

Our ref: L01013

7th July 2009

Dear Complainant

Thank you for your letter of 18th May 2009, which details the elements of your complaint against the FSA. This letter sets out my final decision on the complaints you have raised.

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>

The Complaint

Your complaint is in relation to a land-banking scheme you entered in 2006. This type of scheme is based on a number of investors purchasing adjacent plots of land with the view to selling them all together for a profit. Such schemes often take the form of a company approaching potential investors with the suggestion of purchasing a plot of land on a site which is often touted as being a prime site for obtaining planning permission for redevelopment, often for a supermarket or a similar potentially high value scheme. Often the planning permission is never gained, sometimes it is not even actually sought, and the investor is left with a plot of land that has significantly less worth than the investor paid for it, as it does not reach the potential resale value that it was originally described as having.

Such land-banking schemes can, if they wish, be authorised and regulated by the FSA. However many are not authorised and therefore not regulated by the FSA and thus investors into such schemes do not receive protection either from the Financial Services Compensation Scheme (FSCS) nor do they have the benefit of disputes being resolved by the Financial Ombudsman Service.

On the 16th August 2006 you purchased a plot of land from the Firm for £9000. On the 3rd November 2006 you purchased another plot of land, at a different site from the same company for £8000. The Firm has been in liquidation since April 2008. At both these times the investment you were making was not one that was authorised by the FSA.

You have stated in your complaints that you "wish to assert a claim against the FSA for regulatory breakdown to get back the money I paid". Later you state that "if the FSA had

acted promptly years ago many of the investors would have been saved from their current pain”.

In the FSA’s decision letter of 31st March 2009 it states that the FSA “first considered that the Firm were potentially conducting unauthorised business in early 2006. What followed was that the FSA worked with the firm and its legal advisers to regularise the position of its land-banking scheme, which the FSA considered was a Collective Investment Scheme (CIS) and being operated illegally.” That was a perfectly reasonable and responsible approach to adopt particularly where at that point the evidence available to the FSA via an established and well regarded firm of city lawyers was that there was a desire to comply with the FSA’s requirements. Had that succeeded the investors position would have improved from what at that point was an investment in an unregulated product.

In this letter the FSA it explains how it is constrained by section 348 of the Financial Services and Markets Act 2000 (FSMA) as to what information it can provide to third parties. Section 348 has nothing whatever to do with “data protection legislation”, rather it was inserted by Parliament into FSMA in order to enable the FSA to operate more effectively and thereby fulfil its statutory objectives. Although I too am constrained in what information I can provide to you on the topic, I am entitled to see all the documentary evidence in relation to what happened, and when, between this firm and the FSA in the key period of 2006. That I have done.

It should be noted that when the FSA discovers what it considers to be an unauthorised CIS, one of the options it and the firm in question has, if the firm operating the CIS wishes to apply to become authorised by the FSA, is to work towards a solution that can produce the end result that the firm’s activities do become authorised. That is not always possible but the FSA may see such action as a satisfactory course of action for all the parties to take and equally it benefits the investors. Clearly from what the FSA has told you this was the course of action that the FSA was investigating during these early stages as it sought to “regularise” the situation. Inevitably it took longer than one would have wished but does not mean that the FSA did not act reasonably or responsibly.

Having reviewed FSA documentation on this matter I am satisfied that during the key period of the chronology of your case, namely from when the FSA became aware of the firm in question in “early 2006” and the dates you invested into the firm (August and November 2006), there had not been any unreasonable delay on the part of the FSA in relation to its investigations into the firm in question and possible solutions. As a consequence of this finding, I do not consider it reasonable to believe that the FSA should have taken enforcement action against the firm in question *prior to the dates when you invested with it*. I also take the view that in prolonging the attempts to regularise the position the FSA adopted a reasonable approach.

As a consequence of this it is my view that the FSA is not under any duty, nor obligation to make you any financial award such as you are seeking. I should further add that by choosing to invest in an unregulated scheme you chose to take a significant element of risk in the

event of the firm going into default as you had no protection from the FSCS. It is my view that you alone should bear responsibility for that decision.

As a consequence of this it is my final view that I am unable to uphold your complaint.

Yours sincerely

Sir Anthony Holland
Complaints Commissioner