



21st January 2010

Dear Complainant

**Complaint against the Financial Services Authority (FSA)
Reference Number: GE-L01078**

I am writing to advise you that I have now completed my investigation into your complaint.

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 email of 6th November 2009, I understand that the complaint you wish me to investigate relates to the following:

You are unhappy that your firm (Firm A) was required to pay the Financial Services Compensation Scheme (FSCS) levy for the 2009/10 accounting year. You feel that your firm was not given sufficient notice or time to allow it to submit an exemption/waiver form for the 2009/10 accounting year as you did not realise that your firm was eligible to pay the FSCS levy until you received an invoice for an additional FSCS 2008/09 levy on or around 31st March 2009. You feel that this did not provide you with sufficient time (one working day) to submit an exemption/waiver application.

Whilst you tried to submit this application, your chief executive sent this to the incorrect email address. As a result the FSA did not receive the exemption/waiver application by the cut off date and subsequently your firm received an invoice for a 2009/10 FSCS levy of £6,231.10.

You are unhappy that the FSA will not waive the 2009/10 levy even though it has been accepted that your firm did attempt to submit the application form before the cut off date. As your firm does not deal with retail customers, who are the only class of consumer who is able to receive protection from the FSCS, you feel that the FSA should refund the FSCS levies you have paid.

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 relation to the application for exemptions from FSCS levies.

I have also considered the argument you made when referring the complaint to my office on 6th November 2009. From these papers it is clear that, following receipt of an invoice for an additional FSCS levy of £9,606.86 your chief executive attempted to submit a FSCS levy exemption/waiver application form. It is accepted that he addressed the email to the incorrect address and as a result the FSA did not receive it.

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 late submission of returns and the payment of fees by regulated firms in my annual reports (http://www.fscs.gov.uk/documents/annual/OCC_Annual_Report_2009.pdf). Although this does not directly comment on the late (or incorrect) submission of applications, my stated views would equally apply. Whilst I have considered your comments on this, I have to be mindful that the both FSA's and the FSCS'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 accept that you failed to submit a completed exemption/waiver application form to the FSA in a timely manner.

In your submissions to both my office and the FSA you have commented that Firm A previously was not subject to FSCS levies and as a result you were unaware that your firm needed to apply for an exemption/waiver. I appreciate that the way FSCS levies are calculated changed significantly during the 2008/09 accounting year and that they also increased considerably as a result of a number of firms being declared in default.

As I have indicated above, as part of my investigation I ask the FSA to provide a full copy of its investigation. In this instance, the FSA's file included a copy of Firm A's fees and levies invoice for the period 1st April 2007 to 31st March 2008 (dated 11th June 2007). In my opinion, this document is relevant as it indicates that Firm A's 2007/08 fees included a FSCS levy of £26.61. I appreciate that this levy is considerably smaller than the ones due in the 2008/09 and 2009/10 accounting years, but this indicates that Firm A was (my emphasis) subject to FSCS levies prior to the reorganisation of the classes/sub-class in which firms were categorised.

Additionally, the FSA's file also included a copy of Firm A's FSA fees and levies invoice for the period 1st April 2008 to 31st March 2009 (dated 14th July 2008). In my opinion, this document is also relevant as it included a large amount of text surrounding changes to the way FSCS levies are calculated (including that Firm A was receiving a refund of £13.63 under the 'clean-break' exercise) and more specifically, that Firm A was required to pay a FSCS levy of £2,240.63.

Although you state that Firm A was not aware it was subject to FSCS levies until 31st March 2009 the fact that the invoice the FSA sent to you in July 2008 indicates that Firm A was subject to FSCS levies indicates that this is not the case. I would also add that as Firm A should have been aware of the situation in July 2008 and therefore it had a considerably longer than one day to submit the waiver/exemption form.

Conclusion

Ultimately the position is that Firm A agreed to the rules and guidance laid down in the FSA handbook in when it applied 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 appropriate exemption/waiver form before the deadline. I appreciate that you attempted to submit the form, but the fact that the application was sent to an incorrect email address (and therefore not received by the FSA) is not the fault of the FSA.

I also appreciate that you stated that you firm does not have any customers who are eligible for compensation under the FSCS regime, 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 your firm must bear the responsibility for your failings to comply fully with the FSA's rules.

Whilst you indicate that you only had one day to submit the form, the fact that you had previously received FSA invoices which included (my emphasis) details of FSCS levies indicates that the firm either felt that it did not qualify from an exemption or was happy/required to pay the levy. I would add your FSA annual fee invoice for the 2008/09 accounting year (dated 14th July 2008) made specific reference to the FSCS levy in both the accompanying letter and on the invoice.

As the 2008/09 FSCS levy was considerably larger than that paid in previous accounting years, this should have prompted you to investigate whether Firm A qualified for a waiver/exemption and if it did apply for one at this point (i.e. in July/August 2008). Again, the fact that Firm A did not act at this time and appears to have only acted when it received a further/interim invoice for £9,606.86 (on the last day it could apply for a waiver/exemption) is not the fault of the FSA.

The FSA's rules are clear, if a firm wishes to apply for a waiver/exemption from the FSCS levy then the FSA must receive the application by the 31st March in the accounting year before the accounting year where the firm wishes the waiver to take effect. In this case, to receive a waiver for the 2009/10 accounting year the FSA needed to receive the application by the 31st March 2009. As the application was sent to the incorrect email address, the FSA did not receive, and therefore could not consider the application or grant you a waiver.

I appreciate that the levies for 2008/09 and 2009/10 are large, and may have an impact on Firm A's financial performance for 2009/10 but these papers do not provide any evidence to demonstrate that there was any breach of the rules by the FSA. As I have indicated above the facts, in my opinion, are that Firm A failed to act in a timely manner and when it did act used an incorrect email address. Therefore your complaint cannot be upheld and as a consequence the levy remains payable in full. I will not therefore be making a recommendation to the FSA that it should either refund or waive the FSCS levies you have paid and/or that are outstanding.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Anthony Holland". The signature is written in a cursive style with a large initial 'A'.

Sir Anthony Holland
Complaints Commissioner