

21 January 2022

Final report by the Complaints Commissioner**Complaint number FCA001439***The complaint*

1. On 5 October 2021, you complained to me about the FCA's investigation of your complaint. I sent my preliminary report to you and the FCA on 16 December 2021. Both you and the FCA have provided responses to my preliminary report.

What the complaint is about

2. In its decision letter to you dated 20 September 2021, the FCA described your complaint as follows:

Part One

You are unhappy with the level of communication given on the new RegData system, which resulted in you being charged a £250 administrative fee for a late Firm Details Attestation submission.

Part Two

You claim that the £250 fee is an "Insidious little trap" set by the FCA as a money-making exercise against small Firms.

Part Three

You are unhappy at the service provided by the Supervision Hub (the Hub), who you claim were bullying you into agreeing with their view on your issue and used a poor level of grammar in their communications.

As a remedy, you would like the £250 fine to be withdrawn (not waived) due to the inappropriate behaviour, as indicated above.

What the regulator decided

3. In its decision letter the FCA set out that it did not uphold Part One and Part Three of your complaint.
4. It set out that it had previously written to you on 6 July 2021, and explained, that it was excluding Part Two of your complaint under paragraph 3.4(c) of the Scheme.

Why you are unhappy with the regulator's decision

5. You disagree with the FCA's decision, stating that it claimed that you had the relevant information. It has quoted from emails that were sent three months after the fee was imposed on you.
6. You are finding the FCA's conduct overbearing and bullying.

Preliminary points (if any)

7. Paragraph 3.2 of the Complaint Scheme sets out that to be eligible to make a complaint under the scheme, a person must be seeking a remedy (which for this purpose may include an apology) in respect of some inconvenience, distress or loss which the person has suffered as a result of being directly affected by the regulators actions or inaction.

My analysis

8. Firstly, I want to acknowledge that in your correspondence with the FCA you have raised the fact it has been a difficult period for small businesses navigating the uncertainties that the pandemic has created. In addition to this I would also like to say that I appreciate that the implementation of new computer systems can be very frustrating and fraught with teething problems both for internal and external users.
9. In the FCA's letter to you dated 20 September 2021, it set out that:

Since 31 January 2020, Firms that come under Sup 16.10 reporting requirements have to check, amend or confirm the accuracy of their Firm Details annually, using the FCA's Connect portal. The fee of £250 for non-compliance is an administrative cost to cover the late returns process and is not a fine.

10. This clearly shows that the requirements under the FCA handbook have been in place since January 2020. However, in the background to your complaint in the same letter, the timeline commenced on 17 March 2021, when the FCA says that a final reminder was sent to you for your Firms Details Attestation (FDA). In the information I received before issuing my preliminary report I was not provided with information that showed how firms were informed about these new requirements and directed them to complete them on the FCA's Connect Portal. I was also not provided with details of any prior notifications that you received about the requirements from January 2020 and what other notifications as an organisation you received.
11. As a result of the lack of relevant information I had received before issuing my preliminary report I set out that it was my preliminary position that I was minded to disagree with the FCA and uphold your complaint that there was insufficient communication in relation to the new FDA requirements since January 2020 and that 9 days' notice in the form of a final notice was not sufficient. I did leave it open to the FCA to provide me with relevant details of communications that it had issued.
12. The FCA in its response to my preliminary report has now provided me with a detailed summary of the information that it sent to you and about the information that was available in the public domain to notify firms about the new FDA requirements. These included:
 - a. a portfolio strategy letter for credit brokers that was issued in February 2020, which set out that the FDA needed to be completed via the Connect system. The FCA confirmed that its records show that this letter was sent and delivered to your email address and opened. The FCA also confirmed that you registered to use its Connect system in 2016 and used it to submit information in 2017.

