

25 June 2024

**Final report by the Complaints Commissioner****Complaint number 202300689***The complaint*

1. On 15 January 2024, you asked me to review a complaint about the FCA.

*Your complaint to the FCA*

2. The FCA issued a decision letter on 15 December 2023 (“Decision Letter”). The Decision Letter summarised your complaint. Due to the length of the FCA’s Decision Letter, I have attached a redacted copy in Appendix 1.

*What the regulator decided*

3. The FCA separated your complaint to it into 5 parts. Each part of your complaint centred upon a different application. The FCA reviewed each of the 5 applications complained about and did not uphold your complaint. Its findings are outlined in the FCA Decision Letter.

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

4. For ease of reference I have divided your complaint into “Elements” which I have assessed and subsequently investigated as per the below.

## Element One

5. You are not satisfied that the FCA’s response to your complaint adequately answers why the applications were neither approved, nor rejected within the statutory timeframes. You have not received an apology or any compensation for the delays (other than for the delay for the complaint assessment itself).

## Element Two

Your CF30 application

202300689

6. You feel that the FCA breached the principle of transparency in good regulation by not sharing concerns in relation to this application. You feel any FCA concerns should have been negated through a VREQ which would have blocked the transfer of assets to Firm A to Firm B.

#### Element Three

##### Your CF1 (AR) application

7. You feel any concerns the FCA had with this application could have been resolved through a VREQ much earlier. You also disagree with the concerns the FCA raised in relation to this application, including the FCA's concerns about the movement of clients from Firm A to Firm B and complexities created with other live applications.

#### Element Four

##### R's CF30 application

8. You do not feel the FCA's concerns regarding the complexity of the other live applications, had an impact on this individual's fitness and propriety for this role. You feel any FCA concerns with this application could have been resolved through a VREQ.

#### Element Five

##### Your SMF3 application

9. You feel the Supervision team's concerns regarding phoenixing could have easily been resolved using a VREQ. You also feel the FCA used underhand tactics to try to get you to withdraw the application.

#### *My analysis*

#### Element One

10. The FCA stated in the Decision Letter that it was sorry you were not offered an apology for the delays caused concerning the applications, however it found that the delays were justified.
11. There was a statutory timescale of 3 months to process the applications mentioned in your complaint. Processing the applications mentioned in this complaint, the FCA rules provide as follows:

**SUP 10A.13.11** G **01/04/2013** **RP**

The FCA must either grant the application or, if it proposes not to grant an application, issue a warning notice (see DEPP 2). The FCA will deal with cases more quickly than this whenever circumstances allow and will try to meet the standard response times published on the website and in its Annual Report. However, if an application is incomplete when received, or the FCA has knowledge that, or reason to believe that, the information is incomplete, then the processing time will be longer than the published standard response times.”

12. The above statutory timeframes are set out in the [Financial Services Markets Act 2000 \(FSMA\) section 61](#) and in the [FCA handbook](#). In all of the applications relevant to this case, from my investigation, I have concluded that the FCA sent information requests within 3 months of the applications being lodged. As per the FCA rules and legislation for such applications, the period for consideration (3 months) stops running on the day the FCA sends an information request. So at that time when the information requests were sent, essentially the clock paused. So whilst the FCA did not meet the period of three months to complete the application, it did send the information requests within three months which it was required to do. As per the FCA rules and legislation in such cases, where there are information requests submitted due to incomplete information, the FCA explain that the processing time will be longer than the published standard response times.
13. Additionally, I have looked at the FCA information requests that were sent in respect of the applications and have found that they were reasonable and justified. One of the many issues from my understanding, concerned the Firm where you and your husband previously held roles. The Firm advised on transfers out of direct benefit pension schemes, in this case to members of the British Steel Pension Scheme. You will no doubt be aware of the issues that have been raised in relation to the potential harms suffered by consumers in relation to this matter. The FCA had legitimate concerns in ensuring there would be no detrimental impact on these clients if they were moved to a different Firm.

14. You have highlighted that you have not received an apology or compensation for the delays concerning the applications. The FCA stated in its Decision Letter to you that no decision on the approval of the applications could be made until its concerns were allayed. I am sorry to disagree with you on this point, but I think the FCA's rationale and its explanation to you were clear and well-founded. Furthermore, I think the length of time it took was not unreasonable in the circumstances. I do not think that compensation or an apology are appropriate given the nature and complexity of the concerns it raised.
15. The FCA also provided their concerns in a warning notice to you in August 2022. I agree with the FCA's concerns that this does explain why the applications were not approved, nor rejected within the statutory timeframes.

