

7th June 2011

Dear Complainant,

Complaint against the Financial Services Authority
Reference Number: GE-L01234

I refer to your letter to my office of 31st January 2011 in connection with your complaint against the Financial Services Authority (FSA). 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 correspondence with my office, I understand your complaint relates to the following issues:

- You say that your firm submitted a “Cancellation of Part IV Permissions – Application Form” (or Cancellation Form) on 26th March 2010.
- Although this was before the date when FSA fees for the 2010/11 accounting year are calculated (31st March 2010) you have been told that as the FSA did not receive the Cancellation Form (and your firm therefore remained authorised) you are required to pay the FSA’s fees for the 2010/11 accounting year.
- You add that as the correspondence was not acknowledged by the FSA you were unaware that the form had not been received until your firm received an invoice for its Regulatory Fees and Levies invoice dated 5th July 2010.
- You have are unhappy that, although you have explained the position to the FSA, and provided it with a copy of the Cancellation Form, it will not cancel the invoice it sent to you on 5th July 2010.

Background

From your letters and the FSA's investigation file I believe that the following timeline summarises the course of events in relation to this matter:

- 31st January 2010 You indicate that your firm ceases to conduct regulated activity.
- 26th March 2010 You say you submit the Cancellation Form to the FSA.
- 5th July 2010 The FSA issues you with its Regulatory Fees and Levies invoice.
- 15th July 2010 You contact the Firm's Contact Centre to clarify why the invoice was sent to you and how you can avoid paying the fees.
- 19th July 2010 You forward a copy of the Cancellation Form to the FSA.
- 16th August 2010 You refer your complaint to the FSA's Complaints Team.
- 7th December 2010 The FSA's Complaints Team concludes its investigation and writes to you confirming that it is unable to uphold your complaint.
- 31st January 2011 You refer the matter to my office.

My Position

I have now had the opportunity to review the FSA's investigation file and your submissions to my office.

Before I comment 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 requirements placed upon firms by the FSA in relation to the submission of a Cancellation Form in relation to a firm's Part IV 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.

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 wished to cancel their Part IV permissions (authorisation) to carry on regulated activities, and avoid paying the 2010/11 annual fees, must formally have applied to the FSA using the appropriate form and the FSA must have received this (fully and appropriately completed) no later than 31st March 2010. I would add here that the FSA's approach in relation to the submission of documents and reports, is that it places the responsibility on the firm (my emphasis) to ensure that it is received (my emphasis) by the FSA.

The FSA has adopted this position as firms, who have failed to adhere to their reporting requirements under the FSA's rules in a timely manner, have stated that they made their submissions but these were not received by the FSA. As this creates significant work for the FSA, the FSA has adopted a position, correctly in my opinion, where it is the firm's responsibility to ensure that documentation and reports they submit are received by the FSA.

As such, unless the firm receives confirmation that the FSA has received the submission, by way of an acknowledgement or action on the part of the FSA (i.e. the firm is shown as no longer being authorised on the FSA's register), then the firm should assume that the submission has not been received. I concur with the FSA's position on this.

It is unfortunate that your Cancellation Form was not received by the FSA. However, although I appreciate that you say that your firm ceased conducting regulated activity in January 2010, this of little consequence as unless a firm can demonstrate with evidence, which shows that the FSA received the appropriate form correctly filled in prior to the deadline the fee will remain payable.

In this case although it appears that you submitted the Cancellation Form on 26th March 2010, this was not received by the FSA (my emphasis). During my investigation I asked my Senior Investigator to contact you to establish the method by which the Cancellation Form was sent to the FSA and to enquire whether you held documentary evidence (in the form of a 'signed for' receipt) to indicate that the FSA received the form. As you have not responded to my Senior Investigators letters and emails I have assumed that you sent the form by normal (non-registered) post and are therefore unable to provide evidence to show that the Cancellation Form was received by the FSA.

