

30 May 2019

Final report by the Complaints Commissioner**Complaint number FCA00559***The complaint*

1. On 18 March 2019 you complained to me about the FCA's decision not to uphold your complaint about the way in which it displayed your firm's details on the Financial Services Register.

What the complaint is about

2. Your complaint has a significant history, going back to 2016. In brief, it started because a rogue firm had cloned your firm's details, and you thought that the way in which the Register showed your firm's details made it hard for consumers to recognise that there was a genuine, un-cloned firm in operation. The matter was further complicated because your firm's status had changed from being a small payments institution to an authorised payments institution. This meant there were two register entries, one of which was no longer active, and this led to confusion about whether or not your firm was still registered. You cited two examples – one from your bank, another from an individual consumer – which you claimed showed that the way in which the Register displayed information was harming your business.
3. Initially you raised these matters with the operational divisions of the FCA which were responsible for the Register entries – in 2016, 2017, and early 2018. In March 2018, the matter was referred to the FCA Complaints Team.
4. On 22 March 2018, the FCA Complaints Team wrote to you, describing your complaint as follows:

You submitted an application in 2011 to change your firm's PSD status from a small payment institution to an authorised payment institution. You believe that the FSA made an error processing the application in 2011 which has led to the following complaints.

FCA00559

Part One

When searching for your firm's details on the FS Register two entries appear. One entry has a status of 'No longer authorised' and the other says 'See full details'. You believe this is highly misleading.

Part Two

You have said that an FSA error has resulted in your firm being given a different firm reference number and your firm's name has incorrectly been listed on the Register as Limited instead of Ltd.

5. The FCA queried why it had taken you seven years to make the complaint.
6. You responded to that letter on the same day. You wrote:

The FCA online register only started displaying the grossly misleading information when search for [your firm's name] with the implementation of the Payment Services Regulations on 13th January 2018, less than 3 months ago.

From that date, our firm is shown with two entries – 'Not Authorised' and 'See Full Details'.

Before 13th January this year, the display showed that we were authorised.

I am shocked and dismayed that the FCA is trying to use a time limit not to have to correct this grossly misleading situation.

7. Following this exchange, efforts were made to investigate the complaint further. These took eleven months.

What the regulator decided

8. On 27 February 2019, the FCA issued its decision. By this stage, it had redefined your complaint in the following way:

Part One

Your complaint relates to how the FCA's Financial Services (FS) Register displays the status of your firm []. In particular, you state that you are unhappy the FS Register displays your firm's current and historical status - as "See full details" and "No longer authorised", respectively.

You believe this is unclear and misleading for potential clients who use the FS Register to check if your firm is regulated by the FCA.

Part Two

In 2011, you applied to cancel your firm's status of a Small Payment Institution (SPI), together, with an application to become an Authorised Payment Institution (API), under the Payments Services Directive (PSD).

You believe that the Financial Services Authority (FSA) at the time made an error when processing the application, which has led to your firm being given a different firm reference number (FRN) and your firm's name being incorrectly listed on the Register as "Limited" instead of "Ltd".

Part Three

This part of your complaint was raised in further correspondence with the Complaints team, dated 19 September 2018, in which you forwarded to us details of a cancelled transaction by potential customer of your firm. You explain that you believe the voiding of this transaction was due to the “misinformation promulgated by the FCA online register”.

In general, to resolve your complaints, you have suggested that “the FS Register should be redesigned to list separately genuine firms and below in a separate and explained box, non-genuine and unauthorised firms”. You also state that the status of ‘See full details’ should be replaced with “either ‘authorised as a Payment Service Provider’ or ‘registered as a Small Payment Institution’, as appropriate”.

9. The FCA’s decisions on the three parts of your complaint were summarised as follows:

Part One

I have not investigated this part of your complaint because... it relates to dissatisfaction with the FCA’s general policy. I am satisfied that that the information on the FS Register about your firm is accurate and is consistent with how other firms are also displayed in this situation. I sympathise with your concerns about the need to ensure the FS Register is clear for members of the public and have brought this to the attention of the relevant area.

Part Two

For the reasons given above, I am unable to determine if the FSA made an error by listing your firm as “Limited” when your application to become an API was processed. The relevant area has confirmed that the usual process is to record the firm’s name exactly as it appears on the application form. I have not upheld the remaining section of this complaint given that it was correct to assign your firm a new FRN following the application to become an API.

Part Three

You referred to a cancelled transaction between your firm and a potential client in September 2018. The outcome of my enquires [sic] is that the client contacted the FCA to seek clarification about your firm’s regulatory status having discovered information about a clone firm. It seems to me that it was the existence of a clone firm and the guidance given by the CCC, rather than the way the Register displays your firm’s status, that led to the cancelled transaction.

10. The FCA did, however, offer you £100 because of the delay in dealing with your complaint.

Why you are unhappy with the regulator’s decision

11. In response to the FCA decision letter, you have said (I paraphrase):

- a. You were not expressing dissatisfaction with the FCA's general policy. You were wanting misleading information rectified;
- b. You are unclear about whether the FCA considers the existing state of affairs to be satisfactory or not;
- c. You do not consider that the proposal that 'Limited' might be changed to 'Ltd' in your firm's entry would address the problem – indeed, it might make matters worse;
- d. You continue to believe that a potential customer of yours was put off using your firm because of misleading information supplied by the FCA's CCC in relation to escrow accounts. You add that the potential customer you have cited was only one of several.

