



21st January 2009

Dear Complainant

Complaint against the Financial Services Authority
Reference Number: GE-L01071

I am writing to advise you that I have now completed my investigation into your complaint.

At this stage, I think it would be worth explaining my role and powers. I am charged, under Paragraph 7 of Schedule 1 of the Financial Services and Markets Act 2000 (the Act), with the task of investigating those complaints made about the way the FSA has itself carried out its own investigation of a complaint. The investigations I undertake are conducted under the rules of the Complaints Scheme (Complaints against the FSA - known as COAF). I have no power to enforce any decision or action upon the FSA. My power is limited to setting out my position on a complaint based on its merits and then, if I deem it necessary, I can make recommendations to the FSA. Such recommendations are not binding on the FSA and the FSA is at liberty not to accept them. Full details of Complaint Scheme can be found on the internet at the following website; <http://fsahandbook.info/FSA/html/handbook/COAF>.

Your Complaint

From your correspondence with my office, I understand your complaint relates to the following issues:

You have incurred a £250 administration fee for the late submission of your quarterly Gabriel return for the period ending 31st August 2008 which was due to be submitted by 26th September 2008 but was not submitted until 8th May 2009.

You feel that the FSA's new Gabriel reporting system is not appropriate for small firms. You hold this view as the information you are required to enter is largely estimated and therefore does not take into account the practices of small firms.

My Position

As part of my investigation into your concerns I have obtained and reviewed the FSA's investigation file. I have considered the arguments you have made when corresponding with both the FSA and my office. I have also referred to the FSA's handbook which sets out the requirements it imposes on individuals and firms who wish to be authorised.

I have also considered the argument you made when referring the complaint to my office on 10th September 2009 and noted that you claim the information the FSA required under the Gabriel return was significantly different to that you had previously provided to it under the Retail Mediation Activity Report (RMAR) reports.

Before I comment further on your complaint I must make you aware that I have previously made a general comment about the way in which I view complaints relating to the return of reports by the industry to the FSA on my website under the heading of "Views of the Commissioner" (<http://www.fsc.gov.uk/documents/recent-issues-feb08.pdf>). As part of becoming authorised under the FSA you accepted to be bound by its rules. I note that I have not seen any evidence of your firm challenging the effect of the rules surrounding the requirement for electronic submission prior to the date which the regulatory return was due. This is clearly explained in the FSA handbook which sets out the rules with regard to regulatory returns, which you have previously agreed to comply with as part of the authorisation process.

The FSA's records show that your firm, Firm A, first became authorised by the FSA on 8th August 2005. From your correspondence with the FSA I also believe that you had previously submitted a number of returns and therefore would have been aware that your firm was required to complete subsequent returns at regular intervals.

The £250 administration fee you have incurred relates to the late submission of your Gabriel return for the period ending on 31st August 2008. FSA rules state that a firm has a period of 30 business days, following the end of the period, in which to submit its return. Your return was not received by the FSA until 8th May 2009. This meant that your return was submitted some five months late.

I believe that, on 2nd April 2009, you contacted the FSA and requested an extension to date by which your return had to be submitted as you needed to obtain further information from your accountant who was unavailable. Subsequently, on 21st April 2009 you received a response from the FSA saying that it would not grant you the extension you were requesting. I must say that I am disappointed that it appears to have taken the FSA 11 working days to answer what appears to be a simple request. However, whilst I appreciate that you feel that the FSA was being unhelpful in denying you an extension, I note that when you made the request the return was already around five months late (my emphasis). As such I do not believe that the FSA was being unhelpful when it denied your request for additional time.

The FSA's file indicates that, on 10th March 2009, it sent you an email reminder stating that your firm's Gabriel return was over due and must be submitted within the next 10 business days. This reminder also explained that, if the FSA did not receive your return a late submission administration fee of £250 would be payable.

The administration fee of £250 imposed by the FSA is a standard fee applied in all cases of late submission and does not reflect the details contained on the RMAR return. Details of the penalties applied for the late submission of a return can be found in the FSA rule book under SUP 16.3.14.

SUP 16.3.14 states

If a *firm* does not submit a complete report by the date on which it is due in accordance with the *rules* in, or referred to in, this chapter or the provisions of relevant legislation and any prescribed submission procedures, the *firm* must pay an administrative fee of £250.

In this case, as your submission was received by the FSA some considerable time after it was due, the FSA is following the rules laid down in its rule book by imposing a £250 administration fee on your firm. The onus for compliance with all of the FSA's rules (including the timely submission of reports required by it) falls upon those who are authorised. This responsibility is accepted as part of the authorisation process by the firm applying for authorisation. The rules on regulatory returns are clear and straightforward to find in the FSA handbook. By imposing the administration fee following the late submission of your Gabriel return, the FSA has followed its stated procedures on the matter.

In this case, as you did not submit your Gabriel by the due date (submitting it around five months after it was due) you have not complied with the FSA's rules. By imposing the administration fee (which is detailed in its hand book under SUP 16.3.14) the FSA has followed its stated procedures on the matter.

