

1 November 2022

Final report by the Complaints Commissioner**Complaint number 202201147***The complaint*

1. On 19 July 2022 you asked me to investigate a complaint against the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

You are unhappy that you have been fined £250 for a late regulatory return. You state that you did not receive any notifications that the regulatory return was due as they were sent to an old email address that no longer exists. You have explained that the firm has always paid invoices on time. To resolve your complaint, you are seeking for the late fee to be waived.

What the regulator decided

3. The FCA did not uphold your complaint. It said that 'It is the firm's responsibility to ensure that they update their email address when necessary. Furthermore, it is a firm's responsibility to be aware of the reporting requirements.'

Why you are unhappy with the regulator's decision

4. You have explained to me that you communicated a new email address to the then FSA in 2008. You say that your firm always paid invoices immediately on receipt and therefore did not have any reminders until now. You have now found out that FCA emails about fees (invoices, penalties or else) were generated correctly to the updated address, but reminders were not. The reminders were issued to a pre 2008 non existent email address, so you did not receive them.

My analysis

5. An FCA requirement for firms to complete their firm attestation details annually came into effect in January 2020. The FCA is right to say that it is the firm's responsibility to be aware of the reporting requirements. However, the FCA does issue reminder letters. You said none of these reached your firm.
6. You say the FCA was issuing these to an old email address not in use any longer, and it was your contention that the email address change had been notified to the FCA.
7. The FCA's decision letter did not address your allegation that it was sending reminder emails to a defunct email address and merely pointed out it was your responsibility to advise the FCA you had changed your email address.
8. However, you had told both the FCA, and me, that you believed you had changed your email address. Therefore, I asked the FCA to comment on this point.
9. The FCA has responded to me with the following information:
 - a. 'It wasn't until 10 September 2021 that your firm submitted a Firm Details Application changing their email address on the FCA register. (This means the email address for your firm was not changed in 2008 as you maintain but in 2021, to xxx@xxx.com.)
 - b. The principal user was updated on 13 May 2022: The firm continued to use this email address (xxxxxx@xxxx.co.uk) to login to our Connect system until May 2022. The reminders go to the principal user's email address which may be a different to the email address that the firm chooses to use for their invoicing.'
10. The information above was not provided to you in the FCA's decision letter. It should have been, because your complaint was centred on your belief you had changed your firm's email address with the FCA; it appears you did not. Had the FCA provided you with this information, you may have either not complained to me with the allegations you did, or you may not even have complained at all.
11. Given the FCA's comments above, it seems to me that it was your firm which did not update its details in the manner you portrayed.

12. Having said that, I do have one criticism: My criticism is that the FCA investigation into your complaint was inadequate. It should have addressed the points in paragraph 9 above.

My decision

13. For the reasons above I do not uphold your complaint.

Amerdeep Somal

Complaints Commissioner

1 November 2022