

26 April 2024

**Final report by the Complaints Commissioner****Complaint number 202300579***The complaint*

1. You complained about the FCA on 9 November 2023.

*What the complaint is about*

2. The FCA described your complaint as follows:

## Part One

You applied for your firm, [ X ] to cancel your permissions on 27 April 2023. You explained the firm would stop trading on 2 May 2023. Your firm was no longer authorised effective from 1 June 2023.

You are unhappy that your firm has been charged for a full year of fees, despite the firm's permissions being cancelled as of 1 June 2023. This means the firm has been charged for 10 months of fees for permissions that will be unused. You say this contradicts the fee charging model for your two new firms, which have been invoiced on a pro-rata basis along with a first month discount.

## Part Two

You have not received a response from an email dated 29 June 2023 to a member of FCA staff.

*What the regulator decided*

3. The FCA did not uphold your complaint. It said that "*under the FCA's fee rules, any firms still authorised on 1 April 2023 will be included in the invoice population for that fee year*".

4. It also explained the rationale behind those rules saying : *“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”*
5. The FCA also said that your email had been responded to, and it did not uphold Part Two of your complaint.

#### *Why you are unhappy with the regulator’s decision*

6. You have said that charging you a full year fee in your circumstances is unfair, and that newly authorised firms are charged on a pro-rata basis: you believe all firms should be, not just newly authorised firms (Element One).
7. You have said that the FCA’s claim that it responded to your email is incorrect: it did respond to an email you sent at 8.59 in the morning of 29 June 2023 but not to the follow up email you sent at 13.54 that same day in which you ask when the invoice will be sent (Element Two).
8. Finally, you are unhappy that when you complained to the FCA you specifically asked to be contacted in writing. Instead, the FCA emailed you, using an old email address you were no longer using (Element Three).

#### *My analysis*

##### *Element One*

9. The FCA has rules about how it charges annual fees, which you feel are unfair. You also disagree with the FCA’s rationale for the way it charges fees.
10. Unfortunately, I am unable to review complaints about rulemaking under paragraph 3.4 ( c) of the 2016 Complaints Scheme.
11. Whilst I sympathise with your situation, as the FCA have not charged you incorrectly or mis-advised you, I am sorry to say I unable to recommend a refund of this fee and I cannot uphold this part of your complaint.

12. Therefore, your fee is payable.

#### Element Two

13. You have said that the FCA did not respond to your email sent 13.54 on 29 June 2023.

14. In your complaint letter to the FCA you said: “we would like to complain about one of your employees, TA, who was asked, in an email on 29th of June 2023, how we could escalate the previous issue with the FCA. To date we have had no response”.

15. The FCA has not investigated this allegation, due to the fact that there were two emails from you on that day and the Complaints Team commented only on the response to your first email. The FCA has said it did not enter the second email in its system due to human error.

16. I recommended that the FCA apologises to you for the error in not addressing this complaint point accurately. The FCA has accepted this recommendation. Given that the matter has progressed since then, an answer is no longer necessary.

#### *Element Three*

17. I uphold this element of your complaint. You clearly asked to be contacted by post. The FCA sent your scope letter by post, but for reasons which are not clear to me it then emailed your decision letter. I recommend that the FCA apologises for this and reviews its processes to ensure that complainant communication preferences are adhered to. The FCA has accepted this recommendation.

Rachel Kent

Complaints Commissioner

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