

15 April 2024

Final report by the Complaints Commissioner

Complaint number 202300556

The complaint

1. On 27 October 2023, you asked my office to review a complaint about the FCA. On 11 March 2024, I sent my preliminary report to you and the FCA about your complaint.

What the complaint is about

2. In its decision letter dated 10 October 2023, the FCA set out the following summary of your complaint:

“Part One

You have explained that your firm has not carried out any regulated activity for the last few years. You wanted to cancel your authorisation, but you were waiting for your renewal date before you submitted a cancellation request. You received your invoice and upon submitting your cancellation you were advised that you were still liable to pay your fees for this financial year as you didn't submit your request before the start of the financial year.

You are unhappy as you have said that your firm was not informed of the above and had you known you would have cancelled your authorisation a lot sooner. You have explained that you do not want or need FCA authorisation and feel that the fees are unfair.

Part Two

Your firm previously received late return fees. You disputed the invoices as you have said your emails were not getting through as such

you were unaware of any reporting deadlines. Following a complaint made you asked the FCA to notify your firm by letter to avoid missing any future reporting, however this request was not fulfilled and as a result you received a further late return fee.

In both aspects of your complaint, you feel the FCA has provided poor and misleading communication and as such you feel the fees are unfair and not justifiable. To resolve your complaint, you are seeking for the fees and charges to be waived.”

What the regulator decided

3. In its decision letter dated 10 October 2023, the FCA set out the following conclusion in response to your complaint:

“I did not uphold Part One of your complaint. This is because under the FCA’s fee rules, any firms still authorised on 1 April was included in the invoice population for that fee year. This is unless the firm have made an application to cancel by 31 March and are not still authorised past 30 June. That population is billed accordingly to raise the annual funding requirement. Firm X was a regulated firm on 1 April 2023 and was therefore correctly included in the invoice population for 2023/24 and formed part of our financial modelling and forecasting.

It is important for the financial services industry that the FCA is fully funded, allowing it to carry out its essential functions. We know firms also value certainty and predictability, to allow them to manage their cashflow. It is for these reasons that we do not offer fee refunds when a firm cancels, as this risks a funding shortfall and a consequent need to raise further invoices for firms that remain in the sector. While this can feel unreasonable in the individual case, overall we believe it is the fairest way to share the regulatory burden amongst firms.

The cancellation requirements are set out in our handbook, at <https://www.handbook.fca.org.uk/handbook/FEES/4/2.html>. As an authorised firm, Firm X is expected to be aware of its obligations and applicable rules.

I did not uphold Part Two of your complaint, this is because I have found no issues with the communications that you received and feel that the fees were issued fairly. You had previously said that as you don't use our online portals very often, you rely on our reminder emails in order to remember your reporting due dates, however, these email reminders are only a courtesy and should not be relied upon to maintain compliance. It was not agreed upon that we would send firms a final reminder via post, it was only agreed that your feedback would be shared.

As previously explained to you, it is a firm's responsibility to complete their reports on time and to have the correct systems and controls in place to meet their regulatory obligations. You were sent courtesy email reminders when appropriate, however, it would not be the FCA's fault if those emails ended up in the firm's spam inbox and it would be the firm's responsibility to make sure that their email system had the correct settings in place to prevent this from happening."

Why you are unhappy with the regulator's decision

4. In your webform submitted on 27 October 2023, you set out the following in relation to your complaint:

"Poor communication leading to fines. Emails not getting through. Not being up front on future payments. Invoicing without confirming that we actually want the service. This invoice only issued months after we supposedly became liable for it. We had no idea and would have said we didn't want the service had we had been notified prior."

5. I have addressed the complaint as set out in the FCA decision letter which was broken into two parts. In my report I have referred to them as Element One and Element Two to separate my decision points from those of the FCA's.

My analysis

Element One – Annual fees

6. I have looked carefully at all the information available to me. Whilst I have sympathy for your situation, given it is clear that you did not wish to have

continuing authorisation for Firm X, you unfortunately mistakenly thought that you had cancelled your firm's FCA authorisation at the appropriate time, being the renewal date for the firm.

