

27 April 2022

**Final report by the Complaints Commissioner****Complaint number FCA001681***The complaint*

1. On 23 March 2022 you asked me to investigate a complaint against the FCA.

*What the complaint is about*

2. The FCA summarised your complaint as:

## Part One

You are unhappy as you feel the FCA has failed to supervise Firm X.

## Part Two

You are unhappy as you feel the FCA failed to act on information that you provided.

## Part Three

You are unhappy that the FCA failed to respond or explain to you what it can or cannot do regarding Firm X.

## Part Four

You are unhappy with credit reference agencies (CRA) that hold information on you and your property. You feel you have been forced to

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release data to CRA's. You believe it is wrong that Terms and Conditions demand that you consent to provide details to CRA's.

*What the regulator decided*

3. The FCA did not uphold your complaint, they advised you:

Part One

You are unhappy as you feel the FCA has failed to supervise Firm X.

You have been approached by Firm X for the collection of a personal debt which is not connected to you. The creditor had taken the debt to Court and a court order was made in their favour. This type of debt is considered unregulated by the FCA.

The FCA does not regulate the collection of unregulated debt. The FCA only regulates the collection of debt in the following circumstances: debts arising under credit agreements, consumer hire agreements and regulated peer-to-peer loans.

The firm are a regulated firm, and their conduct is of interest to the FCA even when related to an unregulated activity.

It may be helpful if I explain the strict confidentiality restrictions which the FCA is bound by under section 348 of the Financial Services and Markets Act 2000 (FSMA). I also want to draw your attention to certain relevant aspects of the FCA's own policy on the information we share. A guide to what we can share with the public about firms, people and markets, and what we can't is here - <https://www.fca.org.uk/freedom-information/information-we-can-share>.

For instance, we don't usually make public the fact that we are investigating (or have investigated) a firm or individual. This is partly to protect the effectiveness of our investigation, as publicity might

encourage people to destroy or hide evidence, and partly because announcing an FCA investigation can damage reputations prior to undertaking the investigation and reaching relevant conclusions.

Unfortunately, and while I appreciate that this may be frustrating for you, these restrictions limit the scope of any responses and the amount of information the FCA can give you regarding any actions the relevant departments may have taken in respect of the information you provided.

I believe the FCA has supervised the firm and taken action where needed. Unfortunately, the FCA cannot supervise the unregulated activities the firm undertakes. For the reasons given above, I have not upheld this part of your complaint.

Although I cannot provide you with specific information, you may find the following information helpful.

The FCA website explains, 'Permission to carry on debt collecting is required to collect debts arising under credit agreements, consumer hire agreements and regulated peer-to-peer loans. Utility debts and company debts are excluded as they are not credit agreements. However, any steps taken to gain payment of a debt due under a credit agreement (consumer hire agreement or regulated peer-to-peer loan) constitutes debt collecting – whether the agreement is regulated or exempt.

On 18 January 2021, the FCA issued the Debt Purchasers, Debt Collectors and Debt Administrators Portfolio Letter<sup>2</sup>. The letter stated the following:

'We continue to see some firms fail to treat customers fairly. The most common causes of this are weak operational oversight, ineffective

systems and controls, and insufficient emphasis placed on Treating Customers Fairly within a firms' culture. Increasing consumer debt has the potential to increase the prevalence of consumer harm in this portfolio if these causes of harm are not addressed. We will take action where we identify firms causing or likely to cause significant harm to consumers.

The letter referenced vulnerable customers and said, 'With growing numbers of people in vulnerable circumstances it is more relevant than ever that firms recognise and respond to their needs. In July 2020, we published a consultation (GC20/3) on Guidance for firms on the fair treatment of vulnerable customers, and we aim to publish the final Guidance in early 2021.

*The Guidance aims to create a practical shift in firm behaviours so vulnerable consumers can achieve the same outcomes as other consumers. Firms should embed the fair treatment of vulnerable consumers into their culture, policies and processes through the whole customer journey. Once the guidance is published, we will monitor firms' compliance in this area. If we find that vulnerable customers have not been treated fairly, we will act where we consider it appropriate to do so.*

#### *Part Two*

You are unhappy as you feel the FCA failed to act on information you provided.

The information you provided was passed to the area to inform the ongoing supervision of the relevant firms. Although we are unable to give you any further detail of the outcome of this, I can confirm the intelligence was sent to the correct team and I have reviewed the

action taken by the area. I am satisfied the intelligence was handled in the appropriate manner.

For the reasons given above I have not upheld this part of your complaint.

*Part Three*

You are unhappy that the FCA failed to respond or explain to you what it can or cannot do regarding Firm X.

