

22 March 2017

Dear Complainant

Complaint against the Financial Conduct Authority

Our reference: FCA00282

Thank you for your email of 13 February 2017. I have completed enquiries of the FCA, and can now write to you. In reaching my final decision, I have carefully considered the points the FCA has made and that you make in your emails of 9, 13 and 20 March 2017, in which you responded to my preliminary decision, and I refer to them below.

How the complaints scheme works

Under the complaints scheme, I can review the decisions of the FCA 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 that three regulated companies, namely HM LLP, GCS and GCEN, ‘by their negligence or complicity in fraud/theft, organised advertising promotions, collection of funds from UK investors and the currency exchange of a multi-million Pound Sterling fund which they transferred to a non-FCA regulated company which had turned “belly-up”, being unable to meet its creditors, some 18 months prior to my being invited to invest in the company.’

You further stated that HMLLP and GCS had worked with ES on the project you had invested in through the latter, and which investment had not been repaid to you.

The FCA wrote to you that it had considered your complaint as follows:

‘You are unhappy with the responses you have received from the FCA in relation to complaints you have made against HM LLP, GCS and GCEN as you feel you have been ‘fobbed off’.’

The FCA said that it was ‘not upholding Element One of your complaint. The FCA have acted accordingly as they are unable to get involved with individual disputes. As explained to you previously, if you are unhappy with a financial product or service you need to complain to the firm directly. More information can be found at <https://www.fca.org.uk/consumers/how-complain>.’

The FCA went on to say that ‘I will pass on the information you have provided about the regulated firms involved to the FCA’s Supervision Division.’

You then sent your complaint to me.

You pointed out that you are dissatisfied with the way the FCA handled your complaint, and that it failed to understand the crux of your complaint, which is your wish to report three FCA regulated companies who you believe are acting negligently and/or fraudulently. You are not asking the FCA to intervene in a personal dispute between ES and you.

I have reviewed how the FCA treated the information you had provided. The FCA informed you that it would pass on details of your complaint about these companies to its Supervision Division. Because I am allowed to look at the FCA's confidential information, I requested information from the FCA to confirm that that has been done. The FCA Complaints Team informed me that it had asked the Customer Contact Centre (CCC) to pass the information to the Supervision Team, but due to human error the CCC had not done so. This is regrettable, but the matter has now been rectified.

I have made further enquiries to see whether Supervision has now dealt with the information provided. Although I cannot give you details, I am satisfied that the information has been properly considered. The Supervision Division is responsible for monitoring the conduct of regulated firms and ensuring that they comply with the FCA's rules. The FCA is a risk-based regulator and has discretion over which issues and concerns it decides to pursue. If it did decide to take any further action because of the information you have supplied, most of the actions it takes are confidential, so it is unlikely that you would receive any further information from the Supervision Division.

Conclusion

I finally turn to your question of whether or not I uphold your complaint. In order to answer this, I ought to explain that I am unable to review complaints against financial services providers, and therefore I cannot review whether HM LLP, GCEN and ES were acting negligently or fraudulently. I can only look at the actions of the FCA. You have raised concerns about the activities of these three regulated companies, and my role is to see whether any action the FCA took in response to your concerns was reasonable.

The FCA was right to explain to you that it cannot deal with individual complaints. However, even though the FCA does not deal with individual complaints between customers and financial services providers, it does use the evidence from complaints in deciding how to supervise firms and whether to launch investigations. If the FCA acts on information it receives, there are constraints on the FCA being able to provide feedback. This is because s.348 of the Financial Services and Markets Act 2000 restricts how the FCA handles confidential information. This means that, unfortunately, the FCA is not in a position to tell you what it has done with the information which you have provided.

My inquiries have shown that the Complaints Team did ask the CCC to pass on your information to the Supervision Division, but unfortunately this was not acted upon. However, I am satisfied that this has now been rectified, and that the Supervision Division has taken appropriate action. It would have been helpful if the FCA had been able to explain this to you earlier, since that might have provided you with some reassurance that your concerns were being acted upon.

For the reasons I have given, I cannot uphold your complaint, though I sympathise with the position in which you find yourself.

Finally, in order to try to prevent another instance of the error which I have described above, I have recommended to the FCA that the Complaints Team has a procedure to ensure that it has documented evidence that actions it has recommended or requested have been completed. I am pleased to say that the FCA has accepted this recommendation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Antony Townsend'.

Antony Townsend
Complaints Commissioner