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complaintsaboutphso@ombudsman.org.uk

Your ref: Email of 21 May 2009  
Our ref: Legal: EN-34088/0117

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Parliamentary  
and Health Service  
Ombudsman

**Confidential**  
Mr Graham Senior-Milne  
39 Castle Street  
Norham  
Northumberland  
TD15 2LQ

21 May 2009

Dear Mr Senior Milne

Your pre-action protocol letter of 1 May 2009 and your Judicial review Bundle (emailed today) have been passed to me for reply.

From your pre-action protocol letter, it appears that you propose to issue judicial review proceedings because the Ombudsman has failed to respond to a fax of 16 February 2009 and a faxed "reminder" of 15 March 2009. Your fax of 16 February deals with your complaint that an email of 22 January 2009 had not been responded to.

Your email of 22 January 2009 was responded to by email on 23 January 2009. It said:

"I acknowledge receipt of your emails of 22 and 23 January 2009 which have been added to your file. We will carefully consider the issues you have raised but if we do not feel that they cast doubt on our previous decision on your case, we will not send you a substantive response."

This repeats the contents of the Ombudsman's letter to you of 31 July 2008 which said that:

"I am sorry that you are unhappy with the decision not to allow an amendment to your complaint against the FSA. I have decided that there is nothing more that I can do to help you, and that it is time to draw your case, and correspondence on it, to a close. We will, of course, consider with care any further correspondence you may send us about your complaint, but if we



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conclude that it does not raise any new issues of substance, or demonstrate that you have obtained an MP referral for your new complaint, we may only acknowledge it."

There was no need to respond further to your email of 22 January, or your faxes of 16 February or 15 March, as they did not raise any new issues of substance, demonstrate that you had obtained an MP referral or cast any doubt on the previous decision. This was a perfectly reasonable position for the Ombudsman to take.

Whilst the Ombudsman accepts that judicial review is available to challenge her decisions, any Claimant needs to establish an arguable case. You have not advanced any proper case that the Ombudsman's decision not to respond to your email or faxes is open to challenge on established public law grounds.

Your judicial review bundle, however, seems to indicate that your dissatisfaction in this matter actually relates to a decision of the Ombudsman communicated to you in February 2008 and confirmed in July 2008. You were informed that the Ombudsman could not investigate your complaint against the Financial Services Authority in relation to their supervision of the demutualisation and sale of Scottish Widows in 2000, because the FSA was not and had never been in the Ombudsman's statutory remit for the purposes identified in your complaint, i.e. Conduct of Business regulation (although its actions on Prudential regulation between 1999-2000 only, were within her remit).

The Ombudsman can only investigate Bodies that are in her remit. The FSA was not and never had been in her remit for the purposes of Conduct of Business regulation. The Ombudsman was (and is) satisfied that your complaint concerned Conduct of Business regulation, so she could not investigate your complaint. She did not have any discretion in this matter.

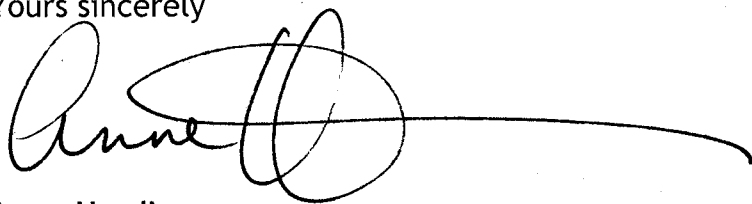
Following the Ombudsman's decision, you tried to amend your complaint to complain about the Prudential regulation of Scottish Widows by the FSA between 1999- 2001. The Ombudsman advised you in a letter of 31 July 2008 that you needed to have this matter referred to her by your MP as a new complaint. You did not do this.

You have not advanced any proper case that the Ombudsman's decision not to investigate your complaint is open to challenge on established public law grounds.

In addition, In so far as your threatened proceedings relate to the decision of the Ombudsman in 2008 to decline your complaint against the FSA, it is significantly out of time. Judicial Review proceedings should be brought as soon as possible and in any event within three months of the decision complained about.

The Ombudsman will resist any claim you may bring. If you still wish to initiate proceedings and have not already taken legal advice on the matter, you may wish to do so before proceeding any further. If you initiate Judicial Review proceedings and are unsuccessful in your application to proceed, the Ombudsman will be entitled to apply for costs against you. The Ombudsman has successfully applied for costs in previous cases.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Anne Harding', followed by a long horizontal flourish extending to the right.

**Anne Harding**  
Legal Adviser to the Ombudsman