

20 September 2018

Final report by the Complaints Commissioner**Complaint number FCA00483***The complaint*

1. On 20 July 2018 you made a complaint to my office that the FCA is incorrectly pursuing your firm for a late return fee.

What the complaint is about

Part one

2. Your firm was issued with a late return fee because you did not submit your 'nil return' on time. You complained that you were not given sufficient information about GABRIEL and submitting returns. You also believe that the £250 fine is disproportionate and you asked the FCA to waive the fee.

Part two

3. You are unhappy with the service provided by the FCA's Contact Centre because you say they did not help you cancel your authorisation and they told you they will not respond to emails.

What the regulator decided

4. The FCA did not uphold your complaint. It said that you had ticked the box on your application form to indicate that you would be able to submit regulatory reports via GABRIEL online. Additionally, it had sent you a 'welcome letter' by email on 9 May 2016, when your application was approved, setting out your responsibilities and what you needed to do.
5. You were issued with a late return fee of £250 because you did not submit your returns, which were due by 13 June 2017. The fee was appropriate and in line with the Rules set out in the FCA Handbook at SUP 16.3.14R.
6. The FCA further commented that the CCC Associates you and your employees spoke to on three separate occasions had provided you with sufficient

information and guidance about what you needed to do and where you needed to look on the FCA's website for further information, and the systems you needed to use. You were provided with all the information you needed in order to comply with your reporting duties.

Why you are unhappy with the regulator's decision

Element one

7. You are unhappy that the FCA insists on you paying the late return fee as you contacted them and advised them that you did not want to go ahead with the authorisation even before you were approved, and you thought that that was the end of it. Additionally, you say you had no access to the FCA's systems and it was incredibly difficult to set up an account to submit your returns in the end, even with the help of an FCA Associate. You say you did not see the emails that were sent to you due to what your administrator did before leaving your business and you admit that some letters may have been sent, but as you share a reception area with other firms, things are not always delivered to you.

Element two

8. Additionally, you have offered to make payments in instalments if the FCA insist the fee stands, as that is all you can afford, but it refused to allow you to do this and told you that the outstanding amount will go to debt collectors if you do not pay in full.

My analysis

9. You applied to be authorised to provide consumer credit on 26 April 2016 and your application was approved on 9 May 2016. I have found no record of you contacting the FCA between these two dates to tell them that you no longer wished to proceed with your application.
10. There is a record of one of your employees contacting the CCC on 30 May 2017 to inform them that you did not wish to be authorised any more. Your firm was told that you could not cancel your authorisation over the telephone and that the process may take six months. Your employee was also directed to the relevant pages of the FCA website and told which systems you needed to access to submit the returns that were due and to apply to cancel your authorisation.

11. On 27 June 2017 your representative contacted the FCA to say that you had been issued with a late return fee and that this was wrong as you had applied to cancel. You had never done any regulated activities and had no returns to submit anyway. You were given the same information as before and told that you still had to pay the fee.
12. Finally, you called on 2 March 2018. You were again given full information about how to cancel your authorisation. This time you were also told that you could submit your application to cancel by a paper form, which was sent to you by email on the same day.

My decision

13. Your firm is bound by the rules of the FCA, which you agreed to as part of your authorisation. You were late in submitting your regulatory return. The FCA took reasonable steps to inform you about, and remind you of, your obligations. The late returns fee is designed to recover administrative costs from firms which do not follow the processes, so that firms which do comply are not subsidising those which do not. Therefore, the FCA is entitled to charge you this fee. I am unable to uphold your complaint about the fee issued.
14. I have listened carefully to the recordings of the several phone calls between you, your employees, and FCA staff. You and your colleagues were given a lot of guidance and advice about how to use the FCA's systems. I do not think that that advice can be faulted. My only comment is that it might have been helpful if the FCA had offered you the option of completing a paper form on an earlier occasion, although then you would still have had to submit the information to the same timescales.
15. I recognise how frustrating it must be for you to owe fees for a regulatory licence which, it turns out, you never needed; and I sympathise with your view that the system is quite a complex one. However, I am satisfied from the records that at the outset you were sent the information which told you how the system worked and what you needed to do and, when you and your colleagues contacted the FCA, you were given the correct guidance. For that reason, I cannot uphold your complaint.

16. I suggested that the FCA contacts you to discuss how you may be able to settle the outstanding fee if you are unable to settle the debt in one payment for valid reasons and they have now confirmed that you have agreed to a payment plan which you are able to manage.

17. I am sorry I am unable to uphold your complaint.

Antony Townsend
Complaints Commissioner
20 September 2018