

26 June 2020

Final report by the Complaints Commissioner

Complaint number FCA00738

The complaint

1. On 12 May you asked me to investigate a complaint against the Financial Conduct Authority (FCA) which the FCA had not upheld.

What the complaint is about

2. In its decision letter, the FCA described your complaint as follows:

You say that the fact that [firm X] was listed on the Financial Services Register as an FCA authorised firm led you to believe that your investment with the firm was covered by the Financial Services Compensation Scheme (FSCS). You have lost all of part of your investment of £55,000 and feel that you were completely misled by the information on the Register and by being encouraged to check online by the FCA's recorded message.

What the regulator decided

3. The FCA said:

You appear to have received accurate and consistent information and guidance from the Supervision Hub during your calls to them in 2018 and 2019. From the outset, associates clearly explained that the investment you had made was probably unregulated, and therefore unlikely to be covered by the FSCS.

It is unfortunate that you did not speak to the Hub before making your investment, as they would have been able to give you guidance on whether particular products and services were likely to be covered by the FSCS and Financial Ombudsman Service (FOS). However, I do not believe that the FCA can be held liable for advising customers who are waiting for their calls to be

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answered that information about whether a firm is authorised can be found on the Register. This is factually correct and may be useful to those whose needs can be met by consulting the Register, without any additional guidance.

In the light of these facts, I do not uphold your complaint.

Why you are unhappy with the regulator's decision

4. In your email to me, you say:

*When checking the FCA's website, we had not appreciated that where it stated "Authorised", this only meant for ancillary activities, we believed it to mean that [firm X] was authorised for investments and therefore covered by the FSCS. From being guided by the recorded message and reading the information, we were under the misapprehension that a firm just needed to be authorised and it would be covered by the Compensation Scheme. The reason for our call to the FCA in April 2018 was that we had suspicions [firm X] was having difficulties and we wanted to reassure ourselves that we would be covered in the event of [firm X] becoming bankrupt. Obviously, we were shocked to find out that [firm X] was **not** covered by the FSCS but by then it was far too late. The FCA Associate had suggested we call FSCS to check but that seemed somewhat unnecessary as we felt the information given by him must be accurate. However, had we called the FSCS, judging by our conversations with them in 2019, they would most likely have said the firm was authorised and therefore covered by their Compensation Scheme. Why did the Associate feel it was necessary for us to call the FSCS? As we understand, the FCA are the ones who authorise a firm and should therefore be able to confirm this information for themselves.*

Just to clarify our thinking, when we looked on the FCA website under Status it showed [firm X] as "Authorised" and the pop-up stated that "Firms must be authorised to provide regulated products and services, including banking, investments ...". As we thought our money to be an investment with an "authorised firm" and the website appeared to confirm our thinking, we were under the impression that our investment was safe in the event of any failure of [firm X].

Preliminary points

5. My role is to consider the actions and/or omissions of the FCA. The totality of your complaint includes complaints about information you were given by the FSCS, but I cannot consider that aspect.

My analysis

6. Your complaint arises from the complexity of the regulatory system for financial services, and is of a kind which I see fairly frequently. The complications are:
 - a. Some financial services activities are regulated and some are not (and the products offered as a result of those activities may themselves be complex);
 - b. Regulated products may be protected by the FSCS, depending on the circumstances;
 - c. Firms which undertake regulated activities require authorisation from the FCA, but may undertake a mixture of regulated and unregulated activities;
 - d. The result is that the fact that a firm is authorised by the FCA does not mean that all its products are protected by compensation arrangements.
7. This complexity makes it hard to provide clear and simple information to financial services clients. In other complaints, I have drawn attention to the fact that the FCA's Financial Services Register has not been as user-friendly as it might have been. The FCA, partly in response to my suggestions, has been undertaking considerable work to make the Register easier to navigate, which I welcome, although I am afraid that that is of no assistance to you.
8. Your email (quoted in paragraph 4) puts the position very clearly. You telephoned the FCA on several occasions without getting through to a member of staff and, prompted by a recorded message, consulted the on-line register. You have provided me with a screenshot of the register entry, which includes the words 'Firms must be authorised to provide regulated products and services, including.....investments', and shows the firm's status as 'Authorised'. Seeing that the firm in which you were proposing to invest was authorised, you proceeded to invest on the mistaken assumption that that meant that your investment was protected. Unfortunately, that was not the case.

9. I think that the mistake you made was an understandable one, but it was a mistake. You were making a significant investment, and you proceeded without checking the details of compensation arrangements, although the FCA had suggested that you should do so. While I think that the Register could have included additional warnings, the information which it provided was accurate, and I do not think that the FCA should be considered responsible for any of your losses, and for that reason I do not recommend that it should make a compensatory payment. The FCA provided you with suggestions for how you might attempt to recover your losses, which I imagine you have considered.
10. I know that you consider that, although you were advised by the FCA to speak to the FSCS before investing, you should not have had to do so – and indeed, you did not do so. I recognise that the variety of organisations involved in this area is complicated, but the fact remains that it is the FSCS’s function to determine questions of eligibility for compensation, and I think that the advice given to you by the FCA was correct.
11. You also asked me to consider the delays in the FCA’s handling of your complaint. You said ‘We initially instigated our complaint in May 2019 but it took until March 2020 for them to reach their decision. This unanticipated amount of time caused us more anxiety, as we simply wanted the matter concluded as soon as possible and not dragged out for almost a year.’
12. The FCA did apologise for the ‘long delay’, and explained to you over the course of the year that it was dealing with an unprecedented caseload. I have drawn attention to the problems of long delays in FCA complaints handling in other complaints reports, and will be doing so in the report to be laid before Parliament in the summer.
13. In your case, no significant work was undertaken on your complaint between May 2019 and February 2020. In the circumstances, **I recommend** that the FCA offer you an ex gratia payment of £100 to reflect the additional stress that the delay caused you, and I am pleased to say that the FCA has accepted this.

My decision

14. For the reasons I have given, I do not uphold your complaint, but **I recommend** that the FCA offer you £100 for the distress and inconvenience caused by the

delay in dealing with your complaint – a recommendation which the FCA has accepted.

Antony Townsend
Complaints Commissioner
26 June 2020