

28 June 2018

**Final report by the Complaints Commissioner****Complaint number FCA00450***The complaint*

1. On 5 April 2018 you asked me to investigate a complaint about the FCA. I agreed to accept your complaint out of time for the reasons you supplied on 6 April. I have carefully reviewed the papers sent to me by you and by the regulator. My preliminary report was issued on 24 May 2018; you and the FCA have commented.

*What the complaint is about*

2. On 1 November 2017 you complained to the FCA about the way it was handling the authorisation process for your debt management business. The FCA divided your complaint into the following three elements:
  - You received a Minded to Refuse letter in response to your Firm's Application. On 17 October 2017 you sent a letter addressing the concerns that had been raised. You do not believe your letter was considered fully before your firm was referred to the Regulatory Transactions Committee (RTC).
  - You believe you withdrew your application and have said that you did not receive information about the winding down process or [were] told that creditors would contact your clients once your firm no longer had Interim Permission (IP). You believe you should have been made aware of these details.
  - You took steps to withdraw your Firm's Application because the case officer did not provide full answers to questions you raised about the withdrawal process. You have also said that you were forced to take steps to withdraw your Firm's Application.

*What the regulator decided*

3. On 28 November 2017 the FCA complaints team told you that it would not be investigating Element 1 of your complaint because, under paragraph 3.6 of the Complaints Scheme, it considered that the RTC was the appropriate forum for this aspect of your complaint.
4. On 21 December 2017 the FCA complaints team told you that it had partly upheld Element 2 because, although you were sent information about the winding-down process, you were not told that creditors might contact you or your clients when you took steps to withdraw your application. Element 3 was also partly upheld

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because you did not receive an appropriate response to your letter dated 17 October 2017. You were offered an apology for the lack of information and poor customer service you received. However, the complaints team did not accept that you were forced to withdraw your application.

*Why you are unhappy with the regulator's decision*

5. You consider it was unacceptable for the FCA not to review Element 1 of your complaint, because your decision to withdraw your application was due to the pressure you felt from the Authorisations Team and your complaints about the lack of clear and accurate information have been partly upheld. An apology and assurance of further staff training is unacceptable because you took steps based on incorrect or missing information and have been subjected to unfair treatment. This has led to the loss of your business and income and caused you stress and anxiety.

*Chronology*

6. On 3 October 2017 the FCA Authorisations Team informed you that it was "minded to recommend" to the RTC that it refuse your application. The FCA's letter said that if the RTC agreed, a Warning Notice would be issued and you would have the right to appeal to the Regulatory Decisions Committee (RDC). The letter invited you to address the FCA's concerns by 5pm on 17 October 2017 "*before we make our recommendations to the RTC.*" The letter ended with a reminder that it was open to you to withdraw your application.
7. You responded to the FCA on 17 October 2017, slightly after the deadline. You considered that your letter addressed the FCA's concerns. On 19 October you were sent a brief acknowledgment that said your application was being referred to the RTC; following this you emailed to ask about withdrawing your application. There was further correspondence between you and the FCA Authorisations Team between 20 and 27 October when you decided to withdraw your application. On 31 October 2017 the FCA told you that your IP had lapsed on 27 October and that you would cease to have IP from 12 noon on 1 November.
8. On 1 November 2017 you informed Authorisations that you had changed your mind about withdrawal, in part it seems because creditors were now contacting you clients direct due to the lapsed IP. This led to you agreeing to enter into an agreement with the FCA (VREQ) to allow a staged winding-down of your business.
9. On the same day you submitted your complaint to the FCA's complaints team. Your complaint form said that you wanted to have your letter of 17 October considered and responded to, and in the meantime to have your IP reinstated. You said that once your concerns had been addressed you would be able to make an informed decision about whether to continue with or withdraw your application.
10. Your complaint was acknowledged on 2 November and you were told that you would be contacted again within four weeks. The FCA's complaints file shows that active enquiries were made by the complaints team investigator who was informed on 8 November that your IP had been reinstated and a VREQ was being prepared for your signature. You signed this on 17 November 2017.

11. On 28 November the complaints team wrote to you setting out its understanding of the three elements of your complaint. The letter said that it was no longer possible for you to proceed with your application because you had signed the VREQ. As noted above, the letter also said that Element 1 of your complaint would not be investigated. You received the complaint outcome on Elements 2 and 3 on 21 December 2017.

