



Complaints Commissioner

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Dear Complainant

Thank you for your email of 8th September 2009, which details the elements of your complaint against the FSA. This letter sets out my final decision on the complaints you have raised.

At this stage I think it would be worth explaining my role and powers. Under the Complaints Scheme (Complaints against the FSA-known as COAF) my role is as an independent reviewer of the FSA's handling of complaints. I have no power to enforce any decision or action upon the FSA. My power is limited to setting out my position on your complaint based on its merits and then if I deem it necessary I can make recommendations to the FSA. Such recommendations are not binding on the FSA and the FSA is at liberty not to accept them. Full details of Complaint Scheme can be found on the internet at the following website; <http://fsahandbook.info/FSA/html/handbook/COAF>

The Complaint

In your email to this office you set out your complaint with regard to your change of status and the issues surrounding that change. You stated;

“I was told that in order to add a limited company trading name I had to be an authorised limited company firm, which I was not at the time, I was a sole trader. On the basis of this information I proceeded to change the legal status of my authorised firm from a sole trader to a limited company. Once this was done in January this year I proceeded to add a limited company trading name but was told by the static data team that I couldn't”.

In your letter to the FSA dated 12th May 2009 you have sought as a remedy the cost of the change in legal status, which amounts to seven hundred and fifty pounds.

The FSA position

The FSA has set out its position on the matter in its decision letter dated 4th September 2009. It has stated that the written records of the call are insufficiently clear in their meaning as to have a full grasp of what was actually said during that phone call. The FSA goes on to state that it no longer has a recording of the call, as its policy is to destroy such recordings after a prescribed period of time. As it is unclear as to what was said in that telephone conversation the FSA has not upheld your complaint.

The FSA have gone on to state that with regard to the change of status application, it can only take the application on its own merits, and as you have received benefit from this change in terms of reduction of personal liability, the FSA has refused to reimburse you the seven hundred and fifty pounds.

My position

It is clear from the records held by the FSA that you rang the FSA to discuss this issue. It is also clear that either the consequences of such changes were either not discussed or not properly noted. It is unfortunately the case that we cannot know what exactly was said in that conversation and as a consequence it is not unreasonable for the FSA to state that it cannot uphold your complaint due to lack of substantiation of your allegations.

What is clear is that you made that call and then, at a later date made an application to the FSA to change your status. I have reviewed that document and in it the applicant is asked "why is the existing firm applying to change its legal status"? In response you have stated that the reason to change is to "take liability and risk away from personal assets due to having multiple advisers within (sic) firm".

This is clearly a different reason to what you claim in your complaint. Knowing that you had had the conversation at the FSA you had the opportunity to state in the application the reasons for the change you have put forward in your complaint but you chose not to do so. Bearing in mind this opportunity that you had, and your choice not to use it, I can only agree with the FSA position that it was entitled to rely on the reasons for the application being as stated on the application.

In your complaint to my office you have stated in response to the FSA position;

"The FSA is correct in stating that I was also looking at changing due to the liability issues, however this was not the main reason. I am the only Director of my Firm and 99% shareholder, therefore I have to provide personal guarantees on just about everything and therefore the liability point is not valid. 'Knowing this why would I want to change my legal status on this point alone!'"

In response to this argument I can make two points.

- 1) In the application you had opportunity to list your reasons for the application and you only stated one reason. The FSA is entitled to assume from this that the stated reason in the application form is at least the main reason and possibly the only reason. Either way you cannot now, in retrospect, claim it was not the 'main reason' at the time, as there is contemporaneous evidence demonstrating clearly that it was the reason for the application at that time.
- 2) With regards to your comments regarding liability this has demonstrated that you have not fully appreciated the legal distinctions between being a sole trader and a limited company.
 - a. In a limited company the company is liable for the advice it gives and as a consequence in the event of a large claim this liability would be the amount at which the company is limited. Your personal liability in any such case would be the amount of any personal guarantees that you had chosen to give.
 - b. As a sole trader you were, personally, liable in full. This means, in the event of a large claim, all your assets could be removed from you in order to pay the claim until you were declared bankrupt. This would include your house,

car and all other belongings of value. Clearly there is a vast difference in the size of potential personal liability between being a sole trader and a limited company.

I should add that in each case the issue of any professional indemnity policy would be relevant. It is my view that the FSA is correct in its position that it can only take the application at face value, and that as a consequence of you benefiting, substantially in my view, from this change it should not reimburse your seven hundred and fifty pound fee.

For these reasons I do not uphold your complaint.

Yours sincerely

Sir Anthony Holland
Complaints Commissioner