

Our ref: L0837

19th January 2009

Dear Complainant

Thank you for your letter of 2nd June 2008, which along with your letter 3rd February 2008 details the elements of your complaint against the FSA. This letter sets out my final decision on the complaints you have raised.

At this stage I think it would be worth explaining my role and powers. Under the Complaints Scheme (Complaints against the FSA-known as COAF) my role is as an independent reviewer of the FSA's handling of complaints. I have no power to enforce any decision or action upon the FSA. My power is limited to setting out my position on your 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>

The Complaint

You are complaining about the periodic fee charged to your firm. This fee is based upon the number of approved persons registered at the firm at the yearly cut off date (31st December). In March 2006 your approved person status was cancelled due to health reasons. However as this was after the 31st December deadline your firm had its periodic fee for that year calculated based on you being an active approved person. You feel that this is unfair.

The FSA has explained the situation in its decision letter dated 8th April 2008 and has stated;

“I certainly appreciate that neither you nor your former employer could have known before 31st December 2005 that you would need to retire early, and I can sympathise with the fact that, because of this, you were unable to earn any money to pay towards the periodic fee. Having said that, it is important for the FSA to take a consistent approach with regard to the collection of fees; to do otherwise would be inequitable to other firms in the industry. The fact remains that you were registered as holding a controlled function at (the Firm) on 31st December 2005 and although this was through no fault of yours or your firm's, neither was it a fault of the FSA.”

My Position

Firstly let me state that I am sorry that this process has taken so long. There have been delays on all sides, mainly due to the collection and consideration of evidence and opinion thereon. I am satisfied that all the evidence required to come to a conclusion has now been collected and reviewed by the parties as necessary.

In relation to the complaint I note that in neither of your letters to me have you tried to argue that the FSA is wrong in its application of the rules. You apparently view this decision as

unfair but you do not provide any persuasive arguments to support this position. It appears to me that you feel this decision is unfair simply because it does not go in your favour.

The FSA is correct in its assertion that it is important that it must take a consistent approach to its collection of fees. By applying a set annual deadline which it promulgates through a variety of media to the industry it enables firms to know on what number of approved persons its fee will be calculated and when. Many firms use this to their advantage when reducing numbers by doing so before the end of the calendar year and if recruiting to do so after the deadline. It is unfortunate that you had to cease being an approved person at the time that you did but this does not make the rule in place or its application unfair, just unfortunate from the individual perspective of your position.

In your letter of 3rd February 2008 you state that if the fees have to be paid then you would reimburse your firm “as this situation is not in any way of its making”. Clearly this issue should have been addressed by your firm in your employment contract with it and consequently it is not a matter for either the FSA or this office to comment upon.

Further to these arguments I asked the FSA to look again into this matter and to provide me with its reasons for its conclusions having re-appraised the situation. In its response to me it has made the following general comments:

- 1) Each case is looked into on a case by case basis.
- 2) The FSA would only consider waiving such fees when it concerns a sole trader or a family partnership. This is because it would expect all other company types to have cover arrangements (that is, probably by the use of insurance) to run the business in such an eventuality.
- 3) The FSA delineates between long term chronic illnesses/ terminal illnesses and all other forms of illness. The FSA’s reason for the delineation is that other illnesses do not necessarily force individuals into having to stop working indefinitely.

In relation to your specific complaint it has applied the above points and also has pointed out that your ill health was never mentioned “as part of the original fees dispute during 2006. This only came to light recently.”

Having reappraised your case the FSA has taken the view that it “would not recommend the fee be waived on the basis of his medical condition.”

In light of this view and the arguments I have already put to you I do not concur with your arguments and hence I do not uphold your complaint.

Yours sincerely

Sir Anthony Holland
Complaints Commissioner