

6 August 2020

Final report by the Complaints Commissioner**Complaint number FCA00720***The complaint*

1. On 12 March 2020 you asked me to consider your complaint about the FCA. I have considered the FCA's file on its investigation of your complaint and the concerns you have set out in your email about the FCA's fitness for purpose. My preliminary report was issued on 10 July 2020 and both you and the FCA have commented.

What the complaint is about

2. You complained to the FCA about inaccurate information on its Register, which led you to invest in a cloned firm causing you financial loss for which you sought compensation.

What the regulator decided

3. The FCA divided your complaint into two parts as follows:
 - a. *Part One - You say that there were incorrect details on the Financial Services Register (the Register), leading you to believe erroneously that the firm you were considering investing in was covered by the Financial Services Compensation Scheme (FSCS).*

The FCA did not uphold this part of your complaint because it said that the notice on its register did not amount to a statement that the firm is covered by FSCS.

- b. *Part Two - You say that the FCA did not post a warning about the cloned firm until after you had consulted the Register, leading you to invest in a fraudulent scheme.*

The FCA did not uphold this part of your complaint because it said that a warning was published on its Register as soon as it had sufficient information to do so in

accordance with the policies and processes that were in place at the time. Unfortunately, this was after you had decided to invest.

Why you are unhappy with the regulator's decision

4. You have told me that the outcome of your complaint is 'what you expected' but that it took nearly nine months and, in the meantime, your personal data was breached. You have said that the FCA was not fit for purpose for you 'and probably for others'. You would like to hear my thoughts on this.

My analysis

Your complaint about the FCA's Register

5. The situation that arose was that a scammer cloned the details of an EEA authorised firm based in Luxembourg, and set up a UK domain address that attracted victims via cold calling and people finding them on the internet. Although the FCA eventually identified the scam, issued a warning and closed down the UK domain address, you had already invested and lost a considerable sum, only some of which you have recovered. You checked the Register before investing but unfortunately this was before the FCA had acted. You also told the FCA that you thought you were investing in a firm covered by the FSCS and that you considered the FCA had been too slow to take action to protect you.
6. In response to Part One of your complaint, the FCA concluded that the wording on its Register about the correct, authorised firm did not amount to a statement that it was covered by the FSCS. The wording used for EEA authorised firms is as follows:

The compensation scheme in the country this firm is regulated in may be able to compensate customers if this firm fails. Contact the firm for specific details. The Financial Services Compensation Service may also be able to compensate certain customers if the firm fails. Find out about [compensation](#).

The web link takes you to information about the FSCS and from there you can also access the FSCS's own website.

7. Although I agree with the FCA's conclusion on Part One, I think that your complaint could have been used to consider if more helpful language might be used to emphasise to potential investors the limitations of protections. I have

therefore **recommended** that the wording should be reviewed (and the FCA has confirmed that it has done so (see further below). I also note that the Register refers to the Financial Services Compensation *Service* rather than *Scheme* and I have **recommended** that this error is corrected. The FCA has confirmed that the correction has been made.

8. In relation to Part Two of your complaint, the FCA said that:

You told us that you first consulted the Register around the end of February or beginning of March 2019. At that point, the FCA did not hold sufficient information on the cloned firm to justify publishing a warning on the Register, in line with the processes and procedures that were then in place.

Shortly afterwards, in the first half of March 2019, the FCA received additional intelligence about the cloned firm. This triggered the publication of a warning on the Register, which was posted on 20 March 2019.

From your perspective, I understand that it is frustrating that you had already consulted the Register and invested in the cloned firm, before the warning was published on the Register. However, I am satisfied that the FCA followed the policies and processes that were in place at the time, and that it would have been contrary to those policies and processes to have published a warning prior to the point when you consulted the Register.

9. My review of the FCA's files shows that its Unauthorised Business Department (UBD) received its first report of suspicious activity on 18 February 2019. The conclusion then was that there was insufficient information to decide if this was a cloned firm. A second report was received on 27 February and, although this did not yet meet the threshold for UBD to act, a file note was made as follows: *The additional information provided by the consumer suggests that the EEA authorised firm may have been cloned... therefore refer to CCC to refer to Supervision to make enquiries with the EEA authorised firm.* On the same day (27 February 2019) UBD sent an email with a link to the consumer's information to the Consumer Queries team saying: *Please refer to CCC to make enquiries with the EEA authorised firm in relation to the website* (my underlining). CCC is the FCA's Customer Contact Centre, now called the Supervision Hub or 'Hub'.
10. The FCA's files do not show what, if any, action was taken in response to this email, and this was not considered by the Complaints Team. I therefore asked the FCA further questions about this. In summary, they have told me that:

