



05 September 2024

Final report by the Complaints Commissioner

Complaint number 202300799

The complaint

1. On 11 March 2024 you submitted a complaint about the FCA to my office.

What your FCA complaint is about

2. The FCA summarised your complaint as follows:

- *“Part One – You are unhappy that the FCA has not approved the Firm’s application to be registered as a Small Payment Institution (SPI).*
- *Part Two – You are unhappy that your application for registration was not managed well and communication was poor.*
- *Part Three - You are unhappy that the FCA told Company Y to terminate your contract with them.”*

What the regulator decided

3. The FCA did not uphold your complaint on the basis that:

- Part One – the appropriate route for appealing registration application decisions is by referring them to the Upper Tribunal.
- Part Two – there weren’t any periods *“where there was a lack of communication”* between the FCA and yourself.
- Part Three – *“the FCA did not guide or tell Company Y to suspend your firm’s access to their platform or ultimately terminate your contract. These decisions were made by Company Y independently.”*

Why you are unhappy with the regulator’s decision

Element One

202300799

4. You are unhappy with the FCA's decision because it did not uphold your complaint. Your complaint is about the fact that the FCA did not approve your application to become a Small Payment Institution given that you believe your firm has "*met FCA's requirements*". You want my office to confirm if it has the remit to investigate the FCA's decision and to approve your application. Therefore, I have investigated this as a complaint.

Element Two

You are unhappy about the application process and the length of time it has taken the FCA to assess your application.

Element Three

Your desired outcome is to avoid legal action and to be compensated for your loss of income following the termination of your contract by Company Y. Additionally, you require that an acknowledgment letter be sent to your university explaining these circumstances to enable you to continue with your academic studies.

Element Four

You complain about the length of time it has taken the FCA to provide a decision on your complaint under the Complaints Scheme.

Background information

5. The background to your complaint is as follows. On 2 May 2023, your firm submitted an application for registration as a Small Payment Institution (SPI) to the FCA.
6. The case officer at the FCA reviewed your application and, in July 2023, recommended it for refusal on the basis that your firm did not meet the threshold conditions for registration for a number of reasons, which it provided you with in a letter.
7. Following receipt of this letter, you submitted a complaint to the FCA under the Complaints Scheme about, amongst other things, their failure to approve your registration application and the application process. Your complaint was not upheld for the reasons set out in paragraph 3 above.

8. You decided not to withdraw your firm's application and, instead, provided further supporting evidence for consideration. However, despite the additional information, the FCA wrote to you in October 2023 to advise that it still recommended to the Executive Decision Maker that the application should be refused.
9. On 13 May 2024, you received a letter from the FCA setting out its decision to refuse your application and the reasons for such decision, which you have referred to the Upper Tribunal (UT).

My Analysis

Element One

10. Provision 2.11(b) of the Complaints Scheme states that even where a complaint is eligible, the FCA will not investigate it if it reasonably considers that it would be better dealt with in another way, for example, by referring the matter to the Upper Tribunal. The right to have decision notices made by the regulators referred to the Upper Tribunal is conferred by the Financial Services and Markets Act 2000. As a result of this the FCA and the Complaints Commissioner do not investigate complaints about refused application decisions made by the FCA and, instead, advise that such complaints be referred to the Upper Tribunal. The FCA's response dated 13 December 2023 in relation to your complaint is consistent with this approach.

As such, I am unable to assist you with this Element.

Element Two

11. You have submitted a complaint about the FCA's delay in processing your application, however as this may be subject to review as part of your case at the UT, I am discontinuing my review of this Element in order to avoid a parallel investigation with the UT on matters which may overlap. Once the UT has made its decision, if you still wish to refer any matters connected to this Element of the complaint, you may do so for my consideration and I will determine at that time whether the complaint is still eligible under the Complaint Scheme.

Element Three

12. I understand that one of your desired outcomes is to be compensated for your loss of income following the termination of your contract by Company Y. Whilst I have not had sight of the agreement between your firm and Company Y nor the associated correspondence, I note from your complaint to my office that one of the reasons for refusing your firm's application included the performance of remittance as an agent, even though money remittance was not within its principal's permissions. The FCA's decision letter goes on to say that: "*the FCA has given no guidance to [Company Y] to suspend [your firm] or ultimately terminate their contract.*"
13. 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. This is so that I, as an independent person, can see whether I am satisfied that the FCA has behaved reasonably. Although I am unable to comment what action the FCA did or did not do in this regard, however, having reviewed the file, I agree that the FCA's position was appropriate.
14. As this is a contractual issue between your firm and Company Y, and there is no evidence of wrongdoing on the part of the FCA, I am unable to award any compensation in respect of the lost income. However, you may want to consider whether you have a legal claim against Company Y.

Element Four

15. I note that you made a complaint to the FCA on 20 July 2023 following a receipt of your SPI application update. However, the FCA decision letter states that your complaint was submitted on 22 October 2023.
16. I also note that you did not receive an acknowledgment of your complaint until 2 November 2023. On 13 December 2023, the FCA finally provided its decision on your complaint, almost 5 months after it being submitted.
17. According to the Complaints Scheme, a complaint should be acknowledged by the FCA within 5 working days of its receipt and, within 4 weeks of receiving your complaint, the regulator should outline its decision on whether your

complaint is eligible and explain the next steps. The Scheme further states that where a complaint cannot be resolved within 8 weeks of receiving it, the FCA should write to update you, setting out the progress of its investigation and, if possible, the time it will take. Unless your complaint is deferred, the FCA should continue to give you written updates on their progress every 4 weeks until you receive its decision on your complaint.

18. Based on the information on the file, I did not believe this process had been followed in your case, which resulted in unnecessary delay in receiving a decision on your complaint. Therefore, I invited the FCA to comment on why it had described your complaint as having been received on 22 October 2023 rather than 20 July 2023 and the FCA have advised that their system failed to generate a new complaint, which impacted their complaint handling timeframe, However, the FCA *“would like to apologise to [you] for these delays on handling of [your] complaint and for failing to explain why [your] complaint had not been answered within our timeframes.”* It would also like to offer you *“ £75 for the delays on handling [of your] complaint in accordance with [their] usual approach”* and *“an additional £50 for the service [they] provided.”* If you wish to accept the FCA’s offer, it will contact you to arrange an electronic payment.
19. In view of the above, I uphold this Element of your Complaint.

Complaints Commissioner

05 September 2024