

The FCA's response to the Complaints Commissioner's Report

FCA00431

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We have considered the final report of the Complaints Commissioner on complaint FCA00431.

As noted in the final report, the FCA has accepted certain criticisms and recommendations made on this complaint.

The Commissioner concluded that there was unreasonable delay and lack of care amounting to maladministration in the processing of this application. He also concludes that the response to the complaint sought to minimise the FCA's failings, and did not properly consider the impact of those delays upon the business. The Commissioner recommended the FCA offer a payment on an ex gratia basis of at least £5,000 and an apology to the complainant. In addition, the Commissioner has asked we consider what loss the business has incurred using his 'Annex 1' as a baseline.

In considering the Commissioner's recommendation, we note that the Commissioner's public policy on remedies under the Scheme are that 'The Commissioner... cannot award compensation... in the same way as a court... would do'. The FCA agrees that it is not an objective of the Scheme and therefore, if the firm considers that it is entitled to compensation for loss of business of £400,500 as it claims, it should consider taking legal action.

In terms of whether some compensatory payment should be made, we have reviewed the evidence provided by the firm:

- It seems that the basis of the firm's claimed losses related to its intention to purchase back books and customer contracts from other firms. However, the firm was clear with the FCA when it submitted its Consumer Credit application that it had no intention of purchasing back books and customer contracts from other firms. The firm also confirmed**

that it did not use lead generators. If it was the firm's intention to purchase back books and customer contacts, then Interim Permission provided the firm with the ability to do this.

- **Management Information (MI) supplied by the firm since its application has supported its intention to grow organically rather than by way of post-authorisation acquisitions. During the course of the application process the firm continued to take on new customers at a conservative rate and did not purchase any back books in line with what it had previously told the Authority.**
- **The firm also agreed to a voluntary requirement that ensured the firm notified the FCA if it grew its customer base to more than 500 customers as the FCA had concerns that the firm did not have the appropriate systems and controls in place to manage a client bank of that size.**

The FCA considers that, had the application been processed within the stipulated 12 Month period, it is at least possible that the firm would have been given a warning notice. The concerns about the firm included, but were not limited to the adequacy of the firms:

- 1) fact find & advice process;**
- 2) customer financial statements;**
- 3) systems and controls.**

The application might then have proceeded to the Regulatory Decisions Committee (RDC) and then the Upper Tribunal.

For these reasons, the FCA does not accept the Commissioner's recommendation relating to compensation. However, it does accept the failing that it indicated to the firm that it was minded to refuse the Consumer Credit application, and then made no contact with the firm for six months. Due to this poor communication after the minded to refuse recommendation was discussed, the FCA has agreed to offer the firm an apology and a payment of £1,250, which is the refund of its application fee.

The FCA agrees with the Commissioner's recommendation under point 27 – and the FCA will offer the complainant an apology and a payment of £150 for the delay in handling the firm's complaint.

Under point 29, the Commissioner recommends that the FCA considers how it will in future handle similar situations where it is likely to breach statutory deadlines that will have a significant effect on businesses seeking authorisation and ensure that businesses are provided with adequate communications and explanations that take account of the impact of delay on those businesses.

Since this application was made, Authorisations has published 'our commitment to firms' on the FCA's website– this can be found here: <https://www.fca.org.uk/firms/authorisation/how-to-apply>

Briefly, this outlines the FCA's commitments to firms on the communication they can expect from the FCA when an application for authorisation is made. These are:

- 1. We will tell you as soon as your application has been assigned to a case officer, who will be your single point of contact from then on.**
- 2. We will acknowledge any communication from you within 2 working days.**
- 3. We will give a substantive response (or an indication of when this can be expected) to any communication from you within 10 working days.**
- 4. We will give you clear deadlines if we ask for any information from you.**
- 5. We will give you an update on the progress of your application at least once a month.**

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