## Element Two

### Your CF30 application

16. This application was lodged on 3 March 2022. Whilst at first sight it may appear that the FCA was not sharing all of its concerns regarding this application, I consider any doubt over this the FCA were able to resolve in the warning note and the FCA decision letter that was issued to you. Indeed prior to this the FCA were in contact with you regarding this application on 11 May 2022. I can see in this email the FCA sent you an array of questions asking for further information concerning this application.
17. The warning notice that was issued to you on 30 August 2022 set out any concerns the FCA had. The FCA's basis for having concerns included ongoing enquiries because of phoenixing concerns, the removal of clients from Firm A where advisors had previously advised on Defined Benefit Pensions (DB) transfers and as such, there was still an ongoing file assessment review concerning this. These are just some of the concerns that were present in the warning notice.
18. In the FCA Decision Letter, the FCA explained that it was entitled to withhold certain information as the risks of revealing it could have led to mitigating action being taken, which may have caused consumer harm. I conclude that this assessment was clearly connected with ensuring both consumer protection and

mitigating any threats to the market integrity objective, both of which were also mentioned in the warning notice.

19. I recognise that you feel the FCA should have shared its concerns with you and that it breached the principle of transparency in good regulation by not doing so. Whilst the FCA did not share concerns at the time of the application or during the time it sent you the information request, these concerns were eventually shared with you in the warning notice and the FCA decision letter. For my part, I accept the FCA's rationale for not disclosing such information to you sooner. The FCA felt there were risks in doing so and it needed to keep in line with its objectives of preventing consumer harm and mitigating any threats to the market integrity objective. I find this reasonable and appropriate.
20. You have personal feelings that the FCA's concerns could have been negated through a VREQ thereby blocking the transfer of assets from Firm A to Firm B. I do not feel this was appropriate or a reasonable way of the FCA dealing with the issue, given the potential harm that was being considered.
21. In summary I am unable to see that the FCA breached the principle of transparency in good regulation or that it withheld its concerns unreasonably. As such I do not uphold this element of your complaint.

### Element Three

#### Your CF1 (AR) application

22. I note with this application you have similar concerns to that described in Element Two of your complaint.
23. I accept the FCA's rationale regarding the concerns it raised with you. The FCA's concerns surrounding moving clients from Firm A to Firm B stemmed upon the history of Firm A's advisors having previously advising on Defined Benefit Pensions (DB) transfers. Given that DB transfers is a focus area for the FCA in the interests of consumer protection and mitigating any threats to the market integrity objective, again this reinforces the FCA's rationale. And I do regard these actions as perfectly reasonable as required.
24. The complexities created with other live applications I understand were due to the ongoing investigations concerning the other applications. The FCA have

said that it could not approve applications where there were ongoing concerns and in turn the investigation was ongoing. I note that you disagree with this and the other concerns the FCA raised, but I accept the concerns as significant considering the reasons the FCA provided. As such, trying to resolve these issues through a VREQ much earlier I do not find would have been a reasonable alternative, given the risks that were identified by the FCA.

25. In light of the reasons I have provided above, I do not uphold this element of your complaint.

#### Element Four

##### R's CF30 application

26. In my preliminary report I referred to this application being your husband's application. This was an admin error and thank you for bringing this to my attention.

27. This application was lodged on 29 November 2022. The FCA sent Firm A an information request concerning this individual on 11 January 2023. I can see in this email the core of the FCA's concerns were indeed the fact that Firm A had been involved in the DB advice process. Given the concerns relating to the prior history of the removal of clients from Firm A, where advisors had previously advised on Defined Benefit Pensions (DB) transfers, I agree why the FCA needed to investigate matters further and therefore sent the information request.

28. As the independent person I have access to the FCA file, which has allowed me to see the initial concerns raised regarding this application and what the investigation entailed. For confidentiality reasons I am unable to share or discuss the contents of this information. However I can share that having studied the material, I am satisfied the FCA behaved reasonably and I am in agreement that it was appropriate to conduct this investigation for the reasons the FCA gave. I do not think a VREQ was an appropriate method to alleviate any of the FCA's concerns.

