

01 September 2022

**Final report by the Complaints Commissioner****Complaint number FCA001718***The complaint*

1. On 12 May 2022 you asked me to investigate a complaint about the FCA.

*What the complaint is about*

2. You initially complained to the FCA and it summarised your complaint as follows:

You are unhappy that CRA X keeps hard searches for two years. You state all the other Credit Reference Agencies (CRA) keep hard credit searches for 12 months. You made the FCA aware of this, you are unhappy that the FCA responded stating that they have “no process in place to how long a hard search can stay on a person’s credit file and that this process is left to the organisation to decide”. You believe this is a failure by the FCA and believe that they should regulate all CRA’s processes as by not doing so would mean that CRA’s cannot be properly monitored, and this disadvantages the public. You believe that the FCA should have a standardised process for all CRA’s to follow to ensure a fair and transparent processes.

3. On 7 January 2022, the FCA issued a decision letter to you in which it said

As your complaint relates to data retention it is not something that we are able to investigate under the Scheme as it would not be considered one of the FCA’s relevant functions. CRA’s information handling and data retention practices are not regulated by the FCA. The Information Commissioner’s Office (ICO) is the regulator for matters such as this and may be able to advise you further. The ICO is an independent body that had been set up to uphold information rights.

4. You referred your complaint to me and said the FCA was failing to regulate CRAs correctly. The FCA agreed to review this point and issued a second decision letter to you.

5. It summarised your complaint as follows on 10 May 2022:

You are unhappy as you feel that the FCA is not regulating Credit Reference Agencies (CRA's) correctly. You have explained that the FCA has not implemented a timescale as to how long a search should show on an individual's file. You state this has resulted in, different CRA's have different timescales. ...You feel this makes applying for credit a "chance process", it depends on what CRA a firm looks at which determines if a person is accepted or not. You believe there needs to be a standardised timescale for all CRA's whereby hard searches stay for a maximum of 12 months. You state that if a firm is regulated then all its activities should be regulated.

6. The FCA said that

After carefully considering the information, you have provided, we have concluded that this is not a complaint we would investigate under the Complaints Scheme. Paragraph 3.5 of the Complaints Scheme provides that we will not investigate complaints that we reasonably consider amount to no more than dissatisfaction with our general policies or with the exercise of, or failure to exercise, a discretion where no unreasonable, unprofessional or other misconduct is alleged. Your complaint relates to the FCA's regulation of CRA's which we consider amounts to being dissatisfaction with our general policies. Accordingly, this is not something we will investigate under the Scheme.

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

7. You have said to me that:

My complaint is that CRA A and CRA B keep hard credit searches on a person's credit file for a maximum of 12 months after 12 months this hard credit search then comes off a person's credit file.

Banks and other financial institutes look at this information as apart of their application process, as if a person has more than two hard credit searches on their credit file the credit score will also reduce another help for banks and other financial institutes to help with their credit applications from consumers.

CRA C keep hard searches on their credit file for two years not 12 months like others, therefore depending on what credit reference agency a bank or financial institution uses will help determine a person credit worthiness based on who the bank or financial institute uses as their preferred credit reference agency.

This should not be down to a chance of luck to which credit reference agency is being used, they should all have a transparent structure which should be regulated and overseen by the FCA.

#### *My analysis*

8. You allege that consumer outcomes for lending activities may be affected by the CRAs lending institutions use which in turn retain data for different periods of time. You allege that if retention periods were standardised this would lead to a fairer method of credit scoring, and you have suggested the FCA introduce guidance or rules with respect to retention periods. You have used your own case as an example to illustrate how different retention periods by CRAs may affect the credit score of a consumer.
9. It does not seem to me that you are expressing general dissatisfaction with the FCA's policies. It is clear that you have made a very specific allegation and suggestion: which is that the FCA standardises retention periods (you mention for hard searches).
10. So, I do not agree with the FCA's decision letter dated 10 May 2022 to exclude your complaint on the grounds of paragraph 3.5 of the Complaints Scheme. The FCA has accepted this point but its position is that the complaint is still excluded under paragraph 3.4 of the Scheme as it relates to the legislative functions of the Scheme.
11. I now turn to the FCA's letter dated 7 January 2022 which addresses an aspect of the same point you make. In this letter, the FCA says that it does not regulate

data retention periods and therefore cannot investigate your complaint. It suggested you approach the ICO which you did, and which informed you it regulates breaches of GDPR, but the ICO cannot regulate how long data can stay on a person's credit file if the FCA have not implemented a process.

