

23 August 2016

Dear Complainant,

**Complaint against the Financial Conduct Authority
Reference Number: FCA00074**

I have now reviewed all the papers you and the Financial Conduct Authority (FCA) have sent to me, and am able to write to you. My final decision on your complaint is explained below. Before finalising this decision, I invited comments from you and the FCA on my preliminary decision. I have considered the comments received in detail and made some reference to them in this final decision. However, they have not significantly changed my preliminary decision.

How the complaints scheme works

Under the complaints scheme, I can review the decisions of the FCA's Complaints Team. If I disagree with their decisions, I can recommend that the FCA should apologise to you, take other action to put things right, or make a payment.

Your complaint*Background*

From your email correspondence and the papers submitted to me by the FCA I understand that your concerns initially arose from the way the FCA handled your application in December 2013 to vary your Part 4A permissions. You were seeking permission to conduct regulated mortgage business. In February 2015 you made a complaint to the FCA about the way this application had been handled, about the conduct of the FCA's Authorisation Team and the decisions made by the FCA's Regulatory Transactions Committee (RTC) and Regulatory Decisions Committee (RDC) to refuse your application. On 1 April 2015, the FCA Complaints Team declined to investigate your concerns on the basis that, under paragraph 3.6 of the Complaints Scheme (the Scheme), your complaint would be better dealt with in another way. This was because you had the option of a referral to the Upper Tribunal to reconsider the outcome of your application. The FCA confirmed its decision on 20 April.

You referred your complaint to my office. We wrote to you and the FCA indicating our view that certain aspects of your complaint should be investigated by the FCA under Stage 1 of the Scheme. In your response to my Preliminary Decision, you say that I should not have referred these matters back to the FCA but should have conducted my own review. However it was my view, exercising my discretion under the Complaints Scheme, that it was more appropriate for the FCA to conduct a Stage 1 investigation first as they had not done so.

We said that in our view only the following matters should be considered:

- the Authorisation Team’s conduct when assessing your application (specifically were there any administrative failings in the FCA’s approach to the assessment of your application or was the assessment process it adopted overly or unnecessarily bureaucratic in its approach); and
- the Authorisation Team’s actual behaviour and/or conduct during the meetings it held with you (including your concerns over the manner in which notes were taken during the meeting).

We also said that under the Scheme we were unable to review your concerns about:

- the recommendations the Authorisation Team made to the RTC and the RDC
- the manner in which the RTC and RDC assessed your application (which includes the emphasis which the committees placed upon the Authorisation Team’s recommendations to them); and
- the contents of the Warning and Decision Notices issued by the RTC and RDC.

This was because these issues formed part of the application (and the RDC) process which, under the Financial Services Act 2012, can only be considered by the Upper Tribunal.

Your complaint was referred back to the FCA for Stage 1 investigation on 24 June 2015.

Current Complaint

On 16 July 2015, the FCA wrote to you about the action it was taking in relation to various complaints you had raised. It said that it was investigating as Element One of your complaint the two matters we had said it should look at, about the Authorisation Team’s conduct. It regarded these matters as a complaint about ‘lack of care’. Element Two of your complaint was a separate complaint you had made on 18 June 2015, in which you raised concerns about the FCA’s processing of your application for Consumer Credit Authorisation. The FCA told you that it was deferring its investigation into Element Two under paragraph 3.7 of the Scheme because your complaint “*is connected with, or arises from, some form of continuing action by the FCA, in this case it the FCA’s consideration of ARCIS’s application for Consumer Credit Authorisation*”. Element Three of your complaint was your concern about the FCA’s rejection of ARCIS’s application for Part IV regulated mortgage permission. The FCA told you that this element of your complaint had been addressed by our letter of 24 June 2015 and that it considered the matter closed.

