

15 August 2022

Final report by the Complaints Commissioner

Complaint number FCA001679

The complaint

1. On 21 March 2022 you asked me to investigate a complaint against the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

Part One

You have complained about the "serial harassment by FCA personnel" when contacting you about outstanding invoices on your firm's account.

Part Two

You have alleged that on 17 December 2020 and 4 March 2021 details of a complaint about the FCA that you wished to make were not actioned.

Part Three

You contacted the Supervision Hub (the Hub) about an issue that was being experienced with RegData and the submission of your firm's regulatory returns. You are unhappy with the time taken to resolve the RegData issue.

Part Four

FCA001679

In an email dated 1 April 2021 addressed to the Hub, you have said that you were unhappy that a previously discussed issue had not been addressed.

What the regulator decided

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

Part One

This allegation was originally investigated by the Revenue team and their decision letter was sent to you on 19 March 2021. This part of the complaint was not upheld by the area as the standard procedures had been adhered to by the supervisors. I have reviewed the handling of the case and I am agreement with the outcome of the local area complaint. Therefore, I have not upheld this part of your complaint.

Part Two

This allegation was originally investigated by the Revenue team and their decision letter was sent to you on 19 March 2021. This part of your complaint was upheld. I am in agreement with the response to the complaint, the apology offered and the offer of a £50 ex-gratia payment. Therefore, I have not upheld this part of the complaint as it has already been addressed.

Part Three

You are unhappy with the time taken to resolve the RegData issue. You contacted the FCA about your issues with submitting FSA029 and FSA031 on 29 March 2021.

On 1 April 2021, a supervisor emailed you confirmation as follows: I'm writing this morning in relation to your firm's FSA029 and FSA031. I have heard back from my support team who were

looking into the problems you were facing and they have come back with resolution. As such, when you are back in work, could you please submit both reports without making any changes to either form - the team has manually changed their status to Ready to Submit so there's nothing more you need to do with them. You responded and referred to another issue not being resolved as follows, 'You haven't addressed the other issue we discussed - why not please? If you are refusing to address this, please escalate this as a complaint'.

The RegData issue was resolved in 3 days and I believe this is an acceptable amount of time to resolve a technical issue. For the reasons given above, I have not upheld this part of the complaint.

Part Four

On 29 March 2021, you called and spoke to a supervisor in the Hub to report issues with FSA029 and FSA03. The supervisor explained they could refer the issue to RegData Support for resolution.

You explained to the supervisor that you wanted any late fees to be waived and the supervisor explained that he did not think this would be possible.

The issues relating to the submission on FSA029 and FSA031 were resolved on 1 April 2021. You responded to the supervisor and raised the issue of the late fees that you wished the FCA to waive.

You stated that this had not been addressed

The Revenue team had previously written to you in March 2021 in response to your complaint which was in part about the late fee and said, 'In respect of the £250 late payment fee and associated

interest, we issued our decision letter on 18 September 2020. We explained in that letter that any referral to the Complaints Commissioner should be made within three months - that is, by 18 December 2020. The Complaints Commissioner has confirmed that as of 17 March 2021 no communication from Firm X has been received. The fee and interest therefore remain payable, as set out in our letter of 18 September 2020.

I can also confirm that Firm X has an outstanding invoice of £277.60 (less £50 if you wish to accept the ex-gratia payment offered in March 2021). Although a hold was placed on collection while the complaints were resolved, the invoice remains payable.

You have already raised a complaint about the issue of the outstanding fee. The complaint was dealt with under 206387421 by the Complaints team and was not upheld. Although you may not agree with the outcome of the complaint, this does not mean your issues were not addressed.

For the reasons given above, I have not upheld this part of your complaint.

Conclusions

Part One and Part Two

The Revenue team wrote to you on 19 March 2021 and explained they had investigated these allegations and had upheld part two of the complaint. No further evidence has been provided and I do not have anything further to add on these allegations

Part Three

I have not upheld this part of your complaint as the issues were resolved in 3 days and there was no detriment to the firm.

Part Four

I have not upheld this part of your complaint. You have alleged the issue you raised had not been addressed but the decision letter for your previous complaint covered this allegation.

The fee remains payable and the firm should do this as soon as you are able as the complaints have been resolved.

Why you are unhappy with the regulator's decision

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

My analysis

5. You have told me:

My complaint is about an on-going saga where the FCA has not dealt with my complaints properly and has not engaged with the substance of my complaints, so I tried to engage them on the issue at hand (mainly failings in FCA technology).

Where there is a big problem is RegData. Firm X was migrated across to RegData from Connect (email received 11.01.21 that the migration would happen, another on 18.01.21 confirming that it had happened).

My accountant had trouble submitting RegData submissions for Feb 2021, he was able to submit two out of three submissions but the third failed. They reported this to the FCA Feb 2021 submission. They spoke to someone called Advisor A at the FCA, who called them back quoting reference 207368603 (30th March) spoke to Advisor B and Advisor C. I have tried to provide this information to the FCA but they refused to take it, instead issued a series of fines that they refuse to retract.

