

Our ref: L0658

12th September 2006

Dear Complainant

Thank you for your letter of 17th July 2006, which details the elements of your complaint against the Financial Services Authority (FSA). This letter sets out my final decision on the complaints you have raised.

Background

Before I comment on the issues raised in your case I should explain my position so that you have a full understanding of my 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 COAF can be found on the internet at; <http://fsahandbook.info/FSA/html/handbook/COAF>

The Complaint

From your letter and the records I seen it seems clear that there are two elements to your complaint.

- 1) You feel it is unfair that you have been charged the fees that you have and;
- 2) you feel it unfair that having issued its stage 1 decision the FSA has then taken civil action against you to recover the fees.

The FSA position

In the decision letter issued on the 18th April 2006 the FSA has clearly explained that relevant rule (FSMA (Services of Notices) Regulations (S1 no 1420) regulation 9) clearly explains that a notice (such as your cancellation notice) is not deemed to have been given to the FSA until the FSA receive it. This rule is clearly set out and by having agreed to be authorised by the FSA you have accordingly accepted to be bound by the FSA's rules (including this one). It is not the FSA's fault that you were not aware of the importance of ensuring that the FSA had received your cancellation prior to the deadline for the following year's fees. The FSA's decision letter on this subject is clear and straightforward and I have not seen any evidence which would persuade me to find against the FSA decision. Consequently I do not uphold the first element of your complaint.

Later in the FSA decision letter it states;

“Please note that if payment is not received by 27th April 2006 DLA Debt Collectors will continue collection of the debt through the civil courts”.

You state that you had not completed the complaints process and as a consequence you feel the FSA has “bullied” you on this because the next thing that happened was that you received notice from the court that this action had been taken against you.

On receipt of the FSA decision letter with the warning quoted above being clear, straightforward and succinct I consider it reasonable for someone who disputed the findings of the FSA to have contacted either the FSA or my office immediately. It is of note that the FSA had allowed a period from the sending of this letter to the deadline for the beginning of the civil action. Such a period of time was sufficient for you to have brought your complaint to my attention. However it seems you chose to do nothing for some time.

On the 10th July, some 11 weeks and six days after the FSA decision letter was sent, you contacted both my office and the FSA by phone having received notice from the court. You then faxed your complaint letter to me on the 17th July. I consider the FSA warning of impending action to be clear. I consider that it was reasonable to expect you either to pay the fees outstanding, to continue your correspondence with the FSA (before the deadline) or similarly to bring your complaint to my office before the deadline. Had you done this it is likely that court action would not have started when it did. However by taking none of the options available and explained to you, you in effect, initiated the court process. Furthermore you have not provided any mitigating evidence to support why you did not act before the deadline of the 27th April 2006 or in the period between then and the court reaching its decision.

For all these reasons I cannot uphold your complaint.

Yours sincerely

Sir Anthony Holland
Complaints Commissioner