

Direct line:
Local fax:
Email:

By email

Xx xx 2015

Our Ref:

Your Ref:

Freedom of Information: Right to know request FOI 3985

Thank you for your clarified request under the Freedom of Information Act 2000 (the Act), for information in relation to Harrisons, who were the administrators for Fyshe Horton Finney Ltd (the full text of your request is in Annex A).

As you are aware from 1 April 2013, the responsibilities of the Financial Services Authority (the "FSA") were split between two new regulators, the Prudential Regulation Authority and the Financial Conduct Authority (the "FCA"). For convenience, references in this letter to the FCA are also to its predecessor, the FSA, where appropriate.

Your request has now been considered under the Act. We consider that to extract the information relevant to your request would exceed the cost limit provided for in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, due to the volume of information held. For a detailed explanation as to why this exemption applies, please refer to Annex B.

I realise that you may be disappointed with this decision but I hope you understand why we are not able to process your request.

However, it may be helpful to you if I provide some background information on the special administration regime. Once a firm enters administration all of the firm's client money is 'pooled'. Any shortfall in the overall pool is shared pro-rata across all clients based on their respective entitlements as at the time of pooling. As such, if the FCA (and formerly FSA) has a concern that a firm is going to enter administration, and particularly if there is likely to be a shortfall, then it would be extremely concerned about creating an unfair 'first mover advantage' i.e. if a client asks for their money the day before they enter administration they would get it all back, if a client ask the day after they are part of the pool and share in any losses. As soon as administrators are appointed, they in effect, become the firm.

The administrators are then responsible for ascertaining the correct client money / asset position. Should there be any shortfall, customers have right of recourse to the Financial Services Compensation Scheme (FSCS). For more information on the requirements of the special administrators please see The Investment Bank Special Administration (England and Wales) Rules 2011, which you can find here –

<http://www.legislation.gov.uk/ukSI/2011/1301/made>.

The Special Administration Regime ("SAR") came into effect in February 2011 and sets three objectives for a special administrator:

- to ensure the return of client assets as soon as practicable;
- to ensure timely engagement with market infrastructure bodies and the authorities; and
- either to rescue the firm as a going concern or wind it up in the best interests of the creditors.

There is an FCA requirement that client monies must be kept separately and securely ring fenced. These rules are stated in the Client Assets (CASS) Sourcebook - this can be found through the following link; <http://fshandbook.info/FS/html/handbook/CASS>

Yours sincerely

Information Access team
Financial Conduct Authority

[Your right to complain under the FoI Act](#)

If you are unhappy with the decision made in relation to your request, you have the right to request an internal review. If you wish to exercise this right you should contact us within three months of the date of this response.

If you are not content with the outcome of the internal review, you also have a right of appeal to the Information Commissioner at Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF. Telephone: 01625 545 700. Website: www.ico.org.uk

Annex A

- 1) *Correspondence between FCA and Harrisons (administrators) regarding the pooling event when Fyshe Horton Finney Ltd went into special administration.*
- 2) *Did FCA know and approve of what appeared to be contrary to a CFA CASS Handbook regarding statutory return of client cash. Moreover, were FCA made aware Harrisons imposed embargo in July 2013 that froze such as Claims for return of 100% client cash from FSCS, arranged in lieu? I now seek evidence that FCA formally approved the reclassification of retail clients to unsecured creditors and imposing the embargo to leverage payment of spurious invoice, wanting back say £18K client cash.*

Annex B

- **Section 12 (Cost of compliance exceeds appropriate limit)**

The Act requires us to comply with a request, unless it would be too expensive to do so, as estimated in accordance with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 made by the Department of Constitutional Affairs (now Ministry of Justice). The regulations provide that, for the FCA, the cost limit is £450, i.e. 18 hours at the rate of £25 per person hour. The regulations allow us to take into account when estimating the cost of complying with a request the time spent determining whether we hold the information requested, locating and retrieving it, and extracting the information from the relevant document(s).

In order to process your request, we would need to consider and review a large volume of correspondence (in excess of 500 documents) between the FCA and Harrisons in the time period requested in order to extract the exchanges relating to the pooling event. In this context, we conservatively estimate that it would take well in excess of 18 hours to undertake this exercise and exceed the £450 limit. Since our policy is not to divert our resources from our regulatory functions in order to meet requests under the Act in excess of the cost limit, we will not be able to carry out this exercise.

When we refuse a request because the appropriate limit has been exceeded, it is our general policy to provide advice and assistance to the applicant to indicate how the request could be refined or limited to come within the cost limit. In this case, as explained above, due to the volume of information that we hold, we are unable to assist you with providing a way in which to refine your request in order to obtain the information you are interested in. Any refinement that we suggest is likely to exceed the statutory time limit.

In reaching the conclusion that your request exceeds the appropriate cost limit we have not considered whether any other exemptions apply. In any event, information the FCA receives from, or about, regulated firms is likely to be prohibited from disclosure under section 348 of the Financial Services and Markets Act 2000 as it would be confidential information received for the purposes of carrying out our regulatory functions and supervision of those firms. Such information is therefore likely to be exempt by virtue of

section 44 (prohibitions on disclosure) of the Act. Other exemptions under the Act may also apply.