



14<sup>th</sup> January 2011

Dear Complainant

**Complaint against the Financial Services Authority  
Reference Number: GE-L01221**

I refer to your emails of 2<sup>nd</sup> and 5<sup>th</sup> December 2010 and 2<sup>nd</sup> January 2011 in connection with the above. I am now 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 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 correspondence with the FSA, I understand your complaint relates to the following issues:

Following your suspension from the Network A (the Network), in June/July 2010 you applied to the FSA to cancel your firm's permissions. You are unhappy that the FSA has told you that, although your firm's fees were payable in August, the FSA's charging year runs from 1<sup>st</sup> April until 31<sup>st</sup> March. As such, as your firm was authorised on 1<sup>st</sup> April (albeit that it may not actually have been conducting regulated activity due to your suspension) you are required to pay the FSA's fees for the 2010/2011 accounting year.

**My Position**

As part of my investigation into your concerns I have obtained and reviewed the FSA's complaint investigation file. I have also considered the comments you have made when corresponding with my office (although I have not concerned myself with the reasons for your suspension from the Network). 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 note from your correspondence with the FSA that your initial complaint surrounded the application of a £250 financial penalty for the late submission of a GABRIEL return before moving into a complaint about the cancellation of your firm's permissions. Although you raised the issue of the late submission administration charge with the FSA, you have not raised this issue with my office (your email of 5<sup>th</sup> December 2010 which clarified the nature of your complaint) specifically referred only to the issue of the charging period for a firm's annual fees. As such I do not intend to review or comment upon the application of the late submission administration charge in this my Preliminary Decision.

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 about the timing of applications for the cancellation of permissions on my website under the heading of "*Part IV Permissions and Fees*" in the document "*Views of the Commissioner*" which can be found on my website (<http://www.fsc.gov.uk/documents/views/recent-issues-nov09.pdf>).

Ultimately the position is that the firm has agreed to the rules and guidance laid down in the FSA handbook in signing its original application for authorisation. The onus is subsequently on 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 2010/2011 accounting year the deadline for submission of the appropriate form was 31<sup>st</sup> March 2010. This is applied consistently to all FSA regulated firms.

Whilst I accept that you were in dispute with your network (Mortgageforce) over your suspension at this time, ultimately it is of little consequence whether a firm has or has not been carrying out the regulated activity during this time. The onus is upon the firm and it must bear the responsibility for its own failings by not submitting the cancellation form before (my emphasis) the deadline so as not to incur charges for the following accounting year.

In your complaint you state that as your fees were not due to be paid until August 2010 you did not realise that the accounting year began on 1<sup>st</sup> April 2010 and feel that it is inappropriate that fees are payable sometime into the accounting year rather than at the beginning of it.

To answer this, I believe that it may be useful if I explain the process (and the relevant dates) which the FSA follows when setting and communicating the levies it is to impose upon the industry:

1 <sup>st</sup> April	The FSA establishes the population (or number) of firms which are authorised for the accounting year
Early May	The FSA consults with the industry on the fees it will levy upon authorised firms
Late May/Early June	The FSA makes an announcement to the industry relating to the level of fees authorised firms will be required to pay.

Mid June to Late August      During this period the FSA sends invoices to authorised firms requesting payment of their annual fees. Due to the number of firms it is unable to invoice them in a single block. As such it phases the sending out of invoices, sending out around 3,000 invoices each week.

From this it is clear why there is a delay between the start of the accounting year and authorised firms receiving invoices for their annual fees. I would add that if the FSA allowed a 'floating' accounting date it would not be possible for it to assess accurately the fees it required from the firms it regulated and as such would be unable to set and operate within a set budget.

Whilst I can appreciate why you may have believed, incorrectly, that the FSA's accounting year ran from August to August, the fact remains that the FSA clearly indicates that fees in respect of a firm's authorisation are based upon the accounting year 1<sup>st</sup> April to 31<sup>st</sup> March and that any firm which is authorised (and has not submitted a cancellation form to the FSA) on 1<sup>st</sup> April will be liable to pay fees for the whole of the accounting year. I would add at this point that as the FSA must have received the cancellation form on or before 31<sup>st</sup> March (my emphasis) if the firm is to avoid paying fees, oral notification that a firm intends to cancel its permissions will not relieve the firm of the responsibility to pay fees for the accounting year.

I would add that you agreed to be bound by the FSA's rules as part of your application to become authorised. Although you now appear to be challenging these rules, I note that I have not seen any evidence of you challenging the effect of the rules surrounding the charging period prior to your complaint being made. As a result I believe that you accepted the FSA's rules and requirements and agreed to be bound by them.

In your email of 5<sup>th</sup> December 2010 you also referred to the alleged release of information to your wife which you believe was in breach of the Data Protection Act. I understand from the FSA's Complaint Team that this alleged breach is currently being considered by the FSA's Data Protection Team. As this is still under investigation, and you will ultimately have recourse to the Information Commissioner if you are unhappy with the FSA's decision, I do not propose to comment further on this issue in my Final Decision.

