

16 March 2023

Final report by the Complaints Commissioner

Complaint number 202201657

The complaint

1. You complained to the FCA that your firm ended up accruing authorisation fees for the 2022/23 financial year because of its delayed action in response to reports you made.

What the complaint is about

2. Your firm operated as an authorised Claims Management Company (CMC) and submitted tens of thousands of complaints to banks in the UK for the mis-selling of PPI contracts.
3. You were in the process of winding down these complaints post the 2019 PPI deadline and made good progress with most banks but one (the Bank).
4. As a result of a lack of engagement from the Bank and what you put down to lack of care for consumers, in breach of the FCA's rules of conduct, you submitted a complaint to the FCA about the Bank in August 2021. You set out your concerns and the negative impact on your customers.
5. You followed this up in January 2022, because there was still no movement from the Bank.
6. Whilst the FCA clearly took steps to encourage the Bank to make progress with the review and resolution of these complaints, because the Bank eventually actively engaged with you, it is your position that the FCA did not act fast enough.
7. The last of the complaints from your customers were resolved in July 2022 but you were issued with an invoice for authorisation fees for the financial year 2022/23. It is your complaint that had the FCA acted quicker on your complaint,

202201657

in August 2021 when you initially sent it, the Bank would have resolved the outstanding complaints quicker and you would have been able to apply for de-registration before the 31 March 2022 deadline and you would not have been made liable for the authorisation fee.

8. Furthermore, you are concerned because the fee was calculated based on the turnover of the firm in the previous financial year, which was significantly higher than in the applicable year and therefore a lot more costly than what you had anticipated.
9. As a resolution, you wanted the FCA to de-apply the fees for the 2022/23 financial year.

What the regulator decided

10. The FCA did not uphold your complaint because it does “*not believe that the engagement you had with the FCA Supervision team prevented you from submitting a cancellation application*” by 31 March 2022, the cut-off point for incurring fees for the following financial year.

Why you are unhappy with the regulator’s decision.

11. You are unhappy with the FCA’s decision not to uphold your complaint because in your view they failed to acknowledge their delayed response to your reports about the Bank. This delay is the reason for the review of your outstanding complaints, on behalf of your customers, not being resolved until July 2022 and you not being able to cancel your permissions until then, thus resulting in the annual fee being levied.

Preliminary points

12. You reported what you identified as customer harms to the FCA in August 2021. By December 2021 you were “*anxious that the FCA were doing nothing*”, therefore you escalated things by copying in senior FCA directors to your emails.
13. Following this contact, the FCAs supervisory team agreed to a meeting to discuss the case in January 2022.
14. You were asked to walk the supervisory team through the timeline of events and to send them a summary of the same. Your conclusion, as a result of this, was

that the FCA had not read your report *“in August 2021 and had done nothing with the case since [you] lodged the formal report in August 2021”*.

15. You firmly believe that if *“the FCA had taken [your] complaint as seriously in August 2021 instead of kicking it around until [you] escalated the issue, [you] would have had contact from [the Bank] by the end of September and would have processed all cases by Christmas 2021”*.
16. You also believe that the suggestion in [the FCA’s] final decision letter that you could have *“abandoned”* these clients on 31 March 2022 and applied for de-authorisation from the FCA (thus avoiding the 22/23 fee) was *“disingenuous”*.
17. As the Bank had, over the previous year, *“proved themselves to be dishonest in their dealings with their clients, pretending that they had not received their claims”* and their engagement had only just begun following your January 2022 FCA meeting, you did not trust the Bank to process the outstanding claims without you in your clients’ corner.

