

24<sup>th</sup> October 2008

Dear Complainant

Thank you for your letter of 24<sup>th</sup> July 2008 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

Your complaint focuses on the submission of a regulatory return which was due to be provided to the FSA in electronic format by the deadline of the 10<sup>th</sup> August 2007 and surrounding issues.

On the 4<sup>th</sup> September 2007 you emailed the FSA in response to an email you had received from the FSA on 29<sup>th</sup> August 2007 outlining that you were in breach of the reporting requirement and that you were now subject to an administrative fee of £250.

On the 7<sup>th</sup> September 2007 you again wrote to the FSA by email making the following points to appeal the imposition of the £250 fee;

- 1 A nil complaints return was submitted by post (3<sup>rd</sup> August 2007).*
- 2 Submission was acknowledged in an undated letter (reference RRDA/205494); this letter was ambiguous and the first paragraph could be read that the submission was valid.*
- 3 The reminder notification email 18<sup>th</sup> July does not stipulate that a return must be online.*
- 4 I was preparing for a charity bike ride up to the 25<sup>th</sup> July, and the ride itself, 26<sup>th</sup> to 29<sup>th</sup> July. I did not return until 30<sup>th</sup> July and was taking 10 days leave. I have been receiving treatment for a mental condition since February 2007.*
- 5 This society is a partnership friendly society, that is to say, each fund is controlled by the beneficiary themselves, complaints are therefore are unlikely if not impossible.*
- 6 The amount of the administration fee us is arbitrary, unrelated to current, past or future income or capital, and therefore is contrary to natural justice and unreasonable."*

On the 7<sup>th</sup> May 2008 you again wrote to the FSA with regard to correspondence you received from it. In this email you reiterated a number of points. You also stated;

*"I had submitted the report in writing in due time and had received a letter confirming receipt of the report from the FSA. Unfortunately in the second paragraph it*

*stated that the report should have been made online which point was not picked up until notification of late submission.*

*“The submission for the 6 months to 31<sup>st</sup> December 2007 was made online but was incomplete. I contend that the software system is not user friendly and should have warned me that my filing although “validated” was incomplete.”*

On the 20<sup>th</sup> June 2008 the FSA provided you with its decision letter. It states that although it is sorry to hear about your ill-health, it notes that you were still able to take part in normal activities and managed to make the submission on time albeit in the incorrect manner. It goes on to explain that you have previously made a number of online returns, that the system has help screens linked to each data item requiring you to input information, a top tips document, a help link which provides you with all the different ways you can get assistance with the return and lastly an e-learning course costing £5 which is specifically designed to help firms make their returns online. Based on all this the FSA rejected your complaint.

My position

Having reviewed the evidence made available to me I have not seen any evidence of you informing the FSA of your ill-health prior to the 10<sup>th</sup> August 2007. You have provided documentation demonstrating that you received medical treatment during the timeframe in question. However this evidence, nor your actions at the time demonstrate that you could not carry out your work as usual. In fact your submissions and actions at the time indicate that you were indeed capable of submitting the form correctly.

When an individual or firm decides to become regulated it accepts as part of the “becoming regulated process” the rules of the FSA. Furthermore it accepts that the onus is on the firm or individual to know the obligations it has to the FSA. In becoming regulated you would have accepted these two intrinsic parts of being regulated. As a consequence the onus is on you to ensure that you know in sufficient detail your obligations to the FSA.

Furthermore the evidence available to me demonstrates that you have made five six monthly returns using the Firm’s Online system in the past. Consequently I consider that your arguments to the effect that the system is unfit for purpose to be outweighed by your repeated successful use of it.

You have also contended that the letter you received from the FSA in response to your paper based submission was in some way ambiguous. As the letter is short I will quote the entirety of the body of the letter as I think there is a public interest element to this issue.

“Dear Sir/Madam  
Complaints Return

Thank you for submitting your recent complaints return. Please note that as you submit electronically via Firms Online you are not required to submit a paper copy.

*Please note that paper returns cannot be processed by the FSA and will not be accepted as a valid return (my emphasis).*

Should you have any further queries on the above, please contact your usual supervisory contact at the FSA. Yours faithfully.”

I do not consider the italicised line, nor the letter as a whole, to be in any way ambiguous. I think it is a clear explanation of the situation and clearly explains that you should contact the FSA if you had any further queries. You have stated that you did not pick up on the second paragraph of the letter until after you became aware of the late notification email. Considering the brevity of this letter I find that if you chose not to read letters completely, especially those from the body that regulates your friendly society, namely the FSA, then you are accountable for that decision alone and not the FSA.

You state that the reminder email sent by the FSA on the 18<sup>th</sup> July 2007 does not state that you must make the submission online. It is clear that the FSA is not obliged to send such emails but choose to do so in order to help minimise the likelihood of late returns. Further as you are obliged to know your obligations to the FSA the wording of such a reminder is, in my opinion and in this particular case not particularly important, especially when taken in context with your written admission that you did not read the entirety of FSA letter sent to you shortly afterwards.

I do not consider your charity bike ride relevant to this case. Clearly you, like many others feel it important to contribute to the community and elements of it, however I do not feel that it has any bearing on this case when considered in light of the fact that you were still able to submit wrongly a paper based submission prior to the deadline.

Similarly I do not consider the likelihood of complaints being made, or not being made, about your friendly society to be factor in this case. Many firms submit nil returns on time and this information is an important factor in how the FSA prioritises its resources in relation to regulating firms. Late submission incurs costs in chasing the information required and alterations in how the FSA regulates firms on an individual basis. Consequently it is right that there is a fee to dissuade people from making late returns. Having reviewed the evidence on file it is clear to me that the time and effort spent dealing with your case in monetary terms is significantly more than £250 at this time and this matter is not yet closed.

You have argued that the fee incurred does not correlate with firms’ individual circumstances. I have a number of points I would like to raise to answer this.

Firstly such fees would require an enormous amount of extra work to ensure the fees correlated to firms appropriately. This would require a large amount of resource to achieve and would drive the fees up, a somewhat self defeating position. Secondly the FSA has researched this area and the fee is set at £250 because the research it did showed that this was enough to dissuade firms not to make a regular habit of late submission but would not

normally affect their financial status. Lastly considering you had made late returns previously you must have been aware of the size of the fee.

It is my final view that your complaint should not be upheld and that all monies due to the FSA should be paid forthwith.

Yours sincerely

Sir Anthony Holland  
Complaints Commissioner