



15<sup>th</sup> April 2008

Dear Complainant

**Complaint against the Financial Services Authority**  
**Reference Number: GE-L0841**

I am writing to advise you that I have now completed my investigation into your complaint.

At this stage I think it would be worth explaining my role and powers. Under the Complaints Scheme (Complaints against the FSA - known as COAF) my role is as an independent reviewer of the FSA's handling of complaints. I have no power to enforce any decision or action upon the FSA. My power is limited to setting out my position on your complaint based on its merits and then, if I deem it necessary, I can make recommendations to the FSA. Such recommendations are not binding on the FSA and the FSA is at liberty not to accept them. Full details of Complaint Scheme can be found on the internet at the following website; <http://fsahandbook.info/FSA/html/handbook/COAF>.

From your correspondence with my office, I understand your complaint relates to the following points:

1. You feel the FSA agreed with the "transfer of business and liabilities" from the sole trader independent financial adviser (IFA), Trader A, into Firm B Ltd, which later went into liquidation.
2. You state that the FSA's agreement to the "transfer of business and liabilities" transfer helped the IFA, through Firm B, avoid complying with a Financial Ombudsman Service ("FOS") award.

Before I address your concerns, I must first make you aware that some of the issues you have raised relate to events which occurred prior to midnight on 30<sup>th</sup> November 2001. This date is important as this is the date when the Financial Services and Markets Act 2000 (FSMA) came into force. As such, although your complaint can be investigated under COAF, it falls under the transitional complaints scheme. Under paragraph 2.1.3 of COAF a complaint which falls into "*the transitional complaints scheme* does not make provision for compensatory payments to be made to complainants". Effectively that means that whatever my views or no matter how much I may sympathise with your case I am not able under the law to make any financial award in your favour.

As part of my investigation into your concerns I have considered the information provided by you, together with the FSA's complaint file. Additionally, I have also considered the legal entities through which Mr X, the IFA who arranged the pension policy about which you have complained, traded. The latter is important as this clarifies with whom the ultimate responsibility for the payment of your compensation rests.

The FSA's files show you first contacted it in November 2000 and asked for its assistance in ensuring that the financial advice you received in 1993 was appropriate for your personal financial circumstances.

From the information provided it appears that the pension policy you complained about was arranged by Mr X, who was a sole trade IFA, trading under the name of Trader A. At the time your policy was arranged, Mr X was authorised by the Financial Intermediaries, Managers and Brokers Regulatory Association (FIMBRA), which was the body which regulated IFAs at the time.

Between 16<sup>th</sup> November 1990 and around 31<sup>st</sup> January 2001, Mr X was trading as a sole trader. Between 1<sup>st</sup> February 2001 and 30<sup>th</sup> September 2005 Mr X traded as a "limited company". It must also be remembered that a sole trader arrangement and a limited company are different legal entities. During this period Mr X has been authorised as follows:

- From 16<sup>th</sup> November 1990 to 31<sup>st</sup> December 1994, Trader A was directly authorised by FIMBRA.
- From 29<sup>th</sup> December 1994 until 31<sup>st</sup> January 2001, the Trader A was an Appointed Representative (AR) of Network C (which is now Network D).

On (or around) 1<sup>st</sup> February 2001, Mr X incorporated his business and commenced trading under the name of the Firm B. This company was also an AR of Network C and remained so until 5<sup>th</sup> September 2003.

From 29<sup>th</sup> December 1994 until 30<sup>th</sup> November 2001, Mr X, through Network C, was authorised by the Personal Investment Authority (PIA), the successor of FIMBRA.

From 1<sup>st</sup> December 2001 until 5<sup>th</sup> September 2003, Mr X, through Network C (and later Network D), was authorised by the FSA.

- From 4<sup>th</sup> September 2003 until 30<sup>th</sup> September 2005, Mr X, through Firm B, was directly authorised by the FSA.

As stated above, the financial advice you have complained about was given to you during 1993 when Mr X was a sole trader. Although Mr X incorporated his business and transferred his business assets to the new firm on (or around) 1<sup>st</sup> February 2001, this does not mean that responsibility (including any subsequent financial liability) for sales he made whilst he was a sole trader were automatically passed to Firm B (the "limited company").