- b. in November 2019, December 2019, January 2020, February 2020 and March 2020 a Regulatory Round up communication was issued by email to firms who had signed up for the service. The round up communicated that the FDA needed to be completed via the Connect system. (I note that I have been provided with the relevant extracts from each of these round ups). The FCA has confirmed that you had signed up for the Regulatory Round up communication in 2017.
 - c. On 17 March 2021, as a registered user on the Connect system you were issued with a reminder, via email to inform you that your FDA was due on 29 March 2021. The FCA has pointed out that there was no legal obligation to send a reminder but does so as it considers it good business practice to do so.
 - d. On 4 June 2021, a fee note was sent to your firm by way of email as a result of the FDA not having been completed.
 - e. The FCA has also provided details that in addition to the direct communications sent to your firm, that the information was disseminated in a number of public forums including,
 - i. a tweet published on Twitter in January 2020 about the new requirements for FDA and that firms were expected to use the Connect system to complete their FDA,
 - ii. an update published on its website on 23 January 2020 informing firms that they now need to update or confirm their firm details annually, and
 - iii. a discussion about the FDA was also scheduled for at an industry event for Trade Bodies held on 24 February 2020.
13. In view of the above, I am now satisfied that the FCA sent out communications to your firm informing you of the changes and that it also issued public notifications about the changes. In view of this, I consider that the reminder sent to you by the FCA and its timing was reasonable as you had previously been informed about the changes in other communications. On this basis I uphold the FCA's decision that it had take reasonable steps to communicate the changes to you and further information was also available in the public domain.

14. In relation to part three of the FCA's complaint, I agree with its findings that it did not uphold your complaint. I have reviewed the emails sent by the Supervision Hub and I did not find the language or tone used to be overbearing, bullying or otherwise inappropriate. That is not to say that you did not feel that way in the circumstances you were in at that time. The emails came across as being designed to be informative but did not entirely acknowledge the strength of the feelings you expressed in your emails.
15. What was acknowledged in these emails was that the supervision did appreciate that there were new FDA requirements and that these might be easy to miss.
16. This seems to support your view that you were most likely not the only Firm that was not aware of the new requirement and the new process for meeting this requirement on the FCA's Connect portal.

Remedies

17. Originally, you had set out that you wanted the FCA to withdraw the fine. I note that around the time that you lodged your complaint with me the FCA advised that it had decided to withdraw the requirement for the £250 administrative fee from you. Whilst you welcomed this decision you still felt that the FCA's 'heavy handedness should be investigated and asked me to review your complaint.
18. In your response to my preliminary report you set out that you do not think that it is a coincidence that the FCA withdrew the fine two hours after you raised your complaint with my office. I can appreciate why you have questioned the timing of the withdrawal. However, I do note that the FCA set out in its response to my report that it had taken a more lenient approach to issuing late fees in 2021 and did not issue a late fee to any firm that was late but had submitted the data by September 2021, like your firm. The FCA also acknowledged that your fee was part of a small number issued in error in June 2021. It is regrettable that this happened and that it has left you feeling like the FCA has behaved in a 'bullying' manner. On this basis and on the information provided, I consider that the FCA was right to withdraw the fee levied on you for administrative costs.
19. I can see that the FCA has apologised in its letter to you for the experiences you have had in using the FCA's systems and for any inconvenience that this has

caused. I think that this was an appropriate response to the issues you have outlined.

20. I have agreed with the FCA that the supervision hub's communications were not overbearing or bullying, so I do not believe any remedy is required here, so I appreciate that the FCA acknowledged that you felt that way and apologised that you had felt that way.
21. You have set out that the FCA's heavy handed way of conducting itself in a very improper manner needs to be investigated on behalf of all the licensees who have not complained to me and have had to accept bullying conduct and paid an inappropriate fine. As set out in the preliminary points, I can investigate your complaints in respect of some inconvenience, distress or loss which you have suffered directly by the FCA's actions, which I have done in the above preliminary report. I cannot investigate on behalf of all licensees. If you are aware of any other cases where a licensee has allegedly had to accept bullying conduct and have paid inappropriate fines, you should direct them first to raise a complaint with the FCA's complaint team.
22. Finally I want to note a couple of issues that you have informed me of since you lodged your complaint with my office.
 - a. the first is that the FCA has not responded to a Freedom of Information request that you sent to it on 28 September 2021. This did not form part of your original complaint and I do not believe that this complaint has been through the FCA's initial complaints process, so I have not investigated this matter. I note that if you are not satisfied with its response you may be able to lodge a further complaint with my office, however this may not be something that I am able to look at under the complaints scheme. Accordingly, you may wish to contact the Information Commissioners Office (ICO) who considers a variety of complaints relating to information and data breaches.
 - b. the second matter you have raised on 20 January 2022, is that the FCA has issued you with a new annual fee invoice, despite the fact that you have cancelled your approval with the FCA in October 2021. This again appears to be a new complaint which under the Scheme. In these

circumstances I have not investigated this matter and I will allow the FCA the opportunity to investigate and provide you with a response. If following this you are still dissatisfied with its response, you may be able to register a new complaint to my office.

My decision

23. I am sorry to disappoint you, but for the reasons given above I have not upheld your complaint.

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Complaints Commissioner

21 January 2022