

31st October 2011

Dear Complainant

Complaint against the Financial Services Authority
Reference Number: GE-L01330

I refer to your letter of 31st 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 Firm A, your firm. You allege that *“due to an email problem [you] failed to receive any emails for a couple of weeks not (sic) aware the returns were due as on holiday”*. You add that after you *“received an email from the FSA with an administration fee applied (sic) of £250”* you then *“completed [your] return within 24 hours”*. As such you feel that, as you were unaware that the returns were due, you have not been treated fairly by the FSA.

Background

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| 31 st May 2011 | The reporting period for Firm A ends. |
| 30 th June 2011 | An automated email reminder was sent to you confirming that regulatory reporting returns due by 12 th July 2011. |
| 7 th July 2011 | A further automated email reminder was sent to you confirming that data items were required for submission by 12 th July 2011. |

- 12th July 2011 Deadline for the submission of Firm A's returns.
- 21st July 2011 A fee notification email regarding overdue regulatory returns was sent to you. The notification confirmed that £250 administration fee for late returns would now be applied.
- 21st July 2011 You called the Customer Contact Centre (CCC) regarding the above email. The CCC operative advised you that the returns were due to be submitted by 12th July 2011. You confirmed that you wished to appeal the £250 fee and you were given information about the complaints process.
- 22nd July 2011 Your firm submitted its RMAR.
- 22nd July 2011 You sent an email to Independent Complaints Scheme inbox to complain about the application of £250 fee.
- 25th July 2011 The Independent Complaints Scheme confirmed that the business area should deal with the complaint via the Fast Track scheme and that they need to issue response to the complainant on or before 29th July 2011.
- 25th July 2011 The business area issued a Fast Track response to you informing that they have not upheld the complaint.
- 2nd August 2011 The Independent Complaints Scheme received a further complaint from you as you were unhappy with Fast Track response.
- 31st August 2011 The Late Returns area confirm to the Independent Complaints Scheme that your firm had previously submitted its RMAR information (via the GABRIEL reporting system) correctly and on time since its introduction in January 2009.
- 31st August 2011 The Independent Complaints Scheme issued a further decision letter to you/your firm confirming that it was satisfied with that the outcome of the Fast Track investigation and the response it sent to you/your firm.
The letter advised you/your firm that if there were 'exceptional' circumstances as to why the return could not have been submitted on time this evidence should forward to the Independent Complaints scheme by 15th September 2011 otherwise the complaint will be closed.
- 31st August 2011 As you remain dissatisfied with the outcome of the FSA's investigation into your complaint you refer the matter to my office for further consideration.
- 31st August 2011 In light of your referral to my office, the FSA confirms that it is now closing its file on this matter and will await the outcome of my investigation.

My Position

As part of my investigation into your concerns I have obtained and reviewed the FSA's investigation file. I have considered the limited 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). 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 31st May 2011. Although the return was due no later than 12th July 2011, the FSA records show that the return was not submitted by this date and was, I believe, actually submitted on 22nd July 2011 (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 your returns were due as you were experiencing email problems and therefore did not receive the reminders the FSA says it sent you. However, whilst this may have been the case, in my opinion, this is of little consequence in regards to your complaint.

I would also add here that, although the FSA chose to send reminders to you (which I accept you did not receive), there is no requirement that the FSA should do this. The FSA expects its authorised firms, correctly in my opinion, to be aware of their individual reporting requirements. I would add that rather than send any form of notification to you, would have been at liberty simply to apply the late submission administration charge without further notice or reminder being given to you.

I understand that your firm has been authorised since 18th February 2005 and therefore has submitted a number of returns to the FSA. I also understand from the FSA that, since the introduction of the GABRIEL reporting system in January 2009, your firm has submitted all previous regulatory reports on time (and therefore not incurred any late submission penalties).

Given this information, in my opinion, you would have clearly been aware of your reporting periods and would have had at least a general idea of the dates by which your reports needed to have been submitted. I would add here that if there was any doubt over the dates by which when your reports needed to be submitted this information could have been obtained by either telephoning the FSA or by accessing your reporting schedules on the GABRIEL system.

I should also point out that whilst the FSA has, in the past, chosen to send reminders to firms reminding them that reports are due, this has been done as a goodwill gesture (and is therefore a process which it may not continue to adopt in the future). 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 (10 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).


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 you did not receive the reminders the FSA sent to you by email. Whilst I appreciate that you acted to submit the returns as soon as you became aware that they were over due, the fact remains that, in this instance, they were not submitted by the due date.

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 16.3.13 and 14.

Yours sincerely,



Sir Anthony Holland
Complaints Commissioner