



Complaints Commissioner

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Dear Complainant,

Complaint against the Financial Services Authority
Reference Number: GE-L01336

I refer to your email of 12th September 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 for the late payment of Section J of its GABRIEL return for the period ending 31st March 2011 which was due to be submitted by 18th May 2011. In your email of 12th September 2011 you say that you “*completed the return which was due on the [18th May 2011] on the [26th April 2011]*” and believed that you had fully submitted the return.

You also add that, although you accept that you received a reminder from the FSA you believe it was misleading and led you to believe that it was an automated reminder which was sent to all firms. You hold this view as “*the opening line of the email was written in bold black print in capital letters:*

PLEASE IGNORE THIS EMAIL IF YOU HAVE RECENTLY SUBMITTED THE DATA ITEM(S) LISTED BELOW. FSA REGULATORY REPORTING: SUBMISSION OF ONE OR MORE DATA ITEMS IS DUE BY [18th May 2011]

As I believed I had submitted my return on the [26th April 2011] which was before this date, I assumed that this email was to be ignored’.

You also add that as soon as you became aware that the return was outstanding you immediately completed this. As you believe that the FSA has not treated you fairly, by sending misleading information, you believe that the submission administration fee should be waived on this occasion.

Background

31 st March 2011	Firm A’s reporting period ends.
1 st April 2011	An automated email was sent to Firm A notify it that a Reporting Period had ended and listing all the data items that were due for submission, including Section J of the RMAR report. This email confirmed that all reports needed to be submitted no later than 18 th May 2011.
26 th April 2011	Firm A submits its main RMAR returns but Section J is not submitted.
6 th May 2011	An automated email Reminder of Submission Due Date was sent to Firm A listing all the data items that were due for submission. Section J was the only item outstanding from the RMAR report and the only item listed.
13 th May 2011	The FSA sends a final automated reminder email, listing all the data items that were due for submission. Again Section J of the RMAR was the only item outstanding and the only item listed.
18 th May 2011	Due date for submission of all returns (including Section J of the RMAR report).
27 th May 2011	Firm A is sent a Fee Notification email for Overdue Regulatory Returns, in which the FSA advised that it had been fined £250 due to the late submission of its returns and that it had 10 days to submit the overdue returns.
31 st May 2011	Firm A submitted Section J of its RMAR report.
14 th June 2011	You submit a formal complaint to the FSA.
6 th September 2011	The FSA sends you its decision letter in which it explains that it is unable to uphold your complaint.
12 th September 2011	You refer your complaint to my office.

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). 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 (not a fine) the firm incurred relates to the late submission of Section J of your firm's RMAR return (via the FSA's GABRIEL system) for the period ending on 31st March 2011. Although the return was due no later than 18th May 2011, the FSA records show that the return was not fully submitted by this date and was, I believe, actually submitted on 30th May 2011 (you having been prompted to act by the receipt of the FSA's late submission charge invoice).

In this case, as your firm's submission was fully received by the FSA some time (12 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).

Although I can find no evidence to indicate that the FSA has incorrectly applied the late submission administration charge set out in SUP 16.3.14, from my review of your complaint it is clear that you attempted to comply with the FSA rules by submitting the majority of your return some considerable time before the due date (the full return finally being submitted on 30th May 2011). Likewise, whilst it is clear that the FSA sent you two automated reminders (these being sent on 6th and 13th May 2011), which pointed out that Section J of your RMAR remained outstanding.

I would also add here that, although the FSA chose to send reminders to you, 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, the FSA would have been at liberty simply to apply the late submission administration charge without further notice or reminder being given to you.

