

CONFIDENTIAL**FINAL REPORT AND FINDINGS****1. Introduction**

1.1 This is the report of an investigation by the Complaints Commissioner of a complaint made by Mr X against the Financial Services Authority (FSA). The relevant procedures and rules are set out in the publication entitled "Complaints against the FSA" (COAF) and which procedures and rules were made pursuant to paragraph 7 of Schedule 1 of the Financial Services and Markets Act 2000. The complaint falls to be considered under the Main Scheme.

1.2 The Commissioner has analysed the complaint as being that:

"The FSA system is misleading to small general insurance firms with no computer knowledge. The firm was not informed of the cut off date for notification of cancellation of authorisation and therefore should not be liable for the annual fee for the period 2005 to 2006."

2. Background

2.1 Mr X is a director of Company Y (the firm), a small motor dealership with two directors, neither of whom is computer literate. The firm was advised by a number of third parties that it should apply for FSA authorisation in order to be able to provide warranties with the cars they were selling. The firm requested from the FSA, by telephone, a paper application and paid the initial fee on 29 May 2004. Mr X has informed the Commissioner that subsequent telephone calls were made to try to establish whether there would be an annual fee in addition to the joining fee but that no one could tell them.

2.2 Regulation of the general insurance business by the FSA commenced on the 14 January 2005 and the firm has stated that it was assumed that if there was an annual fee it would have been requested at that time. The fact that it was not requested led it to believe that there was not an annual charge.

2.3 In July 2005 an invoice was sent to the firm with a request for payment by 10 August 2005. The firm wrote to the FSA cancelling the registration on 9 August 2005. A request for payment of the overdue invoice was sent to the firm on 6 September 2005.

- 2.4 On 15 September 2005 the firm wrote to the FSA making reference to the letter dated 9 August and a subsequent telephone conversation with a member of staff. Mr X stated that during the telephone conversation the member of staff had informed Mr X that the cut off date for cancellation was 31 March 2005. Mr X had responded that he had no knowledge of that and no paperwork referring to it. He went on to explain that during telephone calls the previous year no one had been able to tell him if there was an annual charge. He further stated that he thought that the system was unclear and lacked simple instructions. Mr X has since provided the Commissioner with the date of a telephone call, 13 July 2004, during which, he alleges, that the FSA was unable to provide an answer to his question concerning an annual charge. The Commissioner has no reason to disbelieve that he made such a call.
- 2.5 Another request for payment was made by the FSA on 3 October 2005. In response, on 12 October 2005 Mr X again wrote to the FSA referring to his previous letters dated 9 August 2005 and 15 September 2005 which had not been acknowledged. He mentioned in the letter that he had returned the cancellation form to the FSA on 27 September 2005.
- 2.6 The FSA responded to the letter and apologised for the delay in replying on 21 October 2005. This letter quoted a section from the Handbook referring to cancellation of Part IV permissions and referred Mr X to the website. The letter concluded that as the firm held Part IV permission on 1 April 2005 it was liable for the fees requested.
- 2.7 On 26 October 2005 Mr X again wrote to the FSA explaining that as he had received no communication whatsoever referring to the cut off date for cancellation he did not believe that the firm was responsible for the payment.
- 2.8 On 15 December 2005 a further letter was received from the FSA stating that if the fees were not received within 7 days the firm would be referred to Enforcement or other regulatory proceedings.
- 2.9 On 19 December 2005 Mr X once again wrote and stressed that the firm was not made aware of any cancellation date and that in his opinion the system was unclear, complicated and open to interpretation. He stated that he had received marketing literature for the supply of FSA manuals but as these are updated generally at least once a month it would be hard to operate the system correctly. In his view the cost of the manuals was too high.
- 2.10 On 13 January 2006 a full explanation of the rules relating to Part IV permission and the sections of the Handbook applicable were supplied to Mr X. He was again referred to the website with the comment "I hope you will therefore accept that this information was available to you at the time".
- 2.11 Mr X again wrote to the FSA on 20 January 2006 and pointed out once more that the firm was a small company that had to rely on third party information. Neither of the two directors was computer literate and had to rely on telephone calls to the FSA. Had they known more regarding registration they would not

have applied for membership. He felt that a small company such as the firm had been misled and he would like the decision reconsidered.

- 2.12 A reply was sent to Mr X on 15 February pointing out that it is the firm's responsibility to comply with the rules and that all the information was available on the website.
- 2.13 On 1 March 2006 Mr X responded that once again he must bring to the FSA's attention the fact that the directors were not computer literate and had requested all information to be put in writing.
- 2.14 The letter of 1 March was treated as a complaint and was entered into the complaints scheme on 13 March 2006.
- 2.15 On 3 April 2006 the FSA Company Secretariat wrote to Mr X and once again referred him to the website. An apology for the oversight was issued once Mr X had again requested all correspondence in paper format.
- 2.16 The substantive response to the complaint was sent to Mr X on 4 May 2006. The complaint was not upheld. It was pointed out that it is the responsibility of the firm to understand the rules and that because the permission was held on 1 April 2005 the firm was liable for the fees.
- 2.17 On 31 May 2006 Mr X complained to the Complaints Commissioner. The complaint is detailed at 1.2 above.

