

16 February 2022

Final report by the Complaints Commissioner**Complaint number FCA001448***The complaint*

1. On 7 October 2021 you asked me to investigate a complaint against the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

On 17 March 2021, your Firm X tried to apply for Authorisation. Whilst doing so, you experienced technical issues with submitting the Form A. You have explained, three of the firm's directors are already senior managers for other firms. When you tried to submit a Form A for one of the managers, the form kept coming up with the name of another firm he was a senior manager for and not for Firm X. As such, you could not submit the Form A as intended on 17 March 2021. The issue was resolved on 26 April 2021.

What the regulator decided

3. The FCA upheld your complaint, apologised for the six week delay in resolving the technical issue with the submission of your application for authorisation and offered you £50 ex gratia payment for the delay in dealing with your complaint.
4. The FCA Complaints Team also said it has provided feedback to the Supervision Hub for escalating issues to the Technical Support team in future.

Why you are unhappy with the regulator's decision

5. You think you should be offered compensation not just for the delay in dealing with your complaint but also for the six week period delay in which you could not submit the Form A so the authorisation application could begin. You have asked for the following remedy:

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- a. A refund of your application fee £1500
 - b. A refund of your initial compliance costs £760
6. You have told me you asked the FCA to prioritise the application given the delay you experienced in submitting it. The FCA Complaints Team said the Authorisation Team had agreed to do so, however, you are concerned that the application process is still ongoing. You have said you are not formally complaining about this at the present time.
 7. You have also said there has been considerable cost to your firm in chasing the FCA during this six week period of delay.

My analysis

8. The background to your complaint is that you were unable to submit a Form A for the authorisation application online as three of the firm's directors are already senior managers for other firms. When you tried to submit a Form A for one of the managers, the form kept coming up with the name of another firm he was a senior manager for and not for your firm X. Despite numerous calls from staff at your firm to the FCA's Supervision Hub, and the Supervision Hub chasing the Technical Support Team, the issue was not resolved for six weeks and in the end, the FCA sent you a paper form to fill in.
9. The FCA has upheld your complaint and apologised for the delay. I welcome this but I do not consider it goes far enough. In my view you experienced both unreasonable delay and a lack of care by the FCA, amounting to maladministration.
10. Paragraph 6.6 of the Complaint Scheme states that:

Where it is concluded that a complaint is well founded, the relevant regulator(s) will tell the complainant what they propose to do to remedy the matters complained of. This may include offering the complainant an apology, taking steps to rectify an error or, if appropriate, the offer of a compensatory payment on an ex gratia basis.
11. Payments for error, such as maladministration and delay, are clearly envisaged under the Scheme, and are the mark of good practice in complaints handling. I

therefore recommend that the FCA make an ex gratia payment for the six week delays in the handling of the application and the effect this may have had upon your business.

12. Whilst I think that the application fee should stand as it covers the process after the application has been submitted, it was my view that the starting point for an ex gratia payment should be at least £500 for the delay and maladministration I have identified, taking into account: the six week delay in resolving the technical issue which precluded you from submitting Form A; the FCA's failure to communicate adequately during this period; and the consequent repeat requests for information, which ultimately required you to complete and submit a paper form and the distress and inconvenience this caused you.
13. You accepted my recommendation about an ex gratia compensatory payment of £500 but said that 'I do believe you should refund the application fee. In the wider world when a customer experiences such an appalling level of service this would be standard. Indeed, as business if we were to deal with any of our customers in such a manner, and this was brought to my attention I would automatically refund any fees charged'.
14. You also said that 'in my original complaint I only wanted the application to be processed as if it had been submitted in March.'
15. The FCA declined to accept my recommendation for an ex gratia payment of £500. It said that it accepted the firm suffered inconvenience and that in 'considering the level of inconvenience and appropriate resolution we note that:
 - despite our errors, the application was determined within the statutory deadline; and
 - the authorisation date was delayed at the firm's request (which seems somewhat at odds to the elements of the complaint around delay)'.
16. The FCA has proposed, instead, to increase its ex gratia payment to you to £100 instead.
17. The FCA's position is that your request that your application be processed as if had been submitted in March 2021 has been met, as after receiving your paper application it expedited as it was allocated to a case handler on 4 August 2021,

and the firm was authorised on 4 February 2022 within statutory guidelines. The FCA has said that 'As such, notwithstanding the delay and inconvenience around the Form A, the application was determined within the statutory deadline from the date at which they attempted to submit.' And it has also said 'The firm is seeking a refund of its application fee of £1,500 and £760 in respect of compliance consultant costs. We note that you do not agree with this. It's not clear to us how the six-week delay has caused these losses to the firm'.

18. In my view, you have not claimed that compensation payment is for direct losses your firm has incurred, but rather as a good will gesture for the poor customer service you have received from the FCA. That is the basis I on which I also made my recommendation: in paragraph 12 above I make it clear that my recommendation is for delay and maladministration on the part of the FCA, and not to recompense you directly for any losses. My view that a refund of your application fee should stand remains for the reasons given above.
19. In reviewing both your comments and the FCA's comments after my initial recommendation of a £500 ex gratia payment, I am mindful that your primary goal was to ensure that the delay in submitting your application did not mean that there would also be a corresponding delay in the approval of this application. The FCA has said that it mitigated against this in prioritising your application after it was received in paper form.
20. Under the Complaints Scheme, paragraph 6.6 provides that

Where it is concluded that a complaint is well founded, the relevant regulator(s) will tell the complainant what they propose to do to remedy the matters complained of. This may include offering the complainant an apology, taking steps to rectify an error or, if appropriate, the offer of a compensatory payment on an ex gratia basis.
21. The FCA has increased its offer of an ex gratia payment to you to £100 for the inconvenience and has said that it has effectively taken steps to 'rectify the error' by prioritising your application.
22. As matters post application have not been the subject of an investigation by either the FCA or myself, I accept the FCA's statement it prioritised your application at face value. In this situation, the increased ex gratia payment, the

apology the FCA offered you and the subsequent prioritisation of your application is sufficient remedy for your complaint.

23. If you have concerns about what happened after your application was submitted, you should refer to the FCA for an independent review of that complaint. If you do so, and it transpires that the outcome has an effect which has a bearing on this complaint, I will reopen it should any new evidence come to light.

Amerdeep Somal
Complaints Commissioner
16 February 2022