

13 March 2023

Final report by the Complaints Commissioner**Complaint number 202201679***The complaint*

1. On 16 December 2022 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

Your complaint was made on 18 July 2022. On 9 August 2022, we wrote to you with a summary of our understanding of your complaint. We did not receive any comments from you regarding our summary, and therefore have proceeded on the basis that it was correct.

You are complaining that when your FCA permissions had been cancelled you were advised that there was nothing else you needed to do. You therefore ignored subsequent FCA emails and later incurred a £250 late return fee.

You are unhappy with being informed that following the cancellation of your permissions there was nothing else for you to do, however you have now been sent a £250 late return fee.

To resolve your complaint, you would like the fine to be removed to draw a line under the closure of the account.

What the regulator decided

3. The FCA did not uphold your complaint and told you:

In reaching my decision, I reviewed the case progression notes, emails on file and any applicable recordings of conversations which took place

with the FCA. I have also liaised with the Late Returns Team (LRT) and Cancellations Team to gain their clarity on matters pertained.

As an introduction and for the purposes of clarification, the applicable annual reporting requirement in this matter is your firm's CCR007 return.

CCR007 is the annual reporting requirement where the FCA collects data from firms that identifies trends and emerging risks, which helps in the monitoring of compliance. This requirement also allows the FCA to calculate the consumer credit-related portion of your firm's annual fees (based on your consumer credit income).

Further, please kindly reference the following provisions within the FCA Handbook:

SYSC 3.2.19 of the FCA Handbook states "A firm, other than a Solvency II firm, should have in place appropriate arrangements, having regard to the nature, scale and complexity of its business, to ensure that it can continue to function and meet its regulatory obligations in the event of unforeseen interruption. These arrangements should be regularly updated and tested to ensure their effectiveness."

SUP 16.3.14R(1) of the FCA Handbook states that "If a firm does not submit a complete report by the date on which it is due in accordance with the rules in or referred to in this chapter or the provisions of relevant legislation and any prescribed submission procedures, the firm must pay an administrative fee of £250."

As I understand, your firm were issued with a late return fee, due to a late submission of your firm's CCR007 return. This return remains unsubmitted and was due on 14 July 2022. A late notification message regarding this return was sent to your firm on 15 July 2022.

However, you have inferred that you were advised by the FCA that following the cancellation of your firm's application, there was "Nothing further you needed to do" and believe that the administrative fee of

£250 should be waived. Unfortunately, I have not found any evidence substantiating you were advised of this.

On 5 April 2022, your firm submitted an application to cancel its permissions with the FCA, effective from 1 October 2022.

The Cancellations team have a 6-month SLA to complete such applications, and your firm's cancellation application was completed on 21 July 2022. It is my understanding that your firm's cancellation application was considered earlier after the assigned Caseworker contacted your firm on 18 July 2022 and received confirmation that you were happy to proceed on that day.

In your call with the Supervision Hub (the Hub) on 15 July 2022, you were advised by the Hub Supervisor that applications to cancel can take up to 6 months and in the interim, any reports or fees that are pending are required to be completed.

You subsequently disagreed with this and inferred to the Supervisor that you had an email stating that your firm's authorisation had been cancelled. I can confirm that having reviewed all email communication, there is no email confirming cancellation of your firm's authorisation, prior to 21 July 2022.

Further, the following was advised in the FCA's confirmation email, confirming cancellation of your firm's permissions, on 21 July 2022: "Any invoices outstanding for the current fee year (April-March) are required to be paid in full. Failure to pay outstanding fees may result in further action being taken."

Please note that Firms are required to be ready, willing, and organised to comply, on a continuing basis, with the requirements and standards under the regulatory system. This is a fundamental requirement for all firms when they apply for authorisation with the FCA.

It is the firm's responsibility (and not the FCA), to ensure that they are ready and organised to comply with their regulatory returns. This extends to the firm ensuring that they have the systems and controls in place to meet their reporting requirements, understanding the FCA

rules and what is expected of them. The FCA advocate across many platforms the need for firms to seek independent compliance advice if they are unsure on any aspect relating to their firm's regulatory requirements.

I have also taken into account that there is no evidence indicating you were advised by the FCA that following your firm's cancellation, there was nothing that you or your firm needed to do. The cancellation process takes up to 6 months and this process is prescribed on our website. It is also my view that you were advised by the FCA to continue complying with your regulatory requirements by submitting the necessary reports and making the necessary fee payments.

Subsequently, it is for this reason that I am unable to uphold your complaint and your fee invoice remains due. Whilst I can appreciate this is not the outcome you were hoping for, the FCA will only consider a waiver or refund of a late fee under exceptional circumstances.

Unfortunately, as the FCA have not made an error in this instance and for reasons stated above, I am unable to consider your proposed remedy on this occasion.

