

08 October 2021

Final report by the Complaints Commissioner**Complaint number FCA00860***The complaint*

1. The FCA summarised your complaint as follows:

Part One

You said you are unhappy with the length of time it has taken to determine your Approved Persons application and you have not been given a valid reason for this delay.

Part Two

You also allege that the Case Officer assessing your application has not returned your attempts to contact them.

What the regulator decided

2. The FCA partially upheld part one of your complaint that your application had exceeded the 90 day statutory limit. The FCA provided an apology for the inconvenience that it had caused you. The FCA did not uphold the other parts of your complaint, being that you were not given a valid reason for this delay, and the case officer did not return your attempts to contact them.

Why you are unhappy with the regulator's decision

3. You have set out that the 'crux' of your complaint is that the FCA did not deal with your authorised person application within the 90 day statutory period that they are supposed to. In your response to my preliminary report you asked that I include that this delay resulted in you having to purchase an insurance premium to cover you in this period, at a cost of £21,000. (Element one)

4. The FCA have provided excuses for its delays rather than providing you with valid reasons. (Element two)
5. The case handlers refused to call you or engage with you. (Element three)
6. The data request sent to the FCA took over 9 months to be completed. (Element four)

My analysis

Element one

7. The FCA has upheld this aspect of your complaint. It has acknowledged that it went over the statutory 90 day period for completing the review of your Approved Person (AP) application. It has apologised for the stress, frustration and inconvenience and that it caused you loss of income and clients.
8. In consideration of this the FCA offered you an ex gratia payment of £100 for the stress and inconvenience that you experienced as a result of the delay.
9. In my preliminary report I set out that I had reviewed the information provided to me that and I considered that it was appropriate for the FCA to apologise for exceeding the 90 day statutory time limit and I consider that it was appropriate to offer you an ex gratia payment for the stress and inconvenience, and I upheld this aspect of your complaint.
10. In your email dated 13 September 2021, you set out that you had incurred significant expenditure (for the additional insurance premium) as a result of the delays you experienced with your AP application. You disagreed with my decision that an apology and ex gratia payment was an appropriate remedy for element one of your complaint. You feel that this remedy was not sufficient to cover your losses and asked that I provide further information about why you are not entitled to compensation.
11. Paragraph 6.6 of the Complaint Scheme sets out that where a complaint is founded, the remedies available for the FCA to consider may be to offer an apology, or to take steps to rectify an error or if appropriate to offer a compensatory payment on an ex gratia basis.
12. In relation to compensatory payments, parliament has granted the FCA immunity from being sued for damages, save in very limited circumstances. So whilst the

Complaints Scheme does include provision for the payment of ex gratia compensation, it does not pay out the kinds of compensation which a court might award in damages. Accordingly, any ex gratia payment that the FCA does award is not to cover and reimburse you for financial losses, rather it is to recognise where stress and inconvenience may have experienced by a complainant.

13. It is for the above reasons that I consider that the FCA offering an apology and an ex gratia payment were appropriate remedies for the stress and inconvenience for the delays that you experienced. I note that the FCA in response to my preliminary report has reviewed the ex gratia payment if awarded to you for the delays you experiences and has said that it is now willing to offer £75 in respect of the complaints delays bringing the total award to £175.

Element two

14. You have set out that you feel that the FCA have provided excuses rather than providing you with valid reasons for the delays in reviewing your AP application.
15. I note that in your response to my preliminary report you directed me to the fact that you were aware of another AP application that was submitted by your colleague at the same time as your application, which you felt had similar considerations as yours, and was processed a lot quicker than your application. I want to acknowledge that you had already provided me with this information. I note that the questions I raised in my preliminary report did stem from this information, but I did not ask specifically about the actual application you detailed. This is because the other applicant has not raised a complaint with the Complaint Scheme, so it is not appropriate for me to request (or for the FCA to provide) details relating to that specific application. I appreciate that you will not be happy that I have not been able to provide you with an answer to the differences in time it took for yours and your colleague's applications.
16. With regards to the delay in your AP application, I have reviewed the correspondence on file I can see that the FCA has provided you with the reasons that your AP application took longer than a standard application. The FCA have set out that, due to you and your firm's prior involvement in Defined Benefit pensions (DB pensions) transfer advice your application was classified as a non-

routine application and this required further investigation and scrutiny. As you will be aware, the area of DB pensions and advice about DB pensions has been an area of focus for the FCA and I consider that it is appropriate that the FCA is treating AP applications for people who provide advice in this area as non-routine applications.

