

01 September 2022

**Final report by the Complaints Commissioner****Complaint number FCA001639***The complaint*

1. On 1 July 2022 you asked me to investigate a complaint about the FCA.

*What the complaint is about*

2. You first complained to the FCA about the debt collection practices of Bank X. The FCA explained that it would log the information you had provided but would not be able to share anything with you due to confidentiality reasons.
3. After some considerable correspondence with the FCA regarding the matter above, which did not change the complaint outcome, you then submitted a series of what you call 'general questions to the FCA' on 7 March 2022. These were :
  - procedure before FCA will act on an individual's documented information which raises issues regarding a company's compliance with relevant legislation (on the basis that it FCA does not act on a single complaint alone)
  - procedure for identifying and dealing with conflict of interests in the Regulatory Decisions Committee when Members or seconded representatives have existing or past employment with companies being considered
  - generically, how can a consumer establish whether a company regulated by FCA is compliant with relevant legislation if FCA is prevented from disclosing information about that company?

- specifically, how can a consumer establish whether a company's debt collection activities are compliant with relevant legislation if FCA will not affirm that status and the company will not provide the information?
- which organisation / regulator assesses the compatibility of a company's compliance with consumer credit licencing (FCA) and data protection legislation (ICO)?

For example, how would FCA know that a company was contracting with an organisation which was not registered in the Data Protection Register for debt collection administration purposes?

Also, how would ICO know that a company that was not registered in the Data Protection Register was handling personal data for debt collection purposes?

- in the context of Fintech (which overlaps financial and personal data) what is the regulatory organisation?
4. You subsequently contacted my office to say that you accepted that your complaint about Bank X was out of time and could not be referred to me, however, you explained that the FCA had never answered your generic questions above, and it is this matter you are referring to me.
  5. You said:

When I contacted FCA regarding the above complaint I also requested generic information. FCA refused to provide it claiming the same reasons as above and also refused to refer the matter to the Supervision Hub – seemingly on the grounds that I had made a previous request specific to the bank (see above).

The refusal to provide the generic information formed my second complaint to FRCC. There is no justification for withholding generic

information and the reason regarding investigatory confidentiality does not apply to generic information.

*My analysis*

6. I have made enquiries of the FCA, specifically to ask it to provide a full explanation to me on its position with respect to the generic questions you posed in paragraph 3 above.
7. The FCA Complaints Team responded that looking at the questions you asked in your letter dated 7 March 2022, it thought they relate to how the FCA uses information individuals provide, and given its previous responses, it considered these points had been addressed.
8. The response the FCA refers to is in relation to your specific complaints about Bank X, and it says:

I note from our records that you've contacted us a number of times regarding your concerns about Bank [X] and I note also that the concerns you've shared have been logged against the firm and have been made available to the relevant FCA supervisory team for their consideration. I see from the responses we've provided that you've been informed a number of times that we're unable to provide feedback regarding what action is taken as a result of the information that's shared with us. This remains the case. We don't usually make public the fact that we're investigating (or have investigated) a particular firm or individual. This is partly to protect the effectiveness of our investigations, as publicity might encourage people to destroy or hide evidence, and partly because announcing an FCA investigation can damage reputations. We understand that not revealing what action we may have taken or what the findings of any such investigation may have been, can be frustrating. But we do carefully consider the information given to us and we value it. Even if the information hasn't resulted in us taking formal action against a firm, it often helps us in future dealings – building up a picture of a firm or individual's conduct or informing how we develop policy.

9. The FCA then goes on to explain that the maintenance or deletion of records by Bank X is within the remit of the Information Commissioner's Office.
10. I do not agree that the FCA's response above has answered the generic questions you posed in 3 above.
11. The questions you pose are ones of FCA policy and the FCA has, technically speaking, no obligation to answer them.
12. Having said that, the FCA generally provides useful information to consumers even on matters which are excluded from the Complaints Scheme. It does so to be helpful, and I have commended this practice in my Annual Report 2020-21.
13. I **suggested** the FCA provides you with as much information as it can to answer your general queries above as the FCA's answers may prove to be helpful to other consumers as well in the future. The FCA has responded with more information which I attach as Appendix 1 to this report.

