FCA Permissions Dept and APCC Meeting 7th September 2015

Attendees:

Permissions:	**Credit Authorisations:**	**APCC:**
Gordon Ferguson	Nick Mears	Ben Mason
Andrew Freeman	Duncan Thistleton	Russell Facer
Emma Krygier	Susan Tyldesley	Gary Kershaw
Nicola Wildman	Aneesh Subhra	Katrina Allen
Gillian Lavabre		
Jag Sahota – Part		

Apologies:

Jude Bahnan (APCC)

Attachments

Credit Authorisation Department working guidelines

Agenda and slides

Key Contents:

Section 1 – Permissions:

General

1. APCC members continue to provide feedback to the FCA who have provided responses, attached to the minutes of the meeting.

2. The Permissions Department continues to receive large volumes of applications in all areas. This is having a knock on effect on times for applications being allocated to case officers.

3. Specifically the Retail Permissions team is dealing with a high number of incoming applications, and the level of wholesale applications is at record levels. The meeting noted that application numbers do not appear to be following any particular trend. The FCA continue to seek to gain efficiencies across their processes, but do not expect to see the time taken to allocate cases to reduce significantly in the short term.

4. Despite high workloads the quality and integrity of decision making during the application process has been maintained.

5. Due to changes in pension legislation, the FCA is also anticipating a higher volume of pension related Variation of Permission applications. In order to help streamline this process, the FCA has drafted a standard letter which will be sent to affected firms confirming that they will be changing firms' permissions and confirming certain limitations. It is envisaged this will help speed up the time taken for assessment.

6. The FCA receives feedback from applicants relating to their standard processes. This feedback indicates that applicants feel that the wait time until a case officer is authorised is lengthy, but once the case officer is allocated the application efficiency is high and applicants are happy with the process.

7. The meeting noted that the published KPIs do not reflect the high volume of applications coming into the department, only those applications completed.

8. The Dual Regulated Department has received a high volume of insurer applications. Last year only two insurance firms applied for authorisation but six insurer applications have been received this year to date.

9. In relative terms the Dual Regulated Change in Control team has also received a substantial volume of insurance applications.

10. The Dual Regulated Department is also experiencing a higher level of pre-application interest from prospective banks, with a lot of firms now requesting pre-application meetings.

11. The FCA confirmed that case officers are taking on more applications than previously and that all staff are fully utilised.

12. The meeting also noted that due to a lot of upcoming regulatory change, application numbers, especially VoPs, are likely to remain at current levels or increase further.

13. AIFMD numbers are now included within the wholesale figures in the KPIs.

14. The FCA is looking at potential solutions in order to streamline their processes to address the higher volumes. Due to the continuing long processing times, the FCA is looking to write to applicants who are waiting for a case officer to help them prepare for the long waiting times. APCC members are advised to manage carefully client expectations around application timings.

15. The APCC advised that it can be unclear to members as to when an application will be allocated to a case officer. An application for lower risk activities may still take a considerable time to assess where the FCA find that they are missing key documents within the application, such as Form As and Controller forms.

16. APCC has coordinated a meeting between PI Insurers, FCA and FOS regarding the Pension Freedom changes and to minimise the risk of complaints (consumer detriment) in the future. Part of this is to reduce the chances of firms ceasing to trade and end up in default with the FSCS, thereby increasing FSCS levies. In addition other causes for increases to the FSCS levy are being identified. The funding of the FSCS is soon to be subject to review and the APCC is involved in this review.

17. A discussion on phoenixing followed, and the FCA advised that they were aware of phoenixing being used in a number of different ways which might be considered inappropriate. Investigating potential phoenixing forms part of any case officer's investigation when determining cases.

18. The FCA has on a number of occasions sought to refuse applications due to suspicions of phoenixing.

19. The same scrutiny is applied to ARs as DA firms in regards to phoenixing.

20. The APCC asked the FCA how long they should advise its members to wait before contacting the FCA regarding allocation of a case officer? The FCA is reviewing its engagement with firms to seek to ensure that greater clarity is given where the time taken to allocation is longer. The FCA pointed out, however, that contacting the regulator in advance of allocation of a case to a case officer will not speed up that process.