#### Element Five

##### Your SMF3 application

29. As I have explained previously in my report, the FCA's concerns including phoenixing, were concerns that I agree needed proper consideration and investigation before approving any applications.
30. The warning note in particular that was issued to you on 30 August 2022 justified these concerns so I can only repeat what I have already mentioned, I accept the concerns that the FCA raised and the actions that it took. I am sorry to disagree with you but I do not agree that a VREQ was an appropriate way of resolving the concerns.
31. I have also considered the information the FCA have provided to me concerning your case known as the FCA case file in investigating this matter. I want to assure you that I have assessed all of the information the FCA have provided to me and I saw no reason to question the FCA or that it used underhand tactics to try to get you to withdraw the application.
32. For the reasons I have outlined above I do not uphold this element of your complaint.

*My decision*

33. In summary I have not upheld Elements One to Five of your complaint.

Rachel Kent  
Complaints Commissioner  
25 June 2024

# Appendix 1



Helpline: 020 7066 9870  
Email: [complaints.scheme@fca.org.uk](mailto:complaints.scheme@fca.org.uk)  
Website: [www.fca.org.uk/about/complain-about-regulators](http://www.fca.org.uk/about/complain-about-regulators)

12 Endeavour Square  
London  
E20 1JN

Tel: +44 (0)20 7066 1000  
Fax: +44 (0)20 7066 1099  
[www.fca.org.uk](http://www.fca.org.uk)

## Sent by email

15 December 2023

Our Ref: [REDACTED]

Dear [REDACTED]

Further to my email of 27 November 2023, I am writing to let you know I have now completed my investigation into your complaint.

Before setting out my response to your complaint, I would like to apologise that it has taken us longer than we had anticipated to provide this response. I will return to this point later in my letter.

## Your complaint

Your complaint was made on 17 April 2023. On 15 May 2023, we wrote to you with a summary of our understanding of your complaint. You provided comments on our summary in your email of 26 May 2023 confirming our summary matched your understanding of the situation.

## Decision

My letter explains, below, that I have not upheld your complaint.

I appreciate this will not be the outcome you were seeking. I hope that the explanations given below will help you to understand why I reached these conclusions.

## Background

You have raised a complaint about five different applications relating to three FCA authorised firms, [REDACTED]

You are unhappy that the applications missed their statutory deadlines and you do not feel the delays in approving the applications are justified.

As I am sure you are aware from reports in the media, defined benefit pension transfers continue to be a focus area for the FCA and we have publicly stated that in our view, for most people transfer out of a defined benefit scheme is unlikely to have been suitable. Therefore, we closely scrutinise any applications where the firm or individual have been, or are involved in, the defined benefit advice process in one way or another.

It is accepted that there were breaches of the statutory timeframes, except in the case of the Change in Control application, however, one of the FCA's operational objectives is to [protect consumers from bad conduct](#) and it is imperative the FCA took the time needed to ensure that any approval of your applications did not pose a risk to consumers.

As you are now aware the concerns surrounding your applications included you moving clients from your father's firm, [REDACTED], at a time when it was subject to CONRED rules connected to advice given in relation to [REDACTED]

I have reviewed the communication on each of the applications and whilst there may not have been regular contact with you, or the applicant, on each application, I can see that as a whole, across all five applications there was regular communication.

I am satisfied that there was no delay between concluding our considerations of the issues and approving each of the applications which were still being considered.

As you will see below, I have made a recommendation to the Authorisations area to consider how delays to decisions on applications caused by internal stakeholders can be communicated to applicants in these circumstances.

## Findings

To investigate your complaint, I have reviewed each of the 5 applications you have complained about to understand whether the FCA has acted appropriately.

## **Part One – not upheld**

### **Application for a CF30 position at [REDACTED]**

You told us that [REDACTED] lodged a CF30 application on 3 March 2022. You have said the 90 day statutory deadline to issue a decision for the application was 31 May 2022.

You have raised the following issues about the application process:

- 1. The case officer said they had all the information to make a decision on the application but you were told that a decision would not be made.*
- 2. A timescale for when a decision would be made was not provided.*
- 3. The case officer was unable to tell you what concerns the FCA had with the application.*
- 4. You have not received an explanation about the 'privileged' information that caused the delays.*

On 3 March 2022 an application was submitted by [REDACTED] for you to hold CF30 function at the firm.

On 11 May 2022 the case officer contacted the firm asking for information.

