



4th September 2012

Dear Complainant,

**Your complaint against the Financial Services Authority
Our Ref: GE-L01422**

I refer to your letter to my office of 27th April 2012 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 or around 28th March 2010.
- Although this was before the date when FSA fees for the 2011/12 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 say that, in April 2011, you spoke to Ms X, a member of the FSA's Contact Centre Team Team, who confirmed that the form had been received and your authorisation was in the process of being cancelled.
- You add that on 16th May 2011, when completing your GABRIEL return, you again notified the FSA that you had submitted a Cancellation Form and I believe that this generated correspondence with the FSA which resulted in your submitting a further (duplicate) cancellation form.

- You add that despite the assurances you say you were given by Ms X in April 2011, on 11th July 2011 the FSA subsequently sent your firm an invoice for £1,126.83 in respect of its Regulatory Fees and Levies (for the 2011/12 accounting year). When you challenged this you were told that, despite the assurances you were given by Ms X, as the FSA had not received the Cancellation Form you say you submitted in March 2011, as the only cancellation form the FSA held was the one which was submitted on 9th June 2011 (which you claim was a duplicate), the invoice you received for the FSA's 2011/12 Fees and Levies remains payable.

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 to 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 2011/12 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 2011. 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.

I appreciate that you say that you contacted the FSA in April 2011 to confirm that it had received your Cancellation Form and was processing it with an effective date of 31st March 2011, and received confirmation that the form had been received and was being processed. Although I do not dispute your recollections of events that you contacted the FSA and received assurances from Ms X, I have to base my decision upon the *documentary evidence* (my emphasis) available to me.

In this case, when considering your complaint, the FSA's Complaints Team asked its Contact Centre to provide a summary of all of the contact it had had with your firm. Unfortunately, this indicates that there was no contact between the FSA and you between 9th November 2010 and 15th May 2011 when there were exchanges of emails. I would add here for the sake of completeness that the FSA's Contact Centre operators are required to record electronically all interactions they have with consumers and members of the industry.

In this instance there is clearly a difference between your recollections of events which took place following the 'submission' of the Cancellation Form in March 2011 and those shown in the FSA's records. This is unfortunate. However, as I have set out above, when considering complaints of this nature, I have to base my decision on the documentary evidence presented to me. In this case whilst you say that you had two telephone conversations with Ms X and a further conversation with Ms Y, in April and May 2011, this view is not supported by the documentary evidence presented to me by the FSA (which has conducted a search under both your own name and that of your firm).

I also appreciate that you say that your firm ceased conducting regulated activity in March 2011 (as you say it ceased trading on 31st March 2011). However, this of little consequence as, unless a firm can demonstrate with documentary evidence that the FSA received the appropriate form prior to the deadline (and that this was correctly completed), the fee will remain payable.

In this case although you say that you submitted the Cancellation Form on or around 28th March 2011, *this does not appear to have been received by the FSA* (my emphasis). During my investigation I asked my Senior Investigator to contact you and 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. When responding to my Senior Investigator, although you supplied a copy of the form which you say you sent to the FSA on or around 28th March 2011, you confirmed that the form was sent by normal post and that you do not hold a copy of a 'Signed For' receipt confirming that the FSA had actually received the completed form.

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 2011/12 fee.

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, you have made additional comments about, what you describe as "*an indicator of FSA incompetence and lack of liaison/co-ordination between [Departments]*" in relation to the submission of your firm's GABRIEL returns. Whilst you have made these comments, I believe that these issues have been resolved and are also unconnected to the cancellation of your firm's Part IV Permissions.

Conclusion

Although you feel that the FSA should issue you with an apology, cancel the invoice it sent to you on 11th July 2011 and provide you with an *ex-gratia* payment 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 appear to do so is not the fault of the FSA. I would also add that, although you say that you sent this there is no documentary evidence to indicate that the FSA actually received it. I would say that I find this somewhat surprising that you do not appear to have submitted such an important document by recorded delivery particularly as this was sent to the FSA so close to the date when the following year's fees would become due and given that you appear to have sent correspondence to the FSA's Complaint's Team by 'recorded delivery' (which would result in a 'Signed For' receipt being produced).

Additionally, given that you state that you had to cease conducting regulated activity due to your personal circumstances, it would appear that you felt for some time that you would need to cancel your firm's Part IV Permissions from 31st March 2011. As such, it is unclear why you did not send the Cancellation Form to the FSA until three calendar days before the end of the accounting period. Given that you may have been considering whether you wished to remain authorised for some time and therefore have intended to no longer conduct regulated activity after 31st March 2011, submitting the Cancellation Form on or around 28th March 2011, clearly resulted in a risk that the form would not be received by the 'cut off' date. Given your intentions it is unclear to me why you did not submit the form earlier with a future cancellation date of 31st March 2011 (which is permitted under the FSA's rules). Had you done this it may have been possible for you to have clearly 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 2011/12 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 Form) are clear and straightforward to find in the FSA handbook. I accept that you say you complied with these (by submitting a Cancellation Form), however, from the documentation presented to me it is clear that this has not been established. Your firm therefore continued to be authorised at close of business on 31st March 2011 when the FSA established which firms were required to pay its fees and calculated the level of fees each firm should pay.

I would also add that whilst you say you contacted the FSA in April 2011 and claim that you received assurances from the FSA that the form had been received I have been unable to find any documentary evidence to corroborate this claim. I would also add here for the sake of completeness given that the form had to be received by the FSA no later than 31st March 2011, it is unclear why you did not submit the form by recorded delivery and/or contact the FSA before 31st March 2011 to ensure that the Cancellation Form had been received. Contacting the FSA before the 'cut off' date and obtaining clarification would have allowed you time to submit a further form in the event (as transpired) that the form was not actually received by the FSA.

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 2011/12 accounting year. As such, you should contact the FSA and make arrangements for the payment of the outstanding fees

Yours sincerely,



Sir Anthony Holland
Complaints Commissioner

