



08 November 2024

## Final report by the Complaints Commissioner

### Complaint number 202400170

#### *The complaint*

1. On 27 May 2024, you submitted a complaint about the FCA to my office on behalf of Mr Z.
2. You allege that a firm [X] with FCA credit broking permissions was offering accredited educational courses but that this was misleading as the courses were not in fact accredited. The firm had an arrangement with a lender, Y (an authorised FCA firm) to provide loans for these courses. You say Mr Z took out a substantial loan for training in 2019 but did not complete the course because he believed the course was not accredited.
3. You remained concerned because you allege firm X continued to offer the misleadingly labelled courses and you say that you approached the regulator Ofqual, which took action against the firm in 2022 as a result of which the firm amended its advertising and the educational courses currently offered on its website do not purport to be accredited.
4. For the purposes of clarity, neither the FCA nor I have had sight of the Ofqual investigation report, nor does Ofqual appear to have notified the FCA directly about its findings. In response to my preliminary report issued on 7 October 2024, you provided me (but not the FCA) with a copy of an email sent to you by Ofqual dated 13 December 2022 which says that steps were taken to ensure firm X does not provide misleading information on its website about accredited qualifications and that Ofqual had checked that the firm's website did not, as of 13 December 2022, provide misleading information.

5. You reported your concerns to the FCA as the regulator of firm X on 10 January 2023 and asked it to investigate and/or take action against the firm as you believed the firm's website was still misleading.
6. The FCA responded to you to say that it had reviewed your allegations, and that it was satisfied that the firm was being supervised in accordance with FCA rules and regulations, therefore it did not uphold your complaint, although due to confidentiality restrictions, it could not tell you what action, if any it had taken.
7. In my view, the crux of your complaint is your concern that customers of educational companies such as firm X can get caught in 'no man's land' with respect to recourse given that there are several regulators involved in monitoring the totality of the firm's business operation, with each regulator responsible for their own 'patch' with little interaction between them, resulting in detriment to consumers. In your view, the FCA should have taken action against firm X to prevent it offering misleading courses once you alerted it in January 2023.
8. In its decision letter dated 24 May 2024 the FCA said to you that it would consider the Ofqual report if you provided it but that it would only be act if it found the firm had failings related directly to the regulated activity (e.g. credit broking). The FCA's main point here is that it would consider the fairness and transparency of terms found in consumer contracts under the relevant legislation, which is usually the Consumer Rights Act 2015 (CRA) and would not typically consider agreements for provision of educational courses as the terms appear to relate to the provision of educational/training services rather than the loan agreement to fund them.
9. It is correct that the FCA has no power to review the promotional material of firm X, the content and quality of its courses or other matters related to the provision of educational courses.
10. However, the FCA does a have a duty to ensure that authorised firms act in accordance with its fit and proper rules<sup>1</sup> which means any approved person in the firm has to act with honesty and integrity. Therefore, although the FCA does not have remit to check the promotional material of the firm, if there are credible

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<sup>1</sup> <https://www.fca.org.uk/firms/senior-managers-and-certification-regime/fitness-and-propriety-fp>

allegations that the firm is misleading customers (and in this case I think you made credible allegations ) then in my view the onus is on the FCA to address this issue in some way, either by raising it with the firm or with other regulators (such as Ofqual). Despite my office's prolonged correspondence with the FCA on this matter, I was not satisfied with the FCA responses and I issued a preliminary report to you and the FCA stating that I did not think the FCA had done this. The preliminary decision asked both you and the FCA to comment. The FCA responded with new information which it had not made available to me previously, for which I am **critical** of the FCA. However, the FCA has now responded to me to assure me that it had, in fact, probed the issue of course accreditation as part of its supervisory work with respect to the firm in 2023.

11. It has provided information to me which shows that the FCA was shown that firm X was providing courses through a third party which was accredited and therefore the FCA took it that it follows training completed through these centres resulted in accredited course qualifications. It also had some evidence that individual courses were accredited.
12. At the time you complained to me, firm X was no longer offering courses in the same way, so I am unable to ascertain what its website looked like at the time Mr Z undertook his course. Nor is it within the remit of the complaints scheme for either the FCA or me to determine whether the courses offered by the firm were accredited or not. My role is to review whether the FCA undertook sufficient regulatory action, within its own remit, with respect to your concerns.
13. I do not uphold your complaint that the FCA did not supervise the firm appropriately. In saying this, I must explain that I am not making a determination as to whether the courses you refer to (which are no longer offered on the company website) were accredited or not. Nor do I think it is the role of the FCA to make this determination. The FCA did make enquiries into this, for the purposes of testing the fitness and propriety of the firm's approved persons, and found that the firm had arrangements in place with a third party for course accreditation. This is as far as I would expect the FCA's remit to extend, and it acted reasonably in this respect.

14. I understand that you allege the courses (which are no longer offered) were not accredited. However, neither the FCA nor I am able to make a determination of this aspect of your complaint as it is not within my remit to decide if the courses were or were not accredited. You have now provided an email from Ofqual suggesting that at the time Mr Z applied for the course, firm X's website may have been misleading. I suggest you refer this new evidence to the FCA so that it can consider it, although due to confidentiality reasons it may not be possible to disclose to you what action if any was taken.
15. I turn to the question of remedy and whether I find the FCA liable for Mr Z's losses. You have said that Mr X is liable for up to £8,000 loan for a course which will not provide him the accreditation required to work in in his chosen field. I do not find that the FCA had failings with respect to the firm or that it caused you loss, and therefore I do not recommend that it offer you any compensation. As you are aware, your primary recourse is against the firm if it misrepresented the educational course. Another avenue open to you is to submit a complaint to the FOS against the loan provider company Y, because you allege the course was missold to Mr Z. I understand you have already done this.
16. You have written to me about your concerns regarding the FOS, however, that is not something I can review under the Complaints Scheme. If you believe that you have new evidence which may influence the outcome of your case, I suggest you approach the FOS to enquire if it will reopen the complaint.

My decision

17. I do not uphold your complaint for the reasons given above.

*The Complaints Commissioner*

Complaints Commissioner

08 November 2024