

06 June 2023

**Final report by the Complaints Commissioner****Complaint number 202201753***The complaint*

1. On 9 March 2023, you asked me to investigate a complaint about the FCA.

*What the complaint is about*

2. The FCA set out in its decision letter dated 10 February 2023 that your complaint was about the following:

**Part One**

Unhappy with the way their application had been assessed and feel that it had not been treated with adequate competence or care.

**Part Two**

Unhappy that Authorisations took over seven months to provide feedback on a product that took the complainant years to put together. Unhappy that application was provided a week to consider Authorisation's email or be faced with a published refusal notice. This left complainant no choice but to withdraw their application.

**Part Three**

Unhappy with the communication you received during the pre-authorisation meetings in 2021.

*What the regulator decided*

3. The FCA did not uphold your complaint. It set out that it did not uphold Part One of your complaint. It set out that this was because consideration was given to your application and the team followed the FCA process.

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4. The FCA did not uphold Part Two of your complaint, because it set out that the FCA have acted appropriately when providing time limits for your application.
5. It did not uphold Part Three of your complaint as it considered that the FCA communicated the requirement for funding to be in place prior to authorisation being given.
6. The decision letter summarised that you had not been granted regulated status (before you withdrew your application), because unfortunately your firm did not meet the required standard for the application to be successful.

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

7. In your complaint to my office dated 9 March 2023 you set out that you do not agree with the FCA's decision letter. You consider that the FCA decision letter failed to address very specific points you had raised in your feedback letter to the Authorisation Team's case officer which you felt demonstrated the lack of care and/or competence in handling your application.
8. You feel that the decision letter did not refer to any of the specific points and appears to have simply assessed again whether it was appropriate to refuse the authorisations. You consider that the decision letter relied on a specific point, the lack of a fully formed funding agreement as justification for refusing the application. (Element One)
9. In relation to part three of the FCA decision letter you have set out that you had stated in your complaint (paragraph headed 'Financial - Funding') that it was conveyed to us during the pre-application meeting that we could be granted a 'minded to authorise subject to funding' letter if there was pre-agreement in place for funding, even if not fully formed. You say that you had this but the complaint investigator simply says that we 'misunderstood' the FCA's position on this and does not elaborate any further.
10. You set out in your complaint to me that you deny that you misunderstood the FCA on this you set out that it is market knowledge that the FCA has granted full authorisation to other similar firms without full funding agreements in place. (Element Two)

11. To resolve your complaint, you want the FCA to pay financial compensation for the loss you have suffered as a result of not being granted authorisations. You have also requested an apology and a commitment to a speedy assessment of the application (with no undue hurdles that will not apply to another firm) if you apply in the future.
12. You have also set out that you would like a review of the FCA's overtly bureaucratic, cumbersome and very very slow authorisation process, which creates significant barriers to entry and innovation.

*My analysis*

13. On 4 May 2022 you applied to the FCA to obtain regulated status for Firm X. Prior to lodging your complaint, you had discussion with the FCA about your planned application and discussed what would be needed to get the authorisation for your firm, including financial backing and you obtained a letter of intent from Firm Y as you were under the belief that this would be sufficient to achieve authorisation for Firm X. After 7 months from the date you submitted Firm X's application, the FCA wrote to you (following a meeting with you on 12 December 2022) and advised that it would be recommending your application be refused and provided you with the opportunity to withdraw your application so that you could reapply at a later date. On 16 December 2022 you withdrew your application and lodged a complaint about the Authorisations Team.

Element One

14. In your complaint to my office you highlighted the fact that in an email that you sent to the FCA dated 16 December 2022 you had detailed a number of very specific points, in response to a feedback letter from your case officer, that you felt clearly demonstrated the lack of care and/or competence in handling your application.
15. You have said that the FCA's decision letter did not refer to any of the specific points you had raised in your complaint and that it appears to have simply assessed whether it was appropriate to refuse the authorisation.
16. I firstly want to note that in your response to my preliminary report you have set out a number of additional points and ask specific questions in addition to those set out in your email to the FCA dated 16 December 2022. Whilst it is important

to address complaints, this has to be balanced with practicalities and appropriate use of time and resources. As such it is often appropriate for the FCA and myself to consider the crux of a complaint and not respond to each and every additional question, criticism and points set out to us that are related to, but are not the key issues of a complaint.

