



4th April 2012

Dear Complainant,

Complaint against the Financial Services Authority

Reference Number: GE-L01375

I refer to your letter of 5th January 2012 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 my office, I understand your complaint relates to the following issues:

You are unhappy with the lack of assistance you received from the FSA following an application to alter the manner in which your business operated. You say that you applied to create a new firm (Insurance Firm) which would purely deal with insurance business. Although say that you made it clear to the FSA that Insurance Firm would also assume responsibility for the existing insurance business written by your existing firm, Advice Firm, the FSA neither altered Advice Firm's Part IV Permissions (permissions) or recommended to you that you should consider reviewing the permissions it held.

You say that you have incurred additional annual fees as a result of Advice Firm continuing to hold permissions to conduct regulated activity in relation to 'non-investment insurance contracts' (insurance contracts) which specifically included:

- Assisting in the administration and performance of a contract of insurance
- Dealing in investments as agent

You add that you feel the FSA, prior to authorising Insurance Firm, should have recommended that you review the permissions held by Advice Firm to ensure that it did not retain permissions which were no longer needed.

My Position

As part of my investigation into your concerns I have obtained and reviewed the FSA's investigation file. In reviewing your complaint I have considered the comments you have made when corresponding both with the FSA and my office.

I can and do appreciate why you are unhappy with the assistance and guidance the FSA provided to your firm. In this case although it is clear that your firm, Murphy Advice, was looking to split into two entities and that the new firm, Insurance Firm would assume responsibility for the traditional 'general insurance' activities previously conducted by Advice Firm. It does not necessarily follow however that Advice Firm no-longer required permissions to arrange insurance contracts.

I can understand your comments that you feel that the FSA should have informed you to review whether Advice Firm continued to require permissions to arrange insurance contracts, nevertheless, the situation is not that certain. The permissions that Advice Firm held (and continues to hold) indicate that it provides what could best be described as a holistic financial advice service. Given this range of services it would, in my opinion, be unclear from the correspondence that you exchanged with the FSA, prior to Insurance Firm becoming authorised, as to whether the specific future services Advice Firm offered would require it to retain permission to arrange insurance contracts that were secondary to the principal advice it had offered.

This is, in my opinion, particularly relevant when consideration is given to the 'activities' or contracts which fall into the category of "non-investment insurance contracts". In this case, it is clear that Advice Firm offered advice on mortgages and in doing so it would appear that protection policies may be required. Likewise, whilst it is accepted that traditional 'general insurance' contracts fall into this category, it should also be noted that certain types of long-term care arrangements are also categorised as non-investment insurance contracts and any firm wishing to offer advice on this type of arrangement probably needs these permissions.

As such, whilst it was clear that the Advice Firm was no longer intending to arrange traditional 'general insurance' contracts for its customers, given the range of services which Advice Firm offered, it would be unclear to the FSA whether or not the firm needed to retain permissions to allow it to undertake all of its existing activities or whether it should look to review all of its existing permissions. Clearly, although the FSA may be able to offer advice or assistance to a regulated firm when asked specifically to do so, ultimately this can only be a matter for the firm (and/or its professional advisers) to decide.

The FSA has, in its decision letter, set out in some detail, that it holds the view that a firm needs to have an understanding of the permissions it needs to hold to allow it to conduct regulated activity. I would add that I concur with the FSA's view that it is for the firm to decide on what permissions it needs and that the FSA should not offer any general advice (other than to answer specific questions). Clearly the FSA should not place itself in a position where, as it may not appreciate fully the exact nature of a firm's business, it allows itself to offer incorrect advice on what permissions a firm does or does not need as incorrect advice could have severe consequences for the operation of the firm.

Although I do have sympathy with the position you found yourself in, particularly as you are a small firm and this is your first experience of making an application for the variation of your permissions, I do have to be mindful that only the *firm* (my emphasis) can decide upon what regulated activities it wishes to undertake. As such, it can *only be a matter for the firm* (my emphasis) to decide upon which permissions it may or may not need (although ultimately the FSA will have to decide upon whether the application for these permissions will be approved).

