

05 June 2024

Final report by the Complaints Commissioner**Complaint number 202300771***The complaint*

1. On 16 February 2024 you submitted a complaint about the FCA to my office.

What the complaint is about

2. Your complaint to my office can be summarised as follows. The FCA did not make it clear to you that you should not be regulated if you don't undertake any regulated work. It is also your view that the FCA doesn't have any processes in place to advise regulated businesses that file Nil returns, when their regulated permissions should be cancelled.

What the regulator decided

3. The FCA did not uphold your complaint and its decision is included in the Annex.

Why you are unhappy with the regulator's decision

4. You are unhappy with the FCA's decision because it did not uphold your complaint and you have said that now you don't know how to proceed.

Preliminary points

5. I note that your FCA complaint consisted of two parts, namely a lack of guidance from the FCA on when to cancel un-utilised permissions (Part One) and the financial consequences of failing to cancel permissions (Part Two). Although, in your complaint to my office you did not raise Part Two, I will address both in my response, since the answer to Part Two flows from Part One.

My analysis

6. I have reviewed the information on the file and understand that the circumstances of your case are as follows. Your firm, X, was FCA-regulated. Due to dormancy in its regulated activity, you contacted the FCA in 2019 and 2020 to check whether your firm's annual fees should be adjusted to reflect this fact and to query the need to complete various FCA surveys. You stated that, although your firm had not done any regulated activity since 2018, you wanted your firm to remain regulated as you wanted to do more regulated work in the future and hoped to acquire clients that would give you regulated work.
7. In addition to being instructed to complete the surveys, during one of those calls, you were advised by the FCA to review your permissions and, if they were not being used, to consider cancelling them. You were also directed to the FCA's authorisation fee calculator and the accounts department to assist you with any queries you might have had in respect of your annual fees.
8. As you did not cancel your firm's permissions, the authorisation issue came up again on 26 July 2023, when you contacted the FCA to dispute the requirement to pay your periodic fee invoice because you had not done any regulated work since 2018. On that occasion, you were informed of the FCA's 'use it or lose it' approach to permissions, which is where the FCA encouraged firms to cancel their permissions if no regulated activity was being undertaken. You were also reminded that the onus was on firms: *"to be aware of their own obligations and applicable rules."*¹
9. Despite this, it wasn't until after you received an Enforcement Notice from the FCA that you finally submitted a cancellation application on 15 August 2023.
10. Whilst the FCA does have the power to cancel or vary permissions if they are not being used by regulated firms, as you had repeatedly communicated to the FCA your wish to stay regulated and carry out more regulated work in future, the FCA left it up to your firm to determine whether or not de-regulation was appropriate.

¹ The FCA decision letter dated 24 November 2023

11. However, after having conducted an UoLI risk assessment and given your inaction in respect of cancelling your authorisation, the FCA finally took the decision to issue its first 'use it or lose it' notice on 1 August 2023, following which you applied to de-register. Had you taken the FCA's advice on board in 2020 and cancelled your permissions, you would not have incurred the authorisation fees.
12. With regard to payment of periodic fees, as the FCA explained, their fee calculation process takes into account the number of firms authorised on 1 April and cancellation applications as at 31 March and, based on that, calculates a fee for that year. Since your firm only cancelled its authorisation on 15 August 2023, you are responsible for the 2023/2024 annual fee.

My decision

13. I note you do not agree with my decision, however, in view of the above, I do not uphold your complaint.

Rachel Kent

Complaints Commissioner

05 June 2024

Annex

"Dear [Complainant]

Further to our email of 25 October 2023, I am writing to let you know I have now completed my investigation into your complaint.

Your complaint

Your complaint was made on 6 October 2023. On 25 October 2023, we wrote to you with a summary of our understanding of your complaint. We didn't receive any comments from you regarding our summary, and therefore have proceeded on the basis that it was correct.

Decision

My letter explains, below, that I have not upheld your complaint. I appreciate this will not be the outcome you were seeking. I hope that the explanations given below will help you to understand why I reached these conclusions.

Background

Having reviewed our summary of your complaint provided in your scope letter dated 25 October 2023, I have separated the allegations to consider them individually for the purposes of my investigation.

As a way of background, you have explained that your firm [X] was a regulated firm. You applied to remove permissions in 2023 after April as you had already received an invoice for the year ahead.

Part One

You allege that during calls with our Supervision Hub, you explained that your firm had not completed any regulated work since December 2018 and the advice received from the FCA previously was to stay regulated 'just in case' you did decide to carry out regulated activities.

