

7th January 2005

Dear Complainant

Complaint about a Firm:

Thank you for your email of 17th December 2004 and the documentation which you previously supplied to us in relation to your complaint about the FSA. This letter sets out our final decision on the complaints you have raised.

Background

You are a with-profits annuitant with the Firm. You have alleged that as a result of FSA 'incompetence' in relation to the Firm you have lost pension income and you seek remedy in the form of compensation amounting to the pension income lost. The FSA have addressed your complaint by addressing the six specific allegations which make up your complaint. The FSA have concluded that two of your allegations are excluded from the scheme and the remaining four have not been upheld.

Findings

In previous correspondence you have been specifically asked to provide evidence to support your allegations. In your email of the 17th December you state that you cannot provide any further evidence to which you had already submitted. The documentation which had already submitted was made up primarily of the document 'Summary of failures of the FSA' and other documentation from The Firm Members Action Group. The distinction should be made that these are submissions as opposed to evidence.

The FSA response to your first two allegations is that they should be excluded from the scheme as these were matters regarding prudential regulation prior to 1st December 2001 and thus for the Parliamentary Ombudsman. None of the evidence you have provided has been sufficiently persuasive for me to form a contrary view to that of the FSA, consequently I concur with the decision to exclude these two elements from investigation.

For the sake of clarity I should re-emphasise the point made in my colleague's letter of 2nd September 2004. There is no power under the Complaints Scheme to recommend the payment of compensation for events prior to the 1st December 2001.

It is clear from the Independent Report that the issues and events that lead to the Firms policyholders policies having less value than anticipated, to the extent that such losses are attributable to causes other than investment performance, must have been due to actions and inactions prior to the 1st December 2001. As a consequence of this the remedy you seek is

unavailable from the FSA. The Complaints Commissioner has no power to alter this position.

Having investigated the evidence you submitted and the findings the FSA have reached, I see no reason to overturn any of the FSA findings in the letter dated 2nd July 2004. As compensation is unavailable to you under the rules of the scheme, I do not propose to comment upon each finding of the FSA other than to state that the FSA conclusions are sound.

Conclusion

It is clear that your dispute, in essence, is that between consumer and firm. It is clear that compensation (the remedy you seek) cannot be paid under the Complaints Scheme irrespective of the investigations conclusions. Your complaint should be addressed to the Firm in the first instance and then the Financial Ombudsman Service. Alternatively you could address your complaint to the Parliamentary Ombudsman. If you have already exhausted these avenues or are prevented from doing so by contractual agreement, I suggested you consider legal advice as to your options at this time.

The Parliamentary Ombudsman
Millbank Tower,
Millbank, London,
SW1P 4QP

I regret I cannot be of further assistance. The contact details for the Firm and the Financial Ombudsman Service are given in the FSA decision letter of the 2nd July.

Addendum

Further to your comments in response to my preliminary decision I comment as follows;

- **Compromise scheme**

The scheme was promoted under section 425 of the Companies Act 1985 and was adopted in accordance with the procedures set out in that act. The compromise involved an arrangement between a firm that is regulated by the FSA and its policyholders. The FSA took the view that it was open to them to assess the proposals. Following this assessment on the 10th December 2001 the FSA issued a press statement which said;

“Having taken into account all the relevant considerations, we have concluded that the proposed compromise now put forward is a fair offer for the rights and claims given up”. The scheme was also reviewed by an independent actuary, who concluded that the scheme was fair. Over 97% of policyholders who voted on the scheme in each of the three classes, voted in favour of the scheme. Before the scheme could be adopted it required the approval of the High Court. Any policyholder who would be affected had the opportunity to present their case to the presiding judge, and many did so, in writing or in person. The judge sanctioned the scheme having reviewed the evidence before him.

The time for appealing against the decision expired early in 2002 and the scheme cannot now be overturned.

- Third Life Directive

The objective of this directive is, essentially to further the development of a single market for life insurance within the European Union and to set certain standards as to the regulation of insurance undertakings within the European Union. In my view reference to the directive adds nothing to the allegation that the FSA was guilty of misconduct in relation to its functions under FSMA in their alleged failure to have proper regard of the compromise scheme.

The role of the Complaints Commissioner is to provide an independent decision on its findings into complaints against the FSA. Once the Final decision has been provided to both the FSA and the complainant, the Commissioner's role in the process is complete. If the complainant wishes to make further comment this should be addressed to the FSA.

Yours sincerely

Sir Anthony Holland
Complaints Commissioner