Our ref: L01079

19th January 2010

Dear Complainant

Thank you for your letter of 11th November 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 that rarely is the case however. Full details of Complaint Scheme can be found on the internet at the following website; http://fsahandbook.info/FSA/html/handbook/COAF

The Complaint Background

In your letter to the FSA dated 30th July 2009 you enquired about the FSA's supervision of a named firm. It also alludes to the discussions taking place with regard to that firm possibly merging with another (the firms have since merged). It also asks "who is available other than your department?"

On the 12th August 2009 the FSA responded with what you have described as a "pro forma letter" with regard to your enquiries.

On the 17th August 2009 you wrote to complain about the FSA letter of the 12th August. You also ask again about the FSA supervision of these "activities", that is the potential merger. You explain that you lost out in the Previous Firm and that you are concerned that you maybe "swindled" yet again.

On the 25th August 2009 the FSA responded with a letter which stated that it was "considering (your letter) as a potential complaint against the FSA".

On the 9th September 2009 the FSA wrote to you again stating that it was going to treat your letter as a complaint against the FSA. It goes on to set out the scope of the investigation and what would happen next.

On the 16th September 2009 you wrote to the FSA stating that you felt that the FSA correspondence with you was "ponderous nonsense" and that you felt that the FSA had decided to;

"ignore the questions (you had put to the FSA) altogether and to divert the whole matter to a department not dealing with the subject of my enquiry but to a separate

complaints department and in the meantime, notwithstanding that the arrangement between the two firms was coming up for court approval no steps were taken to pass the original enquiry to someone competent to answer it".

You go on to state that you are now taking your complaint to your MP and that "I am not interested in anyway with your so called investigation."

On the same day (16th September 2009) the FSA wrote to you with a standard letter explaining that your complaint was being dealt with.

On the 2nd October 2009 the FSA wrote to you acknowledging receipt of your letter dated 16th September 2009 stating that, based on your comment (quoted above), that the FSA therefore "propose(s) to withdraw your complaint from the FSA complaints scheme. However, should you wish us to continue our investigation please contact us before the 16th October 2009".

On the 6th October 2009 you wrote to respond to the latest correspondence from the FSA. You stated you did want the complaint investigated, that "I have twice asked for an answer to the questions raised in my first two letters and this lady (one of the FSA complaint handlers) has utterly ignored them or failed to pass them to a senior relevant person."

On the 15th October 2009 the FSA wrote to you about the status of your complaint and stated "We can also confirm that the original questions raised in your letter dated 30th July 2009 are in the process of being responded to. That response will be sent to (your MP) following his letter dated 24th September 2009."

On the 29th October 2009 the FSA produced its decision letter with regard to your complaint which partially upheld your complaint. It found that some queries in your original letter to the FSA should have been responded to by the FSA in its letter of the 12th August 2009. The FSA apologises for this "error".

It then turns to the complaint regarding the handling of your complaint and rejects this part of the complaint as the allegations you had made were "unfounded". The FSA states in relation to the period 9th to 16th September 2009 that "it should be noted that during this period, the FSA complaints handler was also trying to obtain the information that would enable your original questions to be responded to".

The FSA letter goes onto explain that due to your comment regarding you not being interested in its investigation it had written to you in line with its procedures stating it proposed to close down its investigation. The FSA then state that "we can also confirm that (the FSA complaints handler) does have adequate supervision, and we can confirm that any letters drafted by (that individual) are checked by a more senior member of staff prior to being sent."

The letter goes on to state that the substantive matters you had requested information upon (the proposed merger) were responded to in a letter sent on the 22nd October 2009 to your MP.

The proposed merger that affected your concern was accepted on the 11th August 2009 and was completed on the 5th November 2009.

My Position

I will provide you with my views in a chronological order.

With regard to your initial letter of 30th July 2009, it is clearly not a complaint letter as defined under COAF. It is brief and general in its scope and, due to the language you use, I can understand why any recipient of such a letter might not be entirely sure of what sort of reply you would be expecting to it. The letter in question is capable of two different interpretations. One is to the effect that at the time it was written you were considering entering into a further relationship with the company mentioned but had not yet done so. That interpretation was possible because you used in the second paragraph the phrase "nothing binding has yet taken place involving the above company yet…" The other possible interpretation which is the one you intended is to the effect that already, as an existing customer of the relevant firm, you were concerned about the impact of the merger upon your existing relationship. The FSA based its reply on the first interpretation.

