

28 August 2020

**Final report by the Complaints Commissioner****Complaint number FCA00763***The complaint*

1. On 25 June 2020 you asked me to investigate a complaint about the FCA. I have carefully reviewed the papers sent to me by you and by the regulator. My preliminary report was issued on 3 August 2020 and both you and the FCA have had the opportunity to comment.

*What the complaint is about*

2. In December 2019 you complained to the FCA about difficulties you had experienced with online registration of a firm you are involved with. You requested that: *the FCA use one system for firms (Gabriel is hard enough to use without throwing Connect into the mix) and stop being so jargonistic and inflexible. It's not easy being registered with yourselves and you do not help lay people.*
3. There was a delay in your case being allocated within the Complaints Team and on 16 March 2020 you complained about this delay and a Late Return Fee imposed on your Gabriel return.

*What the regulator decided*

4. The FCA's complaint response dated 5 June 2020 was as follows:
  - a. Part One - *You are unhappy that [ the firm] had to register on the Connect system even though it was already registered on the Gabriel system. With the consent of [the Approved Person for the firm], you tried to complete the Connect registration. You found the registration process difficult and the Associates you spoke with in the FCA's Supervision Hub unhelpful. By way of a remedy, you have suggested that the FCA uses one system for firms as opposed to using both Gabriel and Connect.*

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This part of your complaint was upheld in part because you had been given incorrect information about security processes by third-party operators of the FCA's helpline and because it was felt that on one phone call a Supervisor in the FCA's Supervision Hub should have referred you to the Complaints Team. A recommendation was made that relevant managers provide appropriate training to ensure that outsourcers follow the correct procedures and that the Supervision Hub deals with queries such as yours in an appropriate manner. You were also informed about the FCA's plans to replace Gabriel and *provide a single identity for both Connect and the new data collection system.*

- b. Part Two - *You are unhappy with a £250 Late Return Fee you received for the late submission of the firm's return. You feel this is inconsistent with the standard of service you received from the FCA.*

This part of your complaint was not upheld on the basis that the return was due on 13 March 2020, the submission was made on 16 March, there were no mitigating circumstances that prevented the firm from completing the returns on time, and there was no FCA system failure at the time.

- c. Part Three - *You are unhappy with the way your complaint has been handled and with the time it has taken for an Investigator to be assigned to your complaint.*

This part of your complaint was upheld in part and you were offered a goodwill payment of £50 for the delay in allocating your complaint.

#### *Why you are unhappy with the regulator's decision*

- 5. You are dissatisfied with the FCA's complaint response because:
  - a. Part One – The response does not address the inflexibility of the FCA's security process where you had to be in the same place as the Approved Person each time in order for her to authorise you to speak to the FCA on behalf of the firm. This was not possible in your situation because even in normal circumstances you work in different counties and tend to conduct your business via email and telephone. In the current Covid 19 situation this

is not possible at all. You are unhappy that the FCA seems unwilling or unable to have a fair system that helps registrants and that the current system is too inflexible to cater for the needs of customers.

From the responses given, you are also concerned that the FCA allows third party call handlers to have private and sensitive information from customers. You would not be happy to provide such information, especially as it is only required for the FCA to update its own systems.

- b. Part Two – You do not agree with the FCA’s assertions and you consider that it seems to be ‘one law for the FCA and another law for the customer’. The FCA took over six months to deal with your complaint whereas you were three days late with the return after having issues on the FCA’s system and the firm was fined £250.
- c. Part Three – The FCA took over six months to deal with your complaint and to only offer £50 as a gesture of goodwill is *laughable at best*. In your view, a more equitable approach would be to offer £250 to cancel the fine.

#### *My analysis*

##### *Part One – FCA registration process*

- 6. The FCA’s files show that the complaint investigator made detailed enquiries of the relevant internal team about this aspect of your complaint. These enquiries revealed that:
  - a. You were given incorrect advice by an outsourced helpline operator about the process for authentication of callers. The complaint response informed you of the correct process.
  - b. The helpline operator should not have completed or attempted to complete authentication or advise on what is required. The agreed process was to transfer the calls to the FCA’s Supervision Hub who have been trained to correctly explain the process.
  - c. Callers should not be aware that they were speaking to an outsourced firm.
- 7. The Complaints Team recognised that you had experienced poor service in relation to points a. and b. above and made a recommendation for training in relation to the errors that had occurred in your case.

