

06 March 2023

**Final report by the Complaints Commissioner****Complaint number 202201709***The complaint*

1. On 27 January 2023 you asked me to investigate a complaint about the FCA.

*What the complaint is about*

2. The FCA summarised your complaint as follows:

You were previously authorised by the FCA. Your permissions were revoked by the FCA on 1 June 2010. This information is displayed on the Financial Services Register (FS Register).

*Remedy sought*

You are unhappy that the FCA will not remove the information relating to your permissions being revoked from the FS Register. You have said that this is preventing you from securing employment as a mortgage advisor. You have also asked that your firm's permissions be re-instated as you now wish to resume working as a mortgage adviser. Finally, you would like any negative entries in relation to this issue on any website or news article to be removed.

*What the regulator decided*

3. The FCA did not uphold your complaint. It said, amongst other, that:
  - a. ...'you believe the revocation that was placed onto FS Register with respect to your firm's permissions, was not justified. This is because you had requested that your firm's permissions be placed on hold until further notice, due to financial difficulties you were suffering as a result of the global recession at that time.

.... your firm's permissions were cancelled due to non-payment of regulatory fees. Please note that it is the firm's responsibility (and not the FCA), to ensure that they are ready and organised to comply with their regulatory obligations and returns...the FCA does not place permissions on hold and consequently, firms are required to be ready, willing, and organised to comply, on a continuing basis, with the requirements and standards under the regulatory system. For clarity, the FS Register is a public record of firms, individuals and other bodies that are, or have been, regulated by the PRA and/or the FCA. The FS Register is designed to ensure that the public are afforded accurate information on firms that are/were authorised; what they are/were regulated to do and how they are protected when doing business with them. In this case, it is my view that your firm's status on the FS Register is accurate and isn't something that is time bound on the basis of any statutory inferences.

- b. The FCA explained it had removed all references in December 2021 about the Final Notice issued about your firm in 2010 from its website.

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

- 4. You have said to me that you wish 'to explain/clarify the possible ambiguity which seems to have arisen by my selection of words in explaining the closure request of my Firm. As previously explained to the FCA complaints department my intention behind the phrase " put on hold " was to simply request the close down of my firm. I made this request before the issue of the bill for the period in dispute due to experiencing a decline in business because of the impact of the recession at the time. As explained in my earlier emails I did not process any business during the disputed period and also cancelled all my paperwork with other relevant parties i.e. P.I. Cover, Public Liability Insurance, Data Protection, Phonelines, internet and I subsequently moved out of the business premises. Hence it does not make sense to hold part4A permissions in these circumstances'. You say this is a matter of miscommunication and 'needs to be corrected as I have a family to support and therefore need to secure employment in order to do so'. (Element One)

5. You have said that the fact the FCA did not remove the final notice from its website after six years 'resulted in causing me significant hinderance in securing employment and financial loss'. (Element Two)
6. You also feel the FCA took a long time to resolve your complaint which caused you further financial loss. (Element Three)

*My analysis*

*Element One*

7. In your complaint to the FCA you say:

Due to the lasting effects of the 2007/8 recession, I found it difficult to keep my head above water. By the end of 2009 I had lost around 70% of my income and was struggling to pay my office rent and service charges whilst simultaneously struggling to bring up my new born and one year old. This was putting enormous strain on my finances and wellbeing. At this point I decided to put things on hold rather than let my finances spiral out of control and land myself in debt. I decided to move out of my business premises after bringing all my office bills up-to-date and wait for better times. Hence, I cancelled my P.I. Insurance, data protection and also requested the FCA not to renew my Part4A permissions and put things on hold until further notice. Subsequently I left the business premises and shut down my internet and phone line (X) and my email (Y). I very much later learned that the fax communication sent to the FCA to withhold renewal of my Part4A permissions had not been received and that I am to pay a fee for the following period. As I had left the premises and closed my business line and email, I was unaware of the FCA communication until it was too late. At this point the matter had escalated my permissions had been revoked.

