



11 December 2024

Final report by the Complaints Commissioner

Complaint number 202400047

The complaint

1. On 25 April 2024, you submitted a long and detailed complaint to my office about the FCA regarding:
 - a. Firm X: you allege the FCA failed to supervise the firm adequately. The FCA did not uphold this complaint and neither do I although see (b) below;
 - b. The peer to peer lending (P2P) industry: you allege the FCA is not regulating the P2P industry, and you have asked me to recommend an independent inquiry into the matter. It appears to me there are significant issues in relation to the P2P industry which may merit further consideration beyond your complaint against Firm X and I will write separately to the FCA to set out my concerns. I plan to review and publish my correspondence with the FCA and its response when I receive it, as well as my views on the matter based on that correspondence.
 - c. The FCA's investigation of your complaint about the preceding matters. I uphold your complaint. The FCA has not had a chance to review your representations because they were submitted to me directly once you received the FCA Decision Letter on your complaint. The FCA has accepted my recommendation to provide you with answers to your questions; to apologise for its incorrect reference to COBS rules and the fact that it said it had investigated its regulation of the P2P industry when it had not. It did not accept my recommendation to apologise to you for trawling the internet in order to locate comments you had made on online forums connected to the P2P industry and firms you invested in, and use these in support of its decision not to uphold your complaint.

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2. I do not recommend any further remedy under the Complaints Scheme.

Background

3. You say, in your complaint to me, that you invested in around 2016 through Firm X (a firm still trading and authorised by the FCA) using their P2P platform. You lost a substantial amount of money due to bad debt is and defaulted loans. You say that this is due to the Firm's failings and ultimately you hold the FCA responsible for what you perceive to be its failure to properly supervise the firm. As a remedy you are seeking that the FCA compensate you for your losses. You also allege that the FCA has failed to regulate the P2P industry generally.

Element One

4. You say that the FCA did not regulate Firm X properly.
5. The FCA stated that it had regulated the firm appropriately, however, it could not give you further details due to confidentiality restrictions.
6. You did not accept the FCA's conclusion that it had regulated the firm properly and referred your complaint to me, making the following allegations about the firm at the time you invested in 2016:
 - a. It failed to carry out due diligence on its loan portfolio;
 - b. It made misleading statements about loans (e.g. you say on its website it promoted loans by saying the average yield was 15.4% p.a. but you do not think the firm's loans ever achieved this; the firm said the loans were "secure" but you say your loans were not...you also give other examples);
 - c. It did not make clients aware that the risk profile of loans had changed and failed to reprice the loans on the secondary market (you say "Due to being misled in this way, I was duped into purchasing distressed loan parts on the secondary market");
 - d. It amended lender terms and conditions without recourse to lenders;
 - e. "The standard of service provided by Firm X has been woeful with misleading information, an absence of timely updates on defaulted loans and a failure to respond to lender's queries"; and
 - f. A large proportion of loans failed.

7. You have incurred losses as a lender using Firm X's P2P platform and believe they are attributable to failings on the part of Firm X to act in a fair and reasonable way when fulfilling its obligations to you, and to comply with its regulatory obligations.
8. In so far as your dispute with the firm X is concerned, the correct avenue for you to pursue is to refer your complaint against the firm to the Financial Ombudsman Service ("FOS"). I understand that you have already done this.
9. The FCA does have a statutory duty to secure an appropriate degree of protection for consumers. It does so by regulating the financial industry through the setting of standards which firms must meet, and by taking supervisory and enforcement action where that is justified. It does not investigate individuals' complaints against the firms it regulates: that is the role of the FOS.
10. That does not mean that the FCA cannot investigate concerns arising from information about individual complaints, but it investigates those in the context of considering whether or not regulatory action is justified, rather than whether or not the individual requires redress.
11. Any action the FCA may or may not take with respect to Firm X as a result of the information you provided would not lead to redress for you personally.
12. In this instance, the FCA has concluded that its supervision of the firm has been reasonable. From the evidence I have seen, I agree, although for confidentiality reasons (including s348 FSMA) I am limited in the details I can disclose. I should caveat that neither the FCA nor I have reviewed each specific allegation you have made against the firm.
13. I provide some general information regarding the FCA's regulation of firms. The FCA has said the following about its approach to supervision of firms in the past: "there will be many instances of non-compliance in firms which the FCA considers it appropriate to address without the use of formal disciplinary sanctions. The FCA uses a range of tools to carry out its responsibilities and meet its objectives. Where a firm or other person has failed to comply with the requirements of the Act, the rules, or other relevant legislation, it may be appropriate to deal with this without the need for formal disciplinary or other enforcement action. The proactive supervision and monitoring of firms, and an

open and cooperative relationship between firms and their supervisors, will, in some cases where a contravention has taken place, lead the FCA to decide against taking formal disciplinary action. However, in those cases, the FCA will expect the firm to act promptly in taking the necessary remedial action agreed with its supervisors to deal with the FCA's concerns. If the firm does not do this, the FCA may take disciplinary or other enforcement action in respect of the original contravention”.

