

Final report by the Complaints Commissioner dated 27th October 2017

Complaint number FCA00393

The complaint

1. On 12th September 2017 you asked me to investigate a complaint about the FCA. I carefully reviewed the papers sent to me by you and by the regulator, and issued a preliminary report on 5th October, inviting comments from you and the FCA. You responded on 6th October; the FCA did not respond.
2. I have considered the points you have made in response to my preliminary report, and have made some adjustments to my report below.

What the complaint is about

3. The FCA summarised your complaint as follows:

Element One

You are unhappy with the late return fee because you did not receive email notification for GABRIEL registration or that a return was due.

Element Two

You are unhappy with the FCA relying on proof of receipt of an email because it did not bounce

What the FCA decided

4. The FCA did not uphold your complaint. They explained that, when you were authorised, you had been told that you would need to register a principal user for your firm, which you did not do; and that two email reminders had been sent to you, informing you that you needed to make your regulatory return. The FCA's view was that, because those emails were sent to the right address and did not bounce back, it was reasonable for the FCA to assume that they had been delivered.

Why you are unhappy with the regulator's decision

5. In your complaint to me, you said that "It is ridiculous that the FCA regards non bounce back of the Registration email as proof of receipt".

My analysis

6. The question is whether the FCA's actions were reasonable and, therefore, whether they should have charged you a late return fee. You have also raised with me the question of whether the FCA's records might have been falsified. The matter is complicated by the fact that you supplied two email addresses to the FCA, both of which appear to have been used. I shall refer to the first as the "personal email", and the second as the "firm email".
7. I can see that when you applied for authorisation you signed a form confirming that you would be able to use the FCA's reporting system, and that you understood about your duty to submit reports. The form told you that, upon authorisation, you would receive instructions to enable you to register on the system.
8. According to the FCA's records, a welcome email was sent on 17th October 2016 to the personal address, explaining the importance of registering with GABRIEL, the returns the firm was required to submit, and that a £250 administration fee would be charged for each late report. You have stated that you did not receive that email, and have drawn my attention to the ease with which it is possible to amend records to make it appear that they were sent to a different address.

9. According to the records, the FCA also sent you two reminder emails, but those were to the firm address rather than the personal address which was used for the welcome email. You make the point that the firm address was only monitored by junior members of staff, who might not “understand the significance of an email from the FCA or the importance of GABRIEL”.
10. In your response to my preliminary report, you said that “you must decide if I am an honest person & did not receive the vital e mail to the correct address & you must then ask yourself why all the follow up emails were sent to a different email address”.
11. I have no reason to doubt your honesty; but equally, I have no evidence that the FCA falsified its records. It seems to me probable that the emails were sent as recorded. I cannot establish whether any or all of them failed to be delivered or whether, as you have suggested might have happened, junior members of staff did not understand the significance of the latter two emails.
12. I conclude that the FCA took reasonable steps to inform you of, and remind you about, your responsibilities. There are, however, two outstanding questions arising from this.
13. The first is whether the FCA should, as a matter of policy, rely upon email without proof of delivery. That really goes beyond the scope of this Complaints Scheme. I think it is relevant to point out that in applying for authorisation your firm – in common with other firms – was asked for, and supplied, an email address for communications. Emails are, of course, quicker and much cheaper than letters. Nonetheless, if it has not already done so, **I suggest that the FCA should explore whether proof of delivery for important communications could be introduced in a cost-effective way.**
14. The second question relates to the use of email addresses. The application form which you completed has three separate fields for email addresses. The form does not make it clear which addresses might be used for what form of communication. While I consider that the principal responsibility for ensuring that any email address shown on a form is properly monitored must rest with the applicant, I **suggest that the FCA should consider showing on the form how each address might be used.**
15. In summary, it seems to me that the FCA took reasonable steps to remind you of your obligations, and had no reason to believe that you had not received those reminders. Furthermore, you had been alerted to the need to register on the FCA’s reporting system, and to submit regular returns, at the time you applied for authorisation.
16. The late returns fee is 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), and in the circumstances, I think it was reasonable for the FCA to charge you.

My decision

17. I am afraid that I cannot uphold your complaint, though I have made two suggestions for possible process improvements for the FCA to consider.

Antony Townsend

27th October 2017