

4 April 2022

Final report by the Complaints Commissioner**Complaint number FCA001526***The complaint*

1. On 29 November 2021 you complained to me about the FCA's investigation of your complaint.

What the complaint is about

2. In its decision letter to you dated 29 November 2021 the FCA described your complaint as follows:

Part One

You are unhappy with the invoice you received from the FCA on 3 September 2021 and specifically, the consumer credit element which you have said has increased to £750 despite you having a NIL return last year. You feel this is an exorbitant amount of money for a small company like yours. You have said that since the FCA took over from the Office of Fair Trading (OFT) the fees are around five times more than what the OFT were charging. You have explained that £750 makes an increase on last year of £432 which is an increase of 136%. This you have said this is disproportionate for the small amount of consumer credit your firm does. You have explained in your case, the only activity that is close to consumer credit is when clients ask you to pay direct debit, to that end your total involvement is to pass this onto the insurers who do the rest. You have said that you do not have any contact with the credit companies and last year you did not arrange any cases. You currently have seven cases and the fee of £750 works out that each case is costing your small business about £107 per case which you feel is not proportionate. You have said the FCA's charging structure which is calculated at 0 – to £50,000 income with nothing in between, puts you in an awkward position as it would be more cost effective not to offer a

direct debit option to clients. You feel that charges the FCA impose for consumer credit activities should be on a sliding scale to take account of the small income brokers like you. You do not feel the FCA is treating you fairly as its customer and that these charges are likely to cause you to go out of business. You feel that the FCA should link any charges to income and not just putting a minimum charge which cannot be absorbed by some brokers. You feel this is counterproductive and a deterrent to anybody wishing to start up in this industry. You feel there has been complete lack of consideration on the FCA's part on how the constant increase in the FCA charges are impacting small businesses like yours.

Part Two

You are unhappy with the customer service you have received from the FCA whilst trying to speak to someone to discuss the issues detailed in Part One of your complaint. You have tried on several occasions to speak to someone and have said that you have spoken to around eight to nine people. You have said your experience has not been great, and you have said that on one occasion your call was terminated, another person would not give a surname and that you were unable to speak to the same individual. You are also unhappy that the Complaints Team doesn't have a phone number to speak to someone directly and the voicemail does not advise individuals as to when the team will call you back. You have said that you did receive a call back from the Complaints Team however you were not happy that they did not leave a phone number to get back to them and that departments phone number only directs you to the website. You were also not happy that the individual you spoke to did not know anything about consumer credit but did write down your concerns and said they would get back to you.

What the regulator decided

3. The FCA did not uphold your complaint.
4. The FCA stated that the service which you received by the various FCA departments was sufficient, in accordance with policy and not unreasonable. The FCA also mentioned in its decision letter that it was unable to agree that the Complaints Team service was insufficient, unreasonable or that an error had

occurred. I can also see you informed the FCA on 9 December 2021 that Part One of your complaint could be resolved as you made a variation of permission (consumer credit) which solved the problem of you having to pay a fee. As such I am investigating Part Two only of your complaint.

5. You requested an independent review of Part Two of your complaint. You informed my office that Part Two of your complaint was what you were most unhappy with.

Why you are unhappy with the regulator's decision

6. You provided me with your complaint submissions and I have reviewed that you are unhappy with the process you had to go through with the FCA, just to get the answers to Part One of your complaint.
7. I can see that you originally raised the issue in September 2021 and it wasn't until three months later in December 2021 that you got the answer to your concerns and you are unhappy it took this long to get the answer.
8. You mentioned the difficulties you experienced with calling the FCA and the accessibility of its helpline. You state that you '...couldn't get hold of anyone at the FCA who tried to contact you, it was just a one way street...'
9. You mention that during your interaction with the FCA a member of staff was reluctant to give you their job description stating they '...could not see the relevance or words to that effect...' You state you '...just wanted to know what department this staff member was working for...'

