

13 June 2022

Final report by the Complaints Commissioner**Complaint number FCA001714***The complaint*

1. On 9 May 2022 you asked me to investigate a complaint about the FCA

What the complaint is about

2. The FCA summarised your complaint as follows:

In our letter of 23 December 2021, we provided a summary of our understanding of your complaint. We did not receive any comments from you regarding the summary and so I have proceeded on the basis that it was correct.

You have explained that your firm was previously authorised by the Ministry of Justice. An application to the FCA for authorisation was required for your firm to be able to continue operating.

You state that you were told it would take 12 months for a decision to be made on the firm's application, instead it has taken 30 months. You feel there is no point in continuing with the application as a "decision has obviously been made".

You are unhappy with the time taken for a decision to be made. You are also unhappy about the fees you have had to pay in the last 18 months.

You have explained that you have "completed the cases that were still live when the process began with the FCA." You stated that "full authorisation was unlikely looking at the level of detail required to continue".

You have stated that you paid the following fees:

- £500 for 2019/2020
- £563 for 2020/21
- £1,200 for provisional authorisation fee. You feel this should be refunded as the FCA's website states this would be refunded if the application was unsuccessful.

You have explained you recently received another invoice for £550 due in December 2021. You state "given the situation and having no current live cases and no income from the company for this tax year", you will do the 30-day wind up required so you hope this payment will not be necessary.

What the regulator decided

3. The FCA partially upheld your complaint, they advised you:

In reaching my decision, I have undertaken a review of all case notes, emails, letters and liaised with the Authorisations Division in gaining their clarification on the matter. I have also reflected over relevant policy guidance and applicable rules, in consideration.

Essentially, your complaint is concerning the length of time taken in your application for authorisation being considered, as well as the regulatory fees you had to pay in the last 18 months.

Therefore, for ease of reference, I have stipulated my findings under separate headings below:

Length of time taken

Authorisation's standard policy is not to allow applications to remain in a greatly incomplete state for an extended period after submission, since this causes problems with the eventual statutory deadlines and is not an efficient use of their resources.

Your application was submitted on 30 May 2019 and a Warning Notice proposing to refuse the application was sent to you on 19 November 2021. The application outcome time was therefore 30 months.

In consideration, I have reviewed the timeline of events which took place to ascertain whether the length of time and delay was reasonable and proportionate. As a result, it is my view that whilst the application was correctly considered and in accordance with the FCA's authorisations process, there were a large number of gaps in communication with you, as well as a lack of updates being provided. I have also considered that the number of requests for information, whilst necessary and permissible during a formal review of your application, could have been better managed by potentially combining requests or gaining the necessary information at the early stages.

It is my understanding that the large number of gaps in communication were as a result of Authorisations awaiting information from other internal stakeholders. However, whilst it is acknowledged that the overall reason given is justifiable, it is my view that if delays were being foreseen during the case cycle like awaiting relevant information from stakeholders, then your assigned CO should have updated you and kept you informed.

And so, on the basis that a significant delay did occur and for reasons as stated above, I am upholding this part of the complaint. Please accept my apologies, on behalf of the FCA, for this and for any inconvenience this may have caused you.

Regulatory Fees

Authorisations can consider, outside of public policy, whether a fee refund could be given on specific occasions. However, a substantive and agreed process exists between authorisations and the finance department for refunds outside of the public policy. This would require that there had been some error by the FCA which materially contributed to the incorrect application.

The authorisations process page on the FCA website also states the following:

“Refusals/ If we do not consider your application meets the standard for authorisation, we will recommend to an executive decision maker that it

is refused, and they will make the decision. Rejections/ A submission for authorisation under Part 4A of the Financial Services and Markets Act 2000 ('FSMA') may be rejected. You must provide the minimum information set out under section 55U of FSMA. If your application is rejected, we will give the reason(s) and your application fee will be refunded. You are welcome to resubmit an application, containing all the relevant information, at any time".

In this case, your application was refused and not rejected. Therefore, the application fee would have been non-refundable.

Additionally, as your firm were shown as authorised under the Temporary Permissions Regime (TPR), whilst undergoing the full application process, regulatory fees would have been due. Further, as no error was identified in consideration of your application, it is my view that a refund is not justified in this case. It is therefore on this basis, that I am unable to uphold this part of the complaint.

Why you are unhappy with the regulator's decision

4. You have asked me to review the FCA's decision

My analysis

5. You have told me:

The timeline was partially upheld but almost unbelievable they insist that my application was refused not rejected so the £1200 fee is not returned. However, had it been rejected then it would be!

Is this treating anyone with fairness? A message the FCA like to enforce.

I would be interested in what the plain English society would make of it.

Maybe it should be the Financial Ombudsman that I try now, if you could let me know your opinion, please.

6. I am pleased the FCA have acknowledged there were unnecessary delays when reviewing your application and have apologised to you for this and upheld this element of your complaint.

7. Having reviewed the wording relating to the authorisation application being rejected or refused on the FCA website and within its decision letter to you, I can sympathise as to why you would be unhappy you have been refused a refund.
8. The website does not detail the fee is not refundable if an application is refused, nor does it confirm the difference between a rejected and refused application in a clear manner.
9. As I have had access to the FCA file, I hope I can clarify the difference between a rejected and refused application for you. If an application is received and is of poor quality, then the application will be rejected after the initial review following its receipt by the FCA. In this instance, a refund will be issued.
10. In your case, you submitted your application on 30 May 2019, the FCA did not reject your application when you first submitted your application. The FCA liaised with you over 30 months before your application was refused by an executive decision maker, therefore no refund is due.
11. Whilst I agree with the FCA no refund of your application fee is due, I recommend the FCA updates the wording on its website to make the difference between a rejected and refused application clear and to detail the application fee is non-refundable except in the following circumstances....and to detail the circumstances to avoid any future misunderstanding and confusion.
12. In response to my preliminary report, I am pleased to advise the FCA accepted my recommendation and have updated the wording on its website.

My decision

13. For the reasons outlined above, I am unable to uphold your complaint.

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Complaints Commissioner

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