



11 July 2024

## **Final report by the Complaints Commissioner**

### **Complaint number 202400004**

#### *The complaint*

1. On 27 March 2024, you submitted a complaint to my office about the FCA.

#### *Your complaint to the FCA*

2. In its letter of 5 February 2023 the FCA summarised your complaint as follows:

“Your society, X Ltd, was cancelled on grounds that the society had wilfully violated a provision of the Co-operative and Community Benefit Societies Act 2014 by failing to submit annual returns and accounts since 2012.

You feel it’s unfair to say that the society wilfully failed to submit returns because the first time you were made aware of this was in March 2023. You feel that the FCA should have made earlier communication with you about the severity of the situation before cancelling the society. You also mentioned that you’ve had communication issues with the FCA and have suffered with ill health during this time period.

Your complaint was reviewed, and a decision letter was issued on 15 January 2024 from the Mutuels Team, as the area of the FCA that is the subject of your complaint. You are unhappy with their response to your complaint.”

#### *What the regulator decided*

3. In its letter of 22 February 2023 the FCA informed you of the following,

“I appreciate that these health issues have impacted you in recent years along with circumstances outside of your control, such as the Covid-19 pandemic, however there were opportunities to submit your returns prior to 2020 and the Society had been in contact with the FCA regarding this on

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multiple occasions from 2017 onwards regarding this and had been guided and shown how to complete their returns appropriately. From 10 May 2017 to 26 March 2020, the society had been guided on how to submit their returns on four separate occasions.

You have mentioned that you cannot remember receiving a reminder letter dated 26 November 2019, however when you rang the FCA on 26 March 2020 you were inquiring about the November 2019 letter and acknowledged that you were behind on your returns.

I believe the above indicates that you were aware of the issues surrounding your outstanding returns and the implications of that prior to March 2023.

Our initial notice to cancel was issued on 14 February 2023 and instead of your society being cancelled as intended on 9 May 2023, the society's registration wasn't cancelled until 20 October 2023. This means that from the date of the initial notice until the final deadline of 6 October 2023, the society had just under 8 months to submit their outstanding returns to avoid cancellation.

Once again, I appreciate that you have suffered with health issues during this time and you initially had some technical difficulties with the OTP, however, I believe just under 8 months is still an appropriate amount of time for the society to submit their outstanding returns. As stated by the Mutuels Team previously, the FCA is unable to extend deadlines indefinitely.

I'd like to reiterate that the firm were aware of the option to submit returns via email from as early as 29 January 2018 and during the roughly 8-month period from notice to cancellation, the firm were told on the following dates that there was an option to submit the forms via email:

- i. 24 February 2023
- ii. 6 March 2023
- iii. 24 March 2023
- iv. 26 March 2023

Therefore, the society was not reliant on the online portal to submit the annual returns and from as early as the above dates, the firm could have attempted to submit the returns via email.

You were eventually able to provide us with returns for 2012-2015, however, despite first notifying us on 13 April 2023 that you were in the process of working on your returns for 2016-2017, this documentation was never submitted before the final deadline of 6 October 2023. It was reiterated to you on 30 May 2023 and on other occasions, that a complete set of signed accounts for the years 2012-2022 would be required to avoid cancellation. Even if you managed to submit the returns for 2016-2017 before the final deadline, there was still the matter that the returns for 2018-2022 would have been outstanding.

In conclusion, I do not have concerns with the local area's response to your complaint and feel that the society was given enough additional time to submit their outstanding returns. In regards to the communication that you had with the Mutuels Team, although on occasions you weren't called back following a call-back request, the Team still contacted you in a timely manner via email to assist you with your query and provide relevant guidance and information."

*Why you are unhappy with the regulator's decision*

4. You have told me that you are complaining about the outcome the FCA reached on your complaint.

*Preliminary points*

5. You did not mention any specific complaint points in your submission to me. As such I have looked at your complaint points to the FCA.

