

Final report by the Complaints Commissioner**Complaint number FCA00414***The complaint*

1. The complaint has a complex history.
2. You first complained to the FCA on 23 September 2016. The element of that complaint which you have referred to me was described by the FCA as follows:

Element One:

- a. *'You state your firm [X], applied for full authorisation in March 2015. After several conversations with your case officer, you claim the case officer 'talked (you) out of' continuing with all of the permissions you had originally applied for except for limited permission lending. You maintain having questioned the case officer over the adequacy of having only limited permission, given that the supporting documentation you supplied indicated you would require full permission lending. Despite this, you say you were assured you would only require limited permission lending for the regulated business activity the firm was undertaking.*
 - b. *It has since been identified that you do require full permission lending. This has resulted in your firm conducting unauthorised business which has led to a number of supervisory actions. You state these have proved detrimental to you, your firm, and its reputation. You are now also required to reapply for the correct permissions.'*
3. The regulator did not uphold this element of complaint.
 4. You subsequently submitted another complaint which I dealt with under reference FCA00364. I issued a decision letter on 23 November 2017, but I do not consider that further here.
 5. As a result of the outcome of that complaint, you asked me to investigate element one above of your original complaint of September 2016, and you also asked to me to investigate two further complaints as follows:

Element Two

You wished to complain about the length of time it took the FCA to vary the permissions of your licence in the period May-December 2016. This is a complaint which the FCA has not investigated, and it is normally desirable for the FCA to review complaints before they come to me. However, I have decided to accept your request that I investigate this matter in conjunction with my investigation into your other complaints, in order to avoid parallel investigations between my office and the FCA, and given your representations about your state of mind.

Element Three

You cancelled your firm's permissions on 2 October 2017. You dispute that you need to pay the regulatory fees for the following financial year.

What the regulator decided

6. The FCA did not uphold element one of your complaint for the following reasons stated in its decision letter of 13 December 2016:

'You submitted a full permission consumer credit application for your firm [X] on 19 March 2015. Although this application was for full permission, the lending permissions applied for were 'limited to lending without interest or charges'. The description for this limitation further added:

'This permission is limited to lending under a regulated credit agreement, other than hire purchase agreement or a conditional sale agreement, under which no charge (by way of interest or otherwise) is payable by the borrower in connection with the provisions of credit under the agreement.'

You had also applied for: credit broking, debt adjusting, debt administration, debt-collecting and debt-counselling (limited to counselling no debt management).

During assessment, the case officer noticed that in your response to her on 15 July 2015 you indicated you were no longer engaging in debt administration or debt collecting activities. You confirmed, in writing, to withdraw these permissions from your application on 15 September 2015.

The case officer raised additional questions to gain a better understanding of the firm's business model and the activities it engaged in. On 22 September 2015 you stated in an email that your business plan had changed considerably and that you only now required a 'licence' to set up loans for home improvements.

In the email of 6 November 2015, the case officer suggested your firm may wish to 'down-scale' its application to limited permission if it would only be offering '0% interest loans'.

On 10 November 2015 you provided an updated business plan. This business plan did not indicate any fees or charges would be charged in relation to the firm offering finance. The example provided within the business plan did not indicate charges would be associated with the lending. The business plan, as well as previous responses from you, indicated your firm would be offering services in relation to home improvements in contrast to solely offering finance.

The case officer therefore stated in an email dated 13 November 2015:

'On the basis of the business plan you have provided, it appear[s] that the activities you will be engaging in qualify for limited permission lending.'

I believe it was reasonable for the case officer to make this statement considering the updated information you had provided to them. The case officer also gave you time to consider and confirm if you wanted to proceed with the above.

I do not believe it was reasonable to expect that the case officer should have questioned whether you required home credit lending permissions. This is because your updated business plan did not indicate you would be collecting loan repayments from the customers' homes. On 27 November 2015 you sent a response which indicated you would like to 'down-scale' the permissions you had applied for.

On 7 January 2016 your firm was authorised for limited lending permissions.'

