

12 August 2020

Final report by the Complaints Commissioner

Complaint number FCA00686

The complaint

1. You have asked me to investigate a complaint about the FCA Financial Services Register (the Register).

What the complaint is about

2. The FCA summarised your complaint as follows:

'You are unhappy that you found out that the FCA allegedly had information about firm X, an Austrian firm, from 12 years ago which suggested the information displayed on the FS Register was wrong. If the information on the Register had been correct, the firm wouldn't be listed as a passporting entity. You were also unhappy that during a call with the Supervision Hub, you were not informed there was a wider issue with a number of EEA passporting firms from Austria and the Czech Republic.'

What the regulator decided

3. The FCA did not uphold your complaint. Regarding Part One, it explained that firm X was an Austrian firm which had been registered in 2005 under the European Economic Area (EEA) passporting arrangements, and set out what those arrangements are.
4. The FCA explained that at some point a clone firm appropriated the identity of firm X. You lost your investment to fraudsters who were impersonating a genuine firm, and the FCA said it cannot be responsible for your losses.
5. Under Part Two of your complaint, the FCA said that the associate at the FCA Customer Contact Centre you spoke to in July 2019 explained that the firm had

cancelled their passporting permissions, and that you would need to contact the Austrian regulator directly to confirm whether the company was still trading.

Why you are unhappy with the regulator's decision

6. You believe that the firm you invested in is the same one I discussed in my published report FCA00503, and think the FCA is liable for your loss because it duplicated an entry for the firm on the Register rather than cancelling the firm's permissions in 2006. (Element one)
7. You have also alerted me to a number of inconsistencies in the FCA decision letter. (Element two)

My analysis

Element One

8. Firm X, in which you thought you had invested in August 2018, was a genuine Austrian firm which had been given an EEA inward passport to provide certain financial services in the UK. This firm is not the same firm which I described in FCA00503.
9. The FCA does not dispute that that you may have checked the firm's name and reference number on its website and found the firm to be registered. Indeed, it was showing on the register until 20 September 2018.
10. The FCA began to receive reports about unauthorised business activity relating to firm X in July and August 2018, and began an investigation into the activities of this firm, in conjunction with a review of other Austrian firms which had a similar EEA inward passporting licence. It issued a clone alert on 11 September 2018.
11. I appreciate that by the time the FCA took the steps above, you had already been defrauded by the clone firm X. I have reviewed the FCA file and consider that the steps it took in response to information about firm X were reasonable. Unfortunately, the alert it issued on the Register came too late to stop you making your investment in August 2018, but that does not mean that the FCA was responsible for your loss. You have asked to see the communications between the Austrian regulator and the FCA regarding this firm. You have told me that you asked the FCA but it did not address your question. I am afraid that

the question of whether or not to release any further information to you is a matter for the FCA to decide.

12. You feel the FCA should have issued an alert to potential consumers on the FS Register against firm X when they first became aware of problems with the firm, as had they done so you might not have invested with this firm. The FCA does not usually make public the fact that it is investigating a firm or individual at an early stage. This is because it has to check that any information it has received is correct. Premature action may damage a legitimate firm or individual. In this case, the FCA explained it is reliant on other parties. It said this includes having to complete a Data Protection waiver request which needs to be agreed by the bank who hold the scammer's account. This can take several weeks in practice. I consider that the steps the FCA took in response to information about firm X were reasonable.
13. In conclusion, firm X was a genuinely registered firm which was cloned by fraudsters who impersonated the legitimate firm in order to defraud investors such as you. I am very sorry to hear about your losses, but you lost your investment to fraud, and the FCA cannot be held responsible for that.

Element Two

14. You have pointed out to me that the FCA decision letter said you had made two investments with firm X, whereas you had only made one, in August 2018. I note this point, but it does not affect my view of your complaint.
15. The FCA decision letter says you told the FCA you contacted the Austrian Regulator and did not wait for a response before you invested. You have said to me that you approached the Austrian regulator and it had told you that it would contact you only if there was a problem with the firm. As it did not contact you, you felt it was safe to invest with firm X. I understand your point, but it does affect my view that the FCA cannot be held responsible for your losses.

My decision

16. For the reasons given above, I do not uphold element one of your complaint. I am sorry to hear about your losses, but the FCA is not responsible for this.

17. On element two, the FCA decision letter contained minor inaccuracies but while that is regrettable, I do not think it had any effect upon the handling of your complaint. The FCA has acknowledged these inconsistencies.
18. The FCA offered you an ex gratia payment of £100 for delays in dealing with your complaint, which you have accepted.

Antony Townsend
Complaints Commissioner
12 August 2020