

14 June 2022

Final report by the Complaints Commissioner**Complaint number FCA001717***The complaint*

1. On 11 May 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 have received a £250 admin fee for the late submission of a Firm Details Attestation (the Attestation).

Part One

You have said that the Attestations are complicated to complete and that this is evidenced because you have contacted the FCA's Supervision Hub (the Hub) several times to understand what you need to do to submit the required information.

Part Two

You believe that £250 for the Fee is unfair and a financial burden because you are a sole trader.

Remedy sought

To resolve your complaints, you are seeking a waiver of the late return fee.

In your email of 31 March 2022 you said, 'I expect not to pay the £250 for obvious reasons; mainly the responses from the FCA which were inadequate and the complex nature of inputting data.'

In your email of 7 April 2022 you said, 'I've received another attestation request for submission by 5 July; this debacle is now getting ridiculous. Please look into this issue fully.'

Our letter of 31 March 2022 explained that we would not be investigating Part Two of your complaint in relation to the amount of the late return fee. To recap, this is because the Complaints Scheme covers the investigation of complaints that arise in connection with the exercise of, or failure to exercise, any of the FCA's relevant functions.

The 'relevant functions' of the FCA are defined in the Complaints Scheme and Part 6 of the Financial Services Act 2012, and broadly speaking cover the FCA's regulatory functions that arise under the Financial Services and Markets Act 2000, or such other functions as may be ordered by HM Treasury.

Expressly excluded from the definition of 'relevant functions' is anything arising from the FCA's exercise of legislative functions or standards review functions. 'Legislative functions' of the FCA include the making of rules, and the issuing of general guidance.

The Fee is an exercise of our legislative functions because the FCA Handbook (SUP 16.3.14R) states: 'If a firm does not submit a complete report by the date on which it is due in accordance with the rules in, or referred to in, this chapter or the provisions of relevant legislation and any prescribed submission procedures, the firm must pay an administrative fee of £250'.

Therefore, your complaint is excluded from being considered under the Complaints Scheme, as confirmed in paragraph 3.4(c) of the Scheme.

The Fee is intended to recover the costs the FCA incurs in pursuing firms with late/overdue returns and/or submissions. It is separate from the FCA's enforcement powers and is not a financial penalty. The late payment charges for the FCA (formerly FSA), Financial Ombudsman Service and Financial Services Compensation Scheme were all aligned to £250.

What the regulator decided

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

My letter explains, below, that I have not upheld your complaint.

I appreciate this will not be the outcome you were seeking. I hope the explanations given below will help you to understand why I reached these conclusions.

You have said that the Attestations are complicated to complete and that this is evidenced because you have contacted the FCA's Supervision Hub (the Hub) several times to understand what you need to do to submit the required information.

I have reviewed the FCA systems and can see email reminders were sent to your firm to complete the Directory Persons Attestation on 25 January, 18 and 23 February 2022. The date for submission was 25 February 2022. You did not submit the Attestation until 4 March 2022.

It appears that you may have confused the Directory Persons Attestation with the Firm Details Attestation. The supervisor outlined this to you in her email of 27 February 2022.

You explained that you believe you submitted the Directory Persons Attestation in January 2022. On submission of a Firm Details application on 26 January 2022 you received an email which stated, 'Case Reference 208037959 submitted for firm Michael Brian Rooney. Effective Date: 26/01/2022. We confirm that your Firm Details application has been approved.'

Following the submission of the Directory Persons Attestation an email of 4 March 2022 stated, 'Thank you for your Directory Persons attestation of accuracy notification'.

Why Directory Persons Attestation is important

On 8 March 2019, the FCA published the Policy Statement PS19/7 Finalising the Directory. The Directory is a public register for checking the details of key individuals working in financial services.

The webpage explained, *The Directory will include information available through the Financial Services Register, as well as information about other individuals, including those performing roles no longer made public on The FS Register following the introduction of the Senior Managers & Certification Regime (SM&CR).*

This information will be made public through a newly designed user interface developed to be clear and easy to use.

Publishing this information on an ongoing basis will help protect consumers and firms by making it easier to check whether individuals work for an authorised firm. It will also support the FCA, law enforcement, professional bodies and other regulators to monitor the market, build intelligence and target interventions

Webpage publication

On 5 September 2019, the FCA published a webpage 'Directory of certified and assessed persons'. You can find a copy of this publication here <https://www.fca.org.uk/firms/directory-persons>

We note that on our web page we said this:

If your firm has submitted Directory Persons' data to the FCA, this means your firm is subject to SUP 16.26.18-20 reporting requirements. These reporting requirements mean that all relevant firms must attest to the FCA that their Directory Persons' data is up to date and accurate, if no changes have been made to their Directory Persons' data in the last 12 months. It is a firm's responsibility to submit a Directory Persons attestation form. To be compliant with our rules, you must update and/or confirm your Directory Persons' data is accurate within 12 months of when you last updated it and/or confirmed its accuracy. If you fail to do this, you will receive a late return notification and a £250 late return fee. We may also take enforcement action against you. The firm's data will also be marked as being out of date on the Financial Services Register.

Regulation Round-up

Regulation Round-up is our monthly newsletter sent by email to all regulated firms who have signed-up to the service to update them on the latest news which affects the sector they practice in. We encourage firms to sign-up for Regulation Round-up as it includes news and key events affecting each portfolio of firms.

Conclusions

I have not upheld your complaint.

Your firm is required to complete the Directory Persons Attestation.

Why you are unhappy with the regulator's decision

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

Preliminary points (if any)

5. It is important for me to highlight, matters which are excluded from the Scheme which I am unable to investigate.
6. Section 3.4 (c) of the Complaints Scheme provides:

[Exclusions to the Scheme](#)

3.4 Excluded from the Scheme are complaints:

- c) in relation to the performance of the regulators' legislative functions as defined in the 2012 Act

My analysis

Part One

7. You are a sole trader and submitted your Firms Attestation on 26 January 2022. After receiving reminder emails, you contacted the FCA on 24 February 2022 to advise you had submitted both your Firms Attestation and Directory Persons information and there were no outstanding info flags on Connect.
8. You are required to complete your Firms Attestation and Directory Persons Attestation annually. These are two different submissions; I have seen you were sent separate reminder emails for both attestations. The Directory Persons Attestation reminders were sent on 25 January, 18 and 23 February 2002 and you completed the submission on 04 March 2022. Your Firms Attestation

reminder email was sent on 06 April 2022. I have reviewed the wording of the reminder emails and I am satisfied there is a clear distinction of both submissions required. Whilst I know it will disappoint you for the reasons above, I am unable to uphold this part of your complaint.

Part Two

9. Your complaint about the late fee and requesting a refund of it, relates to the FCA's legislative functions as such this part of your complaint falls outside the Complaints Scheme and for those reasons, I am unable to investigate this matter for you.

My decision

10. You have expressed your disappointment with my decision, but for the reasons outlined above, I cannot uphold your complaint.

Amerdeep Somal

Complaints Commissioner

14 June 2022