

10 January 2022

**Final report by the Complaints Commissioner****Complaint number FCA001484***The complaint*

1. On 28 October 2021 you asked me to investigate a complaint against the FCA in connection with Firm X.

*What the complaint is about*

2. The FCA summarised your complaint as follows:

## Part One

You allege the FCA committed market manipulation by suggesting they would not turn up to the court hearing about Firm X and then gave very little notice and turned up anyway.

## Part Two

You claim the FCA has not considered the most vulnerable and innocent stakeholders, namely the staff who work at Firm X before opposing the scheme of arrangement.

## Part Three

You believe the FCA have failed to provide any clarification on what would allow a balanced result for all stakeholders and dis-regarded the investors and the employees of Firm X.

*What the regulator decided*

3. The FCA did not uphold your complaints. It said that:
  - a. Part One: Whilst it acknowledged the share price for Firm X may have been affected by the court determination, this does not mean there was any market abuse.

Part Two: As the Scheme was not approved, a decision was made by the FCA not to take any further regulatory action at the current time. The phrase 'informal moratorium' has been used to describe the decision by the FCA not to take any formal action while alternative solutions are sought. The 'informal moratorium' reflects the decision not to take regulatory action at the current time and has resulted in avoiding an immediate insolvency outcome. This gives Firm X time to explore options that may deliver a better outcome for the most redress customers (compared to the proposed Scheme). The FCA considers that allowing Firm X to avoid insolvency also allows Firm X time to explore options that will provide a better outcome for their staff as well. You are concerned about the wellbeing of Firm X employees, but the FCA has a consumer protection objective which means the needs of the consumers must be considered as a priority (as well as the legal requirements).

- b. Part Three: Any scheme of arrangement needs to take into consideration the needs of the firm's customers as well as shareholders and creditors. Firm X's total estimated redress bill is likely to be greater than its assets, and so the firm has sought to reduce its redress liabilities through a scheme of arrangement. Should the firm enter an insolvency process, customer claims will be assessed in line with insolvency law. Our actions and engagement with Firm X are driven by our focus to advance our market integrity and consumer protection objectives in relation to different cohorts of customers, including those with determined but unpaid complaints, some with undetermined complaints and others who may have a valid claim but are yet to complain. The interests of these different cohorts of customers may not necessarily align, other than they all have redress claims and taking regulatory action to advance the claims of one cohort is likely to reduce the redress available for others.

The Court took all these matters into consideration when it decided not to approve the proposed scheme of arrangement, and although the FCA made representations to the Court, the decision lay with the court not to accept the scheme of arrangement.

It is not the responsibility of the FCA to structure or develop a Scheme for Firm X. This is the responsibility of the firm. The Scheme would then need to be approved by the court.

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

4. You have told me that with respect to Part One, you feel the FCA should not have objected to the scheme arrangement which you say customers of the firm supported, and that there are currently a large number of firms online offering loans at exorbitant rates for individuals with 'poor credit history', which is both damaging the reputation of the UK financial market and exposing customers of Firm X and similar firms to risk.
5. You have told me with respect to Part Two that the FCA has not considered the livelihood of staff at Firm X who may lose their jobs if Firm X goes into administration, which you believe is a likely option as Firm X's proposed scheme arrangement was not approved by the High Court.
6. The remedy you seek is for the FCA to make an apology to the staff, investors and customers of Firm X.

*My analysis*

7. Firm X are a consumer credit firm who specialise in guarantor lending. At some point in 2020 the firm began to receive large numbers of complaints and the FCA explained to you, Firm X's total estimated redress bill is likely to be greater than its assets; - therefore the firm has sought to reduce its redress liabilities through a scheme of arrangement. Such a scheme of arrangement must be approved by a Court. The High Court considered the Scheme as well as the FCA's representations (some of which are highlighted in paragraph 3(b) and it did not approve it.
8. I turn to Part One of your complaint. It seems to me there are two separate issues which you raise. The first is about the FCA's actions in objecting to the proposed Scheme and the second is your view that the FCA is allowing firms such as Firm X to operate in a way which has been detrimental to consumers.

9. The FCA has investigated the former but not the latter part of your complaint, as you did not formally complain to the FCA about its oversight of the guarantor lending market.
10. You have complained to me that the FCA objected to Firm X's proposed scheme of arrangement. The FCA has explained to you why it did so. I should make it clear that it is not my role to say what I would have decided had I been the regulator. My task is to assess whether or not the decisions were within the range of decisions which the regulator could reasonably have taken, in the light of its statutory duties and policies.
11. The FCA's explanation about why it made the representations it did to the High Court are not unreasonable, in my view. But in any event, it was the High Court, and not the FCA, which did not approve the Scheme of Arrangement.
12. For these reasons I do not uphold this element of your complaint. You may refer your complaint about the FCA's oversight of the guarantor lending market to the FCA for an investigation. Should you choose to do so, if you are not satisfied with the FCA decision letter you may refer that complaint to me.
13. Turning to Part Two of your complaint to me, you have reiterated your point the FCA did not take into account the livelihood of staff at Firm X who may lose their jobs now that the Scheme of Arrangement has not been approved by the Court.
14. The FCA has explained to you that it has a 'consumer protection objective which means the needs of the consumers must be considered as a priority (as well as the legal requirements)'. The FCA's statutory objectives are determined in the Financial Services and Markets Act 2000. It has a legal requirement to pursue these objectives, and it has explained this to you as well as the considerations it has taken into account with respect to the firm's customers. For this reason, I do not uphold this part of your complaint.

My decision

For the reasons given above, I do not uphold your complaint.

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Complaints Commissioner  
10 January 2022