



9th May 2008

Dear Complainant

Complaint against the Financial Services Authority
Reference Number: GE-L0811

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 the 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 issues:

1. You allege that the FSA was wrong to invoice and chase the Firm A (the firm), which you, your husband and your parents ran, for fees (amounting to £955.78) after it had cancelled its permissions and notified the FSA of this.
2. You allege that the FSA did not respond to your emails of 16th and 19th October 2007.
3. You allege that the FSA released confidential information about the state of the health of your father (Mr X) to a Y Debt Collection Agency (DCA). You do not feel this was appropriate and was a breach of confidentiality.

My Investigation

- Element 1** You allege that the FSA was wrong to invoice and chase the firm that you, your husband and your parents ran, for fees (amounting to £955.78) after it had cancelled its permissions and notified the FSA of this.

As part of becoming authorised under the FSA you and your firm accepted to be bound by its rules. I note that I have not seen any evidence of you or your firm challenging the effect of the rules prior to the time you became authorised. The FSA's reporting and notification requirements, (including the procedures for cancelling a firm or an individual's registration) are clearly explained in the FSA handbook which sets out the rules, which you have previously agreed to comply with as part of the authorisation process.

The FSA's records show that the firm first became authorised by the FSA on 14th January 2005, the date when general insurance became regulated. When the firm applied for authorisation, the four directors were also granted approved persons status. The FSA's records also show that, although your parents and your husband simply received approval as directors, your authorisation gave you additional responsibilities within the firm.

The FSA's records also show that the firm, and the four directors' approved person status, was cancelled on 25th October 2007. From your correspondence to my office, you tell me that, although the FSA cancelled the firm's authorisation on 25th October 2007, the firm actually ceased trading in June 2005 due partly to Mr X's ill health. I would also add that, although you say the firm ceased trading in June 2005 and that you notified the FSA in writing of this at the time, the FSA is unable to locate any correspondence being received from you around this time. According to the FSA's records, the only contact it had with you in 2005 is dated from February to April which related to routine enquiries. As such, your firm's Part IV permissions, together with the directors' approved person status, were not cancelled until the FSA had had the opportunity to consider the formal applications you sent to it on 29th June 2007.

In considering this matter, I have noted your comments, and also consulted the FSA's handbook which was in place at the time for the FSA's requirements. The correct procedure for cancelling the firms Part IV permissions (which authorised the firm) and the directors' approved person status is clearly explained in the FSA Handbook, under SUP 6.4.5 to SUP 6.4.7 and SUP 10.13.6 to SUP 10.3.11 respectively.

When cancelling the firm's Part IV permissions, the FSA's rules which should have been followed in June 2005 were:

- SUP 6.4.5**
- (1) If a *firm* wishes to cancel its *Part IV permission*, it must complete and submit to the *FSA* the form in SUP 6 Ann 6D D (Cancellation of permission application form).
 - (2) A *firm's* application for cancellation of *Part IV permission* must be:
 - (a) given to a member of, or addressed for the attention of, the Cancellations Team at the *FSA*; and
 - (b) delivered to the *FSA* by one of the methods in SUP 15.7.5 R (Form and method of notification).
 - (3) [deleted]

- (4) Until the application has been determined, a *firm* which submits an application for cancellation of *Part IV permission* must inform the *FSA* of any significant change to the information given in the application immediately it becomes aware of the change.

SUP 6.4.6

- (1) In addition to applying for cancellation of *Part IV permission* in accordance with SUP 6.4.5 D, a *firm* may discuss prospective cancellations with its usual supervisory contact at the *FSA*. Alternatively a *firm* can contact the Firms Contact Centre on 0845 606 9966.
- (2) To contact the Cancellations Team:
 - (a) write to: Cancellations Team, The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London, E14 5HS; or
 - (b) email cancellation.team@fsa.gov.uk
- (3) If a *firm* which has applied for cancellation decides to remain authorised it should inform the *FSA* immediately using one of the methods in SUP 6.4.6 G (2).

SUP 6.4.7

When an application is received, the *FSA* will send the *firm* a written acknowledgement. The *firm* will be required to provide information which, in the opinion of the *FSA*, is necessary for it to determine whether to grant or refuse the application for cancellation of *Part IV permission*. The Cancellations Team will work with the *firm's* usual supervisory contact at the *FSA* during this process

Similarly, when cancelling the directors' approved person status, the rules which should have been followed in June 2005 were:

SUP 10.13.6

A *firm* must submit to the *FSA* a completed Form C no later than seven *business days* after an *approved person* ceases to perform a *controlled function*.

