

4 January 2023

**Final report by the Complaints Commissioner****Complaint number 202201169***The complaint*

1. On 17 August 2022 you asked me to investigate a complaint about the FCA.

*What the complaint is about*

2. In its decision letter the FCA described your complaint as follows:

*Part One*

You allege there has been an unreasonable delaying of the Firm's various FCA applications. You claim the extended length of time the Supervision team took to complete their own review further delayed the resumption of the FCA's processing and determining of the Firm's other applications.

You are unhappy with the time taken to process the applications your firm has submitted. Although the FCA has statutory timescales to meet, an application cannot be assessed without consideration of all relevant factors in order to come to the right outcome.

*Part Two*

You are also unhappy with the manner the Supervision team carried out their review and believe there was a lack of consideration of the serious financial and operational damage caused to the Firm and the personal distress caused to its employees and yourself.

*What the regulator decided*

3. The FCA did not uphold your complaint.

## Part One

4. In Part One of your complaint the FCA stated that the FCA has 12 months to assess and consider an application if the application is considered as incomplete. Having considered all your applications individually, the FCA found that none of your applications took over 12 months to complete and therefore it did not breach the statutory timescales. It added that one application (the Variation of Permission VoP) was withdrawn prior to completion.
5. For each application the FCA explained that the Case Officer involved sought further information from your Firm and considered any wider intelligence held about the Firm by the FCA. The FCA stated that this was appropriate in order to protect consumers from any potential harm, the Case Officer needed to ensure an application is correctly assessed and all information considered to make sure the approval of an application is appropriate.

## Part Two

6. In Part Two of your complaint the FCA reviewed correspondence between the Firm and Supervision which included engagement between January and December 2020 including the s165 request in April 2020. The FCA concluded that the correspondence was professional and respectful of you and the Firm.
7. There were several questions you put forward to the FCA in Part Two of your complaint. The Complaints Investigator informed you that as some of the questions related to individual FCA members of staff, it was not appropriate to identify individuals, but it did consider the actions of the teams you had dealt with.
8. With respect to the s165 request, the FCA explained that the scope of questions contained in the s165 letter demonstrated a number of wide-ranging questions that needed further input from your Firm. Some of the information provided to the FCA following the s165 caused concerns and these were dealt with in the feedback letter and required remedial actions. In response to one of your comments, the FCA did not find any evidence that the use of s165 powers was considered as a negative factor or created any type of suspicion for your Firm. It also added that it did not agree that the feedback was unfair.

9. You expressed that you were concerned that ‘...the s165 besmirched the company and created suspicion in the minds of other areas of the FCA...’ The FCA did not find any evidence that such concerns about your Firm were raised to any unrelated area of the FCA. It mentioned that the Listings team were engaged in the process but believed that this was appropriate as the team were directly involved in your Firm’s proposed business model.
10. The FCA looked at your concerns surrounding Supervision’s review of your Firm, the timescales and potential financial and other damage to the Firm as the negative impact of the FCA’s actions. With respect to the s165 review the FCA said there was no evidence it had seen that the review was ‘...dragged out...’ or that there were any ‘...specific delays...’.
11. The FCA recognised your comments that you had requested ‘...a more optimal path to complete their review...’ and this request was ignored. The FCA noted that you did not identify what you considered the more optimal path was.
12. You stated that you had been personally impacted by the engagement with Supervision. You believed the s165 review caused your Firm financial damage and personal distress to not only you but also employees of your Firm. The FCA explained in its decision letter that it had a statutory objective to protect consumers from harm. As part of this objective, it stated it needed to carry out investigations into Firms where it considered there could be potential for detriment. It added that this may have meant cost and inconvenience to investigate but it is not influenced by personal opinions or a desire to cause any harm or damage. The FCA finalised its findings by mentioning that it had not seen any incidence of incompetence or bad behaviour by the Supervision team in the correspondence that had been reviewed, nor had the FCA seen evidence of personal opinions expressed about yourself by any FCA staff member.

#### *Intelligence*

13. The FCA explained why assessment of intelligence was crucial to the FCA and how it uses information to mitigate risk of harm and markets it oversees. It also explained the expectation of its Case Officers. The FCA reviewed the two applications you had with it which followed the s165 and in each instance it saw

that the Case Officer sought to understand your Firm's business model and considered all intelligence available to them.

