



23<sup>rd</sup> December 2010

Dear Complainant,

## **Complaint against the Financial Services Authority**

**Reference Number: GE-L01213**

I refer to your letter of 7<sup>th</sup> November 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 that comes within the complaints scheme. 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:

You are unhappy that the FSA has imposed a late submission administration fee on you. You allege that you could not access the Gabriel reporting system and were therefore unable to submit your required reports electronically. However, you feel that as you had emailed copies of the required reports to the FSA, the late submission fee should not apply.

### **Background**

- 20<sup>th</sup> January 2010:** You called the FSA as you had been locked out of GABRIEL. Your password was reset.
- 25<sup>th</sup> January 2010:** You were again locked out trying to activate GABRIEL, a new password was again sent to you.
- 28<sup>th</sup> January 2010:** Again, you were unable to log into GABRIEL and called the FSA. Your password was once again reset and you were advised to log in through the main website.
- 28<sup>th</sup> January 2010:** You called again later on the same day and this time you were informed of the format in which your password needed to be entered.

- 1<sup>st</sup> February 2010:** Your Gabriel report for the period ending 31<sup>st</sup> December 2009 was due.
- 8<sup>th</sup> March 2010:** You phoned the FSA and requested that your GABRIEL password be reset.
- 9<sup>th</sup> March 2010:** The FSA sent a reminder email to [your registered email address]. The email informed you that there were regulatory returns for your firm which were overdue for submission. The email instructed you to submit the returns within 10 working date of the reminder to avoid paying a £250 administrative fee. The reminder stated that the return must be completed and submitted electronically using the GABRIEL system.
- 14<sup>th</sup> March 2010:** You sent an email to the FSA stating  
*“Pls find enclosed herewith our return  
 Any way i have already submit the return onlin in case if u can not find [sic]”*
- 30<sup>th</sup> March 2010:** The Consumer Contact Centre (CCC) sent you an email informing you that you should submit your return online via GABRIEL. You were also informed of this later the following day on 31<sup>st</sup> March 2010 during a telephone call with the CCC.
- 31<sup>st</sup> March 2010** Mr X, called the CCC on your behalf to say that the returns had been completed. On checking, the CCC advised that the returns required validating before they could be submitted and as they had not been validated they still remained outstanding.
- 5<sup>th</sup> April 2010:** Your return was updated and submitted.
- 7<sup>th</sup> April 2010:** A late submission fee notification email was sent to you at [your registered email address] confirming that the returns remained overdue and that you/your firm were now being charged a £250 administrative fee.
- 8<sup>th</sup> April 2010:** You emailed the FSA to contest the payment of the fee.
- 26<sup>th</sup> April 2010:** The CCC responded to your email of 8<sup>th</sup> April 2010. In the email the CCC operative stated the following:  
*“I can confirm that the firm's GABRIEL regulatory return, for the reporting period starting 1<sup>st</sup> January 2009 to the reporting period ending 31<sup>st</sup> December 2009, was due by 1<sup>st</sup> February 2010. I can confirm that the return was submitted on 5<sup>th</sup> April 2010. As a result, this constitutes a late return.*  
*On 9<sup>th</sup> March 2010, you were issued a final reminder email to submit your overdue return within 10 working days of the date of the notification, to avoid paying a £250 administrative fee. As you failed to submit by this revised date, you have been issued an administration fee”.*

**28<sup>th</sup> April 2010:** You emailed the CCC again requesting that the fee be waived on the basis that you had incurred log in difficulties when attempting to submit your return.

**17<sup>th</sup> May 2010:** The CCC sent you an email in which they stated that:

*"I appreciate that you may have completed the return in good faith, however please note that the reporting obligation for each return is only satisfied once all of the data items in the return have been successfully submitted.*

*In considering your comments, I have reviewed our records and can see that a final reminder notification was sent to your firm on 9<sup>th</sup> March 2010. This advised your return had not been submitted in full, and requested that you submit the outstanding sections within 10 business days in order to avoid being levied with the administration fee. It was not until 5<sup>th</sup> April 2010, after receiving the fee notification that the firm submitted the return in full.*

*Whilst we appreciate that things can get overlooked, please be aware that there are no exceptional circumstances that would warrant waiving the administrative fee for the firm on this occasion".*

## **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 you accepted to be bound by its rules.

I also note that I have not seen any evidence of you challenging the effect of the rules surrounding the requirement for electronic submission (my emphasis) 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 £250 administration fee the firm incurred relates to the late submission of your GABRIEL return for the period ending on 31<sup>st</sup> December 2009. Although the return was due no later than 1<sup>st</sup> February 2010, the FSA records show that the return was not submitted by this date. I appreciate that you say you had difficulty logging on to the FSA's GABRIEL system, but although the return was due on 1<sup>st</sup> February 2010, I note that after you contacted the FSA on 28<sup>th</sup> January 2010 (three days before the due date) there was no contact between you and the FSA until 8<sup>th</sup> March 2010 when you again requested that your password be reset.

