

28 November 2019

Final report by the Complaints Commissioner**Complaint number FCA00659***The complaint*

1. On 1 October you asked me to investigate a complaint about fees charged to you by the FCA.

What the complaint is about

2. The FCA described your complaint as follows:

You contacted the Customer Contact Centre (now known as the Supervision Hub ('The Hub'), for guidance on cancelling your firm's authorisation. You were told that your firm would not owe any fees for the 2019/20 financial year and you are unhappy that you were given the incorrect information.

What the regulator decided

3. The FCA did not uphold your complaint. It investigated the matter thoroughly, and explained to you what had happened. The key points in its explanation were that:
 - a. In a telephone call on 25 April, in which you inquired about cancelling your firm's authorisation, you were initially correctly informed that unless you cancelled your authorisation by 31 March in any year, you had to pay the following financial year's fee;
 - b. Later in the conversation, you discussed with the FCA staff member the FCA statement that 'If, however, your business continues to operate for 3 months beyond the deadline – that's to say, past 30 June – then you will have to pay the annual fee for the financial year.' You interpreted this as meaning that as long as your authorisation was cancelled before 30 June, you would not have to pay the fee – although the wording is intended to mean that if you

cancel before 31 March and cease business by 30 June, you do not have to pay. The FCA staff member shared your misunderstanding and confirmed that you would not have to pay;

- c. The FCA apologised for the 'miscommunication', but said that the fee had been correctly charged and should not be waived.

Why you are unhappy with the regulator's decision

4. You have explained your unhappiness in this way. 'I rang the Fca and was led to believe that if I cancelled there would be nothing owing. After I had cancelled I am now being charged (unfairly in my opinion).'

My analysis

5. I have listened carefully to the relevant extract of the telephone call. The staff member was clearly trying to be helpful, but there is no doubt that she confirmed your view that you would not have to pay the fee, leading you to believe that, as long as you made your cancellation application promptly and accurately, you would have nothing to pay.
6. The FCA justified its decision not to uphold your complaint on the grounds that the rules are clear – firms which do not cancel by 31 March must pay the following year's fees – and the rules must be applied consistently.
7. By the time you spoke to the FCA, you had already missed the deadline, so in one sense the advice you were given on the telephone did not affect your position. However, in considering your complaint, the FCA appears to have ignored the expectation which its wrong advice gave you. The argument that the rules must be applied consistently only holds to the extent that all firms are treated consistently. You were given wrong information by the FCA: other firms were not.
8. I note from the FCA's decision letter that the Supervision Hub, recognising its mistake, wanted to offer you a waiver, but was overruled by the Finance Department. My view is that the Finance Department, and then the Complaints Team, ought to have considered the question of your expectations in the light of the FCA's mistake, rather than considering the narrow point of whether the rules had been correctly applied.

9. In its response to my preliminary point, in which I set out the arguments in paragraphs 5-8 above, and recommended that the FCA should waive 50% of the fee, the FCA has said:

In light of the fact that Mr Lee's call was made after 31 March, our view is that Mr Lee is wholly responsible for missing the deadline. While we regret and have apologised for the miscommunication, we therefore do not agree that 50% of the fee should be waived.

10. In essence, the difference of opinion between the FCA and me is that the FCA considers that an apology is sufficient, and I consider that some financial compensation to acknowledge the error and the false expectation which arose would be appropriate. The FCA is very strict in imposing financial penalties on firms which make administrative errors: it would be unfortunate if it appeared that it was more forgiving of its own errors than the errors of others.

My decision

11. I uphold your complaint. Given that I think you should take some responsibility for the fact that you missed the FCA's deadline, I have **repeated my recommendation**, initially made in my preliminary report, that the FCA offers to refund you (or waive) 50% of the fee.
12. In response to this final report, the FCA has offered to make you an ex gratia payment of £50 'for the inconvenience caused by raising his expectations unnecessarily'.

Antony Townsend
Complaints Commissioner
28 November 2019