Complaints Commissioner

Office of the Complaints Commissioner
3rd Floor
48–54 Moorgate
London EC2R 6EJ

Tel: 020 7562 5530
Fax: 020 7256 7559
E-mail: complaintscommissioner@fscc.gov.uk
www.fscc.gov.uk

8th May 2013

Dear Complainants,

Complaint against the Financial Services Authority
Reference Number: GE-L01516

I have now completed my investigation and issue you with my Final Decision in respect of your complaint.

I need to explain my role and powers. Part 6 of the Financial Services Act (the 2012 Act) requires the regulators to maintain a complaints scheme for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of their relevant functions. Section 84(1)(b) of the 2012 Act provides that an independent person is appointed as Complaints Commissioner with the task of investigating those complaints made about the way the regulators have themselves carried out their own investigation of a complaint that comes within that scheme. The appointment has to be approved by H.M. Treasury. I currently hold that role.

You may be aware that with effect from 1st April 2013, as part of the changes implemented by the Government, the Financial Services Authority (FSA) was replaced by the Financial Conduct Authority (FCA), the Prudential Regulation Authority (PRA) and the Bank of England as regulators of the UK's financial services industry. I would add that although the FSA has been replaced, transitional provisions have been put in place to enable the continued consideration of complaints against the FSA. As your complaint relates to the inactions of the FSA, in relations to its objectives and duties under the Financial Services and Markets Act 2000 (FSMA) your complaint has been considered by me under the new transitional complaints scheme.

As set out in the consultation paper (CP12/30 Complaints against the regulators) and confirmed in the policy statement (PS13/7 Complaints against the regulators), any complaints which have not been concluded as of 1st April 2013 will continue to be investigated by the FCA Complaints Team with the cooperation of the PRA if needed and my office. In practice, this means that, although the governing legislation will have changed there will be no change to the manner in which, or the terms under which, your complaint is investigated.

Your complaint

From your correspondence with my office, I take the view that your complaint relates to the following issues:

- You are unhappy with the outcome of the FSA's investigation into your complaint about the Loan X loan facility you entered into.

- Although the Loan X loan facility was marketed by Bank B Channel Islands (BCI) you say that the arrangement you entered into was with Bank B (the UK parent of BCI). Given that Bank B is a UK based firm which was authorised and regulated by the FSA you feel that the FSA should assist you by taking action against the firm as the arrangement of which the Loan X loan facility forms part has a similar structure to an equity release investment product which was banned by the Securities and Investment Board (SIB) in 1991 (and you believe that the ban of such products remains in force as it has not been lifted by the FSA).

- As BCI is a subsidiary of Bank B, given that you believe your contract is with Bank B (and not BCI), and, in your opinion, BCI is simply acting as Bank B's agent, the requirements of DISP 1.1.4 apply and mean that Bank B is responsible for the activities of BCI. DISP 1.1.4 states:

  "Where a *firm* has outsourced activities to a *third party processor*, DISP 1.1.3 R does not apply to the *third party processor* when acting as such, but applies to the *firm* which is taking responsibility for the acts and omissions of the *third party processor* in respect of the outsourced activities".

- Since Bank B has, in your opinion, appointed BCI as its agent (for servicing the Loan X loan facility) you believe that Bank B is responsible for the products its agents introduce and market to consumers.

- You allege that as Bank B limited the type of investment which could be selected to run alongside the Loan X loan facility, you believe that Bank B provided you with unsuitable investment advice.

  As a result you maintain that Bank B is responsible for the impact the performance of the product has had upon your overall financial position. In raising this you have referred to s25 of Chapter VI (*Arranging Deals in Investments - The Activities)* of the Regulated Activity Order 2001 which states:

  "*(1) Making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment which is—*

  (a) a security,

  (b) a contractually based investment, or

  (c) an investment of the kind specified by article 86, or article 89 so far as relevant to that article, is a specified kind of activity.

  (2) Making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments falling within paragraph (1)(a), (b) or (c) (whether as principal or agent) is also a specified kind of activity".

- You also allege that the money you invested in the investment part of the arrangement was not placed into the agreed plan but into a 'cloned' plan which had significant upfront charges which were not explained to you. You feel that as the arrangement was promoted by Bank B's Channel Island subsidiary, BCI, Bank B is ultimately guilty of mis-selling this arrangement.

- You say that the FSA has failed in its statutory objective of consumer protection as, in your opinion, it has not ensured that Bank B, as a UK bank, has obeyed the laws of England and Wales. You add that although the Loan X loan facility was introduced by BCI, as the loan agreement was with Bank B you believe that the FSA has a duty to intervene.

Coverage and scope of the transitional complaints scheme

The transitional complaints scheme provides as follows:

9.1 The transitional complaints scheme provides a procedure for enquiring into and, if necessary, addressing allegations of misconduct by the FSA arising from the way in which it has carried out or failed to carry out its functions under FSMA. The transitional complaints scheme covers complaints about the way in which the FSA has acted or omitted to act, including complaints alleging:

a) mistakes and lack of care;

b) unreasonable delay;

c) unprofessional behaviour;

d) bias; and

e) lack of integrity.

9.2 To be eligible to make a complaint under the transitional complaints scheme, a person must be seeking a remedy (which for this purpose may include an apology) in respect of some inconvenience, distress or loss which the person has suffered as a result of being directly affected by the regulators' actions or inaction.

9.3 The transitional complaints scheme does not apply to the Bank's functions under Part 5 of the Banking Act 2009 (overseeing inter-bank payment systems) as this was not previously subject to these complaints arrangements.

I should also make reference to the fact that my powers derived as they are, from statute contain certain and clear limitations in the important area of financial compensation. FSMA (as the relevant legislation in place at the time) stipulated in Schedule One that the FSA is exempt from "liability in damages". It stated:

"(1) Neither the Authority nor any person who is, or is acting as, a member , officer or member of staff of the Authority is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the Authority's functions.

(2) (Irrelevant to this issue under investigation)

(3) Neither subparagraph (1) nor subparagraph (2) applies

(a) *if the act or omission is shown to have been in bad faith; or*

(b) *so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the [1998 c.42] Human Rights Act 1998.*"

I have referred to FSMA here as it was FSMA which was the relevant legislation when the FSA considered your complaint. This exemption has been rehearsed in sections 25(3) and 33(3) of Part 4 of Schedule 3 of the 2012 Act. You have not adduced evidence of any act of bad faith on the part of the FSA which would have the effect of bringing 3(a) above into play.

