

28th November 2016

Dear Complainant

Complaint against the Financial Conduct Authority
Reference Number: FCA00220

Letter of 28 August 2016. I have completed further inquiries of the Financial conduct Authority (FCA) and have reviewed all the papers you and the regulator have sent to me.

Before finalising this decision, I invited comments from you and FCA on my preliminary decision. I have considered carefully the points that you made.

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.

Your complaint

You complained to the FCA on 30 January 2016 as follows:

‘That the FCA should pay investors compensation who had previously invested in Green Oil Plantation (GOP) as it failed to accept that GOP was a Collective Investment Scheme (CIS).’

The FCA did not uphold your complaint, and you then submitted your complaint to me for an independent review.

My findings

I have recalled the files from the FCA and reviewed the actions taken by the FCA and before that its predecessor the Financial Services Authority (FSA) in relation to GOP.

The background to this complaint is that you were an investor in GOP, a firm which was not regulated by the Financial Services Authority, which went into administration in 2013.

When you made your investment with GOP, it was public knowledge that the firm was not regulated by the Financial Services Authority (now FCA), and as such you would not have had the protection of the Financial Ombudsman Service or the Financial Services Compensation Scheme.

After GOP went into administration, you were informed by a company dealing with the affairs of GOP that the FCA had looked at the affairs of GOP in 2010 and 2013 and had apparently concluded that GOP probably fell within the definition of a collective investment scheme as defined by section 235 of the Financial Services and Markets Act (FSMA) 2000. This contrasted with the conclusion which the FSA had reached in 2010, when it had decided that GOP did not fall within the definition.

This led you to your complaint seeking compensation from the FCA. The FCA did not uphold your complaint, but said that because of confidentiality restrictions it could not provide you with further information. In my view, it is possible to give you a fuller explanation, and the FCA has agreed that I can release the following information.

Having reviewed the FCA files, I can see the FCA's Unauthorised Business Department which is responsible for dealing with firms conducting business outside of authorisation, had been in contact with GOP in 2010, and concluded that, subject to some changes which GOP were making to the scheme, including offering investors the option to leave the scheme, GOP was unlikely to fall within the definition of a collective investment scheme. For that reason, the FSA did not take further action.

GOP continued to operate until 2013 when it went into administration. Upon reviewing the firm again, the FCA formed the opinion that the firm may have been operating within the definition of a collective investment scheme. However, this is something only the courts can decide. In recent years, the courts have made several rulings, giving clearer interpretation of section 235 and what schemes fall within the definition of a CIS.

Conclusion

I have sympathy with your situation. However, you invested in a scheme which was not covered by compensation arrangements. There is no evidence that the FCA (and its predecessor the FSA) acted unreasonably with respect to GOP nor that it is liable for any losses incurred by GOP investors.

For the reasons given, I do not uphold your complaint. 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