



9th June 2009

Dear Complainant

Complaint against the Financial Services Authority
Our Reference: GE-L0888

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>

Your Complaint

From your letter of 10th February 2009, I understand your complaint relates to the following:

In the early 1990s, upon the advice of a financial adviser, you transferred your preserved occupational pension scheme (OPS) benefits to a personal pension plan (PPP). As the financial adviser who recommended this transfer was no longer trading, a review of the advice you received was undertaken by the FSA. Unfortunately, as the result of the incorrect filing of your case by the FSA, the review of the advice you received to transfer your OPS benefits to a PPP was delayed for a period of 19 months.

You have now been partially reinstated into the OPS, but you feel that the 19 month delay, caused by the FSA incorrectly filing your papers, resulted in the reinstatement costs increasing and consequently to a reduction in the benefits you will receive. Although the FSA accepts that it incorrectly filed your case you are unhappy with its view that as you have received the maximum compensation you can from the Financial Services Compensation Scheme (FSCS) you have not been disadvantaged.

Background

From the papers presented to me I understand that, following occurred:

Mid 1990s You transferred your OPS benefits to a PPP.

October 1996 You were contacted and visited by a representative of the Personal Investment Authority (PIA), the predecessor of the FSA, in relation to the transfer of your OPS benefits. Following this meeting you believed that the PIA was to undertake a review of the advice you received to transfer your OPS benefits.

October 2001 You sent a letter to the PIA asking for an update on the position of your review.

April 2002 You sent a further letter to PIA asking for an update.
The FSA Pension Unit (FSAPU) informs you that it cannot locate your records.

February 2003 You responded to the FSAPU's letter of April 2002.
FSA PU acknowledge letter and provides you with a review form.

May 2003 You complete and return the review form completed to the FSAPU.

July 2003 The FSAPU acknowledges completed review form.

August 2003 The FSAPU sends you a holding letter.

October 2003 The FSAPU confirms your case (review) is being referred to its outsourcing partner, Actuarial Firm A, for further evaluation and investigation.

February 2004 Actuarial Firm A confirm your case is to be referred to the FSCS as it is likely you have suffered a loss and as the financial adviser is no longer trading.

September 2005 You write to Actuarial Firm A for an update on the position of your review.

October 2005 Actuarial Firm A responds and confirms that your case returned to the FSAPU.

November 2005 You request an update from the FSAPU. The FSAPU confirms case has been passed to the FSCS. The FSCS acknowledge that the paperwork has now been passed to it and requests that you complete a further review form.

December 2005 The FSCS receives your completed review form.

February 2006 An initial evaluation is completed which shows that you have been disadvantaged. The FSCS also write to you and requests the completion of additional forms.

March 2006 You return the forms to the FSCS and it acknowledged receipt of these.

March 2008 You are partially reinstated into the OPS.

July 2008 You complain to the FSA.

- November 2008 The FSA completes its investigation which concludes that you have not been disadvantaged as a result of the time it has taken to complete the review of your pension arrangements.
- February 2009 You complain to my office and request that I review the FSA's decision not to uphold your complaint.

My Position

As part of my investigation into your concerns I have obtained and reviewed the FSA's investigation file. I have considered the time line above, which shows that there were two delays in the review of your pension arrangements (my comments on these delays are shown in Appendix 1), the arguments you have made when corresponding with both the FSA and my office, together with the FSA's arguments for not upholding your complaint.

In your letter to my office you have stated that you believe the shortfall of £71,925.47 (the difference between the amount required to fully reinstate you in to the OPS and the combined values of your PPP and the compensation you were entitled to from the FSCS) is partially due to the time that it took the FSA to complete its review of your pension arrangements. You also believe that the FSA's admission, that it archived your file in error for part of this time, supports your view. The FSA disputes this and in its decision letter of 19th November 2008 states that although it accepts that the file was archived in error, as you received the maximum compensation you could from the FSCS (£48,000) it does not believe that it is responsible for this shortfall and that you have not been disadvantaged by this delay.

