

26 February 2025

Final report by the Complaints Commissioner**Complaint number 202201743*****The complaint***

1. On 28 February 2023, you asked my office to review a complaint about the FCA in connection to its maintenance of the Financial Services Register (a register maintained by the FCA to enable the public to understand certain details about regulated firms) (“the Register”).
2. The crux of your complaint is that the Register displayed inaccurate information between 2021 and 2023 about an EEA inward passporting firm (Firm X or the Firm) of which you were a client. During this period, the Register showed Firm X as being registered in the UK. However, unconfirmed to you until 5 December 2022 at the earliest, Firm X had merged with Firm Y in May 2021 to form Firm XY, with both Firm X and Firm Y ceasing to exist on the date of the merger. The businesses of Firm X and Firm Y were transferred to Firm XY.
3. Firm X should not have continued to show on the Register after May 2021 as authorised to carry out regulated activities in the UK, but it continued to show as such until July 2023, when the Register was finally updated by the FCA.
 - a. In January 2022, relying on the Register, you complained about Firm X to the Financial Ombudsman Service (FOS), which also did not appear to know that Firm X had ceased to exist and that Firm X should have lost its temporary permissions in the UK in May 2021. (The successor, Firm XY, has never been UK regulated.) The FOS excluded your complaint on a complex technical point (see below), unconnected to the legal and regulatory status of the firm in the UK.

4. You were not satisfied with the basis on which the FOS made the decision to exclude your complaint and decided to instruct UK lawyers to commence legal proceedings against the FOS and potentially Firm X. Eventually and in the course of undertaking this legal work, it transpired that Firm X no longer existed and ultimately it was decided that the legal proceedings should not continue in light of the new information. Enforcing a judgement against a non-existent company would be problematic if not impossible for the UK legal team.
5. You complained to the FCA about the matters above and requested that the FCA reimburse you the legal fees you incurred, on the basis that the Register was incorrect and this incorrect information influenced your decision making. In addition to this, the FCA also gave you incorrect information and advice in the course of your email correspondence with its Supervision Hub. Had you known that Firm X did not exist as a legal entity (and had you understood the correct regulatory status of it in the UK) you would not have taken the actions you did.
6. The FCA acknowledges that the Register was inaccurate in the way described above, but has not agreed to award you compensation for the legal fees you have incurred for a number of reasons (see below) including that they misunderstood what your complaint related to.

Decision and Recommendations

The FCA's oversight of Firm X and the inaccuracy of the Register (Element One).

7. The Register was inaccurate with respect to the information it displayed about Firm X from May 2021 to July 2023.
8. The FCA upheld your complaint about the inaccuracy of the Register. However, you also said that the inaccurate information could have implications not just for you, but others in similar circumstances and you are unhappy with how the FCA handled this matter. I agree with your point about how the FCA handled matters in connection to which I have identified regulatory failings on the part of the FCA, which led to the inaccuracy of the Register. The root cause of the FCA's failings are weaknesses and inefficiencies in its internal systems and processes. These include:
 - a. Failure to Follow up information: FCA teams/ individual failed to follow up on communications and information shared internally between relevant

areas. Some departments do not, or at the very least did not at the relevant time, appear to have a system in place which effectively logs and tracks requests received, with a reminder to deal with unanswered queries;

- b. Failure to assess information adequately: information was not properly understood or appropriately acted upon, nor sufficiently communicated between different departments. The seriousness of the situation was only finally understood and acted upon by the FCA when you raised a formal complaint with it on 4 December 2022 (although the correct regulatory status of Firm X was not updated on the Register until mid-July 2023);
 - c. Failure to consider matters holistically in the light of information the FCA had available to it: A lack of intelligence processing and sharing between departments led, at times, to information being treated in isolation, rather than considering whether, and if so, how these issues were indicative of broader concerns and might be symptomatic of a more serious problem;
 - d. Lack of continuity: Effective systems and processes did not seem to be in place so that when one person leaves the FCA or moves teams, their work is not lost but is handed over to someone else and carried on with;
 - e. Register: The Register was, after significant delay, updated but the correct process was not followed when this was done and even then, the updated information was still only partially correct. The correct information was only finally displayed on the Register some two years later;
9. In conclusion there were several missed opportunities when:
- a. information provided to the FCA should have raised questions and follow-up actions;
 - b. queries which were raised (in silos) should have been responded to but they were not and there were failures to follow up on these; and
 - c. human errors occurred.
10. Clearly these are indications of, what amounts to, ineffective internal processes in different departments at the FCA.
11. I am particularly concerned that my findings of inadequate supervision emerging here (9 a – d above) are similar to themes occurring in other cases. This may

indicate the FCA has not addressed significant areas of concern identified previously in its supervisory framework.

