

*Our ref: L0514*

27<sup>th</sup> May 2005

Dear Complainant

- 1) Thank you for your letter of 12th April, which details the elements of your complaint against the FSA.
- 2) Your complaint is with regard to discussions you had with the FSA prior to making a complaint about a mortgage endowment. The endowment was taken out in July 1987 with 'the Provider' through advisers called 'the Firm'. In August 2003 the Provider wrote to you detailing the possibility of a shortfall in your mortgage repayment. In September 2003, as the FSA have outlined, you wrote to the Provider and stated "I am prepared to take my complaint to the Financial Ombudsman Organisation (sic)". The Provider directed you to take your complaint to the Firm. In December 2003 the Firm responded to your written complaint by rejecting it and giving you the option of taking your complaint to the Financial Ombudsman Service (FOS).
- 3) On the 1<sup>st</sup> March 2004 you rang the FSA and spoke to an FSA employee who was dealing with enquiries about endowment issues. You have contended that based upon this discussion you were left with the belief that you had no alternative but to go to a firm who specialised in complaints to seek the solution that you wanted. You consequently approached such a firm who succeeded in getting the Firm to offer you redress of £3,634.52 for your endowment complaint. As part of the agreement with that firm you have to pay them in the region of £1200 from the redress received.
- 4) You believe that had the FSA made you aware, during the phone-call, of the option of going to the FOS you would have received the same compensation offer and you would not be obligated to pay £1200 to the complaints firm.
- 5) The FSA have contended that although this phone call was not in line with its procedures, the evidence shows that you were aware of the existence of the FOS and consequently your decision to use a firm of complaint specialists was your decision and hence you should bear those costs. Consequently the FSA have not upheld your complaint.

My Findings

- 6) In essence your complaint is that the FSA provided you with incorrect information. The remedy you seek is that as a consequence of your reliance upon the information that the FSA provided you incurred a cost of £1200 which you contend you should not have done had the FSA given correct information.
- 7) Having reviewed the FSA file and the transcript of the telephone call in question it is clear that the information which you were provided with was incorrect. As a consequence of this your complaint in essence should be upheld.
- 8) However the FSA have correctly stated that the evidence shows that you were aware of the Financial Ombudsman Service (FOS) prior to calling the FSA. The evidence shows you had previously mentioned the FOS in your correspondence and had received

documentation providing contact details of the FOS. The FSA are justly entitled to ask why you ignored the information you had received about the FOS in the phone conversation you had with the FSA and afterward. This clearly mitigates the overall position in the context of the compensation which you now seek.

- 9) Your argument also depends on the assertion that had you complained to the FOS you would have received the exact same compensation which your complaints specialists managed to secure for you. Unfortunately this is not necessarily the case. The evaluation of compensation to a mis-sold endowment mortgage 'package' is not an exact science. Firms of complaints specialists have experience of making complaints which normal consumers do not have. They also have access to information and documentation which the individual consumer does not have. This often leads them to securing larger compensation offers than individual consumers would have done in the same situation had they utilised the services of the FOS. Consequently your assertion in its fullest sense cannot be relied upon.
- 10) Your assertion that you would therefore have received the same redress is not without doubt. Furthermore the FSA are entitled to plead that as a result of the evidence that you were aware of the FOS and how to contact it. You chose not to contact the FOS nor bring them up in the conversation that you had with the FSA.
- 11) It is unfortunate that the FSA chose not to uphold your complaint originally when clearly the FSA provided you with misleading information in the phone conversation in question. However since my preliminary decision I been notified that the FSA have chosen to offer you what I believe to be a suitable ex-gratia payment in the circumstances.

#### Conclusion

- 12) I uphold your complaint but am unable to recommend the FSA awards you a compensatory payment due to the significant mitigating factors detailed above.

Yours sincerely

Sir Anthony Holland  
Complaints Commissioner