

5 June 2018**Final report by the Complaints Commissioner****Complaint number FCA00425***The complaint*

1. You complained to the FCA that the two Minded to Refuse letters you were issued with were the wrong outcome and that the application process to become approved as a CF30 and the use of the Minded to Refuse Letters was unfair.

What the complaint is about

2. You were approved as a CF30 and worked at the same company for a number of years. When regulatory concerns arose in the area of the business you worked in, you voluntarily attended interviews with the FCA in order to assist them in carrying out their regulatory functions. As part of these interviews you were shown information that concerned other people and their conduct, as well as some information that related to your activities. You shared your interpretation of the information and tried your best to assist the regulator and clarify any questions that dealt with your conduct.
3. Following those events, you decided to move to a different employer where you were to reapply to be approved as a CF30, in accordance with the rules, and you and your new employer expected this to be approved. The FCA, however, raised concerns and issued a Minded to Refuse letter, and your employer decided to withdraw the application, with your consent, in order to avoid the risk of a Warning Notice being issued. A new application was made some time later but it also resulted in a Minded to Refuse letter, and your employer again decided to withdraw the application and not challenge the FCA's decision through the Regulatory Transactions Committee (RTC).
4. You believe that Minded to Refuse Letters are unfair, especially in your case where someone you discussed with the FCA, as they had concerns about his activities, apparently got approved while you are still waiting.

What the regulator decided

5. The FCA excluded your complaint on under section 3.6 of the Complaint Scheme as it should have been dealt with through a different route, namely, by being referred to the RTC.

Why you are unhappy with the regulator's decision

6. You believe that as another individual in circumstances broadly similar to yours was treated in a way you think is special, you should be given the opportunity for the same treatment or be told exactly what you need to do to get approved.
7. You feel you are now tainted, as you have not been able to do the job you were hired for and you would not be able to move to a different job, even though you believe you have not done anything wrong. You continue to believe the Minded to Refuse Letters are unfair.

My analysis

8. I understand that your firm did not challenge the FCA's recommendation to the RTC as they did not want to run that risk that a Warning Notice would be triggered if the RTC agreed with the case team's recommendation.
9. To ensure I understood the application and withdrawal of application process correctly, I reviewed the information contained on Form B (SUP 10A Annex 5) and the notes referred to on the form. Form B makes it clear that both the applicant and the candidate will be treated as having read these notes if they sign the form.
10. The notes state:

*“Under section 61(5) of the Financial Services & Markets Act (Determination of applications) **the firm may withdraw the application only if it also has the consent of the candidate and the person by whom the candidate is or would have been employed, if this is not the firm making the application.**”*
11. The FCA has confirmed that both you and the firm signed this form. Therefore you should have understood that even if a firm withdraws their support for a controlled function application, as mentioned above, the candidate may carry on without the support of the firm. If you had legal advice, your lawyer also ought to have explained this point to you.
12. If you had carried on with the process without the support of the firm, it could have resulted in the RTC declaring you fit and proper - or not fit and proper - for the role / controlled function you had applied for. However, as there would have been no “supporting firm” at this point, you would have had to make a new application if another firm (or even the same firm) had wanted to employ you in a specific controlled function. You cannot be deemed fit and proper through an unsupported application and then go on to perform controlled functions without reapplying.
13. While the FCA cannot publicly comment on individual cases, it is our understanding that some candidates do decide to carry on with the process without the support of the applicant firm, with varying degrees of success.
14. You have been advised that you need to disclose all relevant information, should you want to apply again, and that the FCA will assess your application on its merits and in light of the information provided at the time of the new application.
15. For this reason, while I have sympathy with your position, I agree with the FCA that your complaint about not having been authorised falls outside the scope of the Scheme, as a challenge to the recommendation to refuse to approve you should have been raised with the RTC at the time it was issued, with or without the support of your firm.

My decision

16. For the reasons set out above, I am unable to uphold your complaint about the outcome of your application to be authorised.

General points

17. This is one of a number of complaints I have been dealing with in which there has been some confusion about Minded to Refuse letters. While I do not consider that you have been disadvantaged, I am concerned there is a lack of clear information on the FCA's website about the process and the options available to firms and individuals. For that reason, I am separately pursuing with the FCA how the process might be improved.

Antony Townsend

5th June 2018