



31<sup>st</sup> October 2011

Dear Complainant,

**Complaint against the Financial Services Authority**  
**Reference Number: GE-L01326**

I refer to your letter of 15<sup>th</sup> August 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 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 your firm, Firm A. You allege that the first you heard of the overdue return(s) was when you received the late submission administration charge invoice. You add that although the FSA refer to a reminder (dated 3<sup>rd</sup> November 2010) this was not received by you and as such you were unaware, despite what the FSA maintains, that the returns were overdue.

You also add that *"as this was the first ever report that [you were] due to complete, [you] assumed that the FSA would, in fact, write/email [you] to notify [you] when the first report was due, instead of simply sending a letter stating that [you were] being fined £250.00. [You] assumed, incorrectly, that the report was due 6 months after first registration and after reading the welcome pack again, it does state that we should log in to (sic) the FSA website for further information about GABRIEL but this suggestion is buried on one of 7 appendices"*.

## Background

13 <sup>th</sup> July 2010	Firm A was authorised by the FSA to conduct regulated activity
1 <sup>st</sup> October 2010	Your firm's first reporting period (which ran from 1 <sup>st</sup> April to 30 <sup>th</sup> September 2010) ended.
1 <sup>st</sup> November 2010	The GABRIEL reporting system generated an electronic reminder that your firm had outstanding regulatory return. Unfortunately, as you had not updated the contact details on the GABRIEL system the electronic reminder was not issued.
3 <sup>rd</sup> November 2010	A manual version of the reminder was produced and posted (by Royal Mail) to your firm at its recorded contact address.
8 <sup>th</sup> November 2010	The GABRIEL reporting system generated a further (and final) electronic reminder that your firm had outstanding regulatory return. Unfortunately, as you had not updated the contact details on the GABRIEL system, again the electronic reminder was not issued.
11 <sup>th</sup> November 2010	Your firm's first regulatory return (for the reporting period 1 <sup>st</sup> April 2010 to 30 September 2010) becomes due.
25 <sup>th</sup> November 2010	As the FSA still does not hold contact details on its GABRIEL system, it sends your firm, by post, the late submission administration charge invoice .
9 <sup>th</sup> December 2010	You approached the FSA's Consumer Contact Centre (CCC) to appeal for the late submission administration fee to be waived.
14 <sup>th</sup> December 2010	The CCC contacted you and confirmed that the late submission administration fee invoice cannot be waived.
15 <sup>th</sup> December 2010	You make a formal appeal to the CCC for the invoice to be waived.
20 <sup>th</sup> December 2011	You complete and submit your GABRIEL return.
5 <sup>th</sup> January 2011	The CCC confirm that the fee cannot be waived but provides you with details of how to make a formal complaint and provides you with contact details for the FSA's Complaints Team.
11 <sup>th</sup> January 2011	You make a formal complaint to the FSA.
25 <sup>th</sup> May 2011	The FSA issues you with its final decision confirming that it is unable to uphold your complaint and as a result the late submission administration fee remains payable.
15 <sup>th</sup> August 2011	You refer your complaint to my office (your letter being received on 22 <sup>nd</sup> August 2011).

## 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 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>) and again in my 2010/2011 Annual Report a copy of which can also be found on my website ([http://www.fsc.gov.uk/documents/annual/Annual%20reports/AnnualReport\\_2011.pdf](http://www.fsc.gov.uk/documents/annual/Annual%20reports/AnnualReport_2011.pdf)). I would also add that as part of becoming authorised under the FSA you accepted to be bound by its rules.

The £250 administration fee the firm incurred relates to the late submission of your RMAR return (via the FSA's GABRIEL system) for the period ending on 30<sup>th</sup> September 2010. Although the return was due no later than 11<sup>th</sup> November 2010, I understand from the FSA's records that the return was not submitted by this date and was, I believe, actually submitted on 20<sup>th</sup> December 2010, some 24 working days late (and then you having been prompted to act by the receipt of the FSA's late submission charge invoice).

I appreciate that you say you were unaware that you needed to submit a return as it was your first return and that you *assumed* (my emphasis) that the FSA would write to you. Whilst I appreciate that this was your first return, in my opinion, this is of little consequence in regards to your complaint. By applying to become authorised, you agree to comply with the FSA's rules, which includes the timely provision of any information, including regulatory reports, the FSA requests.

In this case, it is clear that, although your firm had recently become authorised you had not reviewed sufficiently the paperwork the FSA sent you, particularly that concerning your firm's reporting requirements. Had you done so, as the FSA explained in its letter of 25<sup>th</sup> May 2011, you would have seen that Appendices C and D clearly set out a firm's ongoing reporting requirements and that there is an administration charge of £250 should these requirements not be met. It is also clear that Appendix D (entitled GABRIEL) also sets out what you need to do to be able to review your firm's specific reporting schedule. I would add here that had you logged on to the GABRIEL system, and followed the instructions set out in Appendix D, you would have been able to view your firm's reporting requirements. I would also add that, by registering a principal user, you would have received the electronic reminders that the FSA attempted to send to you (and which are detailed in the timeline shown above).

