

20th May 2005

Dear Complainant

1.1 Thank you for your letter of 20th February 2005, which details the elements of your complaint against the FSA. This letter sets out my final decision on the issues you have raised.

For clarity I shall quickly comment upon the correspondence you have had with the FSA prior whilst adding my findings as I go.

1.2 FSA letter 09/08/04

In response to your complaint, by telephone, the FSA wrote to you and addressed your complaint under four headings.

1. Allowing the Firm to trade between July and December 2000.
2. That the FSA failed to ensure compromise scheme was fair.
3. That the allocation of votes on compromise scheme was unfair and this was the FSA fault.
4. That the FSA failed as a prudential regulator between July and December 2000.

1.3 The FSA responded by stating that issue 3, the allocation of votes for the compromise scheme was a matter between you and the Firm and that the FSA had no jurisdiction in this area. I am satisfied that this conclusion is reasonable.

1.4 In relation to issue 4 the FSA have stated that it was not responsible as it did not take over responsibility for prudential regulation until December 2001. Between July and December 2000 the FSA (the period to which your complaint is specific and when the FSA was involved in regulation) it was acting as agent for HM Treasury. The FSA have stated that if you wish to take this allegation further you should take it to HM Treasury, as it bears the responsibility for the prudential regulation of the Firm during that time. I have investigated this relationship and the FSA position of referring you to the Treasury and I am satisfied that it has been arrived at correctly.

1.5 Having stated that the third and fourth allegations lie outside the scope of the scheme the FSA then go on to explain that the Parliamentary Ombudsman, is to conduct a further investigation into the prudential regulation of the Firm.

1.6 Complainant letter 30/08/05

Your letter quotes the report into the Firm (page 678 paragraph 115) which comments on the Firm being allowed to trade after the House of Lords decision. Later you point out that not all members were allowed to vote on the Compromise Scheme.

1.7 FSA substantive response 06/12/04

The letter of 6th December 2004 repeats the findings in relation to allegation 3 and 4 as above. It also repeats that HM Treasury held statutory responsibility for prudential regulation and that the FSA were acting as agent for HM Treasury. It goes on to state that allegation 1 (allowing the Firm to trade between July and December 2000) on reflection refers to prudential regulation and consequently you should refer to the parliamentary ombudsman on this count. I am satisfied that the FSA conclusion to refer you to the Parliamentary Ombudsman is correct.

1.8 Allegation 2 (FSA failure to ensure the Compromise scheme was fair) was rebutted on the basis that the FSA had previously set out in a press release its reasoning for its conclusion that the scheme was fair. Furthermore the scheme was set out in line with s.425 of the Companies Act 1985. It should be noted that this was a formal legal process and that policyholders had the right, at the time, to make presentations to the Court. Furthermore the time limit to lodge an appeal has long since past. Having regard to the formal legal proceedings that were completed some time ago into the fairness of the compromise scheme I find the FSA position on this allegation to be reasonable.

1.9 The FSA then respond to a new allegation which was added after your correspondence of 30th August;

5. That the FSA failed to ensure that the Firm presented all relevant risks to policyholders and new consumers when issuing policies.

The FSA have stated in its response to this allegation that all such losses were taken into account and settled as part of the s.425 compromise scheme which the remaining Firm members accepted in 2002. The FSA goes onto state that the other report into the matter does criticise the conduct of business regulators for their role in allowing sales of the Firm's policies to continue. It goes onto quote the other relevant report (6.24.2) in that;

“neither of the two regulators fully appreciated the issues which the other was required to address and the information which the other would find useful; and neither was properly or consistently aware of what the other was doing”.

The FSA then state that as the prudential regulator was responsible for the firm's ability to meet its liabilities, then it is to it you should address your complaint. Consequently the FSA have been unable to uphold your complaint and have suggested you take your complaint to the Parliamentary Ombudsman.

