

21 March 2023

Final report by the Complaints Commissioner**Complaint number 202201691***The complaint*

1. On 4 January 2023 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 7 July 2022. On 20 July 2022, we wrote to you with a summary of our 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:

Part one

You have explained that you had not used your FCA permissions for over a year. You called the FCA on 7 December 2021 to cancel your permissions. You were advised that the deadline was not the calendar year end, but financial year end. You then worked to 4 April 2022, the Financial Year deadline. You completed the permissions request on 31 March 2022 and submitted on 1 April 2022.

You received confirmation that permissions have been cancelled but then received an invoice for around £400. When you called to query this, he advised you were told that the deadline was 31 March 2022 not 4 April 2022 and invoice should stand.

Part two

You are unhappy with how the second call went as you felt the Supervisor was not helpful.

To resolve your complaint, you are seeking for the invoice to be waived.

What the regulator decided

3. The FCA did not uphold your complaint, it said:

Part one

You have explained that you had not used your FCA permissions for over a year. You called the FCA on 7 December 2021 to cancel your permissions. You were advised that the deadline was not the calendar year end, but financial year end. You then worked to 4 April 2022, the Financial Year deadline. You completed the permissions request on 31 March 2022 and submitted on 1 April 2022.

You received confirmation that permissions have been cancelled but then received an invoice for around £400. When you called to query this, he advised you were told that the deadline was 31 March 2022 not 4 April 2022 and the invoice should stand.

I have reviewed the calls which took place on 7 December 2021. In the second call the second supervisor explained that the fees were aligned to the financial year and not the calendar year. The supervisor did not mention the financial year end as the date to submit the cancellation application.

During the first call the first supervisor directed you to the FCA webpage for firms wishing to cancel.

The FCA webpage¹ states, before applying to cancel your authorisation, your firm is expected to have:

- stopped carrying on regulated activities, or
- planned to stop carrying on regulated activities within 6 months of the application

If you do not plan to stop carrying on regulated activities within 6 months of applying, we may not accept your application.

You should have also:

- told your clients and approved persons that you are going to cancel your permission
- paid all your outstanding regulatory fees
- filed any regulatory returns that are due
- resolved any complaints against you

The section Fees explains, 'We don't charge anything for cancelling your authorisation. However, you will have to pay the full annual fee for the financial year in which you apply for cancellation. If you submit your cancellation application to us before 31 March (or before the last day in February, if you are also regulated by the PRA), you will not have to pay the annual fee for the following financial year. If, however, your business continues to operate for 3 months beyond this deadline – that's to say, past 30 June – then you will have to pay the annual fee for the financial year.

The webpage also has a link to a guide for completing your application to cancel which explains, 'Please note a cancellation being approved does not absolve your firm from any fees that are outstanding

The application form explained, 'If you submit your cancellation application to us before 31 March (or before the last day in February, if you are also regulated by the PRA), you will not have to pay the annual fee for the following financial year. If, however, your business continues to operate for 3 months beyond this deadline – that's to say, past 30 June – then you will have to pay the annual fee for the financial year

For the reasons given above I have not upheld this part of your complaint.

Part two

You are unhappy with how the second call went as you felt the Supervisor was not helpful.

I understand from your complaint that you are referring to the call you made to the Supervision Hub on 6 July 2022.

I recognise that the supervisor did not provide you with the response you were seeking and that you were unhappy with the situation. However, I do not believe the supervisor was in a position to provide you with any other response, other than re-iterating previous guidance to explain the FCA position and provide the details of the complaint team as he did.

