

19 April 2022

Final report by the Complaints Commissioner**Complaint number FCA001501***The complaint*

1. On 25 January 2022 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 with an email you have received from the FCA stating you have an invoice of £1,000 which is due.

You have explained Firm X was registered from November 2013 until October 2021. A decision was taken during the summer of 2020 to cease any further lending.

You state you posted a completed Annex 1D Registration form and sent this to the FCA by post (to the FCA's address at '12 Endeavour Square') on 2 November 2020. The FCA state that they never received the form and unless you can provide proof of posting, their invoice for registration for a further year will stand, together with penalties and interest for non-payment.

You have explained that you downloaded the form from the FCA website on 28 October 2020 at 14:58. You have sent a screen shot that you state shows this. You state the document was printed and signed on 1 November 2020 and posted on 2 November 2020 from your local post box. You did not feel it was appropriate to visit the Post Office due to the national lockdown to obtain proof of posting.

What the regulator decided

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

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In reaching my decision, I reviewed the case progression notes, emails on file and considered the relevant policy and technical guidance. I have also liaised with the Authorisations Support Team (AST) to gain their understanding on the issue.

The Money Laundering, Terrorist Financing and Transfer of Funds (*Information on the Payer*) Regulations 2017 (*the Regulations*) give the FCA responsibility for supervising the anti-money laundering controls of businesses that offer certain services.

Therefore, because of the FCA's responsibility to supervise firms for the purposes of the aforementioned Regulations, your firm was registered as an Annex I financial institution from November 2013.

In order to de-register with the FCA as an Annex I financial institution under these Regulations, the firm is required to complete a de-registration form, available on the FCA website. The firm then needs to return the form, marked for the attention of Authorisations Support Team (AST) to The Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN.

The FCA's Post Team have been operating as per normal since the beginning of the pandemic in our offices at 12 Endeavour Square where all incoming post is scanned and forwarded on to the relevant teams. Any post received that is an Annex I de-registration form would have been forwarded to AST to log.

AST have advised that the post log for the date in question and two weeks either side have been checked. However, they have been unable to confirm receipt of this particular application.

I have carefully reflected over your case and considered the reasonableness of the matter. Whilst I can understand and sympathise with your concerns in visiting a Post Office during the national lockdown to obtain proof of posting, unfortunately, I am unable to uphold your complaint. I have explained below as to the reasons why:

The Post Office have been designated as an essential service by the Government and were open during the national lockdown. The de-registration form has to be posted in as Annex I firms do not have access to the FCA's Connect System.

I can see that you emailed in the form to the Finance Team on 25 August 2021, explaining the situation and reiterating that the original had been posted using normal first-class email. It is my view that had you advised the FCA of your concerns in going into a post office during the lockdown and asked for the form to be considered via email when it was due, this would have likely been accepted. However, having reviewed your record, I am unable to find any such evidence existing.

Further, it is the responsibility of the Annex I firm to ensure the form is received by the FCA, to avoid further charges arising. I can wholly sympathise that the Postal system isn't secure but without definitive proof which confirms that the form was posted, unfortunately, the pending invoice would stand. This is in line with an email sent to you on 5 October 2021, by the FCA's Financial and Operations Team.

Why you are unhappy with the regulator's decision

4. You have asked me to review the FCA's decision.

My analysis

5. Firm X ceased trading in summer 2020, due an oversight you did not de-register the firm and therefore you paid the invoice that was due in August 2020. You have told me you downloaded the de-registration form on 28 October 2020 and have provided a screenshot evidencing this. The form was posted in your local post box on 2 November 2020, you have told me you used a post box instead of getting proof of postage from a Post Office due to the impending second lockdown.
6. The FCA did not receive the form and have advised as you do not have proof of postage you are liable for the invoice.
7. From the evidence you have provided it is clear you did download the de-registration form. I think it is reasonable as you downloaded it, you did post it. I

can understand your reasoning for putting the form in the post box rather than obtaining proof of postage from a Post Office. However, it would seem prudent knowing you would be invoiced again if the form was not received for you to follow it up by email or a telephone call to check its receipt, especially with the situation with the postal service during that time and the fact you had not received confirmation of the cancellation from the FCA.

8. Taking into account the above, I cannot recommend the FCA waives the invoice. I do however suggest the FCA makes it clear to firms that they will receive confirmation of the de-registration within x amount of time, and that a firm should follow up if no notification is received or it may incur further charges if the form for whatever reason is not received by the FCA.
9. In response to my preliminary report the FCA have confirmed its Authorisations Division send a confirmation letter to the Firm after a case handler has been assigned, advising the de-registration is being reviewed and confirmation will be received within 45 business days.
10. The FCA have advised there may be a delay in the de-registration application being received and a case handler being assigned the application within the Authorisations Division, therefore the FCA have agreed an earlier acknowledgment would be useful, so a Firm knows where it stands. I am pleased to advise the FCA have already implemented this change and going forward Firms will receive confirmation the FCA are in receipt of the application prior to the application being assigned to a case handler.

My decision

11. I realise you may be disappointed with my decision report, but for the reasons outlined above, I cannot uphold your complaint.

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Complaints Commissioner

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