

04 March 2019

Final report by the Complaints Commissioner

Complaint number FCA00543

The complaint

1. You are not satisfied with how the FCA is applying section 173 (s173) of the Financial Services and Markets Act 2000 (FSMA) when dealing with your firm X.

What the complaint is about

2. The FCA requested information from your firm X about another firm, Y. You complained to the FCA, which summarised your complaints as follows:

Part One

The FCA will not pay a fee of £6,745 for your firm to provide the required information. You believe the FCA's refusal to reimburse your reasonable costs amounts to a reasonable excuse under the terms of the Act to justify you in not complying.

Part Two

You have referred to a letter where you have complained about 'bullying, threats and abuse of process'.

What the regulator decided

3. The FCA deferred investigation into your complaints under paragraph 3.7 of the Complaints Scheme, which permits the FCA to defer an investigation pending continuing action by the regulator.
4. The FCA also said that if you did not provide the required information, the FCA might initiate court proceedings. If this happens it believes paragraph 3.6 of the Scheme (which provides that the regulators will not investigate a complaint *which they reasonably consider could have been, or would be, more appropriately dealt with in another way (for example by referring the matter to the*

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Upper Tribunal or by the institution of other legal proceedings) would apply to Part One of your complaint as well as 3.7.

5. The FCA's interpretation of this is that the FCA can appoint someone (for example an FCA member of staff) to require information from your firm. It also believes that there is no obligation on the FCA to meet any costs for your firm to provide the required information.
6. The FCA said this is the FCA's interpretation of legislation, and only a court can decide whether it is correct or not.

Why you are unhappy with the regulator's decision

7. . You are unhappy that the FCA is refusing to meet what you consider reasonable costs for providing the information it seeks, and you do not think it was the intention of FSMA to allow it to do so.
8. You also feel the FCA is placing a disproportionate burden on you. You quote section 3B of FSMA which requires the FCA to apply *the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction; and the need to use the resources of each regulator in the most efficient and economic way.*
9. You are also unhappy with what you perceive to be FCA investigators' threats and bullying behaviour when dealing with your firm, and in particular a letter dated 19 October 2018.
10. You asked the FCA to review its policy of not reimbursing firms for reasonable costs when applying s173 of the Act. The FCA did not address this complaint.

My analysis

11. Your firm X (which is not regulated by the FCA) holds information about another firm Y, which is of interest to the FCA. The FCA requested information from you about firm Y in April 2018 under s173 of FSMA.
12. You, in turn, requested £6,745 for providing this information to the FCA.

13. The FCA declined to pay you anything as it does not believe it has an obligation under FSMA to do so. It offered, instead, to send a member of its staff to your premises to take images of the data it requested.
14. You declined this offer, a reason being that the FCA staff member would have access to data about other clients, which is confidential.
15. Following protracted correspondence between the FCA and you, the FCA wrote to you on 19 October 2018 with an information requirement which superseded the information requirement sent to you in April 2018, and said that if you did not comply with the request for information by 15 November 2018, it would prepare papers to commence proceedings under s177 of FSMA. That same day the FCA Complaints Team wrote to you to say that it was deferring investigation into your complaint because of continuing action by the regulator.
16. On 7 November you replied to the FCA saying that you were not prepared to waive the fee of £6,745 or allow a member of the FCA's staff to attend your premises, and if the dispute could not be resolved by agreement, you would like it 'resolved judicially'. You said you would comply with the court's decision on the issue of the fee.
17. On 16 January 2019 you referred the matter to me.

My decision

18. The FCA is correct to say that only a court can interpret legislation. I cannot rule on whether the FCA is legally obliged to meet your costs for providing information under s173 of FSMA. It appears this issue may be determined by court proceedings.
19. The FCA has decided to defer investigation into Part One and Part Two of your complaint because of the continuing action by the FCA. The FCA has confirmed to me that it is about to issue proceedings under s177 of FSMA.
20. I agree with the FCA's decision to defer your complaint. It would not be right to investigate it while the possibility of court action remains, and you will have the right to renew your complaint with the FCA if no court proceedings materialise. Any ruling by the court will also help inform the question of whether or not the FCA policy needs changing.

Antony Townsend
Complaints Commissioner
04 March 2019