SUP 10.13.7

- (1) A *firm* must notify the *FSA* as soon as practicable after it becomes aware, or has information which reasonably suggests, that it will submit a qualified Form C in respect of an *approved person*
- (2) Form C is qualified if the information it contains:
 - (a) relates to the fact that the *firm* has dismissed, or suspended, the *approved person* from its employment; or
 - (b) relates to the resignation by the *approved person* while under investigation by the *firm*, the *FSA* or any other *regulatory body*; or

- (c) otherwise reasonably suggests that it may affect the FSA's assessment of the *approved person's* fitness and propriety.

SUP 10.13.8 Notification under SUP 10.13.7 R may be made by telephone, fax or email and should be made, where possible, within one *business day* of the *firm* becoming aware of the information. If the *firm* does not submit Form C, it should inform the FSA in due course of the reason. This could be done using Form D, if appropriate.

SUP 10.13.9 A *firm* is responsible for notifying the FSA if any *approved person* has ceased to perform a *controlled function* under an arrangement entered into by its *appointed representative* or former *appointed representative*

SUP 10.13.10 A *firm* can submit Form C or Form E to the FSA in advance of the cessation date. When a *person* ceases the arrangement under which he performs a *controlled function*, he will automatically cease to be an *approved person* in relation to that *controlled function*. A *person* can only be an *approved person* in relation to a specific *controlled function*. Therefore, a *person* is not an *approved person* during any period between ceasing to perform one *controlled function* (when he is performing no other *controlled function*) and being *approved* in respect of another *controlled function*.

From your letter to my office, it is clear that, whilst you may have written to the FSA in June 2005 informing it that you no longer wished to be authorised, had you consulted the FSA handbook (SUP 6.4.5) you would have been aware that there was a specific procedure to be followed. It is also clear to me that you did not follow the correct procedure required by the FSA, and that had you consulted the handbook, you would have been aware of this.

It is also clear that you did not receive a written acknowledgement from the FSA, confirming that it was considering your requesting the cancellation of the firm's Part IV permissions. Had you consulted the handbook you would have been aware that under SUP 6.4.7 (shown above), "when an application is received, the FSA **will** (my emphasis) send the *firm* a written acknowledgement". The fact that you did not receive an acknowledgement should, in my opinion, have alerted you that the letter (or form) you sent may not have been received. In my opinion, having not heard from the FSA you should have contacted it to establish whether your request for cancellation had been received. If you had done this, you would have been aware that the firm, although no longer trading, was still authorised by the FSA and, as such, was still accruing and remaining liable for its fees.

I would also add that it is the firm's responsibility to ensure that the FSA actually receives documentation of this nature (and any other reports the FSA require). As such, for this part of your complaint to be upheld, you would need to produce evidence to show that, although the FSA received your letter (e.g. by way of a read receipt for an email or a copy of a signature acknowledging receipt for a recorded delivery letter), it did not act upon it.

As I have stated earlier, in my opinion, had you reviewed the rule book you would have been aware that, upon receipt of an application to cancel a firm's Part IV permissions, you would have received a written acknowledgement from it. As you clearly did not receive this, you should have been alerted to the fact that the FSA had probably not received your letter and therefore your firm was still authorised by the FSA (and therefore still liable for its fees). I am sorry, but in light of this I am unable to uphold this element of your complaint. As a consequence of this, the outstanding fees, which you tell me amount to £955.78, remain due.

Element 2 You allege that the FSA did not respond to your emails of 16th and 19th October 2007.

This element of your complaint relates to the emails you sent to the FSA at its request, in October 2007, after you became aware that, although the firm ceased trading in June 2005, the FSA was looking to recover £955.78 from the previous partners in respect of outstanding fees.

Although you have asked me to review this issue, I note from the FSA's letter to you of 3rd January 2008, that it has upheld this element of your complaint. It reached this decision as, although its normal policy is not to correspond with 'debtors' once it has instructed a debt collection agency to act on its behalf, in this case, as it had asked you to provide it with further details by email, it accepts that it should have acknowledged receipt of your emails. As the FSA has already apologised to you for this, I do not believe that anything would be gained by me undertaking a further investigation into this element of your complaint.

