

30 August 2018

Final report by the Complaints Commissioner**Complaint number FCA00490***The complaint*

1. In your email of 3 August 2018 you asked me to review the FCA's handling of your complaint about the fees charged to your company.

What the complaint is about

2. In its decision letter of 6 July, the FCA described your complaint as follows:

You are unhappy you received a letter from the FCA's Enforcement and Market Oversight Division regarding unpaid 2017/18 annual fees as you had not received any previous correspondence regarding the debt as they had been sent to an old address.

Part One

Following the response from the FCA's Revenue team you would like to challenge the amount of time you have been given to settle the fees (30 days).

Part Two

You are also challenging the calculation of the fees as you were not trading during the period in question and you would like an explanation of how the fees are apportioned.

Resolution

To resolve your complaint, you would like the fees to be deferred for a minimum of 90 days and a detailed explanation of the fees and how they are apportioned.

You require full disclosure and transparency of all correspondence in association with this matter.

What the regulator decided

3. The FCA did not uphold your complaint. It said that it had sent invoices and reminders to the email address which you had supplied: the fact that you were no longer checking that email address was your responsibility, since you had not informed the FCA of a change of address.
4. The FCA also said that it had properly calculated the fees, since your firm had not supplied any updated data. However, since your firm had now submitted new data, the FCA agreed to revise the fee.
5. The FCA did not agree to your request for a 90-day deferral of your fees, but agreed to a 30-day period.

Why you are unhappy with the regulator's decision

6. On 20 July, you responded to the FCA's decision letter saying you were still dissatisfied. Your key concerns were:
 - a. The FCA had not disclosed to you copies of all the documents "which were claimed to have been posted to our previous addresses";
 - b. The FCA had a "responsibility...to communicate with a limited company by way of correspondence to our place of business or registered office address". It was not sufficient to rely upon emails to a "personal email address";
 - c. You wanted the FCA to revise the fees further to reflect the period during which the firm was not trading, or credit the fee to the following year's activity.
7. The FCA responded to this by saying that:
 - a. All the relevant documents had already been disclosed to you. They had all been sent by email;
 - b. The revised fees had been correctly calculated in accordance with the published rules;

- c. There was no distinction between the minimum fee for a non-trading company and that for a trading company;
 - d. Fees could not be credited to a subsequent year.
8. You referred the matter to me. In particular, you asked me to look at the “full disclosure of documentation” and your “appeal against the quantum of fees”.

Preliminary points

9. I should explain what I can and cannot do. Under the rules of the Complaints Scheme (which you can find at <http://frccommissioner.org.uk/complaints-scheme/>), I can look at allegations that the FCA has made mistakes, has not taken sufficient care, has delayed or behaved unprofessionally, or has shown bias or lack of integrity. What I cannot look at is the FCA’s “legislative functions” – which essentially means the making of rules, the issuing of guidance and policy statements.

My analysis

10. The key issues in the complaint you have brought to me are what you consider to be the FCA’s failure to correspond with you properly, and your view that the fees calculations do not take sufficient account of periods of non-trading.
11. On the first point, it is the FCA’s practice to use email correspondence for things like invoices. This is a normal business practice and, while there is a legitimate debate about whether or not it would be preferable to use a postal back-up, I do not consider that the FCA’s position is unreasonable. Your firm signed up to email communications, and supplied an email address. The record shows that the FCA sent documents to that email address, and it appears that in response to your complaint the FCA has sent you further copies of what it originally sent. It is not the FCA’s fault that the email address was not monitored or updated.
12. On the second point, you have been given a full explanation of how the FCA calculated your fee, and the rules on which this is based. As far as I can see, the FCA has applied its published rules correctly. I recognise that you think that the rules should be changed but, for the reasons given in paragraph 9 above, the making of rules is not something which I can consider.

My decision

13. I am sorry to disappoint you, but I cannot uphold your complaint. My view is that:

- a. The FCA took adequate steps to communicate with your firm;
- b. The FCA properly applied its published rules;
- c. The FCA undertook a thorough and prompt investigation into your complaint, gave you a full explanation, and took steps to make adjustments to your fees on the basis of the late data which your firm supplied.

Antony Townsend

Complaints Commissioner

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