



Complaints Commissioner

VIEWS FROM THE COMMISSIONER FEBRUARY 2008

Cancellation of Part IV Permissions of Firms after 31st March deadline

There have been a number of complaints to my office concerning firms having to pay annual fees due to their cancellation notice not being received by the FSA until after the deadline (31st March). Many of these complainants provide no reasoning for why they believe they should not pay the fee other than it's 'unfair'. Further many complainants admitted that the appropriate form missed the FSA cancellation deadline by some months.

Ultimately the position is that the firm has agreed to the rules and guidance laid down in the FSA handbook in signing its original application for authorisation. The onus is subsequently on the firm to know and abide by the FSA rules and guidance, and in these cases, submit the cancellation form before the deadline. All firms who wish to cancel their Part IV permissions (authorisation) to carry on regulated activities must formally apply to the FSA using the appropriate form. To avoid incurring fees for 2008/09 the deadline for submission of the appropriate form was 31st March 2008. This is applied consistently to all FSA regulated firms. It is of little consequence whether a firm has been carrying out the regulated activity or not during this time. The onus is upon the firm and it must bear the responsibility for its own failings. Unless a firm can demonstrate evidence which shows that the FSA received the appropriate form correctly filled in prior to the deadline, or some other substantial reasoning for not paying the appropriate fee, it is unlikely that I will consider making a recommendation to the FSA to alter its position.

The following link takes you to the 'Cancellation of Part IV Permission Application Form' http://www.fsa.gov.uk/pubs/other/cancellation_form.pdf

Notification of changes to numbers of Approved Persons in Firms

Likewise, I have received a number of complaints about the amount of Firm's fees in relation to the number of approved persons it has. If the Firm does not notify the FSA of a reduction in the numbers of its approved persons prior to the deadline of 31st December then it has only itself to blame. It should be noted that the Firm is obliged to complete a Form C within seven business days of the staff member leaving the employ of the Firm.



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The following link takes you to the 'Form C – Notice of Ceasing to perform a Controlled Function' form on the FSA's website. http://www.fsa.gov.uk/pubs/forms/imap_formc.doc

The following link takes you to the 'Form C' notes on which can also be found on the FSA's website. http://www.fsa.gov.uk/pubs/forms/imap_formc_notes.doc

All of the appropriate forms required to apply for or alter an individual or firm's FSA status can be found on its website. The following link will take you to the appropriate page. <http://www.fsa.gov.uk/pages/Library/Communication/Forms/handbook/supervision.shtml>

Late regulatory returns and associated fees

Some firms have similarly complained about having to make returns 'online'. The FSA has consulted at length on this process prior to its commencement. There are clear benefits to all parties for reporting to be done in this way. Similarly to the cancellation process, the requirement for online reporting is clear in the handbook which regulated firms have agreed to follow whilst authorised. The onus is clearly on the firm.

Conclusions

It is of concern that so many firms appear not to have not appreciated the rules by which they are bound. It is important to appreciate that the onus is on the firm to comply with these rules. The FSA is not obliged to explain or notify firms of such rules. Some firms have tried to use the lack of FSA notification to mitigate their position. Such a position does not deviate from the fact that the onus is on the firm to comply with the rules. Clearly to do this, firms should ensure that they are well acquainted with the rules.

Complaints Brought to the OCC

When a complaint contacts the Commissioner, he should ensure that he has checked that the complaint falls within the jurisdiction of the Commissioner and that the Commissioner is able to investigate his concerns. Details of the types of complaints the Commissioner can be investigated can be found on in our 'General information Leaflet', a link to which can be found on the 'About' page of our website.



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The complainant should also ensure that the complaint has first been referred to the FSA and that they have provided the complainant with a substantive response, as it is unlikely that the Commissioner will investigate a complaint which the FSA have not had the opportunity to investigate.

The complainant should also ensure that, when referring the complaint to the Commissioner he does this within three months of the date of the FSA's substantive response and provides arguments explaining why he feels the FSA's substantive response is incorrect. If a complainant simply asks the Commissioner to review a case without giving an argument why he feels the FSA's decision is incorrect, then it is difficult for the Commissioner to be able to find against the FSA.

Sir Anthony Holland
February 2008