Preliminary points

10. In your response to my preliminary report you asked me to consider other aspects. This included your views regarding the requirement of having a license in order to pass a client's bank details to a provider for a direct debit to be set up. You state that as a broker you do not get any benefit from this, the benefit is for the client. I'm afraid this is not something that is within my remit to investigate. FCA internal policies and rules are excluded under the Complaints Scheme here under 3.4 (c) <https://frccommissioner.org.uk/complaints-scheme/>

My analysis

11. I can see the original inception of your concerns arose when you contacted the FCA in September 2021 because you were unhappy with the invoice you had received regarding fees in your role as a Broker. You felt the fees were wrong. There was an amount in the invoice which included fees for consumer credit which you disputed because you did not require a consumer credit licence.
12. You spoke with the FCA on 3 September 2021 by telephone. I have listened to this call recording that took place between yourself and the FCA.
13. You outlined in the call that you were shocked and upset with the increase of £430.00 added to your fees from the previous year. You emphasised that you were a small broker and that this would be a substantial portion of your income and you wanted a justification for the increase in fees. The FCA looked through the invoice whilst on the phone with you and advised that the reason for the increase was because of the consumer credit side of things which was part of the FCA's fee consultation. The FCA repeated that it was subsequent to the April 2021 Consultation Paper document, which was the reason for the fee increase, with regards to consumer credit.
14. The FCA offered to show you during the call where the Consultation Paper was online on numerous occasions so that you could see this. The FCA also confirmed that for consumer credit in your invoice you had £0 for tariff data. You asked the FCA why you had been charged a fee for consumer credit when you didn't have any cases that concerned consumer credit for that year. The FCA responded that the fee was correct in line with the Consultation and the FCA offered again to pull up the details on the website so that you could see. You emphasised that you still couldn't understand the justification for the fee. At this point the FCA responded to this and informed you that you could raise a complaint with the FCA Complaints Team if you were unhappy. You emphasised that it was your preference to speak to someone that was in charge so that they could understand your position, rather than complain to the Complaints Team. The FCA mentioned that they would be able to refer it to the Complaints Team who would be able to take the matter higher up if needed. You explained again to the FCA how you felt the fee was unjustified. The FCA

then gave you two options, they could show you the Consultation Paper online or they could refer you to make a complaint. At this point you stated that you didn't feel you had any other option but to make a complaint. You also asked the FCA during the call if they would also be taking the matter higher which they confirmed they would. You were then given a reference number to quote with the Complaints Team and the call was transferred.

15. Listening to the call recording I see the crux of your matter was getting a justification on the increase of the fee and having the opportunity to discuss this with someone higher up, so that somebody could understand your position as a small broker.
16. I was pleased to hear that the FCA did empathise with your position during the call and attempted to explain the reason for the increase in the consumer credit fee. I do note however that during the call when you continued to explain your concerns and disagreement with the fee increase, you were only given the options of raising a complaint with the Complaints Team or being shown the Consultation Paper. You noticeably responded to this that your preference was to speak with someone higher up so they could understand your position. You also expressed you felt you had no other option but to make a complaint. I am unsure why at this stage you were not given the option of being able to speak to someone higher up or at least given the chance to speak with somebody that was an expert in that area of the business.
17. I would have expected at this point the FCA to have realised that your query was one that could potentially be resolved fairly quickly, whilst at the same time working with the aim of avoiding an unnecessary service complaint. Had you been informed that it was possible at the very least, to discuss your matter with somebody higher at this point, rather than only being given limited options to raise a complaint or look at the Consultation Paper, there is a possibility this complaint may never have materialised and in turn made its way to me. I understand from looking at the email correspondence between yourself and the FCA, you did eventually get the opportunity to speak with somebody at the FCA on 3 December 2021 and received the answer to your query. You confirmed in an email to the FCA on 7 December 2021 that you got the answer you wanted. However, you did also point out in this email that it had taken three months to

get the answer and this could have happened sooner. I agree that on this occasion there was an opportunity for the FCA to avoid this complaint being raised by simply providing you with the answer to your query sooner.

Unfortunately, it took three months.

18. I am glad to hear that you eventually received the answer to your query. I do empathise with the journey you had to go through and the time spent trying to get the answers to your queries. You did emphasise with the FCA on numerous occasions that you are a small broker, so it would have been better in my view, for the FCA to give you access to someone higher up (as you requested) or someone specialised in the business area more promptly, to give you the help and information that you needed at that time. I can also see in the file that you tried several ways to contact the FCA to get the answers to your queries. In my preliminary report I made a recommendation in relation to this point. The FCA responded to me on this particular point. Having considered the response carefully, the FCA has appropriately demonstrated to me that steps and processes are already in place in line with the recommendation I had made. Unfortunately, in your case these processes were not followed. The FCA did however, express its regret that things did not go as they should have done in your case and what it could have done differently. It has subsequently agreed with my findings that you were only given two binary options during the call that took place on 7 September 2021. Further on towards the end of my report I have outlined what the FCA has additionally stated it will do in recognition of processes not being followed and it not delivering the best service it could for you. This is a positive step and I hope this provides you with reassurance that the FCA have reflected on my preliminary report and have specifically taken on board the concerns you initially raised seriously. I have provided more details on this towards the end of my report. As such, I no longer feel it is necessary to uphold this complaint point. The FCA have reflected on this, provided me with the information that I needed to see to feel assured, that processes are already in place when they need to be utilised and the FCA is willing to take appropriate action in your case, as it has realised it did not provide the best service it could have to you.