From the papers presented to me, and indeed from the complaint you have sent to my office, it is clear that you had not checked your firm's reporting requirements either online with the GABRIEL system or by contacting the FSA, instead simply *assuming* (my emphasis) that returns would become due six months after you became authorised. Whilst you simply assumed that the FSA would notify you that you had returns due, I note that the FSA did attempt to do this by writing to you (at your registered address) on 3<sup>rd</sup> November 2010. Whilst it is unfortunate that you did not receive the reminder, this is not the fault of the FSA.

I have also noted your comments in your response to my Preliminary Decision where you state “*that the FSA did have my email address and did correspond with me on numerous occasions with updates on my authorisation and regulatory updates*”. However, whilst you had provided the FSA with an email address for use in connection with general correspondence, it appears that you did not update the principal user on its GABRIEL system. The principal user details on GABRIEL has to be amended by the principal user and is independent of the email address the FSA uses when corresponding generally with firms.

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 a specific individual (who will also receive any reminders the FSA may choose to send out). As this individual may be, and in some cases is likely to be, different from the contact who is to be shown on the FSA’s register as the general contact. Likewise, as the individual who is to receive the reminders may also change more regularly than the general contact the FSA requires a firm to update independently its principal GABRIEL user.

In this case, as you had not updated, and in fact had not entered, a principal user in the GABRIEL system, the FSA was unable to send you the automated reminders which the GABRIEL system produces. I understand from the FSA’s records that you did not enter a principal user on to GABRIEL until after you had received notification that you had incurred the late submission penalty.

I have also noted your comments that you allege that around 10% of small firms fail to submit their first GABRIEL returns on time and as a result incur the £250 late submission policy. Whilst it is unfortunate that a number of firms may well do this, it is also clear, using the statistics you have provided, that 90% of the firms (which I am sure you will accept is considerably more) *are aware* (my emphasis) of the reporting requirements imposed upon them and submit successfully their returns *before* (my emphasis) their due date. This also emphasises the importance of reading fully the information the FSA provides and suggests that the majority of newly authorised firms do this.

Additionally, whilst the FSA currently chooses to send reminders to firm’s there is no statutory requirement that it should do so. The FSA expects its authorised firms, correctly in my opinion, to be aware of their individual reporting requirements (which for the avoidance of doubt can also be obtained from GABRIEL under the reporting schedule). I would also add that rather than send any form of notification to you, the FSA would have been at liberty simply to apply the late submission administration charge without further notice or reminder being given to you. It is therefore inappropriate for firms rely upon this practice in respect of complying with their reporting requirements as firms should (and, as I have indicated above, are expected) to be aware of their reporting requirements and submit returns on time if they are to avoid the standard late submission administration fee.

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 your firm's submission was received by the FSA some time (24 days) 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 the firm's GABRIEL return, the FSA has followed its stated procedures on the matter (which can be found in its handbook under SUP 16.3.14 which is shown above).

I have also noted your comments that at the time the returns were due there were other factors which you believe should be taken into account when assessing whether the fee should be levied against your firm. The factors which you feel are relevant here are the extreme weather conditions which Scotland experienced in November 2010 and your father-in-law's death. Whilst you have my condolences for the loss of your father-in-law, as the FSA has explained, the death of a family member does not provide a firm with an exemption for fulfilling its reporting requirements.

The reason for this is that ultimately, the FSA expects an authorised firm to have sufficient systems, controls and resources in place to enable it to fulfil its regulatory requirements irrespective of the difficulties employees of the firm may face (irrespective of whether these difficulties relate to environmental or personal factors). Regrettably, in this instance and as the report was some 24 days late, I do not believe that either of these factors provide sufficient extenuating circumstances for the FSA to 'waive' the requirements set out within SUP 16.3.14 shown above.

### **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 that it has been applied given that this was your first return, your assumption that the FSA would notify you that you were expected to submit a return and that you did not receive the reminder the FSA sent to you. Whilst I appreciate that you submitted the return soon after you became aware that it was overdue, the fact remains that, in this instance, that the returns *were not submitted* (my emphasis) by the due date.

Whilst it is unfortunate that you incurred a penalty for the late submission of your firm's first GABRIEL return, as I have set out above, ultimately responsibility for ensuring the timely submission of all FSA regulatory returns rests with the firm concerned (whether this is a large or small firm). As the timely submission of regulatory returns forms part of the requirements the FSA places upon the firms it authorises, it expects, correctly in my opinion, that all firms are aware of and comply with their individual reporting requirements from the date that they become authorised.

I have noted that your comments that, following the authorisation of Firm A, you received a considerable amount of paper work from a number of organisations and did not have the opportunity to consider fully all of this. Whilst I sympathise with the position you found yourself in, this is not the fault of the FSA.

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. There is also nothing to suggest that the FSA has not treated you fairly as it has complied with the rules contained within its handbook in applying the late submission administration fee to you. 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 16.3.14.

Yours sincerely,



Sir Anthony Holland  
Complaints Commissioner

