

15 October 2018

**Final report by the Complaints Commissioner****Complaint number FCA00494***The complaint*

1. On 21 August 2018 you complained to me about a late payment fee which the Financial Conduct Authority (FCA) had levied on your firm.

*What the complaint is about*

2. When it considered your complaint, the FCA described your complaint in this way:

*You do not agree with the late return fee you have been charged in relation to the Gabriel report CCR007 which was due on 12 February 2018. You believe that this fee should be waived as you did not submit these due to not receiving any reminders about the report and because you were awaiting information from the finance company to allow you to complete it.*

*You have stated if the FCA is unable to waive the fee it should apply to your local county court to review the fairness of the contract it says exists.*

*What the regulator decided*

3. The FCA rejected your complaint. It said that the record showed that three automated reminders were sent to the email address which your firm had supplied, and that it was the firm's responsibility to have systems and controls in place to send the relevant FCA returns in on time. For that reason, the FCA would not waive the late return fee.

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

4. You say that you did not receive any reminder emails; that in the circumstances you were entitled to assume that a return was not required; and that there is no contract between you and the FCA which entitled it to levy a late return fee.

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*Preliminary point*

5. The question of what, if any, contractual relationship exists between your firm and the FCA is something which only a court could consider; so I would suggest that if you want to pursue that point, you should consider taking legal advice. You have asked me for a copy of the “contractual agreement” between your firm and the FCA. On your application for authorisation with the FCA, you will – in common with all firms seeking authorisation – have signed to accept a number of obligations. You could ask the FCA for a copy of your application, if you do not have one, but that does not affect my consideration of your complaint.

*My analysis*

6. The FCA’s records show that three reminder emails were sent to the correct email address. You have said repeatedly that the FCA has confirmed that they bounced back, and you have sent me a copy of a letter from the FCA, dated 22 February 2018, which says that an email “was returned undeliverable”.
7. I think there has been a misunderstanding. From my reading of the records, the FCA did not receive bounce-back emails from the three reminders which were sent to you before the deadline for the completion of your Gabriel report. However, they did receive one bounce-back in response to the fee notification letter, following which they sent it to you by post.
8. In any event, the FCA is right to say that it is the firm’s responsibility to submit returns on time. This is one of the things which firms sign up to when they are authorised by the FCA. The FCA is not required to send reminders, although it does so in order to help firms to comply.
9. I am afraid that if your firm simply assumed that it did not have to make a return because it had not received any reminders, that was a mistake.

*My decision*

10. I am sorry, but it appears to me that the FCA has operated its processes correctly in this case, and is entitled to charge a late return fee. I cannot uphold your complaint.

Antony Townsend

Complaints Commissioner

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