

CONFIDENTIAL

FINAL REPORT AND FINDINGS

1. Introduction

1.1 This is the report of an investigation by the Complaints Commissioner of a complaint made by Mr X against the Financial Services Authority (FSA). The relevant procedures and rules are set out in the publication entitled “Complaints against the FSA” (COAF) and which procedures and rules were made pursuant to paragraph 7 of Schedule 1 of the Financial Services and Markets Act 2000. The complaint falls to be considered under the Main Scheme.

1.2 The Commissioner has analysed the complaint as being that:

- a) The FSA did not provide sufficient information to enable an informed decision to be made concerning registration by over emphasising the need to register and understating the advantages of the tied agent route, and by not being able to advise what the annual subscription would be:
- b) The FSA withdrew the annual subscription from the firm’s bank without first advising the firm of the amount involved; and
- c) When the firm cancelled registration the FSA refused to refund its fee either in whole or in part.

2. Background

2.3 Mr X is a director of Company Y (the firm), a small motor dealership with two directors. The firm understood from media articles that it might be advisable to become authorised by the FSA in order to provide ‘gap’ insurance as an ancillary to its main business of car sales. The firm contacted the FSA helpline in order to seek advice over the necessity to become authorised early in 2004. Mr X has informed the Commissioner that, in his view, the FSA over-emphasised the need to become authorised and downplayed the alternative option of becoming a tied agent. In addition he has stated that the FSA was not able to inform him of the annual subscription.

2.4 Mr X has further explained that because of the lack of information, the decision was made to seek authorisation because the FSA is a “Government organisation” and the firm wanted to ensure that it was doing the right thing. He has described it as a ‘belt and braces’ approach.

- 2.5 On 13 March 2004 the firm applied for authorisation, paying the application fee and completing a direct debit. A letter was received from the FSA on 6 November 2004 granting authorisation from 14 January 2005, the date at which the FSA took over responsibility for the regulation of general insurance.
- 2.6 Mr X has stated that nothing further was heard from the FSA until the periodic fee for 2005 was deducted from the firm's bank account. Mr X has explained that this came as a surprise to the company and he believed that the FSA should have notified the firm before taking the money from the bank account.
- 2.7 Mr X wrote a letter of complaint on 29 September 2005 asking for a refund of the periodic fee. An application to cancel the firm's permissions was submitted to the FSA on 3 October with a request that the periodic fee should be refunded. Cancellation of the firm's permissions was granted by the FSA on 21 October 2005.
- 2.8 An email was sent by Mr X to the FSA on 24 October 2005 which stated that *'my original letter to you and subsequent cancellation application were both official complaints'*.
- 2.9 Between 21 October 2005 and 29 November 2005 a number of telephone calls took place with the FSA during which a refund of the fee was requested. Mr X has told the Commissioner that during his telephone calls when he asked for a refund of the fee he had said that *"we had no previous notification of the money coming out of the account."* In his view the obvious response would have been *"we sent you an invoice"* but this did not happen, the only response had been to refer him to the website.
- 2.10 On 16 November 2005 during a call to the FSA Mr X said that he had made an official complaint requesting a refund of his fee and wanted to know what had happened. This was followed on 29 November 2005 by a telephone conversation in which Mr X asked *"what is happening to my complaint?"* At this point and as a result of this conversation Mr X was asked to send an email to the FSA detailing his complaint. The email was received on 5 December 2005 and was then entered into the Complaints Scheme. The FSA dealt with the complaint in two elements. A substantive response to the complaint was issued by the FSA on 2 March 2006.
- a) The first element dealt with the allegation that the need to be authorised was oversold by the FSA and that the fee charged was not disclosed at the time. This element was not upheld.
 - b) The second element dealt with the allegation that Mr X was treated poorly by the FSA staff with whom he had been in contact and that he had been subject to a game of 'pass the parcel'. This element was upheld and an apology was issued.
- 2.11 On 10 August 2006 Mr X complained to the Complaints Commissioner. The complaint is detailed at 1.2 above.

