



26<sup>th</sup> November 2010

Dear Complainant,

**Complaint against the Financial Services Authority**  
**Our Reference: GE-L01181**

Thank you for your letter of 16<sup>th</sup> August 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 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 that comes within the complaints scheme. 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 16<sup>th</sup> August 2010, I understand your complaint relates to the following:

In late 2009 or early 2010 you received a referral from an existing client for two customers (Mr and Mrs X) who wished to conduct some investment business. Following an initial canvas, one of your advisers subsequently met with the customers and was in the process of arranging an investment for them.

The customers had not dealt with your firm before and were intending to invest a considerable sum of money, so in order to satisfy themselves that their interests were protected, they contacted the FSA to confirm that your firm was authorised and regulated by it. You say that during this call to the FSA, the FSA's Consumer Contact Centre (CCC) operative to whom they spoke, incorrectly told the Mr and Mrs X that your firm was not authorised by it.

As a result of this information you say that the customers declined to complete the proposed investment business your firm had recommended and terminated the relationship which your adviser had built up. You add that the customers proceeded to seek advice from another adviser and as a result of the FSA's actions your firm lost commission payment it would have received from the product provider which was initially £4,590.

You are unhappy that the FSA rejected your complaint and said in its decision letter that it was unable to substantiate your claims as you provided insufficient information to allow it to trace the call and ultimately review the information that the CCC operative provided to Mr and Mrs X.

## **Background**

From the papers presented to me I understand that, following occurred:

- |                              |  |
|------------------------------|--|
| Late 2009/Early 2010         | Your firm receives a referral from an existing customer.<br><br>An adviser from your firm contacts the customer and establishes that they are looking to invest a considerable sum of money  |
| 15 <sup>th</sup> March 2010  | Your adviser obtains quotations for an investment bond and presents these to the consumer.   |
| 26 <sup>th</sup> April 2010  | The customers contact the FSA to satisfy themselves that your firm is authorised and regulated by the FSA. During the call the FSA's CCC operative informs them that your firm is not authorised.<br><br>The customers subsequently contact you and inform you that as the FSA has told them that your firm is not authorised by it they no longer wish to proceed with the business.<br><br>You contact the FSA immediately and raise a complaint about this incorrect information. |
| 6 <sup>th</sup> August 2010  | Following its investigation the FSA inform you that, as it has been unable to locate the call, it is unable to uphold your complaint.  |
| 16 <sup>th</sup> August 2010 | You refer the matter to my office for further consideration.   |

## **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, together with the FSA's arguments for not upholding your complaint.

In your letter to my office you have stated that you believe that you provided sufficient information for the FSA to trace the call and are disappointed that it felt that you provided insufficient information to do this. You hold this view as you called the FSA on the day the customer was provided with the incorrect information and provided the consumer's name, an approximate time of the call together with the name of the operative the consumers spoke to. You add that you believe that the FSA should have been able to trace the call and review the information which the CCC operative gave to the consumers from this information.

Having had the opportunity to consider your letter, I asked the FSA to confirm what information was required to trace a call and asked it whether it was possible to do this from the information you provided. Acting upon my request, the FSA reviewed the manner in which it had dealt with your complaint, specifically whether it could trace the call from the information you provided.

As a result of these further investigations, the FSA has informed me that it has been able to trace the call and can now confirm that, as you stated, the customers did contact it (specifically its CCC) at 11.04 am on 26<sup>th</sup> April 2010. Additionally, whilst a recording of the actual call is no longer available, the FSA's records do indicate that the CCC operative incorrectly told the consumers that your firm was not authorised by it.

### **Conclusion**

Having considered your submission to the FSA and that which you made to my office, it is disappointing that the FSA's CCC operative made an error when checking its register which resulted in the FSA providing incorrect information to a consumer. It is equally disappointing that it did not undertake, what I consider to be, an adequate investigation to establish whether Mr and Mrs X did contact it. Had it done so, it would have clearly established that its CCC operative provided incorrect information to Mr and Mrs X.

I would add here that I am equally disappointed that despite my request for details of the contact the consumer made with the FSA on the morning of 26<sup>th</sup> April 2010 the FSA did not identify that the consumer made two additional calls until after (my emphasis) I had issued my Preliminary Decision. I consider this less than satisfactory. Whilst the FSA's records of these calls show that although different FSA operatives then confirmed to the consumer that your firm was authorised, the notes do not indicate whether the subsequent operatives concerned apologised to the consumer for the error made by the previous operative or that they ultimately treated the error in the manner I would have expected.

In making this comment I would point out that had the FSA's Complaints Team obtained a copy of the calls when the complaint was made or recordings of the three calls the consumer made to the CCC were still available then this might have had an impact upon my findings.

However, in the absence of recordings of the three calls and/or detailed notes of the call, my findings have to be based upon the information I have obtained from your firm, the consumer concerned and the brief notes of the call the FSA have provided to me. Contact was made with the consumer and a telephone conversation with one spouse of the potential investors elicited the statement that *"as they had not dealt with Firm A before and as the investment they were intending to make was large, they wanted to be sure that the firm was genuine. As such they checked at the library to see whether Firm A was authorised and then called the FSA to confirm the situation. As a result of the FSA telling them that Firm A was not authorised they became concerned (as they are elderly and the amount was, in their eyes, a significant investment). Despite being reassured by the FSA during the later calls that the firm was authorised, the fact that the FSA had told them that Firm A was not authorised concerned them. As such they felt that they did not wish to invest through Firm A"*. Faced with such direct and clear evidence I am satisfied that the incorrect information the FSA provided to the consumer directly led to your firm losing a commission payment of £4,590.

As a result of the information which has now come to light, I am upholding your complaint against the FSA and will make the following recommendations to it.

## Recommendations

As a result of my investigation I am making three recommendations to the FSA:

1. The FSA should issue you with an apology for providing incorrect information to the consumer and for completing an ineffective investigation into the complaint you raised with it in relation to this matter.
2. The FSA should also make an ex-gratia payment of £500 to you. I have arrived at this payment as follows. A payment of £250 for the FSA's failure to provide the consumer with the correct information coupled with its failure to complete what I consider to be an adequate and comprehensive Stage One investigation. In that context I make two observations. First it is essential at all times that only correct information is given out by the CCC in the crucial area of who is and who is not authorised. Second in an investigation all (my emphasis) relevant information must be obtained before completing a Stage One process to give credibility to that process in the eyes of the complainant. A further payment of £250 for the FSA's failures to provide my office with full and appropriate information during the Preliminary stage of my Stage Two investigation. I found the fact that yet further information came to light after (my emphasis) my Preliminary Decision unsettling in my confidence in the FSA investigatory process as well as particularly disappointing in the fact that it occurred after the FSA had accepted my Preliminary Decision.
3. The FSA should make a further *ex gratia* payment to your firm equal to the initial commission payment (£4,590) you would have received from the product provider.

Yours sincerely,



Sir Anthony Holland  
Complaints Commissioner