22 April 2009

Our Ref:

Your Ref:

Freedom of Information: Internal Review

I write with reference to your letter dated 6 March 2009 in which you requested an internal review under the Freedom of Information Act 2000 ("the Act"). In your request you asked the FSA to review its decision not to release the GCD advice regarding the Financial Ombudsman Service and the 15 year rule, as mentioned the information previously released to you.

The FSA made an initial decision not to provide the information requested, as it was considered exempt under the qualified exemption in Section 42 (Legal Professional Privilege) of the Act.

I have now had an opportunity to review the FSA's decision not to provide the information you requested under the Act. The outcome of that review is that I consider that Section 42 has been correctly applied, so the original decision still stands. This letter explains how I reached that view.

Section 42 (Legal professional privilege) – qualified exemption

Advice from lawyers (whether external or in-house) to the FSA acting as such is legally privileged.

The information consists of FSA lawyers' analysis, views and advice in relation to the 15 year longstop in the Limitation Act, which applies to legal proceedings, which is absent from the time bar rules in the COMP Handbook. The rules in COMP are made by the FSA but are applied by the Financial Ombudsman Service (FOS).

The Financial Services Authority
25 The North Colonnade Canary Wharf London E14 5HS United Kingdom

Section 42 is a "qualified" exemption; therefore I have balanced the public interests for and against disclosure as required by the Act.

Factors for disclosure:

- It is in the public interest that the FSA is open and transparent in its internal dealings.

- Disclosure would increase public awareness and the quality of legal advice given on the absence of a 15 year long stop in COMP.

Factors against disclosure:

The factors against disclosure are as follows:

- Firms have the right to challenge the FOS' decisions in court and in the recent past have applied for judicial reviews of FOS cases involving mortgage endowment cases to challenge the lack of a 15 year longstop. So far, we understand that the applications have been unsuccessful. The ability of those directly affected by the lack of a 15 year longstop to mount court cases supports two points: that the absence of GCD's advice from the public domain has not prevented firms from exercising their legal rights, and that the issue remains current and cannot be regarded as being of historic interest only.

- Public disclosure of the FSA's advice would be likely to be prejudicial to FOS in any future judicial review of their decisions in that possible arguments against the FOS's position would be available to their opponents, while their opponents would not be obliged to reveal their legal advice to the FOS.

- The public interest will, in general, rarely favour the disclosure of material covered by legal professional privilege.

- Public disclosure of this information would be likely to harm FSA's ability to obtain proper and adequate legal advice. Furthermore, if legal advice of this type came to be routinely disclosed, public sector clients and their legal advisers are likely to change their stance so that potential legal risks in future are discussed but not recorded. This in turn would compromise the effective decision-making process of public sector clients to the detriment of the public interest.

Taking into account all of the above factors, I am satisfied that the balance of the public interests comes down in favour of protecting our ability to obtain proper and adequate legal advice, rather than providing the information to you under the Act.

I realise that you may be disappointed not to receive the information you requested but I hope this letter explains more fully my decision not to provide the information you seek.

If, however, you are not content with the outcome of the internal review, you also have a right of appeal to the Information Commissioner at the following address: *Information Commissioner's Office, Wycliffe House, Water lane, Wilmslow, Cheshire, SK9 5AF. Telephone: 01625 545 700, Website: www.ico.gov.uk*

Yours sincerely

Information Protection Officer