- a. UBD should have sent the email to Supervision in the first instance. The Hub on receiving the email should have either responded to UBD or forwarded it on to Supervision but this did not happen.
 - b. Whatever UBD, Supervision or the Hub did at that point would not have made any difference to you, because you had already consulted the Register and taken your decision to invest around the start of March, before the additional intelligence came in.
11. I do not find this explanation satisfactory because the complaint response said that *the FCA followed the policies and processes that were in place at the time*. This is not correct because either UBD's email of 27 February 2019 was sent to the wrong team or was not acted on correctly by that team, possibly both. It seems clear from the file note of 27 February that UBD intended the matter to be referred to Supervision by CCC; however, the email sent said *refer to CCC*. This might be simply a typing error; however, the FCA has told me that UBD should have sent the email to Supervision. In that case it cannot be said that processes were followed.
12. The FCA has also told me that because the Hub does not contact firms – that would be for Supervision – and because it is for UBD to liaise with Supervision if they consider it necessary, UBD's email of 27 February was ignored by the Hub. The FCA accepts that: *It would have been preferable for the Associate to have either responded to UBD or forwarded it on to Supervision, however the Hub does not have a specific rule in this scenario on the basis that contacting firms is for Supervision*. This seems to me quite unacceptable, especially in cases like this where there is a report of potential consumer detriment. At the very least, these failings delayed information relevant to the issues you had raised being passed to Supervision, which might have clarified sooner there was a clone firm.
13. I am sorry to say that this is yet another example of an issue failing to get to Supervision when required, something I have noted on many previous occasions. I have therefore **recommended** that the FCA reviews in further detail what happened regarding UBD's attempt to refer matters to Supervision, what should have happened, and then takes steps to revise its policies, processes, practice and training to ensure that both UBD and the Hub are clear about what

to do when there are reports of a cloned firm and to ensure that information reaches Supervision promptly where necessary.

14. As a result of these failings, the EEA authorised firm was not contacted in late February or early March to establish its awareness of the situation, despite UBD's clear intention that this should happen. The FCA now appears to accept this, even though it was not investigated by the Complaints Team as it should have been, but says it makes no difference to you because of the timing.
15. It is impossible to know with certainty whether these failures delayed the issue of a warning about the cloned firm. On the balance of probabilities, given that you looked at the FCA's Register in 'late February/early March', I think it is unlikely that any earlier action would have resulted in a different outcome for you. However, the FCA's complaints investigation was inadequate, and you have experienced further delays because of this. I return to this below.
16. Following receipt of further reports, UBD acted on 12 March 2019. Urgent enquiries were made and it became clear that the EEA authorised firm itself had ceased operating in 2011 and should no longer have been on the FCA's register at all. My enquiries have shown that this was not due to a failure by the FCA but because the Luxembourg regulator had failed to inform the FCA. The FCA posted a warning on its Register on 20 March and took steps to ensure that the UK domain website was suspended on 9 April 2019. I am satisfied that this was in accordance with UBD's policy, processes and practice at the time.

Complaints handling delays and data breach

17. You complained to the FCA on 11 June 2019 and received its Decision Letter nine months later on 11 March 2020. The FCA told you from the outset that it had complaints handling delays and promised you four weekly updates. These were provided in July, August and September 2019. The September update gave you the name of the investigator and told you that the investigation had begun. No update was sent in October. On 29 November, the Complaints Team Manager wrote to you with an apology and said that he hoped to issue the Decision Letter in early 2020. A similar update was sent to you on 23 December. On 25 February the Manager sent you a personalised update with an apology for

the lack of update since December and saying that he hoped to issue the Decision Letter by the end of March. A generic update was also sent on 4 March.

18. The FCA has been open with me about the delays in its complaints function and I have commented on this in my recently published [Annual Report](#). The Complaints Team was also frank with you about these delays and offered you a further apology in its Decision Letter. However, it is apparent that substantive work on your complaint did not commence for over two months and it still took a further seven months to issue a complaint response. Some updates were sent but this was rather haphazard.
19. I am surprised that the FCA did not make you an offer of an *ex gratia* payment for the distress and inconvenience caused to you by its severe complaints handling delays. There is no evidence that such a payment was considered by the Complaints Team despite the fact that you waited nine months for a substantive response. This does not accord with its practice in other cases.
20. You have told me that one of the consequences of this delay is that you have been affected by the FCA's data breach which released into the public domain the names of some people who have made complaints. I understand that you have complained to the FCA about this issue separately and I have not considered it as part of this report.
21. I have **recommended** that the FCA offers to pay you the sum of £100 for the distress and inconvenience caused by its complaints handling delays.
22. Despite these delays, your complaint was not considered thoroughly and the conclusion reached on Part Two is not supported by the evidence (paragraphs 10 to 16 above). As a result I have had to make additional enquiries of the FCA during my investigation of your complaint. There have been further delays in the FCA responding to these enquiries and providing me with additional information between May and July 2020.
23. The explanations provided show that UBD or the Hub, or perhaps both, failed to act appropriately in late February. As a result the conclusion reached on Part Two of your complaint, that *the FCA followed the policies and processes that were in place at the time*, was not a satisfactory response – indeed, it gave a misleading impression that everything had been done properly, when it had not.