19. I now move on to the next part of your complaint concerning the difficulties you experienced with calling the FCA and the accessibility of its helpline. You mention ‘...you couldn’t get hold of anyone at the FCA who tried to contact you, it was just a one way street...’ I appreciate you couldn’t speak to anyone when you called the FCA helpline. The reason for this is because for operational reasons, the FCA helpline provides a voicemail service where callers can leave a message, which the Complaints Team then aim to respond to within one working day. My office operates a similar approach with our phone lines, we use a telephone bureau to take our calls and we subsequently return calls within two working days. So, I can’t see any issues with the way the FCA operate their helpline from an operational point of view. It is worth highlighting, if an individual has accessibility requirements the FCA does make their service accessible in a variety of ways when the need arises here: <https://www.fca.org.uk/accessibility-statement/accessibility-service> I appreciate this doesn’t apply in your case but I think it’s important to point out that the FCA does its best to adapt its service to meet communication needs, if required.
20. In the next part of your complaint, you mention that during your interaction with the FCA a member of staff was reluctant to give you their job description. You stated they said ‘,,they could not see the relevance or words to that effect...’ You also state you ‘...just wanted to know what department this staff member was working for...’. I understand from looking at your emails this conversation you have referred to, appears to have taken place on 3 December 2021. I do not have a recording of the call that took place on 3 December 2021. In my preliminary report I made initial general observations about this, taking into account the information and evidence that was available to me. The FCA responded to my preliminary report on this point and explained why it did not share the call recording of 3 December 2021 with me. The FCA’s Decision Letter not upholding your complaint was sent to you on 29 November 2021 concluding its investigation - which is pursuant to 6.7 of the Complaints Scheme here: <https://frccommissioner.org.uk/complaints-scheme/> . Therefore, this particular complaint point concerning the events that took place on 3 December 2021 is deemed a new complaint point out of scope of this particular investigation. That is not to say that I would not be able to investigate this

complaint point for you. If you wanted to pursue this complaint concerning the telephone conversation that took place on 3 December 2021 with the FCA, you can raise this as a new complaint with the FCA who will investigate this for you. If you decide to do so, once the FCA investigation is complete and it has issued you with a decision letter, you can refer your complaint to me within three months of the FCA's decision letter if you are unsatisfied with the FCA's response. Subsequently, I am unable to investigate this complaint point regarding the call that took place on 3 December 2021 which is out of scope of this particular investigation.

21. During my investigation I asked the FCA to provide me with all the call recordings that took place between yourself and the FCA. The FCA provided me with call recordings that took place on 3 and 8 September 2021. In my preliminary report I stated that the FCA should explain why other call recordings or call notes that were available were not provided in the original FCA case file and subsequently, when my office requested these. I also asked the FCA to provide any outstanding recordings and/or call notes so that I could review these in response to my preliminary report. The FCA responded to me regarding this and provided three further call recordings from 8 September 2021 and call notes that took place between you and the Supervision Hub on 7 September 2021. These had not been provided to me previously in the FCA case file or when my office initially sent its information request. The FCA confirmed in its response to my preliminary report that it had technical issues at the time and couldn't provide one specific call recording in relation to your complaint. However, the FCA assured me in its response to my preliminary report, that this had since been rectified and it enclosed a copy of the call recording. The FCA also confirmed in its response that I had been provided with all the relevant and available calls or contemporaneous notes regarding your complaint up to the date it finalised its response to you. However, disappointingly it transpires that this was not the case. My office engaged in further conversations with the FCA again regarding call recordings, shortly after receiving the FCA's response to my preliminary report. It transpired that it was not just one call recording that hadn't been provided to me as outlined in the FCA response. There were actually a further two call recordings of 8 September

2021 that were subsequently made available to me. Whilst the FCA has apologised for this, it is still not clear to me why all of this information was not provided in the original FCA case file. This is a concern and in this instance, it is important to highlight that section [7.3 of the Complaints Scheme](#) was not followed by the FCA. I say this as it took requests from my office during the initial investigation, a request from me personally in my preliminary report and further requests from my office (subsequent to receiving the FCA's response to my preliminary report), in order to get all of the call recordings and call notes relevant to your case. The FCA need to remember that it is important I am also provided with all of the information the Complaints Team has relied on in its investigation as per 7.3 of the Complaints Scheme. This needs to be provided in the original FCA case file rather than repeated requests from my office and requests in my preliminary report. It is important that in the best interests of transparency that I have all the information I need in the first instance for my investigations.