On 16 March 2016, the FCA issued its response on Elements One and Two of your complaints as identified in July 2015. Element One was partly upheld on the basis that “*the meeting notes should have been recorded in a manner which could not be disputed, for example, an audio recording or alternatively, the agreement of meeting notes (or meeting minutes) once the meeting had concluded*”. An internal recommendation to that effect was made. The FCA repeated its position on deferring Element Two of your complaint because you were pursuing matters in the Upper Tribunal. The FCA offered you its “*sincere apologies for not providing you with this substantive response within a reasonable time*”.

Your complaint to my Office is that the FCA’s response does not represent the material facts, that it was inappropriate to amalgamate your complaints under one reference number, that this has caused unnecessary delay, and that your original complaints about the conduct of the Authorisation Team still stand.

My position

With regard to Element One of your complaint, subject to what I have to say below about delay, I am satisfied that the FCA has thoroughly considered the points that you made and that its response to you was reasonable. This is because I am satisfied that the FCA has followed its processes in dealing with your application for Part IV permissions, and that it was entitled to make the robust enquiries of you that it did. As you know, I am not considering the outcome of your application as that has been subject to the appropriate review procedures. I am however satisfied that the FCA Complaints Team has appropriately considered your complaint about the conduct and behaviour of the staff involved and that the conclusions reached are reasonable in the circumstances. I welcome the fact that there has been an internal recommendation for a new process for agreeing notes of meetings in circumstances which are likely to be contentious and which may be subject to review through appeals procedures.

I also consider that the FCA's response to defer Element Two of your complaint was correct because this was subject to continuing proceedings. I understand that this is still the case. It is open to you to refer your concerns back to the FCA Complaints Team when these matters have concluded. In your response to my Preliminary Decision you have said that there is no continuing action in respect of your original complaint (FCA reference 4224) but Element Two of your complaint related to your Consumer Credit Authorisation (FCA reference 4372).

With regard to Element Three of your complaint, the FCA informed you that this was closed in July 2015. I consider that this was a reasonable response, as my letter of 24 June 2015 had made it clear that these matters could not be investigated further and had set out the issues that could be investigated, which were correctly summarised by the FCA as Element One. In your response to my Preliminary Decision you have made a number of points about your continuing concerns about the Authorisation process. However, as already explained, I am not considering these matters nor am I reviewing the Upper Tribunal decision.

Although I am satisfied with the FCA's substantive response to these three elements of your complaint, I do have concerns about two aspects of the process that were followed and which I know also concern you. These are the length of time it has taken the FCA to investigate your complaints and their amalgamation under one reference number.

I deal with the question of the reference numbers first. On the face of it this was a minor administrative change about which the FCA has sought to reassure you. However, I appreciate that it has been of considerable concern to you, not least because you consider it has been used to disguise the lengthy delays in dealing with your complaints. You were originally given the FCA reference number 4224 for your complaints about the Authorisation Team. When this matter was referred back to the FCA by the Office of the Complaints Commissioner in June 2015, it was amalgamated with your further complaint about your application for Consumer Credit Authorisation and given the reference number 4372. I am not clear about the administrative logic for this. Although it was something the FCA was entitled to do, in my opinion it has not been helpful because your complaints were clearly about quite separate matters. I do not consider that the effect of this amalgamation of reference numbers was to combine your Part 4A mortgage advice permission and Consumer Credit Advice applications. From the documents I have seen, I am satisfied that these have always been treated separately by the FCA. However, I agree with you that it was confusing

for the FCA Complaints Team to combine your complaints about these matters under one reference number.

Furthermore, the FCA's Stage 1 response says that one of the reasons for the severe delay in responding to your complaints was "*ensuring that no overlap occurred in investigating Element Two on the basis of the Consumer Credit RDC decision (issued in December 2015) and the subsequent appeal to the Upper Tribunal in January 2016*". I can therefore understand why you might think that the amalgamation of reference numbers has contributed to a delayed response to Element One of your complaint.

