

20<sup>th</sup> July 2005

Dear Complainant

Final Decision

Thank you for your letter of 23<sup>rd</sup> April 2005, which details the elements of your complaint against the FSA.

- 1) In your complaint letter you have stated that you wish to complain about 'misadministration' on behalf of the FSA with regard to the authorisation of your stockbroker. Your complaint is that the authorisation of your stockbroker took approximately 3 months and hence you were kept out of the market and consequently made a financial loss of between £10,000 and £15,000. You request that I use my position as Complaints Commissioner to explain to the FSA how the authorisation process should have been handled.
- 2) The FSA have sent substantive responses to you on the 3<sup>rd</sup> March, 13<sup>th</sup> April and 23<sup>rd</sup> May. I shall address each of these in turn.

FSA Letter of 3<sup>rd</sup> March 2005.

- 3) The letter of the 3<sup>rd</sup> March 2005 splits your complaint into two parts. Part a) regarding the length of time taken to authorise your stockbroker and part b) your treatment by the FSA. Part a) was not investigated in that letter but that decision has been revisited in the letter of the 23<sup>rd</sup> May. I shall comment on this decision when commenting on the letter of the 23<sup>rd</sup> May. In regard to part b) the FSA state it will investigate the matter and write to you with its decision once the investigation is complete.

FSA letter of 13<sup>th</sup> April 2005.

- 4) This letter refers to the investigation of part b) namely 'you feel that you have been shabbily treated by the FSA as it has proved to be very unhelpful in the handling of your enquiries'. The FSA have not upheld your complaint on the basis that your correspondences with the FSA were responded to in a timely manner.
- 5) Having reviewed the numerous correspondences between you and various members of the FSA I consider the FSA stance reasonable on this point. Consequently I do not uphold this particular element of your complaint.

FSA letter of the 23<sup>rd</sup> May 2005

- 6) Further to correspondence between the FSA and I, the FSA decided that the first element of your complaint, namely the authorisation process of your stockbroker, should be investigated. In short it has not upheld your complaint on the basis of the FSA completing this process within the statutory deadline set out in S61 (3) of the Financial Services and Markets Act 2000 (FSMA).
- 7) FSMA expressly sets out a time limit for the FSA to decide whether and how an individual should be authorised. As the FSA has explained in its decision letter this deadline was met. Furthermore the FSA have explained in detail the progress of this authorisation application. In your submissions you have illustrated that you believe this process should be very quick. However FSMA clearly demands that a high standard of investigation is needed to ensure that the FSA can deem someone to be fit and proper to be authorised. The letter of the 23<sup>rd</sup> May 2005 illustrates that there were some causes of concern to the FSA and consequently it used more in robust investigative techniques in this particular case and this lead to the process being elongated. Having reviewed the documentation it is my opinion that this process was progressed in a reasonable manner and in a reasonable timescale considering the individual case concerned. As a consequence of this I do not uphold this element of your complaint.

#### Conclusion of the substantial issues in your complaint

- 8) For the reasons explained above I do not uphold either element of your complaint. The FSA dealt with your correspondence in a timely fashion and did not treat you shabbily as you suggest. Further the authorisation process was also performed in a timely manner.

#### The FSA handling of your complaint

- 9) There is an area within the FSA treatment of your complaint which has caused concern. In the letter of the 3<sup>rd</sup> March 2005 the FSA decided not to investigate an element of your complaint, and this was confirmed in the FSA letter to you dated 13<sup>th</sup> April. At that time the FSA declined to investigate the first element of your complaint because, in essence, section 348 FSMA precluded it from providing information to you about the authorisation process of your stockbroker. The FSA is correct in that S348 does prevent it from providing such information to a third party without consent. However this does not prevent it from carrying out an investigation into the alleged misconduct. S348 only impinges on the process when the investigation is complete and the decision is being relayed to the complainant. After my intervention, the FSA agreed to conduct a stage one investigation and in the letter of the 23<sup>rd</sup> May to you explained that the complaint had initially been excluded on the basis of COAF 1.2.1, namely because the FSA did not believe that had been affected directly by its dealings with your stockbroker, and that this had been explained to you on 3<sup>rd</sup> March. I find the letter you received on 3<sup>rd</sup> March is silent

with regard to COAF 1.2.1 and that the FSA should have taken greater care in ensuring you received a full and clear explanation of why it chose not to investigate that element of the complaint.

- 10) Given the confusion which may have arisen for you as a result of the different messages in the letters of 3<sup>rd</sup> March and 23<sup>rd</sup> May as to the reason for the FSA not investigating your complaint, I recommend that the FSA consider having a representative from its senior management write to you to apologise.

#### Summary

- 11) I am satisfied that the FSA handled the authorisation of your stockbroker and your correspondences with it satisfactorily and consequently do not uphold your complaint. However I have illustrated a concern about how your complaint has been handled. I have recommended that the FSA consider having one of its senior management team write to you on this matter.

Yours sincerely

Sir Anthony Holland  
Complaints Commissioner