

17 October 2024

Final report**Complaint number 202400239***The complaint*

1. On 14 June 2024, you submitted a complaint about the FCA.

Your FCA complaint

2. You are dissatisfied that the FCA's Supervision Hub did not answer your question about whether the FCA considered a breach of the Consumer Protection from Unfair Trading Regulations 2008 was a breach of the Consumer Credit Act. You are unhappy that the FCA's Supervision Hub (the Hub) will not answer this question in relation to a purchase you made which the FCA describes as: "This relates to a £80,000 purchase that you made. The purchase was partly paid for with a credit card with the rest by debit card and monthly payments (that I believe are for a finance agreement)".
3. Firm X told you that its requirement was that you needed to self-certify with it otherwise your account would be restricted. You are unhappy with the FCA, as when you discussed this with the FCA, it said it would not be taking any action towards Firm X.

What the regulator decided

4. The FCA split your complaint into two parts. It did not uphold Part One of your complaint and partially upheld Part Two of your complaint. In Part One of your complaint the FCA Supervision Hub did not answer your questions referred to above because you sought an explanation, advice or guidance on legislation which the supervisors you spoke to are not legally qualified to answer. The FCA stated that you may wish to consider contacting a solicitor or the Citizens Advice Bureau for assistance in relation to your question.

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5. In partially upholding Part Two of your complaint, the FCA confirmed that whilst crypto firms are not generally required to be regulated or authorised by the FCA, they are required to adhere to the UK Financial Promotions Regime if they wish to market cryptoassets to UK consumers as in the case of Firm X. Firm X is registered with the FCA under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 which allows it to lawfully communicate cryptoasset-related financial promotions but, in doing so, it must comply with chapter 4 of the FCA's Conduct of Business sourcebook (COBS). COBS requires registered firms to categorise their consumers. This categorisation requirement involves retail clients signing a declaration stating that they meet the relevant criteria to be certified as a Restricted, High Net Worth or Certified Sophisticated investor before they can receive a direct financial promotion relating to cryptoassets.
6. The FCA Complaints Team confirmed that you had received incorrect information from the FCA's Supervision Hub on 13 December 2023 when a supervisor stated that cryptoasset firms are not subject to the COBS rules. The FCA apologised that you were given incorrect information. The FCA summarised that complaints about the exercise of the FCA's legislative functions such as rule-making in relation to the financial promotions rules for cryptoassets or the issuing of guidance/statements and the processes for these cannot be investigated under the Complaints Scheme.

Why you are unhappy with the regulator's decision

7. In your complaint to the OCC you mention the following:
 - a. You want to know whether the FCA considers a breach of the Consumer Protection from Unfair Trading Regulations 2008 is a breach of the Consumer Credit Act . You are unhappy the FCA will not answer this question.
 - b. You are complaining about service level issues within the FCA regarding the delay you experienced, failures in not responding to emails and your case passing from person to person.
 - c. You are unhappy that Firm X asked you to complete a questionnaire to self-certify what category of investor you are. You say Firm X are

intentionally mis-leading customers claiming to be FCA regulated. You feel the FCA has not taken appropriate action in respect of this.

Analysis

8. In relation to point a, you have said that you would like general information about how the Consumer protection: Unfair Trading Regulations interacts with the Consumer credit Act 2015, and if one is breached does this mean that the other is as well. The FCA's response on your complaint was predicated on the presumption that you wished to know this in connection to your purchase, and that response was correct. If you would like to know more generally about the interaction between the two, I suggest you read the publication below, specifically section 2.6 which is a good starting point <https://researchbriefings.files.parliament.uk/documents/SN04678/SN04678.pdf>. I understand you may wish to know more details, however, although I wish to be helpful, it is not within the remit of the Complaint Scheme to provide general research answers to broad questions on legislation such as yours, to which there is no one simple answer. You may wish to consider seeking legal advice and/or approaching the Financial Ombudsman Service in relation to your specific query.
9. In relation to point b, in respect of your complaint being dealt with by several individuals within the Complaints Team, the FCA did not mishandle your case in taking this approach. It is common for large organisations to take this approach. This complaint point is not upheld.
10. You logged your complaint with the FCA on 27 January 2024 and received the FCA's decision letter on 12 June 2024. As per the FCA's own guidance regarding complaint handling delays it should have offered you an ex-gratia payment of £50 for the delay caused. As such, this part of your complaint about the FCA complaint handling delay is upheld.
11. You disagree that you should have to self-certify with Firm X and you feel that the firm referring to [FCA's policy statement] PS23/6 in its requests for self certification gives the impression it is regulated (whereas its status is "registered.") I do not agree with you either that the firm ought not to ask you to self certify or that it is implying it is regulated rather than registered. It is an FCA

requirement that Firm X is obliged to comply with as confirmed by the FCA decision letter which states: “The financial promotion rules in COBS 4 [explained in PS23/6] can apply to firms registered with the FCA for AML purposes in relation to their communication of cryptoasset-related financial promotions”. Therefore I do not uphold your complaint that the FCA has not taken appropriate action with this element of your complaint.

Decision

12. I **recommend** that the FCA apologise for the delay in responding to your complaint and make an ex-gratia payment of £50 in recognition of the delay. The FCA have informed us that it accepts the recommendation to make a payment of £50 in recognition of the delay and it will make payment once it receives your bank details. It has also informed us that it will issue an apology to you in relation to the complaint handling delays. I note you do not believe that £50 is sufficient for the inconvenience you have experienced, however, the FCA has published their table on the level of payments deemed appropriate for delay and I have found it reasonable: <https://www.fca.org.uk/about/how-we-operate/complain-about-regulators/compensatory-payments-for-complaints-handling-delay>.

The Complaints Commissioner

Complaints Commissioner

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