

27 March 2025

**Final report by the Complaints Commissioner****Complaint number 202400548***The complaint*

1. On 18 November 2024, you asked my office to review a complaint about the Financial Conduct Authority (FCA). In summary, your complaint concerned the FCA's handling of your firm's authorisation application and the redress offered for mistakes made during that process. You were unhappy that an FCA case officer had, in your view, mishandled your application – including by requiring your firm to comply with the new Consumer Duty rules which should not have applied to your case – and you felt that the FCA's errors caused significant delay and inconvenience to you and your business. You also complained that the FCA's offer of £500 as compensation for the stress and inconvenience was inadequate, particularly given the impact on your business, and that the 14-day period the FCA gave you to accept this offer was unreasonably short. Additionally, you believed you should not have to pay the FCA's annual fee for 2024/25 in light of the negative experience you had with the FCA's authorisation process.

*Background*

2. Your firm applied to the FCA for authorisation to carry out regulated activities in December 2022. I understand that your application was submitted before the FCA's new Consumer Duty came into effect (the Consumer Duty rules apply to applications made on or after 23 January 2023). Despite this, in early 2023 an FCA authorisations case officer assessed your application against the new Consumer Duty standards. On 7 March 2023, the FCA informed you that it was minded to refuse your application on the basis that your firm did not meet certain Threshold Conditions – citing, among other things, that your firm's

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policies were not compliant with the Consumer Duty. The FCA indicated it would issue a formal Warning Notice outlining these concerns if the refusal proceeded. Following this indication, you withdrew your application.

3. In September 2023, after consulting with your solicitor, you raised a complaint with the FCA about the handling of your application. You reported that the FCA case officer had treated you poorly – you felt the individual was arrogant and patronising, did not understand your business, and placed unreasonable demands on you (such as repeatedly asking for more information and insisting on Consumer Duty compliance when it should not have been required). You also said you felt pressured by the case officer’s warning that if you continued and were not authorised, your name would be published on the FCA’s website, which you interpreted as a threat. In essence, you believed the FCA’s conduct during the authorisation process was unprofessional and had unfairly forced you to withdraw a valid application.
4. The FCA investigated your September 2023 complaint and issued a decision in October 2023. The FCA acknowledged that mistakes had been made in handling your application. In particular, it confirmed that firms which applied before 23 January 2023 (as yours did) should not have been assessed against the new Consumer Duty requirements. The FCA apologised for the way your case was handled and informed you that it would take corrective action to prevent a recurrence of such errors. Importantly, the FCA arranged for your firm’s withdrawn application to be re-opened. After some further processing and iterations, your firm was granted authorisation in December 2023. This outcome addressed the primary issue of getting your business authorised, albeit later than it should have been. The FCA’s October 2023 response to your complaint also expressed regret for the case officer’s conduct and assured you that feedback would be provided to the staff involved.
5. In April 2024, not long after obtaining authorisation, you applied to cancel your firm’s authorisation (your cancellation took effect in May 2024). In July 2024, you submitted a further complaint to the FCA under the Complaints Scheme. This complaint had two parts. First, you continued to express dissatisfaction with the treatment you received from the FCA during your application (including the case officer’s behaviour and the inappropriate application of the Consumer

Duty standard to your case). Second, you complained that because you had submitted your cancellation request in April 2024, it was unfair that you were being charged the annual regulatory fee for the 2024/25 year – you felt that, given your negative experience with the FCA, you should not have to pay that fee at all.