12. I **recommend** that the FCA reviews and where appropriate remedies:
 - a. its internal processes for tracking issues and queries raised by different teams, including within its legal team;
 - b. its processes to ensure that the work of job movers and/or leavers is appropriately carried on by another member of the team; and
 - c. the issues I will be setting out in the separate letter covering the confidential material I cannot comment on here.
13. I will also write to the FCA separately on these and other matters (for which I have made a recommendation which I cannot reflect here for confidentiality reasons).
14. I invite the FCA to provide me with an update about the work undertaken with respect to the above in six months' time.

Compensation (Element Two)

15. You consulted the Register at different times during your dealings with the Firm and when determining your next steps and the appropriate course of action. You incurred costs in taking legal action against the FOS and the firm based on information displayed on the Register. Your legal advisers informed you about the potential inaccuracy of the Register with respect to the Firm on or around 5 December 2022, following the receipt of confirmation about the correct legal status of the Firm directly from its representatives, although the UK regulatory status of the Firm remained unclear for some time. The complexity of the case finally became known to you (despite the Register not being rectified until July 2023). You eventually discontinued legal proceedings because they were no longer viable once the inaccuracy on the Register was discovered. Therefore, your 'wasted' legal costs were a direct result of the inaccuracy of the Register.
16. For this reason, I **recommend** the FCA award you a compensatory payment of the proportion of your fees incurred up to the date your legal team explained the complexities referred to above on 5 December 2022. Any additional legal expenses you incurred after this date should be borne by you as after this date

you would have made the decision to continue with legal action in understanding of the complexities associated with the legal status of Firm X.

Preliminary Points

17. Due to confidentiality reasons, I am unable to go into as much detail as I would like with respect to my findings below, and therefore have not disclosed the full particulars of the case. I have, however, written separately to the FCA to substantiate my findings below and to make a recommendation. Section 348 (s.348) of the Financial Services & Markets Act 2000 (FSMA) classes some information the FCA holds about firms as confidential and restricts how that information is dealt with. Equally any information that is not restricted by s.348 FSMA may be restricted due to the FCA's policy on sharing information about regulated firms and individuals who also have legal protections. There is a good explanation of the statutory and FCA policy restrictions on information sharing here <https://www.fca.org.uk/freedom-information/information-we-can-share>

Background of the complaint

18. This complaint has a complicated background. You complained to the FCA, which upheld your complaint about the Register and agreed that it was inaccurate. It apologised for the fact *"that your already difficult situation has been exacerbated by the confusion caused"*.
19. In your complaint to the FCA you also sought compensation for the losses you suffered. The FCA understood your compensation request to relate to your capital losses incurred through your dealings with Firm X.
20. The FCA stated in its Decision Letter dated 30 January 2023 ("Decision Letter") that it did not accept that the inaccuracies on the Register were the cause of your capital losses and did not award you any compensation.
21. You referred your complaint to me and explained that your compensation request relates not to the capital losses you incurred in dealing with Firm X, but to the legal fees you incurred in taking action against the FOS and the Firm as a result of relying on the inaccurate Register.

22. You also said you are concerned that the Register was inaccurate for so long that the inaccurate information could have implications not just for you, but others in similar circumstances.
23. It is now agreed by all parties that you are not asking the FCA to compensate you for your capital losses, but for the cost of the legal fees you incurred in taking action against the FOS, with Firm X being an interested party.
24. As the compensation request was considered by the FCA on a different basis, the usual process under the Complaints Scheme would be to refer the matter back to the FCA as it did not have a chance to investigate your request for compensation on the correct basis. This would give the FCA the opportunity to investigate and consider the correct question.
25. On this occasion, however, considering all the circumstances of the complaint and the amount of time it has taken, with the help of the FCA and Prudential Regulation Authority (PRA) for which I am grateful, to understand the factual matrix and the root cause of the issues with the Register, it has been agreed with the FCA that I will consider your complaint in the first instance and will make a decision, rather than sending it back to the FCA first.

