

Consumer credit

Challenging decisions about authorisation

Rather than wait for newly authorised consumer credit firms to slip up and give the Financial Conduct Authority (FCA) reason to take enforcement action, the Regulator is set to take the fight to the sector early by simply rejecting applications for authorisation. Such interventionist and judgement-based decisions – although consistent with the FCA's avowed approach – will be ripe for challenge.

The FCA recently noted that around 50,000 firms registered for interim consumer credit permissions. All such firms were permitted to continue consumer credit business up to the point that their application for FCA authorisation was determined. It planned a “rolling programme of authorisation assessments” starting in October 2014. Each firm has a three-month period in which to apply (and all firms need to have applied by April 2016) and the FCA then has up to 12 months to decide. Firms already authorised by the FCA for other regulated activities need only make an application for a variation of permission (VoP).

By the end of Q1 2015, 19,533 firms had submitted an application (new applications and VoPs). Of these, the FCA has apparently decided 11,079 cases; approving 10,286 firms. The FCA has refused 18 applications whilst a further 775 firms have withdrawn their application (which normally happens when a firm is told that the regulator is minded to reject).

Many of the firms which withdrew their application probably did so without considering the benefits that could flow from pursuing the application further. All firms with interim permission are permitted to continue their consumer credit business until such time as the FCA issues a Decision Notice. Firms that withdrew their application would have lost the opportunity to challenge the decision and would have had to cease trading. In contrast, the 18 firms whose applications were refused would have been able to continue trading until a Decision Notice was issued – and other firms will have been authorised after they decided to challenge the Authorisations team through the FCA's internal decision making process.

The FCA's authorisation programme for consumer credit is likely to throw up many decisions which can be challenged and overturned, and even if a firm were to lose the time taken will have given them the opportunity to plan for the wind down of the business or the sale of any assets.

If you would like to discuss your firm's situation, please contact

Steve Wyndham
Senior Associate
+44 20 3060 6648
steve.wyndham@rpc.co.uk

Marcus Bonnell
Regulatory Counsel
+44 20 3060 6068
marcus.bonnell@rpc.co.uk

Therefore firms whose consumer credit application is likely to be refused should consider challenging the regulator to test the decision and to buy valuable time.

At RPC, we are experienced in dealing with such matters and are well placed to assist firms with:

- revising their applications and their business models/plans
- the process for making an application for consumer credit business
- understanding the individual responsibilities falling on approved persons
- exploring the possibility of finding other routes to be able to undertake regulated business eg appointed representative status
- how to engage with the Regulator about an application
- challenging the Authorisations team before the FCA's Regulatory Decisions Committee
- arguing applications before the Upper Tribunal.