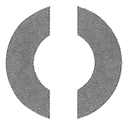 Complaints Commissioner

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9th September 2014

Dear Complainant,

Complaint against the Financial Services Authority
Reference Number: FSA01615

Thank you for your email of 15th August 2014.

As the rules of the scheme under which I consider complaints can be found on our website at www.fscc.gov.uk, I do not intend to set them out fully below.

Your complaint

From your email I understand that you are unhappy with a number of the actions of the Financial Services Authority (FSA), specifically:

- you say that the FSA's decision to make an announcement regarding the suitability of Traded Life Police Investments (TLPIs) in 2011 was premature, inaccurate and prejudicial and led to a high volume of redemption requests which resulted in the Catalyst/ARM fund suspending trading.
- you go on to say that you are aware that the FSA had concerns over the SLS Bonds in 2008, a year before Keydata (which invested solely in SLS bonds) collapsed, and failed to take action to prevent the further distribution of TLPI based investments at this time.
- as a result of the regulator's actions you have incurred a loss of £15,682.56 in quarterly coupon payments which you are now seeking from the Financial Conduct Authority (FCA) as the successor to the FSA.

My position

Before I comment on the issues you have raised, it may be useful if I provide you with some background on the events which took place both before and after Margaret Cole's statement and the regulator issuing guidance preventing (in most cases) the sale of TLPI based contracts to retail investors.

In a speech made by Peter Smith, Head of the FSA's Investments Policy, Conduct Policy Division, to the European Life Settlement Association in London on 24th February 2010[1] he set out that the FSA did not regard TLPI based investments as mainstream products, and that they should only be sold to sophisticated investors (and not generally to retail investors).

[1] http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2010/0224_ps.shtml

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The regulator's views on this were influenced by the failure of Keydata which had heavily invested in TLPI investments (offered by a Luxembourg based firm called SLS) and whose failure had resulted in considerable consumer detriment. I would also add that, despite the speech the regulator had given in February 2010, it was apparent that large numbers of TLPI based investments were continuing to be sold to retail investors.

Given this, together with concerns that a number of TLPI providers had failed or were experiencing significant financial difficulty and the general unease that TLPIs are complicated, complex and illiquid products which are fragile and susceptible to collapse, especially if funding pressures arise, the regulator felt that it needed to take further action. In addition, the regulator had significant concerns that, as the providers of TLPI based investments were based overseas, they were not subject to its regulation and supervision.

Following discussions with the industry, in which the regulator made clear its views and intentions relating to the future distribution of TLPI based investments to retail investors, on 28th November 2011 the regulator issued its consultation guidance paper (GC11-28)[2] which set out its intentions regarding the future distribution of TLPI based investment products. On the same day the regulator issued a press release[3] highlighting its concerns about TLPI and setting out its intentions.

I can understand why you are unhappy with the manner in which the regulator chose, in November 2011, to publicise its intentions regarding the future distribution of TLPI based investments. However, before deciding upon this course of action, the regulator considered alternative ways in which it could ensure that TLPI based investments were not generally recommended to retail investors. Following careful consideration of all of the options, and discussions with a number of TLPI providers, the regulator felt that the announcement it made was the most appropriate way for it to undertake its statutory duty of preventing what amounted to the potential large scale mis-selling of TLPI based investments to retail investors.

Ultimately, what the regulator's Guidance Consultation paper and associated announcement did in November 2011 was to reiterate the message that it gave to the industry in February 2010, namely that it did not feel that TLPI based investments were generally suitable for retail investors. Whilst there is a great deal of debate about the precise terms of the regulator's statement and guidance paper the drafting of the statement and terms of the statement were a matter of judgement for the regulator in making a difficult decision on how best to fulfil its statutory duties.

Having carefully considered this matter, I agree with the regulator's decision that the complaint is not one which can be considered under the rules of the complaints scheme. In arriving at this decision I have considered paragraph 3.4 (c) of the scheme rules:

3.4 Exclusions to the Scheme

Excluded from the Scheme are complaints:

c) in relation to the performance of the regulators' legislative functions as defined in the 2012 Act;

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[2] http://www.fsa.gov.uk/static/pubs/guidance/gc11_28.pdf

[3] http://www.fsa.gov.uk/library/communication/pr/2011/102

I have considered your view that the regulator's statement led to the demise of the Catalyst/ARM bonds and that this has led to you losing over £15,000 in quarterly coupon payments. Although this does not affect my view that your complaint falls outside the scheme, it may be beneficial if I provide you with some further background information .

In July 2009, the regulator became aware that a UK based investment provider, Catalyst, was marketing bonds issued by a Luxembourg based firm, ARM. However, although ARM had been issuing TLPI based bonds since 2006, it did not have authorisation to trade in any European jurisdiction. The regulator therefore entered into correspondence with ARM, Catalyst and the CSSF the Luxembourg financial services regulator.

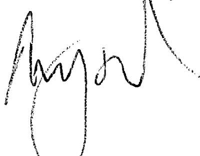
I understand that subsequently ARM applied to the CSSF for authorisation to act as a 'securitisation' vehicle (which would allow it to promote its TLPI based investment bonds). Unfortunately, although the CSSF instructed ARM not to issue any further investments until its application had been considered, it failed to comply with this instruction. Given that ARM was not carrying out regulated activity within the UK, the FSA was powerless to take any direct action against ARM.

The CSSF rejected ARM's application and on 29th August 2009 ARM's business activities were suspended. In September 2011 ARM appealed against the CSSF's decision but this was rejected with the decision being announced in late 2011. ARM subsequently attempted to overturn the CSSF's decision by making an application to the Luxembourg Administrative Court of Appeal which too was rejected on 21st August 2013[5]. Following this decision, on 9th October 2013, administrators were appointed by the UK High Court to manage the wind down of ARM's assets.

From this it is clear that, whilst you invested in bonds, as the provider of the investment was not authorised the contracts should not have been marketed within the UK. It clearly highlights why the regulator had significant concerns and felt that it needed to take action to protect UK consumers. I would also add that although you have claimed that the regulator's actions in November 2011 led to the collapse of ARM, I do not believe that the action the regulator took in November 2011 was the cause of the collapse, given that the CSSF had suspended ARM's activities in 2009, and the FCA's intentions had been signalled in 2010.

I know that this is not the response you had hoped for, but hope you will understand why I conclude that this is not something I can consider under the scheme rules.

Yours sincerely



Antony Townsend
Complaints Commissioner

[5] http://www.fscs.org.uk/what-we-cover/questions-and-answers/qas-about-arm-and-catalys-j847tta1d/#What_is_ARM_Asset_Backed_Securities_SA_and_what_has_happened_to_it_