

25 August 2022

Final report by the Complaints Commissioner**Complaint number FCA001682***The complaint*

1. On 24 March 2022 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. In its decision letter dated 2 March 2022 the FCA described your complaint as follows:

I understand that your firm has applied for FCA Authorisation, however your application was withdrawn on 26 October 2021 after you were unable to demonstrate that your firm was registered with HMRC within 12 months of application. You state that the FCA has not used sufficient information to enable a complete assessment of your application and would like your application to be reconsidered without the need for HMRC registration.

What the regulator decided

3. The FCA did not uphold your complaint. The FCA stated that it has a twelve month statutory deadline to make a decision on an application. It highlighted that your firm only wanted to carry out money remittance business so therefore you would be regulated by HMRC for money laundering purposes and that HMRC registration, is a key condition of being able to meet the conditions for registration as a money remittance firm.
4. The FCA explained when an application from a firm fails to achieve registration with HMRC in a timely manner, the FCA asks firms to withdraw the application and provide a route for the firm to re-apply once they have secured HMRC registration. The FCA further emphasised that your firm needs to satisfy the requirement for HMRC registration before the application can be progressed

and that the unfortunate delay with HMRC was not within the oversight of the FCA.

Why you are unhappy with the regulator's decision

5. Rather than re-apply, you would like the FCA to reopen the previous application and grant you a Small Payments Institution (SPI). You feel you have successfully passed the FCA assessment as well as the HMRC registration now that you have received the approved registration from the HMRC under the Money Laundering Regulations.
6. You have highlighted that the FCA decision letter is factually wrong. You state your request was for the FCA to kindly reopen your application pending receipt of HMRC approval and not to register your firm without HMRC approval. You add that this therefore is on the wrong premise and not in line with your request.

My analysis

7. On 27 October 2020, your firm submitted an application for registration as a SPI. On 26 October 2021, the application was withdrawn due to full HMRC registration not being provided within the statutory timeframe of 12 months which also did not meet the conditions of approval.
8. First, I believe it is necessary to outline the requirements when applying to become a Small Payment Institution (SPI). This can also be accessed on the FCA website here: [Apply to become a small payment institution \(SPI\) or a small electronic money institution \(SEMI\) | FCA](#) The following conditions must be met:
 - a. directors and managers must be of good repute with appropriate skills to provide payment services
 - b. average monthly payment transactions in the preceding 12 months must not exceed €3 m
 - c. if you have not been providing payment services, or have been providing payment services for less than 12 months, projected average monthly payment transactions must not exceed €3m
 - d. managers must not have been convicted of money laundering, terrorist financing or other financial crimes

- e. your head office and registered office (or place of residence for natural persons) must be in the UK
 - f. you must comply with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017
 - g. if the applicant is a partnership, an unincorporated association or a corporation, anyone having a qualifying holding must be fit and proper for the sound and prudent conduct of a SPI, and
 - h. if the applicant is a corporation with close links to another person, the links mustn't be likely to prevent our effective supervision of the business (if the link is outside of the UK, foreign laws mustn't prevent our effective supervision of the business)
 - i. you must not provide AIS or PIS
9. As well as the conditions that need to be met the FCA require specific information from the applicant, require registration for each person that will manage the SPI, register those with qualifying holdings and register agents. The latter does not take place until after the SPI has been registered.
10. From looking at the case file, I can see the information the FCA gave you was correct, the FCA will decide on the application within 12 months of receipt if the application is incomplete. This was communicated to you on 24 April 2021 and the FCA asked you whether you agreed to an undertaking. The undertaking was whether you agreed to the FCA withdrawing your application on 20 October 2021 in the event you did not provide evidence of HMRC approval. The FCA explained the reasons for this, that the FCA was required to determine applications within a statutory timeframe of 12 months and without HMRC full registration the application did not meet the conditions of approval.
11. The FCA did give you the option to not agree to the undertaking and explained what this meant for the application if you did not agree. It meant that it would need to formally refuse the application before the statutory deadline as a decision would need to be made prior to that date. The FCA shared that formally refusing the application would take several months and it would need to start the process on 12 July 2021. So, I can see you were given both options and you chose to agree to the undertaking.

12. I understand in your complaint to me that you feel you were left with no option but to accept the undertaking. However, I can see the FCA gave you a choice and the options were made clear that you could choose not to agree to the undertaking. As such, I do not think the FCA did anything wrong in this instance or that you were forced to accept the undertaking. You agreed to the undertaking requirements and continued to keep the FCA updated with your HMRC registration application.
13. I understand you feel you have passed the FCA assessment as well as the HMRC registration. It is unfortunate that there was a delay in getting your HMRC registration application approved, but I agree with the FCA, it made the requirements clear to you and I cannot see the FCA at any point gave any information or indication, that the requirements could be amended if the HMRC registration was provided to it outside of the 12 months' time frame. I believe the FCA were transparent on the requirements and it consistently made it clear that for the application to reach authorisation stage, it needed to be provided with HMRC registration in the 12 month period.
14. I agree with the FCA that it is unable to re-open the application. The next option as outlined in the FCA's decision letter to you if you would like to pursue it, is to re-apply.
15. In the second part of your complaint, you mentioned that the FCA decision letter was factually wrong,

By her own admission as stated in the highlighted portion of his letter to us dated 2nd March 2022 attached herewith, the reviewer believed that we were requesting for FCA registration "without the need for HMRC approval" and hence based her assessment on this. This was factually wrong as our request was for the FCA to kindly reopen our application pending receipt of HMRC approval and NOT to register our firm without HMRC approval. This was clearly stated in the FCA's acknowledgement and summary of our complaint dated 29th December 2021 signed by another officer on behalf of the FCA. The reviewer's basis for assessment was thus on a wrong premise and not in line with our request.

16. I have looked into this and agree with you that your original complaint point was not taken forward for investigation and it was amended at some stage. Having looked through the evidence and the FCA case file I can see your complaint was acknowledged and a clearly stated summary was provided in a letter the FCA sent to you dated 29 December 2021. In this letter it stated your complaint point as, '...You would like the FCA to re-open your application pending HMRC registration...'. However as you have highlighted to me the FCA's decision letter stated the following '... 'You would like the application to be reconsidered without the need for HMRC registration...' This was not in line with your complaint which was acknowledged and outlined in the letter dated 29 December 2021.
17. I raised this with the FCA during my investigation of your complaint and highlighted what had happened. The FCA responded and agreed there was an error made with the allegation you had raised and that this was not intentional on its part. Due to the unfortunate mistake made, the FCA would like to offer you an ex-gratia payment of £50 to reflect any distress this may have caused you. I think the FCA's offer of £50 ex-gratia is fair and reasonable considering the mistake that occurred. Please let me know if you would like to accept the FCA's ex gratia offer of £50 and I will take this forward for you.
18. I have also looked at whether I think if your original complaint '...You would like the FCA to re-open your application pending HMRC registration...' would make a change to the outcome of your complaint. I have assessed this and I do not think this makes a difference to the outcome of your complaint. I say this as I can see you were always aware and understood from the FCA's communications, that the HMRC registration needed to be provided in the 12 month period. So, it would not be appropriate in my view for the FCA to re-open your application pending HMRC registration. As the FCA have stated to you in its decision letter, the next option if you would like to pursue it, is to re-apply.

My decision

19. I am sorry but for the reasons above I have not upheld your complaint.

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Complaints Commissioner
25 August 2022