



11<sup>th</sup> May 2010

Dear Complainant

**Complaint against the Financial Services Authority**  
**Reference Number: GE-L01111**

I refer to your email of 3<sup>rd</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 your quarterly Gabriel return due to be submitted by 22<sup>nd</sup> December 2008 but was not actually submitted until 4<sup>th</sup> June 2009.

You feel that the FSA's should waive the administration fee it has charged you as you have say you attempted to submit the return on a number of occasions but experienced difficulties with the Gabriel reporting system which prevented you from doing so and which ultimately led to the return being submitted late.

**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.

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 31<sup>st</sup> October 2004. 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 11<sup>th</sup> November 2008. Although the return was due by the 11<sup>th</sup> November 2008, due to delays activating your Gabriel account, the FSA extended the deadline for the submission of your report until 22<sup>nd</sup> December 2008. Whilst the FSA extended the submission deadline until 22<sup>nd</sup> December 2008, the FSA's records show that your return was not actually submitted until 4<sup>th</sup> June 2009, over five months late.

Although you say you contacted the FSA to explain that you were experiencing problems activating your account, from the FSA's records it does not appear that you contacted the FSA until 28<sup>th</sup> January 2009, which was some five weeks after the return was due. When contacting my office, I note that you have not challenged the information the FSA provided or provided any explanation over why you did not attempt to submit your return before the 22<sup>nd</sup> December 2008 deadline.

I accept that you were in correspondence with the FSA about the problems you were experiencing between 28<sup>th</sup> January and 13<sup>th</sup> March 2009, but note that the FSA has no record of you contacting it again to request assistance or make any further comments until 14<sup>th</sup> August 2009, despite the FSA contacting you, by email, on 16<sup>th</sup> April 2009 to inform you that your return was outstanding and that should it not be submitted within the next 10 days you would incur a late return administration fee.

The FSA's records show that, on 3<sup>rd</sup> June 2009, it notified you that as your return was overdue you would now incur a £250 administration fee. Subsequently, on 4<sup>th</sup> June 2009, you submitted your return.

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 over 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.

In your response to my Preliminary Decision you say that the problems you experienced when submitting your November 2008 Gabriel return resulted in you incorrectly submitting your May 2009 return instead of your November 2008 return. You asked me to take these problems into account when producing my Final Decision.

Prior to the production of my Final Decision, I asked the FSA to provide me with further information in relation to the submission of both your November 2008 and May 2009 Gabriel returns. The FSA has done this and confirmed that your May 2009 Gabriel return, which was due on 20<sup>th</sup> May 2009, was submitted on 15<sup>th</sup> May 2009. As such, it does appear that you may have submitted the May 2009 Gabriel return in error.

However, although you I agree with your assertions that you submitted the May 2009 Gabriel return in error, I have to be mindful of the date when this return was submitted. Although the FSA, due to delays, granted firms extensions to the date by which their first Gabriel returns were to be submitted, your November 2008 Gabriel return was due to be submitted no later than 22<sup>nd</sup> December 2008. The FSA also notified you, by email, on 16<sup>th</sup> April 2009 that should your November 2008 Gabriel return not be submitted within the next 10 working days (i.e. by 30<sup>th</sup> April 2009) your firm would incur an administration fee.

Whilst you say that your May 2009 return was submitted in error, the FSA's records show that this was not done until 15<sup>th</sup> May 2009, which was after the date by which your November 2008 return needed to be submitted if the administration fee was not to be incurred. Whilst I can and do sympathise that with the problems you say you encountered when attempting to submit your return, ultimately it had to be submitted by the due date if an administration fee was not to be incurred. In this case, although you say that you submitted the incorrect return in error, the facts are that neither the November 2008 nor the May 2009 returns were submitted by 30<sup>th</sup> April 2009.

## **Conclusion**

In assessing a complaint, I have to have regard to the FSA's investigations and findings, together with the further representations complainants make to my office. In this instance, you have not explained why you feel that the decision the FSA made was incorrect, only that you are unhappy with it. I accept that you may have had problems accessing the system and this may have initially delayed your submission of the Gabriel return in question. However, you have not, in my opinion, provided adequate, if any, explanation for the further delay.

In arriving at this conclusion I am conscious that there is no record of any contact with the FSA stating that you were experiencing problems between 21<sup>st</sup> November and 22<sup>nd</sup> December 2008, i.e. before (my emphasis) the return was due. Likewise, although you were corresponding with the FSA between 28<sup>th</sup> January and 13<sup>th</sup> March 2009, there is no record of any correspondence with the FSA between 13<sup>th</sup> March and 4<sup>th</sup> June 2009 when you ultimately submitted the return.

This is a concern to me as, in my opinion, if you were actively attempting to submit your return and still experiencing problems, the reminder the FSA sent to you on 16<sup>th</sup> April 2009 should have prompted you to make contact with it. I hold this view as this clearly set out that should the return not be submitted within the next 10 days your firm would incur an administration fee. The reminder also provided contact details (both telephone and email) for technical assistance with the submission of the outstanding Gabriel return.

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