

25 March 2025

Final report by the Complaints Commissioner**Complaint number 202400379***The complaint*

1. On 8 August 2024, you submitted a complaint about the FCA to my office.

Your FCA complaint

2. On 8 April 2024 you submitted questions/comments to the FCA Supervision Hub about P2P lending particularly regarding COBS 18.12.31R 09/12/2019 (Appendix 1). This is the general section containing conduct of business provisions applying to P2P businesses. The FCA did not answer your queries over a prolonged period of time and on 6 June 2024 you submitted a complaint about the lack of response.

What the regulator decided

3. The FCA upheld your complaint on 29 July 2024 on the basis that it had delayed sending you a response, which it eventually did send on 18 June 2024.
4. In the decision letter of the same day, it referred to the fact that you had eventually received a response to your queries and acknowledged that you were dissatisfied with this response. However, it said that the FCA “cannot give an interpretation of FCA rules or explain how they apply in certain scenarios.”

Why you are unhappy with the regulator’s decision

5. You are unhappy with the FCA response of 18 June 2024. You say that the FCA did not answer your questions or address your concerns.

Background

6. On 8 April 2024 you sent an email to the FCA consumer enquiries team. In that email you cited [COBS 18.12.31R 09/12/2019](#) of the FCA Handbook and asked 202400379

the FCA to answer a number questions relating to the rules. You said that you were a long term experienced P2P investor, and you were struggling to understand how to apply the “Ongoing Disclosures” COBS 18.12.31 regulations to your specific portfolios, as the different platforms you invest in are applying the guidelines inconsistently. You provided specific examples and say that “all platforms I invest with are applying different levels of details in different ways to each other, whilst essentially offering the same style of P2P loans, so I think these questions are important. Without answers to these questions, the entire section on Ongoing Disclosures (one of the most important for assessing future lending criteria as a whole) is worthless to investors”

7. Your query was passed onto a technical specialist team within the FCA. When the FCA Supervision Hub responded to you on 19 June 2024, it did not answer your questions.
8. The 19 June 2024 FCA response is below:

“Peer 2 peer platforms

As with most businesses, there are operational differences and this is the same with the various platforms providing crowd funding style investments, including peer 2 peer platforms. Some platforms operate a mix of the main business models, and so not all are subject to the same rules as outlined in the Conduct of Business Sourcebook (COBS), which forms part of the FCA Handbook. For example:

- Only Pricing & Discretionary models are subject to [COBS 18.12.11 – COBS 18.12.18](#) .
- Discretionary models only are subject to [COBS 18.12.27](#)
- Conduit & Pricing models subject to [COBS 18.12.26](#)

I would like to point out that COBS 18.12 is not the only Handbook section that is applicable to P2P firms, you might like to review some of the other relevant handbook sections which can be found in [COBS 4.2](#) , [COBS 4.5](#) (particularly 4.5.2 & 4.5.5) and [COBS 14.3](#) (particularly 14.3.1, 14.3.2, 14.3.5).

Whilst all platforms should comply with these regulatory requirements, some of the COBS 18.12 rules are not prescriptive on the exact steps/process a firm must follow. This means there is not a 'standard format' for firms to provide information to clients. Due to the diverse range of models operating in the sector this gives firms some flexibility in how they may provide information. Ultimately all firms have to be able to demonstrate how they comply with the rules that are relevant to them.

Ultimately each firm must have the flexibility to interpret the rules according to their business model and implement those rules in a way that is compliant but tailored to the platforms operational processes.

The role of the Supervision Hub

I regret that I am unable to answer your question to the extent that you require. It may be helpful here to explain the role of the Supervision hub. Our role is to answer queries from the general public on behalf of the Financial Conduct Authority (FCA), and includes:

- Answering general enquiries regarding financial products and services
- Providing general information on firms' responsibilities
- Advising consumers if a firm is regulated
- Assisting (where possible) consumers with an enquiry that falls outside of our remit, by directing them to another organisation.

We regret we are not able to:

- Answer research requests
- Define FCA terms in the FCA Handbook (italicised words have their own definition in the Handbook glossary)
- Interpret rules, i.e. confirm how FCA apply rules to specific scenarios

- Give private opinions
 - Answer in detail enquiries where it is apparent it is not asked on behalf of consumers.”
9. The FCA complaints team issued a decision to you on 29 July 2024 in which it said “In its decision letter it said it cannot give an interpretation of FCA rules or explain how they apply in certain scenarios and that you may wish to seek independent legal advice for further help”.

