



12<sup>th</sup> May 2010

Dear Complainant

**Complaint against the Financial Services Authority**  
**Reference Number: GE-L01092**

I refer to your email of 19<sup>th</sup> March 2010 in connection with the above. I am now 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 the RMA-J (Part-J) of your Gabriel return which was due to be submitted by 14<sup>th</sup> September 2009 but was not actually submitted until 6<sup>th</sup> November 2009.

You feel that the FSA's should waive the administration fee it has applied as you say that although you clicked on the "submit all" button, only the first part of your Gabriel return was submitted and that Part-J of the return remained completed but not submitted. As the FSA's systems failed to allow you to "submit all" of the return, you feel the administration charge should be waived.

**My Position**

As part of my investigation into your concerns I have obtained and reviewed the FSA's investigation file. I have considered the comments 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.

The FSA's records show that your firm, Firm A, first became authorised by the FSA on 14<sup>th</sup> January 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 Part-J of your Gabriel return for the period ending on 31st July 2009 which was due to be submitted no later than 14<sup>th</sup> September 2009 (the September 2009 return). Although the return was due before 14<sup>th</sup> September 2009 it was not submitted until 6<sup>th</sup> November 2009, some nine weeks late.

The evidence confirms that you completed and attempted to submit all of your Gabriel return (including Part-J) on 8<sup>th</sup> September 2009 (6 days before their due date) by clicking the "submit all" button. However, whilst you did this, only the first part of your return (excluding Part-J) was actually received by the FSA. I can, and do, understand your views that the FSA should waive the administration charge as the "submit all" button failed to deliver the service it suggested it would. I would add that normally, as part of my Preliminary Decision, I would recommend the FSA addresses this problem, but from my subsequent discussions with it in relation to the matters you have raised, I believe that it is aware of this problem and understand it is taking steps to correct the situation. As such, I do not believe that a recommendation is necessary.

As I have explained above, I do sympathise with your position as it is clear that Firm A incurred an administration charge despite attempting to fulfil your obligations under the Act. However, in reaching my Final Decision, I also have to be mindful of both your and the FSA's action after you attempted to submit the returns.

In this case the FSA has confirmed that it wrote to you, by email on 2<sup>nd</sup> September 2009, notifying you that your Gabriel returns needed to be submitted by 14<sup>th</sup> September 2009. I also appreciate that whilst you attempted, unsuccessfully as it turned out, to submit all of your returns on 8<sup>th</sup> September 2009, the FSA notified you on 9<sup>th</sup> September 2009 that Part-J of the September 2009 return had not been submitted and remained outstanding.

In your response to my Preliminary Decision, you tell me that although the FSA say that it notified you that Part-J of your return had not been submitted, you did not receive this email and were therefore unaware that Part-J of the September 2009 return had not been submitted.

Similarly, you also tell me that you did not receive the further email the FSA says it sent you on 6<sup>th</sup> October 2009 (informing you that Part-J of the return remained outstanding and that should this not be submitted within the next 10 days Firm A would incur a £250 administration fee). You add that you remained unaware that Part-J of your September 2009 return remained outstanding until 6<sup>th</sup> November 2009 when you received written notification (by post) that an administration fee was now due (together with copies of the emails the FSA says it sent to you on 9<sup>th</sup> September and 6<sup>th</sup> October 2009). I also believe that upon receipt of this notification you immediately checked your firm's Gabriel reports and submitted Part-J of the September 2009 return and immediately contacted the FSA about this matter.

When the FSA considered your complaint it appears that it felt the emails it says it sent to you on 9<sup>th</sup> September and 6<sup>th</sup> October 2009 gave sufficient notification that Part-J of your September 2009 return remained outstanding and as a result felt that it had sufficient grounds to apply the administration fee (detailed in SUP 16.3.14 of its hand book).

However, as I have mentioned above, although it is clear, that the FSA may well have attempted to notify you that Part-J of your September 2009 return remained outstanding it is unclear whether the emails it says it sent to you were actually received by you. Your evidence to me is that they were not received. In arriving at my Final Decision I have considered firstly that you attempted to submit the required returns before (my emphasis) their due date; secondly that you did so by use of the "submit all" button which, as you indicate in your correspondence to my office suggests that it will submit all of the reports and thirdly that the FSA accepts that you did that by virtue of its confirmation that it received the first part of what you had submitted. I am also mindful that the FSA accepts that there have been issues/problems with the "submit all" button which in this case resulted in only part of the return actually being submitted. That remains the case today and this matter is still being worked upon by the FSA.

### **Conclusion**

Whilst the FSA maintains that it notified you that Part-J had not been submitted, I have taken your evidence and actions into consideration when arriving at my decision. In my opinion, these show that you attempted to submit the returns in a timely manner and acted immediately upon receipt of the written notification you received (by post) that Part-J of the September 2009 return remained outstanding. As such, I have reached the view that you attempted to comply fully with the requirements the Act imposes upon you/your firm by attempting to submit your returns in a timely manner and were unaware (as you state that you did not receive the emailed notification) that your attempt (on 8<sup>th</sup> September 2009) to submit the whole of your Gabriel return (including Part-J) had failed.

I am therefore recommending to the FSA should waive the £250 administration charge it has applied in relation to the late submission of Part-J of your September 2009 return. I do so on the basis that, having regard to what I have set out, you took what action you could and remained in ignorance of the failure of your required return having been received by the FSA. In short your actions throughout lead me to the conclusion that, on the balance of probabilities, you believed that you had complied with all the relevant FSA requirements.

Yours sincerely,



Sir Anthony Holland  
Complaints Commissioner