

8 April 2019

Final report by the Complaints Commissioner**Complaint number FCA00527***The complaint*

1. You complained to me on 18 February 2019 about the FCA's supervision of a firm in which you had invested.

What the complaint is about

2. The FCA described your complaint in this way:

[Firm X] operated a peer-to-peer website for approximately two years, during most of which time, it purported to have an interim permission ('IP') pending an application for full authorisation. Before investing with the firm, you state that you checked the firm was authorised on the FCA's Financial Services Register ('the Register') and that you believed the firm was fully authorised to carry out the activities it was doing, as the Register showed [Firm X] as having IP under the Firm Reference Number XXXX.

On 4 April 2018, the FCA published a news story highlighting that none of the [Firm X] Companies held any valid authorisation or permission to carry out regulated activities. It stated that, when challenged by the FCA, the [Firm X] Companies agreed to cease their lending activities and, on 26 February 2018, the lending platform became inoperative. Following this, the firm voluntarily entered administration. You complained to the FCA that it failed to maintain an accurate record on the Register, meaning that it contained information that was misleading prior to you investing.

To resolve your complaint, you would like the FCA to pay you compensation for any losses you may incur following the administration process.

What the regulator decided

3. In its decision letter of 9 January 2019, the FCA said it had decided to defer your complaint for the following reasons:

I am deferring our investigation of your complaint. This is because your complaint is connected with some form of continuing action by the FCA. The regulatory status of [Firm X], and the events which led to the register entry for the IP in question appearing to show [Firm X] as an authorised firm, are matters which are subject to an FCA Enforcement investigation.

We are generally only able to begin investigating a complaint after any ongoing action is finished. Once that action is finished, we will write to inform you of the next steps with regards to your complaint. The Complaints Team will continue to liaise with the relevant team internally and we will seek to keep you informed of significant developments.

Why you are unhappy with the regulator's decision

4. In your emails to me, you say that 'The administrators which have been appointed by the FCA are incredibly well paid and extremely slow....No information is forthcoming to the whereabouts of our investment and any information I request is declined by the FCA who caused the problem in the first place.....I believe an investigation needs to be conducted on them – now.' You also say that when the FCA initially intervened, investors knew nothing.

My analysis

5. Your complaint, and the FCA's response, raise some significant issues which I need to explain in some detail, having examined the FCA's files.
6. First, the FCA is right to say that your complaint is connected with some form of continuing action by the regulator. Under the terms of the Complaints Scheme,

A complaint which is connected with, or which arises from, any form of continuing action by the regulators will not normally be investigated by either the regulators or the Complaints Commissioner until the complainant has exhausted the procedures and remedies under FSMA (or under other legislation which provides for access to the Scheme) which are relevant to

that action. The complainant does not have to be the subject of continuing action by the regulators for this provision to be engaged. An investigation may start before those procedures are completed if, in the exceptional circumstances of the case, it would not be reasonable to expect the complainant to await the conclusion of the regulators' action and that action would not be significantly harmed.

7. I have some concerns about the wording of this provision, which I have raised with the FCA before, but the thinking behind it is that undertaking a complaints investigation at the same time as doing an Enforcement investigation (that is, an investigation which might lead to action against regulated individuals or firms) could have two adverse consequences: it could divert resources away from the regulatory investigation, and/or it could prejudice the regulatory action.
8. However, these consequences need to be weighed against the interests of complainants and the wider public interest – the provision I quote above refers to exceptional circumstances in which a complaint may be considered before regulatory actions have been completed.
9. This takes me to my second point. Your complaint (which I understand is one of many raised with the FCA about the same matter) raises some serious points about the accuracy of the FCA's register, and losses which allegedly arose from inaccuracy. The question which I need to consider is whether it is reasonable in those circumstances for the FCA to defer consideration of your complaint until 'after any ongoing action is finished'.
10. I can see from the FCA's files that the FCA Enforcement investigation is active. It seems to me likely that that investigation will produce material which is relevant to the consideration of your complaint. I also consider that it would be unhelpful if the FCA Complaints Team were to undertake a parallel investigation into these matters. To that extent, I think that the FCA's deferral decision is reasonable.
11. However, I do not think that the complaint investigation should be deferred until 'any ongoing action is finished'. If the FCA's Enforcement investigation leads to a decision to take action against individuals or firms, there is a significant risk that proceedings will take many months or years before they are concluded. I do not consider that it would be reasonable for you (and others) to have to wait for that

long, *unless* there was a *serious* risk that completing the complaint would *seriously* jeopardise the enforcement action.

12. For that reason, I consider that the FCA should defer consideration of your complaint (and any other essentially similar complaints) for six months or until the conclusion of the Enforcement investigation (whichever is the sooner). At that point, on the basis of the material produced by the enforcement investigation, it should consider whether there remains a justification for further deferral (either because there is not yet sufficient information, or because there is a real risk of serious prejudice to Enforcement proceedings) and, if so, for how long.

Decision

13. I **recommend** that:

- a. The FCA should defer consideration of your complaint for six months or the conclusion of the Enforcement investigation, whichever is the sooner;
- b. At that point, the deferral should be reconsidered and the complaint investigated unless either there is a real risk of prejudice to enforcement proceedings or because there is not yet sufficient information;
- c. The FCA should report the outcome of that consideration to you and to me.

14. I am pleased to say that the FCA has accepted these recommendations.

Antony Townsend

Complaints Commissioner

8 April 2019