

4 December 2019

Final report by the Complaints Commissioner**Complaint number FCA00650***The complaint*

1. You complained to me on 22 September 2019 that, although the FCA had upheld your complaint against it, you had lost a significant sum of money because the Financial Services Register had not been properly updated.

What the complaint is about

2. The facts of this matter are not in dispute. This is what happened:
 - a. In November 2015, the Austrian regulator of financial services told the FCA that firm X – an investment firm based in Austria, but with permission to operate in the United Kingdom under European Union ‘passporting’ arrangements – wanted to cancel its passport. Although the FCA noted this, a clerical error meant that the cancellation was not shown on the Financial Services Register;
 - b. At some point after this, firm X’s identity was cloned by a fraudulent firm (firm Y);
 - c. In September 2018, you were looking to make an investment and were approached by firm Y, using firm X’s identity. You checked the FCA Register, which showed that the firm X was an Austrian firm passported into the UK and authorised to undertake insurance-related activities. Although you noted that authorisation was not for investments, you decided to rely upon the firm’s FCA passporting authorisation to make investments on 18, 20 and 21 September 2018;
 - d. Co-incidentally, on 21 September 2018, the FCA received its first notification that there were suspicions that firm X had been cloned. More notifications of

suspicious were received in October and November, although none of these was assessed until January 2019;

- e. On 30 November 2018, after you had become suspicious about firm Y because it had missed making payments due to you, you contacted the FCA to raise your concerns. These concerns were sent to FCA Supervision on 3 December, the 2015 error was identified, and on 18 December the Register was corrected.

What the regulator decided

3. The FCA upheld your complaint. In its decision letter, it said:

Had the FCA processed the notification correctly, the Register status would not have shown that the firm was “EEA Authorised”, and this may have led you to make a different choice for your investment. For not correcting the Register, as the FCA should have done when notified by the Austrian regulator, I am upholding your complaint.

4. However, the FCA went on to say that the fact that you had identified that the firm was authorised for insurance-related activities only should have alerted you to make further inquiries. It also drew your attention to the material on the Register explaining that consumers could make further inquiries of a firm’s home state, and to the disclaimer that *while the FCA tries to ensure that the information on the Register is correct, the FCA does not give any express or implied warranty as to its accuracy.*
5. The FCA noted that the first notification of suspicions about the cloned firm did not arrive until the day on which you made your final investment.
6. The FCA concluded that

I don’t believe that the FCA should be held responsible for the losses incurred. While the FCA error was unhelpful, of itself it ought not to have been sufficient in terms of undertaking thorough due diligence before investing. It was the dishonest actions of this clone firm that was the direct cause of your loss. It follows that I do not believe a compensatory payment would be appropriate in this case.

7. Nonetheless, the FCA apologised to you for the error, and offered you £150 for the delay in dealing with your complaint.

Why you are unhappy with the regulator's decision

8. I infer from your email that you remain unhappy that you have suffered a substantial financial loss and that, although the FCA has accepted that you might have made a different choice had it not made an error, you have received no compensation.

My analysis

9. The FCA undertook a thorough investigation into your complaint, and was candid about its error. That is to be applauded.
10. The question which I have to consider is whether to recommend any compensation for your financial loss.
11. In favour of recommending a compensatory payment are the following points:
 - a. The FCA made an error;
 - b. The fact that there was a dormant firm on the register increased the chance that a cloned firm would remain undetected for some time (the FCA have pointed out, correctly, that live firms are also cloned, so even if the register is completely accurate and up to date, cloning can still occur);
 - c. The FCA's error also led you to believe that you were dealing with a reputable firm (although not a firm authorised to undertake non-insurance activities);
 - d. This is not the only example of FCA Register errors leading to problems;
 - e. The fact that the other reports of suspicious activity by firm Y, received in September, October and November 2018, were not assessed until January 2019 is a matter of concern.
12. Against making a compensatory payment are the following points:
 - a. This particular error was a simple clerical oversight – there is no suggestion (as there has been in some other similar complaints I have considered) that a catalogue of errors, or ignoring information, or long delays in processing information, led to your loss;

- b. When you drew attention to your concerns, the FCA acted promptly to identify the error, and have the register amended;
- c. As you have accepted, it was clear from the register that firm X was authorised only for insurance-related business. You chose not to pursue this point;
- d. The FCA register states clearly that it does not accept liability for errors;
- e. Parliament has given the FCA immunity from being sued in most circumstances.

My decision

13. This case is different from two other recent cases - <http://frccommissioner.org.uk/wp-content/uploads/FCA00459-FR-18-06-18-publication-version.pdf> and <http://frccommissioner.org.uk/wp-content/uploads/FCA00503-FR-for-publication-08-04-19.pdf> - in which I recommended significant compensation for financial loss. In your case, there was a single, unfortunate, error. Nonetheless, this error gave you a degree of false comfort, and increased the risk that cloning would remain undetected.
14. In your response to my preliminary report, you have urged me to consider the similarities between those two recent cases and your own. I have done so, but it remains my view that your complaint is readily distinguishable,
15. The principal responsibility for what has happened rests with the fraudsters. They are the direct cause of your loss.
16. You are also significantly responsible, because you did not follow up on the fact that the firm's recorded authorisation did not cover investment activities.
17. However, the FCA's clerical error increased the risk that the cloning of the firm would remain undetected, without which none of this would have happened.
18. In all the circumstances, I **recommend** that the FCA should pay you £2,500 to recognise its contribution to the set of circumstances in which you lost your money. This is, of course, only a small proportion of the £50,000 which you lost, but I consider that it is appropriate given the factors which I have explained above.

19. The FCA has indicated to me that it is willing to consider offering an ex gratia payment in recognition of its error, but on the clear understanding that this is because it made an error, not because it is responsible for your losses.
20. The FCA has also drawn my attention to the programme of work it is undertaking, partly in response to my earlier reports, to improve the accuracy of the register. This includes work to ensure the accuracy of entries relating to passported firms. I welcome this initiative.

Antony Townsend
Complaints Commissioner
4 December 2019