*My analysis*

12. I have set out the chronology above to set the context for my analysis of the issues raised in your complaint and the approach taken by the FCA complaints team. The issues raised were live at the time you made your complaint but your decision to sign the VREQ on 17 November effectively brought your application to a conclusion and meant that the remedy you sought for your complaint was no longer available. At that point you had lost the opportunity to have your response of 17 October considered by either the RTC or the RDC.
13. In response to my preliminary report you have drawn attention to aspects of the Chronology leading up to your decision to sign the VREQ, which shows how pressured you felt by your interactions with the Authorisations Team. In particular, you have mentioned that you were not told before your application withdrawal that your interim permissions would cease at 12 noon on 1 November. You submitted your complaint on the same day. That evening you received an out of business hours call from a member of the Authorisations Team, which mentioned signing a form that you now know was the VREQ. You consider that this was unprofessional and put you under pressure when you were clearly very distressed. You consider the FCA took advantage of you at a time when you were vulnerable and that you therefore signed the VREQ under false pretences. You consider this amounts to unfair treatment, particularly since the FCA's letter of 3 October only gave you one option - withdrawal - and that you were not given details of the complaints process until you requested this information on 1 November. You would like me to take this into account when addressing Elements 2 and 3 of your complaint below.

*Element 1*

14. I have considered the FCA's position regarding Element 1 of your complaint. It says that the correct way for you to take this matter forward was to the RTC. Although I understand that this is the FCA's general approach, by the time your complaint was considered that option was no longer available to you. Although this does not necessarily mean that paragraph 3.6 of the Complaints Scheme no longer applies (because you previously had the opportunity to go to the RTC) in my view this will depend on the nature of the complaint. Your complaint was that "You do not believe your letter was considered fully before your firm was referred to the Regulatory Transactions Committee (RTC)".
15. In my view that matter could have been investigated by the complaints team. It is not clear to me from the FCA's file how the decision not to do this was eventually reached, particularly given the conclusion on Element 3 of your complaint that you did not receive an appropriate response to your letter dated 17 October 2017. In response to my preliminary report the FCA says that although this part of your complaint was not investigated, the evidence shows that consideration was given to

your firm's letter and legal advice was sought about how to respond to it. As a result of my preliminary report, the FCA Complaints Team has requested further information from the case team about this, which it considers shows that the firm's letter of 17 October was considered fully by the case team and its lawyer and that there were good reasons why a more substantive response was not sent to you on 19 October, including that your response letter did not meet the Authorisation Team's concerns. I have taken note of these points. In my view they underline that this element of your complaint should not have been excluded under paragraph 3.6 of the Scheme; it could, and should, have been investigated and responded to by the Complaints Team. I have taken account of the Complaints Team's new response in my conclusions below.

16. The FCA's letter of 3 October 2017 was seven pages long and very detailed. Although the FCA refers to it as a "Minded to Refuse" letter, the wording of the letter was "minded to recommend to the RTC that it refuse". There is (or should be) a significant difference. The letter went on to invite you to submit a response "before we make our recommendations to the RTC". This wording suggests that there would be a further stage before referral, and gives rise to an expectation that comments received will first be considered by the relevant FCA team. As a result of this, I do not consider that the FCA's letter set out sufficiently clearly what would happen next.
17. I understand that the "minded to recommend refusal" procedure is an additional and optional process used by the FCA, and in principle I can see it could be helpful to both applicants and the regulator. However, the use of such a process in the middle of statutory proceedings demands that the applicant is given sufficient information: without it, unfairness could arise. The FCA needs to make it very clear what account, if any, is taken of comments received, and in what circumstances the application will nevertheless proceed to the RTC. You also say, reasonably in my view, that you were not signposted to obtaining legal advice and that ending the letter with a 'reminder' about the option to withdraw your application contributed to your sense that you were 'being pushed out of the industry'.
18. I therefore **recommend** that the FCA considers revising the wording of its "Minded to Refuse" (MTR) letters to: make it clear what will happen next and whether comments sent in response will be considered by the relevant FCA team or the RTC; include a signpost to obtaining legal advice; list at the end all the 'next step' options, only one of which would be to withdraw an application.

