

04 July 2017

Dear Complainant,

Complaint against the Financial Conduct Authority
Reference Number: FCA00161

Thank you for your correspondence about your complaint against the Financial Conduct Authority (FCA). I was very sorry to learn of your husband's death.

Before finalising this decision, I invited comments from you and the FCA on my preliminary decision. I have considered your complaint, and your comments on my preliminary decisions, and I am now writing to you with my final decision. I am sorry that it has taken so long to reach this stage, but the matter is very complicated and I have needed to make extensive inquiries of the FCA, and it was paramount to get the complex facts right.

How the complaints scheme works

Under the complaints scheme, I can review the decisions of the FCA's Complaints Team. If I disagree with their decisions, I can recommend that the FCA should apologise to you, take other action to put things right, or make a payment.

Your complaint

You made a complaint about the then Financial Services Authority (FSA), (now the FCA and referred to as the Regulator from now on), for not acting in a timely manner by removing Mr R, a financial adviser, from the Register. You allege that this resulted in you and your late husband doing business with him in June 2010. During the course of your dealings with Mr R he acted improperly by not forwarding relevant information to your insurance provider, which ultimately invalidated your late husband's life insurance cover and resulted in you not being able to successfully claim on the policy upon his death.

The insurance provider, X, stated to you in correspondence in October and November 2015 that their internal records show that the information they received from the Regulator confirmed that while Mr R the person was no longer authorised to carry out regulated activities R, the firm, continued to be authorised. It was on that understanding that they continued to do business with the firm.

The background to your complaint

In response to your complaint, the FCA Complaints Team, having consulted the relevant internal areas, found that the Regulator had acted promptly when they became aware that R the firm had no PII cover in December 2009: the firm signed a Variation of Permission (VOP) form on 12th January 2010, undertaking not to carry out any regulated activities, in order to protect consumers. The Regulator also stated that the Financial Services Register would have reflected this information almost immediately.

The Regulator subsequently found Mr R and R the firm to be in breach of this undertaking and ultimately banned him from being a financial adviser and fined him in 2013.

My findings

The Register issue

In reviewing your complaint, I took a number of steps to understand the events, including the undertaking not to carry out regulated activities by R the firm, the steps the Regulator took to protect consumers by removing R the firm's permissions to carry out regulated activities, and the steps taken to record this on the Register, as well as the statements that were made to you by your insurance provider, X.

First, I should explain that when a regulated firm or IFA applies to withdraw from regulated activities or they are required to stop carrying out regulated activities by the Regulator, their record is not removed from the Register. The record is simply amended to show that they are no longer permitted to carry out regulated activities from a given date. All factually correct information will remain on the Register for as long as the Register is operational.

The information currently displayed on the Register shows that there was an application to vary R the firm's permissions, placing a requirement on the firm to cease all regulated activities, but there is no effective date related to this entry. As the Regulator has recently changed the Register system, it is no longer possible to view the information that would have been displayed on it in January or June 2010.

While the Regulator has stated both to you and to me that the information would have been made clear on the Register when the VOP application was received around 12th January 2010, I wanted to be certain that that assertion was correct. I therefore asked the Regulator to provide me with evidence that the notification about the VOP was promptly recorded in the Register and available for firms and the public to see, especially in light of the fact that the insurance provider stated to you that they had received information from the Regulator at the time of your dealings with Mr R to confirm that R the firm was authorised and permitted to carry out regulated activities.

I also requested that the insurance provider disclose the internal records they hold, which they claim show that the Regulator informed them that R the firm was permitted to carry out regulated activities in June 2010.

The insurance provider stated that they do not retain copies of the records they purchased from the Regulator (known as the Register Extract Service or RES) for the purposes of verifying the authorisation/permissions status of the financial advisers they do business with. X also confirmed that when they investigated your original complaint they relied on their internal records and the information contained in the Regulator's Final Notice related to Mr R.

That Final Notice states that *"In December 2009, the Authority discovered that Mr R did not have the requisite PII cover. Following this, to address the Authority's concerns, on 12 January 2010 Mr R signed an application to vary his permission to add a requirement to cease to conduct regulated activities. R the firm's permission was varied on that date to add the requirement. On 14 January 2010, the Authority wrote to Mr R to notify him that his application had been approved and that he should therefore cease conducting all regulated activities with immediate effect."*

The Regulator, while unable to provide actual records of what the Register looked like in January or June 2010, provided me with records of entries they made on their internal systems, which in turn automatically fed data into the Register, showing that an entry was made to the effect that R the firm was to cease all regulated activities with effect from 12th January 2010.

These entries were made on 14th January 2010 and the information would have been visible to the public and the industry on the public Register from 15th January 2010. It is also clear that these entries relate to R the firm and there is no separate entry for Mr R the person, as stated by X, the insurance provider (they also refer to R the firm's reference number in their correspondence with you when stating that Mr R the person was allowed to carry out regulated activities, which they state is why they dealt with him). For the avoidance of doubt, the fact that R the firm was not permitted to carry out regulated activities in June 2010 is what is relevant here. X should not have done business with R the firm as it was not permitted to sell insurance products to UK consumers.

Based on the information contained in the Final Notice about R the firm, the signed and dated VOP application from January 2010, the undated but clearly present VOP entry on the Register and the internal records supplied to me demonstrating the steps taken to add the relevant information to the public Register, I conclude that Mr R had in fact undertaken not to carry out regulated activities with effect from 12th January 2010 and that on the balance of probabilities this fact was made public and available both to consumers and firms by an entry on the Register, which appeared on 15th January 2010 (contrary to the assertions made by your insurance provider X).

