Our ref: L0552

20th March 2006

Dear Complainant

Thank you for your letter (dated 10th January 2006), which details the elements of your complaint against the FSA. This letter sets out my final decision on the complaints you have raised.

Your complaint refers to your attempts to ascertain whether or not you had been a member of the Personal Investment Authority (PIA) between April 1994 and February 1996. Discovery of this information had significant consequences as to whether you fell under the jurisdiction of the Financial Ombudsman Service (FOS). You were aware that you had been a member of the Financial Intermediaries, Managers and Brokers Regulatory Association (FIMBRA). You first approached the FSA for clarification on the 8th July 2004. The FSA sent you conclusive evidence indicating that you were a member of the PIA during the relevant period on the 10th October 2005 (some 15 months later). In the FSA letter (1st August 2005) the FSA has upheld your complaint with regard to its handling of your enquiry. It has stated that it recognises that confusion and inconvenience has been caused "because you were given the wrong information". This decision letter indicated that relevant documentation could not be traced. This transpired to be incorrect information.

You have specifically asked in your letter that I "comment on the value of this cheque to see if you agree it represents an appropriate amount of money for the stress, time and lack of sleep the FSA caused me and my wife". You note that you have a continuing complaint with the FSA on a related issue. Such a follow up complaint will be dealt with, if and when, you bring it to my attention.

It is clear from the records that the FSA has been in correspondence with you regularly, and between July 2004 and October 2005 it provided you with numerous varying conclusions on your situation. It was only in October 2005 that conclusive evidence of your membership of the PIA was provided to everyone's satisfaction.

Record Keeping

Neither the relevant FSA team, the Complaints team (including the investigator), nor the Freedom of Information Act (FOIA) team could find these records when they searched for them. At various times these teams have stated that these records could not be traced. In your letter, 19th August 2005, you describe the FSA investigator's finding that thousands of records could not be found as "incredible".

It is not entirely clear what led to the records being eventually found. It is however clear that the FSA has been somewhat fortunate that in this particular case the appropriate evidence was unearthed. If the numbers of missing files is as the FSA investigator's report suggests, it would appear that the FSA's initiative now to be pro-active and to begin a number of projects to quantify the issues and potential ramifications of these missing records represents

a wise decision. I have asked the FSA to provide me with copies of its conclusions and it has confirmed, in responding to my preliminary decision that it will do so. I would also add given the difficulties encountered in merging a number of diffuse systems as a result of the creation of the FSA and the resultant problems in locating legacy records the FSA has implemented initiatives and specific projects to rectify the situation. One of those projects was the 'Archive Review Project' undertaken in 2005 which involved a review of the legacy records held in archive by the FSA. The project has already had a positive impact on the FSA's records management and was a key factor in its ability to locate the records to your complaint.

The payment size

It is important to delineate the reasons for the distress you state you have suffered. It is clear that there are complaints that have been made to the FOS about your firm for which you may now be liable (due to falling within the FOS' jurisdiction because of your membership of the PIA). It is clear that the cause of a substantial amount of the distress you suffered is not the FSA's inability to provide a conclusive position but the real threat of being faced with these liabilities. In relation to these liabilities, it should be remembered that presumably you have in place run-off cover which will provide financial protection to you. If for whatever reason you do not have run-off cover, and are consequently personally liable for such liabilities, then that is not the fault of the FSA.

I would state that in a situation where an *ex-gratia* payment is made it should take into account all the relevant factors and in particular whether, in the light of the delay in receiving this information which can be attributed to a third party, you have in anyway acted in a way that you would not have done had there been no delay in this information being given to you at the appropriate time. I have been given no evidence that that is the case. Therefore I consider the amount paid already to be reasonable. It is fair to comment that in evaluating *ex-gratia* payments it is necessary to bear in mind that that is what they are. They are not meant to represent in anyway damages of the kind awarded by a court where there has been a full evaluation of what damage has actually and quantifiably been suffered. Further the courts, albeit in a context slightly different from this, have said in the past that awards for "distress and inconvenience" can only be relatively modest.

Conclusion

I agree with the FSA position on this case and consequently your request for an increased sum to be paid is not upheld.

Yours sincerely

Sir Anthony Holland
Complaints Commissioner