

27 June 2024

Final report by the Complaints Commissioner**Complaint number 202300835***The complaint*

1. Your firm made three consecutive applications to the FCA for authorisation [two for an Authorised E-Money Institution (AEMI) and one for a Small E-Money Institution (SEMI)]. The FCA indicated to you that it was minded to refuse all three applications and, as often happens in such situations, you withdrew them. You then submitted a complaint about the process and outcome connected to the three applications- first to the FCA, and when you were not satisfied with the outcome, - subsequently to my office on 22 March 2024.

Your FCA complaint

2. The FCA summarised your complaint as being about its decision 'to begin refusal proceedings' in relation to your firm's three applications and your allegation that that the ongoing refusal of your applications was racially motivated.

What the regulator decided

3. The FCA did not uphold your complaint. It said that it found no evidence to support your allegation that the ongoing refusal of your applications was racially motivated. It also reiterated the reasons why it felt the three applications your firm submitted had not met the standards of authorisation required (these had been provided to you in previous correspondence), as well as the process for challenging the FCA decisions if you disagreed with them.

Why you are unhappy with the regulator's decision

4. You have submitted a detailed complaint to me which I summarise as follows: You remain of the view that your applications were not handled fairly, competently and impartially. In support of your view, you allege the following:
 - a. The FCA case workers (CO) who dealt with your applications were inexperienced, and potentially incompetent (based on what you perceive to be trivial matters raised as reasons for beginning refusal proceedings of the final application);
 - b. You were provided with feedback after each application about how to improve your application. You felt you had addressed the matters raised in the feedback, however, despite this, application after application was still 'refused'. Additionally, you allege were asked to submit an application as a SEMI, which you did, but were then told your application as a SEMI did not meet the threshold for authorisation. You therefore feel that the FCA has been inconsistent, and the authorisation procedures were not sufficiently transparent.
5. In your complaint to the FCA dated 28 December 2023 you say "Taking all this [the points above] into account, this has led me to believe that there is something far more nefarious at play here, something deeply rooted in discrimination and prejudice. I firmly believe that this decision is purely based on the colour of my skin, making it nothing short of a clear instance of outright racism." You have also highlighted that you do not feel that FCA staff you have dealt with were sufficiently diverse, referring to ethnic background as an example.
6. You further allege that there has been delay in connection to your firm's third application for authorisation.

My decision

You have raised numerous allegations about the FCA which I have summarised as falling broadly into the following elements:

Element One

The application process

7. I do not uphold your complaint that your applications for authorisation were not handled fairly, competently and impartially.

Element Two

Your allegation that that the ongoing refusal of your application was racially motivated.

8. I have not found evidence to support your allegation that the ongoing refusal of your three applications was racially motivated. Therefore, I do not uphold this element of complaint.

Element Three

The FCA decision that it was minded to refuse your firm's three applications.

9. I will not investigate this complaint. Provision 2.11(b) of the Complaints Scheme states that even where a complaint is eligible, the FCA will not investigate it if it reasonably considers that it would be better dealt with in another way (for example, by referring the matter to the Upper Tribunal).
10. For complainants who believe their applications should be approved, if the matter proceeds to a Warning Notice, any representations made to the FCA at that stage would be considered in a review by the Executive Decision Maker (EDM) before making a final decision as to whether to formally refuse the application through the Decision Notice process.
11. The right to have such decision notices made by the regulators referred to the Upper Tribunal is conferred by the Financial Services and Markets Act 2000. As a result of this the FCA and the Complaints Commissioner do not investigate complaints about refused application or registration decisions made by the FCA and, instead, advise that such complaints be referred to the Upper Tribunal. Therefore, I will not be investigating this element of complaint.

Element Four

The length of time it took to process your third and final application after the FCA issued its minded to refuse letter to you on 14 December 2024.