Ultimately, without proof that the documents concerned were actually received by the FSA (e.g. a copy of a 'Signed For' receipt) and in view of the FSA's adopted position, there is nothing to show that the documentation was submitted and received by the FSA. With this in mind, the FSA has, correctly in my opinion, stated that as the Cancellation Form was not received your firm has correctly been invoiced for its 2010/11 fee.

I have also noted your comments about firms being informed of their annual fees before the 'cut off' period to enable them to consider whether they wish to remain authorised. Although I have considered your comments, ultimately, if a firm wishes to conduct regulated activity it must be authorised and is therefore required to pay the FSA's fees. I am not entirely convinced that the FSA's fees should influence whether a firm remains authorised.

Although I have made this comment, I believe that nevertheless it may be useful if I explain the process (and the relevant dates) which the FSA follows when setting and communicating its fees and levies it is to impose upon the industry:

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| 1 st April | The FSA establishes the population (or number) of firms which are authorised for the accounting year, i.e. based upon the number of firms shown as being authorised on its register as at 31 st March (and where it does not hold an appropriately and correctly completed Cancellation Form). |
| 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. From this, I hope that you will understand why it is not possible for the FSA to inform firms of their annual fees before (my emphasis) the start of the accounting year.

I would also 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.

I appreciate that, at the time of your complaint, you indicated that the FSA had yet to action your request to cancel your firm's Part IV permissions. Whilst it is disappointing that the FSA appears to have taken a considerable, if not excessive time to complete your request to cancel your firm's Part IV permissions, I understand that it has now done this and as a result your firm ceased to be authorised with effect from 31st March 2011. I would add that, although it is disappointing that this delay appears to have occurred, as this was not something which was considered by the FSA during its Stage One investigation, I have not investigated the matter further.

Conclusion

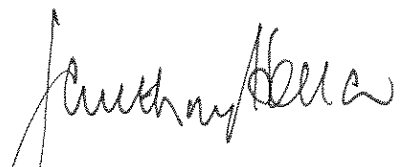
Although you feel that the FSA should cancel the invoice it sent to you on 5th July 2010, you have not provided sufficient, if any, evidence to demonstrate any wrong doing by the FSA. It is unfortunate that the FSA did not receive the Cancellation Form you submitted, but the fact that it did not is not the fault of the FSA. I would also add that, although you say that you sent this there is nothing to indicate that you checked with the FSA to establish if it received the form and that it confirmed that it had done so.

Additionally, given that you state that you ceased conducting regulated activity in January 2010, it is unclear why you did not send the Cancellation Form to the FSA until five calendar days before the end of the accounting period. Given that you were no longer conducting regulated activity had you submitted the form earlier it may have been possible for you to have established that the FSA had not received the form and for you to make arrangements for a copy or further form to be sent to the FSA before the 'cut off' date and therefore allow you to avoid the FSA's fees for the 2010/11 accounting year.

The onus for compliance with all of the FSA's rules falls clearly upon those who are authorised. This responsibility is accepted as part of the authorisation process by the firm applying for authorisation. The FSA's rules on regulatory reporting (specifically the submission of a Cancellation Forms) are clear and straightforward to find in the FSA handbook. Whilst I accept that you say you complied with these (by submitting a Cancellation Form) it is clear that the FSA did not receive it (nor acknowledge receipt of it) and as a result your firm continued to be authorised at close of business on 31st March 2010 when the FSA established which firms were required to pay its fees and calculated the level of fees each firm should pay.

I appreciate that you will be disappointed with my findings but ultimately, from the papers presented to me there is insufficient, if any, evidence which demonstrates any breach of the rules by the FSA. Therefore your complaint cannot be upheld and as a consequence I am unable to recommend to the FSA that it should waive the fees your firm has incurred as a consequence of being authorised during the 2010/11 accounting year.

Yours sincerely,



Sir Anthony Holland
Complaints Commissioner