Timeline of Events

26. By way of background, you say you became a client of Firm X in 2019 and signed up through its UK website and transferred your funds to its UK bank account.
27. By 2020, your relationship with Firm X had broken down. You instructed the Firm to carry out a final transfer out of your remaining cash and assets in November 2020. This instruction was only executed in March 2021. This delay caused you capital losses.
28. You had cause to make a complaint against the Firm in 2020, but as Firm X was an EU passported firm without a branch in the UK at that point, this was done with the foreign equivalent of the FOS. This previous complaint was resolved in your favour in June 2021, although, as I understand it, the Firm only finally paid this award in July 2024, some three years after it was made. This information is not relevant to this complaint but is included for completeness.

29. In January 2022, following an initial complaint to the Firm itself, which did not respond to your complaint within the two months allowed to address complaints, you submitted a complaint about the Firm to the FOS. You had checked the Register. The Register showed that Firm X was still in existence, initially passported into the UK but was then in the Temporary Permissions Regime (a bridge from being passported to being fully authorised in the UK post Brexit) (the “TPR”).
30. On the basis of the information on the Register, you went ahead with your complaint to the FOS on 13 January 2022. On 7 October 2022, the FOS rejected your complaint, on the grounds that the “relevant date” for the purpose of assessing jurisdiction was November 2020, the date you issued the instruction to Firm X to transfer your funds, and not March 2021, the date when the firm eventually, after much delay, transferred your funds, and when your capital losses crystallised.
31. The FOS said Firm X was not in the TPR in November 2020 and therefore did not fall within the compulsory jurisdiction of the FOS (although it was in the TPR in March 2021 and within the compulsory jurisdiction of the FOS for certain complaints, but not all, at that date). In as much as the FOS considered the relevant date for the complaint to be November 2020, and not March 2021, it excluded the complaint on jurisdictional grounds.
32. You explained to my Office that after checking the Register again you decided to take legal advice about the FOS’s decision and instructed solicitors on 12 October 2022. You were advised that you had grounds to challenge the FOS’s decision about the “relevant date” of your complaint and consequently its decision to exclude your complaint on jurisdictional grounds. Your solicitors prepared a legal claim against the FOS and, based on my understanding, Firm X as an interested party on this basis. You incurred legal fees in taking these steps.
33. On or around 11 November 2022, a final check was made by your legal team of third-party sources on the address of Firm X. Information which was contradictory to information displayed on the Register was discovered during

the course of these checks, namely, that Firm X had, in fact, ceased to exist in May 2021.

34. Further checks were made of the Register and a printout dated 11 November 2022, which you retained and provided to the FCA at that time, and to my office along with your complaint, showed Firm X as still registered, in existence, and in the TPR.
35. At this point you had contradictory information from the FCA's Register and third-party sources, which required further work from you and your legal team, because it potentially impacted your proposed course of action.
36. You contacted the FCA yourself seven times between 13 November 2022 and 14 January 2023, asking questions about the status of Firm X and Firm XY in an attempt to understand what was going on and ultimately raising a complaint on 4 December 2022 as you were not satisfied with the responses. You provided them with evidence from third-party sources, the printouts of the Register and other documents, such as the information you found on foreign registers. The FCA did not accept at this time that Firm X ceased to exist and that, as a result, the Register was and had been incorrect for a lengthy period of time.
37. Your legal representatives were finally provided with clarification about the correct legal status of Firm X and Firm XY on 5 December 2022, when Firm XY's representatives responded to your pre-action letter, explaining the status quo (although not the UK regulatory status of either firm, which remained unclear and incorrect on the FS Register until July 2023).
38. Subsequently, you came to the conclusions that you should drop your claim on or about 5 December 2022. As I understand it, this was as a result of the new information that came to light about the correct legal status of Firm X -namely, that it no longer existed as a legal entity. It is our understanding that the general consensus of your legal advisers was that enforcement of any judgement would be difficult if not impossible in these circumstances. Your legal fees in preparing the claim in the UK were, therefore, wasted.
39. Around early January 2023 the FCA Complaints Team realised there were regulatory issues to be addressed by the FCA. They thanked you for "*the quality*

of *[your] analysis*” and they forwarded your correspondence to the relevant Supervisory team.