22. I have listened to the further call recordings that have been provided to me. In the first call of 8 September 2021, you expressed that it was the sixth person at the FCA you had spoken to and you had received voicemails informing you to fill in a complaint form on the FCA website. You explained you did not want to do this and that it was your preference to first be able to speak to the people from the FCA that had been trying to reach you. You further insisted as the call progressed that you needed to be passed onto a manager or somebody who could deal with your simple query. I do empathise that you again reiterated your desire much like the call that took place the day before, to speak with someone who could help you with your simple query rather than raise a complaint. The FCA informed you during this call that they would try to transfer you to the team or the person who had left you a voicemail. You explained to the FCA that you already had the number and explained that this number only went through to a recorded message. When you explained your concerns the FCA also stated that you '...should be able to speak with someone directly if this was the number on the FCA's website...' You explained clearly at this point that the FCA should not transfer you to the answer phone. You stated that you needed to speak with somebody and not a machine. The FCA responded '...no worries I'll get that

sorted'. Approximately after five minutes of being on hold, you were transferred to the FCA complaints answer machine. It is very disappointing that the FCA did not do what it said it would do. Despite your clear requests to not be transferred to the answer machine, you were transferred to the answer machine regardless. It would have been helpful had the FCA communicated with you first as a courtesy whilst you were waiting on the call, what the situation was and whether or not it was able to connect with the FCA complaints Team or the last individual that left you a voicemail. Your next call took place with the FCA shortly after this call.

23. In the next call you explained to the FCA what had happened on the prior call and asked to be transferred back to the person you had originally been speaking with. You were informed that this wasn't possible. You then stated that in the last three days this was the eighth person you had spoken to about your matter (not including those from complaints which would make it ten people). At this stage I could hear the exhaustion and frustration in your voice as you again tried to explain what the issue was and the need to speak with someone about your concerns. You also explained during this call the communication from the FCA should have been better. You were then informed that you would be transferred to somebody in the Supervision Hub where you could actually speak with someone directly and not an answering machine. When this call was transferred to the Supervision Hub you asked for the full name of the person you were speaking to, but the individual informed you that they did not want to give their surname. The FCA has informed me that the Supervision Hub do not give their full names and it is within their discretion. The FCA also informed me that full notes are taken and the call is recorded to ensure it is able to appropriately identify all contacts with a firm/individual and its contacts. The Supervision Hub subsequently tried to put you through to somebody you had liaised with previously at your request, as you stated this individual was already familiar with your matter. The Supervision Hub was not able to put you through to that individual and informed you they would leave a note for the relevant individuals to give you a call back. You asserted that if you were not left with a number to call back or an email address or a voicemail informing you when you would receive a call back (as you would make sure you were available), you

would then subsequently raise a complaint. You emphasised the hours that you had spent trying to call the FCA back that week and were extremely upset with the ordeal. You also asked if anyone was actually in the Complaints Department and questioned whether anyone was sitting at their desks and whether it was empty. Supervision responded to you that Complaints were '...away at the moment...'

24. It is evident from listening to both of these calls that areas of the FCA business seem to have the understanding that the FCA Complaints Team should be answering calls diverted to them. I found this present in both call recordings. If other areas of the business were aware of the way the FCA Complaints Department operates its phone lines, this could have simply been communicated to you, to manage your expectations. This case has highlighted that several other FCA departments are under the impression that the FCA Complaints Department should be taking calls diverted to them. However, this is not the case as explained in paragraph 19 of my report. Given the trend that was highlighted during at least two of the calls with two different departments, there is clearly a gap. It is important that the FCA Complaints Team inform the rest of the business within the FCA, how its phone lines are operated to ensure consistency. This would manage the expectations of callers and a consistent message conveyed across all departments, thereby avoiding unnecessary trouble and upset being caused as was the case here.
25. In your correspondence to me whilst I could see that you confirmed Part One of your complaint in connection with your fees was resolved, you have mentioned to me that the FCA staff member you spoke to in early December didn't respond to you in any way or acknowledge your email. I can see you sent an email to this staff member on 22 December 2021 as follows,

Dear xxx, Further to our conversation today as you can see I have been trying to get an answer since 7th September 21 and I now understand that I do not need consumer credit I am happy to have this taken off from 3rd December 21 when my fees are due and I will pay the balance. I appreciate your help. Kind regards.

