Our ref: L0785

19th February 2008

Dear Complainant

Thank you for your email of 16th January 2008 addressed to my senior investigator, 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 upon 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 contacted the FSA on the 13th June 2007 seeking guidance on regulatory reporting in relation to your current employment role. Within this letter you ask some specific questions in regard to calculations used for the regulatory reporting of your current employer.

The FSA responded on the 27th June 2007 by email. It is of note, that in this email, the FSA states;

"As a general rule the FSA does not give personal advice on legislation and we (sic) do not supply any feedback in respect of issues that we consider".

Within the documentation I have seen there was further contact in November 2007. From contemporaneous records of this contact, including telephone conversations, the FSA has stated that the main issue that concerns you is whether the FSA considers any of its regulations *De minimis*. In response to this the FSA has noted that the FSA would not condone the breaching of FSA regulations.

Having reviewed various sources my understanding of the term has been proved correct, namely that it means "of minimum importance/trifling" or "so small or minimal in difference that it does not matter or the law does not take it into consideration" However It is also clear that from the root of the terminology there follows an inevitable question, namely, how much can be considered *De minimis*? I shall return to this point later.

In later internal correspondence I note that one of the FSA staff to whom you have had telephone conversations noted on the 27th November 2007 that;

"I say this after several phone conversations with the Complainant, where I am trying to be helpful and answer his questions, but this only appears to complicate the issue, because

his expectations both in time and response does not match what we can offer. I specifically point out that he cannot rely on FSA to assist him to resolve his dispute but this is what he appears to be seeking".

On the 14th December 2007 you complained to the Complaint Team within the FSA Company Secretariat. In that email you have stated;

"Having jeopardised my job and career in making disclosures I feel it extremely unfair that my situation has not been taken seriously by the FSA, in that, six months into my contact with them I am still struggling to get a response from the FSA".

On the 24th December 2007 the FSA Complaints Team provided you with its decision on the matter. This decision letter included no actual discussion of the issues you have raised throughout your contact with the FSA since June 2007. Rather it commented that those issues had been responded to and that your email of the 7th November 2007 would be responded to by the 28th December 2007.

You have since brought your complaint to my attention (email 16th January 2008) and in that email you have concluded your comments with the following question;

"Whilst, I appreciate that the FSA cannot communicate details of their (sic) actions or investigations if any, all I am seeking is for definitive guidance to my queries.

Do you think it is fair that the FSA use (sic) section 348 as a reason not to respond to my queries especially as I had first approached the supervisory team for guidance, they (sic) were the ones who asked me to put my queries in writing to the whistle-blowing team".

Lastly I understand that you have spoken to a member of my staff about this matter on a number of occasions, most recently on the 22nd January 2008. I have reviewed the records of these telephone conversations.

My Position

Firstly I would like to point out that the FSA decision letter of the 24th December 2007 does little to improve your views of how the FSA has treated your complaint. It is my view that such decision letters at least should include some review of how aspects of your case have been handled by the FSA with comment on the arguments put forward by you as the complainant and the FSA respectively followed by a conclusion. It is my view that this decision letter is somewhat short of what I would expect.

Having reviewed the evidence it is clear that you wish "definitive guidance" on specific matters in relation to your employment as a regulatory manager. It is also clear that from the start of this correspondence it has been explained to you by the FSA in its email of the 27th June 2007 that you will not receive such definitive guidance. It is clear from the correspondence you have sent to the FSA that you find the position of the FSA on this matter unfair. It is also clear that the FSA has noted in November 2007 that it could not give you what you were seeking and that you were unhappy with this. I note from my colleague's note regarding the last conversation he had with you that he also found this to be the case.

Unfortunately the FSA is not in a position to give specific guidance in answer to questions relating to how firms go about their regulatory reporting. The onus is clearly on the firm to go about it in the manner it deems fit. One of the many reasons for the FSA taking this position is that it must use its resources efficiently and effectively. For example if the FSA were to give you some guidance a construction of the term *De minimis* it would be impossible for that not to be followed by further discussion on what constituted *De minimis* and what did not. This could then lead to protracted debate and the FSA getting further and further drawn into a debate about matters which it had little or none of the relevant information in its possession. Clearly trying to provide definitive guidance without such key information would lead to problems for both the FSA and yourself. Consequently the FSA has throughout its existence made it clear that the onus is on the firm (or the individual) to decide how it goes about its regulatory reporting.

As a consequence I cannot uphold your complaint. I am sorry that you feel that your health and employment have been put at risk by this episode with the FSA. However the FSA position has been clear throughout and consequently it cannot be held responsible.

Yours sincerely

Sir Anthony Holland
Complaints Commissioner