12. I will not investigate this complaint. You did not submit a complaint to the FCA about delay in regard to the third application. I understand that after the FCA

issued a minded to refuse letter in connection with your third application, you initially chose not to withdraw your application and submitted a complaint to the FCA which was reviewed first by an FCA local area and when you escalated the complaint, later by the FCA Complaints Department. You finally referred your complaint to me and asked that matters are resolved in relation to the outstanding application because the delay in doing so is having a financial impact on your business. I now understand that you have since withdrawn your third application. Under the Complaint Scheme to which both the regulators and I are subject, it is preferable for the FCA to conduct its own investigation in the first instance, as that is usually the swiftest way of resolving matters. If you wish to complain about delay, I suggest you direct your complaint to the FCA. You can refer the FCA decision to me once it is issued for an independent review if you are not satisfied with the outcome. I will not be investigating this element of complaint in this report.

Background information

13. You submitted an application for authorisation as an Authorised E-Money Institution (AEMI) on 14 September 2021 [First application (207751861)].
14. Following an assessment in May 2022, the FCA indicated to you in an email dated 12 May 2022 that it was minded to refuse your application. High level feedback included concerns around knowledge and experience of key individuals, financial crime records, policies and procedures and the safeguarding arrangements for customer funds. You did not register any objection to this at the time.
15. You withdrew the application and later submitted a second application for authorisation as an AEMI on 21 October 2022 [Second application (208632153)].
16. You told the FCA that you had addressed the issues highlighted in the feedback to the first application, however, the FCA CO found that concerns around knowledge and experience of key individuals remained relevant (because although the personnel had changed none of the key individuals had worked at any e-money institution or been PSD individuals before). In addition, you had made amendments to your business model and the FCA CO explained that it

now resembled a money remittance business model. As such the FCA did not consider that the services outlined in the firm's proposed business model met the definition of e-money as per E-Money Regulations (EMRs) 2011.

17. You withdrew your application and received a refund for it. You informed the FCA that you would amend your application and submit it a third time. Again you did not register any objection at the time. The FCA CO wrote to you on 28 April 2023 to say:

"I recommend that you reconsider resubmitting another AEMI application. The expectations for AEMI applicants are much higher than for example for SPIs or SEMIs. I recall that none of your proposed individuals have worked at an e-money institution or have been PSD Individuals before. Furthermore your business activities align more with a money remittance business model. It is your business decision what application you want to submit. However, you should satisfy yourself that you are able to meet the relevant requirements before you submit your application. Please familiarise yourself with the following information before reapplying: Apply to become an electronic money or a payment institution, Portfolio strategy letter, the Approach document, <https://www.fca.org.uk/firms/approved-persons/heads-compliance-mlro-applicant-competency-capabilityConsumerDuty> letter".

18. You submitted a third application to be authorised as a SEMI on 2 June 2023 [(Third application [209152767]). During the assessment process, you advised the CO that you now wish to offer both e-money and money remittance services.
19. The FCA CO did not feel that the firm was ready to be registered as a SEMI and provided detailed reasons for this, including knowledge and experience of key individuals, governance and safeguarding issues.
20. This third application was eventually withdrawn by your firm.

My analysis

Element One

The application process

21. You have not indicated that you feel frustrated with the outcome of the first application, in which the FCA informed you that that it did not deem your firm was ready to be registered and provided you with feedback on areas to focus on.
22. It is your view that you had addressed the FCA's concerns when you submitted the second application, however, the FCA found that the knowledge and experience of key individuals remained an unaddressed concern as "none of your proposed individuals have worked at an e-money institution or have been PSD Individuals before."¹
23. Furthermore, in the second application the firm indicated to the CO that it now wished to focus on money remittance which didn't align with the application to be authorised as an EMI, which in turn raised new concerns as to whether the services outlined in the firm's proposed business model met the definition of e-money as per the EMRs.
24. Therefore, it does not appear that your firm addressed important matters raised in the feedback to the first application despite your belief that it had; and new changes to the business model of the firm in the second application were such that an application for AEMI was no longer deemed appropriate by the FCA.
25. The FCA told you to reconsider whether it was appropriate to resubmit another AEMI application (see paragraph 17 above). You subsequently submitted a third application as a SEMI. The FCA felt that your third application for SEMI did not meet the threshold for authorisation.
26. You are of the opinion that the CO for the second application told you to apply as a SEMI and reassured you that the SEMI application process is less strict and rigorous than the AEMI and therefore indicated that there shouldn't be any issues attaining the necessary authorisation. You feel that your firm exceeded the requirements for a SEMI and that the reasons the CO provided for issuing a minded a refuse letter were concerned with trivial matters which "should not have had an overall negative impact on the outcome of the application" One of your conclusions about this is that the FCA process is inconsistent (e.g. for

