

30 June 2020

Final report by the Complaints Commissioner**Complaint number FCA00633***The complaint*

1. You first complained to me on 6 August 2019 about firm X, which you say administers and collects debts on mortgages without authorisation from the FCA.
2. Before I could begin my investigation, the FCA asked to review your complaint again. This was agreed by both you and me. The FCA concluded its second investigation on 10 January 2020. You are not happy with the outcome and have referred the complaint to me.

What the complaint is about

3. You first complained to the FCA in October 2018. The FCA wrote to you on 12 November 2018 summarising your complaint as follows:

You have provided the FCA with information about an unregulated company [firm X] who you state continue to administer and collect on mortgages without authorisation from the FCA. As a result, you feel the FCA has failed in its duty to protect consumers such as you and your family.

What the regulator decided

4. In its first decision letter of 31 July 2019, the FCA did not uphold your complaint. It said that the information which the FCA's Consumer Contact Centre (CCC) had provided you with on the occasions you had contacted it was correct.
5. Following the FCA's decision in August 2019 to reconsider your complaint, the FCA wrote to you on 26 September to say that, contrary to its earlier decision letter, the information which you had been given by the CCC that firm X was not authorised was incorrect, and you were invited to quantify the losses which your family had incurred. The FCA wrote again on 2 October 2019 to say:

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Please note that the FCA have upheld your complaint on the basis of incorrect information which was provided by the Consumer Contact Centre....We note that you intend to engage the services of a professional to quantify loss. The FCA will not cover any costs of the engagement of professional services...

6. On 10 January 2020, you received a further decision from the FCA. This letter said that although firm X was not regulated, it had contracted a regulated firm, Y, to administer and service the debt on its behalf, and that you had been informed of this by the CCC. It went on to say:

...having reviewed all the evidence again, I am of the opinion that the FCA acted appropriately, in light of the information that you provided at each stage of your extended contacts with them. For this reason, I am confirming the original decision not to uphold your complaint...

I apologise that one of our investigators has already indicated to you that the complaint would be partly upheld.

You were given the false impression, particularly in the e-mail that we sent you on 26 September 2019, that the guidance you received from the Hub was partly incorrect. For the reasons I have outlined above, on further consideration, I do not believe that to be the case. In the light of this error, and in view of the further delay in reaching our conclusion, I am raising our offer of an ex gratia payment from £75 to £200.

Why you are unhappy with the regulator's decision

7. You are unhappy that:

Element One

- a. The FCA failed to investigate firm X for breaching the terms and conditions of their regulated 2nd charge mortgage loans by adding increased payments, interest and charges onto the consumer.
- b. The FCA failed to investigate firm X for collecting and administering on their 2nd charge mortgage loans without appropriate legal 'Power of Attorney', 'Service Agreement' or regulatory authority to do so.

- c. The FCA failed to investigate firm Y on whether they had the correct regulatory authority, 'Power of Attorney' Service Agreement' to collect and administer on behalf of firm X.

Element Two

- d. The FCA failed to investigate Firm X for their provision of a non legally compliant, fraudulent 'Discharge of Security'.

Element Three

- e. The FCA failed to investigate your complaint in an acceptable time frame.

Element Four

- f. The FCA told you that it would partly uphold your complaint and asked you to calculate and provide your losses, but before you could do so, it issued a further decision letter not upholding your complaint.

Element Five

- g. You entered into further correspondence with the FCA and received a response on 2 June 2020 which you wish to complain about.

My analysis

Element One

- 8. The background to your complaint is that your brother and sister-in-law took out a secured loan in 2007 with a regulated financial services company which sold the loan account in 2015 to firm X, an unauthorised firm which became the legal title holder.
- 9. Between January 2017 and November 2018, you called the FCA for guidance about this firm, which appeared to be seeking payments from your brother and sister-in-law including some relating to arrears on the loan. You were concerned that the firm was not on the FCA Register.
- 10. During your discussions with the CCC, it became apparent that although you were receiving letters with firm X's letterhead firm X had, in fact, contracted firm Y, an authorised firm, to service the debt on its behalf, and this information was provided at the bottom of the letters you received.