Element 3 You allege that the FSA released confidential information about the state of the health of your father to the DCA. You do not feel this was appropriate and was a breach of confidentiality.

In considering this element of your complaint, I have reviewed the correspondence which you sent to the FSA in 2007, together with the correspondence the FSA exchanged with the DCA. I have also considered the legal arrangement under which the firm was created. As the firm was a partnership, the partners are jointly and severally liable for any liabilities which occur. This means that either an individual partner or all of the partners as a collective can be deemed responsible for any liabilities the firm may have. This is important when considering how the FSA, through the DCA, has pursued your parents for the outstanding fees.

Although the firm ceased trading in June 2005, as I have commented earlier, it is clear that the FSA was unaware of this. Similarly, the FSA was also unaware that all of the partners had moved from the Location M area to the Location N area. As FSA fees were outstanding, and it had not received any response to its letters (sent addresses in the Location M area), it instructed a tracing and recovery agent (the DCA) to act on its behalf.

When instructing the DCA, the FSA, correctly in my opinion, provided details of all of the partners (your parents, your husband and you). The file indicates that, as the DCA had located two of the firm's partners, your parents, it contacted them in an attempt to recover the outstanding fees. It is unclear whether the DCA had been successful in tracing you.

Following the DCA's correspondence with your parents, you telephoned and later emailed the FSA and provided a summary of the events which had taken place. You also informed it that, the firm ceased to trade due to the health of your father, that your father was still suffering from ill health and that you had previously requested that all future correspondence should be sent to you. Although you were a partner in the firm, in my opinion, your emails of both 16th and 19th October 2007 simply suggest that you are asking the FSA (and ultimately the DCA) to contact you as their daughter (or representative), rather than as a previous director of the firm.

As the matter had been passed to the DCA to obtain payment of the outstanding fees, the FSA's policy is not to enter into correspondence with a firm (or the partners of a firm). As such, as you had indicated that your father was suffering from ill health, to allow it to consider whether it should continue to pursue him for the debt, the FSA asked the DCA to obtain evidence to support your claims about your father's health.

I can appreciate why you are unhappy that the FSA informed the DCA that you father was suffering from ill health. However, from the evidence presented to me, I believe that the FSA provided these details so that the DCA could obtain further details about your father's health in order that it could decide whether it, through the DCA, should continue to pursue your parents for the outstanding fees. In my opinion, as the FSA had a valid reason for releasing information to the DCA, there is no evidence to show that the FSA has acted inappropriately.

Whilst, the FSA instructed the DCA to contact you about your father's health, it is not clear to me whether the FSA's case officers appreciated that you were also a director of the firm (and therefore jointly and severally liable for the outstanding fees) rather than just the daughter of a debtor. In my opinion, had the case officers fully reviewed the file, it is possible that they may have become aware that the DCA could correspond with and, if necessary, pursue you for the outstanding fees instead of your parents.

I must emphasise that, whilst I have make this comment, I do not believe that the FSA has acted incorrectly when instructing the DCA to pursue the partners of Firm A for the fees (currently totalling £955.78) which remain outstanding. I am therefore unable to uphold this element of your complaint.

Conclusion

I am sorry, but from the papers presented to me I am unable to find any evidence to show that the FSA either acted incorrectly when pursuing this matter or that it incorrectly 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.

I would also point out that, as consequence of my decision the outstanding fees, which currently total £955.78, are now payable in full and, if you have not already done so, the partners of Firm A should contact either the FSA or the DCA to arrange payment.

Recommendation

Although I am unable to uphold your complaint, or conclude that the FSA has acted inappropriately in this matter, it is clear that the matter is causing your parents some concern. I have considerable sympathy for them in all the circumstances of this matter. With this in mind, and as you and your husband were also partners in the firm, I will make one recommendation to the FSA if payment of the outstanding fees is not forthcoming. As I have mentioned earlier, whilst the firm has ceased trading, the partners in the firm are jointly and severally responsible for any future liabilities which occur. As you have asked that the FSA should not contact (or pursue) your parents, and as you are in possession of copies of the previous correspondence (exchanged between the DCA and your parents), I will recommend that the FSA (and ultimately the DCA) should now pursue you (rather than your parents) for the outstanding fees.

Yours sincerely,



Sir Anthony Holland
Complaints Commissioner