On 1 June 2022 the firm submitted a withdrawal application.

In response to your specific issues these are my findings:

1. At the time the case officer said they had all the information to make a decision, other applications which had been submitted were being reviewed. The Authorisation Team and Supervision were in discussion around concerns with regards to this application and the others submitted therefore it was not possible for a decision to be made
2. The case officer was unable to provide a timescale as they were dependent on other colleagues making decisions around the wider concerns.
3. The information which was withheld was entitled to be withheld by the FCA. Revealing the information could have led to mitigating action being taken which may have caused consumer harm.
4. It would not be appropriate for the FCA to disclose information which it is considering. However, I understand you were made aware of the FCA's concerns following the issue of a warning notice on 30 August 2022.

I have noted there were some technical issues with removing the withdrawal from Connect and I apologise that the case officer did not respond immediately to this in the emails in August 2022. I understand this has now been resolved and the withdrawal is no longer on Connect.

## **Part Two – not upheld**

### **Application for a CF1 (AR) position at [REDACTED]**

[REDACTED] applied for a CF1(AR) Directorship position on 24 February 2022. The candidate was [REDACTED], the associated AR was [REDACTED]. The 90 day statutory deadline to issue a decision for the application was 25 May 2022.

You have raised the following issues about the application process:

1. You were told that the FCA had all the information to make a decision on the application but would not be issuing a decision. You have said that the process had been paused indefinitely.
2. After 8 June 2022, you received no communication for over 4 months.
3. The firm communicated that if the application was not progressed, it would close the business. After informing the FCA of this, the FCA sent 1 question on 25 October 2022. The answer to this had already been provided on a separate SMF3 application.
4. You requested details of the FCA's concerns with the application, or instead a decision be issued, by 31 October 2022. This did not happen.
5. On 31 October 2022, the FCA said that it had been unable to 'reach a concluded view on [REDACTED] fitness and propriety for the applied for role given outstanding matters being considered elsewhere within the FCA'. You have not been told what these matters were.
6. In November 2022, a case officer emailed [REDACTED] asking about a Change in Control application. The firm said that it had not submitted the application and asked what was meant by this. This question was subsequently asked many times without an answer being given.
7. On 23 January 2023, the FCA provided details of its concerns about your fitness and propriety. You have said that the accusation was unfounded.
8. On 9 February 2023, you have said that the FCA has incorrectly stated that 'On 30 January, [REDACTED] responded to our concerns to clarify that (and I summarise) as a result of the regulatory rules now applicable to [REDACTED] she no longer intended to move clients advised by [REDACTED]'.  
[REDACTED].

9. You have said that you never mentioned ██████ in the email of 30 January 2023 and that your email was specifically about ██████  
████████████████████
10. You are unhappy that the FCA did not seek assurance that ██████ IFA clients would not be transferred to ██████ earlier to prevent a delay of almost a year.
11. When the FCA sent a VREQ for ██████ IFA to sign, it was incorrectly worded. When the firm asked for a reworded copy, it chased weekly but did not receive a response.
12. On 14 March 2023, the FCA said that a recommendation to refuse the application would be made with any reason being provided or any reference to the VREQ.
13. The application was approved on 3 April 2023, more than a year after the application was made, without any request for a VREQ or explanation why the change in decision had been made.
14. You have alleged that the delay with the application appears to have been unnecessary with no reason to not approve the application within the 90 day statutory timescale, with or without a VREQ.

The application case was allocated to a case officer on 1 April 2022. On 31 May 2022 the case officer acknowledged the statutory deadline had passed and advised that they were unable to reach a view on your suitability under the Fit and Proper test.

On 31 May 2022 the case officer emailed the applicant advising a timescale for making a decision could not be made in response to their email explaining the impact of the delay.

On 25 October 2022 the case officer emailed and asked if the firm wished to continue with the application as you had also applied to hold SMF3 position at ██████ and there were concerns you would be stretched holding two positions. The case officer asked how you intended to manage your time between the two positions.

On 26 October 2022 you responded unhappy that the questions had already been asked and the FCA were already in possession of the answers.

On 31 October 2022 the case officer emailed explaining that it would not be possible to reach the end of October 2022 deadline you had imposed as your fitness and propriety was still being assessed given outstanding matters being considered elsewhere within the FCA.