¹ FCA email to you dated 28 April 2023

example providing you with advice to submit a SEMI application for authorisation and then telling you that you are not ready to be a SEMI).

27. I do not agree with your interpretation of the FCA's 28 April 2023 communication. I do not think the FCA told you to apply as a SEMI, nor I do consider the FCA gave you assurance that your firm was ready to meet SEMI requirements. There is no reference at all to the latter and on the former the CO referred to both SPIs and SEMIs but described them as example. It went on to say you should read the relevant information, to which a link was provided, and satisfy yourself that you are able to meet the relevant requirements before submitting your application. I agree that it was up to you to ensure you were aware of what these requirements were and to meet them if that was the route you wished to pursue. Therefore, I do not find that your allegation that the FCA provided you with inconsistent information is made out.
28. I also do not agree with your assertion that you had 'addressed the matters raised in the feedback, however, despite this, application after application was still being 'refused' and that the 'goalposts' kept changing.
29. There were clearly some matters which you appear not to have addressed as they appeared in the feedback to all three applications (e.g. that key personnel had no E-money experience); your business model was changing throughout which inevitably raised new questions at each application stage and you misunderstood the FCA feedback at the end of the second application to be confirmation that your firm met the requirements to be authorised as a SEMI.
30. I note you disagree with the FCA reasons for being minded to refuse your third application as being trivial, however, that is not a matter which I will review as it is best dealt with elsewhere: namely the Executive Decision Maker.
31. For the reasons above, I do not uphold your complaint about the application process.

Element Two

Your allegation that that the ongoing refusal of your applications was racially motivated

32. I can confirm that the FCA Complaints Team conducted a desk based review of how all three applications your firm submitted were handled and reached the view that there was no evidence that the ongoing refusal of your application was racially motivated.
33. You have said to me that a desk based review is insufficient and that the FCA Complaints Team ought to have interviewed the COs involved in handling your complaint, both in terms of understanding the complexity of the matters involved as well as to probe the issue of racism.
34. I have reviewed the file and, in my opinion, the case notes are sufficient to reach a conclusion on your complaint without the need for interviewing the CO's.
35. Your allegation that the on going refusal of your firm's applications were racially motivated, as expressed in your complaint to the FCA on 28 December 2023, is based on your view outlined in paragraph 4 above that the application process appeared flawed and that FCA staff appeared inexperienced and focused on trivial matters.
36. I do not believe that this, even if it was the case [i.e. that the authorisation process was flawed and the FCA staff were inexperienced, which I disagree with], constitutes sufficient evidence of racially motivated behaviour. The reasons or the refusal seem to me to be appropriate, well thought out and properly communicated.
37. I have nevertheless reviewed the file and like the FCA, I have not discovered any FCA racially motivated behaviour either in the FCA's written correspondence with you or in the internal case file notes. However, if you have any further evidence you would like me to review, please submit it in response to this preliminary report.
38. You have said that FCA staff you dealt with did not appear to be diverse: in your complaint to the FCA on 28 December 2023 you say the FCA should be "employing a diverse workforce, such as more black people."
39. I am unable to review matters related to the employment of staff at the FCA as that is excluded from the Complaints Scheme, however, I can reiterate that I have not seen any evidence that that your applications which concluded with

minded to refuse letters were based on racially motivated behaviour on the part of the FCA.

40. For the reasons above, I do not uphold your complaint.

Rachel Kent
Complaints Commissioner
27 June 2024