My analysis

12. I have studied several hundred pages of emails which relate to this complaint. In my view, the fundamental problems which have led to your dissatisfaction are as follows:

- a. The FCA's register is very poor, and very inflexible. It is not properly designed to provide meaningful information to consumers. Because it is inflexible, it is unable to accommodate the multiple permutations of firm circumstances in a way which makes information readily comprehensible. It is clear from the papers that the FCA staff struggled to understand why the problems which had occurred with your firm's entry had arisen;
- b. Time and effort were spent by the FCA on searches to determine why certain decisions had been made about the design of the register, and seeking documents to show what information your firm had supplied, but these did not get to the heart of the problem;
- c. Much of the focus of the investigation seems to have been on whether *processes were correctly followed* rather than whether *the outcome was right*;
- d. Early efforts by the Complaints Team to see whether your firm's entry could be improved did not bear fruit, because of the inherent complexity of the system;

- e. After early efforts, the complaint was allowed to drift, leading to the serious delay in producing a decision.
13. Turning to the details of the FCA's decision, the FCA decided that your core complaint (Part One) should be excluded because it was about the FCA's general policies. General policies are excluded from the Complaints Scheme for a good reason, because complaints schemes are not designed to settle policy questions.
14. I have explained to the FCA that, in my opinion, your complaint was not about a policy question: it was about the unintended consequences of the FCA's register design for your firm. Furthermore, for the FCA to advance that argument eleven months after you lodged your complaint seems to me to be unacceptable.
15. The FCA does not agree with my view, and continues to consider that it was correct to exclude your complaint. My view remains that to exclude the unintended consequences of policies for individuals from the Complaints Scheme is difficult to justify. However, I am not sure that much turns upon that point in your particular circumstances, given what follows.
16. The FCA's decision letter did give you an explanation of why it had decided to adopt the 'see full details' label for firms such as yours; and it did indicate that your concerns had been passed on to the relevant part of the FCA. So, although it excluded that part of your complaint from the Scheme, it did not ignore it in its decision letter.
17. In relation to Part Two of your complaint, the FCA was right to say that there was no evidence to say whether or not the FCA erred in describing your firm as 'Limited' rather than 'Ltd', though the FCA explained that the record which should have been available was not. However, it seems to me that this is really a side issue, and of not much consequence to your underlying complaint.
18. Part Three of the complaint is more complex. I have listened carefully to the recording of the telephone call in which your potential customer was advised about your firm's status. It seems to me that the information which was given was mainly sound, particularly in relation to the fact that your firm was a genuine one but that the customer should make sure that she was not dealing with a clone. The advice which the FCA staff member gave in relation to escrow

accounts was muddled, however, since she said that escrow accounts were 'not recognised' – a point acknowledged in the FCA's decision letter. The FCA has already confirmed that it has given advice to the CCC about this matter. It is simply not possible to be sure whether the muddled statement about the escrow account played any part in the potential customer's decision, and for that reason I agree with the FCA's conclusion on that part of the complaint.

My decision

19. You approached the FCA because of a problem which arose from the design of the FCA's Financial Services Register. You asked for the problem to be put right. It wasn't.
20. When your approach to the FCA turned into a complaint, the complaint was badly delayed, partly because the investigation got lost in the details of procedures rather than looking at the outcomes. Although some early attempts were made by the Complaints Team to see if things could be put right, those did not bear fruit. Eleven months after your complaint was lodged, you received a decision letter, which in my view wrongly excluded the main part of your complaint, and did not give you sufficient details to satisfy you that your concerns had been properly understood and addressed.
21. It seems to me that what you needed from the FCA was a simple explanation of the following things:
 - a. Had mistakes been made with your firm's register entries?
 - b. Did the FCA agree that the display of your firm's details, even if in a narrow technical sense accurate, was misleading?
 - c. If so, could something be done about it?
22. My reading of the papers gives the following answers to those questions:
 - a. Your firm's entries were technically correct (i.e. the right information had been entered on the register, and was displayed in the same way that information about other firms in the same circumstances would be);
 - b. The entries are clearly very unhelpfully displayed, and are likely to give consumers the wrong impression. The FCA has already said that it 'sympathise[s] with your concerns about the need to ensure the FS Register

is clear for members of the public and [has] brought this to the attention of the relevant area'. However, in response to my preliminary report, the FCA has said that it does not agree with me that the entries are misleading. Its position is that

FS Register displayed the information with regard to the complainant's firm as intended. The information was accurate rather than misleading. That said, we accept that the policy decision on how to display firms who had changed from being a small payments institution to an authorised payments institution may not have led to the most helpful and easy presentation for consumers to understand the information which is why as part of wider work on the FS Register we have undertaken to look at this again.

23. The FCA has already apologised to you for the delay, and offered you a compensatory payment. I am pleased to say that, in response to my preliminary report, the FCA has said:

We recognise that our response to Mr Kaye would have been more informative had we provided further information about the FCA's proposed measures to address these issues.

We therefore accept the recommendation to send Mr Kaye a further letter, clarifying how the FCA proposes to address the concerns raised in this complaint.

Antony Townsend
Complaints Commissioner
30 May 2019