40. However, the firm’s incorrect status nevertheless remained displayed on the Register and was not amended by the FCA until mid-July 2023.

Preliminary Points

41. In the course of reviewing your complaint and the information provided in the FCA’s complaint file, my office identified several questions which needed to be asked of the FCA in order to better understand the facts and the timeline of events. Some of the responses from the FCA led to further, complex questions, and a significant amount of work had to be carried out in order to fully understand:

- a. the actual legal and regulatory position of the relevant firms both pre and post Brexit;
- b. the status of the relevant firms (i.e. X, Y, and XY) on the Register;
- c. how information came to be displayed on the Register;
- d. what information was provided to the regulators, and what actions they took as a result; and
- e. the internal systems and processes across different departments of the FCA.

42. My Office also had to raise questions with the Prudential Regulation Authority (PRA) who, along with the FCA, regulated Firm Y, therefore potentially bringing it within the scope of your complaint. Having completed my investigation, whilst the information received from the PRA in the pursuit of understanding the relevant events and facts has been very helpful, I have made no findings relevant to the PRA, therefore I will not be issuing a separate Report or commenting further on the actions of the PRA.

Analysis

Element one – The FCA’s oversight of Firm X and the inaccuracy of the Register

43. The FCA upheld your complaint, accepting that the Register contained incorrect information, and I agree with the FCA’s decision to do so. However, it provided

no further information about the wider issues you raised regarding why this happened or what it has done to address the situation. Neither did it explain the correct UK regulatory status of Firm X to you.

44. Having reviewed the FCA's complaint file it became clear to me that there were serious concerns about the events and actions and/ or lack of actions by several teams at the FCA which led to regulatory failure and incorrect information relating to Firm X remaining on the Register for over two years following the merger of Firm X and Y to form XY in 2021. This situation persisted despite numerous events which should have caused the FCA to remedy the regulatory issues.
45. Having made several enquiries with the FCA to understand the chronology of events and establish the relevant facts, I have concluded that there was a series of failures by the FCA to take appropriate action. Ineffective internal processes were in place within the FCA, which meant that information was not understood or acted upon, nor sufficiently communicated to, or dealt with by different departments. When questions were asked, they were not responded to or followed up by the relevant areas, including as a result of people moving on to different teams or leaving the FCA.
46. The seriousness of the situation was only finally understood and acted upon by the FCA when you raised a formal complaint with it on 4 December 2022 (although the correct regulatory status of Firm X was not updated on the Register until mid-July 2023).
47. Whilst my office and I have reviewed significant amounts of information, I am unable to share further details in this report. As already explained by the FCA, section 348 of the Financial Services & Markets Act 2000 (s348 FSMA) classes some information the FCA holds about firms as confidential and restricts how that information is dealt with. In addition to this, any information that is not restricted by s.348 FSMA may be restricted due to the FCA's policy on sharing information about regulatory action, regulated firms and individuals, that also have legal protections.
48. In conclusion, I have identified internal process failures and regulatory failure on the part of the FCA. These failures, apart from being serious in their own right,

have a direct bearing on your complaint in that they led to the inaccuracy of the Register.

49. Had adequate processes been in place, the issues with the Register entry regarding Firm X would likely have been understood and been addressed much sooner.
50. As such, I uphold this element of your complaint. I have written to the FCA separately to provide a detailed chronology of events and my rationale for my decision to uphold your complaint and recommend that the FCA pays you compensation.

Element Two - Compensation

51. You have told me that, prior to submitting your complaint to the FOS, you checked the Register according to which, Firm X was in existence, in the TPR and, as such, you expected that it fell within the compulsory jurisdiction of the FOS.
52. You say you believe you had followed the course of action the FCA advises consumers to take. You checked the Register and relied on the information on it, including the contact details of the Firm, and the fact that the Firm appeared to exist and to be in the TPR. Whilst questions arose about the Firm as a result of information from other sources, you were reassured that this information was correct when you contacted the Supervision Hub of the FCA. On the basis of this information, you took action to submit a complaint to the FOS.
53. The FOS was, similarly to you, not aware that the firm was no longer in existence and neither did it understand the correct regulatory status of the firm in the UK at the time of your complaint. It excluded your complaint on a technical point related to the relevant period in which your complaint arose. The FOS concluded this was November 2020 which preceded the firm's entry into TPR, thus precluding FOS jurisdiction.
54. The FOS's decision was not based in any way on the status of the firm as a legal entity.
55. Your subsequent decision to take legal action against the FOS (and the Firm) was because you had good reason to believe, as a result of obtaining legal

advice, that the FOS had made the wrong decision as to the relevant period when your complaint arose, and that the relevant period was in fact March 2021, in which case the firm would be subject to FOS jurisdiction because it had already entered the TPR.

