

2nd August 2005

Dear Complainant

- 1) Thank you for your letter of 11th May 2005, which details the elements of your complaint against the FSA. This letter sets out my final decision on the complaint you have raised.
- 2) In your letter of complaint you are unhappy with the decision of the FSA to charge you fees, in relation to two members of your staff who have left your employ, in the FSA invoice dated 19th July 2004. You have stated that in the case of both employees there was uncertainty as to what their intentions were when they left. It has since transpired that one moved to another firm and the other has left the country. You notified the FSA in February 2004 that Mr R was no longer an approved person and in April 2004 you notified that Mr E should also not have a fee attributable to him.
- 3) The FSA have invoiced you for these two approved persons on 19th July 2004. You have complained that in the past a credit note had been provided to you in a similar situation. You have also paid £5000 'on account' to cover these periodic fees. You have noted that Mr R will have two sets of fees paid for him if the FSA insist on your paying the fee as set out in the invoice of 19th July 2004.
- 4) The FSA has stated that it is clear from the FSA handbook (supervision manual chapter 20) that the cut off date for the number of approved persons and the consequent fees is the 31st December.
- 5) The FSA has also stated that the handbook states "a firm must submit to the FSA a completed form C no later than seven days after an approved person ceases to perform a controlled function".
- 6) Lastly the FSA has stated that the credit note previously issued was done so incorrectly. However, as it had been relied upon it was not going to be overturned retrospectively. Consequently the FSA has stated that the outstanding amount should be paid, this being £1584.28, within 10 working days.

Findings

- 7) The requirement to pay fees is clear and the date at which the number of approved persons is taken to establish fee level is equally clear within the handbook. The complainant has not disputed this.
- 8) It is in the firm's interest to ensure that the number of approved persons is correct at the end of December to ensure it pay the correct fee. The handbook states that the firm should submit a form C within seven days of the employees leaving the employ of the firm.

- 9) From the documentation I have reviewed there does not appear to be any contact from the complainant to the FSA about these two members of staff prior to 31st December 2003. This I believe is significant to the conclusion of this complaint.
- 10) The first contact with the FSA the complainant made was 5th February 2004, this suggests that the complainant was unaware of the importance of the 31st December deadline. However the onus is upon the firm to ensure it is familiar with the rules and significant dates within the handbook.
- 11) The complainant has stated that the reason it did not inform the FSA of the change in their number of approved persons prior to the 31st December was because it could not contact these individuals. If this was the case, and the firm was aware of the importance of the 31st December, I would have expected the firm to be prudent and contact the FSA explaining the situation with which it was confronted and request FSA input. I have found no evidence of any such contact. This, to me, suggests that the complainant was unaware of the importance of the 31st December.
- 12) With regard to the credit note that had been issued previously, the FSA has stated that it was issued mistakenly. The firm has stated that until the FSA recently informed it that it was mistakenly issued, this firm was unaware that it could not get a credit note in similar circumstances. The FSA has stated that it is against its policy to issue a credit note in these circumstances. The FSA has no record of any cover letter being provided to the complainant when the credit note was issued. The complainant has provided a copy of the covering letter. The FSA should consider whether it would be desirable to issue credit notes accompanied by an explanatory letter. However this does not detract from the complainant not updating the FSA record in line with the FSA handbook.
- 13) The complainant has also stated that as one of the individuals had registered with another firm, he would in effect be paid for twice. The FSA has responded that there is nothing stopping an individual from being registered with two firms. The FSA has also stated that it is the firm's duty to ensure the approved persons list that it has with the FSA is correct. I do not consider this argument material to the issue.

Conclusions

- 14) The crux of the complaint is who was registered on the 31st December 2003. Those listed as approved persons on that date were liable to pay a fee. It is through no fault of the FSA that approved persons were listed who were no longer working for the complainant. It is the duty of the firm in question to ensure that the list is correct.
- 15) In the event of those employed by a firm not turning up for a prolonged period of time, it is clear the firm has a duty to inform the FSA of their ceasing employment within seven days. Although the inability to contact the individuals concerned could

mitigate a small delay in notification, I do not consider the inability to contact the individuals concerned to be valid mitigation for approximately 8 months of delay in informing the FSA.

16) It appears that through no fault of the FSA the complainant was unaware of the importance of the 31st December deadline. The onus is on the firm to be aware of this as it makes up part of the FSA handbook. Consequently I do not see any reason why the complainant should not pay the fee applicable to seven approved persons as it is its responsibility to ensure that the list is correct at all times.

17) Although the FSA mistakenly issued a credit note previously this does not detract from the complainant ensuring it is aware of the dates that affect it as set out in the FSA handbook.

18) Consequently I cannot uphold the complaint.

Yours sincerely

Sir Anthony Holland
Complaints Commissioner