

30<sup>th</sup> January 2007

Dear Complainant

**Complaint against the Financial Services Authority (FSA)**  
**Reference Number: GE-L0697**

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 letter of 7<sup>th</sup> December 2006, I understand your complaint relates to the following points:

1. You have experienced problems with the FSA's Firms Online system.
2. You submitted a Notice of Ceasing to Perform Controlled Function Form ('Form C') to have an adviser (Mr X) removed electronically through Firms Online in November 2005 but this was not received by the FSA.
3. A further hard copy of the 'Form C' was passed to a FSA team during a visit to your offices but this was not processed by the FSA.
4. As the 'Form C' was not processed by the FSA in November 2005, and the FSA's records showed that Mr X was still registered with your company, you were asked to pay the approved person's annual subscription. You feel this is inappropriate as Mr X was re-registered with a new firm in late 2005.

You claim you experienced problems with the Firms Online system in November 2005; however you have not provided details of the problems you experienced. Likewise, although you say you submitted a 'Form C' electronically in November 2005, you have not provided any details of the date when you believe this form was submitted and more importantly received by the FSA.

Although the FSA accept that there were problems with its Firms Online system during the latter part of 2005, it has confirmed that it did not affect all business submissions it received. It also confirms it put systems in place to monitor the firms which were using the system and identify those firms which experienced problems with their submissions. Its records do not indicate that your firm made a submission at this time.

When an online submission is made, the firm will receive an electronic acknowledgment, containing a submission reference number. This confirms that the FSA has received the submission and allows you to track the submission should you have any problems at a later date. When the FSA wrote to you on 30<sup>th</sup> November 2006, it said that it would be willing to review its findings if you were able to provide details of the submission number. As you have been unable to provide details of the submission number, there is nothing to prove that the FSA received any submission from you.

During the FSA's investigation into your complaint, it checked its Firms Online system to see what forms you had created and what submissions you made. This identified that you did not submit a 'Form C' during November 2005; although it does show that a draft form (which was not submitted) was created in September 2006. Whilst you say you submitted a 'Form C' electronically in November 2005 I have been unable to find any evidence to show this was the case.

When arriving at my decision, I have also considered your comments that the FSA were aware Mr X was no longer an approved person of your firm, having been approved with another firm. In addressing this view I should first point out that FSA rules do not prevent an individual from undertaking a controlled function with two or more firms at the same time.

As an individual needs to be approved before undertaking a controlled function, the FSA often receive an Application to Perform Controlled Functions under the Approved Persons Regime form ('Form A') before a 'Form C' is submitted. The submission of a 'Form A' therefore does not indicate that an individual is no longer undertaking a controlled function with another firm. The responsibility is on 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).

The Financial Services and Markets Act clearly indicates that it is the responsibility of a firm's senior management to ensure that they comply with the appropriate rules. It is therefore the responsibility of a firm to ensure the FSA receive all of the appropriate documentation (i.e. the 'Form C'). It is not the FSA's responsibility to remind firms to submit the appropriate documentation in a timely manner. Whilst the FSA did receive a 'Form A', from the firm who wished to appoint Mr X, there is no evidence to show you made it aware he was no longer an approved person of your firm until March 2006.

In his letter of 30<sup>th</sup> November 2006, the FSA complaint handler clearly explains how the FSA's fees for the next year 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 31<sup>st</sup> December. The onus is therefore on the firm to ensure that the FSA's records are correct. In this case, as the FSA's register showed that Mr X was still an approved person of your firm on 31<sup>st</sup> December 2005, your 2006/07 fees were correctly calculated to included him.

The FSA accepts that you passed a 'Form C' to the team who visited you in March 2006. However, although the 'Form C' was misplaced by the FSA, and it has apologised for this error, it has had no impact on the level of fees which were calculated for 2006/07 as the 'Form C' was passed to them after 31<sup>st</sup> 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 little evidence which alleges or demonstrates any breach of the rules by the FSA. Therefore your complaint cannot be upheld and as a consequence the fee remains payable.

Yours sincerely,

Sir Anthony Holland  
Complaints Commissioner