

29 September 2023

Final report by the Complaints Commissioner**Complaint number 202300236***The complaint*

1. On 14 June 2023, you asked me to review a complaint about the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

Part One

You wish to complain about the FCA's failure to protect consumers by ensuring that a properly funded wind-down plan was in place in the event that peer-to-peer lending firms entered administration. You have said you feel the Dear CEO letters issued to P2P firms and the rules set out in policy statements fall short of what is required.

Part Two

You have also said you hold the FCA responsible for it not being possible to separate the costs of enforcing the security from the costs of Firm X's administration until the administrators have made their final distributions against all of your outstanding loans, following a court decision obtained by the administrators on Firm X.

What the regulator decided

3. The FCA said it would not investigate Part one of your complaint as 'Paragraph 3.5 of the Complaints Scheme provides that we will not investigate complaints that we reasonably consider amount to no more than dissatisfaction with our

general policies or with the exercise of, or failure to exercise, a discretion where no unreasonable, unprofessional or other misconduct is alleged’.

4. The FCA said it would not investigate Part Two of your complaint as ‘Paragraph 3.6 of the Complaints Scheme provides that we will not investigate complaints that we reasonably consider could have been, or would be, more appropriately dealt with in another way. In your complaint you have expressed dissatisfaction with the court ruling ‘CR-2020-MAN-001030-Order’ regarding the contractual rights of lenders and the costs of the administration. We consider an appeal of decision would be more appropriately dealt with by the relevant appeal court. You have also referenced the ‘Notice of Administration’, this notice was from the administrators and if you have a complaint relating to this notice, this complaint should be raised with through the following link - <https://www.gov.uk/complainabout-insolvency-practitioner>

Why you are unhappy with the regulator’s decision

5. You have said to me that the FCA has misinterpreted your complaint as it is not one about general dissatisfaction about FCA policies, but rather one about how Firm X did not properly apply these policies and the FCA did not enforce them. Your reasons for this allegation are that: ‘the costs of Firm X’s administration which, thanks to the Court Order made on 17/2/22, are being deducted from funds that would otherwise have been paid to lenders’. You have said ‘When the FCA stipulated that peer-to-peer lending firms should have in place a fully-funded wind-down plan, I don’t think “fully funded by lenders” is what the FCA had in mind. You feel these costs should have been met from a ‘properly funded wind down plan’.

My analysis

6. The point you raise with me is slightly different from the one you agreed the FCA should investigate. The FCA reviewed your complaint that the content of its Dear CEO letters didn’t go far enough, and that it had *generally* (my emphasis) failed to ensure peer to peer lending firms had proper wind down plans.

7. You are now saying to me that you are concerned that Firm X did not have a proper wind down plan and that the FCA's oversight of Firm X was lacking because it 'failed to ensure a proper one was in place'.
8. The evidence you provide to substantiate your allegation is that in your view a properly funded wind down plan should be one where the administration costs are not born by the lenders but rather by what you call a 'fully funded wind down plan'.
9. Usually, if the regulator has not investigated a particular complaint, I would refer it back for an initial investigation as that is the best way to resolve matters. In this case however, I am exercising my discretion not to refer the complaint back to the FCA for an initial investigation and to review it myself.
10. I should start by saying that I am sorry to hear that you have incurred losses through your dealings with Firm X which has gone into administration.
11. However, I am afraid that your interpretation of how wind down arrangements have been described in the Dear CEO letters you refer to, as well as how they function in the context of insolvency law, is erroneous. How the administration costs are born out are determined by insolvency law, and the FCA has not sought to stipulate otherwise in its Dear CEO letters. This is a complex area of law and you are advised to seek independent legal advice for further clarification.

My decision

12. For the reasons given above, I do not uphold your complaint against the FCA. Under current insolvency law you are not 'ringfenced' from insolvency costs and there is no statement in the FCA CEO letters to the contrary. I appreciate you remain unhappy with my decision, and you have asked me to clarify further for you 'what costs are covered by the wind down plan.' I am sorry but I cannot provide this advice or guidance to you. This is a complex area of law and you should seek your own independent legal advice for further clarification.

Amerdeep Somal
Complaints Commissioner

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