26. Looking at the email above I can see this was sent to an FCA staff member who worked in Finance and Operations. Judging by your email I think one could make the conclusion that no further action or a response was required to this email. I say this as you didn't specifically ask any questions or ask for an acknowledgement, you confirmed your understanding after speaking with the FCA (albeit it had taken three months) and confirmed your next steps. In my preliminary report I encouraged you to contact the FCA if it was the case that you still wanted to speak with the FCA about this. You informed me in your response to my preliminary report that you phoned the FCA on 28 February 2022 and also sent the FCA an email. I can see from the further information you provided to me in your response, you included an email which you sent to the FCA on 1 March 2022, enquiring about your fees. The short of this email was that you emphasised to the FCA that it needed to deduct the consumer credit part of your fees and you reiterated that you had been trying to get an answer to this since 7 September 2021. You confirmed your understanding that your payment had been placed on hold until this complaint had been dealt with. You also highlighted that you needed to pay from 3 December 2021 when your fees were due which should not include the consumer credit part. You requested an early reply or an acknowledgement to your email.
27. Now that my role in this investigation is complete the FCA should now respond to you so that the matter concerning your fees can be progressed.
28. In my preliminary report I made a recommendation that the FCA recognise the necessity to progress calls to specialised areas or those higher up at the point that this is requested, or within a reasonable time frame rather than, providing limited options where an individual feels they have no choice but to raise a complaint. My recommendation was specific to cases involving smaller brokers or smaller businesses for instance, who would most likely benefit and appreciate speaking with the relevant area of expertise or somebody higher up. The FCA responded to me on this point and confirmed with me how it generally deals with concerns from firms with a specialist area. Looking at the FCA's response it has agreed with me that you were only given two binary options, 1) complain, or 2) review the consultation paper. The FCA recognise that it could have also at this point during the call, given you the email address for the

specialist area where you could have raised your query and concerns directly. Whilst it is not possible to ascertain what actions may have taken place had this happened, the FCA has recognised and accepted that these actions may have avoided the need for you to make a complaint.

29. The FCA has confirmed with me that it currently does have procedures in place mirroring the recommendation I made in my preliminary report, but with regret, it did not follow this process on this occasion. The FCA has informed me that it will apologise to you directly in light of this, and additionally offer you £50 as an ex gratia payment for its error. I am pleased to see the FCA have taken on board the error that occurred and is willing to put things right by offering an apology and an ex gratia payment to you. However, I think the FCA need to increase the amount of ex gratia for its error. It was not just one isolated incident where there was an opportunity for the FCA to follow its own procedures. There were numerous occasions as evidenced in the call recordings where the FCA could have been more helpful and provided you with details of the specialist area that could assist you, such as an email address. Further, you were also given additional poor customer service, specifically in the first call that took place on 8 September 2021, where you pleaded with the FCA during the call to not transfer you to the Complaints Team answering machine. You were assured you would not be transferred to this answering machine but unfortunately this happened anyway and you subsequently took time out again to call the FCA in order to try and get the help that you needed. I think the FCA should increase the amount of ex gratia from £50 to £100 in recognition of the poor customer service you received, the trouble and upset this has caused you and for the errors that occurred.
30. Separately I am pleased the FCA has confirmed the process that it does already have in place regarding sharing concerns from Firms with a specialist area and escalating calls to somebody more senior.

My decision

31. In my preliminary report I initially upheld your complaint surrounding the FCA processes for referring individuals and firms to specialist areas or somebody senior. Since receiving the FCA's response to my preliminary report and for the

reasons given above, I am persuaded from the information that I have seen, that the FCA does already have processes in place to do this. Therefore, this recommendation is no longer required. Further to my comments in paragraph 27 of this report the FCA should also now respond to you about your fees.

32. I **recommend** that the FCA increase its offer of a £50 ex gratia payment to you to £100, to account for and in recognition of, the impact upon you of the poor customer service you received and the errors made.
33. I **recommend** the FCA Complaints Team take immediate steps to inform the rest of the FCA business how the FCA Complaints telephone line in fact currently operates so that there is consistency across the board and accurate information is being shared on incoming calls.

Amerdeep Somal
Complaints Commissioner
4 April 2022