



21<sup>st</sup> July 2010

Dear Complainant

**Complaint against the Financial Services Authority (FSA)  
Reference Number: GE-L01147**

Thank you for your letter which was received on 8<sup>th</sup> June 2010, which details the elements of your complaint against the FSA.

At this stage, I think it would be worth explaining my role and powers. I am charged, under Paragraph 7 of Schedule 1 of Financial Services and Markets Act 2000 (the Act), with the task of investigating those complaints made about the way the Financial Services Authority (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 recent letter, I understand that you have not paid your FSA fees for the 2009/2010 accounting year and the complaint you wish me to investigate relates to your displeasure that the FSA is continuing to pursue you for your 2009/10 fees.

Specifically, you are unhappy that you are required to pay fees for the whole of the accounting year when your business closed and ceased to be regulated just four months (in August 2009) into the accounting year.

**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 its rule and the requirements it imposes on individuals and firms who wish to be authorised.

When considering your complaint I have considered the arguments you made when referring the complaint to my office. From these papers I understand that your business closed as it became uneconomic for it to continue.

When you closed your business (and applied for the cancellation of your firms Part IV permissions), you say you did not do this until after 1<sup>st</sup> April 2009. 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 that as your firm closed in August 2009, you believe it is unfair that you are liable for the fees for the entire year, particularly due to your financial position.

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 cancellation of permissions on my website under the heading of "Views of the Commissioner" (<http://www.fsc.gov.uk/documents/views/recent-issues-nov09.pdf>). I would add that as part of the authorisation process you agreed to be bound by the FSA's rules as set out in its handbook. I would add that I have not seen any evidence of your firm previously challenging the effect of the rules surrounding the payment of fees or how these were calculated.

I believe the FSA's position is clearly explained in the Fees handbook which sets out the rules with regard to how fees are calculated and the FSA's policy on the repayment of fees when a firm cancels its authorisation midway through the accounting year. Having reviewed the FSA's decision letter of 9<sup>th</sup> March 2010, I note that it also referred you to its Fees handbook. With this in mind I would specifically I would draw your attention to paragraph 4.2.9 of the Fees handbook which states:

**FEES 4.2.9G Fee payers ceasing to hold relevant status or reducing the scope of their permission after start of relevant period**

The FSA will not refund periodic fees if, after the start of the period to which they relate:

- (1) a fee payer ceases to have the status set out in column (1) of the table in FEES 4.2.11 R

Although I have considered your comments that you would like the FSA to show you some leniency particularly as the collapse of your business came as a result of the wider financial climate. However, 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. I have not seen any evidence that you have previously challenged these rules when you were authorised by the FSA, and as a result feel that you accepted to be bound by them.

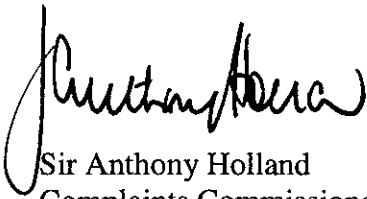
I would also add that, as the FSA explained in its decision letter of 9<sup>th</sup> March 2010, the reason for the rigidity of this rule is because the FSA relies on the data which firms supply for the setting of the overall level of fees the firms which it authorises are required to pay. In my opinion, should it waive the fees for your firm, then it would have to waive the fee (or at least part of the fee) for all of the firms which applied to cancel their authorisation during the accounting year. Clearly this would have significant implications for the FSA's overall funding and as a result, the remainder of the authorised firms would be subject to, and have to pay, additional fees. This is clearly a situation which would be unfair and is something which the FSA could not allow to develop. I would further add that the FSA did consult with the industry prior to the introduction of this rule and, as explained in its decision letter, the industry overwhelming voted in favour of it, as it allowed firms to know what their annual fees would be and as a result enable them to budget accordingly.

## Conclusion

Ultimately the position is that you/Firm A agreed to comply with the rules and guidance set out in the FSA handbook when signing the original application to become authorised. The onus is subsequently on you/the firm to know and abide by all of the FSA rules and guidance. 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 and do so before (my emphasis) the dead line to avoid incurring fees for 2009/10. In this instance the deadline for submission of the appropriate form was 31<sup>st</sup> March 2009 if you did not wish to pay fees for the whole of the 2009/10 accounting year. Whilst I appreciate that it was the economic climate which subsequently 'forced' you/your firm to apply for the cancelation of Part IV permissions, in my opinion, this is of little consequence and is not the fault of the FSA. As the FSA has explained in its correspondence with you, this date was applied consistently to all FSA regulated firms, as you were authorised (and were attempting to conduct regulated activity) on 1<sup>st</sup> April 2009, and as the application for cancellation was not received until May 2009, the whole fee for the 2009/10 accounting year is payable.

Although your complaint cannot be upheld, and as a consequence the fee remains payable in full, I do understand, and am sympathetic, to your position. I am mindful that you say that you are now on a limited income and are therefore unable to pay the fee in a lump sum. As such, I have noted that the FSA is willing to allow the fee to be repaid in instalments and you should therefore contact its agent, Agent X, and agree an affordable repayment plan with it.

Yours sincerely,



Sir Anthony Holland  
Complaints Commissioner