

03 February 2022

Final report by the Complaints Commissioner

Complaint number FCA001365

The complaint

1. On 3 August 2021 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

You said when you were going through the FCA's SM&CR regime, you were incorrectly categorised as an SMF27 instead of a SMF29, and this caused you to have a nervous breakdown because you believed you were operating without adhering to the correct regulations.

You also mention you believe you are being investigated by the FCA having been informed by a third party, not from the FCA directly.

What the regulator decided

3. The FCA upheld the first part of your complaint and said:

'given there is evidence that shows you were incorrectly advised that you should apply for an SMF 27 instead of an SMF29 role. While this advice was based on discussions you had with the supervisors at that time that your firm may be a partnership, this should have been explored in more detail before advising you to submit an application as an SMF27, which was incorrect given you are a Limited Scope Firm as per SMCR's definition for a consumer credit firm.

I have also noted that while the supervisor agreed with your analysis that the SMF27 role was incorrect, you were never given an apology for this mistake'.

4. In respect of the FCA investigating your firm or you personally, the FCA said 'there is no evidence of this and given you were informed by a third party, and not by the FCA directly I don't believe this information is correct.'

Why you are unhappy with the regulator's decision

5. You telephoned my office with a request for me to review your complaint against the FCA.

My analysis

6. In its decision letter, the FCA explains that on 24 January 2020 you received an email from the FCA's supervision (Retail and Authorisations) department with some guidance about what SMF role(s) you should apply for, and you were advised to apply for an SMF27 role as the supervisor believed that there were multiple partners at the firm.
7. However, you disagreed with their analysis of your SMF role, given you are a limited scope firm, and you explained you believed you should apply for an SMF29 role instead. The supervisor sought clarification on this before confirming you should apply for the SMF29 role on 27 January 2021.
8. The FCA explained that in December 2019, and early January 2020, you had discussions with supervision about Controller Functions at the firm, which led the supervisors to believe that (Firm X) was a partnership, and this led them to advise you to apply for the SMF27 role.
9. The FCA go on to say 'You mentioned this incorrect classification has had an adverse impact on your mental health, and I am sorry to hear that this has caused you distress. I have found no evidence that supervisors communications with you were not supportive especially since they were aware of your ill-health, and once the supervisor had sought confirmation, he agreed with you that you should apply for the SMF29 role. This was done promptly, and my only criticism is that the supervisor could have offered you an apology at that time'.

My decision

10. The FCA acknowledges that it provided incorrect guidance to you on 24 January 2020 based on a misunderstanding about the number of partners it believed your firm had. You explored this guidance further with the FCA

supervisor and once it became clear your firm did not have multiple partners, on 27 January 2020 the matter was resolved.

11. The FCA has now apologised for its role in the misunderstanding. I am sorry to hear you were distressed on receiving guidance to apply for a SMF27 role rather than a SMF29 role, however, the matter is now resolved and I am pleased to see the FCA has apologised for the misunderstanding. I find this remedy is sufficient under the Scheme.
12. As to the second part of your complaint, I have seen no evidence the FCA is investigating you or your firm.
13. I realise you may be disappointed with my decision report, but for the reasons outlined above, I cannot uphold your complaint

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Complaints Commissioner

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