



22nd July 2011

Dear Complainant,

Complaint against the Financial Services Authority
Reference Number: GE-L01294

I refer to your email of 25th May 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 that falls 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. It rarely declines to do so however. 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 Gabriel return for the period ending 5th October 2010 which was due to be submitted by 16th November 2010 but was not actually submitted until 8th December 2010.

You feel that the FSA's should waive the administration fee it has applied as you say that when you contacted it, it could not confirm when your firm's regulatory returns were due and as it sent reminders to your previous network which did not pass the reminders on to you.

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 you (and, as you are a sole trader, your firm) first became authorised to conduct regulated activity by the FSA on 30th July 2008. I understand that this application was supported by a network, Network A. Additionally, from your correspondence with the FSA I also believe that you (and/or your firm) had previously submitted a number of returns (you albeit with the assistance of Network A's compliance department) and therefore would have been aware that your firm was required to complete subsequent returns at regular intervals.

The information provided to me by the FSA also indicates that on 6th August 2010, you completed a 'Standing Data' form and submitted this to the FSA. This form confirmed that your firm's trading name had changed to 'Firm B' and that this change occurred on 1st August 2010. It also indicated that your contact email address had changed. The FSA received this form on 9th August 2010 and processed the information accordingly. The FSA also confirmed on 13th August 2010, by email, that it had received your 'Standing Data' form and would arrange for the changes to be processed.

However, whilst you had notified the FSA of the changes to your contact details (which were to be shown on the FSA's register), it appears that you did not update the principal user on Gabriel. As the FSA explained in its decision letter of 15th April 2011, the principal user details on Gabriel have to be amended by the principal user and are not be updated by the FSA as part of amendments following the submission of a 'Standing Data' form.

The reason for this is that a firm (whether it is large or small) will usually place the responsibility for the submission of its reports to an individual (who will also receive any reminders the FSA may choose to send out). As this individual is likely to be different from the contact who is to be shown on the FSA's register (and may also change regularly) the principal Gabriel user is updated independently by the firm (and not the FSA).

In this instance I understand that, although you submitted a 'Standing Data' form, you did not update the contact details of the principal user on Gabriel and this resulted in the reminders the FSA decided to send being sent to the incorrect email address. Given that you did not update the principal user on Gabriel, this does not appear to be the fault of the FSA.

I appreciate that you say that when you contacted the FSA to inform it of your change of contact details it was unable to confirm when your reports were due. It appears from your comments that this call took place before you completed and submitted the 'Standing Data' form. As such, whilst it is unfortunate that the FSA's operative appears to have been unable to confirm when your reports were due, I believe that it would have been clear to you that, as a previous report was completed and submitted in late April/early May, a report was not imminently due (and was not likely to be required until October or November 2010). I would also add that had you 'logged on' to the Gabriel system, full details of your reporting schedule would have been available.

I have also noted your comments that you say that, whilst the FSA sent reminders to you, as these were sent to the incorrect email address, you did not receive these. As I have commented above on the reason why the FSA sent the reminders to your 'old' (and by now incorrect) email address I do not feel that further comment on this point is warranted. However, I would say that although the FSA may choose to send reminders it is not required to do so (and may choose not to do so in the future). As such, firms are expected to know when they are required to submit reports and, if there is any doubt, should check their reporting schedule on the FSA's Gabriel system. As you say you were unaware of your reporting requirements, I can only assume that you did not check your reporting schedule on the Gabriel system.

The £250 administration fee you have incurred relates to the late submission of your Gabriel return for the period ending on 5th October 2010. Although the return was due by the 16th November 2010 it was not submitted until 8th December 2010, some 23 days late. As I have explained above, I do sympathise with your position as it is clear that you may not have fully appreciated when you were required to submit reports to the FSA. However, ultimately you incurred the late submission administration charge as you did not fulfil your requirements under the Act. When considering your complaint I have to be mindful of both your and the FSA's actions. Here it is clear to me that although the FSA attempted to make you aware that returns were due, the fact that you had not updated the principal user on Gabriel meant that the FSA was unable to do this. In my opinion, this is not the fault of the FSA. Similarly, ultimately it is the responsibility of those who are authorised to understand their reporting schedule and, if there is any doubt, check this on the FSA's Gabriel system.

In this instance, it is unfortunate but you did not submit your return by its due date. The fact that you did not do this does not, in my opinion, appear to be the fault of the FSA. Although the penalty for the late submission 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 you/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 say you did not appreciate that your returns were due, the facts are that, in my opinion, you omitted, for whatever reason, to submit the required returns by the date by which they were due. Ultimately, as you did not submit 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 is incorrect, only that you did not appreciate the FSA's reporting schedule and that it issued reminders to the incorrect email address. You have provided no explanation for why you do not appear to have checked this on the Gabriel system

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