

22nd January 2018

Final report by the Complaints Commissioner**Complaint number FCA00418***The complaint*

1. You wrote to me on 5th December 2017 to complain about the fee which the FCA had charged you when you applied to have your firm's authorisation cancelled.

What the complaint is about

2. In the letter which the FCA sent you on 17th November 2017, responding to your complaint, the FCA described it as follows:

Part One

You understood you had a deadline of 8 August 2017 to submit a cancellation application. You feel it is unfair that your firm incurred an annual fee of around £1300 for missing this deadline.

Part Two

You explain that your firm's revenue fell sharply towards the end of the financial year. You believe the annual fee, based on the previous year's revenue, failed to take this into account.

To resolve the complaint, you would like the FCA to cancel the fee.

What the regulator decided

3. The FCA did not uphold your complaint. The FCA said that it would have been helpful if, during the two conversations which you had had with its Customer Contact Centre (CCC), it had been explained to you that to avoid a fee for the following year it was necessary to submit the cancellation application by 31st March; but it noted that, since you did not approach the FCA until 8th August 2017 to apply for cancellation, you had already missed the deadline, so the absence of the explanation had no impact upon your position.

Why you are unhappy with the regulator's decision

4. In your email to me, you say that the impact of MIFID 2 has meant that the firm is no longer viable; that the FCA's fee does not take into account the recent fall in your firm's revenue; and that in the circumstances it is not fair to apply the fee simply because you have missed the date "which I understand was the 8th August". You ask that the FCA cancel the fee.

My analysis

5. I have looked carefully at the correspondence which you have had with the FCA, at and at the FCA's internal documents relating to your complaint, and I have listened to the recordings of the two telephone calls which you had with the CCC.
6. The facts of the matter are straightforward. The FCA's published policy is that a firm is liable to pay a full year's fee unless they apply to cancel their authorisation before 1st April in any year. The fee is calculated according to the firm's income, though in the case of your firm the fee was the minimum.
7. You wished to cancel the authorisation of your firm because of a change in the financial environment. You inquired about this on 8th August 2017, promptly made an application, inquired about the application's status on 15th August 2017, and the authorisation was cancelled shortly afterwards. Because of the policy described in paragraph 6, you remained liable for the full year's fee for 2017/18.
8. I agree with the FCA that, although it would have been helpful if the 31st March cut-off had been explained to you during your two telephone calls with the CCC, it made no practical difference: you had already missed the deadline.
9. In respect of your complaint that the fee calculation did not take into account the recent deterioration in your firm's income, the FCA has already explained that – because your firm was paying the minimum fee – this made no practical difference.

My decision

10. I sympathise with your position, but I cannot uphold your complaint. In your response to my preliminary decision you make the point that the law (and policies) should evolve according to circumstances, and you suggest that the FCA could use your case to inform a change in its approach. I understand this argument, and the fact that you have been placed in a difficult position through circumstances beyond your control.
11. There is a legitimate debate about whether the FCA's fee charging policy ought to be changed; but I am afraid that this Complaints Scheme is not the means by which policies are changed – although information from complaints can and should inform the FCA's policies. I can see from the FCA's records that staff have been reminded that they should explain the 31st March deadline in cases such as yours. The fact remains that the FCA has treated you in accordance with its published policies, which apply to all firms.
12. I am sorry to have to disappoint you, but hope that you will understand my reasons for not upholding your complaint. I note from your response that you wish to reach an amicable agreement with the FCA about the payment of your fee, and I hope that it will be possible to achieve this.

Antony Townsend

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