12. So, the FCA sent you to the ICO on the matter of data retention practices and the ICO has sent you back to the FCA.
13. The FCA has told you it does not have any guidance or rules for firms on data retention policies; but you already knew that. Your suggestion was that it should, and you explained why.
14. It was not clear to me if the FCA's position is that it is not within its remit to issue such guidance and therefore it cannot investigate your complaint, or, that as it has not issued such guidance to CRAs who use their own discretion on data retention policies, it cannot investigate your complaint.
15. It did not appear to me that there was any attempt by the FCA internally to assess whether your allegation about potential detriment to consumers due to different CRA retention periods is a valid point to make, and/or whether issuing guidance for standardised retention periods by CRAs is a worthwhile suggestion.
16. The FCA is already engaged in an ongoing credit information market study which among other things, looks at the standards around how credit information is submitted and shared. It has issued a letter <https://www.fca.org.uk/publication/correspondence/cra-cisp-portfolio-letter.pdf> in which it specifies that an area of focus of its supervisory strategy is 'loss or misuse of personal data.' It seemed to me the issue you raise is connected to/or potentially could be connected to the areas of credit information already in focus by the FCA. You also emailed the FCA complaints team with a link which supports the view that the FCA can, if it deemed it necessary, take a view on data retention policies (and it is certainly something the ICO apparently considers can be done as well):

### **Rules**

17. **3.—** (1) The FCA may make such rules applying to credit rating agencies—

- (a) with respect to the carrying on of a credit rating activity, or
- (b) with respect to the carrying on of an activity which is not a credit rating activity,

as appear to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives under Part 1A of the Act.

18. In my view the Complaints Team was too quick to apply an exclusion rather than consider the underlying issue of your complaint and whether it merits further attention.
19. I invited the FCA to comment on whether the matters you raise can be added to the credit information market study or any other appropriate study looking at credit information matters so it can be properly assessed by its policy department given the matters raised in paragraph 16 above.
20. In its response, the FCA has said that

In 2019 the FCA launched a market study into the credit information sector to investigate (1) the purpose, quality and accessibility of credit information, (2) the market structure, business models and competition between key firms, and (3) consumer engagement and understanding of credit information and how it impacts their behaviour. The Credit Information Study Group have explained that they are in the final stages of writing the interim report for publication next month. The market study has concluded so they are unable to incorporate feedback from [the complainant] at this point. However, they will ensure that his comments are fed into the consultation process which will start once the interim report is published, as this is designed to collect feedback and inform how they might revise their proposals, and/or proceed with further investigations. All updates relating to previous and upcoming publications are shared on the credit information market study page: <https://www.fca.org.uk/publications/market-studies/ms19-1-credit-information-market-study>. I have also spoken to Supervision about the points that [the complainant] raised. As mentioned above, we will pass the comments on to the team handling the Market Study, and we will also consider them in our future supervisory work as this is an important area

that [the complainant] raised. Our current understanding is that ultimately data retention policy is a matter for firms having regard to data protection requirements (in the absence of any other regulatory rules) and CRAs are able to make business decisions about the time they retain information such as hard searches.

*My decision*

21. I find the FCA response to my preliminary report satisfactory, although I have expressed concern and criticism at how your complaint was handled initially. As a result of your complaint, important feedback will now be fed into the FCA's ongoing regulatory work, which is a good example of how the Scheme can operate to provide an avenue for general recommendations and observations about the operations of the regulators.

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Complaints Commissioner

01 September 2022