

2 October 2019

Final report by the Complaints Commissioner

Complaint number FCA00609

The complaint

1. You complained to the FCA that the Financial Services Register (the Register) contains incorrect information about two registered escrow firms.

What the complaint is about

2. You stated that there are two escrow firms on the Register, one of which is insolvent (Firm X) and the other had been dormant for two years at the time of your complaint (Firm Y). You complained that the FCA had not kept the Register up-to-date.

What the regulator decided

3. The FCA did not uphold your complaint, stating that the responsibility for providing updates about firms rests with the firms themselves, and that the FCA updates the Register when a firm provides information about a change which affects their status.
4. The FCA also said that it keeps details of all firms, currently and formerly authorised, and would never remove the details of a firm from the Register, even if it were no longer authorised.

Why you are unhappy with the regulator's decision

5. You believe the FCA relied on “semantics” to avoid addressing your complaint and did not instil any confidence in you that there is an adequate process in place to ensure that firm information on the Register is correct and up-to-date.

Preliminary points

6. The FCA is responsible for the maintenance of the Register which is used by regulated firms and consumers to check the legitimacy of firms and individuals

FCA00609

and what permissions they hold, so that they can decide whether they should do business with a particular firm/ individual.

7. The FCA relies on firms to notify it of any changes, which then get updated on the Register. It is not feasible for the FCA to make its own independent checks on every one of the more than 50,000 firms it regulates.

My analysis

8. I have broken down the complaint into two separate issues. *Element one* is the way in which your complaint was handled and *Element two* is the substance of your complaint, which is the accuracy of the information on the Register.

Element one

9. I have not been provided with a recording of your initial phone call to the Consumer Contact Centre (CCC, now Supervision Hub) in the complaint file, but a note of the complaint dated 27 September 2018 clearly states that in your view Firm X and Firm Y “should not hold an FCA registration” as, according to Companies House records, one is dormant and the other is insolvent. The clear meaning of the complaint was that the information which appeared on the Register was not correct and / or was misleading.
10. The FCA’s response interpreted this in a narrow and unhelpful way, concluding that the Register includes historic details of firms, firms are not “removed” from the register, therefore the FCA had done nothing wrong. This seriously missed the point.
11. Furthermore, there was no apology in the decision letter for the fact that it had taken over nine months to complete the investigation into this (not very complex) complaint. I recognise that there had been apologies by email earlier on, but I do not think that was acceptable.
12. This approach and the way the final decision letter was drafted also gave the impression that the FCA did not care about the concerns which you had raised, despite the fact that the records I have seen show that members of the FCA’s staff shared some of your concerns and were taking steps to address them.
13. In response to my recommendations about your complaint the FCA has accepted that it interpreted your complaint too narrowly and that its response did

not address your concerns. It has also accepted that there should have been an apology in the decision letter for the length of time it had taken to produce a final decision.

Element two

14. In addition to scoping the complaint too narrowly, the Complaints Team does not seem to have given proper consideration to whether the information on the Register about these two firms was correct at the time of the complaint being raised, despite this being the central issue in the complaint, and no explanation was given as to what the FCA does if it receives information that the position of a firm has materially changed, whether from the firm itself or a third party source.
15. The investigation should have focused on the process for ensuring that the information on the Register is correct, up to date, and helpful to register users.
16. From my previous investigations of complaints about the FCA Register, it is clear that the FCA is aware that not all the information on its Register is correct and it has a major project under way to address the Register's deficiencies.
17. The FCA rightly places the responsibility on firms to notify it of any material changes in order to be able to keep the Register accurate, given the number of firms and individuals it regulates and the resources available to manage the information on the Register. However, I am very concerned about the rigid approach the FCA has displayed in this case.
18. The FCA's position was that an entry on the Register can only be amended when a firm, or principal firm in the case of ARs, notifies it of the change, even if – as in this case - the FCA becomes aware of a material change, such as insolvency or a firm being dormant for a number of years, from a third party source. In this case, the firm's dormancy was confirmed to the FCA by Companies House records, yet the FCA's position appears to have been that it did not need to take action because it had not received the appropriate form from the principal firm. Until a "Remove Agent" form is received from the principal firm, the AR will appear to be authorised to anyone checking the Register to ensure they do not deal with rogue firms or individuals.
19. The above approach means that technically the FCA did not do anything wrong by not updating the Register, because it was following its procedures and the

information on the Register is correct according to the information it holds in the format required by it. But this puts a box-ticking exercise above the very real risk of consumers falling victim to a scam firm potentially seeking to exploit the deficiencies of the Register and it not reflecting the true position of firms. This is not the first complaint I have had of this nature.

20. This risk is very clearly demonstrated by the fact that Firm Y had in fact been cloned. The activities of the clone firm were reported to the FCA, it investigated and got in touch with the firm to alert it and request its consent to issue a “clone warning” on the Register. At this time in 2018, Firm Y had been insolvent for around two years according to Companies House records, but this had either not come to light during the FCA’s cloned firm investigations and correspondence with the firm, or the Register was not updated because the “Remove Agent” form had not been received by the FCA. Either way, this appears to be a significant weakness in the supervision of Firm Y.
21. The Register entry for Firm Y was later amended as a result of your complaint, and it now shows that the firm is no longer permitted to carry out business as an AR. The entry for Firm X is yet to be updated because the correct form had not yet been submitted by its (sole) principal firm, which itself is now in liquidation.
22. It is my view that the FCA is right in maintaining a position that firms have a duty to report any relevant changes so that it can update the Register because the number of firms it regulates means it has no resources to proactively check for changes.
23. However, I do not believe it was right for the FCA to insist that its records cannot be amended until a form is received, even if that means leaving consumers exposed to the risk of being defrauded by clone firms and rogue operatives. I **recommended** that the FCA reviews its policy about not taking active steps to check the status of firms and update the Register as a matter of urgency when it is provided with information that a firm should no longer be authorised to carry out regulated activities, in order to ensure that its objective of consumer protection is met.
24. In response to my preliminary report the FCA has confirmed that it is implementing a number of process improvements for gathering information from

firms as well as a drive to improve the quality of the underlying data displayed on the Register.

25. Additionally, the FCA accepts that it should not wait for a particular form to be submitted by a firm before it makes any changes to the Register when it becomes aware of changes through other means, and it has promised to change its processes accordingly.

My decision

26. I uphold your complaint that the FCA did not deal with your complaint appropriately. While I welcome its recognition of the deficiencies in this case, I **recommend** that the FCA reviews its processes and ensures it provides thorough training to its staff on its preferred complaints handling approach and the need for curiosity and looking at complaints holistically.
27. I also **recommend** that it apologises to you for not addressing the underlying cause of your complaint and for the amount of time taken to issue a final decision. I also **recommend** that it offers you an ex gratia payment of £150 for any distress and inconvenience caused by the way in which your complaint was handled. The FCA has accepted these recommendations.
28. While the steps it took in relation to ensuring that the information on the Register is in line with its existing procedures, I **recommend** it reviews these procedures to ensure the Register is updated when relevant information comes to light, rather than relying upon an administrative tick-box procedure which may place consumers at considerable risk. The FCA has also accepted this recommendation.
29. You have said that you are satisfied with the outcome of my investigation and my recommendations. I am pleased that there has been a satisfactory result.

Antony Townsend
Complaints Commissioner
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