14. All this is to say that it is possible that regulated firms generally may have instances of non compliance. The fact that a firm falls out of compliance does not mean, without more, that the FCA has had supervisory failings with respect to that firm. What is expected of the FCA is that it reacts appropriately to deal with non compliant firms.
15. The fact that a firm may have been non complaint at a certain point in time does not remove its responsibility to its clients, and it will have to answer to any complaints arising as a result of this non compliance through the FOS as I have said above.
16. More specifically regarding this case, I am satisfied, based on the evidence provided to me, that the FCA’s overall supervisory approach to the firm in the last 8 years has been appropriate. You have raised the point that “FCA did nothing to protect or compensate lenders who entered into loans in the period 2016-2019 even though it was their adverse experiences that had informed the FCA of the need for enhanced regulation.” The FCA has said protections offered were adequate during this period. I will be probing some general issues connected to this in a separate letter to the FCA (see below).
17. In conclusion, I do not uphold your complaint that the FCA has not supervised the firm appropriately. In your particular case, you have alleged specific firm related non compliance issues in 2016, some eight years ago, which you say led to your loss. I have not made any finding as to whether these were instances of non compliance or whether the firm did or did not contribute in any way to your loss. If you believe the firm is responsible in any way for your losses, that is an individual complaint against the firm and the correct avenue for you to pursue is to complain to the FOS.

Element Two

18. You say the FCA has failed to properly regulate the UK P2P industry, and you made a number of statements in support of your allegation. You have also asked me to recommend an independent enquiry into the FCA's handling of the UK's P2P industry.
19. In its consideration of your complaint, the FCA did not consider that you had provided any specific examples of wrongdoing on the part of the FCA as a result of which it deemed your complaint amounted to general dissatisfaction or that you were not directly affected and did not investigate your complaint under the Complaints Scheme by applying paragraphs 2.11 a and 2.1 a respectively.
20. The FCA both declined to investigate this complaint and simultaneously did not uphold it. It said it has been regulating the industry appropriately. I have seen no evidence the FCA investigated this complaint despite its latter assertion. The FCA has now accepted it has not investigated this complaint and should not have stated that it had been regulating the industry appropriately given this. I do not agree with the FCA that you expressed general dissatisfaction and did not allege misconduct on the part of the FCA with respect to this complaint element.
21. You referred specifically to a 2022 employment tribunal judgment which referenced concerns which were raised internally within the FCA about the potential harm of the P2P lending industry as far back as 2016 and implying that the regulator was too slow to act.
22. This was referenced by the press, including as follows: "the FCA found itself in the middle of a conflict between political pressure to promote the industry and private concerns raised by senior managers, reports The Times"
23. It appears to me from this and other complaints I have had, that there may be significant issues in relation to the P2P industry which merit further consideration beyond your complaint against Firm X and I will write separately to the FCA to raise these issues. I plan to review the matter again once the FCA has responded to me, and to publish my correspondence with the FCA, and my views based on that correspondence, in due course.

Element Three

24. You are unhappy with the following issues in the FCA Complaints Team decision letter on your complaint.
25. It referenced numerous website reviews you had made with respect to your P2P activity. You claim that the FCA ought not to be trawling the internet and referring to quotes you had left on various internet forums in order to prove you were aware of the risks of P2P lending, as your complaint was about Firm X's failings, and in turn the FCA's failings to supervise Firm X. I agree with you that it is not necessary for the FCA to prove that you knew the risks of P2P lending in order to review a complaint about its own supervision of the firm you invested in. However, the FCA have pointed out that in your complaint to them you requested compensation. Your actual knowledge of the risks is relevant to the question of whether you were actually misled by any inadequate risk disclosures etc such that the failing caused your losses or not. If you were already aware of the risks due, for example, to previous experience, this would be relevant to the issue of compensation. I accept this in principle, although I note that you have said that it is not relevant in your case as you "did not enter into any new investments with Firm X after making those posts (some of which were made at a much later date and did not even relate to Firm X). I must insist you make it clear the FCA is not entitled to infer a level of knowledge at time of investment based on posts that were made at a later date". The FCA disappointingly does not accept my recommendation although it says "we note your comments and would welcome a further discussion around the use of information from internet forums in our future complaint investigations". I will take them up on this and ensure that the purpose of any information gathering is understood.
26. In your complaint to the FCA you say that, before deciding to make investments through Firm X, you checked to make sure that the company was authorised by the FCA as you felt that meant it would be complying with COBS. You now think it did not comply. The FCA told you that the firm was complying with COBS 18.12. However this is irrelevant as those rules were not in force in 2016 when you made your investment. The FCA has responded to me to say that "We accept that we incorrectly referred to a FCA rule in our Decision Letter (COBS 18.12) that was not in force at the relevant time. We accept that we should not have included this reference to legislation and we will apologise to Mr X for our

error after receipt of the Final report. Whilst this was down to human error, we will be reinforcing the importance of checking the accuracy of legislative references with complaints investigators”

