

9th March 2015

Dear Complainant,

Complaint against the Financial Conduct Authority
Reference Number: FCA00020

Thank you for your emails of 12th August 2014 and 14th January 2015. I am sorry for the time it has taken to complete my investigation but my office has been liaising with the Financial Conduct Authority (FCA) about this matter and unfortunately it has taken longer than we had hoped to obtain the information we had requested.

However, I have now completed my investigation and have produced my Final Decision. As the rules of the scheme under which I consider complaints can be found on our website at www.fsc.gov.uk, I shall not repeat them here.

Your complaint

From your email I understand that you are unhappy with the actions of the FCA in relation to the Growth Accelerator Scheme (GAS) which is operated by the Department for Business Innovation and Skills (BIS). Specifically, you are unhappy with:

1. the conduct of the GAS's delivery partner (Group GT), which is regulated by the FCA. You have concerns about the conduct of a number of individuals who are representing Group GT and with Group GT itself, as you believe that it has not put appropriate procedures in place to manage potential conflicts of interest.
2. the FCA's "failure to supervise them [Group GT] adequately and also respond in a timely manner when I raised my concerns over a year ago", including your concern that the "FCA appear to still be debating whether they should be regulating the Access to Finance Growth Accelerator Scheme (GAS)".

As you will be aware, the Complaints Scheme under which I operate deals with complaints against the FCA (and other financial services regulators), not complaints against financial services providers. For that reason, I can only consider the matters in paragraph 2 above, not those in paragraph 1 (though the two are, of course, closely related).

My analysis

Although the matters which you have raised relate to some complex technical issues about the activities of the GAS and the extent to which they are or are not regulated, in my view your complaint against the FCA boils down to an allegation that it failed to act adequately and/or promptly to the issues which you raised with them on three occasions.

I have obtained and reviewed the FCA's complaint file. From this it is clear that when you first contacted the FCA in March 2013 your concern was with the conduct of the GAS's delivery partner (Group GT) rather than the FCA itself. In particular, you considered that the potential conflicts of interest of some of those providing coaching under the Scheme should be investigated. The FCA's Customer Contact Centre (CCC) advised you that it could not investigate your concerns since it did not regulate the GAS, and advised you to continue to pursue the matter through your Member of Parliament.

In June 2014 you approached the FCA again, this time complaining about their apparent inaction since your first approach. You drew the FCA's attention to inquiries about the Scheme which had been made by the National Audit Office (NAO), and again urged the FCA to investigate the issue. The FCA's Complaints Team's response on 11th July 2014 essentially confirmed the earlier advice from the CCC. It stated:

“As advised by the CCC in their response (copy attached) to your email of 12 March 2013, the FCA does not regulate the scheme in question. While the FCA regulates [Group GT], this is only in respect of activities that are FCA regulated. The BIS Growth Accelerator Scheme is a scheme run by the Department for Business Innovation and Skills (BIS). This being the case, the FCA is unable to take any action regarding the activities associated with the GAS. We note that you have already approached BIS, and your MP to resolve this dispute. If this is the case, we would suggest that you may wish to seek independent legal advice to determine what avenues of recourse you may have.”

On that basis, the FCA concluded that your complaint fell outside the Complaints Scheme.

On 14th July you responded to that letter with a copy of the contract and specification between Group GT and BIS, drawing attention to the requirements in the contract for contractors to abide by all applicable laws, and suggesting that “it would be ludicrous” if FCA regulations did not apply in such circumstances.

Having reconsidered the matter, the FCA's Complaints Team wrote to you again on 11th August 2014. That letter stated that the FCA:

“would like to apologise to you because we do not feel that we have provided you with a sufficiently detailed rationale as to why your complaint was not investigated. Our decision remains the same, namely that your complaint falls outside the scope of the Complaints Scheme (the Scheme). This is because the Scheme is a means by which complaints about the actions and or inactions of the Regulators whilst carrying out their relevant functions are investigated.

The Scheme does not extend to complaints about individual firms, these types of complaints fall outside of the Scheme. Given that your complaint seems to be about Group GT, your complaint falls outside the scope of the Scheme.”

Although that letter continued to exclude your complaint from the Complaints Scheme, it went on to give what seems to me to be a helpful explanation of the fact that, in the FCA's opinion, the access to finance advice being provided under the GAS “may well be a regulated activity”, and to give you an assurance that the information you had provided had been passed on to the FCA's supervisors of Group GT for them to consider what, if any, further action was required. Finally, the FCA explained to you the limitations on what it could disclose about any action which might, or might not, be taken in relation to Group GT.

My conclusions

It may be helpful if I explain my conclusions under two headings: first, whether the FCA's regulatory response to the information which you provided was satisfactory; and second, whether the manner of its interactions with you was satisfactory.

The FCA's regulatory response

The information which you initially provided to the FCA identified a potential cause for concern with aspects of the GAS Scheme. I do not consider that that information was conclusive that there was an actual regulatory risk, and it may be that, having properly considered the matter further, the FCA would have concluded that there was at that stage insufficient evidence to merit any regulatory intervention. Such a decision would not be a matter for me to assess. However, from reviewing the papers, it seems clear to me that the FCA erred in leaping to the conclusion that there were no matters in your complaint capable of further consideration by them.

