

# Compliance Monitor

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## Delivering your FCA authorisation

Decisionmaking, preparation as well as a great deal of waiting around comprise the tense and often frustrating process of obtaining regulatory authorisation for your incipient financial services business. By **Julian Sampson**.

Divorce, moving house and childbirth are always ranked near the top of anyone's list of stressful activities. To this list one might add (with apologies to those who have recently been divorced, moved house or given birth) getting a company authorised and regulated by the Financial Conduct Authority in the UK.

On the face of it, it's a useful analogy to have in mind. There are a number of parallels between the process of giving birth and getting authorised by the FCA. Both involve preparation, an approximate nine-month time scale (not including the preparatory work), a lot of waiting around when nothing seems to be happening and an ultimate moment of joy, after which life begins. And both involve a cast of supporting specialists attending the mother and new infant, all of whom have to gain the blessing of the presiding physician.

In both activities, preparation is key. During this initial period the would-be Mum will be doing her utmost to keep herself in top shape for the task ahead – folic acid supplements, exercising and cutting back on the booze and ciggies. As with childbirth, this should be both the least stressful part of the process – and the most important.

Similarly, you should start your preparation for an FCA application long before you decide to start completing the forms. (Unlike childbirth, nobody completes these forms by accident). Some basic structural decisions are required to allow the application to proceed smoothly. Firstly, the applicant will need to satisfy the FCA that it can meet the "threshold conditions", of which the physical location of both the legal entity and the directors are critical. You need to show the FCA that the "heart and mind" of the business is within the regulator's reach. Literally. The FCA needs a physical door on which it can knock – in the UK. So consider the legal form and location of the vehicle to be authorised, its owners and directors. Don't expect so smooth a ride if your entity is not UK-registered, your owners and non-executive directors are overseas and your UK operation is a shadow of what you have overseas.



Similarly, you'll need to convince the FCA that your directors and owners are "fit and proper" people for their new roles. What experience do they have? Who is supporting them? Is there anything in the past that might give the FCA reason to doubt that they are the best people to be the 'parents' of this new entity? This is the time to prepare the CV of key players, list of past directorships and biographical details, and to face up to any past indiscretions.

The FCA forms will require the applicant firm to summarise its business model and control environment. For an established firm branching out into regulated business, these documents should exist already. For a newly-formed firm, time considering these ahead of the application is well spent. The FCA will need something in writing describing the control environment. Business plans, financial forecasts and marketing material should all be within the scope of any start-up business wanting to start trading, let alone applying for authorisation.

So the time comes when you've decided that you're fully prepared and ready to make a new regulated entity. You take advice from experienced midwives/consultants as to the best way to prepare. What will the physician in charge be looking for? Is there any past history? What are the potential complications? So you address these questions in advance and detail your responses in the application. Given your good preparation, the forms should be relatively easy to complete and you should be able

to attest to the FCA that everything is in place for the new arrival. You send off the documents, usually via FCA Connect, with the payment, and you wait.

You'll get your first indication that you are officially an applicant within a few weeks. The equivalent of the blue line on the tester kit is an email from the FCA saying yes, they've received your form and yes, they will have taken your money. And it's at this point that the first part of some serious waiting begins. Your application is now on the virtual trolley in the corridor of the authorisation department.

You'll have to wait for about three months before a desk officer reviews your application. This is just the time it takes for your application to come to the top of the pile. Use that time to good advantage. Good parents will now be decorating the nursery and buying the buggy. You too should use this time to make sure that everything will be ready for the new arrival. Are accounting systems ready? How would we cope with a disaster? Do you need to go to a class and meet other expectant applicants? (Maybe not, but there are plenty of courses around for new directors of FCA companies to attend). You'll have confirmed to the regulator in the application that you have a number of processes in place – for example, you'll have confirmed that you have a Compliance Manual. The FCA don't ask to see this at the outset, so you can use this time now to refine it and make sure that it will be fit for purpose when the happy day arrives.

So how long does the whole process take? With childbirth, we know that it's around about a nine-month wait. Sometimes it can be shorter, sometimes longer. But not, in normal circumstances, by more than a couple of weeks. It's here that our analogy breaks down, as the timescale for the FCA to complete its review of an application is arguably far more mysterious.

The FCA operates a 'triage' process for new applications. The intention is that they carry out an initial assessment of your application. At a minimum, this seeks to match your application with the most suitable desk officer and carry out certain automated checks. But unlike the triage that operates in your local hospital, FCA triage will not necessarily promote you to the head of the queue. No matter how urgent your business symptoms, you will have to wait your turn, unless you can show that there will be particular market detriment if you're not allowed to jump the queue.

In formal statutory terms, the FCA has six months in which to reach a decision on an application. This might seem fine, but that clock only starts ticking at the point at which the desk officer reviewing your application deems it 'complete'. There's no publicly available definition of what a 'complete' application looks like. At the very least, it would be the full suite of application forms, with supporting documents, signatures and application fee. But that's probably unfair to the FCA – you have to allow them time to review the application and ask some questions prior to their stamping the application as

'complete'. But even then, it seems that the concept of 'complete' can be elastic, stretching as far into the future as the desk officer has questions to ask. This also avoids putting the FCA under the time pressure of the six-month deadline. So make sure you anticipate as many of those questions as you can, pre-application.

