

28 September 2018

Final report by the Complaints Commissioner**Complaint number FCA00491***The complaint*

1. On 26 July 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. I issued my preliminary report on 30 August and both you and the FCA have commented.

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. You had logged on to complete your return on the due date (12 February 2018) and once it was ready you clicked "Save and Submit". You thought your return had been submitted and only realised that it had not when you received a late notification message from the FCA on 22 February. You went back online and saw that a further step was required. You submitted your return on 23 February.
3. You also complained that telephone guidance you received from the FCA on 12 February 2018 did not explain this aspect of the system to you and that in another call on 28 February (after you had received the late notification message) an FCA staff member suggested a late fee might not be due. You also said that no invoice was sent or emailed to you for the late return fee.

What the regulator decided

4. The FCA did not uphold your complaint although it recommended that the relevant internal team review the GABRIEL prompt and make changes to ensure the message to submit is clearer.

Why you are unhappy with the regulator's decision

5. You are dissatisfied with the FCA's response because you genuinely believed you had taken all steps necessary to submit your return on the due date. The FCA00491

prompt turned green, which was misleading, and the message that appeared you took to be a statement of fact, not an indication that another step was required. The fact that the FCA is making changes shows that these are recognised issues which have affected people and require correction.

6. You consider that the FCA's complaint response ignores the fact that your return was ready and complete on 12 February and no changes were needed before you submitted it on 23 February. You are also unhappy that the FCA referred to previous late returns, which were not relevant.
7. You believe there were opportunities during the long call you had on 12 February for the assistant to clarify the process further. The assistant you spoke to on 28 February reassured you that nothing further was required from you until 2019. You did not receive the FCA's invoice dated 5 March 2018 for the late return fee and the FCA continued to communicate poorly with you about payment even after the Complaints Team's involvement. You would like the late return fee of £250 reimbursed and £450 for your time and trouble in dealing with this matter.

Preliminary points

8. I have previously reviewed several complaints about late submission fees and difficulties with the FCA's GABRIEL system. Partly because of my published reports, the problem of 'validated but not submitted' was recognised as an issue. The FCA made changes from November 2017 to add a prompt that said, "the data item has been successfully validated and must be submitted before the due date". In view of this change the FCA took the view that it had made it clear that firms must still submit once they have validated their returns. However, problems persisted for some users and the FCA's files show that the Complaints Team made further suggestions for improvement to alert users to submit and not just validate.
9. Following these complaints, including yours, the FCA has made further changes, to change the Validation Successful bar to an amber highlight and to ensure the message to submit is clearer. I hope that this will reduce complaints about late submissions. I turn now to the specifics of your complaint and the issues raised.

My analysis

10. The FCA has made its files available to me, including recordings of the relevant phone calls, which I believe you have also received. Just to be clear, as there has been some confusion about dates, these are calls made by you on 12 and 28 February, 26 April and 4 May 2018. Although the FCA's complaint response says that you received notification of late submission on 23 April, this appears to be an error as the files show that the correct date is 22 February.
11. I have sympathy with your position and your belief that you had submitted your return on the due date, even though the fact is that it had not been. I accept that no further changes were made between 12 and 23 February, so it is clear that you had done all the work required by 12 February. I have listened to the recording of your phone call with the FCA on 12 February. The FCA staff member answered in detail all your questions and you were satisfied that you had what you needed. I do not think that the FCA's response during that call can be faulted.
12. The FCA's complaint response acknowledged that the person you spoke to on 28 February made an inaccurate statement, that the Fees Team has discretion to raise an invoice. This was reported back to the team concerned and the evidence I have seen shows that this was picked up and addressed. However, the person you spoke to also said they would raise the problems you had experienced with submission with the appropriate team. I have not seen any evidence that this was done or that it would have made any difference to the decision to raise a late fee if he had. I am inclined to agree with you that the call was over-reassuring, although I do not think that this made any difference to the outcome. In response to my preliminary report, the FCA has confirmed that these matters have also been fed back to the relevant team.
13. Regarding late submissions in previous years, the FCA complaint response said: *I have taken into consideration that this was not the firm's first regulatory return and your firm has previously submitted two returns. Therefore, it is reasonable to expect that the firm would have been aware of its reporting obligations and aware of the requirement to "submit" as an additional step. Furthermore, I note that on both previous occasions, your firm's returns were also submitted late.*

Given your firm's previous history of submitting GABRIEL returns, I do not believe this was down to the system being unclear on this occasion [my emphasis]. Elsewhere in the response, it says: *The GABRIEL audit trail shows that your firm made no attempt to log on to GABRIEL and submit the return until 12 February, when you "saved" and "validated" the return.*

14. There was nothing wrong in principle with the Complaints Team taking account of your experience of using the GABRIEL system. However, care must be taken to ensure that only relevant matters are considered. On this occasion my view is that too much emphasis was given to previous late returns which were not relevant to the issues that you raised. There was a known problem with 'validated but not submitted'. In saying "you 'saved' and 'validated' the return", the complaint response glides over the fact that the button said, 'Save and Submit'. As you point out, your firm only logs on to use the system once a year. The 12 February phone call shows that you were making every effort to submit your return on time and required detailed assistance to do so. The use of the phrase "made no attempt to log on" until the due date implies that you were indifferent to your reporting responsibilities, which is not supported by the evidence.
15. In all the circumstances I consider that the reference to previous late submissions may have inappropriately influenced the Complaints Team's assessment of your complaint. Although I do not think this was the intention, I uphold this element of your complaint.
16. I accept that you say you did not receive the FCA's invoice dated 5 March 2018 for the late fee. However, the internal evidence shows that this was correctly sent to you. When you contacted the FCA complaints team on 4 May 2018 an internal request was made to put the collection of your invoice on hold while your complaint was investigated. At the conclusion of your complaint, payment was pursued but the email sent was inappropriately worded and referred to enforcement through debt collectors. You pointed this out to the Complaints Team and they intervened to ensure a revised payment request was sent to you. There does appear to have been a gap in internal communication around this, although I note that you have not incurred any additional penalties. I have concluded that for this reason there is no basis for me to recommend that you

receive a financial payment. However, I **suggest** that the FCA considers whether it needs to review its internal systems to ensure that messages about suspending debt collection while a complaint is investigated are clearly flagged.

My decision

17. This is a difficult case, in the sense that it is a fact that your firm failed to submit its return on time. In strict terms, it is clearly liable for a late return fee. However, I think it important to take into account two particular factors in this case:

- a. It is clear that you had completed all the work necessary to submit your return before the deadline – this was not a case of a firm failing to make the necessary efforts to comply;
- b. Your firm’s failure to submit does appear to have been attributable to the fact that the FCA’s redesign of its system for submission, in response to earlier examples of this problem, created a new problem. In particular, the use of a “save and submit” button, coupled with the use of a green message including the word “successful”, was likely to mislead users into thinking that they had done everything required. (It is significant that the FCA is undertaking further work to remedy the problem.)

18. In these unusual circumstances, although I consider that the FCA was entitled to levy a late fee, and I am therefore unable to uphold your complaint overall, I **recommend** that the FCA exercises its discretion, and waives the late return fee. I am pleased that, in response to my preliminary report, the FCA has agreed to do this. As you have already paid the late fee, this will be by way of a refund, which the FCA should offer to make to you within 10 days of the publication of this decision.

19. I am also pleased to note that, in response to my preliminary report, the FCA has accepted my **suggestion** that the FCA reviews its internal systems to ensure that messages about suspending debt collection while a complaint is investigated are clearly flagged.

Antony Townsend

Complaints Commissioner

28 September 2018