



04 December 2023

Final report by the Complaints Commissioner

Complaint number 202300450

The complaint

1. On 12 September 2023, you asked me to review a complaint about the FCA.

What the complaint is about

2. In the FCA decision letter dated 20 July 2023 it set out your complaint was as follows:

You are unhappy that your firm has received three late return fees. You state that you had no knowledge of the reporting requirements as your ex-business partner (your brother) handled the reporting and had left the firm. You have explained that you did not have access to your brother's emails where the reminders were sent to. You also did not have access to Connect and were not made aware that you were required to submit the reports. Once you gained access you ensured that the returns were completed on time.

You would like the fees to be waived as you believe the fees were applied in error.

What the regulator decided

3. The FCA did not uphold your complaint. Its findings set out the following:

You state that that you had no knowledge of the reporting requirements as your ex-business partner (your brother) handled the reporting and had left the firm. Whilst it is unfortunate that your brother abruptly left the firm, we would still require you to be aware of your reporting duties as it's a firm's

responsibility to be aware of their reporting requirements. Firms are required to pay annual fees and to submit regular reports/returns and attestations. Failure by the firm to complete those requirements on time will attract late fees.

You have explained that you did not have access to your brother's emails where the reminders were sent to. The FCA on occasion send courtesy reminder emails for data collections but they are not guaranteed and should not be relied on to ensure timely submission of returns. It's a firm's responsibility to be aware of its reporting duties. Even though you were unaware of the reminder emails this does not remove your responsibility to submit the returns in time. It also your responsibility to ensure that you update your email address when necessary.

You state that you also did not have access to Connect and were not made aware that you were required to submit the reports. Once you gained access, you ensured that the returns were completed on time. As explained above, we expect firm's to be aware of their reporting duties and would have expected you to have requested access to Connect before your brother left to ensure you could report on time. The reporting requirements are mandatory and need to be adhered to as it helps us supervise firm and perform our regulatory duties.

Why you are unhappy with the regulator's decision

4. In your complaint lodged with my office you have set out that you are unhappy with the FCA decision letter. You said that you failed to understand how it would have been possible to update your email and contact when 'I have no access to the online FCA systems'. You also said that the FCA's 'change in control' team, had not updated your email address and that it did not come back within a reasonable time frame and that if it had, you feel that you would not have incurred the late fees that have been applied.
5. You have set out that you did make the 'change in control' team aware of the new email contact details, and you think that the change of control should have

made you aware of the requirements for Reg Data reporting and the Connect system too. You state that as you did not have access to any logins to any of the FCA systems, you think that the FCA should have updated the contact email and this would have resulted in the filing being submitted on time.

6. You outlined what appear to be additional aspects to your complaint that when you had contacted the change in control team, you were passed over to 3-4 team members and '*wasted a lot time filling in various forms over than 12 months period only for them to advise that change control was no longer in play and my firm needs to submit a fresh new application*'.
7. In your complaint to me you have said that the FCA's decision letter said that you should have been " aware of your reporting duties as it's a firm's responsibility to be aware of their reporting requirements ". You said that you fail to understand how you can be accountable for these requirements when at no point were you made aware by the FCA that there is need to do so.

Preliminary points (if any)

8. Firstly, I would like to note that your complaint to my office reflects the complaint that was initially outlined by the FCA in its scoping letter on 26 May 2023. However following discussions between you and the complaints team on 18 July 2023, your complaint was amended and you wrote by email and confirmed that the complaint outlined in paragraph 2 above captured the complaint you wanted the FCA to consider. As such this is the complaint that I have reviewed in this report.

My analysis

9. I have reviewed the FCA decision letter and have had access to the FCA's files relating to your complaint. From my review the change in control of your firm took place in around September 2021 and the FCA has been in contact with your firm in relation to the change in control of your firm since January 2022.
10. Having reviewed the FCA decision letter alongside the information available to me, I agree with the FCA's decision in relation to the complaint set out in its decision letter. I consider that the FCA is correct that despite the abrupt departure of your partner (your brother) in the firm, you were required to be aware of your reporting duties as it is a firm's responsibility to be aware of their

reporting requirements, including the requirement to submit regular reports and returns and attestations and to pay annual fees. It was reasonable for the FCA to say that it would have expected you to have requested access to Connect before your brother left to ensure that the firm could report on time. The reporting requirements are mandatory and as a partner in the firm you should have been aware of this. As such your failure to make the returns and attestations sat with you and the fees were appropriately charged.

11. I am sorry but from the information available to me I am satisfied that the FCA's position in its decision letter was correct, so I agree with the FCA's decision to **not uphold your complaint.**
12. I note that I have not investigated your claims that the reason you were unable to complete your returns was due to the change in control team failing to update the firms emails to enable you to access the site. This is because this point was not considered in the FCA decision letter. Whilst I have noted that you had raised a similar point with the FCA and this was set out in its scoping letter in May 2023, it appears that following a call on 18 July 2023 you later agreed to the refined complaint (that was address in the decision letter) in your email on the same date which did not include this point. It is not clear why it was agreed to change the scope of the complaint from what was set out in the scoping letter following the call but you did confirm it writing that this was the complaint you wanted the complaint team to investigate. As such I have accepted that this was the agreed complaint to consider and I have limited to my investigation to the points the FCA addressed in its decision letter.
13. I note that in your response to my preliminary report you again repeated these points and said that you do not understand how you can be held accountable when you had no knowledge that the fillings had to be lodged and you had no way to gain access the FCA systems to update your email and that you made the change of control team aware of the new email and about your circumstances. These points relate to the that you had raised and were set out in the scoping letter.
14. You have informed me in response to my preliminary report that you wish for the FCA to consider the additional/omitted parts to your complaint and have

asked me how to do this. You can lodge a further complaint on the FCA website using the complaint [webform](#). The FCA will then consider whether your further complaint is one that can be considered under the complaint scheme.

My decision

15. As set out above, I agree with the FCA's decision and I have **not upheld** your complaint. This is my final report about your complaint.

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Complaints Commissioner

04 December 2023