

5<sup>th</sup> December 2008

Dear Complainant

Thank you for your emailed letter of 19<sup>th</sup> September 2008, which 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

Your complaint about the FSA relates to a telephone call made by a prospective client of yours to the FSA about your firm's status with regard to holding client money. As a result of this conversation you claim that the prospective client cancelled its policy with your firm and consequently you have suffered a loss. You have stated that "I believe that my firm has been extremely badly treated and indeed maligned by the FSA".

The FSA position

The FSA, in its decision letter to you of the 17<sup>th</sup> September 2008 has rejected your complaint on the basis that it has no record of the telephone conversation in question and that what has been claimed to be said by the FSA would have been against its procedures.

My Position

The key evidence in this case is that your potential client after the telephone conversation with the FSA, and also after you had sent your invoice to the client, stated in an email to you dated 26<sup>th</sup> June 2008;

"After receiving confirmation of the final amount required (the invoice) to pay for the policy, as a matter of course we checked your registration with the FSA and your registration flagged that your company was *unable to hold client money* (my emphasis). We then contacted the FSA directly *who told us not send you any money directly* (my emphasis) as this was in breach of registration and that they would be launching an investigation".

Clearly from the two sections of this email that I have emphasised it is apparent that the prospective client was concerned about sending money to you directly notwithstanding the fact that the invoice clearly instructs the recipient that all cheques must be made payable to the brokerage that holds client money for you. This concern about sending you money directly demonstrates that at the time the prospective client contacted the FSA that client was under the impression that that was what was required. Clearly that was wrong as the invoice demonstrates.

This email is the only record of the conversation with the FSA from the time. I think it is telling as it demonstrates the belief of the prospective client regarding your position regarding client money and that this would have heavily influenced the tone of the conversation. Based on the submission made in the email that the prospective client had already checked the FSA register it is easy to imagine that the conversation was about whether the prospective client should send a cheque payable to your firm directly and was told not to do so. Clearly this is correct advice from the FSA call handler.

In your complaint you have stated that;

“We have lost this business because whoever they (the prospective client) spoke to at the FSA did not look into our status sufficiently well to make an informed comment”.

However based on my construction of the email above as to the mindset of the prospective client whilst contacting the FSA I must wonder why would the FSA would have felt it needed to look into this matter any further? The FSA call handler appears to have been asked whether the prospective client should make a cheque payable to your firm. The handler had then presumably looked at the register and had seen that you were not registered to hold client money and had correctly stated that no such money should be sent to you directly. I see no fault in this.

With regard to the “would be launching an investigation” comment I also see no fault either. The FSA call handler had received *prima facie* evidence that your firm was breaking FSA rules by handling client money. Although this is clearly not true, the call handler would have had to make a decision as to whether to pass this information on to areas of the FSA that would look into the matter. It appears from the prospective client’s email that the FSA call handler indicated to the client that that was the intention of the call handler.

My preliminary position

From the evidence available to me I have seen no evidence of FSA wrongdoing in this matter. It seems clear that the prospective client erroneously believed that you expected to hold client money, contrary to the evidence of the invoice. It is clear that the client emailed you to explain why it was not going forward with the policy. I have seen no evidence of correspondence between you and the prospective client after this time. Nor have I seen any evidence of any further direct involvement of the FSA in the matter. I can only conclude that either you decided not to try to rectify this misunderstanding or that you did try to rectify the misunderstanding with the prospective client but the client decided not to take out the

policy. Either way you have not demonstrated any fault on the part of the FSA and, as a consequence, my final view is that I cannot uphold your complaint.

Yours sincerely

Sir Anthony Holland  
Complaints Commissioner