

07 March 2022

Final report by the Complaints Commissioner**Complaint number FCA001507***The complaint*

1. On 9 November 2021 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. You submitted two separate complaints to the FCA about its oversight of peer to peer lending (P2P) Firm X. The FCA summarised the first one as:

You allege the FCA failed to ensure that Firm X adhered to its Terms and Conditions and specifically their wind-down plan. You claim the FCA has allowed Firm X to be placed into administration. You believe this is not in line with the agreed wind-down plan.

You have said you are affected by the inaction of the FCA to enforce the wind-down plan and to approve administration instead, as you will be charged 25% of any recovery value which will go towards funding the administration.

3. The FCA summarised the second complaint you submitted as:

You allege the FCA has failed to monitor compliance of its regulations, resulting in financial loss to yourself due to an FCA regulated platform allowing all the loans in your SIPP to be in default; and Firm X not having adequate risk controls in place.

You believe the FCA also has a responsibility under SUP IA.3.4 (1) and SUP IA.3.4 (2) and should have identified the problem. You claim the FCA has not protected you as a retail client.

What the regulator decided

4. The FCA did not uphold any of your complaints.

Why you are unhappy with the regulator's decision

5. You have said told me that:
 - a. The FCA have failed to uphold my complaint about their action or in fact lack of action relating to their regulation and supervision of Firm X and
 - b. This very much looks to me like the FCA are not accepting responsibility for the regulatory and supervisory role and in particular in the second complaint, are looking for loopholes in the small print to escape liability. I do not see the point of the FCA if this is the case. It is wholly unreasonable to expect retail clients to read every intricate detail in the FCA handbooks etc. If a firm is authorised by the FCA, the retail client should be able to take that as though the FCA are regulating and supervising properly without having to resort to "get-out" clauses which diminishes their responsibility and liability.

My analysis

6. I am sorry to hear about your losses. You have said that all the loans in your SIPP through P2P Firm X went into default, and subsequently Firm X went into administration. You are concerned that the firm entered administration before it could complete its wind down plan and this means lenders such as you will fund up to 25% of the recovery costs of the administration. You feel the FCA should not have allowed this to happen (Element One). You also believe the FCA did not do its job properly to regulate Firm X (Element Two). I will address these in turn.

Element One

7. Firm X began a wind down plan in December 2019 which was recorded on the FCA Financial Services Register. The FCA explained it 'monitored the progress of Firm X's run off plan between December 2019 and April 2021 when Firm X decided to enter administration. The Directors of Firm X took insolvency advice and as no business is allowed to trade while insolvent, Administrators had to be

appointed. The FCA cannot prevent this as it is a legal obligation on Company Directors’.

8. You have said to me you are not happy with the FCA’s response above. Whilst I appreciate you are not happy, the FCA is factually correct in what it has said above. Therefore, I am unable to uphold this element of your complaint.
9. You have said to me that the firm clearly breached Principle 7 and the FCA failed to supervise this Principle and ensure that Firm X communicated in a clear, fair and not misleading manner, ‘which by not mentioning the possibility of Administration (yet mentioning the good cost free option for lenders i.e. “wind down”)’ they did not. I understand your point, but it was the administrators who applied to court to retain the 25% as part of the costs of dealing with client assets, and which may be redistributed in future once all costs are known. The Court approved this but allowed investors to apply to vary this: my understanding is no such applications for a variation were received.

Element Two

10. The FCA decision letter said that the FCA had supervised Firm X in an appropriate manner but that due to confidentiality restrictions it could not provide further information than that. It also said that it disagreed that it didn’t supervise in accordance with SUP and referred to its Mission statement in which it says, ‘We do not try to remove all harm from markets or operate a zero failure regime’. This means that although the FCA seeks to remove or reduce harm to consumers, this does not mean that the FCA is able to ensure that no harm exists in the markets and that consumers are fully protected from financial loss’. You have said to me that retail investors are not expected to read the ‘small print’ and should rely on the FCA regulating properly.
11. You are right that the FCA is expected to regulate the firms it has authorised properly, but the FCA is right to say that it cannot operate a zero failure regime, and it is an unfortunate fact that P2P is a ‘capital at risk’ product. The fact that Firm X went into administration does not mean automatically that the FCA is at fault. I have looked at the FCA file to see how the FCA supervised this firm to reach a view. I can see from the evidence before me that the FCA took a proactive stance in monitoring this firm. Ultimately it was the firm itself which

decided to close to new business and following consultation with the FCA, commenced a managed run off plan in relation to loan recovery and distribution to lenders in December 2019. I see no evidence that the FCA did not supervise the firm appropriately, although I too am bound by confidentiality restrictions in what I can disclose to you. For this reason, I do not uphold your complaint.

My decision

12. I am sorry for your losses, but for the reasons above, I do not uphold your complaint.

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Complaints Commissioner

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