Amerdeep Somal  
Complaints Commissioner  
01 September 2022

## FCA response to questions

### Question 1

Procedure before FCA will act on an individual's documented information which raises issues regarding a company's compliance with relevant legislation (on the basis that it FCA does not act on a single complaint alone).

If a consumer has provided us with information or documentation regarding a firms' conduct and it meets the 'referral criteria' then we will refer it on to the relevant supervisory team. We may not be able to let the consumer know what action has been taken following the referral due to the strict confidentiality restrictions the FCA is bound by under section 348 of the Financial Services and Markets Act 2000 (FSMA) and the FCA's own policy. This is explained further, here: <https://www.fca.org.uk/freedom-information/information-we-can-share>.

### Question 2

Procedure for identifying and dealing with conflict of interests in the Regulatory Decisions Committee when Members or seconded representatives have existing or past employment with companies being considered. Within the FCA Handbook, the Decision Procedure and Penalties manual sets out, at DEPP 3.2.4G to 3.2.6G, the policy for RDC committee members regarding potential conflicts of interest. Members are required to disclose any potential conflict, which would include any existing or past employment with a company being considered in a specific case. The potential conflict will be considered by the relevant person(s), such as the RDC Chair. If that person considers it reasonable and appropriate, he or she will require the member to stand down from consideration of that matter. All such disclosures, and the steps taken to manage them, are recorded and documented. RDC committee members are also subject to contractual provisions, including in relation to the disclosure of potential conflicts.

### Question 3

Generically, how can a consumer establish whether a company regulated by FCA is compliant with relevant legislation if FCA is prevented from disclosing information about that company?

If a consumer was to contact the Supervision Hub, the concerns they share would be addressed and we'd look at providing relevant guidance i.e. next steps / if there are appropriate rules in the FCA Handbook which we can refer them to for review. As our rules derive from legislation, we're unable to interpret these for consumers so if they want to establish whether a regulated firm has been compliant with relevant legislation, they may wish to seek their own independent legal advice.

There is the Public Register and we occasionally issue scams and consumer warnings. However, we are governed by what we can provide publicly by s348

FSMA – breaching this is an offence. I understand what the consumer is getting at, firm A is misbehaving but they cannot know until we publicise action, but we cannot simply issue information at our discretion.

#### Question 4

Specifically, how can a consumer establish whether a company's debt collection activities are compliant with relevant legislation if FCA will not affirm that status and the company will not provide the information?

It would depend on the type of debt. We only regulate debt in relation to consumer credit activities (such as a regulated loan agreement but not things such as utility bills/council tax arrears). We can search the Financial Services Register to see if the firm is a) regulated and b) whether they have a debt collecting permission. We would be able to provide a consumer with this information only.

#### Question 5

Which organisation / regulator assesses the compatibility of a company's compliance with consumer credit licencing (FCA) and data protection legislation (ICO)?

Broadly, the FCA has responsibility for activities that are regulated under the Regulated Activities Order – this would include lending and debt collecting. It is possible that some aspects of a firm's conduct while carrying out those activities could involve issues regarding personal data which could constitute a breach of the FCA's regulatory regime and against which we could take action. The ICO, however, is the regulator and enforcement agency with regards to data protection legislation.'

For example, how would FCA know that a company was contracting with an organisation which was not registered in the Data Protection Register for debt collection administration purposes?

We are likely to check things like that when a firm is being authorised but if a firm later does something without telling us we would rely on various sources of intelligence to find out, e.g. consumer complaints, whistleblowing, finding it as part of proactive work etc.

Also, how would ICO know that a company that was not registered in the Data Protection Register was handling personal data for debt collection purposes?

I think this would be better answered by the ICO. In the context of Fintech (which overlaps financial and personal data) what is the regulatory organisation?

We (the FCA) regulate those activities that amount to regulated activity (as set out in the regulated activities order). However, to be helpful and as his concerns pertain to debt collection, we could state that the activities of lenders and debt collectors are governed by our Handbook – particularly the Consumer Credit sourcebook. CONC contains specific rules around data accuracy and outsourcing when dealing with consumers in arrears of default. The ICO is responsible for firm's adherence to data protection legislation and rules.