Unfortunately, the same error recurred when your June 2014 complaint was considered by the Complaints Team. Again, the fact that the GAS Scheme was administered by BIS led to the conclusion that, by definition, this placed the matter outside the FCA's jurisdiction.

It was only following your further request for a reconsideration that a more thorough analysis led to the conclusion that there were issues which might fall within the FCA's jurisdiction, and therefore the decision – explained to you in the letter of 11th August 2014 – that the matter would be passed to the FCA's supervisors for further consideration.

As I explained at the beginning of this letter, the reason for the delay in my response is that I have been awaiting further information from the FCA. The awaited information related to the nature of the FCA's enquiries into your concerns that those providing guidance on 'access to funding' may be undertaking regulated activity without being approved. Whilst it is disappointing that there was a delay in the provision of the information, I am satisfied that this delay was not as a result of FCA inaction.

I requested the additional information to satisfy myself that the regulator has considered all of the issues which you brought to its attention. I am now satisfied that it has done so, and that the current position is justifiable. However, it is clear to me that the matter could have been considered earlier had it not been for the mistaken belief that no further inquiries were possible.

I note in your response to me you have commented that "[I am] unclear as to whether or not the FCA considers that this scheme comes under their remit or not, which [you] would like clarifying, as BIS clearly specified it was required to". Unfortunately, although I can understand why you feel you should be given a straight answer it is not always possible to do this when the nature of the scheme (GAS) is to assist businesses grow which may involve the business obtaining funding.

Although the Financial Services and Markets Act (Regulated Activity) Order (as amended) makes a clear distinction between what is and what is not a regulated activity, this distinction may sometimes be down to interpretation of how the 'coach' provides the information. For example, generic information on the types of funding which may be available to a small business is not a regulated activity whereas a recommendation in relation to a specific funding could amount to a regulated activity (although the making of such a recommendation could fall outside of the provisions of the Financial Services and Markets Act (Regulated Activity) Order provisions and not amount to regulated activity).

I hope that you will appreciate that, given the nature and extent of the Scheme and the roles of the GAS coaches, it is not possible for the FCA to say categorically whether every individual GAS coach has acted in breach of the Financial Services and Markets Act (Regulated Activity) Order.

With this in mind, my view remains that the further enquiries that the FCA has been undertaking means that it has now correctly and adequately addressed the concerns that you raised with it.

The FCA's interactions with you

I turn now to the issue of the FCA's interactions with you. It follows from what I have said above that the FCA's erroneous conclusion that there was nothing which they could look into caused you to have to raise the matter with the FCA repeatedly. It may be argued that it was not until your third approach that there was sufficient information to justify further inquiries, but nonetheless I consider that the CCC's decision to reject your information as nothing to do with the FCA was a mistake. The Complaints Team's decision in its letter of 11th July to reiterate the CCC's advice was a more serious error, since this was now a matter which had been raised twice with the FCA and where there was, in my view, enough information to merit a more thorough reanalysis of whether or not further investigation was possible or necessary.

The letter of 11th July 2014 was mistaken in a second respect. It excluded your complaint from the Complaints Scheme on the grounds that it was a complaint about individual firms, whereas it was clear from the face of your complaint that you were complaining also about the actions or inactions of the FCA.

I turn now to the letter of 11th August 2014. As will be clear from what I have explained above, I consider that the conclusion to that letter in respect of the further steps being taken, and the limitations upon what the FCA could tell you, was reasonable. However, I believe that that letter was defective in two other respects.

First, it offered an apology because "we do not feel that we have provided you with a sufficiently detailed rationale as to why your complaint was not investigated". In fact, the position was that, following your third approach, the matter had been properly analysed and the FCA had concluded that it had been mistaken in believing that there were no matters capable of investigation. The problem, therefore, was not that the FCA had failed to provide you with a "sufficiently detailed rationale", but rather that it had reached a mistaken conclusion.

Second, the FCA continued to argue that your complaint was excluded from the Scheme because it was a complaint about an individual firm – but, as I have explained above in relation to the FCA letter of 11th July, that was a mistake.

Decision and recommendation

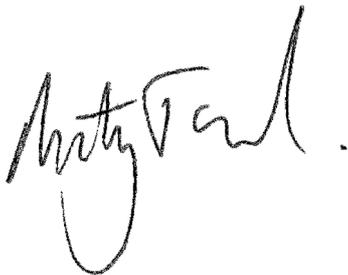
I conclude that:

- a. your complaint against the FCA is one that should be considered under the Complaints Scheme;

- b. the FCA's decision, on two occasions, that there were no matters in your complaint capable of further inquiry was mistaken, and should have been corrected earlier;
- c. the FCA's letter of 11th August 2014, while appropriately offering an apology, failed to acknowledge properly that the FCA had changed its view in response to your third approach;
- d. the FCA's letter of 11th August 2014 erroneously continued to exclude your complaint from the Scheme.

In view of this, when I issued you with my Preliminary Decision , I recommend that the FCA should make a further apology to you to reflect these failings, and that it should offer you an ex-gratia payment of £100 to reflect the inconvenience and frustration which you have suffered. However, when responding to my Preliminary Decision you stated that you "did not seek compensation from the FCA and don't want any". If that remains your position you need not, of course, accept any payment, but I nonetheless recommend that the FCA should make a further apology to you to reflect the failings I have identified above.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Antony Townsend', with a large, stylized flourish at the end.

Antony Townsend
Complaints Commissioner