

21 September 2016

Dear Complainant,

Complaint against the Financial Conduct Authority
Our reference: FCA00137

Thank you for your complaint, sent on 20th June 2016, and for your subsequent emails. As you know, I have made several inquiries of the FCA in the course of my investigation. This letter sets out my final decision on your complaint.

Before finalising this decision, I invited comments from you and the FCA on my preliminary decision. I have considered carefully the points that you and the FCA made and referred to some of them in this decision letter.

How the complaints scheme works

Under the complaints scheme, I can review the decisions of the FCA Complaints Team. If I disagree with their decisions, I can recommend that the FCA should apologise to you, take other action to put things right, or make a payment.

Your complaint

In December 2015 you complained to the FCA that it had failed to process your husband's approved person's application effectively. You were concerned about the length of time it was taking to process and that the case officers involved had failed to consider previous applications submitted by your husband. You said that the failings resulted in your husband (and by extension you) losing an income for four months.

You also said that individuals should be able to submit an application alongside the registered firm and have an assigned point of contact within the FCA.

The FCA partially upheld the first element of your complaint on 10 June 2016, and apologised to you. In its decision letter, the FCA stated that, although it had not breached its internal deadline of 90 days in reviewing Mr P's applications, the FCA accepted that it should have stopped treating Mr P's applications as non-routine after approving his application for firm L in July 2014. The FCA also notified you that, following Mr P's approval in January 2016, it will no longer treat his applications as non-routine (unless new information comes to light).

Regarding the second element of your complaint, the FCA explained the process of applying

for an application, and the respective roles of applicant and candidate.

You remain unhappy with the outcome, as you consider the FCA has not ‘addressed the failures leading up to and including the events’, and have asked me to undertake my own independent investigation. You have also sought financial compensation for the losses which you say you have incurred.

My findings

Mr P’s approved person applications were handled as non-routine by the FCA after firm X applied for Mr P to perform the CF30 controlled function in February 2012. Mr P did not disclose the fact that he had been sent an email by firm S dismissing him for alleged gross misconduct, and in fact wrote that he had resigned from that firm. That application was withdrawn before it could be approved.

In 2014 firm L applied for Mr P to perform the CF30 controlled function. Mr P was invited to attend the FCA for an interview, after which the application was approved. At that interview, Mr P explained that he considered that the email from firm S dismissing him from employment in 2011 was ‘unofficial’, as an internal dispute between the firm’s managers and himself was allegedly ultimately resolved in the verbal understanding that firm S would treat his departure as a resignation rather than a termination. However, unbeknownst to him, firm S had informed the FSA in 2011 that his departure was a termination.

After the approval of the firm L application in July 2014, there were two additional approved person applications submitted for Mr P, and both of these were looked at by the non-routine team at the FCA before being approved.

Following your complaint in October 2015, the FCA undertook a thorough investigation and in its decision letter stated that the applications submitted after July 2014 should not have been treated as non-routine simply because of the firm S disclosure, and would not be in future, provided the disclosure was made.

I find the FCA Complaints Team undertook a thorough investigation into the matter, and I welcome the fact it upheld the complaint. However, although Mr P was informed of his approval in January 2016, and so the immediate concerns leading to the complaint were resolved, it should not have taken the FCA until June 2016 to issue its decision letter.

I now turn to the second matter you raise: the FCA’s consideration of the candidate’s viewpoint when the applicant and candidate differ in their version of events, as happened in this case. The FCA has already explained in detail the respective roles of candidate and applicant in the approved person application process. For the sake of completeness, I would add that when there is a difference in opinion, the FCA has confirmed to me that the FCA seeks copies of correspondence that may support the firm or the individual’s versions of events. This can include a signed statement of events from the candidate, copies of meeting minutes and meetings, transcripts of disciplinary meetings, and other documents. In this case, Mr P was given the opportunity to present his viewpoint in the interview with the FCA in 2014.

In your response to my preliminary decision, you queried the length of time the FCA took in reviewing the applications above, and you also submitted a request for financial

compensation for loss of earnings by Mr P whilst the non-routine review of his applications was being undertaken. I have considered the points which you have made carefully.

In reaching my decision on whether to recommend a compensatory payment, I have taken into account the following factors:

- a. the origin of the problem was caused by the discrepancy between Mr P's and firm S's accounts of the reason for Mr P leaving the firm. This was not of the FCA's making;
- b. the FCA did process the applications within the statutory timescales for approved person applications;
- c. Nonetheless, the FCA did make an error in twice failing to recognise that applications should not have been treated as non-routine, as they have acknowledged.

In those circumstances, while I do not consider that compensation for direct financial loss is justified, I do consider that an ex gratia payment would be appropriate in the circumstances. I therefore recommend the FCA offer Mr P £1,500.

Conclusion

I find that the Complaints Team undertook a fair and reasonable review of the complaint, partially upheld it, and apologised to you. The issue with the non-routine processing of approved person applications has now been resolved, and no applications will be flagged for non-routine review on the matter of disclosure re firm S (provided such disclosure is included in the applications).

However, the FCA did cause Mr P distress and inconvenience by treating his last two applications as non-routine and therefore I recommend the FCA offer to pay Mr P £1,500 to reflect the distress and inconvenience caused.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Antony Townsend', with a large, stylized flourish at the end.

Antony Townsend
Complaints Commissioner