The transitional complaints scheme nevertheless then goes on to provide in paragraph 6.6 that:

> *"Where it is concluded that a complaint is well founded, the relevant regulator(s) will tell the complainant what they propose to do to remedy the matters complained of. This may include offering the complainant an apology, taking steps to rectify an error or, if appropriate, the offer of a compensatory payment on an ex gratia basis."*

If I find your complaint justified, it is to that paragraph that I must refer in order to decide any question of a "*compensatory payment on an ex-gratia basis*".

If you were to take the view that Schedule One referred to above was relevant in the context of the Human Rights Act 1998 I should explain that Section 6(1) of that Act that is referred to, provides as follows:

> *"It is unlawful for a public authority to act in a way which is incompatible with a Convention right".*

The only Convention rights that I consider may be relevant are contained in Article 1 of the First Protocol set out in the Human Rights Act of 1998.

Article 1 of the First Protocol provides:

> *"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
>
> *The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties".*

It is my view, given my conclusions in this matter, that Article 1 of the First Protocol has no application in your case. There is no act taken by the FSA which is incompatible with the Human Rights Act 1998 which directly caused you to lose your possessions. The issue you are complaining about directly stems from the advice you received from a Spanish IFA to enter an arrangement to purchase an investment which was funded by the Loan X loan facility which was introduced and marketed by a non-FSA regulated company. There can be no doubt about that fact as the starting point.

My Initial Comments

As part of my investigation into your concerns I have obtained and reviewed the FSA's investigation file. I have considered the comments you have made when corresponding with the FSA (both before and after its investigation into your complaint). I have also considered information which has previously been provided to my office by an adviser who worked for IFA C, the firm which marketed the SPAIRS arrangement (which included the Loan X loan facility as one of the loan arrangements available within this product).

I would add that when investigating your complaint my investigation and comments are limited to the specific complaint and issues you have referred to me. I will *not* (my emphasis) address those issues which you have raised in relation to one of my previous and unconnected Final Decisions (which related to a complaint brought to my office by one of your friends) which, although relating to a similar issue, does not relate directly to your individual complaint which you have asked me to consider.

In arriving my Final Decision, I have further considered the comments you have made when responding to both my initial and revised Preliminary Decision. I would say that it is disappointing that, when commenting upon my findings you have provided additional information (which you say supports your comments) which was not provided to either the FSA or me when initially considering your complaint. As I have set out on many occasions, the investigations I undertake are based upon an inquisitorial approach, that is conducted by a review of available documentation. Failing to provide all available information upon or providing such information in a piecemeal fashion upon which you wish to rely is not sensible.

Clearly, from the considerable comments you have made you are disappointed with the outcome of my Preliminary Decision and asked me to review my findings. Although I have considered your extensive comments when arriving at this Final Decision, I find the tone you have adopted towards both me and my staff unattractive as well as unnecessary.

I am also concerned with the comments (which amount to accusations) towards the conduct of my Senior Investigator and in turn me when considering your complaint. It is extremely disappointing that you felt it necessary to make, and continue to make, such unsupported comments throughout my investigation. I would add that, in my opinion, these comments, appear to border on the defamation of my Senior Investigator. These comments were and continue to be unnecessary and do not assist you in any way. For the avoidance of doubt all of the correspondence related to this case has been presented to, and considered by me.

It is clear from the comments you have made that you believe that the arrangement you have entered into was totally unsuitable for you. I agree with that conclusion. I suspect that it was not fully explained to you *by your IFA* (my emphasis) and, as a result it is almost certainly unsuitable for your individual circumstances. This does not mean that the UK regulators should intervene in the arrangement of a mortgage (instigated through a Guernsey based company), recommended by a Spanish IFA, on a property which is located in Spain.

Under both FSMA and the 2012 Act, if an eligible complainant wishes to complaint about the advice given, then that complainant should complain to the adviser who arranged the plan (and provided advice) rather than the product provider (unless it was the product provider who directly advised and arranged the product). This is clearly the situation within the financial services industry as is evidenced by the fact that it was *advisers* (my emphasis) who were ultimately responsible for ensuring that consumers were correctly compensated as a result of pension and mortgage-linked endowment mis-selling. I would not wish you to be under any doubt that that represents the legal position.

In this case I understand that BCI marketed the Loan X loan facility through a number of Spanish IFAs and in your case, your IFA was a representative of IFA C. This is something I will return to later in this Final Decision. Before I address the minutiae of your complaint I feel it may be beneficial if I make some general observations and provide clarification on the issues which lie at the heart of your complaint.

In your response to my revised Preliminary Decision you have maintained that, as the purpose of the loan was specified, BCI (or, in your view, Bank B) is therefore liable for the advice you were given as a result of section 25(1) of Chapter VI of the Regulated Activity Order 2001. You hold this view as, in your opinion, section 25(1) of Chapter VI states:

> Arranging deals in investments
>
> 25(1) Making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment which is—
>
> (a) a security,
>
> (b) a contractually based investment, or
>
> (c) an investment of the kind specified by article 86, or article 89 so far as relevant to that article
>
> is a specified kind of activity.

Although I can appreciate from where your view originates, the Loan X package is simply a loan. It is not an investment (although it was recommended to you alongside an investment contract). Ultimately, as in any residential mortgage, the lender can and may specify the purpose for which the proceeds should be used. In this case, the lender be it BCI or Bank B specified that the loan proceeds should be used for an investment. Although limitations were applied to the type of investment which could be used, no recommendation was given to you by BCI (or Bank B) as to the *suitability* (my emphasis) of that investment. That was something which was left correctly to your IFA. I would add that as the loan facility formed part of a package marketed by your IFA and specific advice was given by your IFA on the investment, I do not believe that the provision of a loan secured by a property outside the jurisdiction of the English Courts by BCI (or Bank B) amounts to arranging a deal in an investment as specified under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO).

I would add that this view is supported by the fact that the Loan X was simply a loan or credit vehicle which formed part of a 'back to back' arrangement or package which was marketed by your Spanish IFA. In arriving at this view I would stress that your IFA has confirmed in his email of 11th November 2012 to me that the IFA C's SPAIRS arrangement was available with loans being provided from a number of lenders and that a number of investment vehicles were available. Given that it was your Spanish IFA that recommended the SPAIRS arrangement with a loan from BCI (or, as you suggest, Bank B). Given that it was *your IFA* (my emphasis) which recommended the appropriate parts of the package to you, it is your IFA who is ultimately responsible for the advice you received. I cannot put it more bluntly than that.

