

10 July 2018

Final report by the Complaints Commissioner**Complaint number FCA00452***The complaint*

1. On 12 April 2018 you complained to me that the FCA was ignoring your complaints about a firm (firm X), in which you had invested.

What the complaint is about

2. In its decision letter to you, dated 19 February 2018, the FCA described your complaint as follows:

Part One

You contacted the FCA for guidance and assistance in relation to difficulties you are experiencing with [firm X] Ltd (previously trading as [Y] Limited). This is a firm based in Malta and given permission by the FCA to provide certain financial products and services in the UK. You are unhappy with the FCA's guidance provided to you - that you should escalate your complaint about this firm to their home state regulator, the Malta Financial Services Authority. As the firm claims to be authorised by the FCA, you feel it is a scam that the FCA does not take responsibility in supervising this firm.

Part Two

When you contacted the FCA approximately three or four years ago, you were told that the FCA is responsible for supervising [firm x]. You have also been told this by several brokers. In light of the difficulties you are facing with this firm, you now believe you received misinformation about the FCA's responsibility in supervising this firm.

What the regulator decided

3. The FCA did not uphold either part of your complaint. In relation to Part One, it said that it considered that the information on the FCA Register about the respective responsibilities of the FCA and the home state regulator was reasonable, and that the FCA did not agree that those arrangements were a scam. In relation to Part Two, the FCA said that there was no record of any contact between you and the FCA before November 2016, but that the guidance you had been given since then had been accurate and reasonable.

Why you are unhappy with the regulator's decision

4. You do not agree with the regulator's decision. You have asked me to reconsider the complaint.

My analysis

5. In my view, your dissatisfaction with the FCA is the result of a combination of factors:
 - 1) The complexity of your personal situation;
 - 2) The complexity of the European Union's "passporting" arrangements for European Economic Area (EEA) firms;
 - 3) The distinction between the role of the regulator (monitoring and if necessary intervening in response to concerns about the conduct of a firm or individual) and the role of the ombudsman (resolving disputes between firms and their clients).

The complexity of your personal situation

6. As I understand it, you are based in Canada. You transferred \$3m to firm X – based in Malta – but did not wish to invest it in the vehicle which they recommended. You tried to withdraw the money, but could not. You contacted the Maltese regulatory authorities, but do not consider that they have helped you. You were advised by some UK brokers that, since the firm was authorised in the UK by the FCA, you should ask the FCA for assistance.

The complexity of the European Union's passporting arrangements

7. Under the passporting arrangements, firms regulated in an EEA state can provide services in another EEA state, subject to authorisation by the other state's regulator. Firm X had a "service passport", which meant that it could provide services in the UK without being physically present. The effect of this is that firm X's principal regulator remained the Maltese regulator, even though the firm appeared as "EEA authorised" on the FCA's register.

The distinction between the role of regulator and the role of the ombudsman

8. You were seeking resolution of your dispute with firm X – which is principally the role of the ombudsman (or equivalent) – whereas the FCA's role as a regulator is to consider whether its intervention is required to deal with more general risks in the firm's conduct.
9. These three factors made the exchanges between you and the FCA difficult. I have carefully studied both the written records of the correspondence between you and the FCA, and two recordings of long calls between you and the FCA in 2016 and 2017. In my view, the FCA staff who dealt with you by phone and by email did their best to be helpful, and the information which they gave you was essentially correct.
10. The problem was that, in your view, the fact that firm X appeared on the FCA's register meant that the FCA had a greater responsibility for taking action in response to your complaint than the FCA was prepared to accept.
11. I support the FCA's decision to reject both parts of your complaint, subject to one point. As I have said in another recently published report, the fact that the FCA is not the principal regulator for EEA authorised firms does not mean that the FCA has no role – indeed, in its explanation to you, the FCA talked about "work with the home-state regulator to mitigate any resulting risks". While the FCA was right to tell you that it could not become involved in your individual complaint with the

firm, I would have expected it to have explained to you that it would consider the information which you had provided and, if necessary, raise the matter with the Maltese authorities.

12. The information which you provided – that \$3m had apparently gone missing, and that the Maltese authorities had not responded – was potentially important information relating to a firm on the FCA’s register, but I cannot see any evidence that that information was assessed from a regulatory perspective. I should emphasise that, even if it was assessed, the FCA would not have been able to tell you the outcome of that assessment, nor would any action it took have resolved your personal complaint; but I consider that a statement from the FCA that such an assessment was, or will be, undertaken, might provide you with some assurance that the information had not been ignored.

My decision

13. My conclusions are these:

- 1) The FCA were right to explain to you the limitations of their role in relation to EEA authorised firms, and right to direct you to the Maltese regulator and the Maltese arbitration service;
- 2) Although the situation was complex, the FCA did its best to give you accurate information. There is no record of any contact between you and the FCA before 2016;
- 3) The FCA should have explained to you that, even though the Maltese regulator was the principal regulator to whom you should direct your concerns, it would assess the information which you had provided to consider whether it should take any action. In response to my preliminary report, the FCA has confirmed that it will write to you to confirm that this has been done.

Antony Townsend

Complaints Commissioner

10 July 2018