24. In your response to my preliminary report you have told me that you also complained to the FCA about your bank's response to the loss of your investment and the lack of concern from the receiving banks. Your complaint about this is that once you had agreed to have funds that were not cleared by your bank returned to you that was the end of it, there was no investigation into where your money went. You have told me that you are still waiting for a response to this complaint and have asked me to investigate.
25. My office has checked with the FCA and the only pending complaint that it has for you is about its data breach (see paragraph 20 above). What seems to have happened is this:
- a. The FCA's note of your complaint call dated 11 June 2019 records that when asked what remedy you were seeking, as well as saying you were seeking compensation for loss of your investment, you queried why your bank did not do more checking to stop your investment transaction being processed
 - b. This issue, about your bank, was not taken forward by the Complaints Team, which did not send you its usual letter setting out a summary of your complaint. This would have given you the opportunity to comment on anything that was missing.
26. I have commented in other cases on the failure to send out such a summary letter and yours is unfortunately another example. It appears therefore that this aspect of your complaint has not been investigated by the FCA. I **recommend** that it should now provide you with a response indicating what steps the regulator expects sending and receiving banks to take in these circumstances. Please note, however, that the FCA does not investigate or offer redress for individual complaints about a firm. If you consider that you have a complaint about your own bank's actions then you may wish to approach the Financial Ombudsman Service, which has been established for that purpose.
27. I have also **recommended** that the FCA offers you an apology for these failings in its complaints handling and a further £100 for the distress and inconvenience caused.

28. In the initial stages, my office also missed a deadline, delaying the commencement of my investigation. You have already received an apology for this from my team and I add here my personal apology to you for this.

My decision

29. I have upheld your complaint in part because the FCA's complaints handling process was inadequate, its substantive response on Part Two of your complaint is not supported by the evidence and there were significant delays in the FCA's complaints handling and responses to questions raised during my investigation.

30. I have **recommended** that:

- a. The FCA corrects the incorrect name given for the FSCS on its Register
- b. The issue you raised about wording on the FCA's Register that led you to think you were covered by the FSCS should be fed back to the Register team to review whether more helpful language could be used to emphasise to potential investors the limitations of protections

31. In response to these recommendations the FCA says that:

- a. Its new Register went live on 27 July and point a. above has been addressed
- b. Presentation of firms on the new Register including additional information around protections has been enhanced. The text about protections has been validated/ with additional content to help guide consumers
- c. The text will not account for every individual circumstance therefore the guidance will continue to recommend engaging with the firm or the host regulator to confirm compensation protections
- d. Feedback on the new site is being received and changes will continue to be made where necessary.

32. I have commented in my [Annual Report](#) on the FCA's work to improve the accuracy, reliability and usability of its Register. I welcome the launch of the new Register and will continue to monitor developments via any complaints I receive.

33. I have also **recommended** that the FCA reviews in further detail what happened regarding UBD's attempt to refer matters to Supervision, what should have

happened, and takes steps to revise its policies, processes, practice and training to ensure that both UBD and the Hub are clear about what to do when there are reports of a cloned firm and to ensure that information reaches Supervision where necessary.

34. In response to this recommendation, the FCA says that: *UBD now has a dedicated Clones Team that has established clear processes about how to handle clone cases. UBD, the Supervision Hub and Supervision have also agreed and established clear processes for the passing on of information and reports of clones. For this reason, we consider that many of the concerns raised in your report have already been addressed and the problems that arose in [your] case are unlikely to arise now.*

35. These assurances are of course to be welcomed but the FCA has not provided any evidence in support and I will need to see something more before I can accept them. This is particularly so given that the FCA failed to consider this aspect of your complaint and told you that everything had been done correctly when it had not. **I therefore repeat my recommendation.**

36. I have also **recommended** that:

- a. the FCA offers to pay you the sum of £100 for the distress and inconvenience caused by its complaints handling delays
- b. The FCA offers you an apology and a further £100 for the inadequacy of its complaint response and delays in responding to my investigation enquiries

I am pleased to say that the FCA has accepted these recommendations and you should hear shortly from the FCA with these offers.

37. I have **recommended** that when making these offers to you, the FCA provides you with a response indicating what steps the regulator expects banks to take in circumstances such as you have outlined (paragraph 26 above).

Antony Townsend
Complaints Commissioner
6 August 2020