

30 May 2024

Final report by the Complaints Commissioner**Complaint number 202300770***The complaint*

1. On 15 February 2024 you submitted a complaint to my office about the FCA.

Your FCA complaint

2. The FCA said your complaint is that:

“You were asked by the FCA to cancel your permissions and you are unhappy that you have been invoiced for a full year as the FCA asked you to cancel due to nil returns and you believe that your invoice should be pro-rata”.

What the regulator decided

3. The FCA did not uphold your complaint. It said:

“Your firms’ permissions were cancelled on 1 November 2023. The FCA website explains that under the FCA’s fee rules, any firms still authorised on 1 April will be 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. [your firm] 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, [your firm] is expected to be aware of its obligations and applicable rules”.

Why you are unhappy with the regulator’s decision

4. You said to me that you do not believe it is fair for your firm to pay a full year’s fee when it has been regulated only part of the year. You say: “I wish to only pay pro-rata fee for the 2023-24 year, I do not accept the reasoning for rejecting the complaint is that FCA remain fully funded. , surely it makes no sense to ask us to remove ourselves from the scheme and still expect funding..”

Background to the complaint

5. Your firm has provided nil returns since in 2017, however, you say you have paid annual fees ranging from £358 to £1,087 since then.
6. The FCA contacted your firm on 25 September 2023 to ask for further information on the firm’s regulated activities given the nil returns/inactivity.
7. On 4 October 2023 your firm agreed to cancel its permissions and stated that you would complete the cancellation process.
8. Your firm’s permissions were cancelled on 1 November 2023, however, you were invoiced a full annual fee for the period 1 April 2023-31 March 2024.
9. Before you complained to me, you set out to the FCA that you were asked to cancel your permissions by the FCA due to inactivity (hence the nil returns since 2017), and given the FCA instigated the removal of permissions process, you do not feel that you should be paying a full year’s fees.
10. The FCA responded to you that even if the permissions had not been cancelled, you would still have had to pay the full year fee, and that you were approached about your permissions because you were not using them, subsequent to which you agreed to cancel them.

11. You then said that it was unfair for the firm to pay a full year fee and that a pro-rata rate would be more appropriate given you your firm was not regulated for a full year.

My analysis

12. You had not used your permissions for a considerable period when the FCA contacted you about this on 25 September 2023. The FCA requests that firms which do not use their permissions cancel them: more information can be found here: <https://www.fca.org.uk/news/statements/fca-reminds-firms-regularly-review-regulatory-permissions>

13. The FCA acted reasonably in asking you to review your permissions and you were obligated to cancel them if you were not using them. The FCA is correct that irrespective of whether you had cancelled your permissions or not, you would have had to pay the full fee for the year.

14. I appreciate you feel that your firm ought to be paying fees at a pro-rata rate, however, the information on the cancellation page on the FCA's website sets out very clearly the FCA rules about fees in connection to cancellation of permissions. Under the Complaint Scheme to which both the regulators and I operate to, under paragraph 2.9 c I can not review complaints about the exercise of the FCA legislative functions – such as rule-making and issuing general guidance. The FCA has applied its rules correctly, therefore your fees remain payable in the circumstances.

My decision

15. For the reasons given above I do not uphold your complaint and your fee is payable.

Rachel Kent

Complaints Commissioner

30 May 2024