

Our ref: L0544

27th September 2005

Dear Complainant

Thank you for your letter of 25th June 2005, which details the elements of your complaint against the Financial Services Authority (FSA). This letter sets out my final decision on the complaints you have raised.

I must start by explaining the parameters within which your case falls. The FSA became responsible for the regulation of the Financial Services industry on the 1st December 2001. This was pursuant to the Financial Services and Markets Act 2000. Prior to 1st December 2001 the relevant part of the financial services industry that I need to consider was self regulating under the Financial Services Act 1986 and the relevant body was the Personal Investment Authority (PIA). Due to your complaint referring to events prior to the FSA assuming its regulatory powers it falls under the Transitional complaints scheme (which is set up by part of the Financial Services and Markets Act 2000). That Act set up a system whereby complaints can be investigated against the way the FSA has carried out its regulatory powers (in shorthand I refer to it as Complaints against the Financial Services Authority-COAF). The complaints scheme itself is divided into two. One relates to complaints that occur in this transitional period whereby the FSA took over responsibility for the PIA. The other relates to complaints that arise when only the FSA has been involved. Under the transitional scheme no compensation can be awarded. Further I cannot recommend such compensation nor is it within my jurisdiction to alter this position in anyway. Irrespective of whether I uphold your complaint or not, you will not receive any compensation from the FSA.

You have raised the issue covered in the scheme under COAF 2.4.5;

“Remedying a well-founded complaint may include offering the complainant an apology and taking steps to rectify an error”.

Your complaint is about the timing of the pension review letter you received. In essence the error you submit that was made by the FSA is an error of judgement in how the pension review mailings were handled. Clearly I could not rectify such an error if that was my finding and the scheme is clear that I cannot recommend compensation. This situation is an unfortunate one, but it is not within my jurisdiction to do anything about it.

There is a further matter I must add by way of background. You should also be clear in differentiating between the PIA and the FSA and that the FSA is not financially liable for the actions of the PIA. These bodies were set up under different rules as I have explained above, had differing powers and were entirely separate entities.

Lastly it is important to accept that your complaint is essentially a contractual dispute between you and the IFA (the Firm) that advised you originally. By that I mean you entered

into a contract with the Firm whereby it offered you advice on a financial product you were purchasing. Subsequently that Firm was wound up and no longer exists at all. If it were not for the mailings to which you refer, it is possible that you would still be unaware of the possibility that you may have been missold a financial product by this firm. Although you have submitted that the mailings were badly timed this does not mean the PIA necessarily bears any liability for the loss you may have suffered. You have no contractual link to the PIA and the mailings that both the PIA and the FSA have undertaken are part of its efforts to assist consumers achieve a fair deal. Many such consumers would have benefited from these mailings as it provides them with information they might not have otherwise had. However this does not mean all consumers will necessarily be so advantaged. Nevertheless it is arguable that when the PIA decided to issue such mailings it should have done so in a reasonable manner. If there were errors or omissions in the way the mailings were organised, or in the content of them, then a degree of culpability would belong to the PIA.

Consequently it is important to look at the process of the mailings and ask two questions. Firstly was the mailing process reasonable? Secondly was it sufficiently adhered to? These questions should be viewed with the clear understanding that the PIA were not contractually obligated to perform such mailings and did so under their generic aim of helping consumers to get a fair deal, and that there were a number of different processes that could be used to issue the mailings that could be seen as reasonable.

The PIA mailing process was based upon the individual situation faced by the policyholders captured in its enquiries. Consequently those who were already retired were prioritised as they would be eligible to receive their pension annuity immediately. Clearly those below retirement age could not receive their entitlement immediately and hence were less of a priority than those already retired. There were a number of different classifications of individuals and finally it should be remembered that all of these were consumers whose advisers may have been in default.

The PIA in aiming to benefit as many consumers as quickly as possible, targeted the larger advising firms first. From the evidence available to me it appears that the pension unit first identified the Firm on the 24th April 1996. The FSCS have confirmed the date that its time bar took effect was 10th April 1997. Whilst considering this period (April 96 to April 97) it should be remembered that the pension review included over 8000 departed firms, approximately 900,000 mailing letters and over half a million responses from consumers.

It should be also noted that the FSA has stated that the pension unit did not become aware of the two year time bar until the ICS (as it then was) but now the FSCS started to use the time bar for not providing compensation. This would have been a significant length of time after the initial mailings were sent out by the PIA. The FSCS have confirmed to me that this time bar rule was based upon pre-existing company law which it felt was applicable in all the circumstances.

Taking all of the above factors into account I must now address the issue of causation, as it is my view that that is a further factor in finding whether the FSA are in any way culpable in relation to your complaint.

Causation

It is clear that the FSA is not at fault for the missale which underpins your complaint. The advisers who are culpable for this no longer exist as a legal entity. It is also clear that you were not aware the Firm had dissolved until the mailing informed you of this (unfortunately once you were already time-barred).

You imply that had you received the mailing in time you would have lodged your case with the FSCS (as is now) before the time-bar came into affect. This implication is not beyond doubt as the FSA could argue that at that time, having not had your case reviewed you would have been unaware of the size of the loss, or even if there was any, and consequently would not have been able to pursue this matter immediately. In other words you were never likely to be in possession of all the necessary facts to lodge a valid claim before the relevant date expired.

I should mention in passing the considerable press coverage that was taking place at this time about pension mis-selling. While I have no means of establishing independently whether you were aware of this it is a factor that I am aware of and that you could have decided to take some advice on your own position. However for the purposes of this decision I discount it.

Conclusion

I do not consider that there is a sufficiently strong causal element in the events surrounding the pension review mailing to make the PIA at the time (and even less so the FSA) culpable for the loss you have suffered. Even if I had found a level of culpability financial compensation would have been unavailable for the reasons I have explained at the beginning of this letter.

The regulator at the time was not obligated to issue the mailing it did, and it is my view that the manner in which it proceeded to issue the mailing was reasonable. The aim was to inform a large number of consumers of potential losses that they may have suffered. Clearly many consumers benefited from being provided with this information and clearly consumers as a whole benefited from it.

It is easy to be critical with the benefit of hindsight and maybe this time-bar exclusion should have been prioritised differently. However I am unable to find any evidence to come to that conclusion. Bearing in mind the huge task that faced the regulator at the time, the lack of obligation for them to take on such an onerous task, the clear merits of doing so, and importantly the lack of a sufficiently strong causation argument I believe that the course

adopted was the most reasonable and sensible in all these circumstances. Accordingly I am unable to uphold your complaint.

I appreciate that you will be disappointed with my conclusion. I also appreciate that through no fault of your own your pension entitlement has apparently suffered a loss which you cannot recoup. However the FSA was not the body that was involved in the provision of this pension advice which lead to this loss and considering the circumstances should not bear liability for it.

Yours sincerely

Sir Anthony Holland
Complaints Commissioner