Nevertheless the FSA's response of the 12th August 2009, about which you have complained, is in my view a reasonable response. Your letter of the 30th July 2009 only asks two specific questions, about supervision and with regard to potential losses suffered, which other bodies are available for dealing with such situations. The FSA, in its response, gives a brief explanation of the supervisory regime and that the Financial Ombudsman Service (FOS) deals with such complaints and encloses a leaflet about this. It is my view that, considering the vast amount of correspondence the FSA receives, it is entitled to respond to letters which are general and in this case arguably somewhat vague in their construct in general terms.

The FSA complaints team has upheld your complaint about the FSA letter of the 12th August 2009, stating that it had "misunderstood what was being asked and its subsequent letter did not address your concerns". It is my view that it made a minor misunderstanding regarding your personal policy holding position but it did importantly address the concerns you raised. It is clear that the author of the FSA letter thought you were considering *becoming an annuitant*, when in fact, you believed that it was perfectly clear that you were already an annuitant. I do not consider this to be an important issue as the concerns you raised were addressed properly, and would have been addressed in the same manner in either case.

The FSA Customer Contact Centre (CCC) cannot be expected to have a policy of trying to second guess what those who write to it are actually trying to say, as opposed to what they actually do say, otherwise it would lead to a wholly disproportionate and unnecessary

amount of time and work being put into each and every response. I think it is rational for the CCC to try to answer what is asked of it and to provide further sources of information for the correspondent to research for themselves.

For example, if the FSA had decided to take each part of your letter of 30th July 2009, and to try and answer it in full, the FSA response would end up being substantially longer than would be reasonable. The first paragraph of the letter clearly asks about supervision and consumer protection, which the FSA has covered in its response. The second paragraph is a statement, which could mean you were considering entering into a further contractual arrangement with the firm, it could mean that you were considering buying shares in the named firm or possibly another linked firm with a view to making a profit, it could mean you are making a comment with regard to contract law in general, or lastly a general statement with regard to the choices available to large firms which might lead to losses to either its policyholders, or shareholders, or both. If all of these potential scenarios were to be addressed, I would consider that to be, although helpful, to need to contain a significant amount of work which would not be entirely or necessarily relevant, and thus probably not an economic use of FSA resources.

Your third paragraph about (the previous firm) is somewhat of a red herring in regard to the firm you write about. The well documented case of (the previous firm) and the merger of the named firms bear negligible resemblance to each other. (The previous firm's) major issue was that it was making guarantees that it could not pay during a period before regulation had started, due mainly, but not wholly, to its own management failings. After various reports into the matter the Parliamentary Ombudsman concluded that there were failings on the part of the government departments involved and that it should consider compensating those involved. The firm you are writing about was at the time considering a merger with another firm, both of which are active in the (now) regulated environment and I have not seen any evidence to demonstrate that policyholders of the firm involved have been in any way disadvantaged. For the reasons I have given earlier, providing a substantive response on these individual issues, when they are not particularly relevant, would not be in my view, an economic use of resources.

Your last paragraph is a statement about types of transaction and a request for more information about who you can apply to in the scenario that you feel you have suffered a loss. An issue properly addressed in the FSA response.

The FSA upheld your complaint about this letter without sufficient rationale in its decision. I think, by taking a closer view of your ambiguous letter of the 30th July 2009, the only reasonable position I can take is reject this element of your complaint, even though that leads to a paradoxical situation.

I now turn to your letter of the 17th August. In this letter you begin by complaining about the FSA letter of the 12th August, which I have already addressed. You mention that you have a visual impediment and then you then refer to the transfer of responsibility to company registered abroad. You then provide further comment with regard to the proposed merger

(although not expressly mentioning the merger) and repeat your concerns with regard to being "swindled".

On receipt of this letter it is my view that it is clearer, but not necessarily completely clear, to the FSA that you are primarily concerned is about the merger affecting the firm you have a policy with and that you are unhappy with the FSA correspondence you have received. The FSA responded on the 25th August 2009 with a letter which states that it is considering whether to treat your letter as a complaint. In my view it is clear that this letter does not address the important issues that are referred to in your two letters, nor does it demonstrate that the FSA have considered the importance of the fact that the merger had been agreed during the course of the correspondence. Having reviewed the file I cannot see sufficient investigation by the FSA complaints team into the facts of the merger. This appears to have been done separately by the FSA team dealing with your MP's letter. I must add that in my view once a complaint is in train, the complaints team, and those who advise it, should have primacy in decisions regarding how complaints are handled. It is unclear from the file whether this was the case or not in this matter.

