

20th October 2006

Dear Complainant

Thank you for your letter of 24th July 2006, which details the elements of your complaint against the FSA. This letter sets out my final decision on the complaints you have raised.

At this stage I think it would be worth explaining my role and powers. Under the Complaints Scheme (Complaints against the 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>

The Complaint

From the evidence provided to me it appears that the fact that you completed parts of the regulatory form and tried to submit it before the deadline is not in dispute. Furthermore the fact that the form was not fully completed when you initially tried to submit it is not disputed either. You have stated that due to the nature of the return you were unaware that the form was incomplete on the date when you tried to submit it and that nothing led you to change your opinion on this until you were contacted by the FSA after the deadline had passed (and hence the fee became payable).

The reminder email which the FSA sent to you on the 5th May states that a submission of a FSA return is not to be treated as successful until you have received an acknowledgement email. If you can provide a copy of the acknowledgement email you received after submission of your FSA return I would consider reviewing my stance on your case.

The FSA has stated in its written response to me that "if the firm had tried to validate and submit its return, without making any entries in this section (E2-the section that you omitted to complete), error messages would have arisen on validation and the return would not have been validated". As a consequence of your return not being validated you would not, according to the FSA procedure, have received an acknowledgement email as mentioned above. This non-receipt of the email should have acted as a warning to you that your return had not been validated and pre-empted you into taking action to ensure successful submission and consequently to avoid this fee.

The FSA has gone on to point out that you had successfully managed to submit the previous return in October 2005 through the online process. This somewhat negates your argument about the clarity of the guidance given to completing the return.

Your accountants have written to the FSA to state that they were present during the submission of your FSA return. They have stated that “No message came on screen to indicate that the submission was not successful”. I have no reason to doubt the honesty of this position. The FSA has pointed out that it might be the case that when you thought you were ‘submitting’ your return you may have in fact been ‘saving’ your return and this may explain why no error messages appeared when you ended your online session in front of your accountants. However it should be remembered that this is purely conjecture.

However the onus is on the firm as stated in the FSA handbook SUP16.3.14:

“If a firm does not submit a *complete* (my emphasis) report by the date on which it is due in accordance with the rules in this chapter and any prescribed submission procedures, the firm must pay an administrative fee of £250”.

It is clear that you accept that the form was incomplete when you initially tried to submit it and consequently my conclusion is that the administrative fee of £250 should stand.

Yours sincerely

Sir Anthony Holland
Complaints Commissioner