My analysis

Element One

7. You disagree with the FCA letter quoted above, but you have not provided any further evidence or reasons why. I have reviewed the documents both you and the FCA have sent

me and I find the FCA's description of what happened accurate. During the course of the authorisation process you provided an updated a business plan which did not require full permissions. The case officer pointed this out to you, and you were given time to consider and say if you wanted to proceed with a limited lending permissions application. You chose to do so. From the records, it does not appear that the FCA put you under pressure to amend your application.

8. I appreciate you felt later that you would have liked to operate with a full permissions authorisation, since your business model had changed and you found yourself acting outside your permissions, but that does not mean it was the FCA's fault. Your licence was granted in January 2016 based on your amended business plan and proposed activities, and based on an application which you had prepared. If your business plan subsequently changed and you wished to engage in activities not covered by your permissions, the correct thing to do was to apply for a variation of permissions, which you did on 4 May 2016.
9. For those reasons, I do not uphold this element of complaint.

Element Two

10. You wish to complain about the length of time it took the FCA to vary the permissions of your licence in the period May-December 2016. You have said that you were '**told my change of permissions was to be fast tracked** I believe one of the early conversations indicated a time scale of two weeks'.
11. As part of my investigation I asked both you and the FCA for evidence that you had been told your permissions would be varied within two weeks. Neither the FCA nor you have been able to provide me with evidence that such a promise was ever made to you. It is unfortunate that the FCA have not recorded all the telephone conversations with you, but in the absence of any contemporaneous file notes or recordings from either the FCA or yourself, I cannot reach a conclusion that the FCA promised to vary your permissions in two weeks and breached that deadline.
12. I can, however, look at whether the FCA breached its statutory deadlines in assessing your application, and whether the FCA took a reasonable amount of time overall in the assessment.
13. The FCA has a statutory service standard to process complete applications within six months, and incomplete applications within 12 months.
14. I have reviewed the case file which contains all the correspondence between you and the FCA about your application to vary your permissions. You applied for a variation of permissions on 4 May 2016 and a full licence was granted to you on 12 December 2016. The FCA classed your application as incomplete due to a number of issues which required further input/clarification, and once these were resolved, and the case officer was satisfied all the conditions had been met, your permissions were changed. Whilst I appreciate you may have wanted the process to have taken less time, the FCA processed the application within the statutory deadline. Although it took seven weeks from the date of your application until a case officer started to deal with it, and although there were some short delays in exchanges between you and the FCA (delays on both sides), I can see from the file that the case officer progressed your application in a reasonable manner in the circumstances, and I do not consider that there was undue delay.
15. For those reasons, I do not uphold this element of your complaint.

Element three

16. You cancelled your firm's permissions on 2 October 2017. You dispute that you need to pay the regulatory fees for the following financial year.

17. You have provided the following reasons not to pay the fee:

*'I should not have to pay any fees for this fiscal year up to my deregulation in October 2017. I believe this is **just** due to not receiving any service from the FCA other than a massive delay of 8 months between my raising of the problem as outlined in the above complaint and the FCA complaints department backing down just before Christmas 2016 and awarding me my full license. This delay as you will be aware allowed the enforcement team time to destroy my business. Evidence supporting this has already been provided. I also have an outstanding unpaid invoice of over £30,000.*

Therefore as I received no service from the FCA for 8 months and they are requesting a fee for April 2017 to October 2017 I have stated I should not have to pay such a fee.'

18. I do not think there is much dispute about the facts: you did not apply to cancel your authorisation until after the start of the 2017/18 year; and under the FCA's published policy, which applies to all firms, you were liable for a full year's authorisation fee if you did not cancel before 31 March. The fact that you felt your variation of permissions application was taking longer than you would have liked to resolve at the FCA is not a reason not to pay your authorisation fees. In the circumstances, I am afraid I cannot uphold your complaint.

19. I am sorry to have to disappoint you, but I do not uphold your complaint.

Antony Townsend

Complaints Commissioner

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