

13th April 2007

Dear Complainant,

**Complaint against the Financial Services Authority
Reference Number L0652**

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>.

From your correspondence with my office, I understand your complaint relates to the following points:

1. After submitting an application to become a Directly Authorised firm, Firm A, you became an appointed representative (AR) of Firm B and contacted the FSA to cancel the application. Despite this, the firm's application for authorisation was approved.
2. You also believe that FSA staff failed to inform you correctly how to cancel your application. You are seeking reimbursement of any fees paid and for any outstanding fees to be waived.

In your correspondence with the FSA it is clear, that with the introduction of mortgage regulation from 31st October 2004, it was your intention to become a regulated mortgage adviser. To this end, you applied to the FSA for authorisation to conduct mortgage business as a sole trader under the name of Firm A (your firm).

The FSA's file shows that you submitted an application for authorisation to it on 13th April 2004. Its file also shows that, although you had applied for authorisation to act as a sole trader, you were considering pursuing alternative avenues such as becoming an AR of another authorised firm. On 23rd May 2004 the FSA wrote to you confirming that it was minded to grant you authorisation based on the information you provided on your application form.

Subsequent to the FSA's letter, on 27th May 2004, you contacted it by email, and asked:

"For reference purposes only, if I did not want to proceed do I still need to pay the fee?"

From this, it is clear you were considering alternative employment options, as well as becoming directly authorised by the FSA. However, the inclusion of the phrase "for reference purposes only", seems to indicate to me that you were simply considering alternatives and were not stating to the FSA categorically that you no longer wished to proceed with your request for authorisation.

You received a response to your email, on 28th May 2004, from Ms Z, in which she confirmed that, as you had submitted an application for authorisation, the initial fee would still be due. Ms Z explained that the fee of £1,100 was the costs of assessing your application for authorisation and not the ongoing cost of becoming regulated.

On 7th July 2004 you paid the case assessment fee of £1,100 to the FSA. When paying the case assessment fee, the FSA has been unable to find any written instruction from you to say that you no longer wished to proceed with your application for direct authorisation.

Following the payment of the case assessment fee, you tell me that, on 12th July 2004, you telephoned the FSA and spoke to Mr X. During this telephone conversation you informed him that you no longer wished to be authorised. Unfortunately, the FSA has been unable to locate any record of this telephone call. In the absence of evidence from you as to such a telephone call (such as any internal logging system you may maintain or a telephone bill) I have no evidence of such a call. As such I cannot comment, with any degree of certainty, on what was or was not discussed.

However, although you tell me you verbally informed the FSA that you no longer wished for your firm to be authorised on 12th July 2004, on 12th October 2004 you received an email from the FSA. This email contained a copy of a letter confirming that it had accepted your application and was granting you authorisation to conduct regulated activity (the arrangement of mortgages) with effect from 31st October 2004.

The letter also stated that:

"If you want to withdraw your application, for example, because you have decided to become an appointed representative of an authorised firm, you must notify us at the earliest opportunity as you cannot be both authorised and exempt at the date of regulation"

From the letter it is clear that, although you may have verbally indicated to the FSA that you no longer wished to be authorised, your firm was actually being granted authorisation to conduct regulated activity. Additionally, the letter clearly explained the procedures you should follow if you no longer wished to be authorised.

Having viewed the FSA's letter of 12th October 2004, I am of the view that it clearly explained what you should do if you no longer wished to be authorised. It is also clear to me that you did not follow these instructions. The fact that you did not act on the FSA's written instructions is not the fault of the FSA.

Likewise, in your letter to me, you accept that you did not follow the correct procedures for arranging the cancellation of your firm's Part IV permissions (which allowed it to conduct regulated activity) in October 2004. This again is not the fault of the FSA.

Whilst you tell me FSA staff did not correctly tell you how to cancel your firm's Part IV permissions I have been unable to find any evidence to support this claim. The FSA's letter, which was emailed to you on 12th October 2004, clearly states that if you no longer want to be authorised you need to notify it at the earliest opportunity.

Although you say you spoke to the FSA before your firm was granted its Part IV permissions, and stated that you no longer wished to become authorised, there is no record of you contacting it after these were granted. Additionally, as your letter makes no reference to you contacting it after receiving its email of 12th October 2004, I can only assume that you chose not to contact it and therefore did request the cancellation of your firm's Part IV permissions.

The FSA's handbook clearly explains how a firm becomes authorised and also how a firm cancels its authorisation. As part of the authorisation process, you agree to be bound by the FSA's rules and procedures. This includes accepting the FSA's procedures on how you become unauthorised. As the FSA's complaint handler has explained, in his letter to you of 22nd August 2006, the procedures for cancelling a request for authorisation can be found in the FSA Handbook under AUTH 3.9.32G. The rule states:

“An applicant may withdraw its application at anytime before the application is granted or refused by given written notice to the FSA. The written notice should be signed by the person with appropriate authority to bind the applicant”.

I am sorry that you feel members of the FSA's staff did not provide you with the correct information about how to cancel your application for authorisation. However, although you say you contacted the FSA by telephone and requested the cancellation of your application, it was clear from the FSA's subsequent communications to you that your application was not cancelled and had been processed.

Additionally, as previously explained, the correct procedures for cancelling an application of authorisation can be found in the Handbook. As these were not followed the FSA processed your application and authorised your firm by giving it Part IV permissions. Without a formal request being made by you, in writing, in accordance with the requirements of AUTH 3.9.32G from the Handbook the FSA was unable to cancel your firm's request for authorisation.

I am sorry, but having considered the points you have raised, together with the information contained in the FSA's file, I am unable to find sufficient evidence to show that the FSA gave you incorrect information, or breached any of the powers given to it under the Financial Services and Markets Act 2000. I am therefore unable to uphold your complaint.

The FSA collects annual fees from firms which hold its authorisation at any time during the 12 month period between 1st April and 31st March. As your firm's became authorised on 31st October 2004 and its authorisation had not been cancelled by 1st April 2005 (it being

cancelled on 14th October 2005), FSA fees were due for the period 1st April 2005 to 31st March 2006.

I appreciate that your firm was not trading during the period of time it was authorised, as you were an AR of another firm during this period. However, as your firm held the FSA's authorisation during this period, its annual fees remain payable in full.

From the FSA's file I believe that you have outstanding fees, for the period 1st April 2005 to 31st March 2006, of £891.24. Although the FSA suspended recovery action whilst your complaint was investigated, as the complaint investigation process is now complete, should these fees have not already have been paid, you will be required to make arrangements with the FSA to pay the outstanding amount.

Yours sincerely,

Sir Anthony Holland
Complaints Commissioner