Bank B and BCI

Bank B is the UK based parent of BCI. However, although BCI is a subsidiary of Bank B, it is a Guernsey based and registered company. As such it has a *separate legal identity* (my emphasis) to that of Bank B. As it operates from Guernsey, rather than from the UK (and does not operate at all in the UK), the actions and conduct of BCI is governed by the rules of the Guernsey Financial Services Commission (GFSC) which is the Guernsey financial services regulator which authorises and supervises BCI *rather* (my emphasis) than the FSA. I cannot put it more bluntly than that.

The FSA was only responsible for the supervision and authorisation of Bank B's regulated activities as defined by FSMA. The FSA (or now the FCA) does not have any jurisdiction for activities conducted by Bank B which do not fall into the definition of a regulated activity as set out by FSMA. I would also here that, although BCI is a subsidiary of Bank B, as BCI does not conduct any regulated activity within the UK, the FSA had no jurisdiction whatsoever over the actions of BCI.

The Loan X facility

The Loan X facility is a loan facility which was offered by BCI. I appreciate that you feel that this view is incorrect and that the loan was issued by Bank B using BCI as its agent but this is not the view supported by BCI's annual report (for the period ending 31st March 2004) which you kindly supplied.

Specifically, I would draw your attention to the Chairman's Statement, contained on page five of this report. Here, Mr J, BCI's Chairman, sets out that:

> "*there has been little demand for Loan X loans, a core part of our business in recent years, which are secured by investment products linked to stock market performance. This has been largely due to a lack of appetite on the part of investors to buy such products following the rapid fall in stock markets between 2000 and 2002. Although stability, and even some growth, has now returned to these markets, I believe investors will be slow to return in their former numbers. Nevertheless I expect demand for Loan X to improve in the current year.*
>
> *In addition to lack of demand for new loans, many existing Loan X loans fell due for repayment during the year and were not renewed. As a result, drawn loan facilities (including guarantees) fell from £678 million at March 2003, to £493 million a year later. The outlook for the current year is more promising, and we expect an increase in good quality lending business if current levels of interest are a reliable guide*".

This, in my opinion, clearly shows that the Loan X arrangement was an BCI, rather than Bank B, product. Likewise, although I accept that the brochure you provided entitled 'Banking Services for International Private Clients', does make reference to the Loan X facility on page 14, it highlights that:

> "*Our innovative product Loan X is available through a network of selected independent financial advisers around the world, thus giving clients straightforward access to credit for a wide range of purposes on standard and cost effective terms using their investments as collateral*".

Here the annual report shows that the "*Loan X is available through a network of selected independent financial advisers around the world*". The fact that the product was only available through financial advisers is also extremely relevant in respect of the management of any complaint you may have about the sale. As I explained above, it is the adviser (and not the product provider) who is ultimately responsible for the advice given to a consumer, in the context of your complaint this would be IFA C. It is vital that you understand that core point that lies at that heart of your problems.

I should also highlight that, as the brochure was designed for 'International Private Clients', it was produced by BCI and *not* Bank B (my emphasis). This supports the view that the Loan X loan facility was designed and marketed by BCI and was not, as you suggest designed and marketed by Bank B with BCI simply being used as a servicing agent.

I would further add that the BCI annual report shows that Mr D was an executive director of BCI. As I have explained in our previous correspondence, Mr D was not a director of Bank B. As such, despite what you may feel any representations he may have made to you, these would have been in his position as an executive director of BCI and not as a director of Bank B. I appreciate that you do not wish to accept this view nevertheless it is a view which is supported by the documentation you yourselves have provided to me.

I also appreciate that you claim that Mr D was making misleading representations with the full knowledge and agreement of Bank B. Whilst I may have some limited sympathy with the position you find yourself in, you have not provided any evidence to support your beliefs. Legally and factually Mr D did not, and could not, represent Bank B. I will return to this later in this Final Decision.

The Product (Marketed by IFA C as a SPAIRS arrangement)

From the papers you have provided you took out a SPAIRS arrangement through IFA C. The SPAIRS arrangement is a 'back to back' arrangement made up of an investment bond and a loan facility. The Product (or generic package) was, I understand from an IFA C adviser, designed by the Group P, an Isle of Man based investment management company, and was marketed by a number of IFAs under differing names. In the case of IFA C the product was marketed under the SPAIRS name (although I understand from your IFA the Group P assisted IFA C with the production of its marketing material).

I also believe that IFA C offered the SPAIRS arrangement with loan facilities available from a number of providers which included Bank G, Bank H and BCI (which was the Loan X loan facility which you entered into). I also understand from IFA C's product brochure that the SPAIRS arrangement offered a choice of investment bonds but only one bond offered a form of capital guarantee.

When considering the advice you were given, it is clear that you do not understand the manner in which the SPAIRS product was put together. The loan and the investment are completely different parts of the arrangement, provided by different companies but which were selected as a package by your IFA. It is the adviser, rather than the respective product providers, who is responsible for ensuring that you, as consumers receive, the appropriate (and most suitable) advice in relation to which 'products' (i.e. loan facility and investment) should be selected as part of the SPAIRS arrangement.

Whilst the Loan X may have been a long-standing product offered by BCI, in relation to your situation this formed one of the options for the loan facility part of IFA C's SPAIRS arrangement (which, as I have indicated above, was a product produced by the Group P). Although you have commented that, in your opinion, Mr D was the salesman, this is simply not correct. The SPAIRS arrangement was a IFA C product. The Loan X was purely one of the loan facilities available within that product. The SPAIRS arrangement *was not* (my emphasis) a BCI product.

Whilst Mr D may well have met with you and reassured you about the nature of the Loan X loan facility, ultimately it was your IFA who recommended the overall SPAIRS arrangement to you. The role of an IFA in financial services (something which is confirmed in the literature which both you and your IFA have provided to me) is to provide consumers with the most appropriate advice. Given this clear and unambiguous obligation, it was your IFA's responsibility to ensure that you received the appropriate advice. Your IFA would, I believe have made the recommendation to you after he had spent some time considering your specific personal circumstances. If *your IFA* (my emphasis) felt that the SPAIRS arrangement was suitable, he would then select and advise upon what he considered to be the most appropriate combination of loan facility and investment bond. The fact that your IFA appears to have selected the Loan X loan facility does not then pass responsibility to BCI (or Bank B).

