

5th March 2007

Dear Complainant

**Complaint against the Financial Services Authority (FSA)
Reference Number: GE-L0702**

I am writing to advise you that I have now completed my investigation into your complaint.

Having considered all of the evidence available to me, I now write to inform you of 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>.

From your email of 20th December 2006, I understand your complaint relates to the following points:

- 1 During November 2005 four of your eight Approved Persons left firm X. However, due to an admitted error on your part the Approved Persons register for firm X was not updated with the FSA to reflect these changes until February 2006. As a consequence of this, your fees for 2006/07 were calculated to include the four advisers who were no longer working for you. You feel that the FSA has acted in a heavy-handed manner as your fees for the year should not include the four individuals who no longer work for firm X.
- 2 You also feel that this by arriving at this decision, the FSA is effectively imposing a penalty of £9,000 (i.e. the increase in your annual fees) on you for making this administration error. You think this is excessive and "does not fit the crime". As a consequence you would like the FSA to reduce your fees for 2006/07 to reflect the changes which were made in February 2006.

In your correspondence with the FSA you accept that when the four Approved Persons left firm X in November 2005, you failed to submit a Notice of Ceasing to Perform Controlled Function Form (or 'Form C'), either electronically or in paper format, for each of the individuals. When an Approved Person leaves, it is the responsibility of a firm to ensure the FSA receives all of the appropriate documentation (i.e. the 'Form C'). The FSA's rules state that it is the responsibility of the existing firm to submit a 'Form C' within seven business days of an approved person ceasing to undertake a controlled function (SUP 10.13.6R).

You also accept that the appropriate documentation was not completed, and the FSA register updated, until February 2006. The Financial Services and Markets Act 2000 clearly indicates that it is the responsibility of a firm's senior management to ensure that they comply with the appropriate rules.

In his letter of 7th December 2006, the FSA complaint handler clearly explains how the FSA's fees for the next year are calculated. He confirms the FSA's fees are based on the individuals who are recorded against the firm on its Approved Persons register as at 31st December. The onus is therefore on the firm to ensure that the FSA's records are correct and kept up to date. In this case, as the FSA's register showed that firm X had eight Approved Persons on 31st December 2005, your 2006/07 fees were correctly calculated based on the information the FSA had.

Although you feel the FSA has acted in an unfair manner by insisting that you pay the full fee you have not provided any evidence to demonstrate any wrong doing by the FSA.

It is of note that the FSA Newsletter (Regulation round-up – Issue 5), sent to all Small Firms on 1st December 2005, included a reminder about annual fees, and the consequences of a firm not ensuring that the FSA's records were accurate, which stated:

“Please note that if you are a fee payer in fee blocks A.12, A.13 or A.14 will use the number of Approved Persons registered in Controlled Functions 21 to 26 as at 31 December 2005 for calculating the periodic fees for 2006/07. Amendments made to the Register after 31 December will not affect tariff data for 2006/07.”

I appreciate that you say you had administration problems in late 2005, which resulted in you not notifying the FSA that four of the eight people showing against your firm on the FSA's Approved Persons register were no longer undertaking controlled functions. However, you have not provided any evidence to show that, following receipt of the Newsletter (and prior to 31st December 2005) you contacted the FSA, and made them aware that because of these problems you had been unable update their records to reflect the changes.

I have also considered your comments that you feel the fee being imposed by the FSA for your error of £9,000 is both excessive and “does not fit the crime”. In considering your comments, I have had to keep in mind your admission that you did not comply with the FSA's rules or act on the warnings issued by the FSA about the consequences of not ensuring their Approved Person's register was correct prior to 31st December 2005.

The onus for compliance with all of the FSA's rules falls clearly upon those who are authorised. This responsibility is accepted as part of the authorisation process by the firm applying for authorisation. The rules on regulatory returns (including the submission of a 'Form C' when an individual ceases to undertake a controlled function of a firm) are clear and straightforward to find in the FSA handbook. The FSA has followed the procedures on this matter.

From these papers there is no evidence which demonstrates any breach of the rules by the FSA. Therefore your complaint cannot be upheld and as a consequence the fee remains payable in full.

Yours sincerely,

Sir Anthony Holland
Complaints Commissioner