

Our ref: L0973

20th March 2009

Dear Complainant

Thank you for your letter dated 23rd January 2009, which details the elements of your complaint against the Financial Services Authority (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

In your letter you have stated that you feel that;

“they (the FSA) are acting in a grossly unfair manner for such a small and innocent transgression in submitting fees in a slightly less than timely manner”.

You have gone on to state that you feel that “such a high penalty or indeed any penalty” given the “very difficult trading times” is surely unwarranted.

The FSA issued you with its decision with regard to the late fee penalty it imposed upon you in its decision letter of 13th January 2009. In this decision letter it set out a helpful timeline which details the course of events surrounding this matter. I quote it in full in the following table;

14 July 2008	Firm invoiced.
22 July 2008	Firm states application was sent to Premium Credit Limited (“PCL”).
13 August 2008	Payment due date.
2 September 2008	Reminder letter issued by FSA.
9 September 2008	Call from the Firm to FSA's Fees Department (“Fees”) querying whether the Firm could pay late using PCL. Fees gave advice that the Firm could pay late but because the invoice is overdue there could be a penalty. Advice was provided to pay as soon as possible and the penalty would be waived. The Firm offered part payment however this was turned down by Fees. The Firm advised Fees that they would consider what to do and call back.
11 September 2008	Application dated 22 July 2008 received by PCL.
15 September 2008	Email from Firm to Fees advising credit application is now set up after originally being misplaced or not received.

16 September 2008 15:16	Email from Fees to Firm reinforcing call of 9 September – by electing to pay using PCL the FSA will have to wait a further two weeks for payment which will result in the penalty being levied. Fees advised that if the Firm can obtain a letter from PCL admitting fault the FSA will be willing to waive penalty.
16 September 2008 15:45	Call from Firm to FSA’s Firm Contact Centre (“FCC”): The Firm stated they had received a letter from Fees advising fees were overdue. An application had been sent to PCL for these fees however this had not been received or processed. A copy had now been sent and verified with PCL. The payment would be processed and be received by FSA on 26 September 2008. The Firm wanted to confirm there would be no fine. FCC stated they did not think another invoice would be issued between 16 and 26 September and advice was given to email Fees with the information as above for their guidance. The Firm queried the cut-off date for £250.00 late payment charge. FCC confirmed they did not know the date and advised the Firm to email Fees to make them aware of situation. Firm undertook to contact Fees.
16 September 2008 16:55	Email from Firm to Fees advising the Firm had “spoken to your fees department directly and they advised there would be no penalty if I confirmed the facts by email”.
17 September 2008	Email from Fees to Firm advising there was no record of speaking directly with Fees (as it was FCC the Firm spoke with on 16 September). The email reinforced the conversation of 9 September and email of 16 September that if the Firm pays late using PCL there will be a penalty.
18 September 2008	Penalty letter issued by FSA
1 October 2008	Payment received from PCL

I have emphasised the two dates in bold in order to demonstrate the lateness of the payment (exactly 7 weeks). The total fee due on the 13th August 2008 was £1,132.73. Due to late payment the FSA added a £250 administration fee in accordance with the FSA handbook rule FEES 2.2.1R which I now quote;

If a person does not pay the total amount of a periodic fee (including fees relating to transaction reports to the FSA using the FSA's Transaction Reporting System (see SUP 17)) , FOS levy or case fee, or share of the FSCS levy, before the end of the date on which it is due, under the relevant provision in FEES 4, 5 or 6, that person must pay an additional amount as follows:

- (1) if the fee was not paid in full before the end of the due date, an administrative fee of £250; plus*
- (2) interest on any unpaid part of the fee at the rate of 5% per annum above the Bank of England's repo rate from time to time in force, accruing on a daily basis from the date on which the amount concerned became due.*

I note that you have not tried to state the FSA have applied the rule incorrectly nor have you contested the timeline of events as quoted above. In fact in your letter to me you have

admitted that the annual fee was paid in a “less than timely manner”. You have stated that you feel that the application of this fee is “grossly unfair” but have not explained why it is so. I can only assume that you see the decision as unfair as it does not go in your favour.

On the facts as stated I see no reason why you should escape paying the fee for the following reasons;

- 1) By becoming an authorised and regulated body you agree to be bound by the rules as set out in the FSA handbook. Clearly this places an onus upon you to know the relevant rules. This particular fee rule (FEES 2.2.1R) is clear. Consequently if you do not ensure that your method has been received by the FSA on time you take on the risks related to not complying with the rule.
- 2) The FSA have stated to you that if you could provide a letter from the firm that provides the finance for your payment of your fees admitting that it was at fault for the lateness of your payment, that it would consider waiving the administration fee. You have not been able to provide such a letter.
- 3) You have alleged that there was conflicting evidence from the FSA with regard to the payment of the fee. You received written confirmation that the fee should be paid immediately. You state that in a subsequent telephone conversation with the FSA that you were told that no administration fee would be charged if the finance agreement was put in place contemporaneously. There is no recording of this call. It is my view that if this call took place as stated you should have still have taken further action. This is due to the overwhelming nature of a) the rules in the handbook and the onus on you to know them; and b) you had already received contemporaneous written clarification that you needed to pay the annual fee immediately to avoid the administration fee. Bearing these two factors in mind I consider that had the telephone call been as you stated you should have sought written confirmation of this assertion that you state the FSA made in the telephone conversation in question.
- 4) The payment of fees to the FSA has been ongoing for some years now. Clearly the FSA policy on late payment has been widely published and is well known by all those liable to those rules.

So it is my decision that the administration fee should be paid.

Yours sincerely

Sir Anthony Holland
Complaints Commissioner