8. However, you are also concerned about what you see as the inflexibility of the FCA's system and that a third party was involved without you being made aware. In correspondence with you after issuing its complaint response, the Complaints Team said: *We appreciate you feel that the system is inflexible, however, the security procedure is in place to verify the caller in order to protect consumers.*
9. The FCA has discretion to decide what verification and authentication processes it considers necessary. It can also decide to use contractors. Under the Complaints Scheme (paragraph 3.5) complaints about dissatisfaction with such general policies are excluded from investigation. However, where the FCA decides to use an outsourced firm it remains responsible for the service provided, and it must ensure that proper safeguards and training are in place. This clearly did not happen in your case. The FCA's files show that in response to the Complaints Team's recommendation on this there was a commitment from the relevant team to use your case as a reference if the outsourced company was used again. This was a positive response to the concerns that you had raised and the poor service you received.
10. The FCA's complaint response also informed you that Gabriel is being replaced and provided you with some links to publicly available information about this: <https://www.fca.org.uk/news/news-stories/gabriel-users-share-suggestions-our-new-data-collection-platform> and <https://www.fca.org.uk/news/news-stories/new-platform-replace-gabriel-improve-collect-data>. The stated intention is *to improve user experience when submitting data.*
11. The internal team had also told the Complaints Team that: *We are happy to receive feedback on the screens, and any suggestions to improve these will be considered. If the user could provide examples of where they had confusion, these can be looked into. Additionally, on the How to register for our new data collection platform webpage, we have an online explainer video and user guide to guide, we would also welcome feedback on how to make these clearer.*
12. Although the FCA's complaint response told you that *The Team has informed me that they take consumers' feedback and any suggestions into consideration when making improvements to the systems* it did not pass on the invitation to you to give further feedback. I **recommend** that it does so now.

### *Part Two – Late Fees*

13. While your complaint was being considered, in March 2020, the firm missed sending in a Gabriel return by one working day and a Late Fee of £250 was imposed. The FCA's files show that reminders were sent to you on 3 February 2020, 3 March 2020, and 6 March 2020 and that the firm has submitted returns in the past, which were submitted on time and is therefore familiar with the process. You have said that you were working out accurate end of year figures to 31 January 2020 but there is no evidence that you informed the FCA of this. Unfortunately, due to the timing, the firm cannot benefit from a COVID-19 related pause in Late Return Fees announced by the FCA on 23 March.
14. I am satisfied that the FCA's response to this aspect of your complaint was reasonable. In essence, the FCA told you that to be fair and consistent to all firms it does not generally have discretion to waive the fee once it becomes payable unless there is an FCA system failure, which there was not on this occasion. Although I can understand that this is frustrating for you in comparison with the FCA's own delays in handling your complaint, there is no causal connection between the firm's late return and the FCA's delayed complaints handling.

### *Part Three – Delay in FCA complaints handling*

15. The FCA's files show that the Complaints Team initially decided that your complaint, received on 2 December 2019, could be resolved at local area level. Although the local area team considered the issues raised, a response was not provided in the time required and your case was passed back to the Complaints Team who wrote to you on 31 December. You were told that the team was experiencing delays, that your case would be allocated to an investigator 'in due course' and that meanwhile they would 'aim to update you every four weeks'.
16. Updates were sent to you between 30 January and 21 May 2020. Your case was allocated to an investigator on 20 April and you were sent a summary of your complaint on 1 May. The complaint response was sent to you on 5 June.
17. The FCA has been open with me about the delays in its complaints function and I have commented on this in detail in my recently published [Annual Report](#), where I say that: *In too many of the cases that reach the Commissioner, the FCA*

*is not meeting the Scheme's requirements.* The Complaints Team explained to you the impact of these delays from 31 December and offered you a further apology in its complaint response, along with an *ex gratia* payment of £50 for the distress and inconvenience caused to you. I have considered whether that was a reasonable response to the delay that you experienced.

18. As I understand it, the approach taken by the FCA is to offer a payment that reflects the time actually taken over what would be a reasonable time. That seems a reasonable approach given the current, unacceptable, situation. In your case, the delay was the nearly five months that it took to allocate your case, which was then dealt with in a reasonable time frame (7 weeks).
19. However, I have expressed to the FCA my concern that its payments for distress and inconvenience are out of step with other complaints handling bodies. In August 2018, the FCA told me that: *Each consideration of ex gratia payment for delay is different, however we have worked on a basis of £150/year for delay (based on previous awards).* Even given this modest starting point from two years ago, the sum offered to you was inadequate.
20. I appreciate that you would like the *ex gratia* amount to be increased to £250 to 'cancel out' the Late Fee imposed on your firm because you feel it is unfair for the FCA to impose strict fines on small firms while not having its own house in order. That is understandable. However, for the reasons stated in paragraph 14, it would not be appropriate for me to recommend this, as there is no causal link between the late return fee and the FCA's delays.
21. However, I do consider that some account needs to be taken of the frustration caused to you by the mishandling of your original attempts to register with Connect, which was then exacerbated by the delay in dealing with the complaint. The FCA's decision letter included an apology to you 'on behalf of the third party outsourcer', but that seems to me to be wrong in principle: the responsibility for the process was the FCA's, and it must take responsibility for the failings of any outsourcing which it chooses to put in place. For these reasons, I **recommend** that the FCA increases its *ex gratia* payment offer to you to £100 - £50 for the complaints handling delay, and £50 for the failure in the Connect registration helpline arrangements.

*My decision*

22. I have partly upheld your complaint because:

- a. the FCA's response to Part One of your complaint should have invited you to give feedback on your experience to the relevant internal team.
- b. The *ex gratia* payment did not reflect the cumulative effect on you of the mishandling of your original telephone calls followed by the delays.

23. I have **recommended** that:

- a. the FCA now invites you to give feedback and suggestions for improvement on using its screens and registering for the new data collection system
- b. the FCA increases its *ex gratia* payment offer to £100.

I am pleased to say that the FCA has accepted both these recommendations.

Antony Townsend

Complaints Commissioner

28 August 2020