17. Having reviewed your email dated 16 December 2022 I can see that it was both an email in response to the email of 12 December 2022 from the Authorisations Team and it was also an email requesting that a complaint be opened about the assessment of your application by the Authorisation Team. The complaint points from your email appear to have been set out in points 1-3 and these were the complaint elements that made up parts one to three that the FCA complaint team used to address your complaint. The nine bullet points in the same email appeared to be a direct response to nine 'high-level areas of concern' the Authorisation Team had raised in its email as examples of some of the deficiencies it had found (but it had noted were not an exhaustive list of all the deficiencies it had found) in the firms application and why it would be recommending the application be refused if you chose not to withdraw the application.
18. I can appreciate that the FCA Complaint Team considered that the complaint it detailed in its scope letter to you on 11 January 2023 were the key complaint points you had raised as they largely mirrored points 1-3 of the email in which you raised the complaint as part of your response to the Authorisation Team in which you advised you were withdrawing your application. From my review of the file, it does not appear that you raised these missing nine points in response to the FCA's 11 January 2023 scope letter. As such I consider that it was reasonable approach to your complaint that the FCA decision letter only considered complaints you detailed in points 1-3 that it took from your 16 December 2022 email.
19. In your response to my preliminary report you indicate that it is 'highly punitive on the complainant' to require them to respond to the FCA's scope letter and provides the FCA with an 'easy avenue to ignore the main substance' of your complaint. You consider that the FCA omitted the second sentence in part one

of your complaint which clearly said 'we provide our rationale in the next paragraph 'headed 'our response to areas of concern'.

20. Whilst I appreciate your feelings on this, it is my position that the scope letters are issued by the FCA to ensure that complainants can correct the FCA if they have misinterpreted a complaint. In fact I consider it good practice for the FCA to do so as it gives the complainant the opportunity to check the FCA has correctly understood the complaint. If the FCA is not corrected, as happened in your complaint, even though you were given the opportunity to do so, it is reasonable that it should proceed to investigate the complaints detailed in its scope letter, and consequently, I will take this into consideration when considering complaints raised about the scope of the FCA's complaint investigation. As such my position remains unchanged that the FCA's approach was reasonable investigating the key issues outlined to you in the scope letter.
21. As part of my investigation into your complaint I have had access to the FCA files relating to your complaint. From my review of these files I am satisfied that the Complaint Team has looked into the actions of the Authorisations Team in relation to its assessment of your application, it has reviewed the correspondence it had with you, seen the further information requests it had sent to you and your responses, it considered the Authorisations Team's interactions with internal stakeholders about your application and its decision to issue the email to you setting out that it would recommend the application be refused on 12 December 2022.
22. From my review of the FCA files I can see that the Authorisation Team found that your firm's application was not complete and did not meet the required threshold conditions when you lodged your application. At the start of the process, the Authorisations Team did request some further information to try and recover some of the missing information, but it was clear following the call on 12 December 2022 and the follow up email that there were too many deficiencies to work through and it was more appropriate to provide you with the opportunity to withdraw and have some additional time to rectify the deficiencies before you re-applied. Whilst the Authorisation Team detailed some of the areas of concerns in its email on 12 December 2022, it did set out that the nine

points were not an exhaustive list. The email on 12 December 2022 set out the following:

.....When making an application for authorisation, the FCA expects firms to be ready, willing, and organised to comply with the requirements and standards under the regulatory system at the point the application is made. In practice, this means firms should be able to address all of the requirements before an application is submitted. We provide application support through our web pages, our dedicated Contact Centre, and post application submission we work with applicants to provide feedback on aspects of the application that are deficient or where key documents are missing. However, whilst we want to help firms to become authorised, we cannot act as compliance consultants identifying and pointing out deficiencies for firms to then remedy reactively. Instead, we want to see firms demonstrate they have considered their business and products through the lens of consumers and propose their own proactive conduct risk management plans.