You have spoken to the FCA 2 to 3 times since being regulated. Throughout this time, you feel the FCA have not been proactive in approaching your firm as you were not using the permissions you had been paying for. You feel that the FCA have misled you as you believed that you had to be regulated by the FCA to continue trading.

Part Two

You are unhappy that you received an invoice for an annual fee for the period 2023/24 when you're no longer regulated and don't feel it's fair to pay this.

To resolve your complaint, you are seeking for the FCA to waive the fees for this year, given your history and lack of transparency from the FCA.

Findings

To investigate your complaint, I considered the email and telephone call correspondence between you and the relevant teams. I can see that after receiving an invoice for your annual fee, you contacted our Supervision Hub on 9 September 2019 to question the invoice as you didn't understand why you'd have to pay a fee for regulated work when you hadn't done any regulated business since December 2018.

It appears that this was the first time you made the FCA aware of this information and during the call, you also mentioned that you didn't plan on doing regulated activity for the next 6 months.

As the main purpose of the call was to gather some information on how your fee was determined, the Supervisor took you through some security questions in order to assist you with your query. Unfortunately, you failed to answer the security questions correctly and therefore, the supervisor was unable to clarify details about your invoice with you. You were advised to send any queries regarding your fees to the Fees Team and provided with the relevant email address.

During your next contact with the FCA on 10 June 2020, you asked a supervisor whether you needed to complete the Financial Resilience Survey because you hadn't done regulated activity in the last 12 months. You told the supervisor that you were hoping to get another client that will give you regulated work in the future and that's why you continued to be registered during this time. You were informed by the supervisor that the survey was mandatory and that you should answer to the best of your abilities.

On 1 September 2020, you contacted our Supervision Hub to query the price of an invoice. You explained that you hadn't done regulated business for two years, but you would still like to be regulated as you're looking to get more regulated work. The supervisor advised you that if the firm hadn't done regulated work for over a year, then you should consider

cancelling your authorisation because you would still be liable to pay fees even if you're not doing any regulated business. You explained to the supervisor that as you anticipate that you will do regulated work in the future, you didn't want to come off the register and have to reapply. On 30 September 2020, you rang the Supervision Hub again because you felt it was pointless filling in another survey when you still hadn't carried out any regulated activities. You mentioned during this call that you still wanted to be regulated because although your client at the time didn't do regulated business, you would still like to keep your options open for the future. You were advised by the supervisor again to answer the survey to the best of your abilities.

Your next contact with the FCA was on 26 July 2023 when you rang to say that you were refusing to pay a periodic fee invoice dated 14 July 2023 because you hadn't done any regulated activity since 2018. You were asked by the supervisor why you didn't complete a cancellation application and you said that you'd previously asked whether you needed to be regulated and was told that it was up to you.

The supervisor explained our Use It or Lose It process and how the FCA advises that firms should cancel their permissions if they're not being used. You were frustrated that you weren't told this information before and that the FCA should have picked up on the fact that you input nil returns for the past few years sooner. The supervisor explained that with the scope of firms that we deal with, we cannot deal with each individual firm on a case-by-case basis and essentially, we expect firms to be aware of their own obligations and applicable rules.

You expressed a wish to cancel your authorisation and the supervisor reminded you that all outstanding fees and reporting had to be paid and completed as part of your regulatory requirements even if you cancelled. You were sent an email with further information on how to cancel your authorisation.

On 3 August 2023, you rang the Supervision Hub to say that you had no intention of doing regulated work and you only thought you had to be regulated because nobody came back to you to say you shouldn't be regulated. You expressed that firms like yours rely on us as the regulator to tell you what you need to do.

You wished to know more about the process of cancelling and how to dispute invoices. You were provided with contact details for the Revenue Team, and you emailed them to dispute your invoice on the basis that you're requesting to be taken off the register and should have been advised sooner that if you don't do regulated work, then you don't need to be regulated.

Our Revenue Team contacted you on 10 August 2023 to advise you that the firm was still authorised and regulated and therefore all outstanding invoices are valid and payable, even if you chose to cancel your authorisation on that day. You were also informed that we would continue to chase for the payment unless we received correspondence from an insolvency practitioner, or the status of the firm has been updated on Companies House register.

You told us that your firm wasn't insolvent, but you were told during Covid that you needed to be registered in case you did regulated work in the future. You feel that this advice was misleading you to pay for something you ultimately didn't need. You asked that a manager from the Revenue team contact you.