3. Findings:

- 3.1 In relation to the first element of the complaint that *“the FSA did not provide sufficient information to enable an informed decision to be made concerning registration by over emphasising the need to register and understating the advantages of the tied agent route and by not being able to advise what the annual subscription would be”*, the Commissioner finds as follows:
- 3.2 Regulation of general insurance products became the responsibility of the FSA on 14 January 2005. Firms were encouraged to register as early as possible and a discount was offered for those firms seeking early registration. Mr X has explained to the Commissioner that having read articles in trade papers concerning authorisation, he telephoned the FSA helpline seeking advice on whether or not he should be authorised. Mr X has told the Commissioner that in his view the need to be authorised was over emphasised and other options were not adequately covered. The Commissioner has noted that this occurred in February 2004 and was at a time when general insurance regulation was not yet the responsibility of the FSA. The FSA has informed the Commissioner that the Firms Contact Centre (FCC) does not have any records of the telephone conversations that Mr X claimed to have made at that time. It is possible that the calls were made to the High Street Firms Division (HSFD). It is regrettable that no records exist of the calls made to HSFD and the division itself is no longer in existence. Under these circumstances it is not possible to arrive at a judgement as to what occurred during those calls. However it is the responsibility of the firm to take professional advice as to whether or not it should become authorised. It is a decision that should be made based on commercial considerations. It is not a matter in which the FSA can offer advice.
- 3.3 The Commissioner has noted that when the FSA responded to the complaint made by Mr X the decision letter stated that *“we have collected the records of your communications with the FSA and we have not found any enquiry submitted by you in relation to the fees payable by your firm.”* The records collected all refer to communications made during 2005 and it would appear that Mr X was in fact referring to the earlier calls made during 2004. No records exist for that period but the Commissioner has no reason to doubt that the telephone conversations did take place. However, because of the manner in which the fees are calculated, even assuming that the telephone conversations did take place, it would not have been possible for the FSA to have provided details of the periodic fees at that time.
- 3.4 Periodic fees are calculated on a firm’s annual net income from regulated activities based on the information held by the FSA at the 31 December each year. There is a cut off date for cancellation of 31 March each year and invoices are sent out from June to September. The FSA rules state that permissions held on 1 April each year will be subject to the full annual fee. This information was contained in the FSA Handbook under SUP 20.2.3G and has now become FEES 4.2.9G. Any firm applying for authorisation has to

accept that it will be bound by these rules. It is the view of the Commissioner that the rules are clear on this subject. In addition, there is now, and the Commissioner is assured that there was during 2004, information on the home page of the FSA website under 'Fees' that would explain the way in which the periodic fees are calculated and would direct the enquirer to other literature such as the Handbook and consultation papers.

3.5 The FSA deals with a number of cases where disputes arise concerning the payment of fees and, in order to be fair to the majority of firms that have conformed to the rules, it has decided that exceptions will not generally be allowed.

3.6 During the investigation of this complaint, the FSA provided the Commissioner with a copy of the application for authorisation form completed by the firm in March 2004. The application form contains the following wording:

“We will use the firm’s direct debit details for the collection of future fees that will start from June 2005. The firm will also qualify for a further discount on the firm’s periodic fees by paying by direct debit. Further details of the periodic fees will be available on our website in early 2005. Firms will be told in advance of any sums to be collected from their bank account.”

3.7 The Commissioner is of the view, notwithstanding that the information may not have been provided during the early telephone calls that the complainant had been provided with sufficient information on the application form to enable him to find the details regarding the periodic fees. The Commissioner has sympathy with a small business of this nature which would not have previously been involved in FSA regulation and was not the type of business to which FSA regulation needed to apply. However, the rules are clear and any firm applying for regulation must abide by them. The Commissioner finds therefore that this element of the complaint is not made out.