On 16 November 2022 the case officer emailed asking you to confirm how the firm will discharge its responsibilities as principal to [REDACTED] when there is a Change In Control application under consideration.

On 17 November 2022 [REDACTED] responded stating they had no outstanding Change In Control application.

On 16 January 2023 the case officer emailed advising the FCA are recommending to refuse the application and issue a warning notice

On 23 January 2023 the reasons for refusing the application were provided by the case officer.

On 9 February 2023 a telephone meeting was requested.

On 3 April 2023 the application was approved.

In response to your specific issues these are my findings:

1. At the time the case officer said they had all the information to make a decision, other applications which had been submitted were being reviewed. The Authorisation Team and Supervision were in discussion around concerns with regards to this application and the others submitted therefore it was not possible for a decision to be made on this individual application as it was connected to others which were not decided upon.
2. This is correct. There was no information to communicate with you regarding this particular application. Nevertheless, I have reviewed the contact across all of your applications and I am satisfied that there was communication between you and the FCA in relation to the other applications which had been submitted.
3. Although there was a joined up nature for the applications, they still have to be recorded separately. I can appreciate this was frustrating for you as you no doubt felt you were repeating yourself but the case officer required the answer to this question in order that this specific application case contained all the information it required.
4. The deadline of 31 October 2022 was imposed by you and not the FCA. At this time, the investigations were still on-going and therefore no decision could be made.
5. There were concerns still being considered by the FCA and at the time it would not have been appropriate to share the nature of those concerns

- with you. Revealing the information could have led to mitigating action being taken which may have caused consumer harm.
6. The email which was sent on 17 November 2022 by the case officer was sent in error. I would like to apologise for this and that the case officer did not offer this explanation in a response.
  7. It is not the role of the complaints scheme to decide whether these concerns were founded or unfounded. Had the refusal escalated then you would have had the opportunity to refute the concerns by making written representations to the FCA or refer the refusal to the Upper Tribunal.
  8. I am afraid I have been unable to identify this communication and therefore cannot comment on its contents.
  9. I believe this is connected to point 8 above. Having not had sight of the two emails I would suggest the typing of [REDACTED] instead of [REDACTED] was a mistake caused by human error.
  10. Whilst this would have been one option, it was decided that whilst the parallel investigation as to your fitness to hold SMF3 at [REDACTED] was still being conducted it would not have been appropriate to do so. It was not possible to reach a decision on this application around your fitness and propriety while the investigation for your SMF3 application was still on-going.
  11. The rewording of the VREQ was with the legal team to review and amend as it deemed necessary. However, ultimately the requirement for the VREQ was no longer present and therefore the legal team did not need to continue with their work on the VREQ.
  12. This communication did not come from the case officer for this application. The correspondence at this time was being co-ordinated between the case officers for the SMF and Change in Control applications. There was no reference to the VREQ, as explained at point 11 there was no longer a requirement for the VREQ.
  13. The concerns the FCA had around your fitness and propriety were no longer present and therefore your application could be approved.
  14. The delay in the processing of this application should be considered alongside the other applications which were submitted. Although each application is assessed individually the case officer takes in all information available, which included the other applications and the investigations which were being carried out to assess those applications. The delays to this application were brought about by an investigation elsewhere in the FCA which were fundamental to determining your fitness and propriety for this application.

***Part Three – not upheld***

**Application for a CF30 position at [REDACTED]**

[REDACTED] lodged a CF30 application on the 29 November 2022. The candidate was [REDACTED], the associated AR was [REDACTED]. You have said had a 90 day statutory deadline to issue a decision on 27 February 2023.

You have raised the following issues about the application process:

1. You have said that the 90 day statutory deadline passed without any communication from the FCA.
2. The application was suddenly approved on 31 March 2023 with no reason provided for the delay.
3. You have alleged that the delay processing the application appears to have been completely unnecessary.

An application was made for [REDACTED] to be an adviser within [REDACTED] on the 29 November 2022.

The application was assigned to a case officer on 4 January 2023.

On 11 January 2023 the case officer made contact with the firm requesting additional information.

On 11 January 2023 the case officer made other enquiries to assist with their determination of this application.

On 12 January 2023 the firm responded to the request for further information.

The case officer then made internal enquiries within the FCA which were the main cause for the delay in determining this application.

The application was approved on 31 March 2023.

