

Our ref: L0474

14th February 2005

Dear Complainant

Thank you for your letter of 1st December 2004 and the recent documentation which you have supplied to us in relation to your complaint about the FSA. This letter sets out our final decision on the complaints you have raised.

Background

You are a policyholder of a Firm and a member of a group of their annuitants who have been formed in order to represent the view of many annuitants of the firm who believe the 'revised rectification scheme' proposed by the Firm is insufficient to meet the needs of those annuitants.

Elements of your complaint against the FSA

The basis for your complaint to the FSA was that it had condoned "an unfair and possibly illegal revision to the initial Rectification Scheme required by the House of Lords judgement". Your allegations about the scheme are detailed below.

- "The rectification scheme 2003 is legally incorrect and does not meet the Firm's obligations from the House of Lords judgement".
- "The Firm's presentation of an 'offer' under the revised scheme is unclear, and couched in similar language to that described in the House of Lords judgement as 'opaque'. This will inevitably cause many annuitants difficulty and stress resulting in appeals and complaints procedures-or after frustration and exhaustion-signing the acceptance form under feelings of duress".
- "There is sufficient doubt on the legality of the scheme and the way it is currently being implemented to justify an urgent formal legal assessment of it by the FSA".

The remedies sought are that the new legal advice taken by the Firm should be published, further legal advice should be sought, the Firm should be directed to use the original scheme and not the new scheme and the entire process should be overseen by independent experts.

The FSA Response to your complaint

The FSA has stated that;

"whilst the FSA has not approved the revised arrangements, it has not concluded that they are unfair to the relevant policyholders. The FSA has reached that view on the basis of information provided to it, and following its own analysis of the position".

The FSA continues;

The FSA "made it plain that it would be a matter for the FSA if the information provided to policyholders was unclear, incomplete or misleading. In the light of your correspondence, (it) has discussed with the Firm the information that is provided to policyholders and the further information that is available to policyholders who request it. (The FSA) understand that the Firm have not identified further information that the FSA believe is both reasonable and practicable to provide to policyholders that would help policyholders to understand the redress (if any) offered to them within the Rectification Scheme. Against this background, (the FSA) consider the FSA has acted reasonably and as a result we are unable to uphold your complaint".

The Commissioner's Findings

It is clear that your complaint is primarily against the actions of the Firm. It is also clear from the evidence that the group of which you are a member represents a substantial number of people who believe they have cause to complaint about the actions of the Firm. Finally it is apparent that the FSA have endeavoured to explain their position and their actions within the constraints that are placed upon them by the Financial Services and Markets Act 2000 (FSMA).

Expressions of dissatisfaction about a decision made by the FSA by the complainant are not investigated under the scheme. Only such expressions, when supported by evidence of some form of misconduct can be investigated under the scheme. You presume that due to the nature of the decision made, some form of misconduct must have taken place to reach that particular decision. In my opinion given the absence of evidence, the mere nature of the decision itself is not sufficient to initiate an investigation.

I am also concerned that this complaint, apparently on your behalf, might be used, if the finding were to be in your favour, as evidence and basis of argument to support other members of your group's positions in later proceedings. I think that would be an abuse of my jurisdiction.

Conclusion

The complaints scheme was not designed for such use and explicitly states (COAF 1.4.3) that the FSA will not investigate a complaint under the complaints scheme which it reasonably considers "could have been, or would be, more appropriately dealt with in another way", for example by referring the matter to the Financial Ombudsman Service (FOS) or by the institution of other legal proceedings.

It is my view that, at the outset, the FSA should not have investigated your complaint on this basis. It is clear that your material complaint is about the Firm and that your correspondence with the FSA has been made purely with the aim of getting the FSA to alter the Firm's position (as is clear from the remedies you request). In essence, you as a consumer are complaining about a firm. The FSA do not deal with such complaints. The (FOS) is the body which deals with these complaints and are the body you should address your complaint to in the first instance. In the event of their conclusion to their investigation being unsatisfactory to you, the option of legal proceedings will still remain open.

It is understandable that you would wish to use the complaints scheme as the complaints scheme is free and aims to resolve complaints quickly. However it is clear that the essence of your complaint involves a substantial number of complainants and it is apparent that you are unlikely to reach the solution you seek for all members of your group without recourse to the formal legal process at some stage. It is clear that this complaint would be better dealt with in another way and consequently it should not be investigated by the FSA.

The FSA have tried to explain their position to you. It is unfortunate that the complaint scheme's uses were not fully explained to you from the outset. However this does not alter the position that you should progress your complaint to other bodies and not through the FSA.

For your information the address below may be of help and there are time limits in any referral to that service. I am sorry I am unable to help further.

The Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

Yours sincerely

Sir Anthony Holland
Complaints Commissioner