You also added that you were approached by a debt collector acting on behalf of the FSA whilst you were appealing its decision both to apply the late submission administration charge and issuing you with an invoice you for your firm's 2010/2011 annual fees. Whilst I accept that the FSA did instruct a debt collection agency to contact you, I note that it did not do this until your correspondence with the manager of the FSA's Complaints Team had ended.

According to the FSA's file your last correspondence with the manager of the FSA's Complaints Team was on 4<sup>th</sup> November 2010 where he stated:

*"I have spoken further to my colleagues who deal with Data Protection matters at the FSA and they have confirmed that they will write to you under separate cover setting out the position on the DPA issue from their perspective.*

*In relation to the other matters under discussion, I am afraid that I do not have much to add to the information that has been conveyed to you previously. If you are in a position to submit evidence for consideration by the Credit Committee (this may be, for example, bank statements and other such documents which help to confirm your circumstances) then I would urge you to do so".*

From this it is clear that the email you received from the manager of the Complaints Team on 4<sup>th</sup> November 2010 confirmed the FSA's final position in relation to the late submission charge and the over due 2010/2011 annual fees and brought your correspondence with it to an end. According to the papers presented to me, the FSA then gave you a further 18 days to settle your outstanding account before it instructed a debt collection agency to contact you, which it did on 23<sup>rd</sup> November 2010. I now understand following receipt of the FSA's instructions, on 24<sup>th</sup> November 2010 the debt collection agency attempted to contact you but was unable to do so and therefore left a message on your voicemail which I understand you subsequently dealt with the following day (25<sup>th</sup> November 2010).

When you called the debt collection agency on 25<sup>th</sup> November 2010 you informed it that you were currently appealing the matter through the channels the FSA had given you (which I presume to mean through my office). I understand from the papers presented to me by the FSA that, upon receipt of this information, the debt collection agency, correctly in my opinion, contacted the FSA to request clarification on whether it should pursue the matter with you. The papers show that it was agreed that the debt collection agency was instructed not to contact you again until the outcome of your appeal (which again I understand that you mean my investigation) had been finalised. I would add here although the FSA agreed to do this, at the time you had not (my emphasis) contacted my office to ask me to review the FSA's handling of your complaint. Although you may have indicated that you were to ask me to review the FSA's handling of your complaint prior to it instructing the debt collection agency, ultimately you did not contact my office until 2<sup>nd</sup> December 2010 (which was clearly after the debt collection agency had contacted you).

In my opinion, until you had contacted my office and asked me to review the FSA's handling of your complaint, the FSA was free to instruct the debt collection agency. I hold this view as until I received your formal request to review the FSA's decision, the FSA decision (to reject your complaint) stood and was not being reviewed. Whilst this may appear an unhelpful position for me to adopt, ultimately I am independent of the FSA and do not review its decisions unless (my emphasis) a complainant contacts me directly and asks me to do so. Additionally, I would add here that whilst a complainant may indicate to the FSA that he will refer the matter to my office, there is no guarantee that he will do so and could simply be saying this in the belief that the FSA will treat his complaint more sympathetically. This is clearly an irresponsible position for a complainant to adopt as I am confident that the FSA decides each complaint on its own merits and the threat of a referral to my office would not have any impact its decision. As such, I cannot find any evidence to support your claim that the debt collection agency contacted you whilst you were appealing the decision that you were liable for the outstanding late submission administration charge and annual fees.

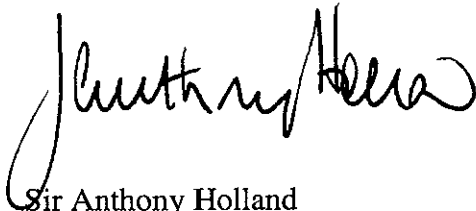
## **Conclusion**

In assessing a complaint, I have to have regard to the FSA's investigations and findings, together with the further representations complainants make to my office. In this instance, you have not explained why you feel that the rationale behind the decision the FSA made was incorrect, only that you are unhappy with it and had an incorrect belief that the accounting year started from the date when your fees were due. Although I can appreciate why you may have held this view, as I have explained above, this view was incorrect and had you considered the communications the FSA sent out (such as the fees consultation documents and the fees notice) it would have been clear to you that your views were incorrect.

I am sorry, but from the papers presented to me I am unable to find any evidence to show that the FSA has not correctly dealt with your complaint or that it has incorrectly charged you and/or your firm the administration fee for the 2010/2011 accounting year. I am therefore unable to alter the decision previously made by the FSA. I appreciate that you will be disappointed with my findings, but hope that you will understand why I have arrived at this decision.

I would also point out that, as consequence of my decision the fees are now payable in full and, if you have not already done so, you should contact the FSA to arrange for the payment of this administration fee. Failure to do this may result in the FSA taking further action against your firm as set out in SUP 16.3.13 and 14. I would also add that, as the FSA has previously explained, if you are unable to pay the fees you can apply to the FSA for the fees to be waived under its "Relieving Provisions". If this is the case and you are unable (rather than unwilling) to pay the fees I would strongly recommend that you should do this.

Yours sincerely,

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

Sir Anthony Holland  
Complaints Commissioner

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