14. You had concerns about your Firm receiving a fair outcome in its future application and made requests surrounding this, such as the amendment of any system flags that may prejudice the Firm's current applications. The FCA's view was that each application was dealt with on its own merits and all relevant factors are considered and intelligence or previous information is not removed from the FCA systems. It was explained that the FCA needs to ensure all information pertinent to a Firm and its application is considered to give a full picture of the firm. The Complaints Team finalised this point by adding that it had investigated your complaint in a sensitive and respectful manner and only sought input from areas with direct involvement to reach an accurate and fair outcome. It also included that it had read all correspondence you had sent to it and making a complaint against the FCA would not be considered as a negative factor in relation to your firm.
15. You also put some questions forward specific to the Complaints Team which the FCA answered in its decision letter.

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

16. In your complaint letter to me dated 17 August 2022 you have informed me that an independent investigation is appropriate as you are dissatisfied with the way the FCA complaint team has investigated the complaint and the outcome reached. As such I shall be reviewing your complaint described in the FCA's letter as Part One and Part Two of your complaint. I will be referring to this as '...Element One...' and '...Element Two...' in my report.

*Element One*

17. You allege there has been an unreasonable delaying of the Firm's various FCA applications. You claim the extended length of time the Supervision team took to complete their own review further delayed the resumption of the FCA's processing and determining of the Firm's other applications.
18. You are unhappy with the time taken to process the applications your firm has submitted. Although the FCA has statutory timescales to meet, an application

cannot be assessed without consideration of all relevant factors in order to come to the right outcome.

#### *Element Two*

19. You are also unhappy with the manner the Supervision team carried out their review and believe there was a lack of consideration of the serious financial and operational damage caused to the Firm and the personal distress caused to its employees and yourself.

#### *Preliminary points*

20. I have reviewed all the material you have provided to me. I have also been provided with the FCA case file. The documents provided on this matter from both you and the FCA were voluminous, all of which I have analysed and considered carefully whilst looking at what is closely and appropriately connected to the Complaints Scheme.

#### *My analysis*

#### *Element One*

21. For the purposes of your complaint, I understand the applications process that you were unhappy with were, the Variation of Permissions application, Waiver application and s165 process. I understand your main concerns with Element One of your complaint is what you allege to be the FCA's unreasonable delay and the time taken to process the applications.
22. During my perusal of the FCA case file I was pleased to see the FCA kept you updated and apologised when there was a delay caused with your applications. For example, I can see on 28 September 2021 the FCA contacted you regarding your Waiver application stating '...I'm sorry this is taking so long. I'm currently awaiting a response from legal colleagues, who have indicated that they hope to respond either this week or early next...' You responded to this email shortly after thanking the FCA for the update. I am also able to see on the same day, the FCA staff member chased this internally with legal colleagues to seek an update, citing that they wanted to update the Firm very soon. They did this prior to responding to your email.

23. I can see you chased the matter again on 13 October 2021 and the FCA replied as follows,

I'm afraid my legal colleagues were only able to provide initial comments late last week. They apologised for the delay which is driven by a large workload and competing priorities. I have today responded to them taking on board their comments, and I've asked if they can respond to me by this Friday with final comments. I'm not sure if they will be able to do this, but I will chase them tomorrow to see if I can get an update. I will provide you with an update as soon as I have one

24. You responded to this email shortly after thanking the FCA for the update, stating you appreciated it and that regular updates helped you to manage expectations on your end.

25. Overall, my investigation and analysis of the FCA's case file and all its communications with you did not raise any significant concerns that your applications were unreasonably delayed so I have not upheld part of Element One of your complaint. I was pleased to see the FCA took your update email requests seriously, chased internally and kept you informed, whilst most importantly being transparent and offering its apologies for delays which I've found to be justified.

26. In the FCA's decision letter it informed you that it did not breach the statutory timescales as the FCA had 12 months to assess and consider an application if the application is considered as incomplete. I can see that an application for a Variation of Permission (VoP) on the FCA website here, <https://www.fca.org.uk/firms/variation-permission/apply> stipulates the following:

We process most applications and make decisions well within FSMA's standards – this will be the earlier of:

- 6 months from when we determine the application to be complete
- 12 months of receiving an incomplete application (missing documents or information)

