

15 February 2022

Final report by the Complaints Commissioner**Complaint number FCA001541***The complaint*

1. On 3 January 2022 you asked me to review a complaint about the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

The you are unhappy that the FCA decided, in 2016, not to extend Financial Services Compensation Scheme (FSCS) protection to payday lenders. You say that FCA's decision has cost you a cumulative total of £11,860 in redress, across four different payday lenders, as all of those lenders have now failed. You seek financial compensation for your losses, which you say the FCA is responsible for.

What the regulator decided

3. The FCA excluded your complaint under Paragraph 3.4(c) of the Complaints Scheme which explains that this type of complaint is excluded from the Scheme. This is because your complaint relates to the performance of the regulators' legislative functions as defined in the Financial Services Act 2012 (including making rules and issuing codes and general guidance).
4. Although the FCA did not formally investigate your complaint, it provided you with a response on the matters you raised. It said:

Lending activities are generally not included within the FSCS scheme. In the event of the failure of a lender (i.e. when FSCS compensation becomes relevant), customers generally do not suffer losses resulting from the failure of the lender; loan customers are more likely to owe money to the lender

(rather than the other way around). For example, mortgage lending is also excluded from FSCS cover.

The FCA's view remains that most consumer credit activities (including high-cost short-term credit (HCSTC)) should remain outside FSCS protection because inclusion would not be proportionate for the following main reasons:

- a. Consumer credit activities such as lending are unlikely to give rise to financial losses to consumers either often or of significant amounts.
- b. The inclusion of HCSTC activities in FSCS cover would be likely to lead to cross subsidy from other firms due to the unlikely sustainability of a stand-alone funding class to cover compensation payments and the cost of assessing claims. Ultimately consumers would meet those costs.

We recognise that some firms have failed, owing redress liabilities to consumers. However, the administration process itself can help to address the risk of consumers being financially disadvantaged. As part of this process, the insolvency practitioner will call for all creditors to come forward. In the HCSTC sector this will be likely to include consumers who believe they may be owed redress by the failed firm. It is likely any successful redress claims would be set off against the amounts those consumers owe to the firm.

Where conduct issues have been identified, the FCA has taken a robust supervisory approach with these firms and has ensured that redress schemes are implemented where appropriate. Most recently, our annual report explains that we have stopped some firms lending following our assessment of their creditworthiness assessments and the identification of breaches and we have asked firms to compensate customers who have been affected.

Why you are unhappy with the regulator's decision

5. You have told me: 'I wish to raise a formal complaint against FCA and their decision not to include FSCS protection to the payday loan and high-cost borrowing sectors despite knowing in the wake of Wonga that in the event of other lenders 'going under' complainants would receive only pennies in the

pound. The FCA stance made by Andrew Bailey, then Chief Executive of FCA that not extending the FSCS protection to the high-cost lending sector would not affect many people or cost people a large amount of money has been proven true and again in the wake of lenders entering administration and eventual liquidation that this has been a gross error of judgement.

6. On a personal level I have lost around £8000 in due compensation because of this stance by FCA and I would like to make a formal complaint into their decision with a view to FCA compensating me for the subsequent loss'.

My analysis

7. The FCA is correct to say that your original complaint about extending the remit of the FSCS relates to the performance of the regulators' legislative functions as defined in the Financial Services Act 2012 (including making rules and issuing codes and general guidance) and as such is excluded from the Complaints Scheme.
8. You have now raised a slightly different complaint which touches more generally on how the FCA oversees consumer credit firms which offer expensive short term loans. There have been a number of highly publicised instances of such firms either entering Schemes of Arrangement or collapsing into administration, and subsequently not being able to meet their redress liabilities in full.
9. Your complaint, and others I have received about the FCA's oversight of high cost credit providers, but which the FCA has not investigated yet, highlights concerns which you may wish to refer to the FCA for an initial investigation. If you choose to do so and are not satisfied with the response you receive from the FCA, you may refer it to me for an independent review.
10. Although your complaint, which is focussed narrowly on the remit of the FSCS, is excluded from the Scheme, it, as well as a number of other similar complaints about the FCA in connection to firms from the same industry, is highlighting a trend in complaints and I suggested the FCA satisfies itself that its oversight of this market is appropriate. The FCA has subsequently provided information to me which shows it is actively monitoring the market and through its supervisory tools seeking to prevent and minimise financial disadvantage and reduce risk to customers.

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Complaints Commissioner
15 February 2022