

Final report by the Complaints Commissioner, 21st November 2017**Complaint number FCA00389***The complaint*

1. On 24th September 2017 you set out why you disagreed with the decision of the FCA in response to a complaint you had made, and asked me to investigate. I have carefully reviewed the papers sent to me by you and by the FCA.
2. In finalising this report, I have also considered the points you made in your email of 12th November in response to my preliminary report, and to the FCA's response – I have referred to both responses below.

What the complaint is about

3. In July 2011 you and your wife made an investment having received advice from a financial advice firm. In 2013, the product in which you had invested went into liquidation, and you lost your investment.
4. You later became aware that the financial advisers whom you had used were a firm which was authorised in Cyprus, had been “passported” under European Union (EU) rules to operate in the UK, and were only authorised to undertake insurance mediation in the UK, not to provide investment advice. The advice which they had given you was outside the permissions which the Cypriot authorities had given them.
5. In an email of 5th June 2016 to the FCA, in which you expanded upon your original approach to the FCA, you summarised your complaint as follows:
 - a. *The FSA/FCA failed to undertake due diligence to ascertain what products [the firm] were authorised to sell within their regulatory permission.*
 - b. *Failed to ensure the [firm] authorisation came with adequate compensation arrangements that would be expected by UK consumers via cover from the FOS and FSCS.*
 - c. *Or similarly, that Cypriot authorities had adequate financial protection to UK standards so qualifying [the firm] for an FSA Number.*
 - d. *As it transpired, it failed in its duty of care to protect UK consumers by not publishing on FCA website those restrictions and limitations connected with [the firm], as previously mentioned. The UK consumer was as a result financially damaged.*
 - e. *FCA website did not show [the firm]'s removal until Oct 2013 6 months later than receivership.*
 - f. *We have not received or aware of any meaningful support from the FCA to address the problem and seek a resolution on behalf of those UK consumers impacted which would establish a procedure for compensation with the Cypriot Ministry of Finance as, for example, has been established for the misselling of PPI.*

What the regulator decided

6. The FCA rejected your complaint. Its grounds for doing so were as follows:
 - a. Under EU law, firms which are authorised for a category of financial services in one EU state (in this case, Cyprus) are entitled to carry on the same category of financial services in another EU state (in this case, the UK) if they notify the appropriate regulator (in this case, the FSA, now the FCA). They can supply these services either by offering services across the border, or by “establishing a presence” in the other state;
 - b. The firm which advised you was authorised for cross-border services in insurance mediation only;
 - c. The FSA’s/FCA’s register correctly stated that the firm was “EEA authorised”, that the type of firm was “Services (UK) of an overseas firm”, that it was passported into the UK under the Insurance Mediation Directive, and that the FCA appeared as regulator with the Cypriot regulator (Insurance Companies Control Service (ICCS)). The FCA knew what products the firm was entitled to provide in the UK;
 - d. The Cypriot authorities took the decision during October 2013 to cancel all of the firm’s EU permissions;
 - e. The FCA published a notice on its website in November 2013 “confirming that [the firm] could no longer sell insurance in the UK”;
 - f. “As your investments were made significantly earlier than the Cypriot authorities took any action, I can’t see how any alleged failure on the part of the FCA would have changed your decision on the investments that were made.” Additionally, the FCA pointed out that the Cypriot decision related only to insurance mediation, not to investment advice (which the firm was not authorised to undertake);
 - g. Because the passporting arrangements under which the firm operated are determined by EU law, the FCA could not dictate the compensation arrangements – they were a matter for the ICCS;
 - h. The Financial Services Compensation Scheme (FSCS) had advised the FCA that your claim for compensation would have to be pursued with the Cyprus Securities and Exchange Commissioner.

Why you are unhappy with the regulator’s decision

7. You remain dissatisfied. You consider that
 - a. the FCA should have taken more steps to establish what the firm were authorised to do in the UK;
 - b. adequate compensation arrangements should have been put in place;
 - c. the FCA website should have shown the “restrictions and limitations” connected with the firm;
 - d. the FCA’s website did not show the firm’s removal until “6 months after than receivership”;

- e. you have not received any meaningful support from the FCA of the kind which has been established for those who were the victims of PPI misselling.

Preliminary points

- 8. In undertaking my investigation I have had access to the FCA's confidential papers. I have the FCA's agreement to disclose key facts from those papers, since that is necessary so that I can explain my analysis and decision to you.

