

8th October 2014

Dear Complainant,

Your complaint against the UK Financial Services Regulator
Reference Number: FCA00017

Thank you for your email of 14th July 2014.

As the rules of the scheme under which I consider complaints can be found on our website at www.fsc.gov.uk, I do not intend to set them out fully below.

Your complaint

From your letter I understand that you are unhappy with a number of the regulator's actions, specifically:

- you say that you obtained a Consumer Credit Licence *"in February 2014 from the Office of Fair Trading. As the responsibility for this was being taken over by the FCA we were advised that we would need to complete an Interim Permission application with the FCA so that we would be able to offer credit facilities"*.
- you add that on *"11th March 2014 we registered with FCA in order to apply for the Interim Permission"*.
- you go on to say that on *"31st March 2014 we attempted to complete the application and make the appropriate payment, but the FCA website would not permit us to do so and we got a message displayed "Online Distribution Limited : No Interim permission request can be created/submitted at this time". I tried to contact the FCA help line by phone at 17.10 but the office was then closed as they closed at 5pm"*.
- although the FCA has considered your complaint you feel that it *"seems to us that the FCA are not prepared to do anything here to assist and just use the same answer each time. We are only a small business trying to expand in to new areas and this was hopefully going to bring us additional business and at the same time enable us to take on additional staff. We had already invested time and money in setting up a new website and sourcing and implementing new systems to run the credit services we intended to offer, but this has now had to be put on hold as we no longer have a valid licence"*.

My position

Before I comment on your complaint I feel it may be useful if I set out how the changes to the granting of Consumer Credit Licences came about. Due to the Government's decision to merge the Office of Fair Trading (OFT) and the Competition Commission, the granting of Consumer Credit Licences was transferred to the FCA. This change was implemented by the Financial Services and Markets Act 2000 (Regulated Activities) Amendment) (No.2) Order 2013 (Statutory Instrument 2013/1881).

As a result of this the FCA became responsible for the authorisation of firms holding consumer credit licences with effect from 1st April 2014. Article 56 of Statutory Instrument 2013/1881 set out that, if a firm holding an OFT issued consumer credit licence wished to continue to use this facility after 1st April 2014 it had to apply to the FCA for interim permissions and pay the regulator's administration fee by 11.59 pm on 31st March 2014. If a firm failed to complete the interim permissions process by the deadline, the licence would lapse and the firm would no longer hold a consumer credit licence which meant that the firm would be unable to conduct any activity which required a consumer credit licence until such time as it had successfully completed the normal authorisation process.

I have noted your comments about the dispensation given to firms which were granted a Consumer Credit Licence by the OFT between 18th and 31st March 2014. This dispensation was granted by Paragraph 7 of Article 56 of Statutory Instrument 2013/1881 and was not therefore something which the FCA had a legal discretion to extend to firms which, like yours, had been granted a licence before 18th March 2014.

I appreciate that you say that you attempted to complete the interim permissions process by paying your fee, on the evening of 31st March 2014, and that you were unable to do so due to problems you encountered with the FCA's application processing system. I also understand that, although you attempted to contact the FCA's helpline, you say that your call went unanswered because you called after 5.00pm, and you were unable to make contact with the FCA until the morning of 1st April 2014, by which time it was too late for the FCA to grant your firm interim permissions.

The FCA has provided me with a record of the log-ins and attempted log-ins you made to its systems between 11th March and 9th April 2014. The record indicates that you attempted to log on to the FCA's systems 19 times (although on two occasions your attempts to log in were unsuccessful as an incorrect password was entered).

The FCA's report also shows that the last attempt to log on to the system before the 31st March 2014 deadline was at 08:56 on 27th March 2014, and that you did not subsequently attempt to log on to the system until the morning of 1st April 2014, when you logged on at 08:36, 08:38 and 08:42, with you logging on again at 15:19 and 15:33 (following an unsuccessful log-in attempt at 15:32).

It is clear from the documents I have seen that the FCA's Complaints Team, when considering your complaint, noted your concerns about the availability of the system and challenged robustly the system's IT administrators. The system administrators confirmed that the system was available until midnight on 31st March 2014 and that there were no system outages on the day in question.

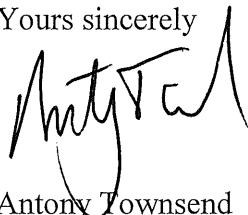
I also note that the FCA's Complaints Team asked the system administrators to clarify why you might have received the error message. The system administrators explained that, in their view, the error message you received would only have been generated if you attempted to log on and pay the administration fee for the interim permissions after the 31st March 2014 application deadline had passed.

I am aware that you have provided phone records which show that you also attempted to contact the FCA by phone on 31st March 2014. Unfortunately, the fact that you may have attempted to contact the FCA by phone does not alter the fact that you knew that interim permissions had to be granted no later than 31st March 2014, and that the FCA has no record of you logging into the system between 27th March and 1st April 2014.

This is a case in which, unfortunately, there is a clear conflict of evidence between your recollection of events and the FCA's records. Having considered your complaint very carefully, it is my Final Decision that the regulator has correctly applied its rules, and that its decision on your complaint was justified. I am sorry about this, since I recognise the importance of this issue to your business, but on balance I have concluded that the FCA has not been at fault.

I would therefore recommend that, if you have not already done so, you commence the authorisation process and hope that the regulator will look to expedite its consideration of your application.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Antony Townsend', written over a faint circular stamp or watermark.

Antony Townsend
Complaints Commissioner