

13 January 2022

Final report by the Complaints Commissioner**Complaint number FCA00985***The complaint*

1. On 19 October 2021 you asked me to investigate a complaint against the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

(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 (now displayed as "xxxx"). On 4 April 2018, the FCA published a news story highlighting that none of the (Firm X) held any valid authorisation or permission to carry out regulated activities. It stated that, when challenged by the FCA, the (Firm X) 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. The FCA deferred your complaint, they advised you:

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.

I've set out further information below about deferred complaints under the Scheme.

Deferred complaint

The Complaints Scheme (the Scheme) sets out what the FCA will do in circumstances where there is continuing action at the time a complaint is made. Paragraph 3.7 of the Scheme states:

'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.'

It may be helpful for me to explain the objective which underlies paragraph 3.7. The objective is to ensure that a complaint investigation does not cause detriment to, or prejudice, any ongoing work by the FCA. Such interference may inhibit the FCA from achieving its statutory objectives in a timely manner.

I have considered, in line with Paragraph 3.7 of the Scheme, whether there are exceptional circumstances relating to your case, but have concluded that there are not, and that the reconsideration of an investigation of your complaint should take place after the conclusion of any enforcement action which may result from the current investigation.

Why you are unhappy with the regulator's decision

4. You have asked me to review the FCA's decision.

My analysis

5. The FCA is correct to say that, under paragraph 3.7 of the Complaints Scheme, investigations of complaints can be deferred where there is continuing regulatory action which might be undermined by the consideration of the complaint.
6. I agree with the FCA's decision to defer yours and other complaints about this matter for the moment, as it is likely that the regulatory action will produce material which is relevant to your complaint. I also think it would be unhelpful if the FCA Complaints Team were to undertake an investigation into these matters in parallel with the regulatory investigation. I am pleased to note the FCA will be keeping you updated every 6 months.
7. I realise that this continuing delay is likely to be frustrating for you, but I hope you will understand that, in my view, it is the best means to ensure that your complaint is thoroughly considered at the most appropriate time.

My decision

8. I realise you may be disappointed with my decision report, but for the reasons outlined above, I cannot uphold your complaint.

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FCA00985

Complaints Commissioner
13 January 2022