I would clarify here that the late submission administration charge was not applied because the return was not submitted by its due date of 1<sup>st</sup> February 2010 (when it is clear you were experience logging on problems) but because it was not submitted (and validated) by the end of the extension period granted by the FSA which expired on 23<sup>rd</sup> March 2010; your return not being validated until 5<sup>th</sup> April 2010.

In relation to the firm's situation I must point out that whilst the FSA chose to issue a reminder to your firm, it did so after (my emphasis) the report's due date (1<sup>st</sup> February 2010) 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 reminder being given to you.

The FSA's records show that you were sent a reminder on 9<sup>th</sup> March 2010 reiterating that the return was now over due. The reminder set out the following:

*"Please submit the overdue returns within 10 working days of the date of this letter to avoid paying a £250 administrative fee. Please note that all overdue returns must be submitted to avoid paying the administrative fee.*

*How to complete and submit the return(s)*

*The returns(s) must be completed and submitted electronically using the GABRIEL system.*

*For access to GABRIEL and to obtain further information, including comprehensive help on how to submit your data, please see the GABRIEL home page...*

*What could happen if you do not submit your overdue regulatory return(s)?*

*If you fail to submit your overdue regulatory return(s) within 10 working days of the date of this letter, you will receive a letter advising you that you will be charged a £250 administrative fee. Continuing failure to submit could mean your firm would be referred to our Enforcement Division and your permission to undertake regulated activities could be cancelled.*

*This action would be based on your failure to meet your obligations under our rules set out in the supervision part of the FSA Handbook (SUP 16.3.13 and 14). This would demonstrate to us that your firm is failing to comply with FSA Principle 11, which requires your firm to deal with its regulator in an open and cooperative way. It would also show us that you are not complying with Threshold Condition 5 (Suitability) as you are not conducting your business in compliance with proper standards".*

From this it is clear that the return "*must be completed and submitted electronically using the GABRIEL system*". Whilst I appreciate that you attempted to submit your return, you did not follow the correct procedures as, although the return had been input onto the GABRIEL system, you had not validated it.

A return is only submitted once it has been validated. This may seem a hard view to take, but until a return has actually been validated, users (or firms) are able to access and amend the details they have entered on the return and as such, it may not represent the details a firm wishes to submit to the FSA. You have commented to my Senior Investigator, that you did not receive any warning that the return had only been saved and not submitted and were therefore unaware that by saving the return you had not submitted it to the FSA.

The FSA's GABRIEL system has a save facility as some firms are required to complete a large number of pages within their returns. As the required information is often available at different times, firms enter the information as it becomes available in order that once all of the information is available they can simply submit and validate the return. I would add that firms can see which reports have been submitted and which ones are outstanding by clicking upon the "View Submission History" within on the GABRIEL system.

Ultimately, in this case, as the return was not validated until after (my emphasis) the end of the extension period granted to you by the FSA, the return was submitted late. Although I accept that you subsequently sent copies of your return to the FSA by email, the FSA had previously indicated this is not (my emphasis) the correct medium for the submission of regulatory returns and that returns must be submitted on its GABRIEL system. As such, the submission of your returns by email does not mean that you had submitted your returns by the submission date.

I would also add that whilst the FSA has, in the 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.

I appreciate that you submitted the reports by email on 14<sup>th</sup> March 2010, but the FSA has clearly specified that this is not an acceptable way for reports to be submitted. The FSA has stated that all reports have to be submitted electronically on its GABRIEL system. Whilst I appreciate that you say that you had difficulty logging on to the system, I note that in the email you sent to the FSA on 14<sup>th</sup> March 2010 you state that “*i have already submit the return online in case if u can not find [sic]*”. This suggests to me that you did not have difficulty logging on to the GABRIEL system but that you were simply unable to comply with the submission instructions but did not seek assistance from the FSA.

Although it is disappointing that the FSA’s CCC did not respond to your email of 14<sup>th</sup> March 2010 until 30<sup>th</sup> March 2010, ultimately your return was not submitted correctly. Similarly, although the FSA emailed you on 30<sup>th</sup> March 2010 and your accountant contacted the FSA on 31<sup>st</sup> March 2010, I note that the return was still not validated (submitted correctly) until 5<sup>th</sup> April 2010.

I would also add that 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 your GABRIEL 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 (nine 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 return, the FSA has followed its stated procedures on the matter (which can be found in its hand book under SUP 16.3.14).

## 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 you are unhappy with it as you believe that you had submitted your return both online and by sending the FSA reports by email before the end of the extension period the FSA had granted you.

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 that it has incorrectly applied the administration fee to your 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 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. Failure to do this may result in the FSA taking further action against your firm as set out in SUP 16.3.13 and 14.

Yours sincerely,



Sir Anthony Holland  
Complaints Commissioner