In this case, it appears that your IFA felt that the Loan X facility was the most appropriate loan facility for you and recommended this to you. I appreciate that you say that BCI only allowed a single investment to be used alongside the Loan X facility but, based upon the information provided by a IFA C adviser, this appears to be incorrect as a selection of funds were available (albeit as I have indicated above only one fund, the Group P Investment Fund, carried a form of capital guarantee). The copy document provided to my office, referring to the SPAIRS arrangement states that:

> "*Apart from The Group P Investment Fund which has a 100% capital guarantee there are no such capital guarantees with the other two investment funds. Although the funds have been selected very much with SPAIRS in mind, there is a risk, however small, that the capital growth of any fund will not, over time, achieve growth rates which will cover the interest costs of the loan*".

I have enclosed a copy of the product brochure the IFA C IFA has provided to me which demonstrates this. I appreciate that you have disputed this, but I must base my finding on the documentary information available to me. In this case, my Final Decision must be based upon the IFA C's product brochure (provided to me directly and not by or through Bank B or BCI) which clearly supports my understanding of the legal position.

I have noted the comments which have been made by your IFA. Your IFA's comments have been of help to me in establishing the generic background to the creation of IFA C SPAIRS product. However, I am also aware that some of his views contradict some of the information included in the brochure which he supplied. When considering these comments, given how responsibility for advice falls within financial services (which I have commented upon earlier and will again later in this Final Decision), I have to be mindful that contradictory comments may have been made in an attempt to try and deflect blame for the clearly incorrect advice he provided (and in so doing might also amount to an attempt to prevent legal action being taken against him). Alternatively, it could be an indication that the adviser simply did not understand the arrangement he was recommending to you but that does not relieve him of responsibility. These are important issues you may wish to discuss with him.

The Provision of Advice

As I have set out above, although BCI marketed the Loan X loan facility, it did not provide specific advice to consumers. The Loan X loan facility was only available from a number of selected IFAs, in your case you were introduced to it, and it was recommended to you, by IFA C.

In your emailed latter of 3rd April 2013 you have set out your belief that it is the product provider who is ultimately responsible for advice given. You do this by stating:

> "*If a salesman comes up with gimmick to sell a product it is still the product provider that is responsible for the product – not the salesman. Mr W of Group P apparently devised a scheme to get people to buy into his employer's investment management services. Mr D saw this scheme as a means of boosting the sales of Bank B's loan product, the Loan X Series 4 loan facility. In these circumstances, [BCI] is clearly the salesman and Bank B the product provider. Here the loan is the product, and the scheme is just window dressing. If I buy a product from a shop and the product is not fit for purpose or not of merchantable quality, it is the manufacturer – the provider of the product - not the shop that is responsible*".

Unfortunately, in respect of financial services this view is legally (and wholly) incorrect. Under FSMA it is the adviser (or salesman as you call him) who is legally responsible for the advice proffered relative to the product brought into. BCI (or as you believe Bank B) were the providers of the loan and not the arrangers/providers of the whole arrangement.

The Loan X formed an optional part of the IFA C's SPAIRS arrangement. The Loan X arrangement was simply the name which BCI adopted for its loan arrangement. In the SPAIRS arrangement this was packaged along with an investment product and marketed by IFA C. In this instance it was a IFA C adviser who, based upon your circumstances, deemed the Loan X loan facility and the Group P Investment Fund to be the most appropriate combination for your circumstances and who advised you as such.

As you have set out in your letter to me, the product (investment and loan) was designed by the Group P. I would reiterate here that the Group P, when designing the Product, had not entered into an exclusive arrangement with BCI to provide a loan facility. As I have set out above (and has been confirmed by another complainant and your IFA) loans were available from other providers. In this case, although it is accepted that an arrangement was entered into with BCI this only appears to have been as the provider of your loan within the SPAIRS arrangement to which you committed yourselves.

Indeed, you appear to accept this point as you have stated that "*Mr D saw this scheme as a means of boosting the sales of Bank B's loan product, the Loan X Series 4 loan facility*". This may well have been the position. However, given that the Loan X loan facility only provided the loan facility for the SPAIRS arrangement you entered into with IFA C, it would appear, in an objective assessment, that BCI (or as you maintain Bank B) was only responsible for the provision of the loan facility and *not* (my emphasis) for the arrangement of the SPAIRS arrangement as a whole (including the overall suitability of the advice you were given).

I would also add that limiting the allowed investment funds does not mean that BCI (or, as you believe, Bank B) was responsible for the advice you were given. The provider of a loan can apply conditions to that loan. In this case, it is accepted that restrictions were applied. However, the application of restrictions does not mean that BCI (or, as you maintain, Bank B) are ultimately responsible for the advice you received to invest into a particular investment fund. It is clear from all of the papers I have seen that BCI neither *directly* (my emphasis) marketed the product nor provided any consumers with specific advice on the suitability of the product. Instead, BCI marketed the product only through IFAs who were responsible for the provision of client specific advice. I must leave you in no doubt about that. I have enclosed a flyer produced by BCI which also confirms this view.

As I have set out above, it was not BCI (nor Bank B) which provided you with specific advice, as it was simply the provider of a product which was marketed by IFA. Ultimately, it was your IFA which recommended the product to you. This is something which you appear to accept in paragraph 15 of your letter of 10th April 2013. The arrangement you entered into was a IFA C SPAIRS arrangement which included BCI's Loan X loan facility as its funding arrangement.

When recommending the SPAIRS arrangement, it was the *IFA's responsibility* (my emphasis) to ensure that the whole SPAIRS package (both the investment and the loan) was appropriate for your individual circumstances. If the investment was not (particularly when there appears to have been a number of investments available) then this is the responsibility of the IFA and not the provider of part of the package.

I have noted your comments that you feel that your decision was 'influenced' by the discussions you had with Mr D. Whilst I hold the view that responsibility rests with your IFA C IFA, even if I was to accept that Mr D's comments influenced your decision, this would not and cannot pass responsibility to Bank B. I hold this view for a number of reasons.

