

06 August 2024

Final report by the Complaints Commissioner**Complaint number 202400142***The complaint*

1. On 13 May 2024, you submitted a complaint to my office about the FCA's refusal to waive a late return fee of £250.

Your FCA complaint

2. Your firm is regulated by the FCA. You are you are unhappy that in January this year, you received a late return fee of £250. Although you submitted a form within the correct time period, you submitted an incorrect form instead of the Data Attestation for Directory Persons that was due at that time. This is the first time in seven years that you have failed to submit a return on time and you asked the FCA to withdraw the late return fee. The FCA did not uphold your complaint and neither do I. (Element One)
3. You have also questioned, in response to the FCA's decision letter, how the FCA justified its £250 late fee, querying what financial loss the FCA suffered as a result of your firm uploading the wrong form to its system. The FCA have explained that the fee is intended to recover the costs the FCA incurs in pursuing firms with late/overdue returns and/or submissions. They confirmed that it is an administrative fee and not a fine and that a breakdown for the costs cannot be provided. This is not something that I can investigate further under the Complaints Scheme. (Element Two)

My analysis

4. I can appreciate your position that you think that 'the one size fits all stance' taken by the FCA in relation to issuing late return fees is disproportionate in light of the fact that you have previously always submitted your returns on time and

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this situation has arisen as the result of a minor error which you corrected as soon as it was brought to your attention

5. However, having reviewed the FCA decision letter alongside the information available to me, I agree with the FCA's decision in relation to the complaint set out in its decision letter and I **do not uphold** your complaint. The FCA has acted in accordance with the relevant rules which are clearly set out in its Handbook. SUP 16.3.14 of the FCA Handbook that sets out the following:

“If a firm does not submit a complete report by the date on which it is due in accordance with the rules in, or referred to in, this chapter or the provisions of relevant legislation and any prescribed submission procedures, the firm must pay an administrative fee of £250.”

6. I understand that you have found the FCA's rigid stance in not accepting your explanation on this occasion frustrating but this does not mean that FCA has done anything wrong by not waiving the fee.
7. In regard to your complaint requesting the FCA justify the amount of the fee, being £250, this is not something that I can review. Under the Complaint Scheme to which both the regulators and I operate to, paragraph 2.9 c sets out that I cannot review complaints about the exercise of the FCA legislative functions – such as rule-making and issuing general guidance. This includes the setting of the amount of the administrative fee and under what circumstances it should be applied. The FCA has applied its rules correctly, therefore your fees remain payable in the circumstances. Having said that, although it is not within my remit to comment on the level of fees as this relates to the FCA's rulemaking function, it seems to me £250 is rather high given the administrative effort involved. I note the FCA consulted the £250 fee in 2005 however given the passage of time and the various technological improvements which potentially may help bring costs down, I **suggest** the FCA to consider the continued appropriateness of level of the fee going forward.

My decision

8. For the reasons given above I agree with the FCA's decision and consequently I **do not uphold** your complaint and your fee is payable, however I have made a suggestion as above.

Rachel Kent

Complaints Commissioner

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