

17 April 2024

Final report by the Complaints Commissioner**Complaint number 202300382***The complaint*

1. On 15 August 2023, you asked me to review a complaint about the FCA. My office issued a preliminary report to you and the FCA on 29 February 2024.

What the complaint is about

2. The FCA summarised your complaint as follows:

Part One

On 28 June 2023, you tried to submit your report for CCR007 on the evening of the deadline, but you feel were unable to submit it on time due to system issues and therefore you received a £250 late return fee.

You feel that as you attempted to submit your return on multiple occasions that evening, that the late submission is not your fault and that the late return fee is therefore unfair.

Part Two

You are unhappy that when you tried to reset your password to access the system, the link in the email to reset your password was not working appropriately and therefore resulted in you not being able to submit your returns by the deadline.

To resolve your complaint, you would like the fee waived.

What the regulator decided

3. The FCA did not uphold your complaint. In relation to Part One of your complaint the FCA set out that your firm had received three courtesy reminders about the upcoming due date, but you waited until the evening of the due date to try and submit the return. It noted that as you attempted to submit the report after the operating hours of its helpline that you were unable to then contact the FCA for assistance when you had issues relating to the password. The FCA took into account the fact that you had previously incurred a late fee for a missed CCR007 report in 2022, so you would have been aware of the importance of submitting your reports on time to avoid the fees.
4. In relation to Part Two the FCA concluded that as there were no known issues with password resets or RegData or Connect between the dates of 26-30 June 2023 and that its records indicated you had initially been successful at logging in via your laptop, that it did not uphold this part of your complaint.

Why you are unhappy with the regulator's decision

5. You wrote to my office on 15 August 2023, and you set out that you had an on-going complaint that was questioning the late payment fee. You explained that your issue isn't that the claim was rejected, but now due to the length of time it has taken to evaluate the claim, there has been another £250 added. You feel that this isn't your responsibility. You have asked that the amount payable be limited to the original £250.

My analysis

6. In cases like yours where a firm or individual complains about a late return fee the FCA will normally point to the fact that it provides firms with a number of reminders about filing their returns far in advance of the due date and reminds firms of the fact that making the returns on time are a key obligation for firms as per SUP 16.3.13 (1) of the FCA Handbook.
7. In your complaint the FCA has used these factors that support its decision not to uphold your complaint, and it also pointed to the fact that you left your submission of your return until the final day permissible. I can see that these are valid facts that the FCA has put forward and I have taken them into consideration in my review.

8. The facts in this case are that you did attempt to file your returns on the FCA system on the final day permissible. As detailed in the FCA decision letter you did so after the time that the FCA's helpdesk had closed for the day, at 20:43, 20:46, 20:47 and then at 20:48 you attempted to login using an invalid password and following two invalid password entries you were locked out of the system.
9. I have confirmed with the FCA that the RegData system is available to submit returns until 10pm each day. As such I consider that had your account not been locked out due to the incorrect password lock out mechanism, it is possible that you would have managed to submit your returns prior to the system closing at 10pm. However, as noted in the FCA decision letter your failed password attempts and subsequent lockout took place after the helpline closed therefore you were unable to get the relevant assistance you required in order to complete your return by the 10pm deadline and you consequently incurred the late return fee.
10. I consider that your situation has highlighted a distinct issue with the current process for submitting returns to the FCA which should be addressed. It is a firm's choice to elect to submit its returns on the final permissible day and if the system and guidance allow a firm or individual to do this until 10pm on the final day then the firm or individual should be entitled to elect to do this up until this time. In my preliminary report I set out my opinion that, if firms or individuals are able to lodge their returns on the RegData system until 10pm there should be a support line to assist with any issues encountered up until 10pm. In my preliminary report I set out that if this is not possible then the FCA should update its position to require firms or individuals to submit their returns within the hours that its helpdesk is available.
11. The FCA have responded to my preliminary report and have said that they do not agree with my opinion or recommendation that they should have a support line open until 10pm to mirror the portal opening times. Whilst they do agree that firms are entitled to submit their returns at any point within the window outlined including the last day, they do not agree with my opinion that telephone support should be available to match the opening hours of the portals that firms use to submit their returns. They have pointed out that they do inform firms that the support helplines are only available during specified hours and provided

details of where the information is set out about the opening hours of its telephone support line including on its 'Contact us' link on the FCA's website for Firms and on the courtesy reminder emails sent to firms to submit their returns. In addition to this their systems have a self-service password re-set process to enable users to reset their passwords outside of its open hours. The FCA have also set out that its approach is not at odds with the approach of other organisations within the industry.

12. The FCA pointed to the fact that you were sent three reminders prior to the date your submission was due, all of which would have had the opening hours of the support line detailed. Consequently, on reflection I do feel that you had the relevant notice and that you should have attempted to complete your submissions allowing time for potential login issues to be navigated with relevant assistance through the support lines during opening hours.
13. With this in mind, whilst I still have concerns about the opening hours of the helpline, I do now feel the FCA has provided me with sufficient justification as to why the fee should not be reversed. Consequently I agree with the FCA's position set out in its decision letter and I **do not uphold** your complaint. I appreciate that this will frustrate you as it reverses my previous recommendation, but that is why I issue my preliminary report to lay out my position and consider relevant responses that I receive from both parties as happened here.
14. I now turn to the matter you brought to my attention in your complaint to my office, being that you queried the fact that you had been charged an additional £250 due to the length of time it had taken to evaluate this claim. I have raised this query with the FCA who have set out to me that there were in fact two £250 late return fees issued on your account, the first was for the late return fee issued in August 2022, the second was the late return fee issued in August 2023 and is the latter fee that is in contention in this complaint. An additional amount was applied to the account after you made the complaint in the amount of £409.54 and this was the annual invoice. The FCA has confirmed that the sum of £909.54 was paid on 9 November 2023.

15. This means that the additional £250 was not added, as you surmise, due to the length of time it took to review your complaint: it was added as a late fee for another outstanding return, which has not been the subject of this complaint.
16. Given that this new late return fee has not been the subject of a complaint which the FCA has reviewed, I will not be making a comment on whether it is appropriate or not. If you believe you have reasonable grounds to challenge this second late return fee, I suggest you do so by approaching the FCA first. If you are not satisfied with the outcome, you can submit your complaint to me for an independent review.

My decision

17. For the reasons set out above, I have agreed with the position set out in the FCA decision letter not to uphold your complaint in relation to the late fee your fee incurred.
18. It is still my recommendation that the FCA either extends a support line to assist with any IT issues encountered by firms up until 10pm. If this is not possible then the FCA should update its position to require firms or individuals to submit their returns within the hours that its helpdesk is available. The FCA has said that it does not accept this recommendation so as an alternative I recommend that it should at least update the wording and add a warning to the listed opening hours (on the website and reminder emails) to note that it is a firm's responsibility to ensure that they submit return on time and allow for technical issues and that if firms experience any technical issues after the support line closes on the day of submission deadlines for a firm, this will not be considered or accepted as relevant exceptions and late fees will be applied.
19. You did complain to me about an additional £250 amount which has been levied on your account, however, due to the reasons I give above, I will not be investigating this complaint. You may choose to refer this complaint to the FCA for its review, and if you are not satisfied with the outcome you can submit your complaint to me for an independent review.

20. This is my final report about your complaint and concludes my investigation

Rachel Kent

Complaints Commissioner

17 April 2024