

16 November 2022

Final report by the Complaints Commissioner**Complaint number 202201173***The complaint*

1. On 24 August 2022 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

Your complaint was made on 13 July 2022. On 8 August 2022, I wrote to you with a summary of my understanding of your complaint. I didn't receive any comments from you regarding my summary, and therefore have proceeded on the basis that it was correct. The summary is:

You explained that your firm has ceased business, but you have been asked to complete regulatory reporting on RegData. You are unhappy as you do not believe your firm should be required to complete any further reporting whilst undergoing a cancellation application.

To resolve your complaint, you are seeking exemption from any further regulatory reporting.

What the regulator decided

3. The FCA did not uphold your complaint they advised you:

I appreciate that you are unhappy that you are required to continue with the regulatory reporting until your cancellation application is approved. I also recognise that the application has been delayed.

However, your firm has been aware of the need to continue with the regulatory reporting requirements since September 2021, which was before the application was made. During the call of 13 September 2021, it was explained to the firm that the application could take up to 12 months and that reporting would be required during this period.

You should complete the outstanding regulatory returns until the cancellation is approved to avoid further Late Reporting Fees. The outstanding invoice should be paid as soon as you are able to.

During your call of 16 August 2022, you explained that you were unhappy with the number of security questions you were asked to verify your identity. It may help if I explain that the FCA Supervision Hub there is a security process which has to be completed before any query in regard to a firm's data held on the FCA systems may be discussed. All firms who contact the FCA are subject to these security measures in order for the FCA to provide a high level of protection to the firms that we regulate. Our security policies ensure firms' data is kept safe, we cannot deviate from the security process.

Why you are unhappy with the regulator's decision

4. You have asked me to review the FCA's decision.

My analysis

5. You have told me:

the adjudicating officer has based the decision on the fact that the rules require a firm to submit a return while authorised. We did this without complaint for a number of months but my patience is now exhausted. My point is that I submitted my request to give up my permissions in November, but it was February the following year before anyone replied and asked for further information. You will then note from the latest email exchanges that no officer has been appointed since that time to

the present to deal with my case, hence due to the ineptitude of the Regulator I remain authorised and I am required to submit irrelevant returns and pay dues when any other organisation would have dealt with this in a timely and professional manner. This is clearly unacceptable as I have to keep using my retirement time and resources to fill in their returns and pay for a service I am not receiving.

As a second point, the initial response to my complaint was partially upheld. i.e. that the Regulator had acted in a tardy manner, but no account was taken regarding the fact that this was causing me substantial extra work and expense as the delays resulted in my firm still being regulated and thus by default having to submit ongoing returns.

Thirdly, as I knew a half yearly return was not long away, I asked that the data collection part of the organisation be informed of my complaint and that I would not be completing a return until the matter was resolved. This did not happen and I have been hit with a £250 penalty payment. This is not just and emanates from the “left hand not knowing what the right hand is doing” in this organisation.

Finally, I rang the data collection side of the FCA to explain what was happening and contest the late payment fee of £250 but in spite of answering a number of questions in relation to data protection I made a mistake and the call was terminated. I am retired on ill health and I am disabled and dealing with them from home. Because I work from home, I no longer have my work computer systems where previously I could have found answers to the questions raised. I have looked on the Data protection web site and in spite of what the FCA are claiming, their current methodology does not in my view meet the 7 principles of the act. They fall short on (a) and (c). At the moment they have a one size fits all question system which

does not meet the requirements. I believe they may also be in breach of the Equalities Act 2010.

6. Whilst I can sympathise with your frustration regarding the timescales involved with your Firms cancellation, the FCA did inform you at the outset that the application could take 12 months and you would be required to complete your regulatory reporting until your cancellation application is approved.
7. I am pleased to see the FCA partially upheld your complaint in July 2022, however I believe it was partially upheld due to the service you had received in not receiving updates, not because of a delay in your application to cancel your permissions.
8. I have listened to the calls you and Mrs X had with the FCA, and I have seen the email exchanges. I am satisfied the FCA were clear in making you aware of your requirements to complete your regulatory reporting until your cancellation application was approved. I note you asked that the data collection part of the organisation be informed of your complaint and that you would not be completing a return until the matter was resolved. This did not happen, and you have been hit with a £250 late payment fee. I agree it is disappointing the complaints department appear not to have passed on your request to the late fee team to see if any late fees could be suspended whilst your complaint was reviewed. However, I have found no evidence during my review of the FCA agreeing to suspend your regulatory reporting activities or suspending any late fees whilst your complaint was being reviewed, therefore without confirmation of this it was your responsibility to ensure you carried on fulfilling your reporting requirements until you were informed otherwise.
9. I am unable to review your complaint about the data protection questions you were asked by the FCA. Under the Complaints Scheme (paragraph 3.5) complaints that amount to no more than dissatisfaction with the regulators' general policies or with the exercise of, or failure to exercise, a discretion where no unreasonable, unprofessional or other misconduct is alleged are excluded from the complaints scheme.

My decision

10. For the reasons outlined above, I am unable to uphold your complaints about the timescales involved with your Firms cancellation and the late payment fee you incurred, and I am unable to review your complaint the data protection questions the FCA asked you.

Amerdeep Somal

Complaints Commissioner

16 November 2022