Due to the problems with RegData I changed the password (email confirmations of this were received 07/04/21 and 09/04/21). I confirmed yet again on 01/04/21 that the FCA was experiencing technical

problems, I reiterated that there were still problems 13/04/21 and made a complaint.

I subsequently find out that I have racked up several fines for non-submission.

In the meantime, someone at the FCA made Mr M of Firm Y the principal use of the Firm X RegData. This was done without my permission, so the FCA breach all regulations and confidentiality.

You have also advised you have been offered compensation all of which you have not received.

6. I am unable to review the complaint you made relating to the fee due in August 2019, which incurred a late payment fee. You raised this as a complaint with the FCA and a decision letter was issued in September 2020, which provided you with referral rights to my office within 3 months of the date of the letter. No referral was made within this 3 month period. Whilst I cannot review this part of your complaint, I note in an email you sent to the FCA on 21 December 2021, you wrote

OK I accept the £175, and I'll pay this fine. Both of these relate to the complaint relating to 2020. Where we still have outstanding business is the inability of the RegData system to accept 2 of the 3 inputs from my accountant at the end of March. We discussed this separately in April. He called the FCA to explain it at the time. I discussed it with you early April.

7. The FCA have confirmed 3 credits were made to your account on 24 February 2022, in respect of fees incurred in 2021. These credits were made after you raised disputes following the system issues you experienced. Whilst I can appreciate how frustrating it must be experiencing ongoing technical issues accessing RegData, I am pleased the FCA have acknowledged your experience by crediting these fees back to your account. You have told me you do not have

access to view these credits. the FCA have advised you can register for the Online Invoicing portal (but you will need to use the same details for the xxxxxxx profile set up on 15 December 2021). The details are here:

<https://www.fca.org.uk/firms/fees-and-levies/new-online-fees-portal>

8. Within your complaint you have told me:

The fines relate to submissions were all “zero submissions” e.g. confirming that Burgoyne Capital doesn’t manage client money (Burgoyne Capital doesn’t have permissions to handle client money anyway). When I complained again I was told that I have submitted enough complaints already and they refused to accept further complaints.

I have been advised by the FCA you have raised a further dispute in July 2022 with the FCA, for a fee incurred in April 2022. You have told the FCA:

I simply see no reason that the FCA needs a report into client money that the firm has no FCA permission to hold, has never held and never will hold. Therefore, this reporting requirement is not required and is clearly sent in error by the FCA. To fine me £250 to tell you something that was already known strikes us as over-kill. The fine therefore needs rescinding.

This dispute has yet to be considered by the FCA.

9. The FCA have told me as part of the RegData move from Gabriel, your accountant Mr M logged in using your profile (in order to do this Mr M would have needed your profile username and password which was not provided to him by the FCA), Mr M linked the RegData to his own Connect account. This meant the contact details for the principal user (PU) were set up for Mr M even though the underlying profile was yours.

10. I have listened to a telephone call you made to the FCA on 15 December 2021.

During this call it was confirmed to you Mr M had been set up as the PU of FCA001679

RegData. The advisor explained what the PU is and asked if you wanted to be the PU. You advised you just want to be added to the system. It was not until a further telephone call in April 2022, you complained and asked to be made PU that it was changed. In response to my preliminary report, you have told me you were not added as a user on 15 December 2021. However, from the FCA file it is evident an activation link was sent to you following this conversation with the FCA and you logged in to submit and validate returns on 21 December 2021. Furthermore, both yourself and Mr M were sent a reminder email on 16 March 2022 for submissions due. You have asked for a copy of the call on 15 December 2021, I will arrange for a copy of this recording to be sent to you.

11. Taking the above into account, I cannot agree the FCA set up Mr M as PU without your permission.
12. You have informed me you have been offered ex-gratia payments from the FCA, none of which you have received. The FCA have confirmed they offered £175 ex-gratia payment in November 2021, you accepted this offer and I have been informed this has been reduced off your outstanding invoice. The FCA have advised whilst you have been offered other ex-gratia payments, you have not accepted these offers which is why they have not been paid. If you would now like to accept these payments, please contact the FCA directly to discuss the matter further. You have told me this is incorrect, and you have accepted these offers. I have contacted the FCA who have arranged for the remaining ex-gratia payments to be credited to your account. The FCA have advised these credits will clear your outstanding balance and leave you with a credit. The FCA will require your bank details in order to make a payment to you, please contact the FCA directly with these details.
13. I appreciate that the implementation of new computer systems can be very frustrating and fraught with teething problems both for internal and external users. Whilst you have experienced ongoing technical issues with the FCA technology which is not in dispute, from reviewing the FCA file I am satisfied the

FCA have assisted you with these issues when they arose, and the fees outstanding have not all been as a result of the technical issues.

14. The FCA have acknowledged its failings in raising your complaint to the complaints department at the FCA, for which they have offered an apology and ex-gratia payment. I am satisfied having reviewed the FCA file that your complaints in relation to the late fees and technical issues you have experienced have been answered fairly.

My decision

15. Whilst I know you will be disappointed, for the reasons outlined above, I am unable to uphold your complaint.

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Complaints Commissioner

15 August 2022