

25th July 2005

Dear Complainant

1) Thank you for your letters of 6th October 2004 and most recently 15th June 2005, which detail the elements of your complaint against the FSA. This letter sets out my final decision on the matter.

2) I have reviewed all of the evidence available to me since the original cause of complaint in July 2002. Since the mailing sent in July 2002 there appears to have been significant correspondence between you (representing your firm, "the Firm"), your legal representatives and the Financial Services Authority (FSA). Due to this dispute and related actions, and or inactions, there have been a number of consequences for which you believe the FSA are liable. The FSA have stated that it considers that it has taken sufficient action to remedy the failings illustrated by the mailing of July 2002. It is clear the differing positions are based upon differing views on the causation of subsequent events following on from the erroneous mailing in July 2002. Consequently I will illustrate my position in this context.

The Mailings

3) The FSA issued a mailing letter to clients of the Firm dated 12th July 2002 stating that the Firm was no longer authorised to give advice on personal pensions. On the 18th July 2002 the FSA issued a retraction letter to those who received the initial letter stating that they should ignore the letter of the 12th July. Another FSA letter was issued on the 31st July 2002 which made similar comments, about the Firm not being authorised, as was contained in the letter of the 12th July. A reminder to this letter was apparently sent to these clients on the 13th September 2002.

4) According to the FSA file thirty-eight clients of the Firm were mailed on the 12th July. Eight clients were sent the letter of the 31st July. Your legal representatives, your Solicitors, have requested clarification of those who have received retraction letters. The FSA have said that it is inappropriate to discuss FSA correspondence with other parties, whilst discussing your complaint (given their confidentiality obligations).

5) The evidence suggests that there have been, to date, no claims against the Firm as a result of these errant mailings. Consequently no financial loss has been suffered directly from the mailings. The FSA have apologised for these mailing errors and have taken steps to rectify the incorrect information provided to these clients of the Firm.

6) In my opinion the FSA have apologised suitably and taken sufficient steps to correct the errors made in sending these particular mailings. I do not consider that further FSA action on this issue is required.

The costs of cessation in trading of the Firm

7) The evidence shows that prior to March 2002 you were considering ceasing your investment business for personal reasons. Having decided to carry on with your investment business two employees took exams with the view of building up this investment business. On 31st March 2003 you effectively ceased trading, which incurred various costs. On the evidence so far provided there are no complaints or claims made against the Firm. You claim that you had no option but to cease trading in March 2003 even though it was clear that the errors made by the FSA in July 2002 had been rectified within six days of the first error being made. Furthermore no claims or complaints had been made in the interim as a consequence of the FSA mailing.

8) Insufficient evidence has been submitted which supports your decision to cease trading on the basis of the erroneous FSA mailings. Consequently no causal argument in fact has been demonstrated that shows you had no choice other than to cease trading. You are entitled to ask what is this nature of the evidence that I do require. Some of these issues I spelt out in my letter of the 8th November 2004 and that produced ultimately the letter from your accountants ('the Accountants'), of 7th April 2005 addressed to the FSA. It contains some information on some of the figures involved but it does not contain a sufficient chain of causation. By that I mean a clear and direct linkage between what happened in July 2002 and your decision to cease trading in March 2003. An example might be a detailed statement by the employee you employed setting out all the details of his being taken on and the reasons behind his eventual redundancy with you. There are many more examples that will be needed in my view. To establish these kinds of links will not be easy for you but at the moment they are not even there in the example I have mentioned. You may feel that it is a matter that requires you to take legal advice, but for the moment, in my opinion you decided to cease trading for your own reasons, possibly those earlier personal reasons to which your Solicitors allude. I therefore conclude currently that the FSA is not responsible for the cessation of the Firm or any associated costs.

Professional indemnity Issue

9) The choice of professional indemnity cover (PI cover) is yours alone. Insuring yourself and your firm is your responsibility not that of the FSA. It is clear from the evidence that you decided not to accept the altered terms offered by your PI insurers. Hence not only did you open yourself up to liability to those clients who had received erroneous FSA mailings but also to those who had not. This was your choice in March 2003. It is not the fault of the FSA that you decided not to accept cover at the time, nor is it the fault of the FSA that you did not consider the consequences of this, one of these being that once retired you might not be able to gain 'run-off' cover.

10) The FSA has offered to respond to any enquiry made by your PI insurers with regard to the erroneous FSA mailing. I have not seen any evidence to the contrary throughout these proceedings. I consider its position on this matter reasonable.

Conclusion

11) It is plainly regrettable that these mailings were sent. Nevertheless the FSA has admitted its fault, apologised to you and taken swift rectifying action for these erroneous mailings to those affected (who made up only some of your clients). Many months later you ceased trading and there is insufficient evidence to support your assertion that you had no option but to do so. Your arguments on this issue remain without foundation given the current evidence submitted by you.

Consequently your decision to cease trading and the other decisions that you made at the time were your responsibility and you should bear any consequential liability for these. In these circumstances I consider the FSA's ex-gratia offer remains generous.

The FSA has asked me to point out that the offers made by the FSA in its letter of 27th May 2005 continue to be open to you.

Yours sincerely

Sir Anthony Holland
Complaints Commissioner