

15 June 2016

Dear Complainant,

Complaint against the Financial Conduct Authority
Reference Number: FCA00169

Thank you for your correspondence dated 25th May 2016, in which you set out the details of your complaint about the Financial Conduct Authority's (FCA). I have now completed my review of the FCA's investigation into your complaint and my decision is set out below.

How the complaints scheme works

Under the complaints scheme, I can review the decisions of the FCA's Complaints Team. If I disagree with their decisions, I can recommend that the FCA should apologise to you, take other action to put things right, or make a payment.

As you can find full details of how I deal with complaints at www.fsc.gov.uk I do not intend to set them out fully below. If you need further information, or information in a special format, please contact my office at complaintscommissioner@fsc.gov.uk, or telephone 020 7562 5530, and we will do our best to help.

Your complaint

I understand your complaint to be dissatisfaction with the court action taken by the FCA against African Land, the outcome of that court action and a concern that the statute governing Collective Investment Schemes (CISs; s235 Financial Services and Markets Act 2000 – FSMA) and the FCA's guidance about these is not clear or adequate. You allege that these amount to a failure on the part of the FCA to exercise its statutory duty of care.

The FCA excluded your complaint on the grounds that it is not within the remit of the Complaint Scheme to challenge the findings of fact by a court.

My position

Having reviewed the information you have submitted to me, while I believe a more detailed explanation should have been given, I am satisfied that the FCA's decision to exclude your complaint was correct. Paragraph 3.6 of the Scheme states that the "*regulators will not investigate a complaint under the Scheme which they reasonably consider could have been, or would be more appropriately dealt with in another way (for example...by the institution of legal proceedings)*". Additionally, paragraph 6.15 states that "*any finding of fact of a court of competent jurisdiction...which has not been set aside on appeal or otherwise, shall* FCA00169

be conclusive evidence of the facts so found, and any decision of that court...shall be conclusive". As the issues you are complaining about have already been decided by a competent court, demonstrating that there is a more appropriate way of addressing them, the complaint is excluded from the Scheme on these grounds as the FCA or the Commissioner cannot override the conclusions of the court.

It is evident from the judgments in this case, both in the initial decision of the High Court (<http://www.bailii.org/ew/cases/EWHC/Ch/2014/144.html>) and that of the Court of Appeal (CA) (<http://www.bailii.org/ew/cases/EWCA/Civ/2015/284.html>) that all the relevant factors raised in this complaint have been considered, including whether African Land was a CIS from the very beginning (see paragraph 71 of the CA decision), and the alleged misguidance given to African Land by the FSA. The Supreme Court denied the defendants a further right of appeal, therefore the matters are settled.

Additionally, as the FCA did not make it clear in their final decision, I should do so here. The wording and therefore clarity, or lack thereof, of section 235 of FSMA 2000 is not a matter that falls within the remit of the FCA or the Complaints Scheme. This is because the FCA only implements legislation, as created by Parliament. If you believe that the section, or any other legislation, is ambiguous, as it was indeed confirmed to be by the judge in this case, you may wish to take this matter up with your Member of Parliament.

Finally, you requested that the FCA provides restitution to the investors in African Land. It should be noted that the FCA has a continuing High Court claim to recoup investors' money in the scheme.

Conclusion

Although I understand that you are unhappy with the FCA's decision not to investigate your complaint, I believe it was correct to do so and, as a result, I am unable to help you under the Complaints Scheme. I appreciate that you will be disappointed with my decision but hope that you will understand why I have reached it.

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