There's very little the applicant firm can do about these timescales. The gestation of the application will proceed at its own pace and will not be hurried. The best thing that the expectant parents can do is be patient. But the initial three months does pass, and then you get to hear from your desk officer. It's a bit like going for your first scan. You're nervous and excited, and you hope that the physician who's running their scope over you will be pleased with your progress.

Just so, the desk officer will have a long list of questions for you. Some of these will be easily resolved, some will require further thought by you. You may have to do some additional work. But this is now the start of an iterative process between you and the FCA, which should see you working through their questions to a successful conclusion.

You'll have follow-up appointments, further scans. These will not be at set times, but you can hasten the time the iteration takes with the FCA by answering the desk officer's questions promptly and comprehensively. And if they don't respond to your answer, chase up! After all, this is your baby. And beware of holidays – when your desk officer is away, your case is not re-assigned. Try to get a resolution to whatever question you're dealing with before the desk officer goes away.

Also spare a thought for the hard-pressed medical team. We know that the National Health Service has staffing issues. There aren't enough qualified staff, so the NHS has to recruit from overseas. There are exact parallels with the FCA. The Authorisation Department struggles to cope with the volume of applications it faces, added to which is the fact that from time to time government or the EU will throw a whole new heap of work at them – consumer credit firms, AIFMD firms, all to be authorised. So the FCA has to recruit new staff, who may not have the immediate grasp of your business model that you would wish.

At any point between now and the delivery date, there may be complications. Something you didn't think about. A new development in childbirth techniques that the supervising team are trying out – or a new FCA priority, which leads them to look at your application in a different light. Or worse, something in your past history that might affect baby. To be truthful, you always knew about this but had either been putting it to the back of your mind, not wanting to confront it, not believing it to be important, or afraid that it might imperil your new venture. But truth will out. The medical team are all-knowing and all-seeing. They will tell you if your complication is fatal to your application. As in all things regulatory, the non-disclosure itself is usually more injurious than the fact itself.

It's at this stage in childbirth that social workers may be called in. Are the parents suitable? Will baby be safe? In extreme situations, the local authority may intervene to remove the child from its parents at birth. That doesn't happen in FCA-land – but it may be the case that if the complications are sufficiently serious, the regulator will recommend that your application should not proceed.

This is an anxious moment for the parents of the would-be FCA firm. At this point they have a choice. They can choose to withdraw the application and try again at a later date, with the previously fatal complication resolved. This is not an easy decision – there will be much heart-ache, frustration and possible recrimination about how things came to this pass.

But it's potentially an easier decision to take the other option, which is to proceed with the application, against the 'advice' of the FCA. When this happens, you'll be facing the Regulatory Transactions Committee, arguing the case as to why your application should be allowed to proceed, against the recommendation of the Authorisation Department. If the committee sides with the authorisation team, they will issue a decision notice to that effect. Then you're into the whole legal side of the FCA, with appeals, final notices, etc etc. And if it goes against you, there's now an official record that you are a 'bad parent', with potentially adverse consequences for any future applications you might make.

But in 99 cases out of 100, you'll proceed towards delivery. In FCA terms, this is the date when the regulator tells you that you will be authorised. Unlike childbirth, this is the least perilous part of the process – you've done all the hard work during the gestation. Before you carry away your shiny new infant, the medical team will have words of caution for you. They may set conditions before you leave the hospital – nothing as easy as a car seat. But they should already have satisfied themselves that you are

fit and proper persons to be the owners of a new member of the regulated community, so any conditions should be something of a formality.

So what happens now? In childbirth, that support structure that sustained the parents through pregnancy can vanish overnight. There are no more ante-natal classes and the hospital is no longer interested in you. You're more or less on your own. Similarly, unless you are sufficiently large a firm to have a dedicated FCA team looking after you, you'll be within the oversight of the FCA Contact Centre. It's a bit like NHS Direct for financial services. Call us when you need to, but otherwise you won't be hearing from us.

For some parents, this can be a liberating experience. They're now free to get on with their lives and carry out their plans. But for others, it can come as something of a shock. Best to ensure that you have a support network in place – a regular visit from a compliance consultant will provide re-assurance that you are doing the right thing and they will be able to answer any questions you might have.

With childbirth, there are lots of early classes on how to have a successful pregnancy and birth, with not so much provided later (and less agreed) on how to be a good parent. But for FCA firms, there are clear expectations as to what they should do to remain a valued member of the regulated community. Ongoing responsibilities, returns, notifications and approvals. So remember – you may have got to the end of this process but, as every parent knows, this is not the end – it's the beginning.

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■ **Julian Sampson** ([julian@fulcrumcompliance.com](mailto:julian@fulcrumcompliance.com)) is director of Fulcrum Compliance ([www.fulcrumcompliance.com](http://www.fulcrumcompliance.com)) and was chair of the Chartered Institute for Securities and Investment compliance professional forum from 2009–2015. He presents their half-day course 'Preparing for a regulatory visit', details of which can be found on the CISI website ([www.cisi.org](http://www.cisi.org)).