1. Any discussions Mr D may have had with you would have been in his capacity as an executive director of BCI (and not Bank B as he was not a director of Bank B). Therefore any responsibility would rest with BCI as, as I have set out above, this is a separate legal entity from Bank B.

2. Alternatively, liability might pass to Mr D, on a personal basis, if his comments were intentionally negligent or designed purposely to mislead you. Despite your views, misrepresentation on the part of Mr D would not automatically pass responsibility to the body you say he claimed to represent (i.e. Bank B) as clear evidence would be required (and for the avoidance of doubt no such evidence has been provided to support this position).

3. For the FSA (and the FOS who would normally have jurisdiction in cases where an IFA has given what could be considered unsuitable advice) to have any jurisdiction to engage with Bank B (or consider the complaint) then it must be accepted that it was Bank B or its agent which *provided you with the advice* (my emphasis). I would set out here for the sake of completeness that I do not believe that Bank B or anyone acting as its agent provided the advice which resulted in you obtaining a Loan X loan facility and/or to take out a specific investment. As I have set out above this was the responsibility of your IFA C IFA (although potentially some liability may be passed to BCI or personally to Mr D. That however is not a matter falling within my jurisdiction).

My Overall Position

When you first contacted my office you set out that you believe that Loan X loan facility arrangement was mis-sold to you. You put this, at one stage, quite succinctly

> *"The FSA have repeatedly said that lending activity in our case was not within the FSAs jurisdiction as it was not a regulated activity, but our complaint has always been about the mis-selling of a totally unsuitable high risk product. (sic)"*

That mis-selling was not carried out by the FSA but, as I have set out in some detail above, it was carried out by your adviser in Spain. The FSA is not, and cannot, be responsible for that. Not only because consumer protection in that area is dealt with by the Financial Ombudsman Service (FOS) when the mis-selling takes place in this country but also because the product in question and its suitability is outwith the FSA's jurisdiction.

I appreciate that you feel the Loan X was a Bank B product and that Bank B simply used BCI as a way of allowing it to offer a product which, in your opinion, had been banned by the SIB. As the FSA has explained, on page three of its decision letter, that its

> *"investigation has not set out to examine the activities or products of Bank B or associated firms. The function of the FSA Complaints Scheme is to investigate allegations of misconduct by the FSA and we have set out to investigate whether the information you provided was considered properly by the relevant supervisors and if the appropriate action was taken". The FSA also added that it had "not formed an opinion on the conduct of Bank B or the suitability of the product you were sold and any inference you take from our letter below in this regard is not intended".*

As the FSA has not, correctly in my opinion, considered this, this has not formed part of the investigation I have carried out into your complaint. However, I note that, whilst the FSA could not comment upon the 'suitability' of the overall SPAIRS arrangement (i.e. the Loan X loan facility and the investment), the FSA did provide you with its view of whether it (and indeed the FOS) had any jurisdiction to consider the actions of BCI and/or Bank B in the context of the provision of the loan facility.

It is clear that the FSA has considered the issue of jurisdiction in some detail and has provided you with its comments, on pages three and four of its decision letter. Given that I concur with the FSA's views that, as the arrangement was promoted (but not advised upon) by BCI and *not* (my emphasis) Bank B itself, the Loan X loan facility falls under the jurisdiction of the GFSC and not the FSA. That is an issue which could not legally be more clear in my mind.

You have continually maintained that the requirements of DISP 1.1.4 clearly allows consideration of your complaint by the FSA. You hold this view as DISP 1.1.4 states:

> Application to firms
>
> 1.1.4 Where a *firm* has outsourced activities to a *third party processor*, DISP 1.1.3 R does not apply to the *third party processor* when acting as such, but applies to the *firm* which is taking responsibility for the acts and omissions of the *third party processor* in respect of the outsourced activities.

Although I have previously explained that I do not share this view, you have disputed my position. In your response to my Preliminary Decisions you have referred to PERG 2.4.3(4) and stated the following:

"PERG 2.4.3 G (4) gives the lie to this and clearly demonstrates that it does apply as it obviously passes the "application to firms" test and BCI certainly meets the Handbook Glossary definition of "third party processor", which reads as follows:

(1) A firm ("Firm A") which carries on home finance activities or insurance mediation activities other than advising on life policies, or both, for another firm (or an appointed representative) ("Firm B") under a properly documented outsourcing agreement, the terms of which provide that when Firm A carries on any of these activities ("the outsourced activities") for Firm B:

(a) Firm A acts only on the instructions of Firm B;

(b) in any communication with a customer, Firm A represents itself as Firm B;

(c) Firm A undertakes to co-operate fully with Firm B in relation to any complaints arising from Firm A's performance of the outsourced activities, even if the complaint is made after Firm A has ceased to carry on the outsourced activities for Firm B; and

(d) Firm B accepts full responsibility for the acts and omissions of Firm A when carrying on the outsourced activities and must pay any redress due to the customer;

It has always been the case that this constitutes "home finance activities", that BCI have always had to get everything approved by the Credit Committee in London and proceed on their instructions, they have always represented themselves throughout as "Rothschild Bank" or as agent for Bank B and points (c) and (d) are surely compulsory under the Law of Agency, even if there is no written agreement to this effect. For the avoidance of doubt, "home finance activities" are defined as: Any home finance mediation activity, home finance providing activity or administering a home finance transaction. This means that Bank B is accountable for ALL the actions of BCI relating to the sale and management of this product.

On that basis, Sir Anthony, we feel that it is indisputable that this IS a regulated activity and trust that you will now agree that this matter IS within the jurisdiction of the FSA/FCA, and all other matters are irrelevant to this issue. Once jurisdiction has thus been established, we are sure there will be other matters as to exactly what should be done and how much Bank B are at fault, but it is clear that there was a total lack of duty of care and total disregard of the TCF principle".

I will first comment upon the application of DISP 1.1.4. DISP 1.1.4 relates to the investigation of complaints by a firm in relation to outsourced activities by the firm outsourcing the activities. It does not relate to the investigation of a complaint by a parent organisation relating to the activities of a subsidiary which the subsidiary has conducted under its own authorisation (i.e. activities which have not been outsourced to the subsidiary). In this case, as you have highlighted, Bank B outsources its administration to BCI. As such only a complaint about the outsourced administrative activities would fall under the DISP rules you have referred to. This is confirmed by PERG 2.3.4 which makes specific reference to a third party processor.

