

04 April 2022

**Final report by the Complaints Commissioner****Complaint number FCA001427***The complaint*

1. On 15 September 2021 you asked me to review a complaint against the FCA.

*What the complaint is about*

2. The FCA summarised your complaint as follows in its decision letter dated 16 June 2021:

The context of your complaint is that you are engaged in litigation with Firm X (trading as 'U'), where you allege that 39 loans made to you by the firm was obtained from commercial lenders and therefore these loan contracts are unenforceable. You say that you and other borrowers, should be refunded all capital and interest and that any pledged goods as security should be returned. You allege that the firm has operated a Ponzi scheme and that the firm was not authorised to deal with commercial lenders and did not use the correct documentation to comply with the Consumer Credit Act.

You also state that the FCA should not have authorised U and you have requested compensation.

Your allegations are summarised below.

**Part One**

You allege that U are operating a Ponzi Scheme and you informed the FCA about this in your letter of complaint dated 3 December 2018. You say that the FCA should have taken immediate action to stop the (alleged) Ponzi scheme and required a remediation exercise on receipt of your letter. You say that the FCA permitted U to operate the Ponzi Scheme for

an additional two years which allowed U to make further 'unenforceable' loans. This, you say has increased the losses that parties would incur and increased the cost of a remediation exercise.

#### Part Two

You have requested that the FCA take specific action in relation to U, including requiring the firm to produce specific documents and that the FCA should investigate and prosecute the company lenders that are associated with U.

#### Part Three

You say that U should have used company lenders (firms) that were authorised by the FCA before issuing loans. You have requested that the FCA investigate and prosecute the company lenders used by U to make these unenforceable loans.

#### Part Four

You query whether U should be authorised by the FCA.

#### Part Five

You are unhappy with U's business practices and dealings with you. You allege that they lied to you about the company lenders they used and have made false statements in the ongoing litigation proceedings. Your First letter at pages 9-13 sets out the specifics of your dissatisfaction.

#### Part Six

You have invited the FCA to grant you whistle-blower status in relation to your letters of 3 December 2018, and your First and Second letter of 18 January 2021. You say this is because of the content and disclosures contained in the letters.

#### Part Seven

Your Second letter dated 18 January 2021, states that you wish to apply to the FCA for compensation pursuant to 'subs.28A (2) of the Financial Services and Markets Act 2000, from the eight firms which you say provided loans to you as arranged by U. You say that none of the eight

firms have ever been authorised by the FCA and that if they were, you would have been treated fairly under the Principles of Business. You believe that you are owed 'millions of pounds of refunds' and have provided a breakdown of sums owed as follows: -

- A return of all sums paid under each loan agreement and the return of all security without repayment of capital,
- Each of the eight firms makes a payment of £75,000 to you, and
- That all 'victims' (borrowers in relation to money lent by corporate lenders), are

owed "millions of pounds of refunds" in total

#### Part Eight

The FCA should instruct U to carry out a Remediation Exercise and refund the money of every affected borrower, including yourself, in relation to money lent by corporate lenders.

#### Part Nine

You say that U did not operate its complaints procedure honestly or correctly and the process did not work for you and as such you should be compensated for this.

#### Part Ten

In your letter of 15 February 2021, you are unhappy that the Complaints Team failed to decide, action and/or your list of requests within 14 days of receipt of your First and Second Letter of 18 January 2021.

#### *What the regulator decided*

3. The FCA responded that:
  - a. It would not investigate Part One of your complaint because it is out of time.
  - b. It would not investigate Parts Two to Four and Parts Six and Eight of your complaint as these are not deemed to be allegations against the FCA

- c. It would not investigate Parts Five, Seven and Nine of your complaint because they are out of scope of the Complaints Scheme, and
- d. It did not uphold Part Ten of your complaint.

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

- 4. You said to me that
  - a. I complain about how the Financial Conduct Authority dealt with my complaints.
  - b. I also complain that they did not assess my compensation which I applied for in my second letter dated 18 January 2021 which they promised to do.

*My decision*

- 5. You sent me your complaint and I instructed my staff to write to you that I have accepted it under the Complaints Scheme (the Scheme) on 15 September 2021.
- 6. I recalled the investigation file from the FCA and was informed by the FCA that you had, in the meantime, and since the receipt of your decision letter from the FCA dated 16 June 2021, issued legal proceedings against the FCA regarding some or all the same points as raised in the complaint. I understand that you have been granted permission in relation to your judicial review proceedings.
- 7. Given this, I have decided to defer the investigation of your complaint. In reaching this decision, I rely on paragraph 3.6 of the Scheme which provides:

*Complaints that are more appropriately dealt with in another way*

*The regulators will not investigate a complaint under the Scheme which they reasonably consider could have been, or would be, more appropriately dealt with in another way (for example by referring the matter to the Upper Tribunal or by the institution of other legal proceedings).*

- 8. I also rely on paragraph 6.15 and 6.16 of the Scheme which provide that:

*In the investigation of a complaint by either the relevant regulator(s) or the Complaints Commissioner, any finding of fact of:*

- a) a court of competent jurisdiction (whether in the UK or elsewhere);*

*b) the Upper Tribunal; or*

*c) any other tribunal established by legislative authority (whether in the United Kingdom or elsewhere);*

*d) any independent tribunal charged with responsibility for hearing a final appeal from the regulatory decisions of the regulators,*

*which has not been set aside on appeal or otherwise, shall be conclusive evidence of the facts so found, and any decision of that court or tribunal shall be conclusive.*

*6.16 Any findings of fact or decisions of courts or tribunals not covered by paragraph 6.15 will carry such weight as the regulators or the Complaints Commissioner considers appropriate in the circumstances.*

9. You have been granted permission for a judicial review against the FCA on some or all the matters in your complaint. I consider that your complaint is best dealt with by the Court, as any findings it makes take precedence over mine.
10. Once the judicial review proceedings have reached a conclusion, you may refer your complaint to me again for an independent review. I remind you however that any findings of fact or decision by the court will be deemed conclusive and therefore binding on me.

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Complaints Commissioner

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