

7 February 2019

Final report by the Complaints Commissioner

Complaint number FCA00520

The complaint

1. You alleged that the FCA's failure to act in relation to Firm X (the Firm) led to you suffering a financial loss.

What the complaint is about

2. You had a two-part complaint. In part one you alleged that the FCA could have taken action sooner against the Firm and in part two you alleged that you were forced to sell your home below market value because the FCA did not take action against the Firm sooner.

What the regulator decided

3. The FCA upheld part one of your complaint, acknowledged that it could have taken action against the firm sooner and offered you an apology.
4. Part two of your complaint was not upheld because it was the FCA's view that even if it had taken action sooner, the debt you owed to the Firm would still have stood.

Why you are unhappy with the regulator's decision

5. You do not accept that had the FCA taken action earlier, you would still have had to sell your house at a loss, and you asked me to investigate your complaint.

Preliminary points

6. At the time you took a loan, secured against your house, from the Firm you are complaining about, it was regulated by the Office of Fair Trading (OFT). The Firm then transitioned to being regulated by the FCA in March 2014, initially under the interim permission regime, which allowed it to carry out regulated

credit activities. It was required to apply for full authorisation at the end of 2015 and was finally authorised in September 2018.

7. Before its transition to the FCA, the OFT had concerns about the Firm and was undertaking work to mitigate the risks to consumers. Because of this, and as a follow-on to the work by the OFT, the FCA imposed a Voluntary Application for Imposition of Requirement (VREQ) on the Firm a few weeks after it gained interim permission.
8. The VREQ meant that the Firm was prohibited from entering into new business and set out steps which the Firm was required to undertake when enforcing its regulated consumer agreements. In these cases, this included informing the Courts of the potential problems with the consumer credit agreement the Firm intended to enforce. This was to ensure that consumers were given protection, and possession orders would only be made in full knowledge of the facts.
9. The FCA also wrote to the existing customers of the Firm, informing them that it was now responsible for regulating the Firm and advising them to seek assistance if they were contacted by the Firm or its representative about possession applications.

My analysis

10. There are two separate issues to be considered in relation to the FCA's actions and their impact on you. One is the steps the FCA took initially to protect consumers and how effective these steps were (element one). The second is how long the FCA took to authorise this firm and whether that had a detrimental impact on you (element two).

Element one

11. As stated, the firm's regulation transferred to the FCA on 31 March 2014, along with tens of thousands of other consumer credit firms. Being aware of the OFT's concerns and previous action against the firm, within weeks the FCA imposed a VREQ in order to severely restrict the firm's regulated credit activities and ensure that consumers were protected from future harm. Work was undertaken to assess the most appropriate way of regulating the firm and protecting consumers.

12. The plan included sending a letter to affected individuals in July 2014 with some useful information about how to protect their interests. You were sent this letter and you confirmed its receipt to the FCA on 22 July 2014 and informed them that you would forward the information to your legal representatives.
13. In my view this correspondence demonstrates that the FCA took swift action to inform affected consumer of the developments about the Firm and their rights in an effort to protect them.
14. Unfortunately, you were not able to repay the secured loan to your lender and possession proceedings were commenced against you, culminating in a hearing in 2015. It appears from the judgment that the court was informed of the circumstances surrounding your loan and made an order by consent. The order stated that the debt would stand and was enforceable against you and your property under the Consumer Credit Act, and that the parties (you and the Firm) had permission to apply to the court for the implementation of the order and attached schedule.
15. In addition, your indebtedness was fixed at the capital sum owing and you were granted a deferment period of 16 months to pay the capital sum. No interest was to accrue on the outstanding amount in this period.
16. However, it appears from the paperwork that you were not able to settle the debt by the appointed date and a warrant of possession was issued against you in February 2017 and eventually your property was sold to settle the debt.
17. Having read the various documents, including your witness statement provided by you and the court order from 2015, it appears that the steps the FCA had taken in early 2014 to protect consumers were effective. They ensured that the Firm notified the Court of the potential deficiencies in your credit agreement and this assisted you in securing a 16 months deferment period in which you could have taken steps to satisfy the outstanding debt to the Firm either by securing another loan or selling your property at a time of your choosing.
18. As you took neither of these steps and you did not give possession of your property to the Firm by the deadline set by the order of 2015, the Firm commenced further proceedings against you to enforce the existing Court order, which resulted in additional costs.

19. These events in the Court were outside of the control of the FCA and not affected by the authorisation process.
20. It was the Court that decided your debt stood and all following steps, including the enforcement proceedings, were conducted through the Courts. For that reason, I cannot uphold your complaint.

Element two

21. The Firm applied for authorisation in December 2015 and became authorised in September 2018. Having reviewed the information provided by the FCA, it is clear that there were some serious delays in processing this application, partly due to changes in people allocated to do the work, partly as the FCA was undertaking work on related matters and partly due to the lack of co-operation from the Firm.
22. In your response to my preliminary report and specifically paragraph 21, (above) you state that the FCA took too long to authorise the firm and that they took no action to protect vulnerable consumers in this time.
23. In my view, the FCA took effective action early on in the process to protect consumers, as I have set out in detail when looking at Element one above.
24. The FCA has accepted that it fell short of expectations in how long it took to authorise this firm and it has upheld this element of your complaint. It is however clear from the records that the amount of time the FCA took to authorise this firm did not have a negative effect on you. The safeguarding measures they put in place were used in your case, but your property was repossessed despite the protective measures, not because of them, as you were unable to repay the capital sum owing. The delay in authorising the firm played no part in this.
25. The FCA has already taken steps to ensure that it manages applications better in future and published its new approach to authorisations, which can be accessed here: <https://www.fca.org.uk/publications/corporate-documents/our-approach-authorisation>.

My decision

26. While the FCA took an unusually long time to authorise the firm, it did take steps very early on to ensure that vulnerable existing customers were protected, and it

took steps to prevent the firm carrying out new business in order to prevent future harm to consumers.

27. I can see no evidence that the length of the authorisation process has resulted in harm to you. For those reasons, I am afraid that I cannot uphold your complaint.

28. In response to your questions about this process, I can confirm that the final report marks the end of the complaints process. If you are not satisfied with the outcome of my investigation, you may have my decision judicially reviewed, at your own cost – you might wish to seek legal advice before taking this step. You may also wish to advice from Citizens Advice (<https://www.citizensadvice.org.uk/>) about what other steps may be available to you.

Antony Townsend

Complaints Commissioner

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