27. You raised four questions in your correspondence with the FCA which you say it did not answer: I **recommended** the FCA answer your questions and it has accepted my recommendation and provided the answers below:

“Please advise which of the products I invested in were unregulated”

28. The FCA has said it does not have visibility of your investments with Firm X.

“Please advise what risk warnings the FCA had put in place at the time I made these investments and how I should have been made aware of same”

29. The FCA has said:

Our authorisation of loan-based crowdfunding platforms included an assessment of firms’ websites to check the appropriateness of risk warnings and a suitable declaration that P2P investors would not be covered by the Financial Services Compensation Scheme (FSCS). Specifically with regards to Firm X, in August 2016 the FCA conducted a detailed assessment of the firm’s customer journey, which included a review of the firm’s Financial Promotions, a review of its compliance with COBS, and a review of customer communications. These reviews resulted in updates to the main website and linked Investor Videos to ensure the inclusion of clear and prominent ‘Capital at Risk’ warnings, and clear links to a dedicated ‘Risks’ section of the website.

The following risk warnings were also clearly published on the platforms website from March 2015 onwards:

”Peer-to-peer business lending carries inherent risks which lenders should be fully aware of ...”

- “Peer-to-peer lending involves you lending your capital to businesses in return for a fixed rate of interest which you have agreed at the time of the lending commitment. Remember, you are lending to limited liability business and therefore your capital is at risk and ongoing interest payments are not guaranteed if the business defaults. For this reason Firm X always seeks to take

security on from the Borrowers. Depending on the type of security provided, enforcing the security takes time and there can be no assurances as to the level of recovery”.

[Firm X] does not understand your personal circumstances and does not offer advice. The only recommendation we make is that you take professional advice from an independent financial advisor. Before committing your hard-earned funds, please ensure that you fully understand the risks and how they relate to your personal financial objectives and circumstances”.

- “Unlike bank and building society deposits, your capital is not covered for compensation (in the event of a loss) by the Financial Services Compensation Scheme”.

In addition to the firm-specific warnings outlined above, we have outlined a list of the FCA’s publications that highlight the work we have conducted in the P2P sector that highlights the nature and risks of P2P. Please note that the below list covers the key publications that we have identified but may not be exhaustive.

October 2013 - The FCA’s regulatory approach to crowdfunding (and similar activities) - <https://www.fca.org.uk/publication/consultation/cp13-13.pdf>

March 2014 - The FCA’s regulatory approach to crowdfunding over the internet, and the promotion of non-readily realisable securities by other media Feedback to CP13/13 and final rules - <https://www.fca.org.uk/publication/policy/ps14-04.pdf>

February 2015 - A review of the regulatory regime for crowdfunding and the promotion of non-readily realisable securities by other media - <https://www.fca.org.uk/publication/thematic-reviews/crowdfunding-review.pdf>

June 2016 – Letter to Treasury Select Committee (Crowdfunding Regulation) - <https://www.parliament.uk/globalassets/documents/commons-committees/treasury/Correspondence/Tracey-McDermott-to-Treasury-Committee-Chair-Crowdfunding-16-06-16.pdf>

“I note that LC&F was a regulated company that offered unregulated products. This situation resulted in access to the FSCS being granted. If I did participate

in unregulated products, as your statement suggests to be the case, does this mean I am able to raise a claim with the FSCS?"

30. The investments were not unregulated, as set out above in the response to Q1, and [complainant's] investments were different to those offered by London Capital & Finance, which were mini-bonds. P2P products (both lending and borrowing) are not covered by the Financial Services Compensation Scheme (FSCS), unless a consumer was advised to invest in the product. We would refer [complainant] to the FSCS website at <https://www.fscs.org.uk/news/protection/crowdfunding/>

"Your email makes a general reference to the Consumer Duty but makes no specific reference. Please advise if you have found any breaches of the Consumer Duty that have been discounted for the reason that they occurred prior to July 2023.

31. The Consumer Duty is not retrospective - therefore we could not assess if there were any Consumer Duty breaches prior to July 2023. As our portfolio letter from January 2024 sets out the Duty is a key focus in our supervision of this sector from July 2023.
32. I consider that the FCA has now answered your questions.

The Complaints Commissioner

Complaints Commissioner

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