7. This, however, was not the case. You did not apply for cancellation of the firm's authorisation until 17 July 2023. Under the FCA's fee rules, any firms still authorised on 1 April each year are required to pay the authorisation fee for the entire year. Therefore, as a result of your firm still being Authorised on 1 April 2023, it was required to pay the annual fee in full.

8. In your response to my preliminary report dated 12 March 2024, you have set out that your main issue is that the invoice for the annual fee was not issued until July, well after the end of the financial year well into the new period.

Whilst I appreciate your feelings that this is seemingly long period, I do accept that it is reasonable that the FCA has a period between the end of its financial year to reconcile the information about firms and incoming fees to forecast for the next year before it issues its invoices. The FCA did explain the timings in its decision letter when it set out that under the FCA's fee rules, any firms still authorised on 1 April was included in the invoice population for that fee year. The exception to this is if the firm had made an application to cancel by 31 March and they were not still authorised past 30 June. As such it seems reasonable to me that the actual invoices for the financial year are then issued after 30 June for all those firms that were included in the invoicing population and this explains why Firm X did not receive its invoice until after 17 July 2023 when you applied to cancel Firm X's authorisations.

9. As set out in the FCA decision letter, the cancellation requirements are set out in its handbook, at <https://www.handbook.fca.org.uk/handbook/FEES/4/2.html>. As an authorised firm, Firm X is expected to be aware of its obligations and applicable rules and should have made relevant enquiries at the time it decided it no longer wanted to continue to be authorised. As such I agree with the FCA **not to uphold** this element of your complaint.

Element Two – Late reporting fees

10. In relation to your firm receiving the late reporting fees. I have reviewed the information available to me including the call recording from 24 February 2023.

11. In this call you discussed the fact that your firm had stopped receiving notifications about upcoming submissions your firm needed to make and that you were receiving fines as a result. You had just received a fine for failing to submit your Firm Details Attestation on 26 January 2023. You said that you had not received a letter or an email like you used to reminding you that you had a submission due. On this call the FCA team member advised you of the dates that the reminders had been sent to your firms email address. You were then able to locate the emails in the firms spam/junk mail folder. During this call you made a suggestion that the FCA should issue a letter for the final reminder to firms to avoid the situation where firms might miss reminder emails if they went into junk folders. The FCA team member advised you that they would pass this feedback on, but he did not state that it would be implemented for the firm.
12. It should be noted that these reminder emails that are sent out by the FCA are courtesy reminders only, the obligation still sits with the relevant firm to have the relevant systems in place to meet their reporting requirements at the relevant dates. The FCA did send out courtesy reminders to your firm about reporting deadlines. It is not the FCA's fault that these were delivered to your junk mail folder. It was the firm's responsibility to make sure that their email system had the correct settings in place to prevent this from happening or that they are regularly checking their spam folders to ensure that they are not missing key correspondence.
13. As such I consider that it was appropriate for the FCA to issue these late return fees and I agree with the FCA's decision **not to uphold** your complaint.
14. Whilst I have not upheld your complaint, I note that in your response to my preliminary report you set out reasons why you felt the FCA had a lack of accountability in your complaint and made some suggestions that the FCA might want to consider to improve its accountability and assist firms with understanding key deadline dates and responsibilities. I consider that all feedback from firms is valuable to the FCA and can help it to improve its practices and processes in the future. As such I list the following suggestions which I have extracted from the comments you made in your email into a bullet point list. I **suggest** that the Complaints Team pass these onto the relevant

team for consideration for improvements to its authorisations and invoicing processes into the future:

- Contacting firms by mail or phone to ask them if they want to renew their authorisations before 1 April when the next annual fee is incurred by the firm;
- Design a calendar that could integrate with firms calendars [with key dates for firms to remember];
- Have a clear annual time line available for firms with deadlines and due dates that occur each year;
- Provide training [to small firms to help them better understand the key dates and responsibilities]; and
- Ensure adequate updates and training for users when changes are made to web portals.

My decision

15. This is my final report about your complaint. I know that you are disappointed with my decision but for the reasons set out above I have not upheld your complaint.

Rachel Kent
Complaints Commissioner
15 April 2024