#### *Elements 2 and 3*

19. In my preliminary report I said that I was satisfied that the FCA investigated Elements 2 and 3 of your complaint and that the conclusion to partly uphold those complaints was reasonable. As noted above, you would like me to revise my conclusion, given the pressure you were put under at the end of October 2017 that led you to sign the VREQ. You have made a number of points in support of your argument as follows:

- You are a small firm (one person, not classed as a consumer) with a complaint against a regulating body (who apply rules on firms to treat consumers fairly and to be transparent)
- The majority of your complaint has been upheld and you have received an apology and the FCA are advised to make changes but no compensation was awarded for inconvenience or for your bad experience.
- The FCA could have supported you better through the application process – for example – review your data and advise you to make changes where (if) necessary and to guide you fairly through the process –instead of being ‘Mindful to refuse’ they could have offered to supervise your firm.
- Being given options means to give more than one option and to allow a person to make an informed choice of which option to take and to be given the information. You were not given the chance to make an ‘informed decision’ and this area of your complaint was upheld.

20. I have considerable sympathy with the points that you make. They illustrate how difficult it can be for small firms and individual advisers to navigate the FCA’s systems and how, in the absence of full information, individuals can feel pressurised. That is why I have recommended changes to the ‘MTR’ letter. The FCA also needs to do more to show that it understands the impact of its actions. For example, however well intentioned, an ‘out of hours’ phone call may not be perceived as helpful by the recipient, especially if it requires a significant decision to be made quickly. I have drawn attention in my last two Annual Reports to the need for the FCA to show empathy with complainants and to consider the cumulative effect of its actions or inactions upon individuals.

21. I appreciate that you consider that the cumulative effect of the FCA’s failings meant that you were unable to make an informed decision about your application. However, by the time these issues were considered by the FCA Complaints Team, you had entered into a VREQ and the complaints remedies you requested were no longer available. I am satisfied that the Complaints Team took steps to establish what options were still available to you and that it was reasonable for Elements 2 and 3 of your complaint to be partly upheld. I realise that this leaves you feeling that you have not had an effective remedy and I have considered whether the FCA’s apology is sufficient or whether it should also consider offering you a compensatory payment. I have concluded this would not be appropriate in the circumstances since, notwithstanding the identified deficiencies of the FCA’s letter of 3 October 2017, and the pressure that you felt yourself to be under, you were made aware, not least through the complaints process, of the options now available to you.

22. There appears to have been a surprising lack of knowledge among FCA staff that withdrawing your IP could lead to creditors contacting consumers. You have reasonably pointed out that this caused your clients stress, although I note the FCA’s response to my preliminary report that there would have been no actual adverse impact on the firm’s customers because creditors would still accept payments whilst the business was winding down. Nevertheless, the FCA’s complaint response told you that: “*the information that is given to firms about the withdrawal process is already being reviewed to help prevent another complaint similar to yours*”. In my preliminary report I **suggested** that in conducting this

review, the FCA considers the impact on consumers from the perspective of its consumer protection remit. In response to my preliminary report the FCA has said that “*steps have already been taken to ensure that the impact on consumers is minimal. On 31 October an email was sent to the firm that included a directive letter. This included clear instructions on steps that the firm must take to ensure its customers were not adversely affected and treated fairly and transparently*”. Although this is noted, it is specific to your firm whereas my suggestion was directed towards the review of generic information provided to firms in this situation. **I therefore repeat my suggestion.**

23. The FCA acknowledges that you did not receive an appropriate response to your letter of 17 October 2017 and I have dealt with this more fully above. Subject to that, and my recommendation on the content of MTR letters, I accept the FCA’s conclusion that an appropriate response to your letter would have been to tell you that your points would be addressed by the RTC.

#### *My decision*

24. I have concluded that the FCA could have investigated Element 1 of your complaint and I note that the FCA has now made further enquiries. I have **recommended** that the FCA considers revising the wording of its MTR letters to make it clear what will happen next and whether comments sent in response will be considered by the relevant FCA team or by the RTC; to include a signpost to obtaining legal advice; to list at the end all the ‘next step’ options, only one of which would be to withdraw an application.

I am pleased to note that, in response to my preliminary report the FCA has said that the wording of the MTR letters will be reviewed to ensure firms understand that any response they provide will be considered and, if the case-officer continues to recommend refusal, what that process looks like. This will include details about whether the firm’s comments will be considered by Authorisations or the RTC. The ‘next step’ options and the firm’s option to seek legal advice, if they wish to, will also be included.

25. I have concluded that it was reasonable for the FCA to uphold in part Elements 2 and 3 of your complaint and to offer you an apology.
26. **I repeat my suggestion** that, in conducting its review of information given out to firms about the withdrawal process, the FCA takes into account the impact on consumers from the perspective of its consumer protection remit.
27. I realise that you will be disappointed by my decision overall but I hope that you will understand how I have reached it.

Antony Townsend

Complaints Commissioner

28 June 2018