

17th May 2007

Dear Sir or Madam: Complainant,

**Complaint against the Financial Services Authority
Reference Number GE-L0722**

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:

1. You are unhappy with the FSA's requirement for all reporting, particularly the biannual Retail Mediation Activity Report (RMAR) to be submitted electronically.
2. Although you used a friend's computer to submit your first RMAR return, you wrote to the FSA and explained the situation, instructing it to remove the email address from its records and not to use it for correspondence. Despite your letter and a reply from the FSA, the FSA is still sending correspondence to your friend's email address.
3. In your complaint to the FSA, you raised concerns over the attitude of a FSA employee. You do not believe that the FSA Complaint Handler has adequately investigated these concerns.

You run a small part time general insurance brokerage where you only spend about three hours per week. As such you do not have a computer either at home or for your business and are finding it difficult to comply with the FSA's electronic reporting requirements. From your letters to both the FSA and my office, I recognize that you are happy to complete the biannual reports the FSA require, but want to do this manually rather than electronically.

From the file the FSA have passed to me, it is clear that you have been corresponding with it since October 2005 about this issue. Whilst I can understand why you feel it is unfair that all firms have to submit returns electronically, I do not share this view.

As part of the FSA's ongoing consultation with the industry, in September 2003, it issued a consultation paper (CPI98) in which it explained its proposals to introduce a single integrated electronic return (RMAR). It also made it clear that all firms (including the general insurance firms which were to become regulated in 2005) would be expected to provide returns by this method. It also explained there would not be an alternative method where you could submit your returns in a paper based format.

With the FSA regulation of general insurance from January 2005, and the need for firms such as yours to receive FSA authorisation, you applied for this in October 2004. In applying for and being given approval by the FSA you agreed to be bound by the FSA's rules and requirements. The FSA's rules required the electronic submission of returns from 2005. In applying for, and being given, authorisation, you have effectively acceded to submitting electronic returns in that format.

I know that you feel this is an unfair requirement and have raised these concerns with the FSA on numerous occasions. The FSA's file also shows it had previously explained to you why this requirement was introduced in 2005. I do not feel that you are being unfairly treated in this respect in that the FSA needs to have regard both to the cost of regulation as well as ensuring that bureaucracy is minimised. Consequently, having considered the evidence available to me I am unable to uphold this part of your complaint.

The file also shows that, following action by the FSA's Enforcement Team, you submitted your RMAR return for the period 31st October 2005 on 29th May 2006. It also shows that the RMAR return for the period ending 30th April 2006 was submitted on 30th May 2006. I believe both of these returns were submitted electronically using a friend's computer.

Subsequently, on 1st June 2006 you wrote to the FSA stating that, under no circumstances, was it to use this email address for communicating with you. You also instructed it to remove the email address from its records. On 22nd June 2006, the FSA replied to you by letter confirming that it had notified the relevant departments of your instructions.

The FSA sent you a further letter on 4th July 2006 explaining that the FSA's Firms Online (FoL) system (the system through which you submitted your biannual returns) needed to have an email address recorded. This letter also explained why an email address was needed and suggested ways you could obtain your own email address, without you incurring charges or committing to a long term contract, so that your friend's email address could be removed from its records.

As all biannual returns have to be submitted electronically, you had to retain access to the FoL system to be able to submit your biannual returns. With this in mind, in my opinion, the letter does indicate that a recorded email address could not simply be deleted but needed to be replaced. This is confirmed on the first page of the letter as the "Firms Online system requires an email address to be registered for all Firms" and on the second page as "any email address added to Firms Online must be accessible to the firm so that important regulatory information concerning electronic reporting can be received"

Following this letter, on 7th July 2006, you were called by a member of the FSA's Firms Contact Centre. During this telephone call, he reiterated the contents of the FSA's letter of 4th July, and also explained why the FSA needed to have a valid email address. From the notes recorded on the FSA's computer systems he explained the email address was needed so that you were able to access the FoL system (as the email address formed part of your FoL 'logon' and identifier) and also so that the FSA can communicate with you. I also believe that he again asked you to provide it with an alternative email address.

I appreciate that you asked the FSA to delete and remove any record of your friend's email address from their systems. However, before any further communications were sent to your friend's email address, the FSA both wrote to and telephoned you to point out that it was not possible simply to delete the email address. It also emphasised that you needed to supply a replacement email address so the one held on the FoL system (i.e. that of your friend) could be replaced. The correspondence the FSA has sent you also confirms that it explained the reasons why it needed a replacement email address. The fact that you did not provide one is not the fault of the FSA. I am therefore unable to uphold this part of your complaint.

As you have not provided an alternative email address, the FoL system still shows your friend's email address as your electronic contract address. Until you provide the FSA with an alternative email address, its FoL system will continue to show your friend's email address as your contact address (and use this as part of your 'logon' for electronic report submission purposes). The FSA now sends a number of communications to firms electronically rather than in a paper format as it is more cost effective. The FSA is bound to have regard to the cost of regulation. This emailing process is also automated, and draws email addresses from its FoL system; therefore until you provide an alternative email address, it will continue to send emails to your friend's email address.

Additionally, the FSA's records also show that your RMAR return for the reporting period ending 31st October 2006 (which had to be submitted by 12th December 2006) is still outstanding. The FSA temporarily suspended enforcement action in relation to your non-compliance with your online reporting obligations, whilst your complaint was investigated. However, as the complaint investigation process is now complete, should the return not have been submitted, this should be done immediately, as the FSA will lift this suspension and enforcement action could result.

In its response to you about this issue, the FSA has said it is regrettable that you felt the conduct of a member of the FSA's staff was inappropriate and had to complain about them. The FSA have also offered an apology for any concern this call may have caused you.

Whilst you do not feel the FSA complaint handler adequately investigated your concerns, I disagree. The FSA does take complaints of this nature extremely seriously. As part of the investigation into this, the person you spoke to on the telephone was interviewed by his line manager about his conduct and a report provided to the complaint handler. Additionally, another person who overheard the FSA side of the conversation you have complained about was also questioned and a report provided to the complaint handler.

Allegations of this nature are always difficult to investigate as often each of the individual involved in the dispute have different views on what was said and more importantly how it was said. As explained in the FSA's letter of 12th January 2007, the telephone conversation you had with the operator was not recorded.

The FSA's complaint handler has also explained that, without a recording of the conversation, it is extremely difficult for anyone to comment, with any degree of certainty, on how this conversation developed. I share this view.

I accept that something must have developed during the call which led you to complain, but when reviewing the FSA's decision, I have to rely on the evidence which is presented to me. From this, there is no evidence to suggest that you were dealt in with in a manner which was neither courteous nor professional. I am unable therefore to uphold this part of your complaint.

I am sorry, but from the papers presented to me I am unable to find any evidence to show that the FSA has not correctly dealt with your complaint. I am therefore unable to alter the decision previously made by the FSA. I appreciate that you will be disappointed with my findings, but hope that you will understand why I have arrived at this decision.

Yours sincerely,

Sir Anthony Holland
Complaints Commissioner