

15 November 2022

Final report by the Complaints Commissioner**Complaint number 202201174***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:

My understanding of your complaint is that you are unhappy with the increase to the fees the FCA charge firms. You say this has steadily risen over the years and has now become unaffordable for your business.

To resolve your complaint, you are seeking for the FCA to reconsider its fee charging model.

What the regulator decided

3. The FCA excluded your complaint and advised you:

After carefully considering the information you have provided, we have concluded that we cannot investigate your complaint under the Complaints Scheme.

This is because the Complaints Scheme covers the investigation of complaints that arise in connection with the exercise of, or failure to exercise, any of the FCA's relevant functions.

The 'relevant functions' of the FCA are defined in the Complaints Scheme and Part 6 of the Financial Services Act 2012, and broadly speaking cover the FCA's regulatory functions that arise under the

Financial Services and Markets Act 2000, or such other functions as may be ordered by HM Treasury.

Expressly excluded from the definition of 'relevant functions' is anything arising from the FCA's exercise of legislative functions or standards review functions. 'Legislative functions' of the FCA include the making of rules, and the issuing of general guidance.

Your complaint relates to the FCA's fees and levies which is an exercise of our legislative functions. The FCA is required to issue rules regarding fees each year and this is set out in the Financial Services and Markets Act 2000 (FSMA). Therefore, your complaint is excluded from being considered under the Complaints Scheme, as confirmed in paragraph 3.4(c) of the Scheme.

I am sorry to hear that you feel our fees are disproportionately applied. Whilst I have not investigated your complaint, I have provided some information below regarding our fees and how they are determined on an annual basis:

- Between October and November each year, we consult on any changes to our policy on how we raise fees and levies. We give our feedback on the consultation responses in the following March Handbook Notice.
- In January each year, we consult on the Financial Services Compensation Scheme (FSCS) management expenses levy limit (MELL), a joint consultation with the Prudential Regulation Authority (PRA). We give our feedback on the consultation responses in the March Handbook Notice.
- Between March and April, we consult on FCA periodic fee rates for the next financial year (1 April to 31 March) and any proposed changes to application fees or other fees. We also consult on the Financial Ombudsman Service general levy, the Single Financial Guidance Body levies and illegal money lending levies for the next financial year.

- Between June to July each year, we publish feedback on responses received to the March/April consultation paper with final fees and levy rates in a policy statement.

I can see that the FCA issued a Consultation Paper in April 2022 regarding our rate proposals for 2022/23. This paper explains the reasons why we proposed the fees we did and provided you with an opportunity to provide a response by 12 May 2022.

The FCA reviewed the responses it received as part of the consultation process and issued a Policy Statement in June 2022.

On our website, we explain how we calculate annual fees which you may find useful along with the information in the Consultation Paper and Policy Statement referred to above. These documents explain how the FCA is funded, the FCA's budget for the coming year and how the fees are made up.

I also note that in the Consultation Paper for 2021/2 we explained that 'We believe that small firms, who only pay a minimum fee, should make a contribution to the costs of regulating them that more fully reflects the costs associated with FCA authorisation and ongoing supervision. A firm which needs to be regulated by the FCA, even if that is for an ancillary part of its business, will recognise that regulatory approval brings value but also specific and serious obligations. Current consumer credit minimum fees are as low as £106 and the proposed revised fees for 2021/22 is the first stage to bring greater alignment of these minimum fees with other authorised firms who currently pay a minimum fee of £1,151.' More information can be found on page 16 of the consultation paper.

The aim of the minimum fee is to ensure all authorised firms contribute to the cost of regulation, including small firms. It also aims to ensure that the minimum fee level is not too high, which would hinder competition, and not too low, which would prejudice existing fee payers. Minimum fees are fixed amounts that each firm pays. Firms under the size threshold only pay the minimum fee. Firms above the

threshold also pay variable fees, based on the measure of business that applies to a particular fee-block.

I appreciate you are unhappy with the fee levies. I would recommend that you take part in the consultation next year which should be published between March and April in line with the fee cycle detailed above so we can take your views into consideration before publishing our fees for the 2023/24 period. You may also wish to contact your Member of Parliament if you are unhappy with the FCA's funding model.

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:

We are very unhappy with the fees charged by the FCA for us to be in business. When we first started trading our licence was under the FSA and was £180 per year. When the FCA took over overseeing companies like ours the fee increased to £318, the charge this year is £1000 and will increase to £2200 in the future. The FCA claim that it cost them £2200 to regulate firms such as ours. We can see no justification for this high charge other than to pay for the exorbitant salaries of its executives and the plush offices where they work.

Why should a small company like ours be equated with the big banks, insurance companies and other large financial institutions by the FCA when it comes to the cost of regulating them.

The FCA does nothing for us other than to take our money but requires us under the penalty of law to complete numerous questionnaires which costs us a great deal in time and money.

The FCA has also stated that it is going to spend one hundred million pounds improving its technology. Why does it need to spend such a huge amount of money. Regulating the finance industry is not a complicated job, all it needs to do is to make the rules and investigate

breaches when they are reported to them. I cannot see this being any more complicated or more expensive than that of the Data Commissioner office.

We are a small business and cannot afford to pay the exorbitant fees charged by the FCA. In our opinion a charge of £250 would be more than adequate for a licence for a small debt collection agency such as ours to be regulated by the FCA.

6. I can sympathise with your situation, however your complaint about your annual fee relates to the FCA's legislative functions as such your complaint about this fee falls outside the Complaints Scheme and for those reasons, I am unable to investigate this matter for you. Although your complaint is excluded from the Complaints Scheme, I am pleased the FCA provided you with information on why and how the fees are calculated.
7. Whilst your complaint is excluded from the Complaints Scheme, there may be a debate to be had about the merits of the FCA's approach to fees, I would suggest you may want to contact your MP about this matter.

My decision

8. For the reasons outlined above I am unable to review your complaint.

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Complaints Commissioner

15 November 2022