6. The FCA issued its decision on your July 2024 complaint in October 2024. The FCA upheld the first part of your complaint. It found that the case officer's tone in some communications with you was not in line with the professional standards expected. It did not uphold your allegation of discrimination by the case officer (and I have seen no evidence of discrimination in the materials). The FCA also reiterated that your application should not have been assessed against the new Consumer Duty rules, acknowledging that this was an error on its part. The FCA apologised to you for these failings. As a remedy for the distress and inconvenience you experienced, the FCA offered you a consolatory ex-gratia payment of £500. The FCA's decision letter stated this offer would remain open for 14 days for you to accept. In respect of the second part of your complaint (the annual fee), the FCA did not uphold it. The FCA explained that under its fee rules, any firm authorised on 1 April of a given fee year is liable for the annual fee for that year. Because your firm was still authorised on 1 April 2024 (you had not submitted your cancellation request before 31 March, and the cancellation was not effective until May), your firm was correctly included in the fee billing for 2024/25. The FCA told you it could not waive the fee, as it was charged in accordance with the established rules.
7. You were not satisfied with the FCA's October 2024 decision – in particular, you felt that the £500 compensation offer did not properly reflect the harm you suffered, and you said that you should not have to pay the 2024/25 fee. You also felt the 14-day acceptance period for the £500 offer was too short and put undue pressure on you. You wrote to my office on 18 November 2024, essentially seeking a higher amount of compensation and relief from the fee. When you approached my office, you indicated for the first time that you were seeking compensation for financial loss (not just distress). In this regard, you mentioned the additional costs your firm incurred – for example, time and effort diverted from your business to deal with the protracted application process, lost

business opportunities/profit during April to December 2023 when you were not authorised, and expenses for legal or compliance advice – as well as a refund of the authorisation application fee you had paid. These were points that had not been explicitly resolved by the FCA’s decision, since, during the FCA’s investigation, you had initially stated you “just wanted to move on” and had only asked for the annual fee to be waived at that stage (and not a broader compensation for costs or losses).

### *Analysis*

#### *Element One*

##### *FCA handling of your application for authorisation*

8. I sympathise with your situation and appreciate how frustrating it must have been to encounter unnecessary obstacles including by having to demonstrate how your firm can comply with the new Consumer Duty requirements.
9. There is no doubt that the FCA made a serious error in the handling of your firm’s authorisation application. The new Consumer Duty requirements were applied to your application when they should not have been, given the timing of your submission. This mistake led directly to the FCA wrongly threatening a refusal of your application in March 2023, which in turn prompted you to withdraw the application out of concern. It also caused you to spend additional time and effort revising your application to try to meet standards that were not actually applicable. Ultimately, the error resulted in a significant delay – your authorisation was achieved in December 2023 rather than earlier in the year – and during this period your business was unable to carry out regulated activities, which likely had a financial impact on you (in terms of lost income or opportunities). This was clearly a failing in the FCA’s authorisations process. The FCA has acknowledged this. I note that in its correspondence, the FCA stated: “concerns were raised about your firm’s implementation of the new Consumer Duty. This should not have formed part of the assessment of your application and the subsequent decision to refuse. I understand that your attempt to demonstrate your compliance with the new Consumer Duty requirements caused you unnecessary inconvenience.” I agree with that

assessment – you experienced inconvenience that should have been avoided had the FCA handled things correctly.

10. You also raised concerns about the conduct and attitude of the FCA's case officer during the process (separate from the Consumer Duty issue). The FCA's investigation found that the case officer's tone in communications with you was at times inappropriate and not up to the professional standards expected. The FCA apologised to you for this, which I consider appropriate. The FCA did not find evidence that the case officer discriminated against you, and I have not seen any evidence of bias or discrimination in the material provided to me. Nonetheless, the manner in which you were treated was not acceptable, and it is right that the FCA recognised and apologised for that. I understand the FCA has provided feedback or taken internal action regarding the staff involved to help prevent similar experiences for others. I find that to be a necessary and positive step.
11. In light of the above, I consider your complaint that how the FCA handled your authorisation application poorly is upheld. The FCA fell short of the standards one would expect in both the procedural handling (applying the wrong standards and causing undue delay) and in the professionalism of its communication with you. However, it is also clear that once the FCA became aware of these issues (through your September 2023 complaint), it took steps to put things right: your application was re-opened and approved, and an apology was offered. These actions by the FCA went some way towards remedying the situation. You ultimately obtained the authorisation that you were entitled to, and the FCA has acknowledged its errors.

