



7th June 2011

Dear Complainant,

Complaint against the Financial Services Authority
Reference Number: GE-L01268

I refer to your email of 29th March 2011 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 14th February 2011 but was not actually submitted until 28th February 2011.

You feel that the FSA's should waive the administration fee it has applied as you say that you submitted your Gabriel return (with the exception of RMA-J) on 9th February 2011 which was before the due date.

You are also unhappy that you have incurred the FSA's £250.00 late submission administration charge as you feel that it is the FSA's Gabriel reporting system, rather than you, which is at fault as, unlike the online application systems used by many general insurance, life assurance, and mortgage providers the system allows you to 'move on' without completing all of the data items (reports).

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 31st October 2004. From your correspondence with the FSA I also believe that you (and/or your firm) 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.

From the papers presented to me by the FSA it is clear that the FSA sent a notification and reminder to your firm on 4th January 2011 confirming that Firm A's reporting period had ended and a report was due. This email also confirmed the data items (or reports) which were due to be submitted by 14th February 2011. This clearly indicated that the RMA-J report formed part of the return you needed to complete and to submit. This email also listed all of the reports which were due and set them out as follows:

Return for period 1st January 2010 to 31st December 2010

RMA-J Data Required for Calculation of Fees

Return for period 1st July 2010 to 31st December 2010

RMA-A Balance Sheet
RMA-B Profit and Loss Account
RMA-C Client Money and Assets
RMA-D1 Regulatory Capital
RMA-E PII Self-certification
RMA-F Threshold Conditions
RMA-G Training and Competence
RMA-H COBS Data
RMA-I Supplementary Product Sales Data

The FSA issued a further reminder to you on 2nd February 2011 which again included the above list in full and also confirmed that you needed to submit these before 14th February 2011. Then, on 9th February 2011, the FSA issued you with a final reminder which again set out that all of the returns needed to be submitted no later than 14th February 2011 if you were to avoid the £250.00.

The £250 administration fee you have incurred relates to the late submission of Part-J of your Gabriel return for the period ending on 14th February 2011. Although the return was due by the 14th February 2011 it was not submitted until 28th February 2011, some 14 days late. From the papers presented to me I understand that the outstanding part of your return was only submitted after you received a Fee Notification email informing you that, as your RMA-J return had not been submitted before the deadline of 14th February 2011 you were now liable for the late submission administration fee of £250.

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 its requirements under the Act. However, I also have to be mindful of both your and the FSA's actions. Here it is clear to me that the FSA made you fully aware of which returns were due and although you attempted to submit these you clearly failed to do so.

The FSA has confirmed, and provided me with evidence to indicate that it wrote to you, by email on 4th January 2011 2nd February 2011 and 9th February 2011 notifying you that your Gabriel returns needed to be submitted by 14th February 2011. These emails also clearly set out which returns needed to be completed. I appreciate that whilst you submit all of your returns (with the exception of the RMA-J) on 9th February 2011, however, you have not offered sufficient explanation to confirm why, despite the FSA's clear reminders, you failed to submit the RMA-J part of the return.

Given that the FSA confirmed on three occasions before the due date (my emphasis) which returns were due, I believe that it would have been reasonable for you to be aware which returns you were due to submit and by when. As I have mentioned above, although it is clear, in my opinion, that the emails prompted you to take some action as you submitted parts RMA-A to RMA-I of your return. However, it is unclear to me why you failed to submit the RMA-J part of your return.

In this instance, it is unfortunate that you did not submit the RMA-J part of your return, however, from the papers I have seen it is clear that the FSA made you aware that this was needed. The fact that you did not, for whatever reason, submit this does not, in my opinion, appear to be the fault of the FSA.

I have also noted your comments that you believe the fault lies with the FSA's computer system, but I disagree. The system was designed to allow firms to complete and save returns and then to submit them as they fall due. As not all sections of the return are due at each reporting period it would, in my opinion, be unnecessary for the FSA to redesign the system at the industry's expense (my emphasis) when it is able to clarify to a firm in an email which reports are due and need to be submitted.

Although the penalty for the late submission of a single part of your Gabriel return may seem high, the amount of the administrative fee is intended to recover the costs that the FSA incurs, as an end-to-end process, in pursuing firms with overdue returns. It is intended to be separate to the FSA's Enforcement powers and is not therefore a financial penalty. The late payment charge for the FSA, Financial Ombudsman Service and Financial Services Compensation Scheme were all aligned to £250. This was consulted publicly in CP05/2 and approved by the FSA Board in March 2005. An administrative charge for the late payment of FSA fees has been in existence since N2 (November 2001 - when the main provisions of FSMA came into force) and continues the process operated prior to N2 by the Personal Investment Authority.

The Act requires the FSA to have regard to the need to use its resources in the most efficient and effective way. The simplicity of having the same charge, whether a firm pays late or submits returns late means it is easier for firms to understand, and is more efficient and therefore cost effective for the FSA to administer data collection and fee payment. This is explained in the compatibility statement to CP05/2.

Details of the penalties and administration charges 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 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.

Whilst I am mindful that you attempted to submit the returns in a timely manner, the facts are that, in my opinion, you omitted, for whatever reason, to submit all of the required returns. Ultimately, as you did not submit the Part-J of your Gabriel by the due date, 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.

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 and you feel that the FSA's computer systems let you down. I accept that you submit most of the required returns before their due date but ultimately, you omitted to submit the RMA-J return before the due date. The FSA made you aware before on three occasions (before the due date) that Part-J needed to be included within the returns and the fact remains that you did not submit this until after you received the late submission administration fees notice.

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 you should contact the FSA to arrange for the payment of this administration fee to be made.

Yours sincerely,



Sir Anthony Holland
Complaints Commissioner