In relation to the provision and marketing of the Loan X loan facility, as set out both in BCI's annual report (for the period ending 31st March 2004) and on page 14 of the brochure you provided entitled 'Banking Services for International Private Clients, it is clear that the Credit Select loan facility is a BCI product. Given this, complaints about the Loan X loan facility should be directed to BCI in Guernsey as it is not an 'outsourced' activity. As a result Bank B would not be able to consider complaints about this.

I accept that Bank B's Credit Committee ultimately had the final decision on whether or not a loan could (or should) be given to a consumer. Based on this it appears that Bank B's Credit Committee could be described as underwriters of the loan. This would appear to be consistent with the procedures adopted by a number of large financial institutions which also operate in a number of off-shore jurisdictions (and effectively amounts to what appears to use the business term of a shared service function). I appreciate that you do not wish to accept this view and that is something which you are free to do but note that you have not provided any evidence to support your claims that my view is wrong.

I have noted your comments regarding the location of the Committee and, as you feel the Committee sits in London, it amounts to a UK based activity but this is incorrect. It is irrelevant where this committee sits as it is the jurisdiction where the advice/agreement was entered into and, in the case of a loan/mortgage, the locality of the secured property which is the relevant factor. As I have indicated above, for the FSA to have jurisdiction the activity *must amount to regulated activity under FSMA* (my emphasis).

For the loan/mortgage to fall under the FSA's jurisdiction it has to meet the criterion set out within the RAO. This sets out that "*a contract is a 'regulated mortgage contract' if, at the time it is entered into, the following conditions are met-*

> *(i) the contract is one under which a person ("the lender") provides credit to an individual or to trustees ("the borrower");*
>
> *(ii) the contract provides for the obligation of the borrower to repay to be secured by a first legal mortgage on land (other than timeshare accommodation) in the United Kingdom*"

However, whilst condition (i) could give rise to an arguable position, condition (ii) has clearly not been met as the land (property) is in Spain *rather* (my emphasis) than in the UK. Given this, together with the fact that the loan agreement you entered into refers to the property being subject to the laws of Spain (with only any purchased investment being subject to UK law) the arrangement is not covered by the RAO. As the arrangement is not covered by the RAO, as set out by Parliament, the FSA simply does not have any jurisdiction under the law to intervene.

I have noted your analogy with the opening of a bank account and your unjustified belief that I am "*picking and choosing bits and pieces of the laws and regulations to suit [my] own arguments*". This is not the case. As I have set out in some detail above, for the FSA to intervene, the activity which the firm has undertaken must amount to a regulated activity as set out in the RAO. In this case, *Parliament* (my emphasis) has excluded the provision of loans on properties which are not within the UK from being a regulated activity. In this case, the property which is held as security under the Loan X loan facility is in Spain.

This is an indisputable fact and is not me "*picking and choosing bits and pieces of the laws and regulations to suit [my] own arguments*". For the sake of clarity I would stress that as the FSA has no jurisdiction, its rules (including the DISP rules you feel support your claims) simply have no application in this case.

I have also noted your comments regarding your interpretation of the FSA's Perimeter Guidance handbook, specifically PERG 2.2.3 which you believe assists your complaint. PERG 2.2.3 states:

> Any *person* who is concerned that his proposed activities may require *authorisation* will need to consider the following questions (these questions are a summary of the issues to be considered and have been reproduced, in slightly fuller form in the decision tree in *PERG 2 Annex 1 G*):
>
> (1) Will I be carrying on my activities by way of business (see *PERG 2.3*)?
>
> (2) Will I be managing the assets of an *occupational pension scheme* (see *PERG 2.3.2 G (3)*)?
>
> (3) If the answer is 'Yes' to (1) or (2), will my activities involve *specified investments* in any way (see *PERG 2.6*)?
>
> (3A) Are my activities related to a *specified benchmark*?
>
> (4) If the answer is 'Yes' to (3) or (3a), will my activities be, or include, *regulated activities* (see *PERG 2.7*)?
>
> (5) If so, will I be carrying them on in the *United Kingdom* (see *PERG 2.4*)?
>
> (6) If so, will my activities be excluded (see *PERG 2.8* and *PERG 2.9*)?
>
> (7) If not, will I be exempt (see *PERG 2.10.5 G* to *PERG 2.10.8 G*)?
>
> (8) If not, am I allowed to carry on *regulated activities* without *authorisation* (see *PERG 2.10.9 G* to *PERG 2.10.16 G*)?
>
> (9) If not, do I benefit from the few provisions of [FSMA] that *authorise* me without a *permission* under Part 4A of [FSMA] (see *PERG 2.10.10 G* (Members of Lloyds))?
>
> (10) If not, what is the scope of the *Part 4A permission* that I need to seek (see *PERG 2 Annex 2 G*)?

In this case, it is not disputed that the nature of the business Bank B undertakes requires it to be authorised. Indeed Bank B is an authorised person in the context of the relevant legislation. However, the fact that an organisation is regulated does not mean that all the activities it undertakes are regulated and, in the matter you are complaining about, fall within the FSA's jurisdiction. As I have set out above, the arrangement of the Loan X loan facility by a Spanish IFA on a property which is situated in Spain does not amount to a regulated activity as defined by the RAO. I can set this out in no clearer way.

PERG 2.2.3 clarifies whether a person (firm or individual) needs authorisation to conduct any activity (which the RAO would define as a regulated activity) within the UK. It does not confirm whether a specific activity is classified as a regulated activity. In this case, as I have set out above, the provision of a loan on a Spanish property is *not* (my emphasis) a regulated activity.

As such, I do not believe that PERG 2.2.3 assists you in any way. I would however add that, given the Loan X loan facility was packaged and marketed by IFA C and it was a IFA C adviser which recommended the specific package to you, if PERG 2.2.3 had any application this would apply to your IFA C adviser. Given that both you and your IFA C adviser have confirmed that he was unauthorised (by the FSA) this simply reinforces my view that liability for the poor advice you received falls upon your Spanish IFA either on an organisational or personal basis.

I would add that, even if I am incorrect about which organisation is ultimately responsible for the arrangement of the arrangement or about the application of DISP 1.1.4, PERG 2.2.3 and PERG 2.4.3, ultimately the definition of a '*regulated mortgage contract*' as set out within the RAO (and as I have set out above) clearly means that the arrangement you entered is not a regulated mortgage contract. Given this the FSA has no jurisdiction to intervene in the matter or arrange for its arrangement to be reviewed.