Whilst it is possible for Mr X to have passed responsibility for the sales made whilst he was a sole trader to the "limited company", as explained in the FOS letter of 23<sup>rd</sup> August 2005, for this to happen Mr X would have needed to have obtained consent from those "*to whom the firm was liable, or potentially liable*". In this case, the phrase "*to whom the firm was liable, or potentially liable*" would mean the holders of policies arranged when he was a sole trader. It is clear from your correspondence with this office that you did not consent to this transfer of this liability. Therefore, in my opinion, this means the compensation payment the FOS awarded to you still rests, on a personal level, with Mr X.

Although Mr X did change the type of entity he was operating on (or around) 1<sup>st</sup> February 2001, there was no requirement for the regulator, which at the time was the PIA (and not the FSA), to have approved formally this as Mr X was an AR of Network C. Similarly, although you feel the FSA allowed the compensation awarded to you by the FOS to be placed against the wrong entity (the limited company rather than against Mr X personally), there is no evidence to support this claim.

As stated earlier, responsibility for compensation payments rests with the legal entity which arranged the policy (unless agreement is given). In this case, whilst Mr X changed the legal entity through which he was trading in 2001, this does not impact on his personal responsibility for policies he arranged prior to this date. Similarly, in law, the FSA cannot, on its own, consent to the liability being passed on to another legal entity.

Whilst it is clear that recommended compensation award the FOS made to you, of £108,852 (made up of an enforceable award of £100,000, which is the maximum the FOS is able award, together with a recommendation that you should receive a further £8,852), did impact on the solvency of the “limited company”, this is not the fault of the FSA. Similarly, although the compensation award appears to have been incorrectly placed against the “limited company”, this again is not the fault of the FSA. When dealing with a complaint, the FOS will deal with the body who is responsible for the advice (and ultimately the compensation).

In this case, it would appear that Mr X has incorrectly allocated the compensation award against the limited company rather than against the sole trader IFA arrangement (i.e. himself). Again, this is not the fault of the FSA.

It is clear from the correspondence passed to me that Mr X has disputed where the liability lies. It is also clear that he believes the payment rests with the “limited company” and not against himself as the “sole trader”. The FOS, in its correspondence to him, which was copied to you, is very clear in its view of where the compensation payment liability lies and that is with Mr X (on a personal basis) and not with the “limited company”. Similarly, it is also confirms that it cannot be transferred to the limited company. As such, it would appear that the FOS are satisfied that as the policy was arranged through the “sole trader” (Trader A), the responsibility and liability for compensation still rests personally with Mr X rather than with the “limited company” (Firm B).

Although this award has been included in the debts attributed to the “limited company”, based on the information provided to me, this would appear to be incorrect. Although you have asked for an explanation of why the receivers, Receivers E, have allowed this to happen, this is not something I can answer. This is something which you should take up directly with the receivers, Receivers E, or with the accountants of the “limited company”.

I am sorry, but from the papers presented to me I am unable to find any evidence to show that the FSA (or any of the previous regulators) has acted inappropriately, or failed to discharge its statutory obligations under the powers it holds. I am therefore unable to uphold your complaint.

Whilst I cannot make an award to you, there are a number of options open to you. As the award has been made by the FOS, as the FOS has explained, it is enforceable through the courts. I would stress that you should take independent legal advice before considering this option. Similarly, as the "limited company" has been placed in administration, it is possible that Mr X himself has insufficient assets to meet your compensation award. As such you could consider referring the matter to the Financial Services Compensation Scheme. Details of how to do this are as follows:

Financial Services Compensation Scheme  
7th Floor Lloyds Chambers  
1 Portsoken Street  
London  
E1 8BN

Telephone: 020 7892 7300  
Facsimile: 020 7892 7301

E-mail: [enquiries@fscs.org.uk](mailto:enquiries@fscs.org.uk)  
Website: [www.fscs.org.uk](http://www.fscs.org.uk)

I appreciate that you will be disappointed with my findings, but hope that you will understand why I have arrived at this decision. I can well understand your view that the entire matter is particularly unsatisfactory from your view point. I have copied this letter to the FSA.

Yours sincerely,

  
Sir Anthony Holland  
Complaints Commissioner