



4th November 2009

Dear Complainant

**Complaint against the Financial Services Authority (FSA)
Reference Number: GE-L01055**

Thank you for your letter of 10th September 2008, which details the elements of your complaint against the FSA. I have now completed my investigation and this letter represents my Final Decision.

At this stage, I think it would be worth explaining my role and powers. I am charged, under Paragraph 7 of Schedule 1 of the Financial Services and Markets Act 2000 (the Act), with the task of investigating those complaints made about the way the FSA has itself carried out its own investigation of a complaint. The investigations I undertake are conducted under the rules of the Complaints Scheme (Complaints against the FSA - known as COAF). I have no power to enforce any decision or action upon the FSA. My power is limited to setting out my position on a 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>.

Your Complaint

From your letter of 10th September 2008, I understand that the complaint you wish me to investigate purely relates to element one of the complaint you made to the FSA on 25th February 2009 which can be described as follows:

You are unhappy that your previous firm, Firm A, was required to pay full annual fees for the FSA's accounting period 1st April 2008 to 31st March 2009 when the firm ceased trading on 1st April 2008 (although you did not apply to cancel its permissions until mid-July 2008).

My Position

As part of my investigation into your concerns I have obtained and reviewed the FSA's investigation file. I have considered the arguments you have made when corresponding with both the FSA and my office. I have also referred to the FSA's handbook which sets out the requirements it imposes on individuals and firms who wish to be authorised. I also note that the FSA, in its response to you, has fully set out its position in respect of the cancellation of a firm's permissions after the 31st March in a given year.

I have also considered the argument you made when referring the complaint to my office on 10th September 2009. From these papers although you say that you sold Firm A on 1st April 2008, you did not, by your own admission, inform the FSA of this until mid-July 2008 when you applied to cancel your part IV permissions.. I have also noted that, you have not disputed the arguments put forward by the FSA, but have simply stated in your submission to me you state that as your firm was sold on 1st April 2008, you believe it is unfair that you are liable for a whole years fees and believe that a 'pro-rata' calculation would be more appropriate and in line with the FSA's treating customers fairly regime.

Before I comment further on your complaint I must make you aware that I have previously made a general comment about the way in which I view complaints relating to the payment of fees by regulated firms pay on my website under the heading of "Views of the Commissioner" (<http://www.fsc.gov.uk/documents/recent-issues-feb08.pdf>). Although I have considered your comments on this, I have to be mindful that the FSA's costs are paid by the industry and to allow it to set its budget (and calculate its income) a cut off point (the 31st March each year) must exist and that you have admitted that you failed to submit a cancellation form to the FSA in a timely manner. Likewise, although I have considered your comments that should you cancel a contract of insurance mid way through the year you would receive a partial refund. Whilst I accept this point, the FSA's rules and position are clearly set out and by receiving the FSA's approval to conduct regulated business you agreed to accept and comply these rules.

Conclusion

Ultimately the position is that you/Firm A agreed to the rules and guidance laid down in the FSA handbook in signing its original application for authorisation. The onus is subsequently on you/the firm to know and abide by the FSA rules and guidance, and in these cases, submit the cancellation form before the deadline. All firms who wish to cancel their Part IV permissions (authorisation) to carry on regulated activities must formally apply to the FSA using the appropriate form. To avoid incurring fees for 2008/09 the deadline for submission of the appropriate form was 31st March 2008. As the FSA has explained in its correspondence with you this date was applied consistently to all FSA regulated firms.

I appreciate that you stated that you had sold your firm (and were not therefore trading) but, in my opinion, this is of little consequence. The onus is upon the firm (and you) to comply with the FSA's rules (and deadlines) and unfortunately, as you did not do this you/your firm must bear the responsibility for your failings to comply with the FSA's rules. It was also open to you in the contract relating to the sale of your firm to provide for the incoming owner to discharge the obligation you have complained about.

From these papers there is no evidence which demonstrates any breach of the rules by the FSA. Therefore your complaint cannot be upheld and as a consequence the fee remains payable in full. I will not therefore be making a recommendation to the FSA that it should refund the fee you have already paid.

Yours sincerely,



Sir Anthony Holland
Complaints Commissioner