

18 June 2018

Final report by the Complaints Commissioner**Complaint number FCA00459***The complaint*

1. On 3 May 2018 you asked me to investigate a complaint about the FCA. I have carefully reviewed the papers sent to me by you and the regulator.

What the complaint is about

2. You purchased bonds from a company purporting to be credit union X in 2016. Before making the investment, you checked the Financial Services Register (the Register) and noted credit union X was authorised, and that the correspondence address on the register was the same as the one the purported company provided you. You also checked the FSCS website and noted there were no recorded defaults against credit union X.
3. You subsequently discovered that the investment was a scam and you are seeking compensation from the FCA as you relied on the FCA authorisation of the firm as proof the credit union was legitimate.

What the regulator decided

4. The FCA upheld your complaint about the Register which wrongly showed credit union X as being active and authorised, and apologised to you but declined to be liable for your loss. It offered you £150 for the delay in investigating your complaint.

Why you are unhappy with the regulator's decision

5. You consider that, having checked that the credit union was authorised on the FCA register, you had undertaken due diligence, and that the FCA should "honour their protection promises and [...] compensate me for their undoubted and admitted failings.

My analysis

6. The facts of this case are not in dispute. Credit union X was dissolved in 2012 but remained as authorised on the FCA Register until recently. In the intervening period, a clone firm assumed the identity of credit union X and defrauded you. The FCA's decision letter of 5 April 2018 summarises its position as follows:

It isn't in dispute the Register showed the firm as being active, when in fact it was not.....in this instance, [credit union X] had not applied to cancel its authorisation therefore the Register still indicated it was authorised.

However, at the time of your contact with CCC, other departments within the FCA were aware that [credit union X] was no longer trading. They were going through the process of updating the Register with accurate information relating to a number of credit unions- including X. These were being dealt with in order of risk.

I think more could have been done by the FCA to have credit union X's entry on the Register updated so it was accurate sooner than it did. From what I have seen, no one department took ownership of the project for removing the credit unions and because of this; credit union X remained on the Register some four years after the FCA was first aware that it was no longer trading.

Had credit union X shown on the Register as no longer authorised, you may have made a different choice for your investment'.

7. You say that, having checked the FCA's register and the FSCS website, you were entitled to conclude that your investment would be protected. You say that the FCA literature stated that "any investment made in to a bank or credit union would be protected up to £85,000 in the event of its failure". You feel the FCA ought to compensate you.
8. I understand the FCA's view is that:
 - a. the Register contains a disclaimer which says the while the FCA tries to ensure the information on the Register is correct, the FCA does not accept liability for any error or omission. The FCA did accept that this disclaimer wasn't very visible at the time you did your checks, as it had been located under the 'Legal information' section of the Register;
 - b. checking the Register is only one step a consumer can take. The FCA's ScamSmart website lists several other suggestions which you could have taken such as calling the contact number of the firm provided on the Register, considering if the investment appears too good to be true, rejecting unsolicited calls and seeking impartial advice;
 - c. the FCA cannot be held liable for the loss you encountered. Both the FCA website and the Register make consumers aware of the steps to take before making an investment.
9. My analysis is that:
 - a. a clone firm perpetrated the scam which defrauded you of your pension savings. That was the principal cause of your loss;
 - b. however, this scam was facilitated by the inaccuracy of the FCA Register, which was not updated for some four years despite the FCA having information to show that credit union X was not trading; and
 - c. the FCA accepts that you might not have made the investment if the Register had been accurate.
10. Consumers have a duty to undertake their own checks to avoid scams: there are many cases of scammers using the names of properly authorised firms to dupe investors,

and the FCA cannot be held responsible in such cases. Furthermore, the FCA cannot be held liable for every loss which arises from any error in the register.

11. Against that, consumers are entitled to expect that the register will be kept competently. In this case, it is clear that for four years evidence which should have led the FCA (and its predecessor the FSA) to remove the credit union from its register was not acted upon. This was more than a simple oversight. The record clearly shows that there was an awareness of the situation, but no effective action was taken until your complaint was lodged. Worse, the records which I have studied give me no confidence that the responsible departments understand the seriousness of the FCA's failings.
12. In its letter, the FCA told you that one of the steps which consumers can take to protect themselves against such scams is to call the contact number of the firm provided on the Register. However, at the time you made the investment, the Register did not show a telephone number or email address for the firm. The postal address from the purported firm you were communicating with was the same as the address on the Register.

My decision

13. Based on the above, I uphold your complaint about the FCA Register. Whilst a clone firm was the principal cause of your loss, it was able to take advantage of the FCA's woefully inaccurate Register. The FCA accepts that you might not have made your investment had its register been accurate.
14. You have been offered £150 for the delays in investigating your complaint (which were bad), but in my view that is not sufficient. While it is understandable that the FCA should be protected from general liability for consumers' losses, this is not an ordinary case. The FCA (and the FSA before it) for some four years sat on information which should have prompted action to remove the credit union from the register. The FCA's serious failings contributed to your financial loss. While I do not consider that the FCA should be held responsible for the totality of your loss, in my preliminary report I recommended that it should make a substantial contribution towards it to acknowledge the extent of their failings.
15. The FCA has accepted my recommendation and intends to offer you an ex gratia payment representing 50% of your loss - £22,137.50 – in addition to the £150 for delays in investigating your complaint. Parliament has protected the FCA from claims for 'lack of care', and there is no evidence that the FCA acted in bad faith, so I do not think that the FCA is legally liable for your loss. In the circumstances, I think that the FCA's offer is reasonable.
16. I further recommend that the FCA review its internal processes to ensure that staff understand the priority which should be given to keeping the register up to date (it is clear from the papers that I have seen that some do not), and that there are protocols in place to ensure that information which suggests that a firm should cease to be authorised is acted upon promptly.

Antony Townsend
Complaints Commissioner
18 June 2018