodies have failed in their duty to protect consumers both in terms of awarding redress and in preventing those responsible for the improper practices from being involved in financial services
- you consider that the FCA's decision to include in a letter to you unverified and unattributed information which HSBC had provided shows that the FCA is failing to protect consumers adequately and is colluding with HSBC.

This is not a matter of belief. I was head of debt recovery at Weightmans. I saw Restons contract with HFC as it was given to me to draft Weightmans contract. It allowed for a universal addition of 16.4% to any debt at the outset of the instructions and that figure was retained by the solicitors as a percentage of any amount recovered. This is an unlawful contingency fee as found by the SRA.

The matters about which you complain concern consumer credit arrangements during the period 2003 to 2010. Consumer credit was the responsibility of the Office of Fair Trading (OFT) until 1st April 2014, when the FCA assumed that role. However, although consumer credit was the responsibility of the OFT, the Financial Services Authority (FSA) was responsible for the supervision of HSBC (although not its consumer credit activities) until its demise on 31st March 2013, when the FCA took on the FSA's functions that relate to this case. Furthermore, although the OFT's regulatory powers changed in 2013, these changes did not extend to allowing the provision of redress. Finally, the statutory arrangements for regulating consumer credit changed again when the FCA took over consumer credit from the OFT on 1st April 2014; and the FCA inherited the responsibility for the relevant legacy issues (including complaints handling) from both the FSA and the OFT.

In your setting out the regulatory history you are overlooking one essential point. I had never approached the OFT myself. The charges I am dealing with were not, and never have been a consumer credit act matter. They are simply fraud. They breach various Solicitors Act rules and meet every one of the definitions of fraud as set out in the Fraud Act. That is why I reported the practice to the FSA/FCA. And, you should know, that it was not just HFC applying the charges, although of course the OFT Requirement is addressed to them, but HSBC were also applying the charges as John Lewis Financial Services Limited. This is now the subject of a recent, new report to the FCA.

Put crudely, the FCA's final decision was to take no action on the following grounds (which I list in no particular order):

1. the matters complained of were very old;
2. they related to HFC, which was no longer involved in consumer credit – the risk was not, therefore, a continuing one;
3. there was no evidence of a significant number of continuing complaints;
4. the matters related to a time when consumer credit had been regulated by the OFT, and the OFT had taken the action available to it at the time;
5. even if it wished to, the FCA could not substitute its regulatory judgement for that properly taken by the OFT in 2010, nor could it impose redress provisions which were not available at the time of the events;
6. matters of fraud were principally for the police.

1. The matters of complaint may be very old but there are still hundreds of thousands of people *still* paying the charges because they will have agreed an instalment arrangement with the bank.

2. They did not only relate to HFC, they related to HSBC trading as John Lewis Financial Services Ltd.

3. There is considerable evidence of the numbers affected on my website which was visited almost daily by the FCA (for which I have records)

4. As stated it was not a complaint about consumer credit - it was a complaint of fraud.

5. This statement does not agree with the letter sent to the TSC by the FCA - http://nicholaswilson.com/wp-content/uploads/2015/02/150203_FCA_to_Clerk.pdf

6. You have not dealt, in your decision, with the fact that the FCA sought to blame me not just for not reporting the matter to the OFT but also for not reporting the matter to the police. I did, it was dealt with by Chief Superintendant Detective David Manley at City of London Police Economic Crime Unit. He said it was a matter for the FCA.

Regrettably, the records from the OFT era are not particularly helpful, and there is little evidence that the OFT checked to see whether the HFC (and subsequently HSBC) had done a thorough job in trying to identify how many customers had suffered a detriment. From the file records passed to me, it would appear that HFC claimed that only four customers were affected, and the OFT chose to accept that. From the records, I am in no position to determine whether or not the OFT's inquiries were sufficient

The import of this appears to be that you have accepted for the purposes of your decision that only four customers were affected. This is absurd. I can now send you copies of at least nine claim forms including the illegal charges. (Not many because in all my years of campaigning it is impossible to find victims because of the cover-ups). You will know, from your time at the SRA and lifelong involvement in professional practice that when a firm is audited for regulatory/practice standards (e.g. ISO) they are asked to supply sample files for analysis by the auditors. To infer that only four people were affected because only four files were examined is utterly disingenuous. In any event, if that was the case, and those customers had been reimbursed, why on earth would the OFT make a requirement against the bank?

I regret that your acceptance of this position is analogous to the acceptance of the position in my complaint to the SRA; either from information supplied by Weightmans (likely) or from the SRAs own exhaustive investigation (unlikely) that only "a few" consumers were affected.

> I accept the FCA's comments that, at the time you made your FoIA request in February 2014, the FCA did not have any legal jurisdiction to supervise the conduct of HFC (or its parent HSBC) in respect of consumer credit activities. It therefore it did not have information on all of the matters to which your FoIA request related, and could not provide fully the information you had requested or answer the questions you had put to it.

This statement is, with respect, nonsensical. My FoIA request related to *what* action the FCA had taken on my complaint. FCA certainly did have jurisdiction to consider a complaint of fraud, which mine was, as set out in the letter to the TSC attached above. Of course it had the information to answer my question on what it had done.

> On 10th April 2014, when the FCA responded to your FoIA request, it included a direct quotation from information which HSBC had provided to it without either attributing the quotation or verifying its accuracy. Whilst I can understand why the FCA approached HSBC for information it did not possess, it simply should not have quoted directly this information without first verifying that the information was correct.

Why do you accept that FCA did not "possess" information. The matter relates to the OFT Requirement. This was in the public domain, not least on my website where I had analysed and commented on it at length. As stated, the FCA were regular visitors to my website. They had no need to approach HSBC to know what the OFT Requirements were.

> When corresponding with the FCA you suggested that this amounted to the FCA colluding with HSBC, something which is denied by the FCA. For collusion to have occurred there must have been a deliberate, joint attempt by the FCA and HSBC to mislead you. It is clear that the FCA made an error and was negligent in the manner in which it responded to your FoIA request. It is also clear that the error is made worse by the fact that the information supplied by HSBC was wrong and – to anyone familiar with the matter – obviously wrong. It appears that the person at the FCA who incorporated the information in the letter to you simply did not know enough about the matter to spot this. Although this as a very unfortunate error by the FCA, I can find no evidence that the FCA set out to mislead you. I understand that the FCA has apologised to both you and the Treasury Select Committee for the manner of its response, and specifically its decision to quote directly from the information which HSBC provided to it.

You appear to misunderstand the word collusion. If the banking regulator receives a request for information concerning its conduct in regulating a bank and refers to the bank for information in order to respond to a FoIA request, that it prima facie collusion. It shouldn't need pointing out that the FCA is supposed to be independent in its regulation.

For the record the FCA have not apologised to me, they have merely stated that the inclusion of HSBC's text was an "error of judgment". Apart from the niceties of whether there was collusion, for them to pass on information that is fundamentally and demonstrably untrue from a bank they are supposed to be regulating is little short of misconduct in public office.

It is unfortunate in the current situation that your office also seeks to misrepresent to the terms of the OFT Requirement.

It goes without saying that I cannot accept your summary of the FCA failings because I believe they are based on erroneous and deliberately false premises. Whilst an apology from the FCA might be welcome, the purpose of my exercise is not to embarrass or seek an apology for the actions of regulators. It is for the regulators to do their job and ensure that half a million people affected by the illegal actions of banks are recompensed and the people involved sanctioned.

Yours sincerely
Nicholas Wilson