

26th August 2014

Dear Complainant,

Your complaint against the UK Financial Services Regulator
Reference Number: FSA01614

Thank you for your letter of 20th June 2014.

As the rules of the scheme under which I consider complaints can be found on our website at www.fsc.gov.uk, I do not intend to set them out fully below.

Your complaint

From your letter I understand that you are unhappy with the regulator's decision to impose a late submission administration fee (administration fee) upon your firm as a result of the late submission of your firm's Retail Mediation Activity Report (RMAR) return for the period ending 30th September 2011. You are unhappy with the FCA's decision as you say that you were ill with flu at the time the return was due and were therefore unable to submit the return.

You add that you do not believe that the regulator has investigated adequately your complaint in relation to your illness. You hold this view as, in your opinion, there is nothing in the regulator's rules which requires you to provide proof that you were ill, particularly where bed rest was recommended as the best remedy.

You are asking me to recommend that the FCA should waive the administration fee you have incurred as a result of the late submission of your RMAR return.

My position

It may be beneficial if I provide you with some further information on the reporting process.

As part of its supervision of the financial services industry, all regulated firms are required to submit information to the regulator in relation to the firm's activities over a specific period by way of a series of individual reports submitted collectively within what is known as a RMAR return. To enable the regulator to monitor effectively the industry all of the firms have to submit their RMAR returns within approximately six weeks of the end of the reporting period. Where a firm fails to submit one or more of the required reports which make up the return by the due date the regulator will usually apply an administration fee to the firm of £250. This is to ensure that the administrative costs of dealing with firms who do not comply with the rules fall on those firms, and are not subsidised by firms who are compliant.

I now come to your complaint. The RMAR return which has generated the disputed administration fee is for the period 1st April 2011 to 30th September 2011. This return had to be submitted electronically no later than 11th November 2011 if your firm was to avoid the late submission administration fee. The regulator's records show that on 3rd October 2011, the regulator sent you an email informing you that your firm's reporting period had ended and an RMAR return was due for completion.

Subsequently, on 1st November and 8th November 2011 you were sent reminders by email setting out that an RMAR return was outstanding and needed to be submitted no later than 11th November 2011 if you were to avoid the administration fee. Unfortunately, the regulator's records show that your RMAR return for the period ending 30th September 2011 was neither accessed nor submitted until the evening of 21st December 2011. This meant that your RMAR return was submitted almost six weeks late.

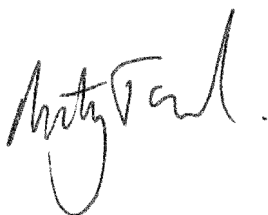
Following notification that you had incurred the administration charge I believe that you wrote to the regulator, on 24th January 2012, challenging the administration fee. The regulator responded to your letter, by telephone, on 9th February 2012, advising you that it could only consider waiving the administration fee on health grounds if you were able to provide evidence that you were ill at the time the submission was due. Whilst I know that you cannot recall receiving that telephone call, I have to base my investigation on the documentary evidence provided to me which clearly shows that the regulator called you to discuss your concerns at around 4.30pm on 9th February 2012. The regulator's records also show that although you corresponded further with them over this matter, medical evidence to support your claims was not provided.

I appreciate that you have confirmed you contacted your doctor and were told that "due to the passage of time, it was no longer feasible to provide a doctor's note" and I have also noted your comments that there "is nothing in the rules about proof of illness of ordinary flu when bed rest was recommended as a remedy". Whilst I accept that you may have been ill and that you contacted your doctor who advised bed rest, this does not in my opinion explain fully why your return was submitted almost six weeks late, nor why you did not seek to obtain documentary evidence from your doctor at the time that the administration fee first arose.

Whilst I appreciate that you are a small business and wish to avoid unnecessary additional costs, the regulator is required to apply its rules fairly and consistently across all of the firms it supervises. In this case, it is clear that your RMAR submission was submitted nearly six weeks after the due date (and 11 weeks after the end of the reporting period). It is unfortunate that you were ill but I believe that the regulator has acted reasonably by saying that it would review the administration fee if you provided documentary evidence (from your doctor) confirming that you were unable to work for a considerable period. As you have been unable to provide this, there is nothing to indicate that the regulator has incorrectly applied the administration fee to your firm or that it has acted unreasonably in the circumstances.

Having considered your complaint it is my Final Decision that the regulator has correctly and reasonably applied its rules and, as a result, the late administration fee was correctly applied. I am therefore unable to recommend that the regulator should waive this. As a result, the invoice you have received remains payable and you should contact the regulator to make arrangements for its payment.

Yours sincerely,

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

Antony Townsend
Complaints Commissioner