11. When you spoke to the CCC in December 2017, the associate told you the FCA was aware of the arrangement between firm X and firm Y, and that there was no concern about this arrangement.
12. During that call, and in subsequent correspondence with the FCA, you highlighted your belief that firm X, rather than firm Y, was administering and collecting the debt.
13. In May 2018 your relatives repaid the outstanding debt to firm X.
14. The FCA has told you, over the course of your contacts with it, that:
 - a. Your concerns that firm X rather than firm Y was administering the debt would be passed to FCA Supervision, however,
 - b. As firm X had legally acquired the title to the loan they were entitled to receive payments under the terms of the original contract and
 - c. If your brother and sister-in-law consider they have been disadvantaged by the administration of the debt, they can approach the Financial Ombudsman Service.
15. I have looked carefully at the communications between you and the FCA, and considered recordings of telephone calls. In general, I consider that the advice you were given – which was essentially that you should be careful about dealing with firm X which was not authorised to administer debts – was correct. While elements of the advice might have been improved – for example, it might have been helpful to have steered you towards obtaining legal advice at an early stage – I do not consider that the advice you were given disadvantaged your brother and sister-in-law.
16. Furthermore, I do not consider that, on the basis of your phone calls, it was clear that the FCA should have taken immediate regulatory action. The information available to the FCA suggested the possibility that firm X was acting unlawfully, but you were directed towards Action Fraud. In December 2017, when you explained that demands stated that debt collection was being administered by firm Y, the FCA checked that firm X had an arrangement with firm Y which was compliant. The FCA cannot investigate every piece of information it receives about firms.

17. I can confirm the FCA has reviewed your concerns about firm X, and given them consideration. Unfortunately, for reasons of confidentiality, I cannot disclose what action, if any, has been taken by the FCA.

Element two

18. The question of the legality of the 'discharge of security' is a matter for the courts, not the FCA. For that reason, I do not uphold this element of your complaint.

Element Three

19. The first FCA investigation into your complaint was delayed: the FCA acknowledges this and has offered you an ex gratia payment of £200 for the inconvenience.

20. The second investigation was also delayed, but the delay in that was largely because you had asked for time to quantify the losses.

21. I agree with the FCA's decision to uphold this element of your complaint and to offer you an ex gratia payment.

Element Four

22. The FCA asked for your complaint to be returned to them in August 2019. The original complaints investigator of your case had left and the new investigator wanted to make sure you had been given all the correct facts. During the course of her review, she wrote to you that your complaint would be partly upheld and asked you to quantify your losses (see paragraph 5 above). This was a serious error for three reasons:

- a. The investigation into the complaint had not at that stage concluded;
- b. Contrary to what the investigator said, you had not been misled about firm X's status;
- c. On the basis of these two errors, you were encouraged to quantify your losses.

23. . The FCA has apologised for this error and offered to increase the original ex gratia payment from £75 to £200. I do not consider that this is adequate, for three reasons:

- a. The fact that a decision was wrongly issued is a very serious error – it is clear that the investigation was inadequately controlled;
- b. The erroneous decision raised a reasonable expectation in you and your relatives – who had already suffered from their loan difficulties and from the earlier delays in the FCA’s complaints process – that they were going to obtain redress;
- c. On that basis, you incurred, or risked incurring, professional costs in the quantification of the losses. The fact that the FCA told you that it would not reimburse such costs is neither here nor there – if you incurred them, you did so because the FCA had misled you into believing that you would receive some redress.

Element Five

- d. You entered into further correspondence with the FCA after you had sent me your complaint. You are unhappy with the FCA response sent to you on 2 June 2020. This is a new complaint. Under the Complaints Scheme (see <http://frccommissioner.org.uk/complaints-scheme/> for further details), the FCA usually does its own investigation first, as that is usually the best way of resolving matters. For that reason, I suggest that you send your new complaint to the FCA. Once the FCA has completed its review, you can ask me for an independent investigation if you are not satisfied with the FCA’s decision.

My decision

24. For the reasons above, my view is that elements one to three of your complaint should not be upheld, but that element four should be upheld.
25. I recommend that
 - a. The ex gratia payment should be increased from £200 to £500, to reflect the delay and the raising of false expectations caused by the FCA’s maladministration. The FCA has accepted this recommendation
 - b. The FCA should reimburse any reasonable professional costs which you incurred in quantifying losses during the period 26 September 2019-10 January 2020. The FCA has not accepted this recommendation, but in my

view it is unacceptable that the FCA, having misled you into believing that you might receive redress, now accepts no responsibility for the consequences. I repeat my recommendation that the FCA should reimburse you.

26. Your relatives have been through a very unhappy experience, and it is unfortunate that the FCA's handling of the complaint has exacerbated this. My recommendations are designed to recognise this.

27. I recognise that you are unhappy with my decision, as you continue to believe that firm X was not entitled to receive payments on the loan and that firm Y did not have permission to collect payments on behalf of firm X. I can only repeat what I have said in my report: the FCA has confirmed that the arrangement between firm X and firm Y is compliant, and that firm Y is entitled to collect payments on behalf of firm X, which in turn is entitled to receive these payments.

Antony Townsend
Complaints Commissioner
30 June 2020