

13 January 2022

**Final report by the Complaints Commissioner****Complaint number FCA001465***The complaint*

1. On 19 October 2021 you asked me to investigate a complaint against the FCA.

*What the complaint is about*

2. The FCA summarised your complaint as follows:

My understanding of your complaint is that you believe the FCA have failed “to ensure and secure the Loan Book Data Records of (Firm X)”. You say this had led to “vastly unnecessary Fees being levied by the FCA Appointed Administrators in having to rebuild the lost/destroyed Loan Book Data Records” and “Wholly unnecessary data recovery work by the administrators”. You believe the FCA has been negligent and failed to exercise a duty of care.

To resolve your complaint, you are seeking redress from the FCA for any losses you incur to your capital and interest.

*What the regulator decided*

3. The FCA deferred your complaint, they advised you:

In January, I wrote to you explaining that I am deferring the investigation of your complaint about the information displayed on the FCA’s Register for Firm X This is because your complaint is connected with some form of continuing action by the FCA.

I have considered your new allegation and for the same reason, I am deferring our investigation of your complaint. The circumstances surrounding the Loan Book data records are matters which are subject to an active FCA Enforcement investigation into the activities of the (Firm X).

FCA001465

## **Deferred complaint**

We can begin investigating a complaint after we have satisfied ourselves that in doing so, it will not pose a serious risk of jeopardising the ongoing action by the FCA. The deferral will be reviewed periodically at six month intervals to assess whether there remains justification for further deferral.

The Complaints Team will continue to liaise with the relevant team internally and we will seek to keep you informed of significant developments.

### *The Complaints Scheme*

The Complaints Scheme (the Scheme) sets out what the FCA will do in circumstances where there is continuing action at the time a complaint is made. Paragraph 3.7 of the Scheme states:

*'A complaint which is connected with, or which arises from, any form of continuing action by the regulators will not normally be investigated by either the regulators or the Complaints Commissioner until the complainant has exhausted the procedures and remedies under FSMA (or under other legislation which provides for access to the Scheme) which are relevant to that action. The complainant does not have to be the subject of continuing action by the regulators for this provision to be engaged. An investigation may start before those procedures are completed if, in the exceptional circumstances of the case, it would not be reasonable to expect the complainant to await the conclusion of the regulators' action and that action would not be significantly harmed.'*

It may be helpful for me to explain the objective which underlies paragraph 3.7. The objective is to ensure that a complaint investigation does not cause detriment to, or prejudice, any ongoing work by the FCA. Such interference may inhibit the FCA from achieving its statutory objectives in a timely manner.

I have considered, in line with Paragraph 3.7 of the Scheme, whether there are exceptional circumstances relating to your case, but have concluded that there are not, and that the reconsideration of an

investigation of your complaint should take place after the conclusion of any enforcement action which may result from the current investigation or after six months, whichever is sooner.

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

4. You have asked me to review the FCA's decision.

*My analysis*

5. The FCA is correct to say that, under paragraph 3.7 of the Complaints Scheme, investigations of complaints can be deferred where there is continuing regulatory action which might be undermined by the consideration of the complaint.
6. I agree with the FCA's decision to defer yours and other complaints about this matter for the moment, as it is likely that the regulatory action will produce material which is relevant to your complaint. I also think it would be unhelpful if the FCA Complaints Team were to undertake an investigation into these matters in parallel with the regulatory investigation. I am pleased to note the FCA will be keeping you updated every 6 months.
7. I realise that this continuing delay is likely to be frustrating for you, but I hope you will understand that, in my view, it is the best means to ensure that your complaint is thoroughly considered at the most appropriate time.

*My decision*

8. I realise you may be disappointed with my decision report, but for the reasons outlined above, I cannot uphold your complaint.

Amerdeep Somal  
Complaints Commissioner  
13 January 2022