

14 April 2023

**Final report by the Complaints Commissioner****Complaint number 202201716***The complaint*

1. On 7 February 2023 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 amount you have been charged on a late return fee. You feel £250 is not a fair reflection of the costs the FCA incur. As a result of your firm making a late return, and you feel the costs are more likely to be £1.

To resolve your complaint, you would like the fee to be changed from £250 to £1.

*What the regulator decided*

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

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 amount of a late return fee, which is an exercise of our legislative functions. Therefore, your complaint is excluded from being considered under the Complaints Scheme, as confirmed in paragraph 3.4(c) of the Scheme.

The fee is an exercise of our legislative functions because the FCA Handbook (SUP 16.3.14R) states: 'If a firm does not submit a complete report by the date on which it is due in accordance with the rules in, or referred to in, this chapter or the provisions of relevant legislation and any prescribed submission procedures, the firm must pay an administrative fee of £250'. Therefore, your complaint is excluded from being considered under the Complaints Scheme, as confirmed in paragraph 3.4(c) of the Scheme.

Whilst I have not investigated your complaint, I have liaised with the area of the FCA most closely connected to your complaint to be able to provide you with the following response to the matters raised.

The fee is intended to recover the costs the FCA incurs in pursuing firms with late/overdue returns and/or submissions. It is separate from the FCA's enforcement powers and is not a financial penalty. The late payment charges for the FCA, Financial Ombudsman Service and Financial Services Compensation Scheme are all aligned to £250. This is an administrative fee and not a fine.

So for the reasons explained, this isn't a complaint that can be looked at under the Complaints Scheme.

*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:

I made a complaint to the FCA regarding a £250 administrative fee I received. The complaint was that this was not a valid administrative fee but an unfair penalty fee. It in no way reflected the costs incurred by the FCA for sending an automated email

I would like the penalty reducing to £1 and £250 towards my time in making and reviewing this complaint, which could have been resolved much sooner by the FCA on a number of occasions.

6. Whilst I realise you disagree with the FCA and feel the fee is a penalty and not an administration fee, your complaint relates to the FCA's legislative functions, so the information the FCA Complaints Investigator gave you was correct. Your complaint falls outside the Complaints Scheme and for those reasons I am unable to investigate your matter for you.

7. Despite not being able to investigate your complaint, I am pleased to see the FCA Complaints Investigator, provided you with information confirming the £250 late fee is not a penalty or fine and the late payment charges for the FCA, Financial Ombudsman Service and Financial Services Compensation Scheme are all aligned to £250.

*My decision*

8. Whilst I know you will be disappointed, for the reasons outlined above, I am unable to investigate your complaint.

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Complaints Commissioner

14 April 2023