

26 January 2017

Dear Complainant,

**Complaint against the Financial Conduct Authority  
Reference Number: FCA00244**

Thank you for your correspondence about your complaint against the Financial Conduct Authority (FCA).

**How the complaints scheme works**

Under the complaints scheme, I can review the decisions of the FCA's Complaints Team. If I disagree with their decisions, I can recommend that the FCA should apologise to you, take other action to put things right, or make a payment.

As you can find full details of how I deal with complaints at [www.fsc.gov.uk](http://www.fsc.gov.uk) I have not set them out here. If you need further information, or information in a special format, please contact my office at [complaintscommissioner@fsc.gov.uk](mailto:complaintscommissioner@fsc.gov.uk), or telephone 020 7562 5530, and we will do our best to help.

**What we have done since receiving your complaint**

I have reviewed all the information you and the regulator have provided us with, including your comments following my preliminary decision. My final decision on your complaint is explained below.

**Your complaint**

You made a complaint about the FCA as you had been issued with a Late Returns Fee for not submitting your GARIEL returns on 14<sup>th</sup> June 2016, the date they were due. You stated that the fee should be waived as you did log on to the system and saved and validated your return. However, in error you failed to click the submit button. You did log on to the system and submit your returns on 24<sup>th</sup> June 2016.

You believe the FCA's systems are too complicated and there are too many different platforms to log on to in order to be able to remain compliant. As a sole trader who has held a consumer credit licence since 1988, but has not actually done any finance deals in the last few years, you do not wish to remain regulated any longer.

You would like the FCA to cancel the Late Returns Fee, given the circumstances described above. There was no warning that you were about to log out without completing your submission, as there is with many other systems, and you do not believe it is fair to fine you for an obviously honest error.

## **My findings**

In considering your complaint, I reviewed your activities on the GABRIEL system, your correspondence with the FCA, and some screenshots of how the GABRIEL system works as you go through the steps of completing and submitting your returns.

There is no dispute about the facts. You were sent three reminders by the FCA to complete and submit your returns before the deadline. You contacted the FCA by telephone before the deadline of 14<sup>th</sup> June in order to seek assistance as you were having trouble logging in to GABRIEL, when you were again told about the impending deadline and the need to act.

You did manage to log on, complete and save your returns, on 14<sup>th</sup> June, all of which were NIL returns as you did not carry out any regulated activities in the relevant period. It is therefore clear that you did heed the warnings from the FCA about the impending deadline: I am satisfied that the failure to submit the NIL return was a genuine error.

You were not sent a reminder email for failure to submit your returns but you were sent a late fee notification email at 11:23 on 24<sup>th</sup> June. You logged in to GABRIEL at 11:36 and submitted your returns at 11:37 on the same day.

In its decision letter, the FCA referred you to SUP 16.3.14R, which states that if a firm does not submit a complete report by the date on which it is due, they **must** pay an administrative fee of £250, as the reason for not upholding your complaint and not waiving the fee. They also stated that they must have a consistent approach when dealing with firms who do not submit their returns and where there are no mitigating circumstances.

Having regard to all of the above, I find that the FCA followed its published rules and procedures, and for that reason I am unable to uphold your complaint.

## **Conclusion**

Due to the clear wording of the relevant rule, I am unable to uphold your complaint or make a definitive recommendation to the FCA not to pursue the recovery of the outstanding fee.

In my preliminary decision, however, I recommended that the FCA reconsider whether the circumstances of your complaint meet the exceptional test set out in FEES 2.3.1R. While most of the complaints about late return fees which I consider have little merit, your case is clearly distinguishable. The FCA's records confirm that you contacted them by telephone trying to ensure that you could log on to GABRIEL, which you did successfully on the day the returns were due, when you entered, validated and saved the data required. You did not press the submit button, but you had done all the work required, by the date required.

In a case involving late fees on which I issued a report in July 2015 – see <http://fsc.gov.uk/wp-content/uploads/FCA00073-Final-Decision-28-07-15.pdf> - I suggested that the FCA might consider exercising some discretion in certain clearly defined circumstances, and I consider that your circumstances might fit into that category. While the FCA is right, in the interests of consistency, to be cautious about waiving fees, there might be advantages to exercising discretion in cases where those being regulated have demonstrably done their best to be compliant.

I can now confirm that the FCA has reconsidered the circumstances of your complaint, and they have decided that it meets the exceptional test and they will remit your late return fee as a gesture of goodwill. You will be contacted by the relevant team in due course.

I am pleased that the FCA has responded to your concerns, and hope you will find this outcome satisfactory.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Antony Townsend', with a large, stylized flourish at the end.

**Antony Townsend**  
**Complaints Commissioner**