



4th July 2013

Dear Complainant,

Your complaint against the Financial Services Authority
Reference: GE-L01532

I write with reference to your letter of 24th June 2013 addressed for the attention of my Senior Investigator to whom I believe you had previously exchanged correspondence with in connection with the decisions made by the regulators to authorisation Firm A and the problems you face as a result of alleged poor advice following its failure and the decision of the Financial Services Compensation Scheme to reject your claim.

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.

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 (i.e. are on-going) 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. However, the policy statement (PS13/7), which governs the manner in which complaints are investigated, also contains some further provisions which I feel are relevant here.

The policy statement sets out that only complaints relating to the actions or inaction of the FSA, which occurred before 1st April 2013, can be considered under the transitional complaints scheme. As the FSA did not receive its powers until FSMA took effect (which was 1st December 2001) this means that complaints relating to the actions or inactions of the regulators which preceded the FSA or, put another way, complaints relating to events which occurred before 1st December 2001 cannot be considered by either the regulators of my office under transitional complaints scheme.

I appreciate that you are unhappy with the FCA's decision that the rules of the transitional complaints scheme prevents it from considering your complaint and stated to my Senior Investigator in your letter that you consider that the "*FSA should have taken into consideration when accepting Firm A as a legally registered Company in Feb 2000, what we mean by this, is that surely the FSA must have been aware that Firm A were or had been trading for sometime already (sic)*".

I can understand your frustration that the FCA says it is unable to assist you in looking at this matter. However, as the FCA has explained in its decision letter of 7th June 2013, the rules of the transitional complaints scheme only allow the consideration of complaints relating to the actions or inactions of the FSA and/or events which occurred after 1st December 2001. Given that the events about which you are complaining about ultimately relate to the authorisation of Firm A by the Personal Investment Authority (PIA), which was a predecessor of the FSA, on 8th February 2000, I believe that the FCA has correctly interpreted the rules of the transitional complaints scheme. I am sorry, but ultimately this means that it is not possible for your concerns to be investigated by either the FCA or my office.

I would add that, in accordance with the requirements set out in both FSMA and the 2012 Act, prior to the rules of the complaints scheme (and transitional complaints scheme) being set, a public consultation exercise took place, through the issue of consultation paper (CP12/30), which invited the industry and the public to respond to the proposed scheme rules. As confirmed in policy statement (PS13/7), little, if any, concern was raised to the proposal to limit the transitional scheme to considering complaints about the actions of the FSA (and excluding complaints about the regulators which preceded it or events which occurred before its creation).

It is unfortunate that the rules of the transitional complaints scheme do not allow either the FCA or me to consider your complaint, but given the rules, I simply do not have the jurisdiction to undertake the investigation you require. I am sorry but there is nothing further I can add to assist you and I am therefore filing my papers.

Yours sincerely,



Sir Anthony Holland
Complaints Commissioner