By way of background information, Society X Ltd, of which you were Director and Secretary, was a co-operative society registered on 24 June 1930, which supplied and sold alcohol and snacks to its members and guests. Occasionally, it provided entertainment, raffles and bingo. Pursuant to s. 89 of the Co-operative and Community Benefit Societies Act 2014, the society was required to submit annual returns, which it had previously been doing on an almost consistent basis since 30 November 1994. As no annual returns had been submitted to the FCA between 2010

and 2022, a Notice before cancellation was issued to the Society on 14 February 2023 for failing to submit annual returns for the period of 2012-2022 and a date of intention to cancel was stated as 9 May 2023. Although, you provided accounts in respect of the period 2012-2015, no other accounts were provided. The cancellation took effect almost eight months after the Notice, on 6 October 2023. The FCA were in frequent communication with you during that period.

### *My analysis*

#### *Element One*

6. You feel it's unfair to say that the society wilfully failed to submit returns because the first time you were made aware of this was in March 2023. You also said you would have liked the FCA to have made earlier communication with you about the severity of the situation before cancelling the registration.

#### *2013 – 2020*

7. As part of my investigation I have access to the FCA file. From the information and evidence that has been presented to me, I can see that you were aware from at least April 2013, that annual returns were outstanding. You called the FCA on 19 April 2013 and it was during this call that the FCA informed you the Society was behind with its legal obligations of AR30 submissions.
8. You also called the FCA on 30 July 2013 to confirm that the FCA had received the AR30 submitted for 2011. The FCA confirmed to you during the call that the return had been received on 11 July.
9. A reminder in respect of the missed returns was sent on 26 November 2019. You subsequently contacted the FCA by phone on 26 March 2020 confirming you had received a letter in November 2019 for annual returns. The FCA advised you on what you needed to do and it repeated that if you needed any guidance, you were invited to email the Mutuels Team.
10. Between 19 April 2013 and 26 March 2020 you had every opportunity to fulfil your obligations and submit the outstanding annual returns. You were certainly aware how you could do this having submitted the annual return for 2011 successfully in July 2013. The FCA were forthcoming and explained on many occasions how you could go about submitting the outstanding annual returns

and who you could contact if you needed guidance. Indeed I can see you did exactly this between March 2020 and August 2021 as you contacted the FCA for guidance on topics such as how to check information on the mutual public register and queries relating to changing the society to a non-members club. It doesn't appear that you had issues contacting the FCA during this period and you could have resolved the issues concerning the outstanding annual returns.

*July 2022 – 20 October 2023*

11. The FCA sent reminders to the society regarding the outstanding returns on 18 July 2022 and 13 December 2022. I have not found any evidence of a reply from you between the period of September 2021 and January 2023.

*Cancellation Notice 14 February 2023*

12. The FCA issued you a "Notice before cancellation of registration" on 14 February 2023 stating that the society had "wilfully violated provision of the Co-operative and Community Benefit Societies Act 2014 by failing to submit annual returns and accounts." The legislation the FCA refers to can be accessed [here](#)
13. More specifically, as you will be aware the FCA handbook sets out the obligations on the Society. Specifically in the [FCA Handbook](#) the FCA summarises such obligations and the processes a society must follow under the relevant legislation. This includes the obligation to maintain and submit accounts and an annual return. It also gives details of the powers it can use if it has concerns that a society is not complying with its obligations under the Act. As relevant in this case the FCA can and did cancel the society's registration due to the annual returns not being submitted in respect of a number of years. As such it is a legal requirement to submit the annual returns and failure to do so means the FCA has the power to intervene if a Society is not complying with its obligations.
14. I have considered the FCA's contact with you from 14 February 2023 (Notice before cancellation of registration) up until 20 October 2023 when it eventually cancelled the society's registration. The Notice before cancellation of registration (14 February 2023) makes it clear that cancellation would follow in the event that accounts are not provided.

15. So in summary I think the FCA did make you aware of the need to submit your annual return prior to March 2023 and it did inform you earlier in February 2023 of its intention to cancel the registration if this wasn't done.
16. I do not, therefore, uphold Element One of your complaint.