2.0 At this juncture it would be useful to explain some pertinent information.

- The Complaints Scheme under which both the FSA and I operate is split into two schemes. One is used for events prior to 1st December 2001 (the transitional scheme) and the other scheme refers to events post that date (the Complaints scheme). These schemes are similar except that in the case of the transitional scheme no compensation can be awarded. Consequently even if the

FSA had found in your favour it could not provide you with any financial remedy. As Commissioner I do not have the power to award compensation in the case of transitional scheme cases nor to change the rules of the Scheme. A consequence is that whatever my decision in your case, you would not be able to receive any financial remedy.

- As Commissioner I am responsible for the handling of complaints about the Financial Services Authority (FSA). Similarly the Independent Assessor is responsible handling of complaints about the decision of the Financial Ombudsman Service (FOS). The FOS and FSA were set up as a consequence of the Financial Services and Markets Act 2000 (FSMA). Generally speaking both were set up to cover differing areas, the FOS was set up to handle consumer's complaints about firms and the FSA was set up to regulate firms. Consequently if you have any complaint about how the FOS dealt with your complaint to it you should approach it in the first instance. Failing that you should complain to the FOS Independent Assessor who oversees the way in which the FOS handles disputes.
- Similarly I have no jurisdiction over the Parliamentary Ombudsman. As the FSA has made you aware previously she has undertaken a further investigation into the regulation of the Firm, which is ongoing. You may choose to follow the FSA suggestion to take your allegations to her.
- Clearly the courts have been heavily involved in the setting up of the Compromise Scheme. I have no jurisdiction in this area and any attempt to overturn such a scheme would have to be done through proper legal process.

3.0 Findings

3.1 On the 8th March 2004 the chairman of the FSA, sent a letter to the Financial Secretary to the Treasury in response to the Report. This letter was published on the FSA website on that day. Point 3 of this letter answers one of your allegations. It states;

“In terms of his specific criticisms of us, the Report's author considers that, when we allowed (the Firm) to put itself up for sale, we did not properly explore all the possible options for the protection of new policyholders. We agree that this is an area for improvement should similar situations arise in the future. We still, however, think we reached the right decision in this case. The prospective benefit to its one million existing policyholders of a sale of the Firm was bound to outweigh the prospective detriment to the 6,000 new policyholders who joined after the House of Lords verdict”.

3.2 It should be remembered that the FSA statutory objectives includes ‘securing the appropriate degree of protection for consumers’. This does not mean each individual consumer but consumers as a whole. This differentiation is clear from the FSA chairman's quote with regard to the Firm's policyholders as a whole compared to those who joined after the House of Lords verdict. In your letter to me (dated 20th February 2005) you have complained that the FSA allowed the Firm to trade. I cannot uphold this complaint for the reasons outlined above.

3.3 The FSA have accepted that it did not expressly direct you to the FSA chairman's comments. I would urge it to consider using them in complaints that it receives in future which are similar to yours as they clearly address some of these findings of the Report.

3.4 In relation to the marketing material issued by the Firm after the House of Lords decision the FSA have stated that this issue was redressed by the Compromise Scheme and that if you are dissatisfied with that view your recourse is to the Parliamentary Ombudsman. I find that this position is reasonable and consequently I do not uphold your complaint on this issue.

3.5 You also complained in paragraph b) of your letter (20th Feb 2005) that the FSA did not intervene in the actions of the Financial Ombudsman Service (FOS) nor the actions of the Court in setting up the Compromise Scheme. Clearly the Compromise scheme, having been set up by the Court, during which you had opportunity to address the court with your concerns, supersedes any other body's decision making. Further it is clear, due to the statutory remits of the FSA and the FOS that the FSA could not involve itself in individual complaints to the FOS. Furthermore considering the Compromise scheme was court approved there was no reason for it to do so. Based on these facts I see no reason to alter the view of the FSA and consequently I am unable to uphold your complaint.

3.6 Having reviewed your submissions and the FSA responses, I do not see any compelling reason to alter the position of the FSA on any of your allegations. Consequently I have not upheld any elements of your complaint. I do believe, however, that the FSA could have responded to your complaint in a more (individual) 'consumer-friendly' manner and I would ask it to consider this with complaints it receives in future.

Yours sincerely

Sir Anthony Holland
Complaints Commissioner