27. So, I agree with the FCA in respect of a VoP applications and that the FCA has 12 months to assess and consider an application if the application is considered as incomplete.
28. For Waiver applications it is not so clear that a 12 month statutory timescale applies. On the FCA website with respect to Waiver applications and ‘...Timeline...’ here <https://www.fca.org.uk/firms/waivers-modifications/process-applications> it states the following: ‘...No statutory deadlines exist for waiver applications...’
29. When it comes to s165 requests the legislation (which can be accessed here: [Financial Services and Markets Act 2000 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2000/7/section/165)) is also silent on whether a 12 month statutory timeline applies.
30. There appears to be a possible discrepancy and inaccuracy with a statutory timeline of 12 months for Waiver applications and s165 requests that the FCA states applies in its decision letter. Given the FCA website links I have highlighted above concerning [Waiver applications](#) and the legislation for [s165 requests](#), I think it is important that the FCA clarify for consistency and accuracy why it thinks a 12 month statutory timeline applies for a Wavier application and s165 request. This is important given the apparent discrepancy between the FCA’s decision letter (12 months) verses what is on its website and in the FSMA legislation.
31. I invite the FCA to respond on this point, it should substantiate why it feels a 12 month timeline applies for Waiver applications and s165 requests. The FCA have stated in its decision letter that it is ‘...statutory timescales...’ so therefore it should explain the source which explains this. For example, this source could be the FCA Handbook or FSMA legislation.
32. The FCA have responded to me and clarified its position as follows with respects to s165 requests,

there is no statutory deadline for a s165 request. Section 165 of FSMA provides the FCA with the power to require information from Authorised Persons within a specified time. Any request must be made in writing and will set out the nature of the information or specific documents that must be produced.

33. With respects to Waiver applications the FCA also responded to this point and informed me that I am correct that there is no statutory timescale that applies to this type of application.
34. The FCA having re-read its FCA file and decision letter appreciates that this has caused some confusion and apologised to me for this. It has also recognised that it should have been clearer in its wording to me regarding its file and to you in its decision letter. The FCA state that the decision letter issued to you should have stated the following,

The FCA has 12 months to assess and consider a VoP application if the application is considered as incomplete. Each of the VoP applications required further information to be requested from the firm and so were incomplete applications. The Waiver application is not subject to a statutory timescale. None of the cases took over 12 months to complete (although I appreciate the second VoP application was withdrawn prior to completion) and so the FCA did not breach any statutory timescales in regard to the VoP applications.

35. This information should have been provided to you in the FCA's decision letter. Noticeably in Element One of your complaint you have mirrored what the FCA told you in its decision letter where you state '...the FCA has statutory timescales...', when we now know, given the clarification from the FCA, that statutory deadlines don't apply for s165 requests and Waiver applications. The FCA has extended its apologies to me, but it should also extend its apologies to you in respect of the above not being made clear to you in the decision letter.
36. Nonetheless I am pleased this part has now been clarified.

#### *Element Two*

37. I understand your concerns with Element Two of your complaint centre upon the way the Supervision Team carried out its review. You also believe there was a lack of consideration of the serious financial and operational damage caused to the Firm and the personal distress cause to the Firm's employees and yourself.
38. During my analysis and review of the FCA case file I have reviewed the way the Supervision Team conducted its review. This involved not only reviewing Supervision, but also the several strands that came with this such as its internal



communication with other areas of the business, such as the FCA's General Counsel Division. I should start by saying that I did not come across anything concerning when investigating the way in which the Supervision Team conducted its review.

39. In scenarios where Supervision had communications with other departments, seeing this first-hand, I found this communication to be appropriate. Supervision along with other departments, were impartial and respectful whilst ensuring it was adhering to the FCA's strategic and operational objectives. I did not find any instances where the FCA's actions were inconsiderate towards your Firm.
40. I am sorry to hear about the distress that this may have caused to you personally and employees of your Firm. My analysis of the FCA's actions in this case show that any areas where there were concerns with the FCA's strategic and operational objectives being adhered to, the FCA's actions with regards to your Firm were warranted. I can see this was the case for example where the FCA asked questions, sought further information from your Firm and provided feedback letters with action points. So, I do not believe there was any wrongdoing on the part of the FCA with regards to Element Two of your complaint.

*My decision*

41. I am sorry but for the reasons above I have not upheld Element Two of your complaint.
42. I have upheld part of Element One of your complaint, given that you were provided with incorrect information in the FCA decision letter and in turn that information formed part of your testimony for this complaint point and may have caused some confusion. Whilst the FCA has apologised to me in respects of this, **I recommend** the FCA also ensures it issues an apology to you personally considering the confusion that may have been caused in its decision letter.

Amerdeep Somal  
Complaints Commissioner  
4 January 2023