

18th August 2008

Dear Complainant

Thank you for your letter of 23rd June 2008, which details the elements of your complaint against the FSA. This letter sets out my final decision on the complaints you have raised.

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>

The Complaint

Your complaint surrounds a healthcare based policy which you purchased from a firm. The FSA explain the policy in its letter of 2nd April 2008 as follows;

“The Health Fund Plan and Safety Net Cover Insurance. The Health Fund Plan was marketed as a type of savings scheme, with an element of insurance cover, as a way of paying for private medical cover. Customers were told in the advertising that 50% of the money saved in the Health Fund Plan could be used to pay towards the cost of medical treatment. If the cost of medical treatment exceeded 50% of the balance in the fund, then the remaining cost could be paid using Safety Net Cover Insurance.”

“Safety Net Cover Insurance involved the payment of premiums. The monetary amount of the premium was dependent on a) the balance in the Health Fund (the greater the balance the lower the premiums and visa versa) and.....” (the marital status and number of dependants of the customer).

The firm went into administration and consequently you made a claim to the Financial Services Compensation Scheme (FSCS) for loss you contend you suffered. The FSCS accepted your claim in part (relating to the Safety net cover insurance) and rejected the other part (the health fund plan) on the basis that the firm “had not been granted permission by the FSA to sell this type of product.” (FSCS letter to you dated 12th November 2007).

You complained to the FSA in writing on 3rd December 2007 stating;

“My complaint is that you have not complied with your statutory objectives; market confidence and consumer protection. You allowed a company to be regulated but failed in your duty to ensure that this company was carrying on a regulated activity.”

The FSA rejected your complaint and in turn you brought your complaint to this office. In your letter dated 23rd June 2008 you complain that the FSA operates a “flawed process” in

that it was unaware of the part of a firm's "business that is outside of its permissions. I disagree with this."

My position

I shall provide you with my views on this case later, at this juncture I feel it worthwhile to address some issues which appear not to be clear to you or that you might be unaware of.

- 1) Your dispute is with a firm that went into administration. Your strongest claim is as a creditor to the firm in that administration process as you were a customer of that firm. If you chose not to claim for the loss you claim to have sustained then that is your responsibility.
- 2) You dispute the FSCS position on the matter. To resolve that dispute you should provide the FSCS with your reasoning. After that if no agreement has been reached then you have the option of taking legal advice and then considering the possibility of legal action against the FSCS. Such advice and action would clearly be at your own cost.
- 3) The FSA and FSCS are operationally separate and the FSA is not responsible for the individual decisions of the FSCS. Even if you were to demonstrate with evidence that there were failings on the part of the FSA, which you have not, that would not be sufficient to demonstrate a sufficiently robust causal link to enable you to claim compensation from the FSA or indeed to be compensated by the FSA for the losses you claim to have suffered.
- 4) It appears from your arguments that the FSA should be aware of the unregulated activities of the firm in question. Consequently this must mean that you believe that the FSA must be aware of all unregulated activity performed by firms that are regulated in some manner. Clearly this is impossible as it would require a level of regulation that would be so costly that no firm would be able to bear the financial cost of being regulated and hence there would be no regulator or regulation.
- 5) You have not provided any evidence to support your allegation that the FSA has failed in its duties in any way. You seem to contend that the failure of the firm or the decision by the FSCS not to compensate your full claim indicates that the FSA has somehow failed in its statutory duties. Clearly the FSCS is responsible for its decisions and not the FSA. Similarly just because a firm goes into administration does not demonstrate culpability on the part of the FSA just as a financial crime being committed does not demonstrate that the FSA has failed in its objective of fighting financial crime.
- 6) Lastly the FSA has discretion as to how it regulates firms or more precisely how it fulfils its legislative functions. This performance of legislative functions of the FSA is excluded from the complaints scheme and consequently any complaint about this function of the FSA cannot be investigated under the scheme (the scheme, known as Complaints against the FSA –COAF covers this particular point under section 1.4.2.3). Clearly the FSA has tried to be helpful by providing you with a decision on your complaint rather than excluding it as it was entitled to do.

- 7) It appears to me that the only reason that you have made a complaint to the FSA is that it is less onerous to do this than to challenge the FSCS decision or to take legal action. This view is supported by you not providing any evidence of FSA failings other than the unsupported allegations you have made.

Conclusion

Consequently my decision is that I do not uphold your complaint. I suggest that if you disagree with the FSCS decision not to compensate you as you seek, then you should challenge that decision directly.

Yours sincerely

Sir Anthony Holland
Complaints Commissioner