



30th September 2010

Dear Complainant

Complaint against the Financial Services Authority
Reference Number: GE-L01184

I refer to your letter of 25th August 2010 in connection with the above. 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 the FSA, I understand your complaint relates to the following issues:

Your client Mr X of Firm A (the firm) has incurred a £250 administration fee for the late submission of his quarterly Gabriel return due to be submitted by 11th December 2009 but was not actually submitted in full until 1st February 2010 (with part of the return being submitted on 13th January 2010).

You feel that the FSA's should waive the administration fee it has charged the firm as you say that Mr X rarely uses the internet or accesses his email account and therefore did not receive the reminder the FSA issued in December 2009 resulting in him being unaware that a return was due/overdue .

I understand that you feel you did not make a complaint on behalf of your client as such. I should point out that on 19th April 2010 you completed by email a formal complaint. The internal arrangements, as well as COAF, do treat a request such as you made on behalf of your client as a substantive complaint about the FSA's actions. These actions you have described in your letter as "*heavy handed and without justification*".

Background

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| 31 st October 2009 | Reporting period for the firm's half-year Retail Mediation Activity Report (RMAR) ends. |
| 11 th December 2009 | RMAR report due date. |
| 30 th December 2009 | Reminder sent to the firm (in letter form to its correspondence address) giving the firm 10 further business days to submit the report electronically. |
| 13 th January 2010 | Four of the required reports (RMA-A, RMA-B, RMA-D1 and RMA-E) are submitted electronically to the FSA. However four reports remain outstanding. |
| 29 th January 2010 | The FSA issues a fee notice to the firm informing it that, as all of the required reports have not been submitted electronically within the required timescale, a late submission administration fee of £250 is now payable. |
| 1 st February 2010 | The four outstanding reports (complaints, RMA-C, RMA-F, RMA-H and RMA-I) are submitted electronically to the FSA. |
| February and March 2010 | You 'discuss' the late submission administration fee with the FSA and request that it is waived. |
| 19 th April 2010 | You complain to the FSA, on behalf of the firm, about the application of the late submission administration charge. |
| 10 th August 2010 | The FSA notifies you that, following its investigation, it is not prepared to waive the late submission administration charge. |
| 25 th August 2010 | You refer the matter to my office for further consideration, but do not add to or expand upon the rationale behind the complaint you made to the FSA in April 2010. |

My Position

As part of my investigation into your concerns I have obtained and reviewed the FSA's investigation file. I have considered the limited comments you have made when corresponding with 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 Mr X (and the firm) accepted to be bound by its rules. I note that I have not seen any evidence of Mr X or the 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 your client has previously agreed to comply with as part of the authorisation process.

The FSA's records show that the firm, first became authorised by the FSA on 15th April 2005. From your correspondence with the FSA I also believe that the firm has previously submitted a number of returns and therefore would have been aware that it was required to complete returns at regular intervals.

The £250 administration fee the firm incurred relates to the late submission of its Gabriel (RMAR) return for the period ending on 31st October 2009. Although the return was due no later than 11th December 2009, the FSA records show that the firm (and/or its representatives) did not submit the return by this date. The FSA's records also show that it sent the firm a postal reminder on 30th December 2009 reiterating that the return was over due and providing it with additional time to submit the return. I would add that this reminder also clearly stated that if the return was not submitted in full within the next 10 business days (i.e. by 14th January 2010) then the late submission administration fee of £250 would be applied.

I appreciate that you say the firm instructed the FSA that all correspondence should be sent to it in written form as it rarely uses the internet. However, whilst the FSA has been unable to locate this instruction, in this instance it is of little consequence as the FSA sent a reminder to the firm **by post** (my emphasis) on 30th December 2010. Similarly, whilst the firm may have instructed the FSA to communicate with it in this way, this does not alter the fact that the return was only fully submitted some seven weeks after its due date. Likewise, whilst you say that the firm did not receive the reminders the FSA sent it December 2009, there is not a requirement for the FSA to issue reminders to firms as firms are required to know and to adhere to their set reporting requirements.

Whilst the FSA has, in past, chosen to send reminders to firms reminding them that reports are due, this has been done as a goodwill gesture (and is a process which it may not continue to adopt in the future). It is therefore inappropriate for firms rely upon this practice in respect of complying with their reporting requirements as firms should (and are expected) to be aware of their reporting requirements. In relation to the firm's situation I must point out that whilst the FSA chooses to issue reminders to the firm, it did so **after** (my emphasis) the report's due date had passed and at a time when it would have been at liberty simply to apply the late submission administration charge without further notice or reminders being given to the firm.

The FSA's records also show that, as the return had not been fully submitted by 29th January 2010 it issued the firm with a fee notice for the £250 late submission administration charge. Whilst the outstanding returns were submitted to the FSA electronically on 1st February 2010, two days after the fees notice was issued, this is of little consequence as returns were already considerably (seven weeks) overdue and after the fee notice had been issued.

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 the firm's submission was received by the FSA some considerable time (seven weeks) after it was due, the FSA is following the rules laid down in its rule book by imposing a £250 administration fee on the 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 the firm's Gabriel (RMAR) return, the FSA has followed its stated procedures on the matter. In this case, as the firm did not submit its Gabriel (RMAR) return by the due date (completing its submission seven weeks after it was due) the firm has 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.

Conclusion

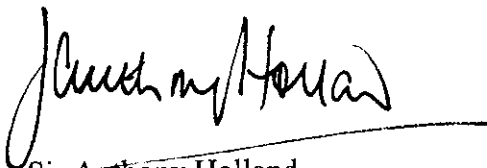
In assessing a complaint, I have to have regard to the FSA's investigations and findings, together with the further representations complainants make to my office. In this instance, you have not explained why you feel that the rationale behind the decision the FSA made was incorrect, only that your client is unhappy with it.

I accept that the firm may only rarely access the internet and email account and this may have impacted on the delay in the submission of the Gabriel (RMAR) return in question. Whilst this may well be the case, I note that the FSA's records indicate that it sent a reminder to the firm by post (rather than email) on 30th December 2009. Again, whilst the firm's offices may have been closed over the Christmas break this is not the fault of the FSA and, as I have stated above, at the time the reminder (giving the firm a further and final 10 business days to submit the return) was sent the return was already 11 business days overdue.

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 or incorrectly applied the administration fee to the firm. 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 also hope that I have by going into this detail that I have established that the FSA's actions have not been either "*heavy handed*" or "*without justification*".

I would also point out that, as consequence of my decision the £250 administration charge is now payable in full and, if the firm has not already done so, it should contact the FSA to arrange for the payment of this administration fee.

Yours sincerely,



Sir Anthony Holland
Complaints Commissioner