

CONFIDENTIAL

22 January 2021

Preliminary report by the Complaints Commissioner

Complaint number FCA00854

The complaint

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

What the complaint is about

2. The FCA summarised your complaint as follows:

Part One

You are an Independent Financial Adviser and was authorised by the FCA between 2001 to 25 January 2018, when you held controlled function positions at your own firm and subsequently, Firm S. In February 2018, you say that you joined Firm T, who submitted an application for authorisation on your behalf.

You say that you received authorisation only for the FCA to withdraw the authorisation soon after on the grounds that there was an error, and requested that the firm submit a full application on your behalf. It appears that the firm did not submit a full application and you left the firm in May 2018.

To resolve this allegation, you have requested an ex-gratia payment for your loss of earnings since April 2018 to the value of £200,000.

Part Two

In May 2019, you joined Firm X as a consultant on the condition that you registered with the FCA. The firm applied to the FCA on your behalf. You say that in July 2019, the firm was told by the FCA during a telephone call that your application should be abandoned and that you could function in a role that does not involve giving financial advice. You say that due to the FCA's actions, you are reliant on state benefits and assistance from friends and family.

Your view is that the FCA's decision to withdraw your authorisation in April 2018 and not grant authorisation in July 2019, was arbitrary and without justification. You are also unhappy that during the application processes, the FCA did not correspond directly with you.

To resolve this allegation you have requested:-

- The FCA grant you authorisation as a financial adviser with Firm X and to provide reasons why if this request is refused as you will consider a Judicial Review.*
- A formal apology*

What the regulator decided

3. The FCA declined to investigate your complaint under paragraph 3.3 of the Complaints Scheme which says that complaints should be made within 12 months of the date on which the complainant first became aware of the circumstances giving rise to the complaint.
4. The FCA also said that even if your complaint was brought within the required 12-month period, it is not the role of the FCA's Complaints Team to substitute its own judgment for that of the FCA (in this matter, the Authorisations Division). This means it is not able to overturn decisions made by the Authorisations Division to refuse authorisation or instruct them to re-open previously submitted applications that have been withdrawn. This is not a remedy that is available under the Scheme so it would not be able to authorise you as a financial adviser with Firm X.

Why you are unhappy with the regulator's decision

5. You have made two points to me as follows:
 - i. *I have only just become aware of the circumstances of a complaint because the whole point is that the FCA withheld making a decision at all and hung me out to dry. In addition I believe that the FCA have a discretion to waive the time-bar in some cases and they did not exercise this in my favour.*

- ii. *That I was authorised from 1990 to January 2018. After that the FCA refused to make a decision one way or the other thus leaving me in Limbo. I am really asking for a fair hearing and the opportunity to state my case properly. I have not had the opportunity to do this.*

My analysis

6. You have said to both the FCA and then to me that you have delayed submitting your complaint because of the FCA's delay in making a decision. I presume you are referring to the FCA's discussion with firm X in July 2019 which the latter relied on to withdraw the application that month. As this occurred over a year ago, I agree with the FCA that your complaint is out of time. You have not provided any further reasons for the delay in submitting your complaint.
7. I am sorry to hear about your current personal circumstances, but I agree with the FCA that the remedy you seek cannot be obtained through the Complaints scheme in the manner you suggest, regardless of whether your complaint is in time or not.
8. The FCA is right to say that your authorisation status can only be resolved if Firm X or another firm submits an application for authorisation again on your behalf.

My decision

9. For the reasons above, my view is that your complaint is out of time and that it is also out of the scope of the Scheme.

Amerdeep Somal
Complaints Commissioner
22 January 2021