In response to your specific issues these are my findings:

1. The delay in the determination with this application are again based on investigations into the wider issues and the other applications made which were connected. Although these applications are assessed individually they take into account other applications and the investigations surrounding them, as well as other on-going investigations

in the wider FCA. There was contact with the applicant firm in respect of other applications around the time of the statutory date breach.

2. The case officer approved the application as soon as they were able. I acknowledge that you felt an apology should be offered for the delay and am sorry that this was not offered.
3. While we recognise the statutory deadlines, where the FCA is conducting enquiries in relation to an applicant's fitness and propriety this means that those deadlines cannot always be met. In order to discharge our statutory functions, particularly around consumer protection, it is important that the FCA's consideration of issues is concluded before authorisations decisions are made. It is unfortunate that in the situation of this application there were other matters being investigated within the FCA which caused concern for the approval of this application and therefore no decision could be made until those concerns were allayed.

#### **Part Four – not upheld**

#### **Application for SMF3 position at [REDACTED]**

*You have raised the following issues about the application process:*

1. *You have alleged that the case officer gave conflicting information about Supervision's involvement with the application.*
2. *You have alleged the FCA attempted to delay issuing a decision on the application (you have provided examples of this).*
3. *You have said the case officer told you and the current SMF3 multiple times that your ongoing applications could cause the application to be rejected. You do not believe that this was relevant to your fitness and propriety and it was an underhand tactic to encourage the application to be withdrawn.*
4. *You have alleged that the case officer had no intention of rejecting the application and that they probably 'knew that the connected applications were not a genuine reason' to reject the application.*
5. *After a decision was made to continue with the application, you have said that the case officer backtracked and said on 24 November 2022 that a decision could not be made on the application or provide a timescale for when a decision could be made.*
6. *You have provided details of FCA action in January 2023 relating to CONRED and a VREQ. The application was approved without a VREQ. You have said that you have not been told why the FCA changed the need for a VREQ.*

The application was made on 17 May 2022. The statutory breach date for this application was 22 October 2022. The application was approved on 30 March 2023.

In response to your specific issues these are my findings:

1. I apologise if you felt the case officer provided conflicting information and this caused confusion. There were several moving parts within the FCA which were impacting on this application which potentially resulted in some confusion. However, having reviewed the communication I am satisfied that at the time it was conveyed to you it was accurate.
2. I have reviewed the application case in detail and have not found any evidence to suggest the FCA deliberately attempted to delay issuing a determination on this application. Given the high risk of consumer harm associated with unsuitable advice to transfer out of a Defined Benefit (DB) Pension, enhanced due diligence is placed on those applications where individuals previously worked at firms who provided such advice. The delays were caused by this application being complex in nature with a number of moving parts surrounding it which meant that it was continually being re-assessed during its journey.
3. There were a number of applications and FCA transactions which were yet to be concluded and further information or action was required before a decision on this application could be made. Due to these moving parts, the case officer was unable to make a decision on any of the applications until the FCA's wider enquiries had been concluded.

It was also not clear when any decision could be made due to some of the complexities. The FCA are not able to hold onto applications indefinitely, and this application was made in May 2022 and therefore needed to have a decision made. The case officer communicated these concerns, that at which point they were unable to confirm your fitness and propriety. As such, if no further evidence was provided to mitigate those concerns, then a recommendation would be made to the Executive Decision maker to refuse the application as they could not be satisfied you were fit and proper for the role applied for. Having reviewed the case notes for this application I have not seen any evidence to suggest there were any tactics, let alone underhand ones, to encourage the withdrawal of this application.

4. In communication in January 2023 the case officer stated that they were recommending issuing Warning Notices proposing to refuse this

application. I am of the opinion this shows a clear intent to refuse the application.

5. Please refer to the response for number 3 above. In addition, and already explained, there were many internal and external variables which were impacting on this application and decisions and this was the main reason this application could not be approved at the time or a timescale provided.
6. In February 2023 the case officer tried to accommodate your requests within a suitably worded VREQ, however the case officer was not able to accommodate this and you refused to agree to the VREQ. Additional considerations were taking place regarding the determination of this application including Warning Notices. Once other investigations and transactions had taken place there then became no requirement to progress with the Warning Notices as further evidence was provided to satisfy us of your ongoing fitness and propriety and your application was then approved without the need of putting a VREQ in place.

### ***Part Five – not upheld***

#### ***Application for Change of Control at*** [REDACTED]

*You have raised issues with a Change in Control application submitted on 16 May 2022 for you and your husband to own* [REDACTED].

