



04 September 2024

Final report by the Complaints Commissioner

Complaint number 202400204

The complaint

1. On 30 May 2024 you submitted a complaint about the FCA to my office.
2. You are a licenced insolvency practitioner and sole director of firm C, which is not authorised by the FCA. Your firm C was added to the FCA Warning List on 8 January 2024 without, you allege, your knowledge because the FCA believed it was associated with another firm X (which was also added to the FCA warning list).
3. Some time in April 2024 you became aware from third parties that your firm was on the FCA warning list, and you contacted the FCA to complain. There were some service level shortcomings on behalf of the FCA in dealing with you during this period, for which it has apologised.
4. Your firm was removed from the FCA Warning List on 23 April 2024 for separate reasons distinct from your complaint, which you kept open.
5. You say that due to the fact your firm appeared on the FCA Warning list, and “As a result of how the FCA dealt with this matter, the Company has lost creditability and I have personally as a licensed Insolvency Practitioner.”
6. The FCA did not uphold your complaint about its handling of the matter.
7. The facts of the case and the arguments which you and the FCA put forward are as follows.
8. The FCA’s position is that:
 - a. It became concerned about your firm in December 2023 based on information which was publicly available from firm X’s mobile phone app

202400204

and Website as well as information found on your firm's website and social media accounts.

- b. The FCA could not find a telephone number or email address for your company on your website or social media accounts. On 18 December 2023 the FCA wrote a letter to your firm (using the firm's address listed on Companies House) requesting information about your association with firm X. It asked this be provided by 4 January 2024. The FCA says it made a reasonable assumption that the letter would be received. The FCA considers to have allowed sufficient time for your firm to respond notwithstanding the holiday period, and that in any event given the extent of its concern about consumer harm it did not consider it appropriate to provide a longer time for you to respond. The FCA says it had extended the period for response beyond its standard due to the holidays.
 - c. The FCA did not receive a response to this letter but made no further attempts to contact your firm because it considers that "where it has set out the likely consequences in correspondence, it does not ordinarily write again to confirm that action has been taken. This is because our actions are within the range of consequences that we have already brought to the subject's attention along with details of how to contact us if they wish to engage with us regarding the contents of our letter". Therefore the FCA does not believe it was necessary or appropriate to try to contact you again.
 - d. The FCA proceeded to publish your firm on the FCA Warning List over the perceived connection with firm X. Its view is that "We did not refer to [you] as an individual in the alert. As such, it was not possible to identify [you] from the alert or her association with either of the company names on the alert" and that "[your] professional standing as an insolvency practitioner would not have been identifiable by the FCA through the publicly available information." Therefore the FCA does not feel you have been impacted.
9. Your position is that:
- a. "The FCA letter dated 18 December 2023 which was allegedly sent to the registered address of C ('the Company') was never received. Given the

seriousness of such allegations against the Company, the FCA should have evidenced that this had been served upon the Company.

- b. Notwithstanding this, if the letter dated 18 December was sent out on the same day (and I have not been provided with evidence to prove this) it would not have been deemed served until 21 December 2023. Given that 23,24,25 and 26 December were not business days, this would have given you only two business days to respond by 4 January which is unreasonable.
 - c. Although you are aware of firm X you have no professional relationship with it and did not authorise it to post on your company website.
 - d. As a result of how the FCA dealt with this matter, the Company has lost creditability and I have personally as a licensed Insolvency Practitioner”.
10. I have carefully considered the arguments both you and the FCA have made.
11. In my view, the crux of the matter is whether the FCA made reasonable efforts to contact you in connection to naming your firm on its Warning List.
12. The FCA has said, on the one hand, that it could not find any other contact details for you apart from the company address, and also, on the other hand, that sending one letter to your company address constitutes reasonable attempts at contact. I agree that the FCA made reasonable attempts to find contact details for you, however, I question whether it made reasonable attempts to contact you. In my analysis of this issue, I am conscious of the fact that the FCA is a risk based supervisor with limited resources, and that when there is consumer harm being detected, it ought not to wait indefinitely in order to establish contact with your firm.
13. However, the considerations above have to be balanced with considerations about the impact on the firms involved. In this situation, it was clear to the FCA that you were licensed insolvency practitioner: the Companies House entry for firm C, from where the FCA obtained your address, lists you as the only officer of the company and lists your occupation as insolvency practitioner. Given this information, I disagree with the FCA that “[your] professional standing as an insolvency practitioner would not have been identifiable by the FCA through the publicly available information” and following from that I also disagree with the

FCA's assertion that "it was not possible to identify [you] from the alert or [your] association with either of the company names on the alert".

14. In addition, your name as an insolvency practitioner features in online searches and no doubt the Insolvency Practitioners Association may have provided details if the FCA had contacted it.
15. I expect the FCA to be pragmatic, and I would not suggest it would be reasonable for the FCA to spend time and resources following up contact with individuals or companies with an elusive footprint, or unverifiable contact details.
16. However, this was not the case here. The FCA clearly knew that you were an licensed insolvency practitioner, with an identifiable address and a legitimate business which might be impacted if it was placed on the Warning List incorrectly. In these particular circumstances, I think it would have been reasonable for the FCA to attempt to further actions than it actually did. In particular, it would not have been unreasonable for the FCA to consider:
 - a. Sending the letter by registered or signed-for post, especially given how close to the holiday period it was; and/or
 - b. Sending a follow up letter when it did not receive a response: I am not suggesting the FCA should have postponed placing your firm on the Warning List, however, if the FCA had made a second attempt to contact you the matter may have been cleared up much sooner and your company would not have been on the warning list for as long as it was; and
 - c. If the FCA was so concerned about the actions of your company potentially harming consumers, it ought to have advised the matter to the IPA which was your recognised professional body as a matter of best practice, (which it did not do). The FCA has responded that it has searched the IPA website and saw your given name and surname (but not your middle name) as listed against a different company and assumed it was not the same individual. It is unclear to me what the date of the FCA's search of the IPA website was.
17. In conclusion, I do not think the FCA made adequate attempts to contact you about this matter. I **recommended** the FCA reviews its internal processes in

order to facilitate a fairer approach to firms which it names in online publications, and that it apologises to you.

18. The FCA did not accept my recommendation: it explained that in some cases it does send a second letter to a company, but that if it deems it has to issue an alert more urgently, it may not do so. In my view the FCA has missed the point of my criticism and recommendation. I was not suggesting that the FCA should wait to update its warning list in order to send a second letter, but rather that it should have sent you a letter confirming it had done so. This would have alerted you to the fact and given you an opportunity to make representations if you felt it appropriate to do so.

Rachel Kent
Complaints Commissioner
04 September 2024