

Date 27 April 2021

Final report by the Complaints Commissioner**Complaint number FCA00852***The complaint*

1. On 1 March 2021 you asked me to review your complaint about the FCA's authorisation of IFA X.

What the complaint is about

2. The FCA summarised your complaint as follows:

My understanding of your complaint is that you are unhappy that the FCA (Financial Services Authority (FSA) at the time) approved Mr X as a mortgage broker when he had a criminal record. You would like the FCA to compensate you as you are of the view that this contributed to you using Mr X's services via X Financial Ltd which led to him fraudulently obtaining two mortgages for you.

What the regulator decided

3. The FCA declined to review your complaint as it was out of time. The mortgages you referred to had been obtained in 2005. The FCA also explained that X Financial Limited had ceased to trade in 2012 and Mr X had his FCA permissions and authorisation revoked in 2012. The FCA pointed you to a final notice it had issued in respect of Mr X.

Why you are unhappy with the regulator's decision

4. You say you became aware of Mr X's fraudulent behaviour recently. The FCA said you were still out of time by approximately one year in bringing your complaint to it. You have said you would like some leniency in this case and for your complaint to be investigated.

My analysis

5. The background to your complaint is that you allege that an IFA, Mr X, helped secure a mortgage for you on a residential property in 2005. Some years later you found yourself in difficulty servicing the mortgage. You learned on or around 2018 that Mr X had falsified some of your income (showing it higher than it actually was) in order for you to obtain this mortgage in 2005 which otherwise you would not have been given. You have approached the FSCS but you tell me its view was there was insufficient evidence to pursue your claim. You then complained to the FCA, saying that if its predecessor the FSA had not authorised Mr X in 2004, he would not have been able to commit the fraud against you. You feel that Mr X should not have been authorised as he had previous criminal convictions and had been investigated and prosecuted for mortgage fraud. You feel, therefore, that the FCA ought to compensate you.
6. I should explain that the Complaints Scheme is concerned with the actions or inactions of the FCA. It cannot deal with complaints against banks, IFAs, individual firms [or against the Financial Ombudsman Service (FOS)], nor is it a redress service for individual consumer complaints. The Financial Services and Markets Act 2000 explicitly provides for a consumer redress service separated from the FCA.
7. The FCA does have a statutory duty to secure an appropriate degree of protection for consumers. It does so by regulating the financial industry through the setting of standards which firms must meet, and by taking enforcement action where that is justified. It does not investigate individuals' complaints against the firms it regulates, that is the role of the FOS. Where a firm has gone out of business, a consumer may approach the FSCS.
8. That does not mean that the FCA cannot investigate concerns arising from information about individual complaints, but it investigates those in the context of considering whether or not regulatory action is justified, rather than whether or not the individual requires redress. Any action the FCA may or may not take could not lead to redress for you personally.
9. Therefore, the remedy you seek from the FCA: compensation for the actions of Mr X, is not available to you under the Scheme. It is the FSCS who would deal

with your complaint, and I understand you have already approached the FSCS. I am sorry to hear that you have not been able to advance your claim with them.

10. I appreciate you would like more information on why Mr X was authorised in 2004 given his past offences. The FCA has not addressed this point as it deems your complaint out of time. I can accept complaints which are out of time if I feel there is good justification. I have considered the circumstances of this case and I do not think it is either practical or justified to investigate this case for the following reasons:
11. Mr X's authorisation as an approved person in 2004 happened 17 years ago. Mr X ceased being an approved person in 2011 and the FSA issued a warning notice against him in 2012 declaring him not fit and proper to be reauthorised. Since that time, Mr X has not worked in a FCA regulated function. Given the passage of time, the fact Mr X is no longer authorised as the FCA took regulatory action against him, and the lack of the remedy you seek being available to you under the Complaints Scheme, there is little merit in reviewing this matter further. This is especially so as you have an alternative venue to pursue your complaint: as I mentioned above, the FSCS is the appropriate body to review your claim for compensation. I am sorry if the FSCS has not met your expectations, but that is not the fault of the FCA, and the Complaints Scheme is not an alternative to the FSCS.

My decision

12. I am sorry to disappoint you, but for the reasons given above I am exercising my discretion not to investigate your complaint.
13. You have said to me that you feel you should not be deemed 'out of time to claim'. I refer you to paragraph 9 of my report: you cannot 'claim' for any losses under the Complaints Scheme. Even if I were to investigate your complaint, it would not lead to redress for you. The appropriate body for you to seek compensation from is the FSCS. The complaints Scheme is not an alternative to the FSCS.

Amerdeep Somal
Complaints Commissioner

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