Analysis

10. In my view the FCA badly delayed sending you a response to your queries/concerns, appears to have misinterpreted the nature of these, and provided an unsatisfactory response on 18 June 2024.
11. The FCA Complaints Team acknowledged on 29 July 2024 that you were unhappy with the response sent to you on 18 June 2024, but it does not appear to have treated this as a separate complaint in its own right, which it is, nor does it provide a decision on whether it upholds or does not uphold your complaint that the 18 June 2024 response is inadequate. Although the FCA commented in its decision letter that it cannot give an interpretation of FCA rules or explain how they apply in certain scenarios, this appears to me to be a generic statement which does not address the core of your concerns. There is no evidence that the FCA gave this matter any material consideration, which in my view should have been treated as a separate complaint and investigated as such.
12. It is clear from your email of 8 April 2024 that although you were using your own P2P investments as an example, this was to illustrate a more general point that P2P firms’ disclosures with respect to similar underlying investments is inconsistent in terms of how they presents financial data, and, additionally, it appears to me you are saying that the platforms themselves do not specify what values they use in arriving at the financial data. Your email of 8 April 2024 shows you are clearly aware that there are different business models subject to different COBS rules. Your point is about disclosures. I believe you are saying that an investor looking at the same data presented by similar model P2P platforms would not know:

- a. How that data was derived by each individual platform; and
 - b. Whether the platforms use the same methodology at deriving the data
13. One example of many you give to illustrate this point relates to the “price of the P2P agreement.” You have said that you do not know whether the word “price” in this context “is the interest rate paid by the borrower, and if it is would this be total interest paid by the borrower, to the P2P Platform, or just interest paid over to the lender by the platform, or both?” – or maybe something else entirely, and whether the different (same model) platforms use the same methodologies in arriving at the “price”.
 14. You are not only asking queries, but in doing so, alerting the FCA that there may potentially be an underlying problem across the industry with respect to the fact that firms are applying guidelines differently in a way that may lead to lack of transparency and accuracy on the part of the firms and potentially mislead investors.
 15. In my view you have highlighted that P2P firms are applying the rules in an unclear manner which may not be compliant with COBS 18.12.31R09/12/2019 Ongoing disclosures “*A firm must ensure that, at any point in time, a lender is able to access details of each P2P agreement they have entered into which was facilitated by that firm*”..... You say this because the firms you are using do not provide details about what factors have been used to derive the data (e.g. the price of the agreement being one example).
 16. You further point out that this unclear and inconsistently presented financial data (and other terms) across (similar model) firms may lead to consumer detriment.
 17. I agree with you that there is a potential for this, and it is apparent the FCA has not assessed this point. The FCA’s belated response of 19 June 2024 does not appear to have assessed your concerns appropriately given its generic answer, and the FCA decision letter of 29 July 2024 compounds the error.

My decision

18. I **recommended** that the FCA reviews your queries/concerns in appendix 1 in order to assess the impact of issues described in your email of 8 April 2024, as

well as how greater clarity may be achieved in the way P2P firms present data to investors. You have suggested that the FCA may wish to consider a Dear CEO letter on this subject, and I invited the FCA to comment on this as well.

19. The FCA has responded to my recommendation (attached in appendix 2). It has decided not to issue a Dear CEO letter. It further explains what its requirements of firms are, as well as what certain regulations cover. However, in my view, the FCA disappointingly falls short of answering the specific points you raised in paragraphs 12-15 above. For example, in paragraph 12 it is clear your concern arises even when the business models of firms are identical and is caused because firms are struggling to interpret some of the requirements and therefore they are making deferential disclosures on similar information. A specific example of this is given in paragraph 13 about pricing: this is also adequately not addressed in in the FCA response. For example, what is the definition of 'price'? It appears to me that unless firms price in a similar way it is difficult to compare between platforms. This is only one example of the concerns you raise in which I feel the FCA has not responded adequately.
20. Therefore, I uphold your complaint because in my view, the FCA has still not answered your questions adequately.
21. It appears to me (from my review of other complaints on matters connected to the P2P industry) that there are significant issues in relation to the P2P industry which may merit further consideration beyond your complaint. I will write separately to the FCA to set out my concerns. I will consider if it is appropriate to include the issues from this complaint in that letter. I plan to review and publish my correspondence with the FCA and its response when I receive it, as well as my views on the matter based on that correspondence.

The Complaints Commissioner

Complaints Commissioner

25 March 2025

Appendix 1

Extract from complainant letter

Dear FCA,

As a long term, experienced P2P investor and qualified accountant, I am surprised that I am struggling to understand how to apply the “Ongoing Disclosures” COBS 18.12.31 regulations to my specific portfolios. I invest through a number of platforms and each show different disclosures in different ways. I would suggest, they are probably as confused by what they are supposed to be providing to investors, as I am.

My confusion seems to lie in the fact that you have separate “information” sections COBS 18.12.26 & 27, for the different types of P2P platform, but only one set of “Ongoing Disclosures” COBS 18.12.31.

I have added my questions in blue below and would appreciate it if you could address them in a response.