56. You told my Office that had the Register displayed the correct information, reflecting the true regulatory and legal status of Firm X, and had you been given the correct information by the Supervision Hub, you would have chosen a different course of action and not complained to the FOS or appointed UK legal advisers on the basis you had, and you would not have incurred what you now find to have been wasted legal expenses.
57. This is especially the case as whilst you were told by Firm XY in December 2022 that it has taken on the liabilities of Firm X, according to the information I have been provided with, they only paid you in July 2024 the compensation awarded to you in June 2021 by the foreign equivalent of the FOS.
58. I agree with you, based on my findings in relation to Element one of your complaint and for the reasons above, and I **recommend** that the FCA award you a compensatory payment of the proportion of your fees incurred up to the date when you were advised about the contents of the 5 December 2022 letter from Firm XY. This was the date when your legal advisors informed you of their understanding about the legal status of Firm X and the inaccuracy of the Register, and so the complexity of the position became known to you. In my view it is reasonable that any additional legal expenses you incurred after this date should borne by you.
59. The FCA informed me in response to my Preliminary Report that it is not minded to accept my recommendation for the following reasons:
 - a. *“We consider that the complainant’s legal fees were not losses [they] suffered as a result of the actions or inactions of the FCA.*
 - b. *We accept (as we did in our original Decision Letter) that post the merger of the firms, the FS Register entry was inaccurate. However, we do not agree that the inaccurate entry led to [the Complainant] incurring legal costs. The conclusion reached by [the Complainant] that the Financial Ombudsman Service (Financial Ombudsman) was wrong not to consider*

[the Complainant's] case was an erroneous one reached by [the Complainant] alone.

- c. *The FS Register did not at any time confirm that [complaint] was within the jurisdiction of the Financial Ombudsman. On the contrary, the FS Register informed [the complainant] that the final decision maker on jurisdiction was the Financial Ombudsman. The only conclusion that could be drawn from the FS Register is that Financial Ombudsman jurisdiction may have applied to the Firm, but that was a matter for the Financial Ombudsman*
 - d. *Although (Firm X) had merged with another Firm, (Firm Y) within its Group, to create the merged Firm XY, it was corresponding with [the complainant] throughout the period following [the Complainant] raising [their] complaint, including in the period after the merger... The argument concerning the uncertainty about enforcement action is not borne out by the facts. It is also highly unlikely that the Financial Ombudsman would have issued 2 Final Decisions to a Firm not taking liability.*
 - e. *The complainant was informed by Firm XY and the Financial Ombudsman on a number of occasions before incurring legal fees that the [Foreign] Ombudsman was the most appropriate place to refer [their] complaint to..."*
60. In my view, the FCA's response above has failed to address the substantive points you have raised. The points were not dealt with at all. I have seen no evidence the points were considered by the FCA and why it advances an entirely different set of arguments whilst yours were refused. Fairness requires that the FCA should deal with compelling evidence, where it exists, which is contrary to the conclusion which it proposes to reach and does not explain why it does not accept your argument. I therefore consider the reasons the FCA gives are inadequate.
61. I also consider the FCA's position irreconcilable with the facts of your complaint in any event. The FCA's Register serves the following purposes:
- **It provides a public record:** It is a public record of firms, individuals, and other bodies that are authorized by the FCA or the Prudential Regulation Authority (PRA) to conduct regulated activities in the UK

- **It is a verification tool:** It allows consumers and businesses to verify the legitimacy of firms and individuals offering financial services, ensuring they are properly authorized and regulated
- **It provides transparency:** The Register provides transparency by listing details about the firms and individuals, including their current roles and any disciplinary or regulatory actions on their record
- **It is a consumer protection tool:** It helps protect consumers from unauthorized firms and potential scams by listing firms that are providing regulated products or services without the correct authorization