*Element Two*

17. In your view your health and covid 19 are the main reasons for the society's annual returns not being submitted to the FCA. You also mentioned in your complaint to the FCA that you had communication issues with them.
18. From 19 February 2023 until 12 May 2023 you were in regular contact with the FCA. This ranged from topics about issues connected to the one time passcode (OTP), accessing the online portal to submitting documents. You also made the FCA aware on 19 February 2023 that you were struggling with your health.
19. The Notice before cancellation of registration stated that on 9 May 2023 the society's registration would be cancelled. Due to the issues connected to the OTP the FCA informed you on 12 May 2023 that you could submit urgent documents to them by email in the meantime. The FCA did not cancel the society's registration on 9 May 2023 and instead it emailed you on 17 May 2023 asking you to send the outstanding annual returns as soon as possible. This clearly demonstrates that the FCA assessed your circumstances and gave them proper consideration, as it did not go ahead with the cancellation as planned and instead gave you another opportunity to submit the outstanding annual returns.
20. The FCA granted you another extension and asked you, on 31 July 2023, when the accounts would be ready for submission. I think it was reasonable for the FCA to be provided with a timeframe as to when the accounts would be ready given the period of time that had passed and the number of annual returns that were outstanding.
21. You responded to the FCA on 2 August 2023 but did not provide a time scale as to when the accounts would be ready for submission. You said this was due to a number of reasons including the accounts having entered sage, having to reconcile the accounts, the accountant's workload, loss of your computer data and also hospital and doctor appointments. The FCA did not receive any

contact from you following 2 August 2023 as to when the accounts would be ready for submission.

22. The FCA later contacted you on 7 September 2023 informing you that the deadline had been extended numerous times and it was unable to continue doing this. A final date of 6 October 2023 was given to you to submit the returns. The FCA made it clear in its correspondence that the society would be cancelled for failure to submit all the returns.
23. The FCA eventually cancelled the society's registration on 20 October 2023 for failing to comply with its obligations of submitting the annual returns.
24. Overall I think the FCA considered your personal circumstances (particularly your health), took these seriously and were willing to provide you with ample time and opportunities to submit the annual returns. You were given a further five months from 17 May 2023 to provide the outstanding information. The FCA also reminded you that you were able to provide this information by email as opposed to post or the online portal to save you time.
25. The FCA had a duty to take obligations owed by the society seriously, whilst at the same time taking your circumstances properly into account, which I think it did in your case. So I do not uphold Element Two of your complaint.

### *Element Three*

26. You say that on 24 February 2023, you informed the FCA during a phone call that you were conscious of the time limits stated on the letter you had received and requested a call back from the Mutuels Team. You mentioned that you had emailed the Mutuels Team but were informed it would take twelve days to get a response, hence the request for a call back. The person you spoke with informed you they would arrange a call back and indeed I can see that they did provide the Mutuels Team with the call back request.
27. I would have expected the Mutuels Team to follow through with this call back request and it is unfortunate that this did not happen. The FCA say that it still contacted you in a timely manner by email to assist you with your query and provide relevant guidance and information. However, the FCA should have enabled you to speak with someone. I think it appropriate that the FCA issue an

apology to you in respect of this. The FCA should also provide feedback to the relevant area that requests for a call back should be fulfilled.

28. As such I am upholding Element Three of your complaint.

*My decision*

29. In Element One of your complaint the FCA made you aware before March 2023 that the annual returns of the society were due. The FCA also provided you with communications in February 2023 of its intention to cancel the registration which it did not do until October 2023. I do not uphold Element One.

30. In Element Two of your complaint the FCA considered your personal circumstances and provided you with ample time and opportunities to submit the annual returns. I did not see any communication issued identified between yourself and the FCA. I do not uphold Element Two.

31. I have upheld Element Three of your complaint. I **recommend** the FCA issue an apology to you for not calling you back as you requested and as they were directed. I **recommend** the FCA provide feedback to the relevant area that requests for a call back should be fulfilled to avoid this happening again. The FCA responded to me on this point and accepted my recommendations. It accepts that the call back should have been actioned. As such it has informed me that it will issue an apology letter to you upon receipt of my Final Report. The FCA has also confirmed it will also provide feedback to the relevant area.

Rachel Kent

Complaints Commissioner

11 July 2024