8. You have now said to me that when you wrote 'put on hold your permissions' in 2009/10 what you actually meant was 'close down the firm'. In my view, these are arguments you should have made to the FSA in 2010. You are complaining to me about FSA actions and events which took place in 2010.
9. In your correspondence with the FCA, you say that 'Since the mortgage market has now recovered and my circumstances are now more favourable (i.e.

children are now older) I have decided to continue my work as a Mortgage Advisor in order to support my family. I have also recently completed my CeMAP and CeRER and been on a training course with Pure Financial to further polish my skills. I would like to have my permissions reinstated and continue to run my own firm'.

10. I understand the FCA has not applied a time bar on your complaint, because it interprets and accepts your complaint to be that you only recently became aware that a Final Notice had been issued against your firm, published on the FCA website, and your firm's permissions cancelled in 2010, due to the fact you have now decided to resume your old career.

11. I do not think the FCA has sufficiently probed to find out exactly when you became aware that your firm's permissions had been cancelled. This is relevant as paragraph 3.3 of Complaint Scheme says:

Complaints should be made within 12 months of the date on which the complainant first became aware of the circumstances giving rise to the complaint. Complaints made later than this will be investigated under the Scheme only if the complainant can show reasonable grounds for the delay.

12. In addition to issues related to time bar, it is my view that the passage of time since the revocation of your firms' permissions (almost thirteen years) is so great that it makes a meaningful investigation of the facts surrounding the case unrealistic due to the unreliability of recollections of facts and the scarcity of contemporaneous records. I would imagine there would have been firm cancellation procedures and requirements which would have had to be followed. From what you have said to me, it does not sound like you did more than send a fax to the FCA in 2010 with non-compliant terminology about your intentions and you did not follow up to ascertain if your communication was received or acted upon, or if there was anything else you needed to do (and indeed the FCA rightly claims you ought to have been aware of cancellation procedures). This doesn't appear, at first blush, to be a sufficient action to cancel a firm's permissions, but without a full investigation of what happened in 2010 it would be difficult to ascertain the facts of the case. As this is my view, I do not agree with the FCA's approach in investigating your complaint given the

circumstances, which are heavily reliant upon your recollection of events from 13 years and paucity of written evidence. I do not think such an investigation can be based on robust evidence for the reason I give above.

13. I do not think such an investigation is viable and therefore I am exercising my discretion not to investigate this complaint. The FCA has written to me that it accepts my decision and has no further comment to make.

#### *Element Two*

You have said that the fact the FCA did not remove the final notice from its website after six years 'resulted in causing me significant hinderance in securing employment and financial loss'

14. You made your complaint to the FCA on 21 July 2021. On 18 October 2021, the FCA received a request from you to remove the FN from its website.
15. On 9 December 2021, your request was approved, and the FN was removed from the FCA website. The FCA says 'However, at the time, it was made clear to you that the record on the FS Register would not be amended'.
16. The FCA has clarified the following about Final Notices: 'There are rules surrounding Final Notices, please refer to section 6.2.12. Final Notices are only removed if the firm or individual applies to have them removed. We won't automatically remove a Final Notice after 6 years and the statutory time limit is something that we consider when reviewing the application to remove the Final Notice'.
17. You submitted a request for the FCA to remove the Final Notice on 18 October 2021 and it did so on 9 December 2021. I do not think there was any significant delay on the part of the FCA in actioning your request, and it did not have to do so before you made the request.
18. For this reason, I do not uphold this element of complaint.

#### *Element Three*

19. The FCA took a long time to resolve your complaint which caused you further financial loss. (Element Three)

20. You submitted your complaint to the FCA on 21 July 2022 and it provided its decision to you on 5 January 2023. The FCA upheld your complaint, apologised for the length of time it had taken to respond to you and offered an ex gratia payment of £50 for the delay. You have referred your complaint to me because you do not feel the remedy which the FCA offered you (£50) is sufficient. I agree with the FCA decision to uphold your complaint and I also uphold your complaint about delay but my view is that the FCA remedy of £50 ex gratia payment is sufficient and I do not recommend any further remedy.

My decision

21. For the reasons given above, I have:

- a. Not investigated Element One of your complaint;
- b. Not upheld Element Two of your complaint;
- c. Like the FCA I upheld Element Three of your complaint but not recommended any additional remedy.

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Complaints Commissioner

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