I appreciate that you also feel it is Bank B rather than BCI which is responsible for the arrangement of the Loan X loan facility. It is clear from the information you have provided that the Loan X loan facility was designed by BCI and that it was IFA C who decided to use this (together with a loan arrangement offered by another bank) as its funding arrangement for its Group P designed SPAIRS package. It is also clear that the Loan X loan facility formed part of BCI's business plans. I do however accept that it is Bank B's name which appears on the application form and that correspondence may indicate that the loan is ultimately with Bank B. Although this can, quite understandably, create confusion over which organisation ultimately provided the loan, it is BCI which is responsible for the arrangement. I know that this is a decision which you refuse to accept but, given that the loan is not a regulated one, the FSA has no jurisdiction over the loan's arrangement.

In your correspondence with my office you maintain that the Loan X loan facility is ultimately a Bank B arrangement and is marketed through BCI to circumvent the SIB ban on such products. I can appreciate your views, but they are views that I do not share. Although the SIB did consider the sale of a certain type of equity release arrangement and issued guidance to the industry, this did not amount to an outright ban of the sale of such arrangements as you suggest.

As I have indicated above, where firms operate in many jurisdictions, finance is often provided by a single entity and it is that entity which will take a charge on the property. In this case given the documentation which I have seen, particularly that which you have provided, I am of the view that the Loan X loan facility was an BCI product. The fact that finance was provided by the parent *does not* (my emphasis) mean that the parent is the entity responsible for the product only that it is the entity which is providing finance.

This is a view supported by the fact that the BCI's annual report shows that it has a large number of loans in BCI's accounts. Whilst these loans are not indicated as specifically being Loan X loans, the fact that loans appear on its balance sheet, (with a value which is approximately equal to that stated in the body of the report) and specific reference to Loan X loans are made in its annual report indicate to me that the loans were ultimately a BCI product.

I appreciate that you continue to dispute this view (and have made reference to a friend's being a customer of Bank B rather than BCI as a result of his Loan X loan). However, ultimately the overall provider of the loan is of little consequence as neither Bank B nor BCI are responsible for the overall advice you received. Even if I was to accept that it was Bank B that recommended and arranged the Loan X loan facility for you (which for the avoidance of doubt I do not), Bank B would only be the provider of the loan facility which would not amount to a regulated activity and therefore falls outside of the FSA's jurisdiction. Bank B did not provide you with advice or indicate that a specific investment vehicle was the most appropriate for your needs.

The advice to 'invest' in the SPAIRS scheme (utilising the Loan X loan facility) *was given to you* (my emphasis) by a IFA C adviser. As such liability would, in my opinion, rest either with IFA C or the adviser personally and not with Bank B (although, as I have indicated earlier in my revised Preliminary Decision, if you believe that Mr D provided misleading or incorrect information then either he or BCI – whom he represented – may, possibly, assume some liability). I would add that the application you signed also indicates that "*the Lender has acted as the provider of finance only*". That statement could not be clearer to any objective reader in that the Lender has only provided finance and *not any advice whatsoever* (my emphasis) over the suitability of the loan arrangement and/or the investment for the applicants' circumstances.

I have also noted your comments about the FSA's requirements of 'Treating Customers Fairly' (TCF) initiative. Whilst the TCF initiative is one which I applaud, the FSA is only able to enforce or monitor a firm's adherence to this where there is a relationship between an FSA regulated firm and a consumer in regard of a regulated activity. In this instance, as I have set out above, I do not believe that you have any direct relationship with Bank B.

However, even if I am incorrect in this belief, the FSA's TCF initiative would not apply to the arrangement of the loan, as the loan was granted as part of the SPAIRS arrangement (through IFA C) and the provision of a loan for a Spanish property does not amount to a regulated activity under the RAO and therefore falls outside of the FSA's jurisdiction (meaning legally the FSA cannot intervene). Any application of the TCF initiative would therefore be limited to the manner in which Bank B subsequently serviced the loan you have (i.e. amounting to a monitoring of the communications it sends to you and any action it wishes to take as a result of the default of your default). The FSA as the then regulator would simply not be able retrospectively to instruct a firm to review or to alter the initial terms of a non-regulated contract.

I appreciate that you continue to indicate that, in your opinion, the FSA has failed in its statutory objective of consumer protection. As I have set out above, the FSA's objectives in effect only extend to protecting consumers in relation to a regulated activity. Whilst the granting of a loan to you would not appear to be a regulated activity the general issue of protecting consumers is something I will go into more detail.

I do that more as a need to give the fullest possible consideration to every aspect of your complaint albeit essentially what you were involved in was patently and completely outside the FSA's jurisdiction; save that the representative's position, in this unhappy investment from your perspective, might bear some third party investigation. That however is of no help to you in the context of this complaint. My starting point must be FSMA (as the relevant legislation in place at the time the FSA considered your complaint) itself. Section 2 of FSMA set out the FSA's general duties in the following manner:

(1) In discharging its general functions the Authority must, so far as is reasonably possible, act in a way—

(a) which is compatible with the regulatory objectives; and

(b) which the Authority considers most appropriate for the purpose of meeting those objectives.

(2) The regulatory objectives are -

(a) market confidence;

(b) public awareness;

(c) the protection of consumers; and

(d) the reduction of financial crime.

(3) In discharging its general functions the Authority must have regard to—

(a) the need to use its resources in the most efficient and economic way;

(b) the responsibilities of those who manage the affairs of authorised persons;

(c) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;

(d) The desirability of facilitating innovation in connection with regulated activities;

(e) the international character of financial services and markets and the desirability of maintaining the competitive position of the United Kingdom;

(f) the need to minimise the adverse effects on competition that may arise from anything done in the discharge of those functions;

(g) the desirability of facilitating competition between those who are subject to any form of regulation by the Authority.

(4) The Authority's general functions are—

(a) its function of making rules under this Act (considered as a whole);

(b) its function of preparing and issuing codes under this Act (considered as a whole);

(c) its functions in relation to the giving of general guidance (considered as a whole); and

(d) its function of determining the general policy and principles by reference to which it performs particular functions.

(5) "General guidance" has the meaning given in section 158(5).

