

Our ref: L0529

Dear Complainant

20th July 2005

Final Decision

Thank you for your letter of 14th May 2005, which details the elements of your complaint against the FSA. This letter sets out my final decision on the complaints you have raised.

In summary the basis of your complaint is, that with regard to the allocation rate and apparent contradictory information regarding commissions emanating from the Firm's policy, it is clear "that either one (or both) parties are in contravention of section 5.7.3 of the FSA handbook". On bringing this to the attention of the FSA it has responded by citing the duty of confidentiality as set out in the Financial Services and Markets Act 2000 (FSMA) and consequently cannot provide you with any feedback about this particular point. You have stated in your letter to the FSA (dated 16th May 2005) that you seek the help of the FSA in determining to whom "the full commission due on this particular product was paid, to enable me to make my own claim for restitution".

Having reviewed the file on this matter I note that you first complained to the FSA in your letter of 12th December 2003. In that letter you state that you have complained about the advice you received from the adviser to his firm and that it rejected this complaint. You then took your complaint to the Financial Ombudsman Service (FOS) who similarly rejected your complaint. In your letter of 26th March 2004 you notify the FSA of your intention to take your complaint to the FOS Independent Assessor.

I also note that in your letter to my office dated 14th May 2005 you do not provide any suggestion as to how you feel the FSA should have acted, nor do you contend the validity of the stance adopted by the FSA with regard to its duty of confidentiality as set out in FSMA.

Having reviewed all of the documentation the FSA hold on this matter I see no reason for the FSA to have acted differently. It is constrained by the duty of confidentiality as set out in FSMA as it explained previously. Furthermore it has explained to you the role of the FSA and the FOS and the option of pursuing the matter through the courts. The FSA have also explained how the FOS investigates complaints about how it has handled its investigations. I have not seen any evidence of FSA malfeasance in this case and consequently I am unable to uphold your complaint about the FSA.

In the interests of finality I would like to make some generic comments that you may find useful. Your letter of the 16th April 2005 to the FSA implies that because the allocation percentage is lower than other firms this "clearly" demonstrates that a balance of commission existed. This is not necessarily the case. It may be that the firm in question pays less commission to the adviser than other firms and thus the 'uplift' is less. It is also clear that the charging structures of firms are complex and vary in their methodology.

It would also appear that there may be some confusion in the difference between allocation rates and rebated commission. Many firms use allocation rates of more than 100%, in effect giving you 'free' extra units as an incentive to invest. Such incentives are likely to be offset in other areas of the charging structure of that policy. Rebated commissions from advisers on the other hand are added to the investment and may be eligible to further apparent uplift by way of allocation rate. Firms illustrate amounts invested, whether rebated commissions, allocation rates or both, in differing manners and this may also lead to apparent disparity.

The four percentages you quote in your letter of 16th April 2005 would appear to be allocation rate figures, or a combination of rebated commission and allocation rates. They are too high to be merely rebated commission when you consider that although the adviser may give up their commission the policy provider does not give up its upfront charges (which make up another part of their charging structures). The figure you quote for the policy which you are complaining about would appear to be rebated commission only as it falls within the normal range of what advisers receive on commission on lump sum investments.

I hope my generic views have been helpful, however I must remind you that your complaint intrinsically is that of a consumer against a firm/individual and the body that deal with such complaints is the FOS and not my office. I suggest that if you wish to take the matter any further you discuss this with the firm involved in the first instance as the FSA have explained previously.

Yours sincerely

Sir Anthony Holland
Complaints Commissioner