Following an Enforcement Notice sent to the firm on 1 August 2023, you submitted a cancellation application on 15 August 2023 and your cancellation became effective from that date. You received a no further action letter from the Enforcement team on 17 August 2023, however the letter did reiterate that any outstanding fees would need to be settled and paid in full.

On 18 August 2023, the Revenue team responded to your chaser email of 14 August 2023 and provided you with a copy of the invoice as requested and provided you with details to complain to the Complaints Team. You responded to this email saying that it's your understanding that the Revenue manager was looking into the matter, and you would await a response before going to the Complaints Team.

You were sent a reminder about your overdue invoice on 29 August 2023, so you responded saying that the invoice was in dispute and that you were awaiting a response from the Revenue manager to look into this.

On 7 September 2023, you rang the Supervision Hub to say that you were still receiving invoice reminders despite it being in dispute. During the call you said that you weren't happy because you contacted us 2-3 years ago saying that you weren't doing regulated work anymore and we asked you whether the company was still trading and because you said yes, we advised you that you needed to be regulated. You said that you feel it's the FCA's job to make sure we respond to queries on financial matters and you're not happy with the lack of response from the Revenue manager. You were transferred to the Complaints Helpline to discuss the matter further.

On this same date, you emailed the Revenue team to express your unhappiness with not receiving a response from the team's Manager and for being chased for fees.

When the Complaints Team spoke to you on 8 September 2023, you confirmed that you didn't want to progress with a complaint because your issue was being dealt with by the Supervision Team. We asked you to confirm your complaint withdrawal but on 15 September 2023 you decided to keep the complaint open because you hadn't heard anything from the Supervision team.

On 21 September 2023, the Revenue team emailed you to say that they'd listened to the call recording of 1 September 2020 and that it is clear from the call that the supervisor at the time provided you with guidance based on the information provided and mentioned that you should consider cancelling your registration. Revenue informed you that based on the information provided during the call, there was no evidence of the FCA intending to mislead you or the firm in any way. Revenue confirmed that your fees and levies remain valid and should be paid in accordance with FCA rules and that we will not refund fees if a firm cancels its permissions after the start of the regulatory period (1 April).

You responded to this email saying that you have made numerous calls with the FCA over the past few years and explained that you weren't doing regulated work and your annual returns confirmed this, yet nobody asked you why you're still regulated. You said that although you feel we may not have meant to mislead you on the call, you still feel you didn't get correct guidance and it's unfair to pay for a fee that serves you until April 2024 if you aren't regulated anymore and you would have stayed on the register till then to get your monies worth if you had known that.

Conclusions

Part One – not upheld

I didn't uphold Part One of our complaint. This is because having reviewed the contact that you had with our Supervision Hub; I haven't found any evidence to suggest that the supervisors you spoke to told you to stay regulated 'just in case' you decided to carry out regulated activities. Nor did I see evidence that the FCA wasn't proactive in advising your firm to deregister.

I can see that during your calls with the Supervision Hub on 10 June 2020, 1 September 2020, and 30 September 2020, it was you who expressed a wish to stay regulated as you anticipated that you would do regulated work in the future, and you didn't want to have to reapply.

Additionally, I can see that during your phone call on 1 September 2020, the supervisor advised you that the firm should consider cancelling its authorisation if you weren't doing regulated work for an extended period, yet this wasn't actioned until 15 August 2023.

Ultimately, it's not the responsibility of the FCA to ensure a firm is using the permissions they have authorised. This is a business decision and remains with the firm on how they decide whether to use or not use said permissions.

Firms have an obligation to regularly review their regulatory permissions to ensure they're up to date and remove them when they're not needed. We expect firms to notify us of any material changes and apply to make any necessary changes in a timely way.

It is a firm's responsibility to be aware of its obligations and applicable rules as a regulated firm and I will go into further detail regarding this in my conclusion below for Part Two.

Part Two – not upheld

I didn't uphold Part Two of your complaint. This is because 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. [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>. Additional information on the application to cancel a firm's permissions can be found in the FCA handbook [SUP 6.4 Applications for cancellation of permission – FCA Handbook](#) and on our '[Cancelling an authorisation or registration](#)' website page.

As explained previously, [X] is expected to be aware of its obligations and applicable rules. Therefore, I can confirm that the invoice has been issued correctly and fairly and your firm is required to pay it. I suggest you contact the FCA at your earliest convenience to pay any outstanding invoices."