

5 October 2005

Dear Complainant

**Complaint against the Financial Services Authority (FSA)  
Reference Number: GE-L0541, Final Decision.**

I have now had the opportunity to look at your complaint against the Financial Services Authority (FSA) and have taken into account your subsequent comments in your letter dated 5 September 2005.

You have stated that you are not happy with the response you have received from the FSA because it did not answer your specific questions. Had it done so it would have assisted you in making the decision as to which course of action to take with regard to the offer from Firm Y relating to one of its funds. You are of the opinion that the FSA has been negligent in not providing the information and should therefore make up the difference between the 60% compensation and your actual loss.

In order to arrive at a decision in this matter I have initially looked at the letter you sent to the FSA dated 21 January 2005. I have then considered whether or not your questions could have been answered by the Consumer Contact Center (CCC). In my opinion they fell into two categories some of which required answers of a factual nature that could have been provided and those which the FSA had explained, in previous correspondence, that it was unable to answer because of the confidentiality constraints of the Financial Services and Markets Act 2000 (FSMA). However, the CCC had earlier informed you in its letter dated 24 July 2003 that it was unable to respond to queries individually. When it responded to your latest queries, on 14 February 2005, although not explicitly told that individual responses could not be supplied, you were supplied with a number of documents relating to the settlement and the setting up of Fund Distribution Limited. In addition, the letter informed you that the CCC regretted that it was unable to provide any further information other than what was contained in the information pack.

I have examined the documents supplied to you in the information pack and I am of the opinion that the questions that you were asking of a factual nature were all answered within the documentation. A list of the funds covered by Funds Distribution Limited was included as was a telephone number should you have needed further confirmation regarding the specific fund involved. In my view it would have been

unrealistic for the CCC to respond to individual enquiries given the volume of correspondence it received relating to this issue.

With regard to those queries which required information concerning the FSA's decision in relation to Fund Distribution Limited and confirmation as to whether or not the FSA's findings would influence the Ombudsman, in my view these do fall within the constraints of FSMA and therefore the CCC was correct in its response in this respect.

On 19 April 2005 your complaint was entered into the Complaints Scheme by the FSA and a formal response was sent to you on 14 June 2005. The substantive response in relation to your complaint provided you with a full explanation and you were reminded that in the letter dated 14 February 2005 that the CCC had explained that it was not able to provide any further information.

I would make the comment that in my opinion, your letter dated the 8 March 2005, should have been treated as a complaint and entered into the Scheme at that stage. However you were informed of the Complaints Scheme in the response sent to you on 7 April 2005 which enabled you to make a formal complaint. Although regrettable that the complaint was not dealt with earlier, this did not affect the outcome and therefore I will not be making any further recommendation in this respect.

In conclusion, you were informed that individual answers would not be provided. It was unfortunate that this was in correspondence in 2003 and that the letter sent to you on 14 February 2005 did not reiterate the point again, however you were told that no further information could be provided. You were provided with sufficient documentation to enable you to ascertain the answers to the queries you had raised and the means to make further enquiries should you have needed additional clarification. Therefore I do not believe that the FSA has been negligent in its handling of this matter.

The FSA had no legal obligation to negotiate with the fund managers concerned in order to set up Fund Distribution Limited or the separate arrangement with Firm Y in relation to the fund concerned. The reason that it did was because it was in the best interests of the majority of retail investors who had lost money in the splits sector. Had the FSA taken enforcement action instead against a number of firms, it would have taken many years to resolve and would most likely have resulted in fewer investors receiving compensation. In addition, the FSA action in negotiating the fund did not preclude individual investors from taking action through the courts but did provide a cost free alternative method of seeking compensation.

I appreciate that you will be disappointed with my conclusion and that you have suffered a loss which you are not able to recoup fully. However, I do not believe that the FSA has acted unreasonably in respect of your enquiries and accordingly I am unable to uphold your complaint.

Yours sincerely

Sir Anthony Holland  
Complaints Commissioner