



10th March 2010

Dear Complainant

Complaint against the Financial Services Authority Reference Number: GE-L01096

I refer to your dated 11th November 2009, which was received at this office on the 12th January 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

The complaint is with regard to a late return fee being charged for £250. The Complainant varied, in this case increased, their permissions and did not report on those increased permissions when the reporting was due shortly afterwards. The Complainant contended that he tried to make that report in relation to the extra permissions but the system would not allow it. Consequently he concluded that *“as my access was denied that it could not be required for this period”*. Consequently it is felt that the £250 fee should be waived.

The Timeline of Events

The FSA have set out a timeline in its decision letter with regards to which the Complainant has made comment in the complaint to me. I shall detail the timeline as set out by the FSA along with the comments made to this office which are added in bold type.

- *“On 7 April 2009 the firm’s permissions were varied to include general insurance mediation.*
- *The additional permission had an impact on the reporting requirements and the Gabriel reporting schedule was automatically updated to include RMA-I Supplementary Product Sales Data report. **The Complainant notes that access to this was “denied” when he entered the computer system.***

- *Your return was due to be submitted on 15 May 2009. The RMA-I report should have been submitted as part of your return.*
- *As a result of a computer error your return was re-submitted on 15 June 2009, however, RMA-I was still outstanding and not submitted.*
- *An FSA's warning notification was emailed to you on 8 July 2009 advising you to submit the overdue return within 10 working days to avoid paying a £250.00 administrative fee for late submission. **The Complainant states that he did not receive this email.***
- *On 6 August 2009, a fee notification for an overdue regulatory return was emailed to you at the above mentioned email address and you confirmed in your telephone discussion with the CCC on 10 August 2009 that this notification had been received by you.*
- *As mentioned above on 10 August 2009 you contacted the CCC. You were advised that the RMA-I data item was outstanding. You informed the CCC that you could not access the RMA-I report. The CCC offered you assistance on how to access the item. This assistance was declined by you on the basis that you did not want to have access to the RMA –I report until the administrative fee was reviewed. Your PU rights were then updated accordingly on this date.*
- *On 10 August 2009, you emailed the FSA and advised it that you were appealing the administrative fee.*
- *On 3 September 2009 you received a response from the FSA regarding your email of 10 August 2009 (appealing the administration fee). You were advised in that email that the administrative fee for late returns was levied as a result of chasing returns. You were also advised that the reminder notifications were sent as a courtesy and that there is no statutory requirement on the FSA to do so. You were further advised that you could have contacted the CCC if you were unsure of your reporting requirements or how to access the data item prior to the deadline."*

My Position on the matter

Having reviewed the evidence available to me this case boils down to the issue regarding the time when the Complainant tried to access the RMA-I part of the reporting. The Complainant has said that when he was denied access he assumed that "*it (that is reporting) could not be required for this period*". It is clear from this comment and the later comment in his letter to this office, that is "*I was only aware there was a problem when I received a fee notification on the 6th August*", that he had assumed that reporting for that extra permission was not required for that period, namely April-May 2009, and was sufficiently happy with his assumption that he did not contact the FSA for clarification.

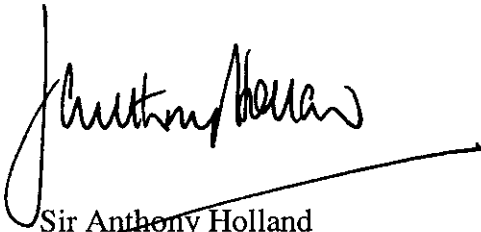
I do not consider this to be a rational decision to make. The fact that he was denied access to a page of the online reporting system does not necessarily mean that he does not have to make such a report, it just means that he did not currently have access to that particular report at that time. By trying to access that report it is clear that the Complainant believed he needed to make that particular report and as a consequence it is clear that a rational approach to such a situation would be to contact the FSA for either clarification of the situation and then appropriately how to gain access to the particular RMA-I part of the reporting. By choosing not to take such action the complainant has left himself open to the situation that has since transpired. This is not the fault of the FSA.

I should add that it seems clear from the FSA file that gaining access to this particular reporting page is a straightforward process which the complainant could have done by ticking the appropriate box in the edit user page of the system.

Conclusion

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

A handwritten signature in black ink, appearing to read 'Anthony Holland', written over a horizontal line.

Sir Anthony Holland
Complaints Commissioner