

Elliott Cook acts for FCA in unauthorised collective investment scheme case: 'FCA v Forster & Ors'

On 28 July 2023, the High Court handed down judgment in *The Financial Conduct Authority v Forster & Ors* [2023] EWHC 1973 (Ch), a claim by the FCA relating to an unauthorised collective investment scheme. The unlawful scheme involved the sale to investors of 125-year leases in individual rooms within care homes owned by Qualia Care Developments Limited and Qualia Care Properties Limited ('QCD' and 'QCP' respectively). The investors then subleased their room back to the relevant Qualia company on a 25-year sublease. In exchange, investors were contractually entitled to a fixed annual return (ranging between 8-10%).

The FCA alleged – and the Court found – that the schemes operated by QCD and QCP constituted collective investment schemes and that the companies were therefore in contravention of s19 and s21 of the Financial Services and Markets Act 2000 ("FSMA"). The Court further found that the First Defendant was 'knowingly concerned' in those contraventions, as well as in the contravention of s21 committed by the Second Defendant, who was the main sales agent for QCD and QCP. The Court also accepted the FCA's case that the investments had been sold to investors on the basis of false or misleading statements and impressions in contravention of s89 and s90 of the Financial Services Act 2012 and that the First Defendant was 'knowingly concerned' in those contraventions.

Among other matters, the judgment contains an interesting discussion on the circumstances in which:

1. A person is 'knowingly concerned' in a contravention for the purposes of s382 of FSMA, including the extent to which they can rely on legal advice; and
2. A scheme involving fixed returns meets the definition of a 'collective investment scheme' as set out in s235 of FSMA.

Elliott Cook represented the Financial Conduct Authority, led by Adam Temple of 3 Verulam Buildings.

The full judgment is available [here](#).