

06 November 2023

Final report by the Complaints Commissioner**Complaint number 202300438***The complaint*

1. On 6 September 2023 you asked me to review a complaint about the FCA.

What the complaint is about

2. The FCA has set out in its decision letter dated 4 September 2023 that you are unhappy with the FCA rules around annual fees. You have recently cancelled your firm's permissions and you think it is unfair that you are still required to pay a full year's fees.

What the regulator decided

3. The FCA concluded that it cannot investigate your complaint under the Complaint Scheme. It went on to set out the following:

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 FEES 4.2.9 of the FCA handbook (<https://www.handbook.fca.org.uk/handbook/FEES/4/2.html>), which is an exercise of our legislative functions. Therefore, your complaint cannot be investigated as it is excluded from being considered under the Complaints Scheme, as confirmed in paragraph 3.4(c) of the Scheme.

Why you are unhappy with the regulator's decision

4. You wrote to my office on 6 September 2023 setting out that you were unhappy with the FCA's decision letter and forwarded a copy of your response to the FCA. In your response you set out that you felt you were being unfairly treated and the interpretation of the FCA's policy in this case was in your opinion, incorrect.

My analysis

5. I can sympathise with your situation, however your complaint about your dissatisfaction with the FCA rules around annual fees does relate to the FCA's legislative functions. Paragraph 3.4(c) of the Scheme sets out that this type of complaint is excluded from the Scheme. This is because your complaint relates to the performance of the regulators' legislative functions as defined in the Financial Services Act 2012 (including making rules and issuing codes and general guidance).
6. Consequently, your complaint about the annual fee falls outside the Complaints Scheme. I therefore agree with the FCA's decision to exclude your complaint and I do not uphold your complaint that it should not be excluded.
7. I note that in your correspondence to my office you have set out that you consider the system is inherently unfair and discriminatory. Although the FCA excluded your complaint, there may be a debate to be had about the merits of the FCA's approach to fees, as such I am pleased to see that the FCA has provided you with the details about how to contact your MP.

My decision

8. As set out above, I agree with the FCA's decision to exclude your complaint and **I do not uphold your complaint** that it should not be excluded. This is my final report about your complaint.

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Complaints Commissioner

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