I appreciate that you are in a stressful and difficult situation and you are seeking to understand whether the FCA can assist you to reach resolution.

The FCA does not investigate individual complaints and cannot intervene in individual situations. The FCA is also unable to give any advice or guidance to individuals about their circumstances.

I am afraid I cannot provide you with any guidance about your circumstances or further actions you could take. However, you may find it helpful to visit MoneyHelper. MoneyHelper is a free service provided by the Money and Pensions Service. You may also find helpful information from Citizens Advice Bureau

<https://www.citizensadvice.org.uk/debt-andmoney/action-your-creditor-can-take/bailiffs/>

The FCA does not regulate the collection of unregulated debt.

You have alleged the FCA failed to respond to you. I have reviewed the correspondence and can see that all your emails were responded to.

In the email of 26 September 2021, the supervisor explained, '*I hope you will understand that it is often not possible for us to tell people*

*about the outcome of any action we may have taken in response to the information they have provided to us.'*

You wrote to the FCA amongst many other addresses on 24 January 2022 and referenced the actions of the police and the courts. In your letter you said, *'The only response I want from any of you is acknowledge you have received and understood this message – No excuses, no warnings, nothing. No claims you could not act, no claim its outs with your control I want nothing but your admittance to utter failure'*.

I do not think it was inappropriate for the FCA not to respond to this letter in any detail. The content of the letter was not related to the actions of the FCA and the supervisor had already explained that you would not be told the outcome of any action.

For the reasons given above I have not upheld this part of your complaint.

### **Conclusions**

I have not upheld your complaint.

I am sorry that you have experienced the distress of dealing with this matter. Unfortunately, the FCA is unable to intervene in individual cases and cannot provide you with assistance.

The FCA do value information provided to us by consumers and the information you provided has been reviewed by the relevant supervisory team.

I hope you are able to reach resolution soon.

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

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

*My analysis*

5. You spoke with a member of my staff and told her about the distressing visit you had from a bailiff in August 2021. I am sorry to hear about your experience, I can appreciate how upsetting it must have been.

Part One

6. I know you are disappointed with the response you received to your complaint with the FCA, however the FCA investigator was correct when they advised you the FCA does not regulate the collection of unregulated debt.

Part Two

7. The regulator welcomes information from people who report concerns. However, as you were told, the FCA does not generally say what action has been taken in response to the information that it receives. This is because section 348 (s.348) of the Financial Services & Markets Act 2000 (FSMA) classes some information the FCA holds about firms as confidential and restricts how that information is dealt with. In addition to this, any information that is not restricted by s.348 FSMA may be restricted due to the FCA's policy on sharing information about regulated firms and individuals, who also have legal protections. Under this policy, the FCA will not normally disclose the fact of continuing action without the agreement of the firm concerned. [There is a good explanation of the statutory and FCA policy restrictions on information sharing at <https://www.fca.org.uk/freedom-information/information-we-can-share>.] This means that, as you were told, there is no general right for members of the public to know the outcome of reports that they make.

8. Like the FCA, I am required to respect confidentiality This means that sometimes I cannot report fully on the confidential material to which I have access. However, as part of the Complaints Scheme, I have access to all the FCA's complaints papers, including confidential material. This is so that I, as an independent person, can see whether I am satisfied that the FCA has behaved reasonably. Sometimes this means that all I can say to complainants is that having studied the confidential material, I am satisfied that the FCA has (or has not) behaved reasonably – but I am unable to give further details. This can be frustrating for complainants, but it is better that I am able to see the confidential material. On occasions, I have persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible. I shall continue to pursue this matter with the FCA.
9. In your case, I am satisfied on balance that the FCA's complaint response, that it would not inform you of any action to be taken, or not taken, in response to the information you provided about Firm X, was reasonable in the circumstances. I recognise that there's a difficult balance to be struck between protecting confidential information to enable the FCA to do its job and encourage potential informants, and the need to give consumers sufficient information and confidence to judge whether or not the regulatory system is operating effectively.

### Part Three

10. Having reviewed the FCA file, I cannot agree the FCA failed to respond or explain to you what it can or cannot do regarding Firm X.
11. I can see you have sought different avenues in which to seek a resolution to your complaint against Firm X including the Financial Ombudsman Service (FOS), and you have explained your objective is to stop this happening to

anybody else in the future. I would suggest seeking independent legal advice, however I note you have considered this but decided against it due to the cost. It may be worth as the FCA have suggested approaching the Citizens Advice Bureau to see if they can assist you.

12. You have expressed your dissatisfaction in response to my preliminary report. Whilst I am sorry you have experienced such a distressing experience, for the reasons detailed above, I am unable to uphold your complaint.

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Complaints Commissioner

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