

11th April 2007

Dear Complainant

Complaint against the Financial Services Authority (FSA)

Reference Number: GE-L0715

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:

You are unhappy that Firm A (your firm) has been invoiced for five Approved Persons and not four, which has resulted in additional fees in excess of £2,000.00 being charged to the firm.

In your correspondence with the FSA, and my office, you say you accept the FSA bases its calculation for a firm's annual fees on the number of Approved Persons registered against the firm on its Approved Persons Register on 31st December. You also say you accept that, where a firm becomes authorised after 31st December, the FSA base the fees for the firm on the number of Approved Persons recorded against the firm at the time authorisation is given.

From your correspondence with the FSA's complaint handler I believe when you applied for authorisation on 22nd December 2005, you indicated to the FSA that your firm was to have five Approved Persons. You also indicated that, when applying for authorisation, you used the services of a compliance specialist who assisted you with the authorisation process.

From the FSA's file I understand that when you were completing your first Retail Mediation Activity Return (RMAR) in May 2006 you discovered that one of the Approved Persons recorded against your firm, Mr X, was already registered with the FSA against his own firm (Firm B). I also understand when you discussed the completion of your RMAR return with Mr X you discovered that he included the work he undertook for your firm on Firm B's RMAR return.

Subsequently, on 5th June 2006, you discussed this issue with the FSA's firm's Contact Centre. As a result of these discussions it was felt your firm was acting as an introducer, rather than an adviser, for the activities undertaken by Mr X. Additionally, as Mr X was declaring these activities on Firm B's RMAR return, it was recommended a "Notice of Ceasing to Perform Controlled Function Form" (or 'Form C') should be submitted to remove Mr X from your firm on the FSA's Approved Persons Register. Although you did this, in July 2006, you received your 2006/07 FSA fees invoice which was based on your firm having five Approved Persons.

I can appreciate why you were unhappy that, despite submitting the 'Form C' in June 2006, and Mr X being removed from your firm on the FSA's Approved Persons' Register, your 2006/07 fees were based on your firm having five rather than four Approved Persons. However, although you feel the FSA has acted in an unfair manner by insisting that you pay the fee for five Approved Persons, you have not provided any evidence to demonstrate any wrong doing by the FSA.

The FSA complaint handler has explained (and you have accepted) that, when calculating a firm's fees, the FSA base this information on the number of Approved Persons recorded against the firm on 31st December. As an alternative, the FSA's complaint handler has also explained (and again you accepted) that, where a firm is granted authorisation after 31st December (as in the case of your firm), the FSA will base its fees calculation on the number Approved Persons recorded against the firm at the time authorisation is given.

When your firm applied to the FSA for authorisation on 22nd December 2005, you stated that the firm would have five Approved Persons. When the FSA gave your firm authorisation on 6th January 2006, five Approved Persons were also recorded against it on the FSA's Approved Person's Register. As a consequence of this when calculating the fees due from your firm for 2006/07, the FSA correctly based this on the five Approved Persons recorded against it on 6th January 2006 (the date when authorisation was given). Although you subsequently reduced the number of Approved Persons recorded against your firm, this does not alter the fees payable by your firm for the reasons previously explained.

In considering your complaint, I accept that Mr X should not have been recorded as an Approved Person against your firm. However, I have also considered that, when applying for authorisation, you took advice from an independent compliance consultant (rather than the FSA). Accordingly, I must conclude that it was the compliance specialist who will have provided you with specific guidance on the individuals (including Mr X) who needed to be recorded as Approved Persons under your firm as part of the firm's authorisation process.

I appreciate that the additional fee which is payable, around £2,000, is a considerable amount of money to a firm, especially one in its infancy, however from the information I have there is nothing to suggest that the FSA has acted inappropriately, or has breached any of its rules. From both the FSA's file, and your correspondence, I believe that the FSA has correctly calculated your fees based on the number of Approved Persons you indicated you would have on the application form you provided.

The FSA calculate its budget, and therefore the fees payable by all the firms it regulates, from the information held on its Approved Persons' register at 31st December each year. Once the FSA has calculated its budget, and the amount payable by a firm, it is unable to alter the level of fees payable by a firm (or make a refund) unless the firm's circumstances are believed to be exceptional.

Your suggestion of paying a reduced periodic fee for the 2007/08 year, to take account of the over payment you made during the 2006/07, year would amount to a refund of a fee. As, having viewed your complaint, I do not believe that your circumstances are exceptional; I do not believe that this would be appropriate.

I am sorry, but your complaint cannot be upheld and as a consequence the whole fee remains payable in full.

Yours sincerely,

Sir Anthony Holland
Complaints Commissioner