3. Findings:

- 3.1 The calculation for authorisation fees is based on the information held by the FSA at the 31 December each year. There is a cut off date for cancellation of 31 March each year and the invoices then are sent out from June to September based on the information held by the FSA. The FSA rules state that permissions held on 1 April each year will be subject to the full annual fee. This information is contained in the FSA Handbook under SUP 20.2.3G. Any firm applying for authorisation has to accept that it will be bound by these rules. It is the view of the Commissioner that the rules are clear on this subject.
- 3.2 The FSA deals with a number of cases where disputes arise concerning the payment of fees and, in order to be fair to the majority of firms that have conformed to the rules, it has decided that exceptions will not generally be allowed.
- 3.3 Regulation of general insurance products became the responsibility of the FSA on 14 January 2005. Firms were encouraged to register as early as possible and having received advice from third parties, the firm registered and paid the initial fee on 29 March 2004. Mr X has explained to the Commissioner and indeed had told the FSA, that neither he nor his co-director were computer literate and had, therefore to request a paper application Form. Mr X has stated that as he could not use a computer he was not able to find out the rules

governing registration. He subsequently telephoned the FSA, on more than one occasion, to enquire as to whether there was an annual fee or just a one off registration fee. He has said that no one was able to answer the question for him. Under the circumstances he decided to wait until 14 January 2005 believing that if there was an annual fee it would be requested at this time. It was not until he received the invoice in July that he became aware that an annual fee was payable. The Commissioner has sympathy with a small business of this nature which would not have previously been involved in FSA regulation and was not the type of business to which FSA regulation needed to apply. However, the rules are clear and it is the legal position that any firm applying for regulation must abide by them.

- 3.4 The Commissioner has noted that on more than one occasion Mr X had explained that the firm was not computer literate and had asked for all information to be supplied in paper format. Regrettably, the FSA still continued to refer him to the website. The complainant alleges that when he asked the FSA, during a telephone call on 13 July 2004, if an annual fee was payable he was not able to obtain an answer to his question. In addition letters written by him to the FSA were not answered. The Commissioner recognises that this occurred at a period of considerable change at the FSA at a time when responsibility for the regulation of general insurance business was being transferred to the FSA. However, it is the Commissioner's view that the way in which the queries raised by the firm were dealt with was not acceptable.
- 3.5 A central point in this case has been the assertion made by Mr X that neither of the two directors of the company was computer literate. The Commissioner has been told by the firm that a professional company, details of which were provided to the Commissioner, designed and managed the firm's website on its behalf. During the period in question a salesman had been employed by the firm who did have some computer training and he emailed the FSA on the instructions of one of the directors. The Commissioner has no reason to doubt that this information is correct.
- 3.6 In addition, the Commissioner is concerned that the original investigation of this complaint did not involve a thorough investigation. It is understandable that the FSA did not attempt to research the records of telephone calls which should have been held by the Department which had been responsible for authorisation of general insurance at the time as it was well aware that those records did not exist. This in itself gives rise for concern. However, because of the inadequate initial investigation, the Commissioner has had to conduct a more detailed investigation in order to arrive at a conclusion in this case.
- 3.7 The firm is a small firm with no previous experience of regulation by the FSA and, in the view of the Commissioner, it was not sensible for this type of firm to be seeking FSA authorisation. It must be added however that it can equally be said that only the firms themselves can decide whether it is sensible to be authorised. The question could be asked as to whether the FSA was treating its customers fairly? Nevertheless, even allowing for the mistakes and the lack of information provided by the FSA, it is still the responsibility of firms to ensure that they comply with the rules when seeking authorisation from the FSA.

Under the circumstances therefore, the Commissioner is unable to uphold this complaint.

4. Recommendations

- 4.1 The Commissioner has not upheld this complaint and, although recognising that procedures at the FSA have now changed, would make some suggestions regarding the handling of cases in the future.
- 4.2 When changes are occurring in regulation, adequate training of FSA staff should be undertaken to enable them to provide answers to firms seeking guidance particularly those not previously involved in regulation.
- 4.3 The FSA has explained to the Commissioner that the procedures have changed and that it does not now send out paper applications for authorisation. Where a firm is unable to download the application form from the website the FSA will send out a CD version. However, the Commissioner understands that there is still no reference made to the cancellation date after which the periodic fees are payable although it is stated that the application fee is not refundable. In the Commissioner's view the cut off date for the periodic fee should also be documented together with the information that the fees will not be waived after that date. This is particularly important in the circumstances where firms not familiar with the FSA procedures are likely to be applying for authorisation.
- 4.4 As the Commissioner has not upheld the complaint, he is unable to make an award for compensation. However, the FSA has advised the Commissioner that it is prepared to offer an ex gratia payment of £125 as a goodwill gesture but has emphasised that this does not alter the initial decision or the firm's liability to pay its fees. The Commissioner considers that that gesture is commendable in all the circumstances and should be accepted.
- 4.5 The Commissioner has decided to publish this report.