21. Recently the Contact Centre has experienced a significant volume of calls from consumer credit firms wanting to understand their fees, as well as firms asking about FSCS fees. Many questions also focused on the reporting periods and use of GABRIEL for consumer credit firms.

22. A focus for the Contact Centre has been to review communications with firms and increasing proactive communication at all stages of the firm journey.

23. The FCA website has been updated to help provide clearer guidance on a number of standard issues, to help reduce call volumes. The FCA has offered to conduct a Connect and GABRIEL webinar for APCC members. The FCA requested that the APCC canvas feedback on what parts of the two systems would be most popular for the FCA to cover in a webinar. The APCC agreed to take this forward and provide responses in due course.

24. The meeting discussed the current Professional Indemnity Insurance (PII) market. The APCC highlighted that the PII market is getting tougher, particularly for retail investment intermediaries, and that a firm might appear to be low risk from a compliance perspective, but underwriters may still be hesitant on occasion.

25. The FCA reminded the APCC that the Connect system is now the preferred submission method for applications, and will be the only option for certain applications as of 26 October 2015. Forms are submitted via Connect as attachments which will give the FCA more flexibility to change forms in the future.

26. The APCC noted that most members are in a transitional phase of switching over to Connect; the FCA commented that utilisation of Connect appears not to be progressing as rapidly as expected.

Mortgage Credit Directive (MCD) Update

27. There is approximately six months until the MCD comes into effect (21 March 2016). The FCA is expecting around 45 lender applications, but is no longer expecting c200 broker applications as some brokers are looking at other options and possible alternatives to becoming directly authorised. The APCC suggested that a last minute rush of applications may occur due to an inability to find an alternative.

28. It is also noted that some Peer-to-Peer lenders will be affected by changes as a result of the MCD.

29. The FCA asked if the APCC considered that the regulatory changes occurring as a result of the MCD were relatively well understood by firms. The APCC's view was that this was the case, particularly for lenders, and already regulated firms although there will always be exceptions.

30. The Credit Authorisations Division and the Retail Permissions team are working jointly on applications from firms that have both lending and broking permissions. Retail Permissions will progress lending applications and CAD broking applications.

Change in Control – Regulatory Arbitrage

31. The FCA has noted that some firms are inappropriately using Change in Control (CiC) as a shortcut to avoid the full FCA authorisation process – what might be considered "regulatory arbitrage". The APCC recognised this trend, and that experienced advisers should be able to advise clients that the CiC process should be used where there is a suitable commercial reason for a CiC and not as a way to circumvent the appropriate process and to reach a quicker authorisation. The FCA will continue to advise some CiC applicants that they are using the wrong process.

32. The FCA has issued some comments on this point, which are included as part of the member feedback attached. The APCC agreed with the comments and asked if the FCA might consider updating the existing CiC Q&A on the FCA website so it is clearer when a CiC is needed, or when a different route is more suitable. This is currently under consideration.

AOB

33. The APCC asked the FCA if there had been an increase in Appointed Representative applications from wholesale firms due to slowing application timescales. The FCA has not observed this trend as the number of wholesale ARs is significantly less than traditional retail ARs.

34. The FCA believed that following a recent re-organisation the previous rising timescales for approved person applications are now shortening again. The APCC had not consulted members about this specific issue recently, but the APCC attendees stated that their personal experience was that timescales were decreasing.

35. The FCA asked how firms were managing implementation of the Senior Manager Regime. The APCC advised that this issue had also not been put to all members but they believed the process to comply was manageable.

36. The meeting noted that the passporting application process is working well and process improvements have been achieved due to the application being filled out via Connect.

37. A discussion followed regarding 'mind and management', which is an issue for many applicants with non-UK ownership. The APCC presented high level guidance on the challenges of advising overseas new market entrants regarding the 'mind and management' rules. The FCA has

confirmed that they may consider these areas as part of their assessment at the gateway. The APCC guidance is as follows:

1. A firm should have more Directors resident in the UK than overseas (although their nationality is not an issue.)
2. UK personnel should have veto powers over an overseas group so the (UK-resident dominated) Board can say "no" to policies, strategies and decisions that typically come from overseas where it would cause the applicant to contravene UK law or regulation.
3. Board meetings should be held in the UK.
4. Operational day to day decisions must be made here and the company based here.
5. A firm could have an overseas director on the board of the UK company if everything else about the company is based in the UK.
6. The CEO should be resident in the UK, and normally, in practice, the Compliance Officer also.
7. The MLRO (Money Laundering Reporting Officer, which could double up as the CEO if appropriately skilled) needs to be a UK resident. Other services could theoretically be contracted back to the group, providing it is clear to the FCA that the company is genuinely controlled day to day in the UK.
8. If someone relocates to the UK to be the CEO they may need to take some training in the regulations and, depending on the business model, they might still need to recruit a local operational manager who has the competence to look after compliance.
   Services provided by any 3rd party – including IT from group/HQ - need to be contracted. (It was noted that points 8 and 9 relate more to the adequate resources Threshold Condition, but from an applicant's perspective these are part of their overall consideration of where to locate resources.)

38. The FCA advised that their June 2013 Payment Services Approach Document (paragragh 3.77): http://www.fca.org.uk/your-fca/documents/payment-services-approach: provides a brief outline of areas to be considered on the location of "head office" which affected APCC members are encouraged to review.

39. It was noted that there is little more to update on in terms of MiFID II since the last meeting in July as MiFID II has not been finalised from a legislative perspective. It was also noted that this is a significant regulatory change and the Permissions Department is preparing for a significant increase in numbers as a result.

40. The FCA consider peer to peer (P2P) applications to be relatively complex and advised that some applications are being submitted which are not of the right quality. There are a number of standard issues in relation to this, but not least that some P2P firms do not appear to have sufficient knowledge and experience of the financial services regulatory environment.

41. The APCC fed back to the FCA that there was some concern that matched principal broker applications were being processed jointly by the Case Officer and the Supervision team which was slowing them down considerably as questions ended up being asked over a number of weeks or months. The FCA confirmed that in a number of cases they work closely with colleagues across the organisation, but would continue to maintain a single point of contact for applicant firms.

42. The FCA advised that some consultants are using out of date application forms (as old as April 2013). In some cases firms have also been completing parts of the form that don't apply to the

application or their business plan. However it was agreed that this should be resolved with the use of the Connect system. The APCC agreed to feed this back to members.

Section Two - Credit Authorisations

43. The FCA advised that the next KPI bulletin is due soon for the quarter ending end 30th June.

44. 20,000 applications have been determined so far. Around 75% of applicants are limited activity firms.

45. It is also noted that factors such as high scrutiny during the applications process is making firms think twice about having a 'just in case' permission (as was prevalent under the OFT). The number of firms allowing their interim permissions to lapse is growing with approximately a half believing that they do not require authorisation.

46. The meeting discussed the allocation process for credit applications. A weekly review is undertaken to prioritise certain applications. Certain applications may be prioritised, such as Principal cases, where ARs are awaiting their Principal to be authorised so they can begin trading. New applicants are also prioritised over IP firms. IP cases are considered less urgent as the firm is able to trade while they are waiting. The FCA review prioritisation weekly.

47. APCC noted that relatively few higher risk applications such as debt managers and HCST credit lenders had been authorised. FCA advised that some decisions are pending for some firms in these sectors.

48. There are 3,500 firms with the next landing slot.

49. The FCA believes the Connect system has stood up well to extensive use including at busy times such as when application periods close.

50. The APCC advised that the FCA that there have been a number of Case Officers setting an unrealistic timeline expectation to the client/applicant. The FCA will send around a communication to ensure the Case Officers aren't committing to timescales timeline that they cannot keep.

51. The transitional period for consumer credit is coming to an end in March 2016. The FCA will then have a period of time to complete the applications still in flight before business as usual. The FCA is beginning planning for these changes.

52. The APPC asked if the group licencing system for solicitors and accounting firms is dissolved, will they need credit broking permissions? The FCA advised that they are still in discussion but it would definitely be an area to watch.

53. The APCC fed back to the FCA that Case Officers still generally do not copy in consultants in communications during the authorisation process. The FCA has requested that case officers do this and will reiterate that message. The APCC reported that it is still seeing instances of case officers asking questions which have already been answered within the RBP.

54. The FCA presented draft working guidelines for the APCC's members to use, similar to those agreed with the Permissions department. These are attached to the minutes.