Being ready and organised in your application means the firm could lend to consumers tomorrow, if authorised, in a way that does not put consumers at risk of harm.

#### Concerns

High-level feedback on areas of concern is provided below alongside some examples to aid understanding. It is not an exhaustive list and does not cover all the deficiencies within the application. Ultimately, we need assurance that the firm understands its regulatory obligations and in turn designs products and services that are designed in the interest of consumers.

23. I consider that this overview set out in the email to you dated 12 December 2022 provided a clear summary of the expectations the FCA expects from applicants and the limits to the role the Authorisation Team can provide to firms

going through the authorisation process. Having reviewed all the available information I agree with the Complaint Team's decision letter that the Authorisations Team handling of your application was adequate and was carried out with competence and care. The Authorisation Team questioned the information it received, discussed matters with the relevant internal stakeholders with relevant understanding and expertise and provided you with some guidance where there continued to be deficiencies. I acknowledge that you had started to address these points in your 16 December 2022 email, however in that same email you withdrew your complaint. In my preliminary report I noted that the 12 December 2022 email from the Authorisation Team had set out that nine points were not an exhaustive list of every issue with the application. In your response to my preliminary report you have set out that you responded to the points made to you and that you cannot respond to a 'black box'. I appreciate the point you have made, however you did still withdraw the application whilst responding to the points, and this does not alter my position that the handling of your application was adequate.

24. I do agree that there was some focus in the decision letter on the fact that the reason Firm X's application would have been refused was that it had not secured a 'fully funded agreement' from Firm Y. In my view, the focus was appropriate. Whilst you view this as just one specific point, for the FCA as regulator, this is a critical issue and it was appropriate that it obtained certainty about the funding for your firm before approving your authorisation. As such I am **not able to uphold** this element of your complaint.
25. I appreciate that you have raised your dissatisfaction with your pre-application correspondence which you say contradicted what you were told after lodging Firm X's application for authorisation and I will discuss this point in the next element, but it does not alter my position in relation to this element.
26. Finally, in my preliminary report I did note that I considered that the time taken to consider your application was acceptable and within the timeframes that the FCA sets out an incomplete application will take to be assessed. My position on this is unchanged. The FCA's authorisation process page sets out clearly that decision on complete applications will be made within 6 months. If however an application is incomplete, the FCA must make a decision within 12 months

(<https://www.fca.org.uk/firms/authorisation/process>). At the time you withdrew your application, the time elapsed since you lodged the application was just over seven months and as you are aware this included a month where your assigned case manager was out of the office sick. Consequently, I consider the time taken was acceptable and within recognised FCA timescales.

27. Regarding the timeframes that you were provided with to respond to requests from the Authorisations Team were generally appropriate and in line with the FCA's stated guidance. It is appropriate that the timescale should always be ten business days to respond to requests, but where there are simple points of clarification, I accept that in the interest of keeping the process moving forward, five business days could also be viewed as reasonable. The only exception to my position on this was the final email when you were asked to confirm whether you would withdraw your application by 16 December 2022 in the email dated 12 December 2022. In my preliminary report I **asked** the FCA in its response to this preliminary report to provide me with some detail why the time given to you to consider and action the withdrawal of your application was only a few days rather than the normal ten business days. The FCA in response to my preliminary report confirmed that it had acknowledged that it did not provide you with ten business days as its guidance says that it should and as such it had set out that it has amended its decision in relation to Part two of its complaint to be **upheld** in recognition that it failed to provide you with the tens days and apologises for this error. I am pleased that the FCA has adjusted its findings to reflect this error in its process and I would **recommend** that it set out an apology to you in response to this Final Report.

