

30 May 2024

Final report by the Complaints Commissioner**Complaint number 202300237***The complaint*

1. On 18 June 2023, you asked my office to review a complaint about the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

“You invested in an investment scheme, which has now gone into administration, called G in 2018 after it was introduced to you by Group M.

It is your belief that the partners of group M ... provided investors with a false investment proposition. As part of marketing the investment, Individual X stated that Individual P was FCA registered, and that individual Y would soon be registered. You feel that this false information and the subsequent failure of the investment scheme indicates that it was fraudulent.

Regarding G director F gathered money into a UK bank account operated by Bank [A] without query or interrogation of source of funds or destination and use of those funds. You are concerned that the agents raising funds appear to have been FCA regulated and yet were subject to no oversight by the FCA.

To resolve your complaint, you would like to be fully compensated for your losses and for the FCA to investigate the actions and conduct of individuals X, P, and F and Group M and G and their bankers.”

What the regulator decided

3. The FCA did not investigate your complaint. It explained that groups M and G had never been authorised by the FCA, that their activity of issuing loan notes was also not regulated by the FCA, and that in relation to its promotion of relevant instruments the groups relied on exemptions in the financial promotions legislation. One such exemption is Article 48 of the Financial Promotions Order 2005, which allows a firm to market its loan notes to a person who the communicator believes on reasonable grounds to be a certified high net worth individual, without either being an FCA authorised firm or having had approval from another FCA authorised firm.
4. Other exemptions which group G appeared to have relied on are Article 50 and Article 50(A) of the Financial Promotions Order, which allow a firm to market its loan notes to certified and self-certified sophisticated investors.
5. The FCA confirmed that individuals P and Y had been briefly authorised by the FCA but for entirely different companies and not the ones which are the subject of your complaint. The FCA has said that, as the above individuals are not authorised by the FCA or were not authorised at the time of your investment and were not carrying out any regulated activities, they do not have the power to investigate them.

Why you are unhappy with the regulator's decision

6. You referred your complaint to me on 18 June 2023 in an email which had the FCA decision letter attached. You asked my office to : 'please see the attached letter'

My analysis

7. I have reviewed the FCA decision as you asked and I find that the FCA is right not to investigate your complaint. Your complaint relates to firms which were not conducting regulated activities and which are therefore not and have never been authorised by the FCA. The FCA is right to say that there is nothing it can do under the Complaints Scheme in the circumstances, and neither can I.

8. For the reason above, I agree with the FCA that it was right not to investigate your complaint, and I do not uphold your complaint that it ought to have done so. It follows that I do not think the FCA is liable for your losses.
9. You also complained that individual (s) had falsely represented their own, personal, authorised status. I asked what, if any, action the FCA took or could have taken in this regard and I invited them to comment (subject, of course, to confidentiality requirements). The FCA has replied that this information had been provided, it would have been referred to its unauthorised business division UBD for assessment (as it is not a matter which the FCA considers under the would fall within the Complaints Scheme).
10. You have raised an additional matter: you say G's bankers ("the banks") "accepted all of the individual deposits through their accounts, without query or interrogation of source of funds or destination and use of those funds." You query:

"the FCA's regulatory responsibilities in this regard ...[and] the conduct of the banks involved with respect to duties which they presumably have under statutory and non-statutory charters/codes/agreements etc such as the UK's Contingent Reimbursement Model Code. Are you saying that the bank has no responsibility for identifying fraud? Do they not have the capacity to access FCA records for example to identify the false claim of FCA regulation made by individuals raising funds?"

11. The FCA reviewed your complaint about the bank and said:

"We appreciate that you consider that G and M Group have acted fraudulently, and the banks they had relationships with should not have allowed investments to flow through their account. This is not something we are able to investigate under the Scheme".

And

"We would like to highlight that if you remain unhappy with how G's banking partners acted, you can complain to the banks involved directly. Should you remain dissatisfied with the banks' response, you may be able to approach the Financial Ombudsman Service (Financial Ombudsman)".

12. I do not agree with how the FCA has reviewed this element of your complaint.
13. The FCA can investigate concerns arising from information about individual complaints, even though it investigates those in the context of considering whether or not regulatory action is justified, rather than whether or not the individual requires redress. Any action the FCA may or may not take as a result of the information you provided would not lead to redress for you personally.
14. I suggest that, if you have evidence of such information being given to the banks or of wrongdoing on their part, you should outline this to the FCA Complaints Team, and it should, in turn, pass this information to the appropriate areas for their review of your allegations.
15. I am also concerned that the FCA is advising you to complain to the FOS about the bank handling of G's accounts. Whilst you are of course free to write to the banks regarding your concerns about their handling of G's accounts, ultimately the banks have no obligation to you with respect to third party accounts: it is highly unlikely it would discuss its management of their clients' accounts with you and it is not something you can complain to the FOS about as you are not a customer of the banks in question. I recommend the FCA ensures that the Complaints Team is properly trained to understand what the FOS can and cannot do before it refers complainants to it. The FCA has said it recognises that inaccurate information was provided to you regarding complaining to the FOS and accepts my recommendation to ensure training is provided to the Complaints Team on this matter.

Rachel Kent

Complaints Commissioner

30 May 2024