

*Our ref: L0668*

24<sup>th</sup> August 2006

Dear Complainant

Thank you for your letters of 23<sup>rd</sup>, 30<sup>th</sup> July and 4<sup>th</sup> August 2006, which detail 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

You are a compliance consultant providing services to general insurance intermediaries presumably on a contractual basis. You arranged to visit one such firm pursuant to that presumed contract on the 1<sup>st</sup> June 2006 to help them submit its RMAR form.

Over the preceding two days the FSA website had been unavailable due to maintenance work being carried out. You were aware of this as you had visited the site and notices explained that it would be unavailable over the 30<sup>th</sup> and 31<sup>st</sup> May.

In view of your journey you checked "late in the evening of 31<sup>st</sup> May and there was no notice to indicate any ongoing problems with Firms Online". You then travelled a considerable distance to the firm in question on the 1<sup>st</sup> June. On arrival at the firm you found that you were unable to log onto the website. You spoke to the FSA on at least four occasions on that day and were eventually told at some stage after 2pm that the system would not be available for the remainder of that day. The following day the FSA posted a notice advising of ongoing problems with the website.

### The FSA position

The FSA has rejected your complaint and claim for £600 in compensation to cover your "wasted journey". The FSA provided three reasons why it would not uphold your complaint. Firstly that it was inevitable such problems do occur; secondly that it was a generic problem and it was "not feasible to offer such (as that which you had requested) a remedy to all those affected" and thirdly in any event a 5 day extension was offered for the submission of RMAR forms.

### Your Position

You rebut this justification of your complaint with the following three points;

- 1) "I believe they (the FSA) had a responsibility to ensure that the system would be fully operational on 1<sup>st</sup> June or to give advance notice if this was not to be the case".
- 2) "I can find nothing in the FSA handbook under COAF which states that FSA do not have to offer a remedy for "generic" problems".
- 3) "The 5 day submission was irrelevant in respect of my wasted journey".

You finish your letter to me by stating that you believe that the FSA acted with lack of care and/or unreasonable delay in not giving adequate notice of the ongoing problems with the website.

My Position

The Claim

Your claim is for £600 for your fee and travel costs. Clearly your fee and travel costs were part of the agreement (written or oral) which you had agreed with the firm prior to travelling to advise it. There are four possible scenarios in relation to this agreement between you.

- 1) Potential technical difficulties such as those encountered were addressed in the agreement between you and the firm and the firm are refusing to honour the agreement. If this is the case your complaint should be against the firm. If it refuses to pay you your fee you have the option of taking legal proceedings against it.
- 2) Such technical difficulties were not addressed in the agreement and consequently the firm are refusing to pay your fees. Clearly the FSA is not responsible for agreements drawn up between parties. Similarly the FSA is not liable for the loss you claim to have suffered.
- 3) You chose to waive your fees as outlined in the agreement between you. Clearly this was your decision and the FSA cannot be held liable for it.
- 4) There was no agreement set out between you other than for you to arrive at a certain time and provide a certain service. Clearly the FSA is not responsible for this as your arrangements with those who you contract out your services to are your responsibility.

It is of note that the scenarios above cover all generic possibilities in relation to the dispute with regard to your fees and expenses and the FSA is not responsible for any of the scenarios. Consequently I find that whatever my findings are in relation to your complaint I will not be awarding the remedy you seek.

Your reasons for disputing the FSA position

You have stated that “I believe they (the FSA) had a responsibility to ensure that the system would be fully operational on 1<sup>st</sup> June or to give advance notice if this was not to be the case”. Such problems can be impossible to predict and consequently advance notice of such problems is similarly sometimes impossible. It is quite possible that these problems did not occur until the morning of the 1<sup>st</sup> June by which time, by your own submissions, you were on your way to the firm in question. In fact you have not provided any evidence to illustrate that the site was not working between 00:01am 1<sup>st</sup> June and when you tried to access the site on arrival in Mansfield. Consequently the inference you draw is that the problems suffered on the 1<sup>st</sup> June were a direct link to the work carried out on the site over the two days before yet you have no evidence to support this.

It is quite possible that the problems suffered on the 1<sup>st</sup> June were unrelated to the work done over the preceding two days. Furthermore although you claim to have had problems you have not provided any evidence which demonstrates that all firms and individuals trying to make similar submissions could not do so on the day in question. As you cannot provide such evidence it may be that some firms could and did make their RMAR submissions on that day and as a consequence the FSA decided that during the 1<sup>st</sup> June a notice on the site was not warranted. It is equally possible that these issues continued to get worse until on the 2<sup>nd</sup> June it was decided to put up such a notice. Due to the lack of evidence you have submitted on this matter and the fact that there is no financial liability on the FSA's part in your case I do not see, at this time, any need for me to approach the FSA website team to discover the exact nature and timings of the website problems during the day in question.

The FSA offered a 5 day extension in light of the difficulties in relation to the website. I consider this to be a reasonable position to take in this case. Clearly such an extension is afforded to all those effected (including the firm whom you travelled to advise) and this seems reasonable to me. Clearly your claim for fees and expenses is primarily a matter between you and the firm whom you had travelled to advise, for the reasons I have already explained.

#### Conclusion

In your submissions you have failed to demonstrate a direct link that imposes liability on the FSA for your loss. Further your submissions lacked sufficient documentary evidence to support your claim. In light of these factors I cannot uphold your complaint.

Yours sincerely

Sir Anthony Holland  
Complaints Commissioner