62. One reason a consumer may wish to verify the details of a firm is to see whether it is (still) regulated and thus whether it is possible that there might be FOS jurisdiction in relation to a complaint, or whether they would have to seek alternative routes, such as raising a case with the Financial Services Compensation Scheme (FSCS) or use any other viable route.
63. You used the Register in such a manner – to verify the regulatory and legal status of the Firm, to check its contact details and to see if there may be a possibility of a complaint to the FOS (with the FOS itself having a final say on its jurisdiction). It is accepted by the FCA that the Register was incorrect for some time, including in January and October 2022, the relevant points in time when you were making decisions about the course of action to pursue.
64. It is not in dispute, as the FCA says, that *“that the FOS was the final decision marker on jurisdiction.”* You are not asking for the FCA to reimburse your legal fees because you disagree with the FOS decision on jurisdiction, but because you would not have engaged with the FOS, and therefore would not have sought legal advice in the UK, if you had known that the Firm X did not exist as a legal entity and was no longer authorised in the UK for the reasons described above. Both you and I have made this distinction clear to the FCA on a number of occasions and it is disappointing that the FCA continues not to acknowledge it.
65. It is also not in dispute you were engaging with Firm X and then XY during the dispute and that you received some responses. The FCA appears to be suggesting that because the firm was corresponding with you from time to time,

such as a response to your complaint to it in February 2022 and a letter to your lawyers in December 2022, it follows that it would have complied with a potential court order or FOS decision against it, perhaps on a voluntary basis. However, you only gained clarity about the exact legal status of Firm X in December 2022, **after** you had already started down the UK FOS and legal action route and incurred costs.

66. Additionally, Firm XY had already failed to pay you the compensation awarded from the foreign equivalent of the FOS, therefore the correspondence you received did not fill you with confidence and there was no reason to believe that just because the Firm was corresponding with you, albeit later than it should have, this would have led to a resolution for you.
67. Finally, with respect to the FCA's argument that the Ombudsman had informed you that your complaint was better dealt with elsewhere: namely with its foreign counterpart, as the FCA knows, this issue arose as you were misled by the Register and complained to the FOS only as a result of the mistaken understanding that Firm X was still in existence and subject to UK regulations. It was not. Additionally, you were guided by the fact that the relevant period of time was as described above. As you understood Firm X to be in existence and subject to UK regulations, therefore you disputed the FOS's decision on the relevant period, and you initiated legal action against the FOS.
68. You were entitled to both submit a complaint to the FOS and to take legal action against it for the reasons above, all of which was underpinned by your legal advisers' understanding that Firm X was a legal entity in the TPR in the UK, an understanding directly attributable to the Register and the information you were given by the Supervision Hub.
69. That is ultimately the crux of the issue: was Firm X a legal entity, in the TPR and subject to UK regulations or not. You took certain actions based on the understanding the Firm was regulated in the UK; actions which you were entitled to take. The FCA has tried to put forward arguments that there were other, perhaps better actions you may have taken. Whether or not that is true, it is not reasonable for the FCA to reject a complaint on the basis that the

complainant could have taken an alternative action when the action they did take was ultimately a valid one open to them.

70. For the reasons above **I do not agree** with the FCA arguments and **recommend** that it award you a compensatory payment of the proportion of your fees incurred up to the date the 5 December 2022 letter's contents were explained to you by your legal advisers. This was the date when your legal advisers informed you of the correct legal position of Firm X and about the inaccuracy of the Register, therefore the complexity of the position and the futility of instructing UK legal advisers became known to you. However, in my view it is reasonable that any additional legal expenses you may have incurred after this date should be borne by you.
71. In a letter dated 25 January 2025, following its formal response to my preliminary report, the FCA notified my Office that it is still minded not to accept my recommendation to pay you compensation for the legal fees accrued.
72. However, the FCA also stated in this letter that on reflection, it would like to extend to you an apology and offer an ex-gratia payment of £400 for the distress and inconvenience caused by the inaccuracy of Firm X's entry on the Register. The FCA says that this is in recognition of the fact that it had opportunities to address the underlying issues with the Firm and ensure the Register entry was accurate before you contacted the Supervision Hub.
73. The FCA will write to you separately with its apology and offer.

The Complaints Commissioner

Complaints Commissioner

26 February 2025