*Element Two – the annual fee*

12. The second element of your complaint was that you should not have to pay the FCA's annual fee for 2024/25, given that you had sought to cancel your authorisation and given the troubles you had experienced. Under the Complaints Scheme, complaints that relate to a regulator's legislative functions – which include the setting and levying of fees – are excluded from the Scheme. The annual periodic fees are mandated by the FCA's rules, and the FCA's enforcement of those fee rules generally cannot be challenged through a

complaint of maladministration. For this reason, I cannot formally investigate or uphold a complaint about the FCA charging you a fee that is required by its rules. The FCA was correct to explain that your firm was on the FCA's register as at 1 April 2024 and therefore liable for the 2024/25 fee – that was in accordance with the published fee rules and not an error by the FCA.

### *Remedy*

13. The remaining question is whether the FCA provided appropriate redress for the inconvenience and other impacts you suffered due to its mistakes. As noted, the FCA offered you £500 as an ex-gratia compensatory payment for distress and inconvenience. You have said to me that this amount is insufficient, because you believe the FCA's errors caused you considerable financial harm (lost profit and extra costs) beyond mere inconvenience. You initially did not ask the FCA for a direct compensatory sum for those losses – instead, at first, you only requested that the annual fee be waived as a way of ameliorating the situation. However, after the FCA extended the £500 gesture, you re-evaluated what you felt you should receive. You told the FCA (and later my office) that given the trouble you went through, you expected a larger amount. I have seen correspondence where you indicated that you had paid a total of around £2,341 in fees/costs, and you proposed that if the FCA increased its offer from £500 to £1,000, you would be prepared to settle the matter (implying that you would cover the remainder of your losses yourself). The FCA declined to increase the offer at that time, maintaining that £500 was appropriate after considering all the circumstances.
14. I have carefully considered whether the FCA's offer of £500 (and its initial refusal to increase that amount) was reasonable and in line with the standards of the Complaints Scheme. Under the Complaints Scheme, when a regulator upholds a complaint and finds that a person suffered inconvenience or distress due to its errors, it may offer an ex-gratia payment for non-financial loss (i.e. the stress, anxiety, or inconvenience caused). Such payments are generally modest and are not intended to directly compensate for specific financial losses or lost profits – they are a token of acknowledgment for the poor service or mistake. In your case, the FCA explicitly framed the £500 as compensation for “distress and inconvenience.” I recognise that from your perspective, the consequences of the

FCA's mistake were not just emotional inconvenience but had tangible financial repercussions for your business. However, claims for financial loss (for example, loss of profit or expenses) are treated differently under the Scheme – they require clear evidence of causation and quantifiable loss attributable to the regulator's actions, and even then the Scheme does not guarantee that such losses will be reimbursed in full as if it were a legal claim for damages.

15. The FCA has explained, in its response to my preliminary report, how it arrived at the £500 figure. The FCA indicated that, although it termed the payment “non-financial loss”, it had in fact given some consideration to the practical impacts on your firm (which one might view as financial in nature) when deciding the amount. In particular, the FCA was aware that you had spent additional time on your application (time that could otherwise have been spent running your business) and that there was approximately a nine-month period in which your firm could not operate in regulated business, which could have affected your revenue. In effect, the FCA says it factored in those elements of your experience when offering £500 – even if it did not label it “financial loss compensation.” The FCA says the one aspect that its decision did not explicitly account for was your expenditure on legal and compliance advice; I note, however, that you had mentioned those costs to the FCA, so it had the opportunity to consider them. Ultimately, the FCA concluded (and maintains) that you had not provided evidence of a quantifiable financial loss that would justify increasing the compensation beyond £500. In my view, the FCA's apology and the £500 gesture together represented an acknowledgment of fault and an attempt at amends, in line with the Complaints Scheme's expectations, although I appreciate that you feel £500 does not reflect the true impact on you.
16. In my preliminary report, I noted that you had escalated your claim to include financial losses (and a refund of your application fee) which the FCA had not expressly addressed in its October 2024 decision. I suggested that those aspects would normally need to be referred back to the FCA for a fresh review, since the FCA should have the first opportunity to consider new claims or evidence. In its response to my preliminary report, the FCA disagreed that a new complaint was necessary. The FCA took the view that your complaint always implicitly included the issue of financial loss – pointing out that when you

initially corresponded with them, you indicated you were willing to settle the matter by having the annual fee waived instead of pursuing all the specific costs your solicitor had outlined.

