



17<sup>th</sup> January 2012

Dear Complainant,

**Your complaint against the Financial Services Authority  
Our Reference: GE-L01322**

I refer to your email of 4<sup>th</sup> December 2011 in connection with your complaint against the Financial Services Authority (FSA).

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 with the regulatory burden which is being placed upon the friendly society for which you carry out the administration.
- Specifically you say that the assurances you were given when the Friendly Society Commission was replaced by the FSA have not been honoured. As a result you feel that small friendly societies, such as the Society A which you represent, are being 'swamped' under a regulatory burden.

- Although you have been informed of the reasons behind the need to submit Retail Mediation Activity Report (RMAR) through the FSA's GABRIEL system on a six-monthly basis you do not see why, given the nature of the Society A, these are needed.
- You also appear to be unhappy with the position the FSA has taken over the late submission and/or outstanding RMAR returns which the Society A has. You feel that, as you are a small organisation (with only 10 members) which has tried to comply with the FSA's rules, the FSA should be more lenient over how it considers (and deals) with the late submission of RMAR returns from small organisations such as yours.

### **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 the FSA. 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>).

The FSA's records show that Society A, first became authorised by the FSA on 1<sup>st</sup> December 2001 (and prior to that had been authorised by the Friendly Society Commission). I have noted your comments that the FSA has increased the regulatory burden which organisations such as yours must comply with. Whilst I accept that the FSA may initially have intended not to increase this burden, ultimately given the changing economic environment, it may simply not been able to do this.

In this case, although Society A is a small organisation, the fact remains that it is an organisation which holds Part IV Permissions to conduct regulated activity. As such, it, like any other organisation with Part IV Permissions, must comply with the FSA's rules. In this instance the FSA imposes the same requirements on all firms (irrespective of size) which wish to conduct regulated activity as defined by the Act and Regulated Activity Order.

I appreciate that you feel that the requirement to provide six-monthly reports places an unfair burden on your firm. However, as I have set out above, as a firm which is, in effect, managing or at least administering its members' assets, it must comply with the FSA's reporting requirements. I appreciate that you have questioned the need to such regulatory reporting and understand that it is related to Society A's Part IV Permissions. Whilst the FSA would normally expect an organisation to appreciate and understand what Part IV Permissions it requires, given the size of your organisation and the nature of the activities you have indicated it undertakes, the FSA has indicated to me that it is in the process of contacting you to clarify whether your organisation requires all of the Part IV Permissions it holds.

I have noted your comments that you believe that, given the size and membership of your organisation, the FSA should be more lenient with your reporting requirements, particularly in respect of the late submission of your RMAR returns. Although I can understand and appreciate why you hold this view, ultimately, the FSA requires all firms irrespective of their size and/or number of members or employees to submit their RMAR returns *before* (my emphasis) their due date. In this instance, it appears that Society A submitted two returns after their due dates. Whilst is unfortunate, particularly given the size of Society A's membership, that the it has incurred a number of late submission penalties, the fact remains that these returns were submitted *after* (my emphasis) their due date

The two £250 administration fees you have incurred relate to the late submission of your RMAR returns for the periods ending 4<sup>th</sup> December 2009 and 16<sup>th</sup> October 2010. As I have explained above, I do sympathise with your position as it is clear that you have attempted to comply with the FSA's reporting requirements. However the fact that you say that you are "*totally at sea as far as RMAR are concerned*" is unfortunately of little consequence here as the fact remains that, as an authorised organisation (albeit a small one with a limited membership) you are required to submit all regulatory reports on (or before) their due date. Unfortunately the fact remains that the relevant returns were simply not submitted before their due dates.

Although the penalty for the late submission for a RMAR 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 submissions were received by the FSA until after their due dates, the FSA is following the rules laid down in its rule book by imposing a £250 administration fee (for each return) upon 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. Ultimately, as you did not submit your RMAR returns by their due dates, 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.

Whilst I am mindful that you say you requested assistance, this appears to relate to your organisations Part IV Permissions rather than the submission of your RMAR returns. I would add here that although it is disappointing that the FSA may not have been as helpful as it could have been regarding your query, normally the FSA expects an organisation to appreciate what Part IV Permissions it needs to conduct its business. However, I am pleased that given your complaint (and the size of your organisation) the FSA has offered to contact you (and by the time you receive this Preliminary Decision may well have contacted you) to discuss the Part IV Permissions Society A holds and to clarify whether it requires all of the permissions it holds.

## **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, as a small organisation, the FSA should show more leniency towards your small organisation.

Whilst I accept that, as a small organisation, you have limited resources and, to an extent, experience in dealing with the FSA's requirements, however ultimately by being authorised you have agreed to the rules and requirements put in place by the FSA. It is unfortunate that you feel that the FSA is placing an unfair burden upon firms like yours but ultimately the FSA's requirements are consistent and placed equally across all of the firms it authorises.

I would add that, I have noted your comments about the reporting requirements being a great burden for small firms. However, a large number of the firms which the FSA supervises are small organisations (such as sole traders). Given the FSA's current risk based approach to regulation, the FSA needs sufficient information to monitor these firms. Whilst sole traders could be regarded as small organisations, the FSA places an equal reporting requirement upon these firms as it does upon small friendly societies. As such, whilst the FSA's reporting requirement *may appear* (my emphasis) onerous for small organisations, the requirements are consistently applied across all firms. As such, there is insufficient, if any, evidence to indicate that the FSA is placing a disproportionate, unfair or unreasonable reporting burden upon Society A or any other small authorised organisation.

Likewise, I also appreciate that you are unhappy that the FSA has imposed administration charges on Society A for the late submission of a number of RMAR returns. I appreciate that you feel that, as you have attempted to comply with the FSA's rules and requirements, the FSA should show your organisation some leniency. As I have set out above, the FSA requires *all* (my emphasis) firms to adhere to its reporting requirements and where a firm does not do this it can (and does) in accordance with of SUP 16.3.14 apply the late submission administration penalty to the firm. In this case, it appears that the FSA is complying with the rules and requirements set out in its handbook by doing this.

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 Final Decision the outstanding administration charges are now payable in full and you should contact the FSA to arrange for the payment of these administration fees to be made.

Yours sincerely,



Sir Anthony Holland  
Complaints Commissioner