*Those issues are:*

- 1. That the Warning Notice was littered with incorrect information. You believe the large number of inaccuracies were a deliberate attempt to portray the application in an unfairly negative light.*
- 2. You have said that after providing evidence to prove that you were not phoenixing, the application was delayed indefinitely.*
- 3. You have said that there was an unnecessary and unjustified delay processing the application, which was approved on 28 March 2023 with no change to the business model or VREQ.*

The application was made on 17 May 2022. The case was assigned on 9 June 2022. A determination was made on 30 August 2022 when a Warning Notice was issued.

In response to your specific issues these are my findings:

1. The Warning Notice was based on the evidence available at that particular point in time. I have found no evidence to suggest there was a deliberate attempt to portray anything other than the facts at the time. You were given an opportunity to provide a response and I have seen that you provided comments to the Warning Notice in your emails of 7 September 2022 and 17 October 2022.
2. The information you provided on 17 October 2022 needed to be considered internally by various stakeholders. In addition, there were additional moving parts connected to other applications and firms involving yourself. Until all of these were resolved and could no longer impact this application a decision could not be made.
3. No service level agreement was breached for this application. Post service of the decision, in this application's case in the form of a Warning Notice, there is no set service level agreement to provide a response, (though the FCA looks to exercise its functions as transparently as possible). The case team were still considering this as a priority. The case team required stakeholders to consider the representations and evidence you provided on 17 October 2022 and the changes to a connected firm's circumstances.

## Conclusions

I have not upheld any parts of your complaint.

While I accept statutory deadlines were breached in determining a number of your applications this is because there were many concerns that impacted on the decision-making process for each of the applications made. Many of these concerns were influenced and impacted by external factors and the landscape surrounding your applications changing.

Having reviewed the timeline for the application for you to hold SMF3 function at [REDACTED], a key application and interconnected to the decisions on the other applications, I have concluded that the delays were justified, albeit frustrating for you.

It is accepted that there were breaches of the statutory timeframes, however, one of the FCA's operational objectives is to [protect consumers](#) and it is imperative the FCA took the time needed to ensure your fitness and propriety and that any approval of your applications did not pose a risk to consumers.

I have specifically not upheld Part Five of your complaint. There was no statutory deadline breach and once you responded to the Warning Notice I have reviewed the internal considerations made by the FCA. I am satisfied that

the delays in making a determination about this application took into consideration your responses and the changes to the connected firm's circumstances. This ensured that a fair decision was made on this case which resulted in your application being approved.

In light of the applications you submitted, which had additional complexities and involved a number of internal stakeholders, the Authorisations Division have reviewed how these types of cases are handled in future to ensure the FCA learn any lessons available and continue to improve.

### **The delay in considering your complaint**

As I mentioned at the start of this letter, we would like to apologise for the length of time it has taken to provide you with this response to your complaint.

In recognition of any inconvenience this may have caused, I would like to offer you an ex-gratia payment of **£75** I would be grateful if you could let me know by **2 January 2024** if you would like to accept this payment. If you require further time to consider this offer, please let me know.

If you wish to accept the offer of £75 for the time it has taken to investigate your complaint, please can you let me know the bank account details to which the payment should be sent (name on the account, sort code, account number and the name of the bank the account is held with) and I will arrange for a payment to be sent to you by electronic transfer.

### **The role of the Complaints Commissioner**

The Complaints Commissioner is an independent person appointed by the Regulators to be responsible for the conduct of investigations in accordance with the Scheme. If you are dissatisfied with how we have dealt with your complaint, you can contact the Complaints Commissioner requesting a review of my decision. You must contact the Complaints Commissioner within three months of the date of this letter. If you contact the Complaints Commissioner later than three months, the Commissioner will decide whether there is good reason to consider your complaint.

The contact details for referring your complaint to the Complaints Commissioner are:

Office of the Complaints Commissioner  
Tower 42  
25 Old Broad Street  
London EC2N 1HN

Telephone: 020 7877 0019

Website: <https://frccommissioner.org.uk/making-a-complaint/>

When contacting the Commissioner please let them know your FCA complaints reference number, which is [REDACTED].

Yours sincerely

[REDACTED]

[REDACTED]

[REDACTED] Investigator / Complaints Department  
Risk & Compliance Oversight Division