

30th January 2007

Dear Complainant

Complaint against the Financial Services Authority (FSA)

Reference Number: GE-L0695

I am writing to advise you that I have now completed my investigation into your complaint.

Having considered all of the evidence available to me, I now write to inform you of 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>.

From your email of 4th December 2006, I understand your complaint relates to the following points:

- 1 You have incurred a £250.00 administration fee for the late submission of your annual return. You feel this is unfair as your return was only 14 days late.
- 2 You have learnt that the FSA allow a period of grace which is not specified in their rule book. You feel this is incorrect and either all firms which submit a late return should incur a late submission administration fee or none should.
- 3 At the time your return was due you were experiencing computer problems and were therefore unable to submit your return. You had attempted to get an engineer to repair the problem, but were unable to do so at the time. You feel that these circumstances were therefore outside your control.
- 4 You were also away from the office for a 10 day period attending to your mother's needs following an operation. You also feel that as these circumstances are exceptional your late submission administration fee should be waived.

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 administration fee you have incurred relates to the late submission of your return for the period ending on 30th June 2006. You have a 30 business day period, following the end of the period, in which to submit your return. This meant your return was to be submitted to the FSA no later than 11th August 2006; you did not submit your return until 25th August 2006.

From your correspondence with the FSA, I understand you have been told that there is a discretionary 'period of grace', where a late submission administration fee may not be charged. You feel that, as this is not shown in the FSA's rules, the late submission administration fee should be applied to all late submissions and that there should not be a 'period of grace' where the administration charge may not be applied.

In the letter of 19th September 2006 the FSA explained that, the 'period of grace' is only applied as it takes it a short period of time, following the due date, to process and to administer firms' returns. It also explains that technically all firms who submit a return after their due date are liable for the fee, and it takes a practical approach as it takes it a few days to complete its administrative process.

From this explanation I believe that it is clear why the FSA allow a short 'period of grace' where it does not apply an administration fee. Nevertheless, although the FSA may offer a short 'period of grace' where it may decide not to apply a late submission administration fee, it is free to do so should it so wish. Similarly, a firm is still required to ensure that its returns are submitted on time and is on notice that should it be late it is liable to such a fee.

In your submission to both the FSA and this office you have provided evidence to show that your mother was admitted to hospital in Manchester on 27th July 2006. You add that following her operation you spent a period of 10 days away from your office. You also explained that a power failure in the West End resulted in computer problems during August which meant that you were not able to access the FSA's computer systems.

When considering the matter I have also allowed for the fact that you were pre-occupied with your mother's condition and that you experienced computer problems in late July and August. I have also noted that you accept you had access to the FSA's computer systems from 1st July 2006. However, you have not offered any explanation to say why the return was not submitted in the period before your mother was admitted to hospital or during the period between your visits to your mother in August 2006. There is also no evidence of you notifying the FSA of any of these problems at the time.

Whilst you may have been away from your office during late July and early August, you had a responsibility to ensure that the FSA's rules were complied with in your absence. The FSA has also confirmed that an email was sent to you on 26th July 2006 reminding you that your return was due on or before 11th August 2006.

The onus for compliance with all of the FSA's rules 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. The FSA has followed the procedures on this matter. It is unfortunate for you that your mother had to have an operation and that you experienced computer problems during this period. This however is not the fault of the FSA.

From these papers there is little evidence which alleges or demonstrates any breach of the rules by the FSA. I am afraid therefore that your complaint cannot be upheld and as a consequence the fee remains payable.

Yours sincerely,

Sir Anthony Holland
Complaints Commissioner