

17 April 2024

Final report by the Complaints Commissioner**Complaint number 202300419 and 202300713***Complaint to the FCA*

1. On 01 September 2023, you submitted a complaint about the FCA to my office.
2. The complaint raised matters in which the Prudential Regulation Authority (PRA) also had involvement alongside the Financial Conduct Authority (FCA), therefore I have assigned a reference number 202300713 for a separate complaint against the PRA.
3. I have not upheld your complaint. I have, however, made a number of criticisms about the regulators and I have also made recommendations.

What the complaint is about

4. You had a vehicle insurance policy with X ("the firm") against which you made a claim. You were not satisfied with the results and submitted a claim to the Financial Ombudsman Service ("FOS").
5. Matters were complicated by the fact that your initial FOS review was badly handled by an inexperienced investigator for which the FOS apologised, and invited you to resubmit your complaint. You decided not to do this but instead you started legal proceedings against the firm. As far as I am aware, those proceedings are ongoing. Around that time the firm cancelled its permissions and you became concerned about this. You referred the matter to the FCA. You believe that the FCA should not have allowed the firm to cancel its permissions as you believe this will affect your ability to enforce your claim.

What the regulator decided

6. The FCA explained that:

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“X was a Dual Regulated firm that was part of the Temporary Permission Regime (TPR). The firm's Registered address when Dual Regulated was in Malta.

Due to being Dual Regulated the Prudential Regulation Authority (PRA) took a lead in determining the cancellation application of the firm.

Having reviewed the cancellation case I have seen evidence that consideration was taken with regards to what arrangements the firm had to deal with any outstanding complaints it had with FOS.

Due to confidentiality reasons, I am unable to provide you with specific details of these discussions with the firm. More information about the legal and policy restrictions that may limit the information we will be able to share with you can be found here: <https://www.fca.org.uk/freedom-information/information-we-can-share/>

The firm is no longer regulated by the Malta Financial Services Authority as it re-domiciled from Malta to Gibraltar, however, it is still operating under the UK and therefore should still be dealing with complaints from UK customers.

This page on the Bank of England website gives an overview of the arrangements which you might find helpful. In addition, this document explains the effect of establishing a domicile in Gibraltar.

I understand from the email you received from FOS and which you forwarded to the FCA on 23 August 2023 that your complaint with the FOS was closed, incorrectly I appreciate, at the time X applied for its permissions to be cancelled. This will mean your specific complaint was not part of the decision-making process when making a determination on whether to cancel the firm's permissions”.

Why you are unhappy with the regulator's decision

7. You have said you began legal proceedings against the firm, however, the firm applied to cancel its permissions in the UK and the regulators allowed it to do this. You feel that this means the firm will now not pay any award the court may

make against it. As mentioned above, I understand that the proceedings are ongoing.

8. You have also expressed your dissatisfaction with how the firm and the FOS handled your complaint. Unfortunately these are not matters I can review under the Complaint Scheme as they are excluded.

My analysis

9. The firm (X FRN A) was an EEA passported company initially domiciled in Malta but later re-domiciled to Gibraltar in or around July 2023.
10. The re-domiciliation resulted in the original permissions for the firm being cancelled by the PRA and being re-issued more or less simultaneously, at the point of its re-domicile to Gibraltar. (FRN B). This happened when the Gibraltar regulators notified the PRA of the new passport. The FS Register ("Register") was updated to reflect this.
11. The FCA state, in the decision letter dated 1 September 2023, that these two entries (X FRN A and FRN B) relate to the same firm, and that the only material change is that of domicile and address. This is because, as I understand it, the firm remained in existence and passported into the UK throughout the process of re-domiciliation.
12. The PRA and the FCA have assured me that they do not have any reason to call into question the effectiveness of the re-domiciliation to preserve the firm's identity as the same corporate entity and have confirmed the following:

"We are comfortable that there was not a break in this firm's corporate existence as a result of the domiciliation and that the firm remains liable for outstanding or future complaints.

