



22<sup>nd</sup> July 2011

Dear Complainant,

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

**Reference Number: GE-L01298**

I refer to your email of 16<sup>th</sup> June 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 five parts of your Gabriel return for the period ending 30<sup>th</sup> September 2010 which were due to be submitted by 11<sup>th</sup> November 2010 but were not actually submitted until 26<sup>th</sup> November 2010.

You feel that the FSA's should waive the administration fee it has applied as you say that you entered the information into the FSA's Gabriel system and received confirmation that it had been submitted on 11<sup>th</sup> October 2011 which was before the due date.

## **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 Firm A (the firm), first became authorised by the FSA on 14<sup>th</sup> January 2005. From your correspondence with the FSA I also believe that the 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 1<sup>st</sup> October 2010 confirming that the firm's reporting period had ended and a Gabriel submission (consisting of a number of individual reports) was due. This email also confirmed the data items (or individual reports) which were due to be submitted by 11<sup>th</sup> November 2010. This email also listed all of the reports which were due and set them out as follows:

**Return for period 1<sup>st</sup> April to 30<sup>th</sup> September 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 1<sup>st</sup> November 2010 which indicated that five reports remained outstanding and that you needed to submit these before 11<sup>th</sup> November 2010 if the firm was to avoid the late submission penalty of £250.00. This email indicated that the following reports were outstanding:

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

I appreciate that you say that you submitted all (my emphasis) of the reports on 11<sup>th</sup> October 2010, but in my opinion, the fact that the FSA's reminder of 1<sup>st</sup> November 2010 only included five of the nine reports you were required to submit (and which you say you believe you submitted on 11<sup>th</sup> October 2010) should have alerted you to the fact that some of the reports may not have been submitted. Had you checked the Gabriel system, you would have identified that although data had been saved it had not (my emphasis) been validated (checked) and submitted.

I have noted your comments that you say you received a message saying that the reports had been successfully submitted. However, whilst you have indicated this, clearly all of the reports were not submitted. The FSA has confirmed that there were no system errors at that time and as such cannot comment with any degree of certainty on what message you received. However, notwithstanding this, as I have indicated above the reminder you received on 1<sup>st</sup> November 2010 should have alerted you to the fact that the entirety of the reports had not been submitted and therefore immediately prompted you to check that you did not have any outstanding reports by checking the Gabriel system. Similarly, although you have commented upon the manner in which the reminders were phrased, the FSA is under no obligation to issue reminders and indeed expects authorised firms to understand when their reports are due and to ensure they are submitted in full and on time (my emphasis).

The £250 administration fee you have incurred relates to the late submission of the five reports which were not submitted before the due date. I have noted that, in your response to my Preliminary Decision, you also state that you and a colleague ensured that all data was correctly inserted before submission. However, whilst this may have been the case, the fact remains that five of the required nine reports were not submitted on time and before that time had expired you were informed of that fact. Whilst you say that information was entered into all of the required reports only some of these were submitted. As they were not submitted they could not be reviewed by the FSA. As such, the fact that you say the information was entered in the reports is not something that can affect my decision.

Although the return was due to be submitted (in full) by the 11<sup>th</sup> November 2010, five of the reports were not submitted until 26<sup>th</sup> November 2010, some 15 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 five of your reports had not been submitted before the deadline of 11<sup>th</sup> November 2010 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 the firm 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. 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 1<sup>st</sup> October 2010, 1<sup>st</sup> November 2010 and 2<sup>nd</sup> November 2010, notifying you that your Gabriel returns needed to be submitted by 11<sup>th</sup> November 2010. These emails also clearly set out which returns needed to be completed. I appreciate that whilst you submit some of your returns on 11<sup>th</sup> October 2010, however, you have not offered sufficient explanation to confirm why, despite the FSA's clear reminders, you failed to submit the outstanding part of the return before the due date.

Given that the FSA confirmed before the due date (my emphasis) which returns were due and that five remained outstanding, 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-F to RMA-I of your return. However, it is unclear to me why you failed to check that parts RMA-A to RMA-E of your return had been submitted.

In this instance, it is unfortunate that, although you saved information relating to parts RMA-A to RMA-E you did not actually submit them. 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 would add that, although information was saved in the reports, until it is submitted the FSA cannot actually consider it. 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 inappropriate for the FSA not to allow information to be saved without being submitted, particularly as it clarifies to the firms it authorises, by 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 (my emphasis) the required returns. Ultimately, as you did not submit the RMA-A to RMA-E parts 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 submitted some of the required returns before their due date but ultimately, you omitted to submit the RMA-A to RMA-E parts of your return before the due date. The FSA made you aware before on a number of occasions (before the due date) of which parts needed to be completed and that some parts had not been submitted. It is unfortunate but the fact remains that you did not submit all of the required returns 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.

### **Recommendation**

Although I am unable to uphold your complaint it is clear that the reminder the FSA sent to you on 1<sup>st</sup> November 2010 could have been worded in a clearer way. Although, as I have indicated above, it should have prompted you to check that all of your reports had been submitted (particularly as it showed that only some of the reports you submitted remained outstanding), I feel that the terminology used by the FSA could be misconstrued. Particularly I am concerned about the fact that first line of the email states:

“PLEASE IGNORE THIS EMAIL IF YOU HAVE RECENTLY SUBMITTED  
THE DATA ITEM(S) LISTED BELOW”.

The FSA should consider changing the opening sentence of this email to highlight that firms who receive it must check to ensure that they have submitted all (my emphasis) of their required Gabriel reports and do not have any outstanding.

I understand that the FSA has acted upon this recommendation and has amended the reminders which are issued in Gabriel reporting reminders to try and make the position clearer to firms.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Anthony Holland". The signature is written in a cursive style with a large initial 'A'.

~~Sir Anthony Holland  
Complaints Commissioner~~