My analysis

18. I have read through your carefully set out complaint and timeline, as well as the FCA’s final decision letter, investigation report and the supporting documentation provided.
19. I can appreciate how frustrating it must be not to know in detail what has happened about the information you have provided to the FCA. The FCA welcomes information and intelligence bringing forward issues for its consideration. However, as you were told, the FCA does not generally say what action has been taken in response to the information that it receives.
20. This is because section 348 (s.348) of the Financial Services & Markets Act 2000 (FSMA) classes some information the FCA holds about firms as confidential and restricts how that information is dealt with. In addition to this, any information that is not restricted by s.348 FSMA may be restricted due to the FCA’s policy on sharing information about regulated firms and individuals, who also have legal protections. Under this policy, the FCA will not normally disclose the fact of continuing action without the agreement of the firm concerned. [There is a good explanation of the statutory and FCA policy restrictions on information sharing at <https://www.fca.org.uk/freedom->

information/information-we-can-share.] This means that, as you were told, there is no general right for members of the public to know the outcome of reports that they make.

21. Like the FCA, I am required to respect confidentiality. This means that sometimes I cannot report fully on the confidential material to which I have access. However, as part of the Complaints Scheme, I have access to all the FCA's complaints papers, including confidential material.
22. This is so that I, as an independent person, can see whether I am satisfied that the FCA has behaved reasonably. Sometimes this means that all I can say to complainants is that having studied the confidential material, I am satisfied that the FCA has (or has not) behaved reasonably – but I am unable to give further details. This can be frustrating for complainants, but it is better that I am able to see the confidential material. On occasions, I have persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible.
23. Having reviewed the relevant records, I can confirm that the FCA had taken seriously and acted in a timely manner on the information you provided in August 2021 in relation to the Bank, and that there is no other confidential material that can be released to you. I realise that this leaves you with concerns and unanswered questions, but I hope you will be reassured that I have reached this conclusion after independently reviewing the confidential material.
24. The details you provided were used to inform the FCA's ongoing supervisory activities, as would be expected. This is confirmed by the fact that you were invited to a meeting to further discuss your concerns. I do not believe that the time taken to arrange this meeting was excessive and unreasonable, especially considering the ongoing overall supervisory work.
25. The actual time taken to resolve the outstanding complaints was within the control of the Bank, even once the FCA got involved more directly in encouraging them to progress these.
26. The FCA takes a consistent approach to how fees are calculated and applies this to all firms and sets the deadlines to vary or cancel permissions by, in order to ensure that it is able to adequately resource its activities.

27. How fees are calculated is publicly available information and it was open to you to assess the potential amount due in advance of the invoice being issued.
28. I note your comments that you kept on five members of staff just to deal with the outstanding cases and that you state you were required to undertake work to prove to the Bank that these complaints were in time. I also appreciate that you wished to assist your remaining customers in bringing their complaints to a close and acted in what you believed was the most consumer-focused manner, which is commendable.
29. Ultimately, undertaking this exercise meant you were required to maintain your authorisation and as such, pay the annual fee.
30. As a final note, according to the records the Bank was already processing these complaints by March 2022, and should it have failed to resolve them satisfactorily, your customers would have been able to refer the matter to the Financial Ombudsman Service on their own, and at no cost to them.
31. I agree with the FCA's conclusion that it was a decision for your firm to make whether you would remain authorised or apply to cancel your authorisation, balancing the revenue you would make from continuing to support your remaining customers in finalising their claims, versus the amount you would have to pay as the authorisation fee for the 2022/23 financial year.
32. Furthermore, based on the evidence provided to me, I do not believe that there had been an unreasonable delay by the FCA in acting upon your concerns and it took appropriate steps following your report. The amount of time taken to resolve the outstanding complaints was within the control of the Bank.
33. Whilst it may not have been how you wanted to handle matters, but if the payment of the 2022/23 fee would have caused hardship based on your firm's financial position, the option to apply to deauthorise by 31 March 2022 was open to you. It was your business decision to remain authorised to see the outstanding complaints through to conclusion.

My decision

34. For the reasons set out above, I do not uphold your complaint. I do not believe that there had been unreasonable delay in dealing with the information provided

by you about the Bank. It was your firm's decision to carry on with regulated activities after 31 March 2022 when the option to apply for de-authorisation was open to it and the FCA assessed the annual fee due in line with its published standards and guidelines.

Amerdeep Somal
Complaints Commissioner
16 March 2023