For the reasons given above I have not upheld this part of your complaint

Why you are unhappy with the regulator's decision

4. You have asked me to review the FCA's decision, you have told me:

Fact 1

I completed my application on the 31 March – not filing it until 1st April. If I had sent that there and then, instead of checking it over the next morning, we would not be going through this 1 x “Non-Click” of the send button and 12 hours, is potentially going to cost me - a private individual, up against a large organisation that deals with this every day - in excess of £400 +

Reasonableness

This seems entirely unreasonable to me, colleagues, friends and professionals I have discussed the matter with

Fact 2

Above I referred to a section of the refusal letter - “.. the second supervisor explained that the fees were aligned to the Financial Year and not the calendar year “

Why would I not believe what I was told? Why would I think to double check, when all the Supervisor did was confirm my thoughts,

expectations and original belief, as someone who had worked to those dates within the finance industry for all those years

Fact 3

There seems some sort of desperation to NOT give me – the Individual – the Benefit of the doubt here –for the sake of 1 Day in the Calendar – not a week or a month or 3 months ONE DAY, and not to take into account that I may even have misunderstood what the individual had told me, as referred to in fact 2 above?

Reasonableness

It seems to me, the Reasonable thing to do here is to recognise a genuine “mistake” IF they believed that was what it was for the sake of 1 day and in view of the fact I believed I was within the rules throughout and following a number of conversations – one of which “Confirmed” my understanding.

Fairness

Or, more Accurately “Treating Customers Fairly”

Treating Customers Fairly is one of the Tenets of the FCA, one of the guiding principles they expect their Authorised Holders to do at all times, yet they appear not to do that to the Individuals they expect to do it for their own customers.

1. Can it be considered Treating a Customer Fairly for a Private Individual like myself to basically be “Fined” by a massive organisation, for not pressing a button on the right day – 1 day out – despite clearly having completed the process the day required?
2. Can it be considered Treating a Customer Fairly when, by their own admission, they DID refer to the Financial Year End being that which the Licence was aligned to, but expected a Private Individual to question this, re-read it and come to a different conclusion – despite this being something they deal with Every

day of their lives - while as an individual, I will deal with once in my lifetime?

3. Can it be considered Treating a Customer Fairly, to use a date of 31st March as a requirement, while referring to the Dates of the Aligned Licence to be Financial Year End?

That is likely to cause confusion – maybe could be considered be misleading at worst, confusing at least, but certainly unnecessary and should not lead to a Private individual being made to pay for a Licence he hadn't USED for nearly 18 months.

My analysis

5. Part One

I have listened to the two telephone calls you had with the FCA on 07 December 2021. You made the second call after reading on the FCA website you had up until 31 March to cancel your firms' permissions in order to not be liable to pay your annual fee. This demonstrates you were aware of the date to cancel your permissions was 31 March.

During the second call the advisor explained your firms' fees were not calculated on a calendar year but on the financial year, she told you this to clarify why your firm would still be liable for the annual fee. I cannot agree it was not made clear to you that you had until 31 March to cancel your permissions if you wanted to avoid being liable for the next years fee. Furthermore, on more than one occasion you repeated back to the advisor that you had until 31 March to cancel your permissions. I would ask the FCA to provide you with a copy of this call recording as I believe you would agree after listening to it back there is no misinterpretation of the cancellation date.

You have told me you are unhappy that you were charged an entire year fee for being one date over the cancellation deadline, especially as you had not used your permissions for over 18 months. It is clear to me after waiting sometime after this call to cancel your permissions your recollection of the telephone

conversation and the cancellation date was not entirely accurate. Whilst I sympathise with your situation, as the FCA have not charged you incorrectly or mis-advised you, I am sorry to say I am unable to recommend a refund of this fee and I cannot uphold this part of your complaint.

6. Part Two

I have listened to the telephone call from 6 July 22, as stated above, whilst I have sympathy for your circumstance, the advisor you spoke to did not act unreasonably and the information he provided was accurate. I am therefore unable to uphold this part of your complaint.

The FCA have confirmed a copy of the call recording from 7 December 2021, has been sent to you.

My decision

7. For the reasons outlined above, I am unable to uphold Part One and Part Two of your complaint.

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Complaints Commissioner

21 March 2023