My analysis

- 9. Investigating this complaint has proved complex. I have divided my analysis into four sections:
 - i. The legislative framework;
 - ii. The information which appeared on the FSA/FCA's website;
 - iii. What the FSA/FCA knew about the firm in question, and what it did about it;
 - iv. How your complaint was handled.

(i) The legislative framework

- 10. The FCA's explanation of the legal framework is correct. I recognise that you consider that the FCA should be responsible for ensuring that UK consumers of financial services should receive the same protections irrespective of where the firm which they use is based. Your point of view is understandable, but that is not how EU law works. The "passporting" system which the FCA has explained to you means that the FCA is required to recognise EU firms which meet certain criteria, even where the consumer protections are inferior to those in respect of firms for which the FCA is the principal regulator.
- 11. The FCA cannot be blamed for the way in which EU law operates, and for that reason I do not think that your complaints set out at 4 a-c above can be upheld.

(ii) The information on the FSA/FCA's website

- 12. In your complaint you said that the FSA/FCA had not made the firm's limitations clear on its website, and had failed to remove the firm from the website for six months.

- 13. The FCA said in its decision letter that:

The FCA register stated that FCP was 'EEA authorised', that the type of firm was 'Services (UK) of an Overseas Firm', and that it was passporting into the UK from Cyprus on a services basis under the Insurance Mediation Directive (IMD); and it is in that context that the FCA appeared, together with the ICCS, as the former regulator in the "regulators" part of the firm's entry on the website.

- 14. In response, you said:

When I consulted the consumer version of the register just before July 2011 it only showed that FCP were regulated by ICCI and then FSA/FCA (as per later copy sent previously) so I'd greatly appreciate a copy of that you are referring to.

15. I have asked the FCA about this. Their response is:

The FCA isn't able to exactly replicate what would have been on the register. Some of the firm's details, such as the fact that it had been cancelled as a result of the withdrawal of the passport by the Cypriot ICCS, will have been changed from the information that would have been shown when it was registered, but the bulk of it will be the same.

The Register is populated directly from a system called TARDIS. On the 'events log' page on TARDIS, mention is made that the firm's status was changed in June 2008 from 'registered' to 'EEA authorised'. So if this was done in 2008 then this is what would have shown on the register in 2011 as there are no further entries on the events log page. The only subsequent change to this was in 2013 when the firm entry was changed to 'no longer authorised'.

The FCA are unable to say precisely what would have been available on further enquiry. But given that the Register clearly showed the firm as 'EEA authorised', the FCA considers that this is what would have been advised on further enquiry.

16. It is unsatisfactory that there seems to be no clear statement of what exactly would have appeared but, if I have understood this correctly, what the FCA is saying is that the register entry would have shown that the firm was EEA authorised. I note that the current entry for the firm does clearly indicate that it was concerned with insurance mediation.
17. In your response to my preliminary report, you have re-emphasised the point that the FCA's register clearly shows that the FCA (and before that the FSA) were regulating the firm. You have supplied a screenshot which confirms this (as well as showing the ICCS as regulator). You argue that this demonstrates the FCA's responsibility for regulating the firm, particularly since the FCA encourages consumers to consult its website.
18. While I do not think that it can be said that anything on the FCA's register is wrong, in this (as in other complaints that I have dealt with) I consider that the FCA's register has been difficult to navigate, and lacking in readily comprehensible information for consumers. It would require considerable work for a consumer, on the basis of the bare information in the register, to understand that an FCA-registered firm was subject to different regulation, and different consumer protection arrangements, because of its EU status.
19. Having said that, if my understanding of what did appear on the register is correct, I do not think that it would have been sufficient to assure you that the firm in question was authorised to provide investment services.
20. In relation to your complaint about the alleged delay in removing the firm from the FCA's website, the fact is that there was no significant delay. The entry could only be removed once the ICCS had cancelled the firm's permissions for the UK. The FCA also published a notice on its website alerting consumers. There were other delays, to which I refer below, but I do not uphold your complaint about the timing of the removal of the firm from the FCA website.
- (iii) What the FSA/FCA knew about the firm in question, and what it did about it
21. In responding to your complaint, the FCA took a narrow view. Its decision letter was structured around the three core issues which you had originally raised, rather than the expanded complaint which you later submitted (as set out in paragraph 4