Following your comments about my original preliminary decision, I decided to make further inquiries of the Regulator to ensure that no stones were left unturned and that I had all the relevant information.

The renewed inquiries by the Regulator found additional information, which was missed the first time around, and which is relevant to your complaint and our understanding as to why X did business with R the firm in June 2010.

The Regulator's new inquiries have established that the data sold by the Regulator through the RES did **not** show that R the firm had been required to cease regulated activities. The FCA has stated:

"R the firm was authorised and did have permissions to carry on activities in June 2010. We had imposed a requirement to cease regulated activities but it was not a variation of permissions. The register extract service [RES] does not provide the requirements because a conscious decision was made not to include them in the service and this is mentioned in the documentation we give to its users. The full register on the website would have shown the restriction."

This means that while the public Register showed that the Regulator imposed a requirement on R the firm in January 2010 not to carry out regulated activities, and that the Regulator acted in a timely manner after finding out in December 2009 that it did not hold the requisite PII, this information was not shown in the extract sold to firms.

If X were relying upon the RES to check the authorisation status of financial advisers they were doing business with, it is understandable that they were not aware of the requirement. However, I do not think that they should have been relying upon the RES in that way. Page 33 of the "FS Register Extract Service on Computer Readable Media Subscriber's Handbook" which accompanies each purchase of FCA register extracts, and which would have been available to X, states:

"a requirement can be placed on the firm's permission as a whole. Currently, the extract does not include details of any Requirement or Limitation (R&L) except for a basic flag indicating whether the firm has authority to hold client money."

It was X's duty to ensure that they only dealt with authorised firms that hold the relevant permissions, and they should not have done business with R the firm as it had restrictions placed upon it by the Regulator and was not permitted to carry out regulated activities. This was made public knowledge through the entry on the FCA Register.

Your dealings with the Customer Contact Centre (CCC)

In relation to telephone calls you made to the CCC, it became apparent through the additional work undertaken by this office that the CCC, in error, created two separate entries for you on their system and, for that reason, we were only provided with recordings for two of the four telephone calls you made to the CCC.

I can confirm that the Regulator has now rectified this error and they have provided us with all the recordings they hold. These recordings show that none of the call handlers advised you that R the firm should have been "banned" long before June 2013, as you stated in your response to my preliminary decision. Had there been a statement made to you to this effect by the CCC, it would not negate the fact that the Regulator did act promptly and placed a Requirement on R the firm not to carry out regulated activities in January 2010 after becoming aware of the lack of PII in December 2009.

I am unable to uphold your complaint that the Regulator did not act in a timely manner to remove R the firm's permissions to carry out regulated activities, publish this information and thus attempt to protect consumers from the risks posed by dealing with this firm.

Conclusion

I have reviewed all the evidence available to me and made extensive enquiries of both the Regulator and the insurance provider in order to establish the facts of this complaint.

I appreciate that you found yourself in a very difficult situation but on the evidence available I find that the Regulator did follow the correct processes, required Mr R to undertake not to carry out regulated activities on behalf of R the firm, and notified the public of this by making an entry to this effect on the Register on 15th January 2010, effective from 12th February 2010; and that R the firm was in fact no longer permitted to carry out regulated activities when you arranged your life insurance cover through the firm in June 2010.

Through the follow-up questions we posed after receiving your comments about my original preliminary decision, it has also come to light that the data sold by the Regulator through the RES, which X mistakenly relied upon without checking the public Register, does not record Restrictions or Limitations placed on regulated firms. X should have been aware of this through a note in the Handbook sold with the extract.

Nonetheless, the fact that clearly significant information was not included in the RES does call into question its usefulness, given that (as I understand it) firms use it to update their records about the authorisation status of firms they do business with so that they do not have to consult the public Register every time they deal with a firm. The risks which can arise from the way the RES has been operating are demonstrated by the Final Notice issued in relation to R the firm, which shows that the firm had done business with 11 different providers and carried out 97 mortgage transactions after the requirement to stop carrying out regulated activities was placed upon the firm.

In discussions which I have had with the Regulator, it has become clear that the RES has grown up organically over time, and that there was insufficient consideration given to the impact of the introduction of Requirements upon the usefulness of the updates. The Regulator has told

me that, partly as a result of the facts that came to light in the course of investigating your complaint, they are now including Restrictions and Limitations in their data extracts to make it easier for firms to keep track of who they can do regulated business with. The new version of the RES went live in May 2017, and all current subscribers have been told about the changes being made.

While I am not upholding your complaint, I **recommend** that the Regulator offers to pay you £100 for the distress and inconvenience caused by the length of time it took to investigate your complaint (including the time it took to address my questions in the course of my investigation) and the fact that the initial investigation did not uncover and consider the information which I have described in this letter. I have reduced this sum from my initial recommendation of £300, given the extensive steps which the Regulator has now taken to improve its processes.

You have told my Complaints Investigator on the telephone that if you had been told from the outset that you would not be able to secure life insurance cover for your husband, as you should have been, you might not have taken out a mortgage or you would have made different financial decisions while your husband was still alive to put yourself in a better financial position following his death. My office informed X of my findings in so far as they related to their firm, as they have significant implications for the way the firm checks the authorisation status of regulated entities they deal with.

Following internal discussions, and in light of all the circumstances of this case, X has decided to make you an ex gratia offer for the full amount insured and it is my understanding that you have accepted this offer.

I am delighted that, as a result of this prolonged investigation, you have received a payment from X, and the FCA has improved its procedures. I hope that this gives you some satisfaction.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Antony Townsend', with a large, stylized flourish at the end.

Antony Townsend
Complaints Commissioner