

11 May 2023

Final report by the Complaints Commissioner**Complaint number 202201733***The complaint*

1. On 21 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:

You are unhappy with 2 late return fees of £250 from October 2022. You say you were previously advised by the FCA that if you continued to not carry out regulated activities by May 2022, your permissions would be cancelled. You weren't able to demonstrate this, so the FCA should've cancelled your unused permissions in May 2022 so you shouldn't have been required to submit the returns in October 2022.

You also say you shouldn't be required to pay another year's fees just to cancel your permissions.

You are also unhappy that you've been paying to be regulated over the past 8 years and FCA have taken 8 years to tell you that the permissions will be taken away if unused.

To resolve your complaint, you are seeking for the FCA to take responsibility for allowing something that breaks their own rules, to continue for 8 years unchecked.

What the regulator decided

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

You called our Supervision Hub on 27 September 2021 to explain that you had been authorised for a number of years, and wanted to double

check if there were any fees or issues with your 'account' as you haven't been using it. Once the supervisor had clarified you had been authorised since 2014 but have not been using your permissions, she provided you with guidance to cancel your authorisation as this should have been done previously. During the call you explained that you assumed that if you had cancelled you would have to go through the process of getting permissions again, and if you had just paid the annual fees it would be ready for you to use when you needed it again. The Supervisor clarified repeatedly that you would have to cancel your permissions if you did not use them. She explained that this would be something a firm would have to do themselves and it would need to be aware of its own obligations as an authorised firm. The Supervisor said she would not be able to comment or provide further guidance. The call ended with her informing you that the matter would be referred to another team.

A letter was sent to you on 29 October 2021 which informed you that 'Your firm has failed, for a period of at least 12 months, to carry out the regulated activities for which it has a Part 4A permission'.

It further stated 'If your firm has not carried out regulated activities for a period of at least 12 months and does not intend to resume within 3 months from the date of this letter, then you are invited to apply to cancel your firm's Part 4A permission. Alternatively, if your firm no longer needs its Part 4A permission then, again, your firm should apply for cancellation.'

This letter made it clear that the onus to cancel the permissions would be on the firm and did not indicate that it would be done automatically for you. It did however state enforcement action may be taken. On this basis I cannot agree that you were told your permissions would be cancelled.

Our records show that on 3 February 2022, you had called in to make us aware that you intended to use your permissions at the end of the month and wanted to continue.

An email was sent by one of our supervisors on 4 February 2022 which stated 'I can see from your response below that you intended to recommence regulated activity by 10th January and have since been advised by the colleague that spoke to you that you intend to begin doing so from the end of this month. I would be grateful if you could confirm for me the date you intend to resume regulated activity by 11 February'.

You then sent an email to state 'firstly I did explain that the death of my mother 25th of November 2022 (funeral 14th January 2022) and dealing with her will, has set my plans back significantly. Consequently, I have revised our plans to start activity back to Monday 11th April, although I hope to make progress sooner. In preparation, this week we signed an NDC (Mutual Non-Disclosure Agreement) with one of the UK's premier xxxxxxxx companies, Firm X. This is preliminary to a full contractual agreement to sell and install their products. We have meetings planned and arranged for a trade show next Thursday, where products will be demonstrated and we will select our product range. We did set up an account with Firm Y in September 2021, which remains live and we have meetings planned to discuss or need in detail at the end of this month.'

I am sorry to learn about your mother's passing, please accept my sincere condolences for your loss.

From the correspondence above, it appears that you were intending to use your firm's permissions and continued to confirm that you would do so.

Further to this, I'd like to highlight that it would be for a firm to check their own permissions and ensure it is up to date. In order to cancel permissions a firm would have to apply to do this itself, the FCA would not automatically do this for you.