17. The FCA also highlighted that, in your communications during their investigation, you asked the FCA to take into account the extra hours you spent on the application “which held me back from running my business which in turn cost me profit.” In other words, the FCA believes it did consider your financial loss arguments as part of the original complaint, albeit indirectly via the request to waive the fee. After reviewing this point, I accept that the distinction between “non-financial” and “financial” loss became a bit blurred in your case – you were raising issues that had financial implications, but the remedy you sought (waiving the fee) was couched as a matter of fairness rather than a direct claim for damages. The FCA’s response to me indicates that it understood your complaint encompassed both the inconvenience and the business impact.
18. Importantly, the FCA has now, in response to my investigation, offered an enhanced resolution to your complaint. The FCA has agreed to enhance its offer as a gesture of goodwill to £1,341.20 which it will offset against the outstanding balance owed by your firm for the FCA annual fee 2024/2025.  
  
In practical terms, this means you will not have to pay that fee. The FCA has proposed this as a “pragmatic” way to resolve the outstanding issues. I welcome this offer and consider it to be a positive and fair step by the FCA.
19. In turn, in response to my preliminary report you have said that you are also seeking a pragmatic solution. “I consider therefore that you are also interested in a pragmatic way forward rather than pursuing a claim for financial loss against the FCA.
20. In my view, the effect of the FCA’s revised offer is that you would be obtaining one of the primary outcomes you wanted in your complaint to the FCA – effectively a relief from the 2024/25 annual fee (£1,341.20).
21. However, I **recommend** that the FCA offer you a compensatory payment of £1341.20 not in place of, but in addition to the £500 it has already offered. While it is not an acknowledgment of specific losses such as lost profit or professional fees, it is a reasonable compromise which is of greater value than



what you initially requested of the FCA. It reflects the additional distress and inconvenience you have had to go through since lodging your complaint.

22. As for the 14-day acceptance period which you found too short: I agree that two weeks was a relatively tight deadline for you to consider the FCA's offer, especially as you were contemplating seeking more. It might have been more considerate for the FCA to allow a longer acceptance window or to clarify that the offer could be discussed or extended upon request. That said, I note that when you did respond (with a counter-proposal), the FCA did engage with you rather than simply withdraw the offer. For the record, I encourage the FCA in future cases to be flexible where a complainant needs more time to respond to a compensation offer. However, I do not find that the 14-day timeframe in itself amounted to maladministration in your case, given that it did not result in you missing out on the compensation.

*My decision*

23. In summary, I uphold your complaint regarding the FCA's errors in the authorisation process and I am satisfied that the apologies and remedies including the enhanced FCA offer of a compensatory payment which it will offset against your firm's outstanding balance, and the additional £500 I recommend are appropriate to address both parties' wishes that a pragmatic way forward is found. My reasoning for this is explained above and is not based on calculation of actual financial loss. If you don't accept this, you may engage with the FCA again.
24. Whilst I can not formally uphold your complaint that the FCA ought to waive the 2024/2025 annual fee for your firm, as noted above, despite the formal position that the fee was due, you will not ultimately have to bear that cost. This is because the FCA will offset its enhanced compensatory payment to you against that cost. This was effectively the remedy you initially asked for, and it has now been achieved, albeit indirectly.
25. This is my Final Report about your complaint, and it concludes my investigation. I hope that the resolution reached will allow you to put this matter behind you.

The Complaints Commissioner

Complaints Commissioner

27 March 2025