



Complaints Commissioner

On 7 June 2004, the Complaints Commissioner issued a final report on complaint GE-L0114 to the complainant and the Financial Services Authority. The introduction and summary to that report is published below.

FINAL REPORT ON COMPLAINT GE-L0114

1. Introduction and Summary

- 1.1 This is the report of an investigation by the Complaints Commissioner of complaint reference number GE-L0114 against the Personal Investment Authority (PIA), subsequently the Financial Services Authority (FSA). The complaint falls to be considered under the Transitional Complaints Scheme.
- 1.2 The complainant was a sole proprietor of a general insurance brokerage (Firm A), which was authorised directly by the Financial Intermediaries, Managers and Brokers Regulatory Authority (FIMBRA), and had undertaken some twenty-eight pension transactions for clients between 1990 and 1994. It applied to resign from FIMBRA and this was accepted, effective from 31 March 1994. In the meantime, the complainant had formed a new sole proprietorship (Firm B) that had submitted its application to become an appointed representative of X Ltd (a network) and this was granted from 1 November 1994. As part of the arrangements for his authorisation via X Ltd, the complainant had given an undertaking that he did not hold X Ltd liable for investment business that he had undertaken before his appointment. The complainant purchased and maintained professional indemnity insurance (PII) for “run-off” cover for business previously undertaken by Firm A.
- 1.3 The PIA issued Guidance in 1995 on how firms should undertake the Pension Review of past pension transfers, opt-outs and non-joiners. In that Guidance, Firm A in the complainant’s view fell clearly within the definition of a “departed firm” and the Guidance confirmed that, in such a situation, the PIA Pensions Unit would undertake the pension reviews. Further correspondence from the PIA to the complainant in May 1995 confirmed specifically that Firm A was a “departed firm”. The complainant had declared this to his insurers and continued to believe that Firm A was “departed” and that the Pensions Unit would undertake the reviews until he received a letter from the PIA dated 27 March 2000 that categorically advised him that he, as Firm B, was responsible for the reviews. He informed his insurers in May 2000 and they revoked his PI insurance *ab initio* for material non-disclosure. He was, therefore, deprived of the possible protection of that policy
- 1.4 On 29 May 2002, the complainant complained to the FSA that, due to what he believed was erroneous information given by the PIA, he had been prejudiced financially in that if he had been given the correct information in 1995 he would have undertaken the pension reviews and, if redress was required, he would have had the protection of his PII cover. The correspondence was directed to the FSA Company Secretariat, who are responsible for the administration of the formal Complaints

Scheme. In the first instance the FSA time-barred his complaint but, subsequently, having received further information from the complainant, the FSA entered the complaint into the Transitional Scheme and undertook a Stage 1 investigation. They sent their substantive response to the complainant on 22 August 2002. They did not uphold the complaint.

- 1.5 The complainant wrote to the Commissioner on 13 October 2002 asking for a Stage 2 review, and the Commissioner confirmed that she would undertake such an investigation but that, as the matter fell to be considered under the Transitional Scheme, she was not empowered to recommend compensation if she were to uphold the complaint.
- 1.6 The Commissioner has analysed the central issue raised by this complaint as being whether or not it was, or should have been, clear to the complainant, from the information emanating directly or indirectly from the PIA, what was the true position as to who was responsible for the review of the past clients of Firm A. Should he or should he not have been aware, before March 2000, that the review of personal pension policies sold to clients by his previous firm, Firm A, was his responsibility.
- 1.7 In summary, the Commissioner's findings are as follows.
 - a) The Guidance issued by the PIA in April and December 1995 was quite clear. It stated that the PIA Pensions Unit would undertake the reviews of "departed" firms. Firm A was, in the terms of the Guidance, a "departed" firm. Therefore, in the terms of the Guidance, the Pensions Unit would undertake the reviews. The subsequent problems seem to have arisen because the Guidance did not address the specific (and unusual) circumstances faced by the complainant. The PIA should, in the Commissioner's view, have been put on enquiry as to the complainant's circumstances in May 1995, when the complainant acquainted them with the relevant facts, but apparently it was not.
 - b) The PIA did, in a letter of 17 June 1996, signal a departure from the terms of the Guidance with regard to who would be responsible for the reviews of Firm A's business. The Commissioner appreciates that there is a clear responsibility to comply with requirements imposed by the regulator but, in the Commissioner's view, in this particular case the important information contained in this letter, which amounted to a significant change of direction in the complainant's particular case, was insufficiently prominent or categorical and, when the complainant responded by confirming that he was liable for any losses, the PIA did not then make clear the position so that the complainant could be in no doubt that, although Firm A was "departed", he had the responsibility to undertake the reviews. This confusion was then further compounded by a telephone conversation between X Ltd and the PIA in October 1997 during which the PIA confirmed that Firm A was departed but the Commissioner has seen no evidence of them having added the crucial information that, contrary to the strict terms of the Guidance, the Pensions Unit would not be doing the reviews: these would be the responsibility of the complainant.
 - c) The Commissioner appreciates that the PIA Guidance had to cover a variety of situations, some of which were very probably not anticipated at the time it was drafted, and the complainant's circumstances were, as was indicated above, unusual. However, there was in fact an important omission in the Guidance in that it did not refer to the situation being changed if legal liability had been accepted by a firm. Instead, it made a simple and categorical equivalence between "departed" status on the one hand and PIA responsibility for the reviews on the other hand. And when the

PIA departed from this simple equivalence in a letter to the complainant it did not do so clearly and categorically, and did not take the opportunity to remove any doubt when it had the opportunity to do so. Indeed, this doubt was only finally removed in the PIA's letter of 27 March 2000, in which the author himself concedes that there had been some confusion hitherto. In these circumstances, which were admittedly unusual, the Commissioner believes the benefit of any doubt as to interpretation should properly be given to the complainant.

- d) The Commissioner notes that the FSA, in their substantive response to the complainant, appear to take a contrary view. They indicated in their letter of 22 August 2002 that, in their view, the complainant and/or X Ltd should have gone on enquiry. However, they make the mistake in this letter of appearing to believe that Firm A was an appointed representative. Had this been so, the complainant would clearly have been responsible for the reviews, but Firm A was, equally clearly, not an appointed representative. It was, on the PIA's own definition, a "departed" firm.
- e) In conclusion, the central issue raised by this complaint was whether or not it was, or should have been, clear to the complainant, from information emanating directly or indirectly from the PIA, what was the true position as to who was responsible for the review of the past clients of Firm A. The Commissioner has concluded that, until March 2000, it was not clear. The complainant had been prudent in purchasing and maintaining PII "run off" cover for Firm A and it was as a direct result of the PIA stating in 2000 that he was responsible for the reviews that the complainant had his PI insurance cancelled *ab initio*. Whether or not the policy, if allowed to continue, would have responded is not known but, save for the compulsory excess, the complainant might have had the advantage of financial assistance in paying for the redress to policyholders. The Commissioner finds that the complaint is upheld.

- 1.8 In the light of these findings, the Commissioner considers that the FSA should apologise to the complainant for the PIA's lack of care and attention to detail in this particular case. She accepts that this lack of care was unintentional, and resulted from the unusual circumstances of this case, but it did prejudice the complainant's opportunity to obtain the possibility of financial assistance from his PI insurers for the losses that arose as a result of the pension reviews