

8 June 2018

Final report by the Complaints Commissioner**Complaint number FCA00457***The complaint*

1. On 27 April 2018 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. Both you and the FCA have commented on my preliminary report issued on 23 May.

What the complaint is about

2. You complained to the FCA on 2 February 2018 about advice given to you in connection with variation of your mortgage permissions. The FCA divided your complaint into the following two elements:
 - a) Following discussions with the FCA, you submitted a variation of permission application to remove any mortgage related permissions your firm had. You asked the FCA's Supervision department if you could continue to sell buy to let mortgages and you say '*they assured you that you could continue to do so*'. However, lenders have removed you from their panels and you believe the FCA has misled you about this.
 - b) After being informed by your lenders that you were to be removed from their panels, you contacted two FCA associates in November and December 2017 and received no response until February 2018.

What the regulator decided

3. On 22 February 2018 the FCA complaints team told you that it had not upheld your complaint because it was satisfied that you were not provided with incorrect information when you varied your firm's permissions and it had not seen any instances where the FCA failed to respond within a reasonable timeframe.

Why you are unhappy with the regulator's decision

4. You are dissatisfied with the complaint outcome on the grounds that you were informed "unequivocally" that you would still be able to conduct unregulated buy to let activities whereas in fact lenders require firms to have permissions for regulated activities in order to be on their panels. You therefore wish to reverse the last variation of permissions that you agreed with the FCA.

Preliminary point

5. Under the Complaints Scheme I am not able to provide the remedy you seek - reversal of your last variation of permission – as that is a regulatory matter outside my remit.

FCA00457

My analysis

Element 1

6. The FCA's complaint response says that you were correctly told that removing your permissions for regulated business would not prevent you from transacting unregulated business and that if lenders subsequently removed you from their panels that was a commercial decision and not the concern of the FCA.
7. I note that there is a considerable regulatory background leading up to your last variation of permissions. You accepted the FCA's suggestion to enter into a voluntary variation of permission as an alternative to further regulatory action by the FCA to remove your mortgage positions at its own initiative.
8. Given these circumstances, I consider the FCA's complaint response to be reasonable. It was not the FCA's responsibility to warn you that lenders might make a commercial decision to remove you from their panels for unregulated business.

Element 2

9. The FCA's complaint response said that it could not find any evidence of you contacting the FCA by phone after 19 October 2017, and that you had been unable to provide further information. The complaint response went on to say that your email of 3 January 2018 asking for reinstatement of your mortgage permissions was responded to on 16 January 2018 when the Authorisations Team advised that you would need to submit a variation of permission application. On 1 February 2018 the Team emailed you to confirm it would not reverse your request to remove your firm's mortgage permissions, and reminded you of the Supervision Team's stance on this issue. The complaint response concluded that there were no unreasonable delays in responding to you.
10. I have reviewed the FCA's case files and they support the complaint response. In response to my preliminary report you said that you are disappointed with this conclusion as you had forwarded evidence of contact with the FCA which in your view has not been taken into consideration. We invited you to send in any other information you wished me to consider. However, the emails and other information that you sent were supplied to me in the FCA's file and had already been taken into account. My conclusions are therefore unchanged.
11. I note that the Authorisations Team informed the Complaints Team it had a number of telephone conversations with you in January 2018 but that notes of these calls had not been "saved to the case". This is clearly poor practice. I am pleased to note that, in response to my preliminary report, the FCA has confirmed that the expectation is for notes of all telephone calls to be saved to cases and has informed me of steps it is taking to ensure that this happens in future cases.

FCA00457

My decision

12. For the reasons stated, I have not upheld your complaints. I realise that you will be disappointed by my decision but I hope you will understand how I have reached it.

Antony Townsend

Complaints Commissioner

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FCA00457