

**The FCA's response to the  
Complaints Commissioner's Report**

**FCA00140**

**Published on 7 September 2016**

**We have considered the final decision of the Complaints Commissioner on complaint FCA00410 and comment as follows.**

**We note that the Commissioner has made two main findings. First, the way the firm's period of suspension as an Appointed Representative was displayed on the Register was likely to give a misleading impression to consumers that the suspension was current. Second, the FCA took too long to accept and correct the problem. We also note that the Commissioner has accepted the steps the FCA took to improve the way the firm's information is displayed on the Register.**

**We accept the Commissioner's recommendation to pay £500 to the complainant for the distress and inconvenience caused. We will also offer our sincere apologies for not rectifying this matter more promptly.**

**However, we do not accept the recommendation to pay £5,839.29 in recognition of the loss of business. When considering whether an ex gratia payment is appropriate, we take into account a number of factors. Paragraph 7.14 of the Scheme lists various relevant matters we consider, including the gravity of the misconduct and (under second b) "the impact of the costs of compensatory payments on firms ... and, indirectly, consumers." We also take into account the previous decisions of the Commissioner and any policy statements the Commissioner has published about remedies including compensation.**

**We note that the Commissioner's published policy on remedies states: "The fact that a complaint is well-founded does not mean that a compensatory payment will automatically be recommended." We agree: an apology, other remedial action and a payment for distress and inconvenience may well be a suitable response. In a case where compensation might be appropriate, we would expect it to be shown that any financial loss "has directly resulted from the regulator's error" to use wording from the Commissioner's published policy. We also**

agree with the statement in the policy, that the Scheme “cannot award compensation ... or costs in the same way as a court or tribunal would do.”

In considering our response, we took into account that other parts of the entries for the complainant were clear and correct. Under the ‘status’ column, the complainant was shown as a current Appointed Representative, from when her relationship with her current Principal started, and was shown as an ‘active’ Approved Person. A prospective client may well have paid more attention to these ‘status’ entries than to those under the ‘names’ column. We also noted that the source of the complaint was the compliance specialist at the complainant’s Principal firm, rather than, for example, a prospective client or a product provider firm using the FCA’s Register Extract Service.

There was also a period from May 2014 to November 2015 when the complainant was not able to carry on regulated activities. It seemed to us likely that, after an absence from the market for a year and a half, it would take some time for previous contacts with clients and other parties to be re-established and new contacts to be made, and therefore there was uncertainty as to when the complainant would be able to generate an income from regulated activities at the level she had previously enjoyed. While we understand that the complainant was reluctant to promote herself until the Register was changed, as the ‘status’ column on the Register showed that the complainant could lawfully carry on regulated activities through her Principal, any potential client could have asked the Principal (or the FCA’s Contact Centre) for re-assurance as to the complainant’s status.

We have finally had regard to the nature of the Register. It is introduced as follows on our website:

The Financial Services Register is a public record that shows details of firms, individuals and other bodies that are, or have been, regulated by the [Prudential Regulation Authority \(PRA\)](#) and/or the [Financial Conduct Authority \(FCA\)](#). It also has information on firms regulated by the Financial Services Authority that had cancelled or stopped being regulated before April 2013.

The Register holds hundreds of thousands of entries for firms and individuals. Robust processes have been designed to remove the risk of errors occurring. Correcting these matters should not, however, create an expectation that substantial compensation will be available where errors occur. The Disclaimer on our website concerning the information we publish covers the information we publish in the Register: <https://www.the-fca.org.uk/legal>



**Overall, we consider that the present complaint should not result in a substantial payment for loss of earnings and interest and we do not therefore accept that part of the Commissioner's recommendation.**