Please see here for further details:

You stated that you shouldn't be required to pay another year's fees just to cancel your permissions. Our supervisor sent an email to you on

17 February 2022 which stated: 'If you submit your cancellation application to us before 31 March, you will not have to pay the annual fee for the following financial year, so it's worth keeping this date in mind if you end up deciding you will not be using your permissions.' As you did not submit a cancellation before this date, the fees would remain chargeable, regardless of whether you have used your permissions or not.

I have also considered the late return fees you have been charged. I reviewed our RegData system and can see that you are being charged 2 fees for the following returns which have still not been completed:

- CCR007 – due 13 October 2022
- REP008 – due on 1 November 2022

Courtesy emails were sent to the registered Principal User 'xxxxx.xxxxxxxxxx@gmail.com' to remind you to complete each return. These were sent on the following dates:

- For CCR007: 3 October 2022 and 6 October 2022
- For REP008: 20 October 2022 and 25 October 2022

The rules regarding late fees are set out in the FCA Handbook it states under SUP 16.3.14R(1) "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."

On this basis, the late return fees will remain chargeable.

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 have attached the decision letter received from the FCA regarding the above complaint. I am not satisfied their conclusion, but it was

predictable given that the central issue of my entitlement to permissions was omitted and not addressed (Element One).

Also, reference was made to a telephone conversation 27/9/21, the details of which are either incorrect or the text, as I recollect it was in an earlier telephone conversation that has overlooked. I am refereeing to a conversation in which I was told categorically that I was not and had never had entitlement to permissions, according to FCA rules, because I had never been active (Element Two).

Element One

I have reviewed the complaint you made to the FCA. You told the FCA:

I now find that the FCA require me to pay this year's subscriptions, before being allowed to de-register! I must have missed some of the details of the email that was sent to me, which I accept, but it seems completely unreasonable, having paid for a service that I didn't use and more importantly, was not entitled to, that I am also required to pay to exit!

This must be an unusual and special case, for which there are no rules to follow. Your own staff had not come across this before (permissions not being used at all over an 8-year period) and it should be looked upon as such. The FCA are in fact saying that I should be paying for something to which I am not entitled, while completely ignoring the 8 years of subscriptions gladly accepted. Furthermore, it seems to have been my job to police the use and/or misuse of permissions over the last 8 years, whilst the FCA have just happily collected annual fees. Had this been pointed out, we would have reached this point 7 years ago. I was originally told that the application process was going to be made far more extensive and considerably more expensive, which was the rational for keeping the permissions.

It is a Firm's obligation (and not the FCA's) to regularly review regulatory permissions to ensure they are up to date and removed where they are not needed. Whilst you have been authorised as an approved Firm since 2014, you

have never used your permissions and therefore should have cancelled them. Although it is clear you should have cancelled your permissions, it is important to highlight you still would have been authorised to use them had the need arose since you were approved in 2014.

In 2021, the FCA started a new initiative 'use it or lose it' after releasing the following statement: <https://www.fca.org.uk/news/statements/fca-reminds-firms-regularly-review-regulatory-permissions> The FCA started proactively identifying and contacting firms from May 2021 and have new powers to cancel a Firms permission's without the Firms application or consent.

It is a Firms responsibility to ensure returns and fees are submitted and paid on time, I am therefore unable to recommend the FCA waives the annual and late fees your Firm has incurred. I am unable to uphold this element of your complaint.

Element Two

I have listened to the telephone call from 27 September 2021, and I would **ask** the FCA to provide you with a copy of the call recording, for your records. I think there is a misunderstanding of wording used. You state you were advised you were not entitled to have permissions and never have been. As confirmed above, you have never used your permissions so you should have cancelled them, which was your Firms responsibility to do. However, I reiterate what I have confirmed above, whilst your Firm was approved and had permissions, you were able to use them. I am unable to uphold this element of your complaint.

Since issuing my preliminary report, the FCA have confirmed it has sent you a copy of the call recording from 27 September 2021.

My decision

6. Whilst I note your comments and disappointment in response to my preliminary report, for the reasons outlined above, I am unable to uphold elements one and two of your complaint.

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Complaints Commissioner
11 May 2023