

In Confidence
Rt Hon A J Beith MP
House of Commons
London
SW1A 0AA



6 February 2008

Dear Mr Beith

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

You wrote to the Parliamentary Ombudsman on 17 January 2007 requesting an investigation into Mr Senior-Milne's complaint against the Financial Services Authority (FSA). We closed Mr Senior-Milne's case shortly afterwards, as he had not provided sufficient information to enable us to assess his complaint. He has since provided the information that we had requested, and I am writing now to report the outcome of his complaint.

Mr Senior-Milne complained that FSA failed adequately to supervise the demutualisation and sale of Scottish Widows in 2000, and in particular that they failed to ensure that policyholders were given sufficient information about the company's financial liabilities. He contends that he was thus denied an opportunity to make an informed decision when policyholders were invited to approve the proposed sale, and that the value of assets accruing to him as a policyholder was diminished as a result of those liabilities.

It might be helpful if I first outline the background to Mr Senior-Milne's complaint. Prior to the sale Scottish Widows provided information to policyholders which included reference to a sum of £1.5bn having been set aside for contingent liabilities. Mr Senior-Milne understood from that literature that any balance after such liabilities had been met was to be paid out to policyholders. He subsequently discovered that the whole of the contingency fund would be used to meet the cost of guarantees that had been given in the past as to the returns accruing to certain policies. In 2003 he complained to FSA that Scottish Widows had deliberately concealed the potential liabilities arising from those guarantees, and said that FSA must have been aware of those liabilities but had taken no action to ensure that policyholders were properly informed. FSA said in reply that they had been satisfied that Scottish Widows had adequately informed policyholders of the extent of their liabilities.



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The Ombudsman's sole remit is to consider complaints where it is alleged that a member of the public has suffered injustice as a consequence of maladministration in respect of an action taken by or on behalf of a body listed within schedule 2 to the Parliamentary Commissioner Act 1967 as being within her jurisdiction. FSA are not so listed, and so the Ombudsman can investigate their actions only where they carry out an administrative function of a body that is.

The regulation of insurance companies falls into two parts. Prudential regulation is concerned with ensuring that a company remains solvent and has made adequate provision for its liabilities. Conduct of business regulation is concerned - as the term suggests - with the manner in which the business is conducted, and includes such matters as advice and information provided to policyholders. FSA assumed formal responsibility for prudential regulation in December 2001. Until then that function had been the responsibility of HM Treasury, though since January 1999 it had been undertaken by FSA acting on the Treasury's behalf. Actions taken by FSA in the role of prudential regulator between January 1999 and December 2001 are, therefore, open to the Ombudsman's scrutiny. At the time of the events giving rise to Mr Senior-Milne's complaint responsibility for conduct of business regulation fell to FSA in their own right, having previously fallen to a number of industry bodies none of which was within the Ombudsman's remit. The Ombudsman cannot, therefore, entertain a complaint about the way in which FSA discharged the function of conduct of business regulator at any time, nor can she consider actions taken by them in any capacity since December 2001.

In putting his complaint to the Ombudsman, Mr Senior-Milne argued that it must fall within her remit as it is essentially the same as one which she is currently investigating concerning the regulation of Equitable Life. There are, however, significant differences between the two complaints, with the Equitable Life complaint being directed squarely at the function of prudential regulator. Supervision of the sale and demutualisation of an insurance company, on the other hand, is clearly a function of conduct of business regulation, and so the Ombudsman cannot investigate Mr Senior-Milne's complaint.

I am sorry to send what I realise will be a disappointing reply for Mr Senior-Milne but, for the reasons I have explained, the Ombudsman cannot help him on this occasion.

I have sent a copy of this letter to Mr Senior-Milne.

Andy Comber



Andy Comber
Assessor