

26th February 2008

Dear Complainant

**Complaint against the Financial Services Authority
Reference Number: GE-L0834**

I write with reference to your letter of 24th January 2008 addressed to the Office of the Complaints Commissioner. I am now writing to advise you that I have completed my investigation into your complaint.

At this stage, I think it would be worth explaining my role and powers. Under the Complaints Scheme (Complaints against the Financial Services Authority [FSA] - known as COAF) my role is as an independent reviewer of the FSA's handling of complaints. I have no power to enforce any decision or action upon the FSA. My power is limited to setting out my position on your 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>.

From your correspondence with my office, I understand your complaint relates to the following issues:

1. You have incurred a £250 administration fee for the late submission of your Retail Mediation Activities Return (RMAR) return for the period ending 31st July 2006. You feel this is unfair as, you did not receive the reminder the FSA say it sent you and were therefore unaware that a return was due.
2. Additionally, you are also unhappy over a difference between the words used in the reminder and the rules. Specifically you are unhappy that the rules, contained in SUP 16.3.14R of the FSA handbook, includes the phrase "the *firm* must pay an administrative fee of £250" where as the reminder you have now been given states "we can charge you an administration fee of £250".

You feel that this means that the FSA has discretion as to whether this administration fee is imposed and therefore is contradictory to the rules. You feel that the FSA is both “judge and jury” in its own cause and would like independent consideration to be given to whether your firm should pay an administration fee.

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 your firm, Firm A, first became authorised by the FSA on 14th January 2005. From your correspondence with the FSA I also believe that your first RMAR return was due for the period ending 30th November 2005 and that this was submitted in early January 2006. Your firm was then required to complete subsequent RMAR returns at six monthly intervals.

The £250 administration fee you have incurred relates to the late submission of your RMAR return for the period ending on 31st May 2006. 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. This meant your firm’s return was to be received by the FSA no later than 12th July 2006. Your return was not received by the FSA until 3rd November 2006. This meant that your RMAR return was submitted some 82 days late.

The FSA’s file indicates that, on 28th June 2006, it sent you an email reminder stating that your firm’s RMAR return was due to be submitted no later than 12th July 2006. This reminder also explained that, if the FSA did not receive your return by 12th July 2006, a late submission administration fee of £250 would be payable.

Although you tell me that you did not receive this email, the FSA cannot be held responsible for this. Likewise, although the FSA chooses to send reminders to firms by email, there is no requirement for it to do so. The FSA’s rules, as set out in its hand book under SUP 16.7.6A to SUP 16.7.6C and SUP 16.7.76R SUP 16.7.81G are clear and show the frequency that firms are to submit reports to the FSA.

Whilst I appreciate that you feel that you were unaware of this requirement, and that you did not receive the reminder the FSA sent to you, I do not believe that the penalty imposed by the FSA is disproportionate. The FSA’s rule book clearly states that once a return is overdue, it is able to impose an administration fee of £250.

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 RMAR 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 82 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 your RMAR return, the FSA has followed its stated procedures on the matter.

In your recent correspondence with the FSA you say that copy of the reminder the FSA sent to you contradicts the rules as they are set out in the FSA handbook. Specifically, you have drawn attention to the phrase "If your firm fails to submit the regulatory return by 12th July 2006, we can charge you an administration fee". In your view you believe this suggests that the FSA has discretion over the application of the late submission fee and as such you feel that an independent person should assess whether or not the fee should be applied.


In considering this argument, I would draw your attention to another phrase which is also included on the reminder, "Act by 12th July 2006 to avoid paying a £250 administration fee". This, in my opinion, clearly shows that if your RMAR return is not submitted by the due date (in this case 12th July 2006) you will incur the £250 administration fee. Likewise, when the reminder is considered as a whole, in my view, it is clear that if the return is not submitted by the due date, the FSA is free to (and will) charge the administration fee.

Whilst it is clear from the FSA's records that it did send you a reminder, it is regrettable that you do not appear to have received it. Similarly, although you have questioned the terminology used on the reminder I must point out that there is no requirement for the FSA to remind firms that a regulatory return is now due. The fact that the FSA chooses to send reminders to member firms is something the FSA does purely to assist them; it is not something member firms should rely to ensure that their regulatory reports are submitted to the FSA in a timely manner, as member firm's reporting requirements are clearly documented in the FSA rule book.

In this case, as you did not submit your RMAR by the due date (submitting it some 82 days late) 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.

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 decision the £250 administration charge is now payable in full and, if you have not already done so, you should contact the FSA to arrange for the payment of this administration fee.

Yours sincerely,



Sir Anthony Holland
Complaints Commissioner