

09 May 2024

**Final report by the Complaints Commissioner****Complaint number 202300714***The complaint*

1. You represent the complainant who is unhappy with the FCA's oversight of Firm X, a peer to peer lender which went into administration in 2020.

*What the regulator decided*

2. The FCA declined to review the 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 the complainant was first aware of when Firm X were winding down from December 2019 and again when they went into administration in December 2020 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 to explain that the complainant became aware of the FCA's failure to regulate the P2P industry as a result of confidential FCA documents that entered the public domain in August 2023.

### *My analysis*

5. The previous Complaints Scheme (March 2016) (which is the scheme that applies to all complaints submitted to the FCA prior to 1<sup>st</sup> November 2023) 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 the complainant 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, the complainant 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 the complainant has not actually read or seen anything definitive which alerted them to the fact that the FCA may have potentially failed to supervise the firm appropriately. You explained the that the complainant became aware of the FCA's failure to regulate the P2P industry as a result of confidential FCA documents that entered the public domain in August 2023. They complained officially to the FCA in January 2024, which is within time.

*My decision*

13. For this reason, I recommended the FCA lift the time bar and investigate the complaint. The FCA agreed to do so.

Rachel Kent

Complaints Commissioner

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