

24th November 2014

Dear Complainant,

Your complaint against the UK Financial Services Regulator
Reference Number: FCA00014

Thank you for your letter of 28th June 2014.

As the rules of the scheme under which I consider complaints can be found on our website at www.fsc.gov.uk, I do not intend to set them out fully below.

Your complaint

From your letter I understand that you are unhappy with a number of the regulator's actions, specifically:

- its decision to impose a late submission administration fee (administration fee) upon your firm as a result of the late submission of one of your firm's Retail Mediation Activity (RMA) reports which make up your firm's GABRIEL return for the period ending 30th June 2013. You are unhappy with the FCA's decision as you say that you had submitted all of the returns four days before the due date and suggest that the error has arisen as a result of the FCA's system being at fault.
- you add that the FCA, by not responding to the email you sent to a member of its permissions team in June 2013, has cost your firm a considerable amount of money and this has not been adequately addressed by the FCA in its decision letter and subsequent correspondence.

You are asking me to recommend that the FCA should apologise, waive the administration fee you have incurred as a result of the late submission of your RMAR return and compensate "*all [your] moral and monetary losses, and reinstate [your] firm's Variation of Part 4A permission*". You also ask me to advise the FCA to separate its regulatory and business matters, and to treat its customers fairly.

My position

I will first deal with your complaint surrounding the administration fee the FCA has applied in relation to what it considers to be the late submission of one of your required reports. It may be beneficial if I first provide you with some further information on the reporting process.

As part of its supervision of the financial services industry, the FCA requires all regulated firms to submit periodic information by way of a series of individual reports submitted collectively within what is known as an RMA return. To enable the regulator to monitor effectively the industry, all of the firms have to submit their RMA returns within approximately six weeks of the end of the reporting period. Where a firm fails to submit one or more of the required reports by the due date the regulator will usually apply an administration fee to the firm of £250.

I now come to your complaint. The RMA-J return which has generated the disputed administration fee is for the period 1st July 2012 to 30th June 2013. This return had to be submitted electronically no later than 9th August 2013 if your firm was to avoid the late submission administration fee. The regulator's records show that on 1st July 2013, the regulator sent you an email informing you that your firm's reporting period had ended and an RMA return was due for completion. Subsequently, on 30th July you were sent a reminder detailing the returns you needed to make (including the RMA-J), and on 6th August 2013 you were sent a further reminder by email setting out that the RMA-J return remained outstanding and needed to be submitted no later than 9th August 2013 if you were to avoid the administration fee. The regulator's records show that, although RMA-A to RMA-I were cross validated and submitted on 5th August 2014, your RMA-J return for the period ending 30th June 2013 was neither accessed nor submitted until 14th September 2013. This meant that part of your GABRIEL return was submitted five weeks late.

I appreciate that, following notification of the first reminder, you accessed the GABRIEL system, and completed and submitted nine of the required reports. These nine reports were the reports your firm is required to submit every six months and represented a different reporting period (1st January to 30th June 2013) to that covered by the RMA-J return (annual fee calculation data required for the period 1st July 2012 to 30th June 2013). A firm's reporting requirements are only completed when all of the required reports (which make up the entirety of the return) are submitted. This was made very clear in the emails. In this case, as one report was not submitted on time, you did not comply with your reporting requirements.

Although I appreciate that you are a small business, and may consider that the regulatory requirements are onerous, the regulator is required to apply its rules fairly and consistently across all of the firms it supervises. In this case, it is clear that you submitted the RMA-J report five weeks after the due date (and 11 weeks after the end of the reporting period). As the return was not completed and submitted in its entirety before the submission deadline, which was your responsibility, and since I can see no evidence that the late submission of the report was caused by any failings by the regulator, I conclude that the regulator has correctly applied the administration fee.

You dispute the need for the RMA-J report as you believe that the information is available to regulator from other sources. The regulator's general policies and practices fall outside the scope of this complaints scheme, and I am therefore unable to consider this matter further. It does not alter the fact that you did not submit the RMA-J report on time.

I have noted your comments about the FCA's alleged failure to respond to the email you sent to a member of its Permissions Team in June 2013, and that you dispute the FCA's view that the email was sent to an incorrect email address.

In June 2013, it appears that you were looking to alter your Part IV permissions and attempted to email the case officer with whom you had previously exchanged correspondence (some 15 months earlier). Whilst you say that this email was ignored, it appears that this is incorrect. The primary email address you used (“*name@fsa.gov.uk*”) was no longer active (both because the individual to whom your email was sent no longer worked for the regulator, and because the FSA had ceased to exist). Additionally, as the email was sent to an individual rather than a central mailbox, the email was not received. You should, however, have received an ‘undeliverable’ notification to alert you to this and could/should have acted upon this.