Ongoing disclosures

COBS 18.12.31R09/12/2019

A firm must ensure that, at any point in time, a lender is able to access details of each P2P agreement they have

entered into which was facilitated by that firm, including:

(1) the price of the P2P agreement;

- I have always taken the word “price” in this context to be the interest rate paid by the borrower.

> Would this be total interest paid by the borrower, to the P2P Platform,

> just interest paid over to the lender by the platform

> or both?

(2) where not provided under (1), the annual percentage rate that will be paid by the borrower

both?

(2) where not provided under (1), the annual percentage rate that will be paid by the borrower in respect of that P2P

agreement, where applicable to that agreement;

- What else could the P2P Platform provide for point 1, if not the annual percentage interest rate. Can you shed

light on this please?

(3) the outstanding capital and interest payments in respect of that P2P agreement;

- Should late interest /penalty interest accrue and be shown by a P2P platform?
- eg. a loan which was for 9 months duration in 2021 which is still outstanding in 2024, with no capital or interest

paid back...

> Should the platform show just 9 months interest

> or 27 months' worth?

(5) any fees paid in respect of that P2P agreement by the lender or the borrower;

- In this context, what constitutes a fee?
- If a P2P Platform carried out valuations, credit checks, site visits, legal work for contract extensions, auction

costs etc, all of which are to be deducted as costs from the loan security (hence paid by the borrower), should investors

be appraised of all these costs as they occur?

(6) if the firm has carried out a valuation of the P2P agreement:

- This opening statement is in itself confusing to me – “valuation of the P2P agreement” suggests resale value on

a secondary market.

(a) the most recent valuation;

- The “most recent valuation” suggests that the FCA are referring to physical valuation of assets.

- What, in this context, is a valuation?

> Is it just a number, a value with no detail behind it?

> Is it the full valuation documents explaining the valuation?

> Does it include the valuations of works carried out during a build?

> Does it include auction reserve price valuations or estate agent valuations?

(7) a fair description of the likely actual return, taking into account fees, default rates and taxation;

- Where investors select loans themselves

> Where the FCA refer to “fair description of likely actual return” is the platform just meant to state, “expected full

recovery with all interest”, “small loss of capital expected” etc ?

> or should investors be kept appraised of litigators / administrators / collection agents costs, etc and all cost

mentioned in point 5 above, which are recovered from the security first, before capital & interest payback?

(9) whether the P2P agreement is backed by an asset (for example, secured against property developments) and if so,

details of that asset;

- In this instance “details of that asset” is very vague. What does the FCA consider the details to be?

- > Is it the full valuation documents explaining the valuation?

- > Does it include the valuations of works carried out during a build?

- > Does it include auction reserve price valuations or estate agent valuations?

- If extra security is added at a later stage (after default etc) should all the valuation details be given of the new

additional security also?

As I have said, all platforms I invest with are applying different levels of details in different ways to each other, whilst

essentially offering the same style of P2P loans, so I think these questions are important.

Without answers to these questions, the entire section on Ongoing Disclosures (one of the most important for assessing future lending criteria as a whole) is worthless to investors.

Whilst I appreciate that getting these answers may be time consuming, I would like a full and comprehensive response. The person, or team who wrote these guidelines should be able to tell investors what their expectations were quite easily

Appendix 2

Extract from FCA response to the Commissioner's preliminary report:

Our policy statement (PS19/14) sets out our final rules in relation to P2P lending. Paragraph 2.36 clarifies our expectations of the minimum information disclosure that firms should provide to investors. We understand why consumers may find it difficult to compare information across platforms. However, this is primarily due to the diverse nature of the sector. Our focus has been on ensuring each platform describes its role clearly and is easy to understand.

As explained in this policy statement, diverse business models in the P2P market mean that it is important that investors receive ongoing disclosures to ensure that investors can access details of each P2P agreement they have entered into. These ongoing disclosures are detailed in COBS 18.12.31 R and include the price of the P2P agreement, its maturity, valuation, likely actual return, fees paid by the investor or the borrower, and whether a default by the borrower under a P2P agreement has occurred. These disclosures also apply to P2P agreements in a P2P portfolio. Where a platform sets the price (pricing platforms and discretionary platforms), it must publish an outcomes statement within 4 months of the end of the first full financial year and for each financial year thereafter.

Our focus has been on ensuring each platform describes its role clearly. We are not setting a prescribed or standard format for this information as we want to ensure that disclosures are appropriately tailored to the specific characteristics of a platform's business model and service offering. We also want to ensure sufficient flexibility to accommodate the continued evolution of the sector.

In the P2P portfolio letter dated 15 January 2024¹, there is reference on page 4 (under Price & Value) reminding firms that Outcomes Statements need to be accessible, capable of being understood by their investors and clear about performance. Our existing rules under COBS 18.12.21 - 18.12.23 set out when an Outcomes Statement needs to be published and the content for this. If firms are identified as not complying with these rules, Supervision would engage with those individual firms and consider further action if appropriate.