

13 November 2017

Final report by the Complaints Commissioner
Complaint number FCA00390*The complaint*

1. On 4 September 2017 you asked me to investigate a complaint about the FCA. I have carefully reviewed the papers sent to me by you and by the regulator. I issued a preliminary report on 16 October 2017. Both you and the FCA have had the opportunity to comment and I have carefully considered the points made and, where appropriate, refer to them below.

What the complaint is about

2. You complained about mistakes and lack of care by the FCA's Credit Authorisation Division (CAD) in relation to an Authorisation application by a firm (the firm) of which you are Chairman and a non-executive director. You wanted the FCA to acknowledge the errors made and to compensate you for the additional legal costs the firm had incurred as a result.

What the regulator decided

3. The FCA partially upheld five out of the nine complaints you had made and apologised for the distress and inconvenience caused by the points of concern it had identified. However, it decided that the errors identified did not materially affect the way CAD considered the firm's application and therefore declined to make a contribution to the firm's legal costs.

Why you are unhappy with the regulator's decision

4. Although the FCA partially upheld five of your complaints, in your view it gave insufficient consideration to the additional legal costs the firm incurred, some of which were a direct result of the FCA's mistakes.

My analysis

5. I have considered the FCA's complaints file and supporting documents in detail. I am satisfied that the complaint investigation was thorough and detailed. I note that, although you do not accept all of the FCA's conclusions, you are content to accept the apology offered save to the extent that it does not go far enough to be a sufficient and fair remedy for additional legal costs you were compelled to incur.
6. The FCA identified the following points of concern in the way that CAD handled the firm's authorisation application:
 - a. The statutory deadline for the application was breached, mainly due to staff turnover.
 - b. Although it was reasonable for CAD to request updated versions of information already supplied, it would have been helpful if the request had

included an explanation of the context in which the information was being re-requested.

- c. It might have been smoother to have had a specific handover document for transition between case officers (but all the relevant materials were available on the FCA's systems).
 - d. The firm was incorrectly told that files were misplaced.
 - e. Although it was not necessarily unreasonable to request information with a very short deadline, having done so CAD should have acknowledged receipt of the information more quickly than it did.
 - f. There were errors in the 'minded to refuse' (MTR) letter to the firm (although the FCA did not consider these had any material impact).
 - g. There were a number of errors in the CAD Recommendation Paper to RTC, including new allegations, and incorrect calculations by a case officer. (The FCA considered any effect of these errors to be minimal although the complaint response said that it would have been "preferable" to include all allegations in the MTR.)
 - h. There was an incorrect statement in the Warning Notice.
 - i. There was an 'unfortunate' error in an email to you from CAD about the RDC process, which gave the impression that CAD assumed pre-emptively that it would find further breaches by the firm (although the FCA considered that it was clear from the context that no such pre-emptive judgments had been made and it did not uphold this complaint).
7. It is apparent that some of these points of concern might be regarded as more serious than others. For example, the FCA highlighted its continued failure to meet statutory deadlines in its published report of performance against its Service Standards in November 2016. I am also concerned by evidence of a lack of regard for procedural fairness, for example not including all allegations in the MTR.
 8. I would also have expected the FCA complaint response to have included some information about what internal steps it would be taking to give feedback to the CAD team about the errors identified to help ensure improved performance. I consider that it would have been helpful, and reassuring to you, if the FCA had done so.
 9. I am also not clear why some of the complaints you made were not fully upheld. For example, under complaint 2 the FCA accepted that you were incorrectly told that documents were misplaced, and under complaint 5 the FCA accepted all the errors you had pointed out in the MTR letter. The rationale for the latter appears to be that the Complaints Team did not think the firm was materially affected by the errors. However, that does not alter the fact that your complaint was made out.
 10. Furthermore, I note that the FCA's complaint response accepts that these errors (complaint 5) "should not have occurred and more care should have been taken", and in one case accepts that this would have enabled the firm to avoid "having to take the time to correct this point".

My decision

11. The FCA's investigation shows repeated and significant errors by the CAD, amounting to unacceptable performance. The decision letter does not say how the FCA proposes to deal with this significant concern.
12. Overall, I am not persuaded that the FCA gave sufficient consideration to the cumulative effect of the identified mistakes and lack of care by CAD and how these would have undermined the firm's trust in the authorisation process. I accept that it is possible this would have led you to seek greater legal input as a result. In consequence, I am not persuaded that the FCA has shown that it gave sufficient consideration to whether some of the firm's legal costs were incurred as a direct result of the FCA's mistakes. The FCA declined to make any payment for additional legal fees on the grounds that "the errors identified above did not materially affect the way CAD considered the firm's application", but that misses the point: your complaint is not about the *outcome* of the process, but the *process itself*. For this reason, I uphold your complaint.

My recommendations

13. I recommend that the FCA considers whether, in the light of my analysis:
 - a. It should accept that elements of your complaint should be fully, not partially, upheld;
 - b. It should accept that its investigation did not adequately assess the cumulative effect upon you of CAD's series of delays and errors;
 - c. It should reconsider whether an *ex gratia* payment for additional costs may be justified in the light of a. and b. above – if the FCA accepted this, you would need to identify the genuinely *additional* costs from the total costs;
 - d. It should indicate what steps have been taken to address the performance problems which its investigation has identified.
14. I am pleased to note that in response to my preliminary report the FCA has accepted all of my recommendations. It has made the following comments:
 - a. The decision to 'partially uphold' was made where the FCA did not agree with each and every allegation in the complaint element. It believes this is justified by the explanation given in the findings section for each complaint, save for complaint 5, which should have been recorded as upheld. The FCA Complaints Team has said that it will use my analysis as a learning point regarding its future use of 'upheld' and 'partially upheld'.
 - b. It accepts that it missed the point of your complaint when it came to assessing whether it would make a payment, i.e. that it was about the operational process itself rather than the outcome of the process.
 - c. It agrees to reconsider whether an *ex gratia* payment for additional costs may be justified on the basis of a further submission from you.
 - d. It has supplied me with information from its Authorisations Team about steps taken to address and improve the performance issues identified.
15. I am satisfied with this response from the FCA and invite you to make further submissions to the Complaints Team in respect of recommendation 13 c. above.