17. Unfortunately, in addition to this, your application was received at a time when the Senior Managers & Certification Regime (SMCR) was extended and this placed increased demand on the relevant department of the FCA. I note that the FCA still have an alert on its website on the approved persons page alerting people to the fact that SMCR applications and non standard AP applications may still take longer to determine than usual.
18. As set out in my preliminary report this element of your complaint raised some additional questions for me, and I took the opportunity to ask for some further details from the FCA. In my preliminary report I noted that it took two months to assign your case to the SMR Lending and Intermediaries Team Case officer and I queried, what, if anything was happening with your AP application in the two month period that it took to assign your complaint to a case officer? The FCA's response to my preliminary report set out a timeline of your AP application which confirmed that on 29 April 2020 your application was triaged and was referred to the Lending and Intermediaries APM team (L&I AMP)/Non-Routine Team (NRI) for further review. The FCA confirmed that between 29 April 2020 and 29 June 2020 the case remained in the NRI queue awaiting allocation. I feel it is disappointing that it appears that your application was not being actively progressed in this two month period.
19. In my preliminary report I asked whether other non-standard AP applications were taking a similar length of time and if so, are there any lessons that the FCA can take from this to improve its process? The FCA did not specifically confirm whether other AP applications were taking similar lengths of time and referred to its:

webpage on [Approved Persons](#), last updated on 1 September 2021, acknowledges the large volume of applications received by the FCA and advises that delays might be experienced.

We consider that the answers provided support the outcome previously reached and that the complainant has already been provided with a reasonable amount of detail with regard to the reason for the delays which he experienced.

20. I have reviewed the update on the FCA's approved person webpage, it notes that it has made good progress in reducing the volume of cases which had breached their statutory deadline and application allocation time. The webpage update also sets out that the FCA is further increasing resources to allocate and process applications.
21. From the information set out on the webpage, from the FCA's previous correspondence with you and from my interaction with the FCA in other matters, I am satisfied that the two month delay to your AP application was most probably the result of under resourcing within the NRI team, which the FCA has attributed to the increase in the volumes of applications and the reduced capacity caused by Covid 19. I am satisfied that these are valid reasons. Accordingly, I do not uphold this element of your complaint.
22. I am cautiously pleased to note on the webpage and confirmed to me by the FCA that the FCA has recognised these delays to be an issue and are taking steps to allocate more resources to process future AP applications, but it acknowledges that there may still be delays experienced. Whilst these delays continue, I consider that there are most likely still steps that can be taken to improve processes. I would **recommend** the FCA continue to review and monitor its processes to see if there are any way that timeframes could be reduced, for instance if there are fewer resources in the NRI team and this is where the applications are backing up, could more information be requested when an application is triaged so that the applicant can collate the relevant information whilst the application is waiting to be allocated to a NRI team member there is little or no further information required from the parties to make the relevant decisions.

Element Three

23. I have reviewed the FCA file and from the information available to me I have not been able to find any evidence that the case managers refused to engage with

you. I can see that your emails were responded to and that there were also some phone conversations. This does not mean that you were not made to feel this way, rather it means that it was not evident based on the information available to me. Accordingly, based on the available information I do not uphold this aspect of your complaint.

Element four

24. This element of your complaint relates to the subject access request (SAR) that you made to the FCA. As you have correctly set out in your complaint letter, data request complaints do not fall within the remit of the Complaint Scheme that is a remit of the Information Commissioners Office (ICO). You have informed me that you have lodged a complaint with the ICO and as such I will not be looking at this aspect of your complaint.

My decision

25. I am sorry as I know that this decision will disappoint you but for the reasons set out above, I have not upheld Element Two, Three and Four of your complaint. I have upheld Element One of your complaint and I consider that the remedies offered by the FCA are appropriate.

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Complaints Commissioner

08 October 2021