The firm is covered by the Financial Ombudsman under the Ombudsman's voluntary jurisdiction. There has been no break in cover for customers. As can be seen by reviewing the Financial Ombudsman's Decision Database, Ombudsman decisions regarding Firm X are still being issued.

Firm X was a member of the FSCS before its re-domiciliation, and continues to be a member post re-domiciliation. The PRA had received written confirmation of this before granting the firm's cancellation application. The

cancellation in July 2023 did not affect any policyholders' eligibility for FSCS protection because at that point the firm was authorised on the basis of its Gibraltar domicile. The firm has continued to be a PRA-authorised person for the purposes of the Policyholder Protection Rules. Furthermore, as noted above, the firm has not failed, so there are no live FSCS matters in relation to the firm".

13. In summary, the regulators have said that the firm "continued to be authorised in the UK, but on a different basis". On this basis, the ability for it to sue and be sued in the English courts and the availability of potential claims to FOS and the FSCS should have remained the same. The firm continues to be liable for claims against it as it was before.
14. I can see that X FRN A still features on the Register. The status of the firm is listed as follows. "Cancelled Since 05/07/2023. This EEA based firm, which previously passported into the UK, can no longer undertake regulated business in the UK unless an exclusion applies."
15. The Register shows that the firm's regulator was based in Malta and that the firm was Registered on 19 March 2010, however, there was no termination date listed and there is no UK regulator listed: neither the PRA nor the FCA feature on the Register.
16. I can also see that there is a company which appears on the Register called FRN B with an address in Gibraltar, with a status of 'EEA Authorised Since 05/07/2023'.
17. The Register shows that the Gibraltar regulator became the home regulator of this firm on 28 June 2023. It passported from Gibraltar into the UK as a services firm in a similar way to its previous passport from Malta.
18. My office liaised with the PRA on the points above and it explained that as the firm was an insurer, it's lead host state regulator was the PRA, with the FCA being responsible for domestic conduct supervision. It said "Immediately prior to the re-domiciliation it was regulated by the home state regulator in Malta, in this case, the MFSA, with a limited supervisory role reserved for the PRA and FCA reflecting its status as a freedom of services passporting firm. This is why the PRA and the FCA are not listed as Regulators on the FS Register. You also

noted that no end-date was listed for MFSA as a regulator of this firm, and this has now been rectified to show the end date of regulation by the MFSA as 28 June 2023”.

19. As lead host state regulator, the PRA made entries to the Register: an error occurred whereby the firm was shown as authorised by the PRA for one day only. This could not be deleted due to technological issues. It is also not possible to link the two records (in respect of the passports from Gibraltar and Malta) for technological reasons.
20. In my view, this was a shortcoming of the Register.
21. The regulators informed me that the incorrect listing of the firm as being authorised by the PRA for one day cannot be corrected as it was not possible to rectify such a mistake by deleting the incorrect information but only to ‘mitigate’ the mistake by reducing the time period to 1 day. This showed incorrect information on the Register. In response to my preliminary report, the regulators said that the FCA had found a way to rectify the error after all. It can now be seen that only the Gibraltar regulator is shown on the Register: neither the PRA nor the FCA are shown as host state regulators. This seems to be at odds with established practice in other cases this office has reviewed which involved inward passported EEA services firms. There, the Regulators were in fact listed on the Register. I **invite** the PRA and the FCA to confirm what policy is in place with respect to listing host state regulators on the Register and why there is a difference in the listings of inward passported EEA services firms.
22. It is not possible to link the two records of the firm. This means that there is no clear, transparent way for users to understand that the two listings relate to the same firm and that as a result the redomiciled Gibraltar entity has retained the liabilities of the previously Malta domiciled entity. The impression created from the Register is that there are two separate firms. If you looked at the Register for the Maltese firm you would be led to believe that it no longer had permissions in the UK. I recommended the regulators propose how to rectify this shortcoming.
23. The Regulators responded that:

“We do not accept this part of the recommendation. For consumers the FS

Register is primarily to ascertain the current regulatory status of firms in order to verify that they are using regulated firms, and firms with the correct permissions, prior to transacting. The regulators' resources are focused on this area where the opportunity to reduce potential harm is greatest. The issue of linking records is complex, not just technically, but also from a policy perspective. It would be necessary to carefully define the circumstances and processes across all firms and definitions of legal entities so that links would be consistently applied across multiple different situations. We would need to retrospectively assess whether links existed for all firms and Register entries, as creating a link between just these records (or any sub-set of records) could create the incorrect impression that in cases where there is no published link, that no such link exists.

The above recommendation would therefore require significant resources to implement and maintain, for a relatively small number of cases where it would be relevant. We feel in this case it seems more appropriate in the smaller volume of cases where these links may be relevant to consumers that direct contact with the FCA to establish the facts is the safest and clearest route for consumers, given the complexities of the subject. The current FS Register directs users to contact the FCA if they have checked the Register and want more information".

24. My understanding of the Regulators' position is that they accept that the Register is incorrect in that there is no link between the two firms which would enable a reader who looked at the Maltese firm to understand that it is continued to be passported in the UK (albeit with a different number). However, they consider that the resources required to create the necessary links for what may be a small number of records is disproportionate. They go on to say that, given the Register directs consumers to contact the regulator if they have queries, it seems more appropriate to help consumers establish the facts if they contact the regulators where matters seem unclear to them.
25. I appreciate the Regulator's position that it is resource intensive to create links and there is limited benefit, however, their proposed solution to the issue is unlikely to work for the following reasons:

- a. It is unlikely that consumers who are searching for a firm, on seeing it is deauthorised on the Register, will call to establish if the firm is still operating in the UK on a different basis and;
 - b. If consumers did contact the Regulator, it is highly unlikely that they would be given the correct information about the firm. The experience of this office in similar situations is that the position on the Register is confirmed by Regulator personnel who do not appreciate the link.
26. Whilst I do not recommend the Regulators necessarily utilise excessive resources in solving the problem, it is still my view that the shortcomings identified above continue to require mitigation (given the Register is misleading) and I invite the regulators to report to me how they propose to rectify the problem within one month of the issue of this report.
27. I turn to the handling of this complaint. I find as follows:
 - a. It is not clear to me why the FCA handled this complaint solely when it should have done so as a joint complaint against the FCA and PRA. After I made enquiries, it has accepted that both the FCA and PRA should have been involved in addressing the complaint;
 - b. The FCA told you 'The firm is no longer regulated by the Malta Financial Services Authority as it re-domiciled from Malta to Gibraltar, however, it is still operating under the UK and therefore should still be dealing with complaints from UK customers', the FCA should have informed you which company FRN the company was supposedly operating under given this had changed on the Register, and the Register showed no link between the two companies.
28. In conclusion, I find that the FCA could have handled your complaint better and I recommended that it reviews its internal procedures for joint complaints against the regulators.
29. The FCA has accepted my **criticism** and **recommendation** above. It says:

"The FCA accepts the recommendation that the FCA review its internal procedures for joint complaints against the regulators. We also accept that we could have provided the company FRN when responding to the

complainant. The FCA is committed to working with the PRA on joint complaints. The FCA has reviewed previous joint complaints to understand how it has dealt with these and to learn lessons from the handling of these complaints. The FCA has provided some additional guidance for investigators and will update its process manual accordingly”.

My decision

1. On the basis, set out above, and given that the firm continued to exist throughout, I do not uphold your complaint. According to the regulators, the firm continues as above and you are free to pursue your claim against it as you see fit, whether through the FOS or through legal proceedings. Nevertheless, I have made comments about the regulators with respect to the Register and how your complaint was handled.
2. I appreciate you are unhappy with the firm’s and the FOS’s handling of your complaint against the firm, however, that is not a matter I can review under the Complaint Scheme as it is excluded.

Rachel Kent

Complaints Commissioner

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