When considering your complaint, I have noted your comments about the reminders the FSA sent you being misleading. Having reviewed the reminders which the FSA sent to you, it is clear that these are headed "*PLEASE IGNORE THIS EMAIL IF YOU HAVE RECENTLY SUBMITTED THE DATA ITEM(S) LISTED BELOW. FSA REGULATORY REPORTING:*"

SUBMISSION OF ONE OR MORE DATA ITEMS IS DUE BY [18th May 2011]” as you indicated in your complaint to my office. However, whilst the reminder says “*PLEASE IGNORE THIS EMAIL IF YOU HAVE RECENTLY SUBMITTED THE DATA ITEM(S) LISTED BELOW*” it does clearly refer to the specific outstanding items and includes a list of these. In this case, had you briefly viewed the email you would have seen that *only one report* (my emphasis) was showing as remaining outstanding. In my opinion, given that you were required to submit (and believed that you had submitted) 10 reports, the fact that only one report was shown on the report as outstanding should have prompted you to check your reporting schedule on the FSA’s GABRIEL reporting system.

Likewise, I appreciate that you say that you believed the reminder you received to be an automated reminder which was sent to all firms, the FSA has confirmed that since May 2009 (when your firm’s first GABRIEL return was due). However, I note that you have only received reminders on one other occasion (in relation to your November 2009 GABRIEL return) which, at the time the reminders were sent to you, *had not* (my emphasis) been submitted. As this is the *only* (my emphasis) time, prior to May 2011, that you have received reminder emails from the FSA, I believe that you would, or at least should, have been aware that the FSA *only* (my emphasis) sends reminder to firms who have outstanding returns. I should also add here for the sake of completeness that the reminders you received in November 2009 were also headed “*PLEASE IGNORE THIS EMAIL IF YOU HAVE RECENTLY SUBMITTED THE DATA ITEM(S) LISTED BELOW*”.

As I have mentioned above, given that the reminder clearly referred you to the *items shown below* (my emphasis) which listed only the outstanding report, it is clear, in my opinion, that the emails should have prompted you to take some action, there is nothing to indicate that you did so. In arriving at this view, as I have indicated previously, firms are expected to be aware of their reporting requirements. Therefore, I believe that it would have been reasonable for you to be aware in any event what returns you were due to submit and when. Likewise, as the FSA provided you with details of what returns were required on two occasions *before* (my emphasis) the due date (and when you submitted part of your GABRIEL return), in my opinion, it would have been clear that you were required to submit your half yearly RMA-J return in addition to the other quarterly returns which were due in May 2011.

As the FSA explained in its decision letter of 6th September 2011, 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. I cannot over emphasise that fact since your response to my Preliminary Decision appears to indicate that you regard it as a fine. The late payment charge for the FSA, Financial Ombudsman Service and Financial Services Compensation Scheme were all aligned to £250. This was consulted about 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 in turn benefits the industry as a whole since the FSA is financed by the Industry of which you are a member. This is explained in the compatibility statement to CP05/2. I have noted your comments about this issue, but, in my opinion, as the issue was the subject of consultation with the industry, there is nothing further I can add.

Details of the 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 of the required returns. Ultimately, as you did not submit Part-J of your GABRIEL return 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. I accept that you submit most of the required returns before their due date but ultimately, you omitted to submit the RMA-J return before the due date. The FSA made you aware before on two occasions (before the due date) that Part-J needed to be included within the returns.

I have noted your comments about the inclusion of the statement "*PLEASE IGNORE THIS EMAIL IF YOU HAVE RECENTLY SUBMITTED THE DATA ITEM(S) LISTED BELOW. FSA REGULATORY REPORTING: SUBMISSION OF ONE OR MORE DATA ITEMS IS DUE BY [18th May 2011]*" and your view that this misled you. Whilst I accept that the first part of the sentence, when considered in isolation, could be misleading, the second part of the sentence specifically refers you to the *items listed below* (my emphasis). As I have set out above the fact that only one item was set out should have alerted you to the fact that the FSA had not received one of the reports you submitted and this in my opinion should have prompted you to take some action (if only to check your submission history on the GABRIEL system).

I am particularly sorry, as I understand your considerable irritation 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 (which the FSA has recently returned to you as a result of your complaint about this being taken by direct debit) 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,

A handwritten signature in black ink, appearing to read 'Sir Anthony Holland', with a long horizontal arrow pointing to the right extending from the end of the signature.

~~Sir Anthony Holland~~
~~Complaints Commissioner~~