

06 June 2022

Final report by the Complaints Commissioner**Complaint number FCA001709***The complaint*

1. On 19 April 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 are unhappy with the increase in the 2021/22 annual regulatory fees and the proposed fees for 2022/23 which will apply to your firm: Firm X.

You have said that the 2021/22 fees are 3% of firm's income and the fee for 2022/23 will represent almost 9% of the firm's anticipated income, which you say is unsustainable. Further, you have suggested the fees bear no regard to the extent of your firm's activities and suggest they may have been miscalculated.

Part Two

You say that you have been told you could apply to end Firm X's authorisation in order to avoid future fees, but that such advice is incorrect as the firm has ongoing obligations which demand that it is authorised.

To resolve your complaint, you are seeking an immediate reduction of the 2020/21 fees, the repayment of any difference already paid and a substantial reduction of the proposed 2022/23 fees.

In your email of 10 March 2022 you stated, 'I am very disappointed that a decision has not been reached. I first raised this matter with your CEO, Mr Rathi, last October 14th. My company is now threatened with a further annual fee of £2,200.00 due by 31st March 2022, 6 April 2022 Complaint Ref: 208073678 an increase in fees of 800% in six years.

I have been advised in an email from advisor x that the annual fee is payable for the financial year in which cancellation of registration is applied for. If your regulator does not let me have a decision before the end of this month I shall not have time to cancel Firm X should that be necessary, and the 2023 fee will become automatically due.

If your regulator's decision was adverse I would have intended to appeal to the Bank of England. If that appeal was rejected I should have to call in the remaining loans as it would not be possible to continue in business whilst being subjected to escalating and disproportionate fees

However, if I have to wait a further month for you to make a decision, I risk having to pay this next extortionate fee. The delays which have taken place have resulted in this situation. The increasing level of unsustainable fees could put my forty four year old company out of business. I did not realise that this was the FCA's function.

I therefore request that I receive a decision within the next seven days in order that I have time to consider the options available to my company.

What the regulator decided

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

Part One

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income, which is unsustainable. Further, you have suggested the fees bear no regard to the extent of your firm's activities and suggest they may have been miscalculated.

The FCA is an independent body funded by the fees charged to the firms we authorise and some other bodies, such as recognised investment exchanges or registered firms. There are 3 types of fee: application; change to permissions; and annual (periodic), which is payable each year.

The FCA's yearly running costs (annual funding requirement (AFR)) include the budget for new activities or regulatory changes. The FCA allocates our total AFR between 'fee-blocks'.

Fee-blocks group together firms that undertake similar regulated activities. Each firm is allocated to one or more fee-blocks according to the activities it carries out. We assess how much the different types of activity will cost to regulate and allocate a proportion of the AFR to each fee-block on that basis.

The email of 18 November 2021 explained, '*The minimum fees for consumer credit activities have fallen behind our other minimum fees and so the shortfall is being picked up by other firms. That is why, as we explained in our April 2021 Consultation Paper, we have started to realign them with the fees paid by other firms in the 'A' fee blocks. Our aim is to merge consumer credit with the minimum fee for 'A' blocks so that firms which have additional credit related permissions, only pay the minimum fee. The consumer credit revenue was originally kept separate to target recovery of the costs of setting up the consumer credit regulatory regime when it was transferred from the Office of Fair Trading to the FCA in 2014. Those costs have now been recovered and so there is no longer a need to maintain the distinction*'

I appreciate you are unhappy with the level of fee your firm has been charged and do not feel it is proportionate to the business your firm carried out.

The amount invoiced is £849.93, which is the total of the fees for the FCA, the FSCS, the Financial Ombudsman Service, the Financial Guidance levy and the Illegal Money Lending levy.

The invoice shows the fee-block as CC02 which is the fee-block for firms with full consumer credit permissions.

The FCA calculates a firm's fee using the firm's 'tariff data'. Tariff data varies across the fee-blocks and is used as a measure of the scale of a firm's activities. Further details of the tariff bases can be found in FEES4 Annex 1A1 of the Handbook. The FCA divides a fee-block's proportion of the AFR by the total 'tariff base' of all the firms in the block. This gives a fee rate per unit. The FCA then calculates a firm's fee by multiplying its tariff base by the fee rate.

