

19 August 2021

Final report by the Complaints Commissioner**Complaint number Case Ref: FCA00939***The complaint*

1. On 1 June 2021 you asked me to review your complaint about the FCA's investigation into your complaint. My preliminary report was issued on 22 July 2021. Both you and the FCA have now provided your responses to my preliminary review.

What the complaint is about

2. The FCA summarised your complaint as follows:

You allege there was negligence on the part of the FCA as the Register showed Firm X as an active company until 16 January 2020, when the original company was wound up in 2018. You claim that you only invested with what turned out to be a cloned company after checking the FCA Register in June 2019 which showed the firm were on the Register and still active, if you had known there was no protection you would not have invested.

The remedy you are seeking is financial compensation as you are suffering financial hardship due to your losses.

What the regulator decided

3. The FCA did not uphold your complaint. It set out that it believed it was the actions of a third party that were to blame for your loss. It acknowledged that this does not lessen the distress you have suffered.
4. The FCA also set out that at the time you checked the Register and subsequently invested the FCA were not aware the entry on the Register was problematic. Once the FCA became aware of an issue with the firm and the

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Register entry it was removed, albeit after a delay. It said that this did not mean that the FCA was liable for the financial losses you have suffered.

5. The FCA apologised for the Supervision Hub giving you incorrect information.
6. For the delay in investigating your complaint the FCA offered you an ex gratia payment of £50.

Why you are unhappy with the regulator's decision

7. The FCA was dismissive of you when you contacted them in October 2020 and it provided you with incorrect advice. *Element One*
8. The FCA has failed to update its scam companies register. *Element Two*
9. You feel that the FCA's failure to update its Register has resulted in you being scammed out of your money and facing financial hardship. *Element Three*
10. You felt that the FCA took too long to investigate your complaint. *Element Four*

My analysis

Element One: The FCA was dismissive of you when you contacted them in October 2020 and it provided you with incorrect advice

11. In or around May to June 2019 you searched for Firm X, an EEA based firm passported in from Germany on the FCA's register. Your search showed that Firm X was on the FCA register and you took this into account when deciding to invest with Firm X.
12. You later found out that Firm X had gone into administration in 2017 and was wound up in 2018.
13. On 12 October 2020 you contacted the FCA about your concerns about Firm X. You spoke with the Supervision Hub and were advised that they were a German company and told to contact the German Regulator, Bafin, which you state you did but did not receive a response from Bafin.
14. The Supervision Hub also directed you to contact Action Fraud. You were not able to register your matter with Action Fraud because you live in Scotland and Action Fraud only covers cases for consumers in England and Wales.

15. You felt the Supervision Hub had been dismissive of your matter and that led you to make a formal complaint against the FCA on 4 November 2020, they did not finalise your complaint until 1 April 2021.

Incorrect referrals

16. I have reviewed the information you have provided and the FCA file. I can see that it appears from the information reviewed that the FCA did try to assist you with your concerns about the firm by referring you to organisations who were more appropriately placed to assist you, but unfortunately these were incorrect referrals.
17. I do find it concerning that the Supervision Hub did not obtain enough information from you and about your complaint to provide you with referrals to the correct organisation in Scotland to investigate fraud, being Police Scotland.
18. Also, whilst this has no bearing on the outcome of your complaint, I note that you were directed to contact the German regulator Bafin, this was an incorrect referral. There is more than one German regulator for financial services that each deal with particular sectors and the one that considers matters relating to the Insurance Distribution Directive (IDD) is Deutscher Industrie- und Handelskammertag (DIHK) and I have noted in the FCA file that you should have been directed to contact DIHK.
19. On this basis I uphold the aspect of your complaint that you were wrongly advised by the FCA Supervision hub and I am pleased that the FCA apologised for this error. I am pleased to note that the FCA have set out to me that they are taking steps to ensure that its Supervision Hub directs Scottish complainants to Police Scotland for fraud matters in future. I would also **recommend** that the FCA should review the processes of its Supervision Hub and consider what steps it could take to improve the quality and accuracy of the referrals it provides to complainants for complaints about firms that are registered in different countries, so that it does not provide incorrect referrals in future. I am pleased that the FCA has advised in its response to my preliminary review that it has accepted this recommendation and passed onto the area's involved and actions agreed to address this issue.

Current issues with the FCA Register

20. Whilst conducting my review of your complaint I visited the FCA Register and noted that it had been updated to show that Firm X was no longer authorised. However, as I proceeded to review the page about Firm X, I identified the following issues on the page that I consider could be confusing to consumers:

- Firstly, the 'Address' for Firm X is still listed, this may lead consumers to think that they can still contact Firm X at this address. This is not the case as Firm X was wound up in 2018. If a firm has been wound up it is misleading to continue to provide the address for the firm, because the address will no longer be active or of any use to the consumer. I note that the address is also detailed in the 'Complain to the Firm' section.
- Secondly, under the 'Status' of the firm the Register sets out the type of service provided by Firm X, there is no longer any indication what permissions Firm X had previously been given to carry out in the UK. In its decision letter to you the FCA considered this was relevant information to set out to you because the permissions that Firm X had in the UK and had been listed on the Register were in relation to insurance distribution or reinsurance distribution and not investment permission. I think this information is still relevant to consumers searching for firms and consider that this should still be reflected in the listing for Firm X.
- Thirdly, under the 'Trading Names' section the Register it lists Firm X name and lists that is registered. This clearly contradicts the status at the top of Firm X's listing on the Register which states that it is no longer authorised in the UK. I feel this would be confusing to consumers.
- Fourthly, under the 'If you have a complaint about a firm' heading on Firm X's listing it states that if you are concerned that you have been scammed to contact the FCA contact centre and Action Fraud. This has clearly not been updated to reflect the requirement that referral for Scottish consumers should be directed to Police Scotland.
- Finally, there is no indication on the page that a consumer should contact Firm X's home country regulator (or that regulators contact details) to lodge a complaint about the Firm. I feel that this is relevant information that should be provided for the EEA passported firms.