Why you are unhappy with the regulator's decision

4. You have asked me to review the FCA's decision.

My analysis

5. During your telephone call to my office, you advised the FCA contacted your Firm as you had not used your permissions for 2 years. During this call you were advised if you did not use them within the next 3 months, they would probably look to remove them. Following Covid and having had a stroke you no longer needed your permissions as you no longer sold motorcycles. Therefore, logic told you the best thing to do would be to cancel your permissions. You have told my office when you submitted your application to cancel your permissions you were advised there was nothing else you needed to do.

I am sorry to learn you have been unwell, I hope you have made a good recovery.

I have listened to your telephone call with the FCA on 15 July 2022, when you called about your annual fees and incurring a late fee. You explained you called earlier in the year and did the application to remove your permissions with the FCA over the telephone, within this call you were told you did not have to do submit anything else as your application to have your permissions cancelled had been submitted. The advisor on 15 July 2022, told you she could see you submitted the application to remove your permissions on 5 April 2022.

I have then listened to the telephone call you had with the FCA on 5 April 2022. The advisor guided you through the screens to help you submit your application to cancel your permissions. At the end of this call, you were told the application could take up to 6 months to be approved and you would still be authorised during this period, to which you said this answered your question. At no time during this call were you advised you didn't need to complete your returns or pay your annual fees.

During your call to the FCA on 15 July 2022, you advised you were in receipt of an email which confirmed your permissions had been cancelled and you forwarded a copy of this email to the FCA advisor. This email did not confirm your permissions had been cancelled. This email stated:

Thank you for your Cancellation CC - Limited application/notification received 05/04/2022.

Your case reference for this application/notification is: xxxxxxxxx

Furthermore, I have not found any other evidence of an email being sent to you from the FCA confirming the cancellation of your permissions had been completed until after your annual and late fee had been incurred.

I am pleased to see from reviewing the FCA file, the cancellation of your permissions was completed, and you have been sent confirmation of this.

You have advised my office the crux of your complaint is you are unhappy there is no call recording from when the FCA called to advise your permissions could be removed within 3 months if you didn't use them.

Since raising your complaint, you are in receipt of an email from the FCA which confirms there was no telephone recording available for the telephone conversation when you cancelled your permissions.

You are now in receipt of the decision letter from the FCA which states the appropriate call recordings have been listened to, you know this cannot be true as the call recording in question is not available.

When you made your complaint to the FCA on 19 July 2022, you were complaining about the information you were given on the call when you cancelled your permissions and submitted your application (5 April 2022). The FCA investigator did have access to this telephone call and subsequent call on 15 July 2022. However, I have not seen a call recording of the telephone call you had with the FCA relating to you losing your permissions if you did not use them. I **ask** the FCA to clarify if this is the call recording that is not available.

I note you requested a copy of all your telephone recordings with the FCA to be sent to you, if you are not in receipt of the call from 5 April 2022, I can request the FCA send you a copy.

As a result of the above, I am unable to uphold your complaint. It is a Firms responsibility to ensure returns and fees are submitted and paid on time. You had been made aware you were still authorised whilst the cancellation application was being processed and were not in receipt of confirmation your application to cancel your permissions had been completed.

In response to my preliminary report you have told me:

The FCA have failed to do the correct administration and remove my email address from their data base, please can you explain why they have failed to do this simple task?. I may have to seek compensation for this as it seems like harassment and somewhat ironic they are chasing me for an unacceptable fee!!!!???? Or will this failure be automatically compensated directly into my bank? I know I am being facetious but why should a small business like mine that followed the instructions as I understood of an FCA representative and then be told the recording was not logged conveniently and be given a fee?

This issue has been live for nearly a year and is causing me further stress which medically I do not need. It is wasting the time and resources for many people all due to me being given the wrong information during the initial phone call. My main concern is to keep my business alive at this time and not have to pay for, in my opinion for the incompetence of an FCA representative or the level of service offered.

I am sure over the past year I have forgotten all the full details and do not have time to spend going through the numerous emails from various departments who do not speak to each other.

If we cannot resolve fully this then I will have to seek advice to take it further, thus leave it in the hands of a third party.

In response to your email, I contacted the FCA who told me:

Regulation Round Up Newsletters are not *automatically ceased* when firm permissions are cancelled.

If Mr X wishes to stop the aforementioned Newsletters, then he will need to unsubscribe through their preferences.

[Financial Conduct Authority \(govdelivery.com\)](https://www.govdelivery.com)

The FCA have provided further clarification on the call recording which is not available. The call was in relation to 'Use it or Lose it', in terms of your Firms permissions, the call recording is not available as the department do not record calls. It is disappointing these calls are not recorded, if they were recorded, this complaint may not have reached me. However, I am satisfied having listened to the telephone call which later took place on 05 April 2022, when you were guided through the application to cancel your Firms permissions, the requirement to make returns whilst the application was going through was made extremely clear. I would ask the FCA to provide you with a copy of this call if it hasn't already done so.

My decision

6. Whilst I know you will be disappointed, for the reasons outlined above I do not uphold your complaint.

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Complaints Commissioner

13 March 2023