Although you have provided details of your firm's turnover as you believe the fees have been miscalculated, the FCA webpage 2 explains, *'In your annual consumer credit returns you will be asked for 'Total annual income' as defined in FEES 4, Annex 11BR for the purposes of FCA Fees reporting'. This is question 12 of the CCR002, or question 6 of the CCR007. We use this figure to calculate your regulatory fees & levies for the following year. This page outlines what you need to report to ensure you are charged correctly. It covers common scenarios, but it is not comprehensive, and you should refer to the Handbook rules in FEES 4 Annex 11B before submitting your return.*

It is a firm's responsibility to complete the regulatory returns with accurate information. The fees for your firm were calculated using the information reported by you to us.

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

Part Two

You have said that you were told you could apply to end Firm X's authorisation in order to avoid future fees, but that such advice is

incorrect as the firm has ongoing obligations which demand that it is authorised.

I have reviewed the correspondence and can see that you were given details of how to cancel from the Supervision Hub and also from the Executive Casework Unit.

In the email of 27 October 2021, the Executive Casework Unit explained your firm could cancel providing they '*ceased carrying on regulated activities; or plan to cease carrying on regulated activities within six months*'.

On 28 November 2021, the supervisor directed your firm to the FCA's webpage about cancellations. The FCA's webpage³ explains, '*Before applying to cancel your authorisation, your firm is expected to have:*

- o stopped carrying on regulated activities, or*
- o planned to stop carrying on regulated activities within 6 months of the application*
- o If you do not plan to stop carrying on regulated activities within 6 months of applying, we may not accept your application.*

On 1 December 2021 the supervisor responding to a query from you and said, '*I can confirm that if the firm continues to collect repayments in relation to an outstanding credit agreement, it would need to hold the relevant permissions to do so (Exercising/having right to exercise lender's rights and duties under a regulated credit agreement). If the firm wishes to cancel its authorisation, it would need to consider if these outstanding payments would be finalised within the next 6 months, as a firm that applies to cancel must have: stopped carrying on regulated activities or planned to stop carrying on regulated activities within 6 months of the application.*'

I believe you were given accurate information about the cancelling of your firm's permissions.

For this reason, I have not upheld this part of your complaint.

Conclusions

I have not upheld your complaint.

I am sorry that you have found the fees to be too high. The FCA is funded by the fees it charges regulated firms and for some firms the minimum amount charged can appear high in comparison with the firm's activities.

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:

Extensive email exchanges with various FCA departments have taken place since October 2021 and on 9th February 2022 I issued a complaint to the FCA Complaints Department, reference xxxxxx. My complaint was rejected on 6th April 2022 on the grounds that "I was given accurate information for cancelling my firm's permissions" to continue in business. At no time did I indicate that I wished Firm X to cease trading. What I wanted and expected was an annual fee relating to the size of my business

It was stated in the rejection letter I received, that the fees charged to registered business's was because "the FCA is funded by the fees it charges to regulated firms". In the recent FCA's Consultation Paper and Policy Statement it states that the FCA's expenses had risen in 2022 by 5.9%. which is a far cry from the 159% increase being charged to Firm X

The increases with which Firm X has been burdened in the last two years, are, I hope you will agree, unreasonable.

6. I can sympathise with your situation, however your complaint about your annual fee relates to the FCA's legislative functions as such your complaint about this fee falls outside the Complaints Scheme and for those reasons, I am unable to investigate this matter for you. Although your complaint is excluded from the Complaints Scheme, I am pleased the FCA provided you with information on why and how the fees are calculated.

7. Whilst your complaint is excluded from the Complaints Scheme, there may be a debate to be had about the merits of the FCA's approach to fees, I would suggest you may want to contact your MP about this matter.
8. In response to my preliminary report, you have advised you were disappointed but stated my analysis was fair. I note you will be writing to your MP as I suggested.
9. Unlike the Commissioners preliminary report, the final report is not confidential, but we would prefer that it is not made public until after it is published on our website on 16 June 2022. However, as requested, you can write to the FCA to advise it has put your Firm out of business without waiting for the publication.

My decision

10. For the reasons stated above, I cannot uphold your complaint.

Amerdeep Somal
Complaints Commissioner
06 June 2022