21. In view of these issues I have identified, I further recommend that the FCA revisit its website, to update where it sets out that all consumers should contact Action Fraud, when it is clear that some UK consumers, such as those living in Scotland, are not eligible to do so. It should also look at removing contact detail for firms which have been wound up or updating it to list the relevant regulator from the home country. Finally, for all EEA passported firms it should look to clearly explain to consumer's that complaints about these firms should be directed to the home country regulator and that it should endeavour to provide the regulators contact details. I am pleased that the FCA has advised in its response to my preliminary review that it has accepted this recommendation and passed onto the area's involved and actions agreed to address this issue.

Your complaint about the FCA Registers

Element Two - Scam Warning List

22. My review of the FCA's files shows that it first received report about a potential clone firm using the name of the Firm in 2019. The report came from an overseas customer and the information was logged as intelligence. In July 2019 further reports about the clone firm with the same name as Firm X were reported and at this time the details were passed to the Unauthorised Business Department (UBD) to act.
23. Whilst it had received these reports, they did not relate to UK consumers and the website for the firm did not appear to be active, so the information did not result in the company being listed as a scam alert.
24. Whilst I acknowledge that it would be preferable for the FCA to investigate every report of potential fraud and cloning, I recognise that this is not practical. Given at the time you consulted the Register the FCA had only received one report relating to the cloned Firm X from an overseas complainant, I do not consider that it was unreasonable that the FCA did not issue a consumer scam alert and had in the meantime logged the initial report as intelligence on its system. The later reports about the company were not received until after the time that you had already consulted the register about Firm X and made your decision to invest, so even if these had been investigated and later reported I do not consider this would have altered your position.

25. You have noted that the FCA have still not registered the clone Firm X on its scam warning list. The FCA scam warning list provides warnings to consumers about active entities that are cloning the details of currently regulated firms to scam UK consumers. Firm X has ceased trading and is not registered as a passported entity on the FCA's register. Also, as the FCA advised, the website that clone Firm X had used to scam consumers is no longer active, and therefore is not a current threat to consumers. Consequently, the FCA has not listed clone Firm X on its scam warning list. I consider that this is an appropriate position. Unfortunately, it is not practical for the FCA to investigate and list every scam that it receives from overseas consumers and about firms that are not on its register, or about clone firms which appear to have ceased the scam activities from the known website.

Element Three - Financial Service Register

26. The FCA are responsible for registering firms acting in the UK. Under the European Economic Agreement (**EEA**) there is an agreement to provide EEA firms with passports to register on the FS register for certain services. The information about active firms is provided by the home nations (in your case Germany) and the FCA then host these firms on its register. This system relies on the home nations providing regular up to date data about the firms in its countries.
27. Unfortunately, I am aware that this matter along with others has identified to the FCA that a number of home country regulators under the EEA passporting system had not effectively provided updates about the status of passported companies from the home countries which resulted in the details on the FCA site being out of date. Consequently, my enquiries have shown that the out of date information was not due to a failure by the FCA but because the German regulator had failed to inform the FCA.
28. I am pleased to see that once the issue about the home country regulators failing to update EEA passported firm's status was identified, the FCA took steps to consolidate the records on its Register and ensure that they are up to date. This demonstrates to me that the FCA in this case have self-regulated its processes and having identified an issue with its role in providing a register it has taken

steps to rectify the issues. I welcome this but I feel there is more work to be done. As I have already set out above, the register currently shows that Firm X is not authorised in the UK, but in the same listing, under the 'trading names' section it states Firm X's name and that its status is 'registered'. This may be confusing to users of the Register and I recommend the FCA revisit the website to review this matter. I will observe with interest to see if these steps taken by the FCA have resolved the issue of EEA passported firm's details being updated regularly and hope that no future complaints relating to this are received by my office. On a related point, with the UK having now left the European Union at the start of this year, I consider that there could be changes to the EEA passporting firm system and I would request that the FCA keep my office updated of any such developments in relation to the steps that will be taken to minimise the impact to consumers seeking information about overseas firms and regulators.

29. With regards to the delay in updating the register, I do feel it was disappointing that there was a two month delay once the FCA was informed by the German Regulator that Firm X's status needed to be updated in November 2019, however this delay in updating the records occurred after you had made your investment with the clone Firm X and would not have altered your position.

Element four – Delay in investigating your complaint

30. I am pleased that the FCA has acknowledged the delay in responding to your complaint and I agree that the ex gratia payment of £50 was appropriate in these circumstances.

My decision

31. While I know that this will disappoint you, for the reasons above it is my final decision that I will not investigate your complaint further.
32. I am pleased that the FCA has acknowledged the delay in responding to your complaint and I agree that the ex gratia payment of £50 was appropriate in these circumstances.
33. As set out above I have **recommended** that the FCA should review the processes of its Supervision Hub and consider what steps it could take to improve the quality and accuracy of the referrals to the relevant fraud investigation bodies (Action

Fraud and Police Scotland) and to regulators in different EEA countries, so that it does not provide incorrect referrals in future.

34. Also, above, I have **recommended** that the FCA revisit the information set out on its Register about EEA passported firms and about firms that have ceased trading.

35. I am pleased that the FCA has advised in its response to my preliminary review that it has accepted these recommendations and passed onto the area's involved and actions agreed to address this issues.

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Complaints Commissioner

19 August 2021