You also indicated that you are unhappy with the manner in which you have to enter information (i.e. purely in multiples of £1,000) and with the FSA's stance that provisional figures can be entered into a Gabriel return (for example estimated turnover) if actual figures are not available, provided that an explanation for the inclusion of provisional figures is included with the return. Although you have indicated that you are unhappy with the way the FSA requires firms to supply (enter) information and with its decision to allow firms to amend previously entered information, the Act gives the FSA a discretion on what information it obtains from the firms it regulates and how firms are required to provide this information. Unfortunately, in view of the contents of paragraph 1.4.2A of COAF this is not something either I or the FSA can consider under the complaints scheme. Paragraph 1.4.2A of COAF states:

COAF 1.4.2A - Circumstances under which the FSA will not investigate

The FSA will not investigate a complaint under the *complaints scheme* which it reasonably considers amounts to no more than dissatisfaction with the FSA's general policies or with the exercise of, or failure to exercise, a discretion where no unreasonable, unprofessional or other misconduct is alleged.

I note that in your letter to me you also indicate that you were unhappy that, in October 2009, the FSA would not extend the date by which your return had to be submitted, despite requests for it do so by both you and your accountant. From the papers presented to me, I do not believe that the FSA has had the opportunity to respond. Whilst I would normally defer my investigation until the FSA has responded, in this instance, as I have already provided you with my views on the issue of requests for extended time limits I do not believe that anything would be gained by such a delay.

I have also noted your concerns that the Gabriel reporting system is not appropriate for small IFA firms as it requires information that you believe only larger firms or groups can easily provide. I have considered this issue as part of my investigation into your complaint and raised this with the FSA. The FSA has confirmed to me that a firm's permissions and/or activities impact on the information it is required to 'input' into the Gabriel system. The FSA also adds that many small IFAs have not seen a significant, if any, change to the information they are now required to provide to the FSA as part of their Gabriel returns.

As I mentioned earlier, a firm's permissions and/or activities do have an impact on the information which is to be provided. In this case, although your firm is a small IFA, it applied for and was granted an EEA inward services 'Passport' allowing it to provide services in other EEA member states. As a result of the introduction of its Gabriel reporting system, firms holding an EEA inward services 'Passport' now have to provide additional information. It is unfortunate that Firm A now has to provide additional information to the FSA, which may not be as readily available as the information which was previously submitted under its RMAR return, but ultimately this is as a result of its decision to apply for an EEA inward services 'Passport', which I assume was one taken for business reasons. I appreciate that you are unhappy about the extent of the information Firm A now has to provide regularly to the FSA, but, in my opinion, this has resulted directly from business decisions taken by the firm and is therefore not the fault of the FSA.

You also mention that you are unhappy that the FSA has not commented on or investigated adequately the lack of responses to your telephone calls and following a meeting you had with it. It is disappointing that the FSA has left you with the view that the service or support it has given you was less than satisfactory. Having reviewed the decision letter the FSA sent to you on 30th July 2009, I agree that the letter does not address these issues. However, I must draw your attention to the letter the FSA sent to you on 11th June 2009 where it sets out its understanding of your complaint and asks you to contact it if you disagree with its assessment of your complaint. Having reviewed the FSA's complaint file it does not appear that you informed it that this formed part of your complaint and that you wanted the Complaints Team also to investigate this issue. As the FSA did not hear from you it, correctly in my opinion, assumed that the four elements of your complaint it investigated represented the whole of your complaint. I will not therefore be addressing this issue in this, my Final Decision.

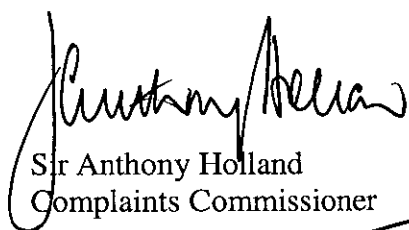
You also indicate that you are unhappy that you have not received answers to the issues you raised about the Gabriel reporting system as part of a FSA 'surgery' you attended. I accept that you did raise this issue with the FSA and that the FSA did not comment on this when it responded to your complaint on 30th October 2009. However, although I make this comment, I would draw your attention to the second page of the FSA's letter to you of 11th June 2009 where the FSA states:

"You also state that you raised some points in an (sic) FSA 'surgery' on 10 December 2008 about GABRIEL (sic) Reporting for 'Phase 3 firms' as well as writing to Adair Turner on 3 April 2009. We have been unable to trace your communications and would be grateful if you would confirm the points raised so that we can consider and provide you with a response".

It is clear from this paragraph the FSA noted this issue formed part of your complaint, and tried to assist you by asking you to provide details of the issues you raised so that it could respond to you and attempt to answer your concerns. It is unfortunate that the FSA did not respond directly following the 'surgery' when you say that you initially raised your concerns. However, the FSA's letter of 11th June 2009 clearly indicates that the FSA's Complaints Team was trying to be helpful and provide you with the answers you required. The fact that you chose not to respond to the FSA's request for further information, resulting it being unable to provide you with the answers you required when it wrote to you on 30th October 2009, is not, in my opinion, the fault of the FSA.

I am sorry, but from the papers presented to me I am unable to find any evidence to show that the FSA has not correctly dealt with your complaint. I am therefore unable to alter the decision previously made by the FSA. I appreciate that you will be disappointed with my findings, but hope that you will understand why I have arrived at this decision. I would also point out that, as consequence of my decision the £250 administration charge is now payable in full and, if you have not already done so, you should contact the FSA to arrange for the payment of this administration fee.

Yours sincerely,



Sir Anthony Holland
Complaints Commissioner