

23 August 2017

Dear Complainant

**Complaint against the Financial Conduct Authority
Reference Number: FCA00362**

Thank you for your letter of 21 June 2017. I have now completed my review of the Financial Conduct Authority's (FCA) investigation into your complaint. Before finalising my decision I asked for comments from both you and the FCA. The FCA did not comment. I have carefully considered your comments and refer to some them below.

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.

Your complaint

Your complaint is a straightforward one. The FCA have charged you an administrative fee of £250 for late filing of your firm's GABRIEL return. There is no dispute about the facts. However, you consider that "The scheme and application is the same regardless of the size of the firm or the people responsible for the implementation of the scheme", and you say that you did not receive reminders to complete what would have been your first annual return on GABRIEL. You have also complained about the time it took the FCA to invoice you for the late filing fee.

My Findings

I have looked carefully at the full record of the correspondence between you and the FCA on this complaint.

From the evidence available to me, I can see that the firm was sent an email welcome upon authorisation to the email which was given in the application for authorisation on 11 February 2016 explaining about registering with GABRIEL, the returns you were required to submit, and that you would receive a £250 administration fee for each late report.

The FCA also sent you two reminder letters to the address you provided on your application form, which you say you did not receive.

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The result is that you did not read any of the FCA's correspondence to you until you received a fee notification letter on 17 November 2016, by which time the GABRIEL return was overdue (it had been due 11 November 2016). You then telephoned the FCA on 22 November 2016, and registered to use GABRIEL, finally submitting the return on 25 November 2016. However, the £250 fee was still due.

I can appreciate you are unhappy about that. However, the fact that you did not receive the FCA reminder letters before the return due date is not the fault of the FCA. I accept you may not have knowingly ignored FCA correspondence, and it is likely the correspondence did not reach you personally. However, based on the evidence before me, I believe the FCA took all the proper steps to inform your firm about what it needed to do to complete the GABRIEL return, in the email it sent you on 11 February 2016 (including writing to you by post twice with reminders).

I have sympathy with the position in which you find yourself, but I am afraid that I cannot disagree with the FCA's decision not to uphold your complaint. It seems to me that you have been treated like other firms in your position, and that the FCA took reasonable steps to remind you of your obligations. While I have no doubt that your firm's error was unintentional, the fact remains that it did not meet its regulatory obligations. The late returns fee is, as the FCA has explained, designed to cover the FCA's costs in pursuing late returns (so that firms who complete their returns on time do not subsidise those which do not).

In your response to my preliminary decision, you have made it clear that you do not disagree with these facts, but that you think that the FCA's policy on late returns should take more account of the circumstances of small businesses like yours. I understand that point, but the Complaints Scheme is not the way to pursue changes in FCA policy (see further, below).

I understand you have queried the length of time the FCA took to issue your invoice, and that you are unhappy that it was sent six weeks after the return was overdue. However, that in itself is not a reason not to pay the fee, nor has your firm suffered any loss as a result.

Finally, you have complained that the FCA "hid behind" paragraph 3.4c of the Scheme (details of which we sent to you on 21st June 2017) to exclude the first element of your complaint, which related to what you consider to be the disproportionate size of the late fee for a small business such as yours. I hope it is helpful if I explain that the Complaints Scheme is designed to deal with complaints about *how* the FCA does its work, not complaints about the FCA's policies. The first element of your complaint was about the FCA's policy on late returns, and the FCA were right to exclude that from your complaint, although they did provide you with an explanation of the policy. If you consider that the FCA's policy on charging for late returns is wrong, you might wish to raise that with the FCA's Smaller Business Practitioner Panel – you can find details at <https://www.fca-sbpp.org.uk/background-smaller-business>.

Conclusion

For the reasons given above, I am afraid that I cannot uphold your complaint.

Yours sincerely

A handwritten signature in black ink, appearing to read "Antony Townsend". The signature is written in a cursive style with a large, sweeping initial 'A' and a trailing flourish.

Antony Townsend
Complaints Commissioner