

24 September 2021

Final report by the Complaints Commissioner**Complaint number FCA001381***The complaint*

1. On 10 August 2021 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

You are unhappy that your firm [firm x] received an email from the FCA on 4 June 2021 stating that they were being fined £250 for late attestation. You've explained that they attested on 5 January 2021 confirming all details were correct. You have sent proof that you state shows that you attested on time.

What the regulator decided

3. The FCA did not uphold your complaint and advised you:

The firm's attestation was due on 25 March 2021, but it was not submitted until 7 June 2021. Prior to 7 June 2021 you had made a submission on 5 March 2020 for the previous year.

I note that you state that the firm submitted their attestation on 5 January 2021. You have sent us a screenshot which you state shows that the firm submitted the attestation on time. I have looked at the screenshot, this shows an application on Connect for 5 January 2021 which is within the window, however this application was never submitted. I can see all the sections of the form are complete, but the 'ready for submission' button appears to be greyed out so that you

cannot click on it. There is a piece of text underneath that button which informs them that the button will appear to allow the application to be marked as ready for submission once it is valid. This should therefore have triggered you to go through the application to determine what is wrong or alternatively to contact the Supervision Hub if you required assistance

As explained, this attestation was due on 25 March 2021 and you submitted this return on 7 June 2021. A reminder email was sent on 17 March 2021 and a Late Return Fee Note was sent on 4 June 2021. The Late Fee is generated once the due date has passed and return has not been submitted. As the late fee was invoiced after the due date had passed and after you had been sent a reminder, I am satisfied that the correct processes were followed.

Why you are unhappy with the regulator's decision

4. You have told me that:

At [firm x] we try very hard to treat customers fairly – and in all my dealings with the FCA have tried my best. I thought I had attested [firm x's] details in Jan 2021 – but obviously didn't hit the final submit button correctly in Jan 2021.

I've provided copies of all my actions showing that apart from hitting the right button, we had attested on the relatively new system in January 2021 our company details.

Being fined – is like we are being treated as criminals and so judged accordingly – it all seems so one sided with no leeway for genuine errors.

My analysis

5. You submitted your firm's attestation on 5 January 2021, however unbeknown to you, you hadn't hit the final submit button. You took a screenshot showing all the sections were complete. Upon receiving a late return fee, you questioned this with the FCA and provided them with a copy of the screenshot.

The FCA did not uphold your complaint and advised the text on the screenshot below the greyed out ready for submission box should have triggered you to go through your application to find what was wrong with the application.

I have reviewed the screenshot and it shows only the attestation has been completed, not that it has been submitted as there is a further submit button you needed to press after the complete message came up. However, I do feel this could be clearer and I recommend within my preliminary report the FCA reviews the Connect system they have for firms to submit their attestation to ensure its user friendly and as clear as it can be. The FCA have commented on this recommendation:

I have discussed this matter with the team that runs the Connect system. They've explained that in addition to the greyed out button within the application that has been referenced by us both already, the firm and the user will have been able to see on the main screen on Connect that an application was in status "Ready to Submit" (not submitted), so this information was available in more than one screen. However, they have explained that there are actions they are able to explore in relation to Connect around user experience and accessibility, including around messaging and visibility, that will be considered for progression alongside some broader work in this area already underway.

A reminder to submit your firms attestation was sent to you in March 2021, however you didn't contact the FCA to question this, had you done so you would have found out the submission had not been made.

You have advised you have received a further reminder In August 2021, which you have ignored as you know you attested correctly in June 2021 and you ignored the March reminder as you were confident you had submitted the attestation in January 2021.

I can understand why you would ignore the August 2021, reminder as you had confirmation from the FCA that there had been an error in January 2021, with your submission and you ensured the submission was done correctly following

contact with the FCA in June 2021, but you didn't have this reassurance in March 2021.

Taking into account the above, I am unable to recommend the FCA waives the fine, however I agree with you that you should not have to chase the fine and I would ask the FCA to contact you in relation to this.

My decision

6. I realise you may be disappointed with my decision but for the reasons outlined above I am unable to uphold your complaint.

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Complaints Commissioner

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