#### Element Two

28. I have not been able to consider this element due to a lack of meaningful records around the conversation that this element hinges on.
29. You have said that it was conveyed to you during the pre-application meeting that you 'could be granted a 'minded to authorise subject to funding' letter if there was pre-agreement in place for funding, even if not fully formed.' You have set out that you had lodged your application on this basis and belief, but the complaint investigator simply says that you 'misunderstood' the FCA's



position. You are frustrated because the Decision Letter does not elaborate on what they mean by 'misunderstood.'

30. I do agree with you that the Decision Letter does not elaborate on how you misunderstood the pre-application meetings. However, I note that the FCA in its decision letter offered for you to direct it to specific communication that you were unhappy with. If you held the relevant communication this would help to set out why the position it set out to you post application did not align with what you had been told in your pre-application discussions.
31. Without any definitive correspondence detailing the actual conversation that you had prior to making your application, I am reliant on the hearsay of both parties and that is not sufficient for me to base any findings on. As such I have exercised my discretion **not to investigated** this element. If you do have any written correspondence between yourself and the FCA from these pre-application conversations that detail the discussion you had, please provide a copy with your response to this preliminary report and I may reconsider whether to investigate the element.
32. The other aspect to this element is that you have outlined that it is market knowledge that the FCA has granted full authorisation to other similar firms without full funding agreements in place. Whilst this may or may not be the case, it does not change the position that the Authorisations Team found a number of deficiencies in Firm X's application. I am not in possession of the details of other similar applications that may or may not have been approved without full funding agreements. Whilst I have read your response to my preliminary report, in which you set out the name of a specific firm who you say was authorised without a funding agreement in place, and that this market knowledge made it reasonable for you to accept the information that the case officer gave you over the phone in your pre-application meeting, I am still of the view that every case is dealt with on a case by case basis. Just because one firm may have been granted authorisation without a funding agreement does not mean it was necessarily appropriate and it certainly does not set a precedent for any other firm. From the information currently available to me I consider that the Authorisation Team acted reasonably in the circumstances by issuing the email

on 12 December 2022 detailing its intention to refuse and giving you the opportunity to withdraw

33. I finally want to touch on the remedies you were seeking in relation to this complaint. I note that I have **recommended** in light of the FCA's response to my preliminary report that the FCA should provide you with a written apology for its error in not adhering to its own guidance to provide ten business days to respond to its 12 December 2022 email, and should confirm in writing that it has adjusted the Part Two finding to its decision letter to Upheld.
34. As I have not upheld your complaint it is not appropriate for me to recommend that the FCA provide you with any compensation. In addition to this you asked that your application be speedily assessed. This is not a remedy that I would be able to recommend under the complaints scheme, however, I can say that the best approach to achieving a speedy assessment of any future application when you next lodge the application, is to ensure that it fully meets the threshold conditions and standards as this will require the FCA to complete the assessment within 6 months rather than 12 months for an incomplete application.
35. Finally, you have expressed strong views about the FCA's overtly bureaucratic, cumbersome and very slow authorisation process, which creates significant barriers to entry and innovation. Again, even if I had upheld any element of your complaint, whilst I can recommend changes to the FCA's processes, my recommendations are not binding and changes to policies generally fall outside the remit of remedies that I can recommend. Such changes would likely require legislative or policy changes and these requests are best put forward to your local member of parliament to take to treasury to consider.

#### My decision

36. I have reviewed the FCA's decision letter and I agree with its decisions in relation to Parts One and Three of its decision letter. As such I have **not upheld** your complaint that the FCA decision letter is not correct. I am pleased that following my preliminary report the FCA has amended its decision in Part Two of its decision letter to be upheld and I agree with this revision and I recommend that the FCA set this out in writing to you along with its apology for

not following its own guidance. In relation to Element two, as set out above I have **not investigated** this element of your complaint.

37. This is my final report about your complaint.

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Complaints Commissioner

06 June 2023