A further cause of frustration to you is with regard to your letter dated 16th September 2009. Up to that date you had received the FSA letters dated 12th August, 25th August and 9th September 2009. None of which had yet addressed the important issue to you, namely the merger. Although I consider the FSA letter dated 12th August reasonable, I can appreciate that having tried to get the FSA to respond to you three times about that merger and having received three letters which did not address this issue, I can understand the frustration which is evident in your letter of 16th September 2009 entitled "your refusal to answer my enquiries". To then receive another letter dated 16th September 2009 which did not address the merger would have been frustrating. In my view although the letters obviously crossed, this does not discount the fact that this was the fourth FSA letter not to address the main issue of the correspondence, namely the merger.

In this letter of the 16th September 2009 your frustration is clear and in it you make a comment, which on reflection I would imagine you now regret, that is "I am not interested in anyway with your so called investigation." The FSA has then written to you on the 2nd October 2009 stating that it proposed to withdraw your complaint from the complaint scheme. There is no comment on the merger in this letter. It is my view that on receipt of your letter of the 16th September 2009 the proper course of action for the complaints handler would have been to review all the letters the FSA had received from you. Had all the evidence been considered in its entirety at that time I consider that a reasonable approach would have been to write the letter as it is set out *but to also pass comment on the main issue of the correspondence, namely the merger.* Had this been done I suspect that would have either been the end of the matter (based on the timing of the letter and the status of the actual merger at that time) or correspondence would have continued but not in the form of a complaint but rather a discussion regarding the merger. I do not consider the FSA letter of 2nd October 2009 to be unreasonable, but rather somewhat ill advised especially when viewed with the correspondence that had gone before, as it was more likely than not to provoke an angry response, as demonstrated by your letter of 6th October 2009.

On the 15th October 2009 the FSA wrote to acknowledge your letter of the 6th October 2009. It also stated that it had received a related letter from your MP. It goes on to state that the "original questions" raised in your letter of 30th July 2009, that is about the merger, would be responded to in a letter directed to your MP. I appreciate the need for the MP to be responded to, but why the FSA chose to not include that information in its complaint decision letter is unclear, considering it was you who had made the complaint to which this issue was key and more specifically you had written to the FSA on numerous occasions to try and gain this information.

I now turn to the letter to the MP dated 22nd October 2009. The first four paragraphs of this letter adequately address the primary issue about the FSA's position regarding the proposed merger. It then seems to view the complaint handling in a different light to the Complaints team. The FSA decision letter upholds your complaint on the grounds that the FSA "in response to your initial enquiry did not answer the points raised (by you) and was not the standard expected". Yet I note that the letter to your MP from the Major Retail Groups Division Director as mentioned above reflected on this differently by stating that "there have been shortcomings *in some of our responses"* (my emphasis).

Lastly I turn to the FSA decision letter of the 29th October 2009. I have already stated that I am dissatisfied with its nature as it does not comment specifically on the important issue at hand, namely the merger. The complaints team's decision to let the MP's letter department deal with this has led to a disjointed and generally poor handling of what started off as essentially a relatively straightforward request for information. It is my view that this decision letter does not demonstrate that the complaints handler has properly reviewed all the documentation and tried to respond to the key issues you have raised properly. It has not addressed issues such as the merger and has not properly reviewed the actions of the FSA in regard to its responses to your correspondence. Having reviewed the file provided to me by the FSA it is my view that the complaints team did not handle this matter to the level of expertise which I think it is reasonable to expect of it. The FSA in its response to me has accepted that "it would have been helpful for our letter to have also enclosed a copy of the letter sent to the MP on 22nd October".

My final view

You have chosen not to provide me with your comments regarding the preliminary decision.

The FSA in its response to my office about the preliminary decision has not agreed with my position and has concluded its response with the view that "the handling of the complaint was generally reasonable".

It is my view that the FSA letter of 22nd October 2009 to your MP is the only substantial letter on the file that is up to the standard that complainants should reasonably expect of the FSA. The merger had been debated in the press for some time and I still do not see why such comments as made in the first few paragraphs of that letter could not have been provided to

you from the start, which would have avoided this long correspondence. Furthermore this information could, and possibly should, have been provided to you in a more timely fashion considering the important time implications of the merger.

It is my final view that the FSA complaints team has, at times in its correspondence with you, fallen beneath the required standard in its handling of your correspondence.

Yours sincerely

Sir Anthony Holland
Complaints Commissioner