

1st September 2008

Dear Complainant

Thank you for your email of 7th July 2008, which details the elements of your complaint against the FSA. This letter sets out 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>

The Complaint

On the 28th February 2007 you wrote to the FSA to complain, following a telephone conversation with one of the members of the FSA complaints team. In this complaint you explain how your business (the Business) was transferred to another firm (the Firm) on the 4th May 2006. You state that you had a telephone conversation with the FSA where you claim to have asked to have the Business's authorisation cancelled. You state that the direct debit for your fees was then cancelled by letter which you sent. In November 2006 you received an email from the FSA reminding you about your obligation to complete an RMAR form. You state that then;

“I received an email back stating I needed to complete a cancellation form. As far as I was concerned this was done in April 06!!”

“I rang and spoke to whoever on the phone line 0207 066 5022 and was told they would send a form out to complete even though this was already noted in April 06.”

“Again I just assumed that the FSA had dealt with all the procedures and thought nothing more of it.”

In January 2007 you state that you received two FSA letters and that “I completed both of these”. On the 20th February 2007 you state that a High Court Sheriff arrived at your house and demanded payment of £1876.27 immediately. You paid this amount at that point.

In your complaint to me you have asked how you could complete the RMAR form at the time it was requested as the Business was no longer under your control. You state that you seek full re-imburement of the monies paid and if you do are not fully reimbursed you intend to pursue this issue through the courts.

The FSA position

The FSA have rejected your complaint in letters of 30th April 2007 and 11th July 2008. I have quoted the salient points of its decision;

“13th May 2006 you wrote to the FSA to confirm that your business had been sold. You stated the following; ‘I will be looking to change my permission and will contact you shortly to advise on my course of action as soon as I have decided what to do.’

Clearly, the statement above contradicts your allegation that you cancelled your permission during a telephone call to the FSA in April 06.”

“FSA rules relating to periodic fees state that all firms who wish to cancel their Part IV permission/authorisation to carry on regulated activities must formally apply to the FSA using the appropriate form, to avoid incurring periodic fees for the next year (in this case 2006/07). The deadline for the submission of this form was 31st March 2006. You did not submit a formal application until 28th February 2007.”

“As you failed to submit your return (RMAR), or notify the FSA that you were no longer carrying out regulated activities, the FSA was right in invoicing you £250 for administration fees.”

My position

In becoming authorised you agreed to be bound by the rules of the FSA as set out in the handbook. Clearly if you do not make efforts to be aware of the rules that you are obliged to follow, that is hardly the fault of the FSA.

It is also clear that some of your assertions in your complaints do not correspond to the evidence available. The evidence indicates that after your Business was transferred that you were planning to continue to be authorised in some capacity. Even if this was the case you did not fulfil your obligations to the FSA in a timely manner.

I believe that it is telling that when the FSA emailed you with regard to completing the RMAR form in November 2006, which clearly indicated to you that the FSA considered you to be still authorised, you replied by email (and I quote the entirety of your response);

“I am no longer a member!! Stop emailing me. Thank you.”

This email does not strike me as the response of a person concerned about the possibility that you may have still been authorised and the ramifications of that.

In your complaint you then state;

“I rang and spoke to whoever on the phone line 0207 066 5022 and was told they would send a form out to complete even though this was already noted in April 06.”

“Again I just assumed that the FSA had dealt with all the procedures and thought nothing more of it.”

At this time you had ample opportunity to contact the FSA for clarification of your status. You chose to do nothing even though you expressly admit being told you had to complete a cancellation of permission form. I do not consider this a reasonable course of action to take in the circumstances.

It appears to me that you considered the onus to be completely upon the FSA to chase you and to make you complete the necessary forms and by it not doing so you assumed that you were free of any obligations to the FSA. Clearly this was a position you had taken without recourse to the rules that you are obliged to follow. If you had looked into these rules you would have realised that the opposite was in fact true and that the onus was on you to provide the FSA with the correct documentation correctly completed in a timely fashion. You could have made a short phone call to the FSA to double check the position at any time. You chose not to and by deciding to not take any action you are solely responsible for the consequences of that decision.

Based on the evidence available to me I do not uphold your complaint. It is my view that this complaint has little merit to it, and falls significantly short of the levels of required for me to consider recommending to the FSA a change of its position.

You have stated that in the event of my decision being not to reimburse you with the monies you were obliged to pay that you will pursue this through the legal system. You should be aware that such a course of action is outside the complaints scheme and thus would be at your own cost and risk.

Yours sincerely

Sir Anthony Holland
Complaints Commissioner