From this you will see that, although FSMA required the FSA to discharge its regulatory objectives, it gives it a discretion over how it does this providing that its act in a way which:

(a) is compatible with the regulatory objectives; and

(b) the Authority considers most appropriate for the purpose of meeting those objectives.

The composite effect of these provisions is to create an inevitable tension between market confidence, through the exercise of the FSA's regulatory powers and the protection of consumers. In effect the FSA had to balance sensitivity and careful judgement with the statutory requirements of all of its regulatory objectives. Issues like the ones raised in your complaint therefore had they been within the jurisdiction of the FSA, would inevitably involve a consideration of difficult and differing courses of action for any regulator when seeking to deal both with prudential regulation and consumer protection. That is the generic background to the issues raised by your complaint and I have borne in mind when examining in detail all the many records the FSA presented to me when I examined your complaint.

This now brings me to the issue of disclosure of what action the FSA had taken. Quite reasonably any complainant will then pose the question relevant to this issue "*well what exactly did the Regulator do when considering my complaint with a view to safeguarding the interests of consumers?*" In answering those questions however Parliament has imposed real restrictions upon both the FSA and myself by the imposition of section 348 of FSMA as to how those questions can be answered in the case of a complainant. For the avoidance of doubt I would reiterate that section 348 of FSMA has been rehearsed in the 2012 Act under section 18 of Part 2 of Schedule 12 Part 23. I have noted your disappointment regarding the continuation of the reporting restrictions but this is not something I can alter. The reporting restrictions form part of the 2012 Act and as such, can only be removed or amended by Parliament. Should you wish to challenge these then I can only suggest that you contact a Member of Parliament in the UK or H.M. Treasury direct.

In summary, Parliament by virtue of section 348 of FSMA (and the provision with the 2012 Act) continues to impose upon regulator, a ruling of confidentiality in the context of disclosing its response or position when acting in the discharge of its functions as the relevant regulator. This means that, other than in limited circumstances, the FSA was unable to disclose any information about what action it did or did not take against a firm or individual (and the reasons for that decision).

In this instance, while I do not believe that the exceptions apply and I cannot comment further, I do myself have the power to delve more deeply into such matters, in my role as Complaints Commissioner, to enable me to be satisfied as to the propriety of what the FSA has done. I am however, although I can do this, limited, in most cases, as to the further disclosure of the details that I am informed about. I am therefore unable, directly, to answer the questions you have posed.

However, what I can say is that the FSA does appear to have carried out entirely appropriately its duties as the UK's financial services regulator. As the FSA explained in its decision letter, it made a number of enquiries of both Bank B and also of the GFSC. I can appreciate that you would like me to provide further details of what enquiries it undertook (together with details of any further enquiries it may still be undertaking into Bank B), and why I have reached the conclusion that I believe the FSA was particularly active.

Unfortunately, I simply am unable under the law as presently enacted by Parliament, to provide you with any further information other than to say that the FSA has given this matter its attention. I would also add that the FSA has indicated to me that it also continuing to take, what I deem to be, the correct course of action in relation to this matter. I can appreciate that all this is not the kind of answer you will wish to receive but it represents the position as I see it having regard to what I have established following my investigation. As such, given the restrictions imposed upon the FSA by Parliament through section 348 of FSMA (and the 2012 Act), there is little further I can add.

Conclusion

I know that you are annoyed with the advice you received to take part in the Loan X loan facility. Whilst it is clear that the arrangement may have been unsuitable for your personal situation as I have set out above, this is a concern you should raise with either IFA C, the specific adviser who recommended the Loan X loan facility to you or BCI (as you say Mr D's comments influenced you to act in the manner that you did). I appreciate that you feel that responsibility remains with Bank B (given that Bank B was the loan provider and BCI is its subsidiary), but as I have explained this does not appear to be the case.

The Product (loan and investment bond) was designed by the Group P but was marketed and *recommended to you* (my emphasis) by IFA C as its SPAIRS arrangement. The Loan X loan facility only forms part of the total Product and was selected as being the most appropriate for your circumstances by IFA C (as it was the IFA C adviser, by your own admission, who introduced you to the Product and specifically directed you to the Loan X loan facility).

I know that you feel the FSA is not taking the appropriate action to enforce "the SIB ban". However, as I have set out above, the FSA has indicated that no such ban was introduced. Notwithstanding this, as I have set out above, the Loan X loan facility was designed and promoted to Spanish IFAs by BCI with Bank B only appearing to operate as financier. Given that BCI is not a UK based firm, and is regulated by the GFSC, responsibility for the supervision of BCI falls outside of the FSA's jurisdiction.

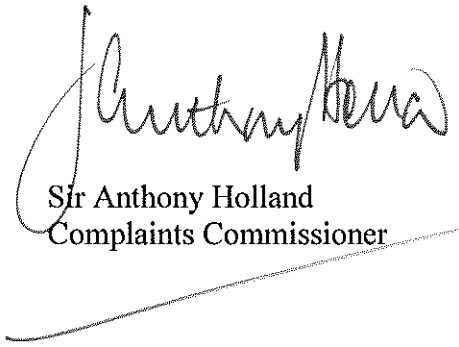
Even if my understanding of the situation is incorrect, given that the granting of a loan by an FSA authorised firm to a consumer secured on a property outside of the UK amounts to an unregulated activity means that the FSA simply has no legal jurisdiction to intervene. As such, any intervention by the FSA (or any regulator) would ultimately be deemed to be *ultra vires* and would be set aside by the Courts. I appreciate that you refuse to accept this but that is the position.

From the information presented to me there is nothing to indicate that the FSA failed to investigate adequately your complaint or that it has failed to act appropriately upon the concerns you have raised.

It is my Final Decision for the detailed reasons that I have set out that the FSA does not have any responsibility for the position in which you now find yourself. As a result, if you feel you were wrongly advised, you should look to complain to IFA C, the adviser who arranged your plan or to BCI. In that context I stress that my comments in this revised Final Decision relate purely to my jurisdiction under the 2012 Act. Your legal position overall either in Spain or in the context of the advice you received could bear detailed advice from a suitably qualified lawyer. Any legal advice you take will, unfortunately, have to be at your own expense.

This investigation therefore is now concluded and further correspondence from you will be acknowledged but not replied to. That is because once I have come to a Final Decision my jurisdiction is then terminated.

Yours sincerely,



Sir Anthony Holland
Complaints Commissioner