

27 September 2024

Final report**Complaint number 202400339**

1. Thank you for submitting a complaint about the FCA on 10 July 2024 to the Office of the Complaints Commissioner.
2. You complained to the FCA about the lack of clarity over whether Firm X (trading under its brand name Y) is FCA-authorized to accept tenant deposits and pay interest. It was not clear from the FCA status disclosure contained in Firm X's correspondence to you (albeit that correspondence appeared to come from brand name Y rather than Firm X) what types of regulated activity Firm X was authorised by the FCA to carry out.
3. Initially, the FCA treated your complaint as a query and advised you that Firm X and any trading names of that firm would need to follow the FCA's rules and principles when carrying out any regulated activity that they have FCA permission to carry out.
4. The FCA also confirmed that certain services or products do not fall within its regulatory rules and guidance. Some regulated firms carry out both regulated and unregulated activities and any complaints about the unregulated activities of such firms would not fall within the Financial Ombudsman Service (FOS) remit. The FCA also confirmed that the accepting of tenant deposits is not a regulated activity and therefore FCA rules do not apply to this activity.
5. As you remained dissatisfied with the FCA's response, the FCA then processed your query as a complaint. The FCA did not uphold your complaint on the basis that accepting tenant deposits is not a regulated activity.
6. You subsequently referred the FCA's decision to the Complaints Commissioner because, in your opinion, the FCA had failed to answer your question (*Element*

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One) as to whether Firm X was complying with the FCA's statutory status disclosure rules. Additionally, you state that the FCA took too long to respond to your query and complaint (*Element Two*).

Element One

7. As the FCA explained, Firm X is authorised for insurance, consumer credit and investments. Firm X is not FCA-authorised for accepting deposits in respect of tenancy agreements (an activity conducted by Firm X under its brand name Y) – this is not an FCA authorised activity.
8. Having reviewed the information on the file, it appears that whilst the FCA answered some of your questions, it failed to address the root cause of the issue, namely that Firm X's correspondence to consumers (although appearing to come from brand name Y) states that Firm X is FCA authorised and this gave you the impression that it was authorised for the business detailed in the correspondence (namely accepting deposits in respect of tenancy agreements).
9. We see that the FCA advised you that Firm X and any trading names of that firm would need to follow the FCA's rules and principles when carrying out any regulated activity that they have FCA permission to carry out; however the FCA did not confirm whether Firm X was in compliance with such rules.
10. In view of the above, we uphold Element One of your complaint. As Firm X (albeit in brand name Y) wrote to you in relation to unregulated business on notepaper suggesting it was regulated, we **recommend** that the FCA passes this information onto its Supervision department to see what action, if any, needs to be taken against Firm X. However, due to confidentiality restrictions, the FCA will not be able to advise what action, if any, will be taken.
11. We understand that you have been told that you could not complain to the FOS as your complaint related to unregulated business. However, given Firm X is required to comply with statutory status disclosure rules and your complaint is about a regulated firm's failure to comply with such rules, you may well have a case that is within FOS's remit. We therefore recommend approaching FOS to further discuss your complaint.

Element Two

12. Turning to your complaint about the length of time it has taken the FCA to process your initial query and the subsequent complaint under the Complaints Scheme.
13. On its website, the FCA states that it aims to provide a response to email queries within two working days and to letters within five working days. You submitted your initial query by email on 28 March 2024, but you say that you did not receive the first response from the FCA until 29 April 2024. You say that the FCA subsequently corresponded with you on 29 and 30 April 2024 but these responses were not to be considered as formal complaint responses.
14. You subsequently submitted a formal complaint under the Complaints Scheme on 30 April 2024, on which you received a decision on 9 July 2024. The Complaints Scheme states that unless a complaint is complex in nature, the investigation of a complaint should be completed within eight weeks of receiving it, following which a complainant will receive a decision. Therefore, taking over two months to respond to your complaint does seem excessive. For this reason, your complaint is upheld.
15. Having reviewed the FCA correspondence on the file, we note that the FCA has apologised to you on a number of occasions for the delays caused in dealing with your query and complaint. Whilst the Commissioner upholds this Element of your complaint, the FCA's apology is appropriate and sufficient in the circumstances.

The Complaints Commissioner

Complaints Commissioner

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