

02 April 2024

Final report by the Complaints Commissioner

Complaint number 202300245

What the complaint is about

1. You are unhappy with the FCA's oversight of Firm X, a peer to peer lender which went into administration in 2019.

What the regulator decided

2. The FCA declined to review your complaint on the basis that Paragraph 3.3 of the Scheme explains that "complaints should be made within 12 months of the date on which the complainant first became aware of the circumstances giving rise to the complaint. Complaints made later than this will be investigated under the Scheme only if the complainant can show reasonable grounds for the delay".
3. The FCA's view is that the circumstances giving rise to this complaint would appear to be matters you were first aware of when Firm X went into administration on 24 May 2019 and therefore you are out of time to bring the complaint.

Why you are unhappy with the regulator's decision

4. You referred the complaint to my office and said that "The two (i.e. the administration of Firm X and you becoming aware you could complain about the FCA) are totally separate events. The only reason I have become aware of the FCA's failure to take appropriate action is because of a court case that took place last year, details of which have come to my attention relatively recently."

My analysis

5. The previous Complaints Scheme (March 2016) says at paragraph 3.3:

“Complaints should be made within 12 months of the date on which the complainant first became aware of the circumstances giving rise to the complaint. Complaints made later than this will be investigated under the Scheme only if the complainant can show reasonable grounds for the delay.”
6. The time limit starts running when the complainant becomes aware of action or inaction by one of the Regulators.
7. The FCA should consider when you became aware of actions or inactions by the FCA. This is a question of fact which the FCA must determine on the basis of relevant evidence.
8. Paragraph 3.3 of the 2016 Scheme does not enable the Regulators to reject complaints on the basis that the complainant should or ought reasonably have known that they had cause to complain more than 12 months before submitting their complaint (for example because there was sufficient information in the public domain). That alternative test cannot be read into the wording of the Scheme.
9. The test is based on actual knowledge (the person knew) rather than constructive knowledge (a reasonable person would have known). Although actual knowledge is a fact which may for this purpose be determined from evidence on the balance of probabilities, it is a much more difficult to establish than constructive knowledge. The wording of the Scheme is clear that the Regulators must consider when the complainant themselves actually first became aware of the issues (or circumstances).
10. The FCA and I must decide on the basis of the available evidence when, on the balance of probabilities, you became aware that there was a basis to complain to the regulator about some action or inaction by the Regulator.
11. The FCA’s argument is that that there is sufficient material available on the internet ‘which would have assisted at an earlier point, when you could have

become aware of the circumstances giving rise to your complaint'. It has pointed out a number of links in relation to Firm X.

12. I do not agree with the FCA decision. The fact that that Firm X had been in the news previously is not relevant if you have not actually read anything definitive which alerted you to the fact that the FCA may have potentially failed to supervise the firm appropriately. The FCA has pointed to a number of communications it has had with you over a period of time, however, none of the communications evidence that you were aware of any potential FCA failings until February 2023. You complained officially to the FCA in May 2023.

My decision

13. For the reason above, I recommended the FCA lift the time bar and investigate the complaint. The FCA has accepted my recommendation.

Rachel Kent

Complaints Commissioner

02 April 2024