



1st June 2010

Dear Complainant

Complaint against the Financial Services Authority
Reference Number: GE-L01098

I refer to your letter of 26th January 2010 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:

Your firm, Firm A, has incurred a £250 administration fee for the late submission of your quarterly Gabriel return for the period ending 30th June 2009 which was due to be submitted by 28th July 2009 but was not submitted until 29th September 2009.

You are unhappy that this administration fee has been levied upon your firm and would like the FSA to 'waive' this as you claim that it one of the reasons the return was not submitted was due to the FSA not providing you with access to the system.

You also feel that the FSA's new Gabriel reporting system is not appropriate for small firms, such as yours, which operate in the 'home reversion plan' market. You hold this view as the information you are required to enter is not required as it relates to 'financing arrangements' which your firm does not offer.

My Position

As part of my investigation into your concerns I have obtained and reviewed the FSA's investigation file. I have considered the arguments 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.

I have also considered the argument you made when referring the complaint to my office on 26th January 2010. 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 first became authorised by the FSA on 1st April 2009. I also understand that as part of the authorisation process the FSA provided you with information which clearly explained your firm's reporting requirements.

Although I accept that your firm was newly regulated and this was your firm's first Gabriel return, the fact remains that as a consequence of becoming regulated your firm was required to be aware of its reporting requirements and also be aware of when they were due. In this case, your firm was required to submit a return, for the period ending 30th June 2009 no later than 28th July 2009. It is a matter of record that the return was not submitted by this date.

In your complaint letter to my office you stated that you experienced problems logging in to the Gabriel system and you feel that this is partially the reason there were delays submitting your return. The FSA has confirmed that the Authorisation Welcome Pack your firm was sent explained the Gabriel Principal User registration procedure for firms. This pack also clarified that if a firm experienced difficulties registering or if a firm was unable to successfully register a Principal User then it should contact the Firm's Contact Centre (FCC) who would be able to assist it.

I accept that Firm A may have experienced problems when attempting to register a Principal User and appreciate that the FCC's assistance was sought to enable it to do this. However, the FSA's file shows that, prior to Firm A receiving the FSA's reminder that a Gabriel return was overdue, there is no evidence to indicate that Firm A had attempted to register a Principal User or submit a return. Likewise, despite Firm A's Principal User being registered (albeit with FCC's assistance) on 27th August 2009, I note that the Gabriel return was not submitted until 29th September 2009, i.e. over one month after the Principal User was registered. I would also add that, during this period, there is nothing in the FSA's file to indicate that anyone from Firm A sought the FSA's assistance as a result of it experiencing problems either accessing or entering information into Gabriel.

Although I can appreciate that you are unhappy with the £250 administration fee you have incurred relates to the late submission of your Gabriel return for the period ending on 30th June 2009. FSA rules state that a firm has a period of 30 business days, following the end of the period, in which to submit its return (which meant it had to be submitted electronically no later than 28th July 2009).

The FSA's handbook indicates that it can apply the late return administration fee once a required return becomes overdue. In this instance, I note that the FSA did not do this immediately, instead on 17th August 2009 it contact your firm and reminded it that the Gabriel return for the period ending 30th June 2009 was now overdue. I also note that the FSA gave you a further 10 days to submit the outstanding return before applying the late submission administration charge.

I appreciate from the FSA's that the reminder prompted a member of your staff call to the FSA on 20th August 2009 and request an extension as you were on annual leave and were the only person who could submit the return. Whilst I accept you may have been away from the office on annual leave, this is not the fault of the FSA and in any event the return was already around three weeks late when the reminder was issued.

Likewise, although I accept that you submitted your return on 29th September 2009. This meant that your Gabriel return was submitted some nine weeks late. 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 the 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 submission was received by the FSA some considerable 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.

As you did not submit your Gabriel by the due date (submitting it around nine weeks after it was due), you have not complied with the FSA's rules. By imposing the administration fee (which is detailed in its handbook under SUP 16.3.14) the FSA has followed its stated procedures on the matter.

You also indicated that you are unhappy with the FSA's stance regarding the amount and type of information which needs to be entered into a Gabriel return. Specifically you do not believe that a great deal of the required information is appropriate for your firm, due the type of business it undertakes. Firstly let me say that the Act gives the FSA a discretion on what information it obtains from the firms it regulates (including the level of detail) and how these firms are to provide this information to it.

From the enclosures you sent my office along with your letter of complaint I can appreciate your frustration at the reporting requirements imposed on you. However, the FSA has confirmed to me that, whilst your firm may not undertake 'lending activities', the Part IV permissions it was given (and the regulated activity it undertakes) means that it falls into the same category of firms as those which undertake home finance administration or home finance provision activities who are required to provide this information. Therefore, you are also required to provide returns which provide this information.

As I explained above, when considering a complaint I must be mindful of the rules and requirements of the complaints scheme when carrying my investigations. With this in mind, whilst I have noted your comments in relation to this issue of the information you are required to submit, and I hope provided you with clarification of why the FSA requires you to submit the detailed information it does, I must make you aware that I cannot formally consider this issue under the complaints scheme. I am unable to do this as the Act gives to the FSA a discretion in relation to what information it obtains from firms (and how this information is submitted). I would specifically draw your attention paragraph 1.4.2A of COAF which states:

COAF 1.4.2A - Circumstances under which the FSA will not investigate

The *FSA* will not investigate a complaint under the *complaints scheme* which it reasonably considers amounts to no more than dissatisfaction with the *FSA's* general policies or with the exercise of, or failure to exercise, a discretion where no unreasonable, unprofessional or other misconduct is alleged.

Conclusion

In arriving at my Final Decision I have also considered the comments you made when responding to my Preliminary Decision. I must apologise for the time it has taken for me to consider this issue, however I had to seek clarification from the FSA on the reporting waiver you have indicated Firm A was given from the FSA. I would add at this point that I am extremely disappointed at the time it has taken the FSA to provide me with what I consider to be a relatively simple piece of information. I can well understand you will find it unsatisfactory that delays of this kind are not visited with any sanction while delays on your part have been visited with a sanction. I cannot alter that position despite my sympathy.

In your submission to my office you say you did not complete the return as you were waiting for the FSA to clarify whether you need to complete part of the return (rather than complete this with "zeros") and your firm has now been given a waiver in relation to this reporting. The FSA has now clarified that Firm A has received a waiver in respect of its reporting, but that this is specifically in relation to the Product Sales Data Reporting (explained in its handbook under SUP 16.11). However, the issue you have raised above in relation to your reporting requirements is detailed in the FSA's handbook under SUP 16.12 and therefore not covered by the waiver Firm A has been given.

As a result, although I can and do sympathise with your position, the facts of your complaint are clear. Firm A was required to submit, electronically, a Gabriel return, for the period ending 30th June 2009, to the FSA by 28th July 2009. It did not do this. Although it is not required to do so, the FSA sent Firm A a reminder that the return was overdue and granted it an extension until 28th August 2009 to submit the return (without incurring a late submission administration fee). Again Firm A failed to do this. As such the FSA, correctly in my opinion, applied the late submission administration fee.

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 note that you have already paid the administration fee in question.

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