I turn finally to the question of delay. It has taken the FCA from 24 June 2015 to 16 March 2016 to issue its Stage One response to your complaint, one week short of nine months. This is far too long. You had originally made your complaint about the issues we identified as being capable of being investigated (Element One) in February 2015, which as you point out was several months earlier. Given that the 'deferral situation' in respect of Element Two remained the same between June 2015 and March 2016, I do not accept the FCA's assertion in the Stage One response that it was reasonable to delay its response to Element One to ensure there was no overlap with proceedings in respect of Element Two (your Consumer Credit application). I note that the FCA Stage One response additionally cites "*the changing of the Complaints Investigator and my management of this case*" as reasons for the delay.

From the FCA file supplied I have tried to verify the steps the FCA took to investigate your complaint and how actively it has pursued these. I can see that there was initially a delay in investigating Element One, between 24 June and 7 September 2015, when no action was taken because a caseworker left. You were sent a holding letter on 13 August 2015. On 7 September 2015, the new caseworker commenced initial work on your complaint by sending an internal email asking for comments on Element One of your complaint and an update on your application. This was responded to on the same day and on 8 September one of the staff members you had complained about also responded offering to supply information. Further holding letters or emails were sent to you on 10 September, 9 October, 6 November, 4 December (when it was said that further enquiries were being clarified), 8 January 2016 (when a substantive response was promised by the end of the month), 29 January, 25 February (when you were told that the investigation had been concluded and, subject to quality checks, a substantive response was expected to be sent by 4 March), 7 March (when you were told that the FCA was now aiming to try and provide its response before 9 March) and 10 March. The Stage One response letter was eventually sent to you on 16 March 2016.

In its decision letter, the FCA says that its investigation "*involved liaising with the Authorisation department to review any retrievable communication with the Authority and AMC during the application process. I have also reviewed the RDC Final Decision letter for the Part 4A 'advising on mortgages' permission applications*". I accept that this was the approach taken because emails and other communications are quoted in detail in the decision letter. However, the file supplied to me by the FCA does not make it clear when, between 8 September and 16 March 2016, the documents and materials were reviewed, nor precisely what was considered. It seems that further enquiries were being clarified in December 2015 but again no details have been supplied. On 1 March, the caseworker sought input from the staff member in the Authorisation Team on the decision letter; this was replied to on 7 March. Further final checks were then apparently made before the response was sent to you on 16 March.

The FCA accepts that there has been inappropriate delay in your case and has sincerely apologised for this. In reviewing this matter I have asked myself whether this was a sufficient response. Overall, I have concluded that it was not and that a compensatory payment would also be appropriate. There was clearly a period of inactivity between June and September 2015 and the FCA has accepted that there was poor case management. It was not made clear to you that the original caseworker had left the organisation and again the FCA has apologised for this. I am unclear how actively the investigation into Element One of your complaint was being pursued between September 2015 and February 2016. I also consider that there was poor management of your expectations, particularly between January and March 2016 when you were told repeatedly that a substantive response was imminent.

Although I appreciate that the FCA's intention was to keep you informed, it is important that anticipated response times are realistic. In addition, I do not accept that it was reasonable for the FCA to state that matters related to Element Two of your complaint excused the delayed response to Element One. In my view this was exacerbated by unhelpfully combining your complaints under one reference number. The resulting delays were unacceptable. Taking into account the initial delay of over two months, the prompt response from the relevant staff member on 8 September and the lack of evidence or explanation for the subsequent delays, I **recommend** that the FCA offers to pay you £150 for the distress and inconvenience caused by the long delay in responding to Element One of your complaint. In response to my preliminary decision, the FCA has indicated that it accepts my recommendation.

Conclusion

I have upheld your complaint of delay and recommended that the FCA offers to pay you £150 for the distress and inconvenience caused to you by this. I am satisfied that its substantive response, to partially uphold Element One of your complaint, was reasonable in the circumstances. I am also satisfied that it was appropriate for the FCA to conclude that Element Two of your complaint should be deferred and that Element Three of your complaint related to matters that were closed. Although I appreciate that overall you may be disappointed with my decision, I hope that you will understand why I have reached it.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Antony Townsend', with a stylized flourish at the end.

Antony Townsend
Complaints Commissioner