I appreciate that you feel that, given the comments you made and answers you provided to the FSA in your letter of 7th June 2010, the FSA should have been aware that Advice Firm no longer needed permission to arrange insurance contracts and the FSA should therefore have either removed the 'unwanted' permissions or at least recommended that you should review Advice Firm's permissions. Although I can understand your views on this, unfortunately, as I have set out above, the arrangement of traditional 'general insurance' contracts *is not the only activity* (my emphasis) which falls under these permissions. As I have set out above, given the range of activities Advice Firm appears to undertake, it was quite likely that it would continue to provide services to consumers which fall within this category and as such only the firm could confirm what activities it would undertake. With this in mind the FSA, correctly in my opinion, does not provide advice to firms on what permissions are required or whether a firm should review its permissions. Given that this is the FSA's general policy I do not believe that the FSA has acted in away that has disadvantaged you.

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, whilst there appear to be genuine reasons why you did not appreciate why your permissions needed to be reviewed, the fact remains that a formal request to remove your firm's permissions to arrange insurance contracts was not made. Whilst it is unfortunate that your firm has incurred additional charges for permissions which you say were no longer needed, as I have set out above it is the firm's responsibility to be aware of its activities, what permissions it requires and, if appropriate, to review those it holds.

I appreciate that you run a small firm but the FSA cannot be expected to understand all of the activities your firm undertakes, particularly given the wide range of services you provided and indeed continue to provide. Ultimately, whilst you say that you believe the FSA should have advised you to review your permissions, clearly as it was your decision to 'split' your firm and to apply for authorisation for a second firm you would have been aware that permissions were required for the new firm and should therefore equally have been aware that your existing firm had similar permissions. As I have set out above, only you (or your professional adviser) would be aware of whether you still required these permissions.

I would also add that, as the FSA set out in its decision letter of 20th December 2011, on its "Small Business" pages the FSA provides a section with specifically deals with the issue of varying a firm's permissions (http://www.fsa.gov.uk/smallfirms/regulatory_reporting/ona_permissions/applying_for_vop.shtml). I can understand that, as a small firm, you may not have fully considered all of the FSA's rules and, as a consequence, did not review the matter fully. However, I have said above, ultimately a firm cannot (and should not) expect the FSA to understand fully the extent of its business activities and therefore rely upon the FSA to inform it of what permissions it requires or no-longer requires. I would add that the FSA expects all regulated firms, irrespective of their size, to have reviewed and have an understanding of its rules.

I have noted the comments you made when responding to my Preliminary Decision. Although I can and do sympathise with the position you find yourself in, ultimately, as I have set out above, a firm (or its professional adviser) is expected to appreciate what permissions it requires.


I appreciate that you say that, since you your permissions for arranging and dealing in non-investment insurance contracts were removed, you have not had any problems arranging (or placing) income protection and private medical business with product providers. Although I have noted your comments, I understand decisions on whether your firm can arrange the business is a matter for your firm to decide upon. Whilst you may have been able to 'place' business with a specific provider this does not, on its own, indicate that your firm has the requisite or sufficient permissions to arrange this type of business.

The FSA does not place any requirements upon product providers to confirm that a firm has the appropriate permissions to arrange business, although it is accepted that some product providers may review a firm's permissions before entering into an agency agreement with a regulated firm. As your firm is authorised by the FSA, it is unclear whether the product providers concerned made any enquiries to ascertain whether your firm holds the appropriate permissions to arrange the type of business you wish to 'place'. I believe that many product providers simply adopt the view that as the firm is authorised by the FSA, the firm will appreciate the limitations on what business it can and cannot arrange and will not undertake any checks before it 'places' the business.

I would also add that where an existing agency agreement exists with the Advice Firm, I believe that it is unlikely that the product provider would undertake any further checks on whether the firm holds the requisite permissions. I would further add for the avoidance of doubt, it is the FSA and *not the Financial Ombudsman Service, the Financial Services Compensation Scheme, the firm or the product provider* (my emphasis) who ultimately decides upon whether a firm holds the appropriate permissions for the business it is arranging. If there is any doubt on whether a firm holds the appropriate and/or sufficient permissions clarification should be sought from the FSA.

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 has acted in a manner which has resulted in its actions being the sole cause (my emphasis) of the additional costs you say your firm incurred. I am therefore unable to alter the decision previously made by the FSA. I appreciate that you may be disappointed with my findings, but hope that you will understand why I have arrived at this decision. As a consequence of this, I am unable to make any recommendation to the FSA that it should either alter or review the decision which it set out in its decision letter of 20th December 2011.

Yours sincerely,



Sir Anthony Holland
Complaints Commissioner