

29 May 2020

Final report by the Complaints Commissioner

Complaint number FCA00631

The complaint

1. On 1 April 2020 you asked me to investigate a complaint about the FCA's Financial Services Register (the Register).

What the complaint is about

2. You invested £5,000 in Austrian firm X on 13 June 2018 and a further £6,500 on 13 August 2018. Before making your investment, you checked the Financial Services Register and noted firm X was authorised. You later discovered the firm you had invested in was fraudulent, and you lost your investment. You also discovered that the Register entry for this firm was incorrect. You would like the FCA to compensate you for your losses on the basis that you relied on the FCA register as proof the firm was legitimate when you made your investment.

What the regulator decided

3. The FCA did not uphold your complaint. It acknowledged that the Register entry for the firm was wrong, but it said that:
 - a. Although at the time you made your first investment the FCA had had some information suggesting that the firm might have been cloned, 'it is unlikely the FCA would have been able to act on the information before you say you checked the FS Register and made the first investment'. This was because the FCA has to go through a process of checking before it can issue an alert. It subsequently posted a notice on 13 July 2018 saying the firm had been cloned.
 - b. With the knowledge that the firm was Austrian, you should have checked with the Austrian Regulator before investing.

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- c. 'There is also a disclaimer on the FS Register which states that while we try to ensure the information on the site is correct, the FCA does not give any express or implied warranty as to its accuracy. As such, we do not accept liability for any error or omission".....'

Why you are unhappy with the regulator's decision

4. You feel the FCA ought to be held responsible for the errors and omissions on the Register.

Preliminary points

5. Firm X, in which you invested, has been the subject of another complaint report which I published on my website <https://frccommissioner.org.uk/wp-content/uploads/FCA00503-FR-for-publication-08-04-19.pdf> and to which the FCA responded as follows <https://www.fca.org.uk/publication/corporate/response-complaints-commissioner-report-fca00503.pdf>.

My analysis

6. In report FCA00503, I outlined the background to firm X's registration. These are that
 - a. Firm X was licensed in Austria in 2001;
 - b. In 2005, the Bundesministerium Für Wirtschaft Und Arbeit (then the Austrian regulator) notified the Financial Services Authority (FSA – then the UK regulator) of Firm X's intention to passport into the UK;
 - c. In 2005, the FSA registered the passport request, but reversed the name order of the firm;
 - d. In August 2006, the Austrian authorities notified the FSA that Firm X's passport should be revoked;
 - e. In August 2006, instead of de-registering Firm X, the FSA registered the firm under its correct title (thereby creating *two* registered passport firms when there should have been none);
 - f. In June 2018, concerns about cloning begin to emerge;

- g. In July 2018, an alert was issued by the FCA, and the second firm X was deregistered;
 - h. In February 2019, when the duplicate entry was identified, that too was deregistered.
7. There were therefore two serious errors made by the FSA: firm X was registered under the wrong name in 2005; and in 2006, instead of being deregistered, a second entry (under the correct name) was made.
 8. During my investigation in case FCA00503 I reviewed the FCA records which show the dates of the alerts connected to firm X and the action the FCA took with respect to these. Like the FCA, I am required to respect confidentiality. This means that sometimes I cannot report fully on the confidential material to which I have access. However, as part of the Complaints Scheme, I have access to all the FCA's complaints papers, including confidential material. Sometimes this means that all I can say to complainants is that, having studied the confidential material, I am satisfied that the FCA has (or has not) responded reasonably – but I am unable to give further details. This can be frustrating for complainants, but it is better that I am able to see the confidential material. On occasions, I have persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible.
 9. In your case, I am satisfied on balance that the FCA's complaint response - that due to timings it was unlikely that the FCA would have had an opportunity to issue an alert on the Register before you made your first investment on 13 June 2018 - was reasonable under the circumstances.
 10. Matters in this case are complicated. Ultimately, you have lost your investment to fraud. However, it appears the failures of the regulator have been a facilitator to the criminal activity, and contributed to your decision to make your investment.
 11. The FCA register entry for this firm was seriously inaccurate. Although firm X was shown as being authorised for insurance services and products only, and you invested in deposit accounts, if it had been deregistered in 2006, you might not have lost your investment in the way you did.
 12. I agree with the FCA's point that 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.

13. Against that, consumers are entitled to expect that the register will be kept competently.
14. While I accept 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 twelve years showed a deauthorised Austrian company as registered despite having information that it should not be. Although the FCA cannot be held responsible for the criminal behaviour of others, the FSA's serious failings contributed to your financial loss.
15. While I do not consider that the FCA should be held responsible for the totality of your loss, my preliminary view is that it contributed to your loss of your first investment into firm X on 13 June 2018.
16. The FCA published a warning on its website about firm X on 3 July 2018. Therefore, I do not think it can be responsible for the second investment you made to the firm in August 2018.

My decision

17. Since these matters came to light in 2018, the FCA has undertaken a programme of work to review and correct Register entries for passported firms, which I welcome. These improvements, however, have come too late for you.
18. Whilst a clone firm was the principal cause of your loss, it was able to take advantage of the FCA's seriously inaccurate Register. The FCA accepts that there were errors on the Register in relation to this firm.
19. For the reasons above, I have therefore recommended that the FCA should make you an offer of an ex gratia payment of £2,500 to cover 50% of your losses from the first investment you made on 13 June 2018. The FCA has rejected my recommendation on two grounds. First, it has reiterated the argument it made in paragraph 24 of report FCA00503. Second, it has referred to the fact that in an explanatory letter you sent the FCA on 4 February 2020, you stated that you were aware that the firm was registered on the Austrian register, when that was

not the case. The FCA's view is that you had undertaken your due diligence, but had failed to ascertain that the company was not listed on the Austrian FS register.

20. I have also recommended the FCA should offer you an ex gratia payment of £100 for its delay in dealing with your complaint, which the FCA has accepted. You first submitted your complaint on 2 August 2019. You received a decision on 31 March 2020. This is not the first time I have commented on the issue of delay and I continue to monitor the situation.

Antony Townsend
Complaints Commissioner
29 May 2020