3.8 In relation to the second element of the complaint that ***“the FSA withdrew the annual subscription from the firm’s bank without first advising the firm of the amount involved”*** the Commissioner finds as follows:

3.9 The FSA has informed the Commissioner that invoices are sent out to firms holding valid Part IV permission between June and September each year. In total some 25,000 invoices are generated by an automatic system with a built in warning so that any error in the issuing of the invoice should be picked up. This system shows that the relevant invoice was produced. In addition the FSA has provided the Commissioner with a copy of the invoice relating to the firm concerned. It was produced on 27 June 2005 with a payment date of the 27 July 2005, one month later. A note was included on the invoice explaining that the amount would be collected by Direct Debit on, or immediately after, the payment date. The FSA has explained to the Commissioner that the invoice would have been posted on either 24 or 27 June 2005 and the amount was collected by direct debit on 27 July 2005.

- 3.10 The invoice contained all the relevant information that the firm would have needed in respect of the periodic fees. The Commissioner is unable to find any evidence that the invoice was not sent to the firm. The firm has told the Commissioner that it had experienced problems with the delivery of its post. Under the circumstances, the Commissioner believes it is unlikely that the invoice was not sent to the firm. It is regrettable that it was not received by the firm but this cannot be the fault of the FSA. All reasonable steps were taken by the FSA to ensure that the firm was advised of the amount due and of the payment date.
- 3.11 Mr X has explained to the Commissioner that he now accepts that the invoice might have been sent to the firm but in his view when he contacted the FSA to complain that the fees had been deducted from the firm's bank account without first advising the firm of the amount involved the logical response would have been to advise him that an invoice had been sent. Mr X has said that this did happen he was merely referred to the website. He has further explained to the Commissioner that he would not have felt the need to pursue his complaint to the same extent had it been explained to him that an invoice had been issued. The Commissioner has no reason not to accept Mr X's version of events and finds it regrettable that his complaint was not dealt with in a more sympathetic and informative manner. However it was not the fault of the FSA that the invoice did not reach the firm and the Commissioner therefore finds that this element of the complaint is not made out.
- 3.12 In relation to the third element of the complaint that ***“when the firm cancelled registration the FSA refused to refund its fees either in whole or in part”*** the Commissioner finds as follows:
- 3.13 The process used to determine the fees is set out in 3.4 above. It is necessary for the FSA to impose a deadline for cancellation of authorisation in order to allow sufficient time for the calculation and issue of invoices bearing in mind the large number of firms involved and the number of invoices that are issued. In order to be fair to all regulated firms the FSA has adopted a policy of not allowing any changes after that date. Therefore where permissions are held on 1 April the fees for the whole year become due. There was no recorded contact made by the firm with the FSA at all during 2005 until 8 September when a telephone call was made to enquire whether it was necessary to be authorised in order to sell gap insurance.
- 3.14 Mr X has suggested to the Commissioner that in view of the lack of notification the FSA should refund part of the periodic fee. However, the rules are clear that if the permission is held on 1 April the fee for the whole year is payable. When applying to become authorised the firm signed an application form stating that it would abide by the rules. Under the circumstances in the view of the Commissioner the FSA was correct in not refunding either the whole or part of the fee.
- 3.15 In conclusion, it seems likely that had Mr X's telephone calls been dealt with differently and more sympathetically this complaint may not have escalated in the manner in which it did. The Commissioner can understand the frustration

experienced by Mr X specifically in being referred to the website and no mention being made of the fact that an invoice had been sent to the firm and this can only have exacerbated the sense of grievance felt by the firm. It is also regrettable that records of the telephone conversations with the FSA in 2004 do not exist. However, even allowing for the fact that the situation could have been better handled by the FSA, it is still the responsibility of the firm to ensure that they comply with the rules when seeking authorisation from the FSA. Under the circumstances therefore, the Commissioner is unable to uphold this complaint.

4. Recommendations

- 4.1 The Commissioner has not upheld this complaint and therefore has no formal recommendations to make. However, it is clear that matters involving this complainant could have been better handled and the situation might not then have resulted in a complaint being made. It is a matter of concern to the Commissioner that when Mr X did complain his complaint was repeatedly not recognised as a complaint and therefore not dealt with appropriately. However, it has been noted by the Commissioner that an apology has been issued by the FSA for the shortcomings in this area.
- 4.2 The Commissioner would also make the observation that adequate records need to be kept of all telephone contact made with the FSA in order that disputes arising from telephone conversations can be properly addressed.
- 4.3 The Commissioner has decided to publish this report.