

1 February 2017

Dear Complainant,

Complaint against the Financial Conduct Authority
Reference Number: FCA00247

Thank you for your email of 7th November 2016 about your complaint against the Financial Conduct Authority (FCA). I have now considered your complaint and I am writing to you with my final decision. In doing so, I have taken account of the comments which you have made in response to the preliminary decision which I sent to you earlier.

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.

What we have done since receiving your complaint

I have reviewed all the information you and the regulator have provided us with. I have also carefully considered your response to the preliminary decision which I sent to you and the FCA earlier this month. My decision on your complaint is explained below.

Your complaint

On 28th April 2016 you contacted the FCA by telephone to complain about an investment management company which you claimed had been trading while not authorised by the FSA (the FCA's predecessor). You also said that the FSA had been wrong subsequently to authorise the firm, and that retrospective action against the firm should have been taken.

On 27th October 2016, the FCA sent you its decision letter. It did not uphold your complaint. Although the FCA said that, because of confidentiality, it could not give you all the details, it did give you a fairly full explanation of the process which the FSA had gone through before the firm was authorised, and confirmed that a number of checks had been made. The FCA also explained its "risk-based approach" to taking decisions about authorisation, and that – because the firm was no longer authorised - the FCA could not take retrospective action even if it considered that such action was justified.

The FCA did, however, identify the fact that there was no evidence to show that the authorisation team were aware that in August 2012 – two months before the firm was authorised – a report about the firm had been received. It was possible that the authorisation team had considered that report and decided that it did not prevent authorisation taking place, but the FCA could not be certain.

The FCA concluded that, while it had sympathy with your position because of the losses you had incurred on your investment, there was no evidence that the FSA had acted unreasonably.

My conclusions

I have carefully looked at your complaint, and the FCA's papers. Unfortunately, for the reasons given by the FCA, I am not permitted by the FCA to divulge the detail of the FCA's material.

I was very sorry to learn of the losses which you had suffered. However, I agree with the FCA's conclusions. The FCA (and the FSA before it) have to operate a risk-based approach when considering authorisations and enforcement action, and there is nothing to show that the FSA or FCA acted unreasonably.

No regulatory system can provide a guarantee that investors will not be exposed to losses, and in any event, you made your investment well before the events about which you complain.

For that reason, I am afraid I cannot uphold your complaint, nor do I consider that you have a case for compensation under this complaints scheme. I have, however, recommended to the FCA that they review the system for recording whether intelligence has been taken into account when authorisation decisions are made, since that would make it easier to review future decisions, and I am pleased to say that they have undertaken to do this.

Yours sincerely,

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

Antony Townsend
Complaints Commissioner