I would also add that had the case officer still worked for the regulator it was likely that the email would not have been received as the domain you used was wrong. When the FSA was replaced by the FCA, the “*@fsa.gov.uk*” domain was closed and replaced by the “*@fca.org.uk*” domain. Unfortunately, as the email address/domain to which you copied your email was incorrectly entered as “*@fca.gov.uk*” rather than “*@fca.org.uk*”, the email would not have reached the case officer (although again you should have received an ‘undeliverable’ notification’ to alert you to this).

I have noted your comments that you should have been made aware that the case officer who was dealing with your permissions enquiry had left the FSA but, as you had not been in active correspondence with the regulator for 15 months I do not believe that there was a reasonable obligation upon the regulator to notify you that the case officer had left the organisation. Likewise, whilst you say that you did not receive the ‘undeliverable’ notification, I understand that when an email account is ‘closed’ the mail server will automatically issue such a notification. It may be that the ‘undeliverable’ notification was blocked by your ISP or your firm’s own spam filter, but it is not possible for me to establish this.

Whilst I appreciate that you say that, in addition to the email, a letter asking for clarification of the procedure to follow was also sent by post, this letter does not appear to have been received by the FCA. This is unfortunate but, as the FCA has no record of receiving it, it appears that it was unaware that you were seeking information. I know that you dispute this but in the absence of proof of receipt (which has not been provided) there is nothing to suggest that the regulator did receive your letter.

I know that you are seeking redress for the losses you say you have incurred as a result of the business you have lost over the 14 months since you requested guidance from the FCA (which you did in June 2013). Unfortunately, as I have indicated above, the regulator did not receive your email and letters and was therefore unaware of your questions. Additionally, it is unclear what actions you took to seek answers from the FCA when you did not receive a timely response (as you do not appear to have written to the regulator again until October 2013, some four months later).

For these reasons, I do not uphold your complaint relating to the non-response to your email and letter of 27th June 2013.

I have also noted that you believe that the ‘reinstatement’ of your firm’s Part IV permissions is being delayed unnecessarily by the FCA’s procedures which you suggest amount to “*red tape and irrelevant interrogation questions*”. Although you have made this comment, this is not something which you appear to have previously raised with the FCA. This is important as, in line with the rules of the complaint scheme, before I intervene in a complaint, unless

the complainant can provide a clear and detailed rationale to indicate why it would be desirable for me to intervene in a complaint before the regulator has had the opportunity to undertake its own investigation, I will usually allow the regulator the opportunity to complete its own investigation first.

As you have not provided any explanation to indicate why it would be desirable for me to commence my own investigation before the regulator has considered the issue itself, I do not believe that, at this time, I should make any comment on the manner in which the regulator has considered or assessed your application to alter your firm's Part IV permissions. I am therefore unable to consider your request for a compensatory payment at this stage. If you decided to pursue this matter with the regulator and, following the regulator's consideration, you remained dissatisfied, you could raise the matter with me again.

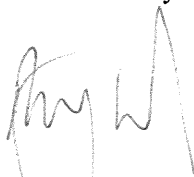
Although I note that you would also like me to recommend that the regulator reinstates your firm's variation of Part IV permissions, this is not something I can do. The assessment of an application is a matter for the regulator and, if it is minded to refuse your application, the matter will be assessed by the Regulatory Transaction Committee (RTC) and, if it supports the regulator's decision, you will have the opportunity to challenge the decision at the Regulatory Decisions Committee (RDC) and, if necessary, at the Upper Tribunal.

Finally, I turn to your last two bullet points. In relation to your request that I advise the FCA to separate its regulatory and business matters, this is a policy issue which does not fall within the remit of the complaints scheme; and in response to your request that I advise the FCA to treat its customers fairly, I would simply say that – while I can and do recommend to the FCA that it puts things right where its treatment of those it regulates has fallen short - I do not see any evidence from your complaint that you have been treated unfairly.

Conclusion

Having considered your complaint, it is my Final Decision that the regulator has correctly applied its rules and, as a result, the late administration fee was correctly applied. I am therefore unable to recommend that the regulator should waive this. The invoice you have received remains payable and you should contact the regulator to make arrangements for its payment. It is also my Final Decision that there is nothing to suggest that the regulator failed to act upon the email and letter you sent on 27th June 2013. I am sorry to send what will inevitably be a disappointing reply to you.

Yours sincerely



Antony Townsend
Complaints Commissioner