



20th January 2009

Dear Complainant,

**Complaint against the Financial Services Authority (FSA)
Reference Number: GE-L0944**

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. 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>

Your Complaint

From your email of 1st December 2008, I understand your complaint relates to the following:

During late 2007 six of your 11 Approved Persons transferred from Firm A to a new independent firm called Firm B.

Your colleague, Mr X (the firm's compliance director) contacted the FSA on three occasions to establish how the 'transfer' of these advisers would work and you claim that he was told that the FSA's fees are based on the information contained in Section J of a RMAR return. You are unhappy that, despite your December 2007 RMAR return reflecting the fact that Firm A only had five Approved persons, Firm A's 2008/09 fees were calculated on the firm having 11 Approved Persons.

You are looking for the FSA to reduce your firm's 2008/2009 fees, which you believe it has calculated incorrectly, to reflect the correct number of Approved Persons (five) your firm had registered with it on 31st December 2007.

My Position

As part of my investigation into your concerns I have obtained and reviewed the FSA's investigation file. I have considered the arguments you have made when corresponding with both the FSA and my office. I have also referred to the FSA's handbook which sets out the requirements it imposes on individuals and firms who wish to be authorised.

From your correspondence with both the FSA and my office it is clear that, in mid to late 2007, Firm A split and became two separate firms, one operating in Glasgow (retaining the name Firm A) and the other operating in Edinburgh (operating under the name of Firm B). The FSA's register also shows that Firm B became authorised on 19th October 2007 and that the six Approved Persons who were 'transferring' to it also receiving approval to work for it on 19th October 2007.

From your correspondence I understand that, once the six Approved Persons received approval under Firm B, they no longer worked for Firm A. This is an important point as, in your correspondence with the FSA, you accept that when the six Approved Persons left Firm A in November 2007, you failed to submit a Notice of Ceasing to Perform Controlled Function Form (or 'Form C'), either electronically or in paper format, for each of them at that time.

You appear not to have done this even though the individuals concerned told you that you were required to do so. Whilst you state that the operator at the FSA's Firms Contact Centre (FCC) told you that there was not a requirement to submit a 'Form C' before the 31st December 2007, I would draw your attention to SUP 10.13.6R of the FSA's handbook which states:

SUP 10.13.6R Ceasing to perform a controlled function

A firm must submit to the FSA a completed Form C no later than seven business days after an approved person ceases to perform a controlled function

From this it is clear that when an Approved Person leaves, it is the responsibility of a firm to ensure the FSA receives all of the appropriate documentation (i.e. the 'Form C'). The FSA's rules state that it is the responsibility of the existing firm to submit a 'Form C' within seven business days of an approved person ceasing to undertake a controlled function (SUP 10.13.6R). In this case it is clear that you did not submit the appropriate documentation in a timely manner (i.e. within the FSA's timescale of seven days). In fact the FSA has confirmed to me that it did not receive the Form Cs until 19th February 2008, even though they were completed on 1st December 2007 and the individuals concerned ceased working for Firm A on 29th November 2007, almost three months earlier.

I appreciate that your colleague contacted the FCC to establish how the fees for your company would be calculated in view of the 'split' and that you allege he was given information which was incorrect. It is unfortunate that it has not been possible to obtain a recording of the calls your colleague made to the FCC (although I fully accept that the calls were made), but this does not on its own mean that your complaint should be upheld. I hold this view for a number of reasons.

The FSA's handbook (specifically SUP 10.13.6R) states a 'Form C' should be submitted within seven days (my emphasis) of an individual ceasing to hold a controlled function with a firm. In this case it is clear that your firm did not adhere to this rule. Had you submitted the form within the required time scale the FSA's register would have shown that, on 31st December 2007, Firm A only had five Approved Persons.

Similarly, the FSA's handbook (Fees 4 Annex 1) clearly explains how a firm's fees will be calculated (and the calculation date where this is appropriate). I accept that this document shows that some firms' fees (for example those in fee blocks A18 and A19) are based on the information contained on a RMAR return, however it also shows that firms in fee blocks A12, A13 and A14 (such as yours) are clearly based upon the number of Approved Persons (CF30 – customer advisers) registered against a firm on the FSA's register on 31st December.

Likewise, although it has not been possible to obtain a recording of the calls made to the FCC, the FSA has passed me written notes made by the operatives your colleague spoke to. From these it is clear that your firm was informed on previous occasions (23rd August 2006 and again on 5th December 2006) that its fees are based on the number of Approved Persons recorded on the FSA's register on 31st December. As the way in which the FSA calculated your firm's fees had not changed, I believe that your firm would have been aware of how its fees were calculated.

Similarly, I have also considered your claims, in your email of 1st December 2008, that your colleague was given incorrect information during his three calls he with the FCC in December 2007. Specifically, you state that he was told:

“... that form C's (sic) had to be completed but that there was no requirement to return them before 31st December. After conversation with the colleagues who had left to form their own firm we decided to call again as they told us it would be a requirement to do these forms before 31st December. We again called to be told it was not a requirement. Again our colleagues insisted that it was required, so we for the third time called the FSA again, to be told once more that it was not required by 31st December.”

I can appreciate why you hold the view that the information allegedly given to your colleague by the FCC was incorrect. However, in my opinion, the information your colleague was given is technically correct as there is no specific FSA requirement or rule that says a firm must (my emphasis) return Form Cs by 31st December each year. The FSA's rules on the completion and submission of Form Cs are, as I have explained above, clear and contained in SUP 10.13.6R and require firms to submit these within seven days of the individuals ceasing to conduct the controlled function for the firm.

Conclusion

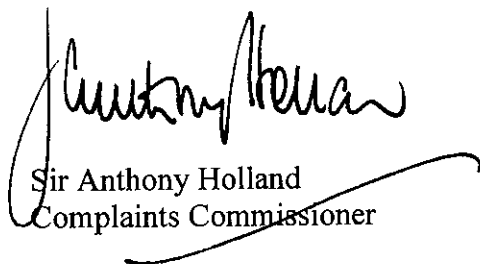
Although you feel the FSA has acted in an unfair manner by insisting that you pay the full fee you have not provided any evidence to demonstrate any wrong doing by the FSA. In fact your arguments contain an admission that you have failed to adhere to the FSA's rules and it is this failure to adhere to the FSA's rule which has led to the problems you are now complaining about.

I have considered your comments that, in your opinion, you feel the additional fee being imposed by the FSA for your error of £4,000 is “ludicrous” and that this does not fit with the FSA's policy of treating customers fairly, particularly as you feel this fee is now being paid twice (by both Firm A and Firm B). In considering your comments, as I have explained above, I have had to keep in mind your admission that you did not comply with the FSA's rules and, had you done so, the failure which has led to this issue would not have occurred.

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 rules on regulatory reporting (including the submission of a 'Form C') are clear and straightforward to find in the FSA handbook. The FSA has followed the procedures on this matter. Similarly, the FSA has clearly publicised how fees for firms in fee blocks A12, A13 and A14 are calculated and that these fees for these firms are based on the number of Approved Persons recorded against it on the FSA's register on 31st December. As I have explained above, whilst I appreciate that one of your colleagues contacted the FCC, had you followed the correct procedures regarding the cancellation of the six Approved Persons who 'transferred' to Firm B, your firm would not have incurred the additional fees you are now complaining about.

From these papers there is no evidence which demonstrates any breach of the rules by the FSA. Therefore your complaint cannot be upheld and as a consequence the fee remains payable in full.

Yours sincerely,



Sir Anthony Holland
Complaints Commissioner