

19 July 2021

**Final report by the Complaints Commissioner****Complaint number FCA00914***The complaint*

1. On 30 March 2021 you asked me to review the outcome of your complaint to the Financial Conduct Authority (FCA). I have carefully reviewed the documents that you and the FCA have sent to me. My preliminary report was issued on 17 June 2021 and both you and the FCA have had the opportunity to comment.

*What the complaint is about*

2. You complained to the FCA about the fairness of its authorisations process when assessing your fitness to hold a customer function (CF 30) within a firm.

*What the regulator decided*

3. The FCA divided your complaint into nine parts and its complaint response dated 29 January 2021 reached the following conclusions:
  - a. Parts One and Eight – Your complaints that the Authorisations team had exceeded the statutory timescale for processing the firm’s CF30 application was not upheld on the grounds that the 90 day period was not exceeded. A chronology and explanation of the time taken was provided.
  - b. Parts Two and Three – Your complaints that the FCA used incorrect data to reject the CF30 application, and had no process for validating that data, was not upheld on the basis that (i) you had provided no evidence of this and (ii) the application was not rejected but withdrawn by the firm with your consent.
  - c. Parts Four, Five and Seven – Your complaint that the FCA either had not processed this application correctly or not processed approved applications correctly in the past was partly upheld on the basis that earlier applications had lacked due diligence. Your complaint that the local area stage of your

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complaint had not been looked into properly was partly upheld for the same reason, as was your complaint that you had not been treated consistently.

- d. Part Six – Your complaint that information was provided to the firm and not to you was not upheld on the basis that the Authorisation team’s communication was, correctly, with the firm making the application.
- e. Part Nine – Your complaint that, due to the rejected application and FCA actions, you are now unjustly unemployed was not upheld on the basis that the application was not rejected but withdrawn by the firm with your consent.

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

- 4. You have told me that, following the FCA’s advice to the firm not to proceed with the CF30 application, you requested your file as you did not know why this had happened. To date you have neither received your file nor an explanation. The FCA’s complaint response does not answer your questions. You have always been authorised previously and you want to know why you are not being authorised now. You believe that the FCA must be holding inaccurate information: this has caused you to lose a job and be unable to work in the financial services industry. You have also complained to me about the time taken by the FCA to answer your complaint.

*My analysis*

- 5. You were offered a customer function role at a firm, who submitted the online CF30 authorisation application to the FCA in October 2019. In January 2020, after exchanges of further information, the FCA told the firm that it was ‘minded to refuse’ the application and set out the options that followed on from this. The firm decided to withdraw the application, which effectively withdrew your job offer, and you agreed to this by signing the withdrawal form.
- 6. In bringing your complaint to me, you have focussed on not knowing the reasons why the FCA was minded to refuse your application and the time taken to respond to your complaint. In response to my preliminary report, you have told me that you also remain dissatisfied about the time taken to process the CF30 application. For the record, I note that there was a statutory timescale of 90 days to process the application. The ‘clock’ was stopped when questions were asked of the firm in October and December 2019 and there was also an initial delay in

allocating the application, due to an influx of applications, although the clock was not stopped in this phase. For the reasons set out in the FCA's Decision Letter, the clock remained stopped (at 13 days left) from 18 December 2019 until the firm sent Form B on 5 February 2020. This was because the FCA continued to seek information and responses from the firm during this time. I am therefore satisfied that the statutory timescales were not exceeded and that the FCA's response to Parts One and Eight of your complaint was reasonable and provided you with accurate information.

7. The FCA's complaint response is also correct to say that the CF30 application was technically made and withdrawn by the firm, who were the applicants, and therefore communication was with them (Parts Two, Three, Six and Nine). The FCA explained to you that the information that can be shared with you about this is limited by the confidentiality regime set out in Section 348 of the Financial Services & Markets Act 2000 (s.348 FSMA) and restrictions due to the FCA's policy on sharing information about regulated firms and individuals.
8. Like the FCA, I am required to respect confidentiality. This means that sometimes I cannot report fully on the confidential material to which I have access. However, as part of the Complaints Scheme, I have access to all the FCA's complaints papers, including confidential material. This is so that I, as an independent person, can see whether I am satisfied that the FCA has behaved reasonably. Sometimes this means that all I can say to complainants is that, having studied the confidential material, I am satisfied that the FCA has (or has not) behaved reasonably – but I am unable to give further details.
9. Having reviewed the evidence, I am satisfied that the FCA's email to the firm in January 2020 provided the firm with all the information it needed to make an informed decision. This included the information relied upon, an explanation of the 'Minded to Refuse' process, and setting out the options of withdrawal and what was involved in continuing via referral to the Regulatory Transactions Committee and from there to the Regulatory Disciplinary Committee and ultimately the Upper Tribunal. Based on this, the firm chose withdrawal as it was entitled to do. You were then asked to sign the withdrawal form, which you did. I note that, while waiting for the firm to send in the withdrawal form, the FCA asked the firm, on 30 January 2020, if you wished to proceed unsupported (i.e.

without the firm) to have your fitness and propriety assessed. You have told me that the firm did not discuss this option with you before you signed the withdrawal form. It was not the FCA's responsibility to inform you of this option. You have also told me that you queried this with the FCA's Authorisation Team by phone on 5 February 2020 and were told that without the support of the firm you had to sign Form B. There is no note of this phone call in the Authorisation Team's case file supplied to me and the FCA says that the team has no record to show that this call took place. I am therefore unable to comment further on this. The evidence I have seen shows that the firm emailed the signed Form B to the FCA at 9.04 am on 5 February 2020 and the case was closed later the same day.

10. In considering Parts Four, Five and Seven of your complaint, the FCA concluded that earlier applications from/about you should have been subject to greater due diligence and these complaints were partly upheld on this basis. In response to my preliminary report, you have also referred me to the FCA's decision to increase your permissions in February 2019. I am afraid that I cannot comment further on this as it falls outside the complaint investigated. I am satisfied that the conclusion reached by the FCA was reasonable based on the information reviewed.
11. I can appreciate how frustrating this must be for you, as you have not had access to the information that has been seen and relied upon by others who are making decisions about you. I note that you have made a Subject Access Request to the FCA: this seems to have been outstanding for some time as there is mention in the local area's complaint response of 24 January 2020 that you were due to have a response to this by 14 February 2020, some 17 months ago. I can only suggest that you follow this up with the FCA and refer on to the Information Commissioner's Office (<https://ico.org.uk/>) if necessary.
12. Regarding the time taken by the FCA to respond to your complaint, from 27 January 2020 to 29 January 2021, this delay was acknowledged by the Complaints Team and you were offered an ex gratia compensatory payment of £125. Although I agree with you that the delay was unacceptable, I am satisfied that the FCA's response was reasonable in the circumstances and in line with offers made in similar cases. My office has raised the issue of complaint

handling delay with the FCA for some considerable time and I am aware of and monitoring the steps the FCA is taking to improve its response times.

*My decision*

13. I have not upheld your complaint for the reasons stated. I appreciate that this will be a disappointment to you but I hope that you will understand the reasons for it. I can only suggest that you pursue your information request with the ICO.

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Complaints Commissioner

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