

03 March 2022

**Final report by the Complaints Commissioner****Complaint number FCA001528***The complaint*

1. On 31 December 2021 you asked me to investigate a complaint about the FCA

*What the complaint is about*

2. The FCA summarised your complaint as follows:

## Part One

You are unhappy that the firm you were working for, (Firm X), decided not to certify you under the Senior Manager and Certification Regime (SM&CR).

## Part Two

You have said that you were not told that the FCA has a Complaints Scheme until 30 November 2021.

*What the regulator decided*

3. The FCA excluded part one of your complaint and did not uphold part two, they advised you:

## Part One

The Scheme is in place to deal with complaints that arise from the exercise of or failure to exercise, any of the FCA's relevant functions. This is set out in paragraph 1.1 of the Scheme and Part 6 of the Financial Services Act 2012. You can view the Scheme online at [www.fca.org.uk/your-fca/complaints-scheme](http://www.fca.org.uk/your-fca/complaints-scheme).

As your complaint relates to the actions of (Firm X) in not certifying you under SM&CR, it is not something that we are able to investigate under

the Scheme as it would not be considered one of the FCA's relevant functions. This is because it is down to the firm, not the FCA, to assess its own employees under the Certification Regime.

The SM&CR for Solo Regulated firms, such as (Firm X), says 'Certification covers specific functions that aren't Senior Management Functions, but can have a significant impact on customers, the firm and/or market integrity. **We won't approve these people** [emphasis added], but firms will need to check and confirm (certify) at least once a year that these people are suitable to do their job. The Certification Regime is a requirement under FSMA and is set out in SYSC 27 of our Handbook'<sup>1</sup>

You have also mentioned that you are in dispute with (Firm X) about the servicing work you completed for the firm. I also consider that this is out of scope of the Complaints Scheme under paragraph 1.1. This dispute is not connected to the FCA's relevant functions.

It seems to me that your complaint relates to an employment dispute between you and (Firm X). The FCA cannot get involved in this dispute.

## Part Two

The Complaints Scheme (in its current form) was in effect from 1 April 2013 and is a requirement of the Financial Services Act 2012. The Scheme, therefore, was in place when you first contacted the FCA in 2019 about this issue. The Scheme is also mentioned on our website under the 'About Us' and then 'Complain about us, the PRA or the Bank of England (the regulators)' section.

I have also reviewed your correspondence with the FCA and can see that we informed you of the Complaints Scheme under our reference 206466834. In an email dated 27 August 2020, sent to Y@outlook.com, we said 'If you wish to make a complaint regarding the FCA, further information about making a complaint about the FCA can be located on our website by clicking on the highlighted link. Our complaints team can be contacted on 020 7066 9870 or at

complaints@fca.org.uk.' This email was sent to the address which you have been writing to us from and I cannot see that this was returned to us.

*Why you are unhappy with the regulator's decision*

4. You have asked me to review the FCA's decision

*My analysis*

5. You are unhappy whilst working for Firm X the firm decided not to certify you and as a result you were not paid for work you carried out and missed out on further paid work from an existing client.

When contacting the FCA for help you were not advised of the complaint process under the Complaints Scheme.

You have advised you will be approaching the FCA to request information under the Freedom of Information Act.

Part One

Whilst I sympathise with your situation, the FCA complaints investigator advised you correctly, your complaint about Firm X not certifying you and not receiving payment for work you carried out does not fall within the Complaints Scheme, for the reasons the FCA gives, and as such I cannot investigate this for you. I note you have taken the correct course of action for non-payment of work by pursuing this matter through the small claims court.

Part Two

I have seen evidence of an email sent to your email address on 27 August 2020 from the FCA providing you with information on how to complain about the FCA, therefore I am unable to uphold this part of your complaint.

I acknowledge you have clarified your complaint following on from my preliminary report and advised:

What is WRONG is that the FCA have not provided any route for an individual to appeal should an individual be refused certification by a financial firm when there is no obvious reason

for the refusal. A financial firm should not be free to manipulate certification to avoid using normal procedures for individuals.

However, as your complaint is still about the rules surrounding the SM&CR scheme and as confirmed to you by the FCA on 29 December 2021, it is excluded from the complaints scheme, so I am unable to carry out an investigation for you.

My decision

6. I realise you may be disappointed with my decision in my report, but for the reasons outlined above, I cannot uphold your complaint.

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Complaints Commissioner

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