From both the FSA's file and its correspondence with you, it is clear that the FSA did undertake the review of a considerable number of pension cases, and I fully accept that the review of pension cases can take some time. I am also pleased that the FSA has freely admitted that it did make mistakes which resulted in your file being archived in error.

In its decision letter, the FSA has explained that, under the FSCS, the maximum compensation open to a consumer is £48,000, and as you received £48,000 you have received the maximum compensation you could from the FSCS. I concur with this view. The FSA goes on to say in its decision letter that, as a result of you receiving the maximum compensation available to you under the FSCS, it does not feel that you have been disadvantaged as a result of the 19 month delay caused by its error. I do not agree with this view. Based on the information I have seen, there is insufficient evidence to show that the potential impact the 19 month delay may have on the reinstatement cost (and ultimately the benefits you will received from the scheme) was considered adequately by the FSA.

Conclusion

Having considered the points that both you and the FSA have made, I feel that the FSA has provided insufficient evidence to show that it considered adequately the potential impact its 19 month delay in passing your file to the FSCS may have had. As such, at this time I do not feel that the FSA can confirm with any degree of certainty that you have not been financially disadvantaged due to it archiving your file in error. I am therefore upholding your complaint and recommending that the FSA takes action to establish whether you have been financially disadvantaged (as a result of the 19 month delay) and if so consider how best to correct the situation.

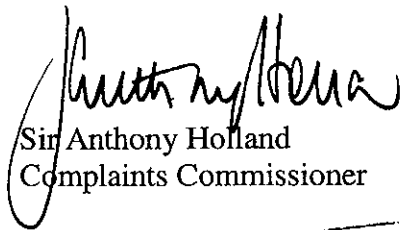
I would add that, as I have explained above, my role is purely to consider complaints about the FSA. As such I am unable to consider or make any further comment on what potentially could be an additional delay in arranging your reinstatement which appears to be on the part of the FSCS. Any concerns you may have about the time it took the FSCS to arrange your reinstatement into the OPS should be referred directly to it.

Recommendation

As a result of my investigation I am making two recommendations to the FSA:

1. The FSA should establish if the 19 month delay, as a result of it archiving your papers in error, resulted in you being financially disadvantaged. I would stress that this recommendation to the FSA is purely to consider what, if any, impact the delay had on the benefits you will receive from the OPS.
2. If, after completing my first recommendation (shown above), the FSA establishes that you have been financially disadvantaged as a result of its admitted error, it should consider how to arrange for this error to be corrected.

Yours sincerely,



Sir Anthony Holland
Complaints Commissioner

Appendix 1

My review of the correspondence presented to me by the complainant indicates that there were two periods of time where there appears to have been little activity with regard to the review of his pension arrangements. These periods are:

- Delay 1 24th October 1996 (when the complainant met with a representative from the PIA) until 1st October 2001 (when the complainant wrote to the PIA requesting an update on the position of his review); and
- Delay 2 12th February 2004 (when Actuarial Firm A returned his case to the FSAPU) until 17th November 2005 (when the FSAPU passed the papers to the FSCS).

Whilst little appears to have happened in relation to the review of the complainant's transferred OPS between the meeting of 24th October 1996 and his letter to the PIA of 1st October 2001, these events took place prior to 1st December 2001.

This is important as it means that effectively this part of the complaint falls under the transitional complaints scheme. Under paragraph 2.1.3 of COAF, a complaint which falls under *the transitional complaints scheme* "does not make provision for compensatory payments to be made to complainants". Unfortunately, this means that whatever my views or no matter how much the I sympathise with the complainant's position I am not able under the law to recommend any compensatory payment in the complainant's favour in relation to this delay (when this delay is considered in isolation).

However, whilst it is accepted that there was a delay on the part of the PIA, (delay 1 above) and this could impact on the benefits the complainant will receive from his reinstated OPS benefits (and the subsequent potential reinstatement cost) I have deliberately not considered this delay in isolation. Whilst delay 1 may well have impacted on the reinstatement costs, due to the way in which reinstatement costs are calculated, delay 1 was implicitly considered when the FSA (through the FSCS and Actuarial Firm A) partially reinstated the complainant into the OPS in 2008.