

16 April 2018

**Final report by the Complaints Commissioner****Complaint number FCA00440***The complaint*

1. On 5 March 2018 you asked me to investigate a complaint about the FCA. I have carefully reviewed the papers sent to me by you and by the regulator.

*What the complaint is about*

2. You complained to the FCA about a £250 late return administration fee imposed because a Gabriel return was not submitted by the required deadline (10 November 2017). You said that you did not believe the fee should be paid because during a call with the FCA you were told that you did not need to complete the return and were told that you would be contacted if this was found to be wrong.

*What the regulator decided*

3. The FCA rejected your complaint because it was unable to find details of any calls between 1 October and 11 November 2017 from the telephone numbers you provided to the FCA. The Complaints Team investigator listened to two calls with the FCA's Customer Contact Centre (CCC) before these dates. She concluded that CCC staff did not say during the calls that you should not submit a Gabriel return.
4. The FCA Complaints Team concluded that it was unable to find any evidence that you called the FCA before the 2017 Gabriel returns deadline. There was no record of you logging on to Gabriel before the submission deadline, and information you sent to the Complaints Team investigator was also dated after the submission deadline. You were therefore advised that the FCA's Revenue team would contact you about payment of the late return administration fee.

*Why you are unhappy with the regulator's decision*

5. You have told me that you find it very strange the FCA cannot trace your calls as you have made a number of calls for assistance and always acted on the guidance provided. You were told "don't do anything unless you hear further". You say you acted upon this and then called again when you got further correspondence as you were advised to do. That is why the document you sent to the FCA Complaints Team is dated after your payment date. You have tried to do the right thing and feel that you are being penalised because the guidance you were given was wrong. You consider that FCA staff feel they can hit small businesses and act as they wish. You reject the financial penalty as you have acted as guided by the FCA, and cannot be held responsible for this.

*My analysis*

6. I have carefully studied the FCA's records, including the recordings of two telephone calls. One call helps you to access the FCA's Online Invoicing service and the other guides you through submitting your first Gabriel return in 2016. There is nothing in these records to indicate that FCA staff advised you that you would not need to submit a Gabriel return in 2017. Indeed, the call about your first

FCA00440

Gabriel return in 2016 clearly explains that this will be an annual obligation. Since you have produced no records to show otherwise, I have to conclude that, on the balance of probabilities, you were not told that you did not have to submit a Gabriel return in 2017. The written evidence I have seen shows that you were sent three reminders of the need to submit a return by 10 November 2017: on 2 October, 31 October and 3 November. This is in line with the Complaints Team investigator's conclusions.

7. You are not the first person who has complained to me that the FCA's on-line system is difficult to navigate for small businesses, and I have some sympathy with your view. However, the FCA has a clear and published policy that it will charge a late returns fee to recover administrative costs from firms which do not follow the process, so that firms which do comply are not subsidising those which do not.
8. It seems to me that you have been treated by the FCA in the same way as other firms and in accordance with its policies, and I have seen no evidence which supports your claim that the FCA made a mistake in handling your requests or advised you that you did not have to submit a Gabriel return by 10 November 2017.

*My decision*

9. For the reasons stated I cannot uphold your complaint. I realise that you will be disappointed by my decision but I hope you will understand how I have reached it.

Antony Townsend

Complaints Commissioner

16 April 2018