

26th August 2014

Dear Complainant,

Your complaint against the UK Financial Services Regulator
Reference Number: FCA00011

Thank you for your email of 27th May 2014.

As the rules of the scheme under which I consider complaints can be found on our website at www.fsc.gov.uk, I do not intend to set them out fully below.

Your complaint

From your email I understand that you believe that you were given incorrect advice in August 2012 over the implications of setting up a new authorised firm. You say that the advice you were given, that you could not 'transfer' your authorisation to an existing but unauthorised firm, was incorrect and it was this advice which resulted in you incurring additional fees. You also consider that, while the application for authorisation of the new firm was being dealt with, you could and should have been further advised.

Although you have challenged the FCA's position through both the Credit Committee and the Complaints Scheme, the FCA has refused to waive the additional fees you have incurred. As you have now cancelled the authorisation of your original firm (with your 'newer' firm having been granted approval) you feel that it is unfair that you should be asked to pay the annual fees for a firm which is no longer authorised. You are asking me to recommend that the FCA should waive the fees for the firm which is no longer authorised.

My position

It may be helpful if I start by providing some background to the authorisations process.

Under the legislation if a person (an individual or a legal entity) wishes to conduct regulated activity then that person needs to be authorised by the relevant regulator. If an existing approved person wishes to undertake additional regulated activities, the regulator is required to undertake a new assessment to ensure that the applicant has the relevant competences to undertake the additional tasks and remains fit and proper to do so. This means that a new application for authorisation is required. Ultimately, this means that it is not possible for an authorised firm to transfer its existing authorisation to another firm which is not currently authorised.

I appreciate that this may appear to impose an onerous obligation upon the regulator and firms wishing to be authorised, but it ensures that those firms operating within the industry remain fit and proper to do so. It also ensures that firms are not attempting to escape their existing consumer obligations by closing a firm (which may have outstanding consumer obligations) and reopening under a new (clean) legal identity.

I now come to your complaint. Although I understand that you called the regulator in August 2012, a recording of that call is not available, although a file note is. I am unable to establish exactly what information was given to you over the telephone. However, it is clear you were told correctly that permissions (authorisation) could not be transferred between firms (even if the firms were closely linked and had the same directors) and an application for the new firm was required.

I appreciate you say that it was the intention that Firm K would be authorised in February 2014 in order that it could “run a campaign” before the end of the tax year. However, whilst you say you contacted the regulator in August 2012 I am aware that that “for business reasons” you delayed submitting your application for authorisation (for Firm K) until 15th January 2013 (with the regulator receiving it on 23rd January 2013).

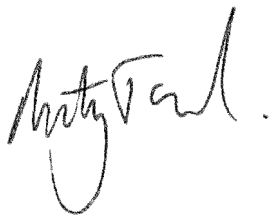
It is unfortunate that your application was not processed as quickly as you had hoped, but the assessment of an application does take some time and there is nothing to suggest that the time taken was excessive or that the application was delayed inappropriately. Whilst it is possible that the regulator could have managed better your expectations over the likely processing time, you equally should have been aware that it was unlikely that the regulator would be able to process your application in only five weeks, as the regulator’s website indicates that it can take up to 12 months to process an authorisation application.

I have noted your comments that you could have been advised to submit a cancellation form for your existing firm, Firm T, pending the approval of your new firm, Firm K, at the same time you submitted Firm K’s authorisation application. Although I accept that this was an option which was open to you, the manner in which applications are submitted are decisions for the applicant rather than the regulator to make.

Although I do have sympathy for the position you find yourself in and, whilst I appreciate that you are a small business with a limited income, the regulator is required to apply its rules (which are set out in [FEES 4.3.13R](#)) fairly and consistently across all of the firms it supervises. Having carefully considered all the documents which have been supplied, I can see no evidence that you were misled either about the authorisation or about the cancellation process. While it could be argued that the FCA could have supplied you with information about the possibility of applying for cancellation of Firm T’s permissions in advance of Firm K’s authorisation, the responsibility for this rested with the firm, not with the FCA.

Having considered your complaint it is my Final Decision that the regulator has correctly applied its rules and has not behaved unreasonably and, as a result, the 2013/14 annual fees are due for both Firm T and Firm K. I am therefore unable to recommend that the regulator should waive the invoice it has issued to you in respect of Firm T’s 2013/14 annual fees.

Yours sincerely,



Antony Townsend
Complaints Commissioner