- above). It did not comment upon the totality of the FCA's activity in relation to the firm.
22. I have, however, examined the FCA's records in some detail, since it seems to me that the underlying criticism of the FCA which you are advancing is of insufficient action. In doing so, I have taken account of your email of 31st July 2017 to the FCA, in which you reported that your financial adviser had confirmed that "the FCA undertook an investigation of [the firm's] activities in the UK in 2010 and concluded it was operating outside its regulatory permission".
 23. What is not apparent from the FCA's decision letter, but is very clear from the records, is that from around April 2011 there were growing concerns that the firm was acting outside its permissions, both in terms of the business that it was doing, and because it was not providing cross-border services but had "established" itself in the UK.
 24. The FSA/FCA were aware of the potential consumer detriment, and there were extensive interactions with the firm, and then with the Cyprus authorities, to try to resolve the situation. The FCA also made inquiries to try to establish whether or not the UK compensation arrangements from the Financial Ombudsman Service (FOS) or Financial Services Compensation Scheme (FSCS) might apply.
 25. I highlight the following points:
 - a. The FSA/FCA initially tried to deal with the matter by obtaining information from the firm and asking the firm to voluntarily undertake to stop providing services beyond its permissions – which it did;
 - b. Consideration was given to referring the case for formal enforcement action against the firm, but the matter was not considered to be of sufficiently high priority, given other demands;
 - c. Attempts were made to persuade the firm that it should commission what is known as a s166 report (in which an independent expert looks at alleged shortcomings so that remedial action can be taken);
 - d. The FCA asked the ICCI to hold off cancelling the firm's permissions to enable it to undertake further inquiries, in the hope of avoiding consumer detriment;
 - e. It took two and a half years from the initial concerns to the point at which the FCA concluded that it had exhausted its attempts, and the Cypriot authorities cancelled the permissions.
 26. My conclusion is that the FSA/FCA made numerous attempts to deal with the problem, but that there appeared to be a reluctance to bring the matter to a head. While it is clear that the regulator was properly concerned about potential consumer detriment, the records do not suggest that anyone stood back, established the facts, and considered what the best options were, until the second half of 2013. The result was that the situation – and the potential risk – were allowed to continue for too long.
 - (iv) How your complaint was handled
 27. I do not criticise the accuracy of what the FCA told you, but I do criticise the degree of openness. The FCA's decision letter gives the impression that it was a largely powerless by-stander in this affair. The record clearly shows otherwise. In

response to my preliminary report, the FCA has said that it did not intend to give a misleading impression, but that there were confidentiality constraints on what it could tell you. While I accept that there were limitations, I consider that it would have been possible for the FCA to explain more of the facts to you (as I have done, with their permission).

My decision

28. It is clear from the above that I do not think that the FSA/FCA handled this matter well. However, I do not consider that any of the FSA/FCA's shortcomings were responsible for your financial loss. While I have great sympathy with the situation in which you find yourself, your initial decision to invest was made only three to four months after the FCA's significant concerns began to emerge, during which time the FCA was attempting to resolve the issue. You made a further investment in 2012, when the FCA's attempts were continuing. Nonetheless, the fundamental cause of your loss was the firm's behaviour, not the regulator's.
29. The fact that the firm's compensation arrangements were dependent upon the Cypriot regulator rather than the FCA is not the FCA's fault.
30. In your response to my preliminary decision, you have said that in reaching my conclusions I have not given sufficient weight to the FCA's responsibilities in this matter. You cite the FCA's role in the PPI compensation arrangements, and its role in the Connaught investors compensation, as examples of what the FCA could do. You say that the FCA "had the authority and knowledge to take corrective action and must therefore be accountable for the consequential financial fallout incurred by UK consumers".
31. It is clear from what I have said above that I consider that the FSA/FCA could have handled matters better; and my recommendations below are designed to address those points. However, that does not change the fact in my view the FCA is not responsible for your financial losses. The FCA cannot intervene to arrange compensation arrangements in every case where a firm's investments fail.

My recommendations

32. I make the following recommendations to the FCA:
 - a. **The FCA should apologise to you for the impression given in its decision letter that it was powerless to act (see paragraph 27 above).** The FCA has confirmed that, while it had no intention to mislead you, it will apologise;
 - b. **The FCA should consider whether there are lessons to be learned in relation to the interaction between its own and foreign regulators' powers over firms operating in the UK.** The FCA has accepted that there were difficulties in its interaction with the Cypriot authorities which made it hard to progress the case, but says that the situation has improved. Because of Brexit, all the relationships with other EU regulators are going to be reassessed;
 - c. **The FCA should consider what further steps could be taken to make clear to readers of the registers what are the limitations of UK regulatory protections in cases where a firm's principal regulator is in another jurisdiction.** The FCA has confirmed that is considering this matter further.

Antony Townsend
21st November 2017