

4th November 2015

Dear Complainant,

**Complaint against the Financial Conduct Authority
Reference Number: FCA00102**

Thank you for your letter of 3rd October 2015. I have now completed my review of the Financial Conduct Authority's (FCA) investigation into your complaint.

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.

You can find full details of how I deal with complaints at www.fsc.gov.uk. 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.

What we have done since receiving your complaint

We have now reviewed all the records you and the regulator have sent us. My decision on your complaint is explained below.

As the rules of the scheme under which I consider complaints can be found on our website at www.fsc.gov.uk, I do not intend to set them out fully below.

Your complaint

I understand that your concern is that the FCA's rules are effectively preventing firms from offering all consumers the pension freedoms which came into effect in April 2015. Specifically, you are unhappy that individuals holding defined benefit pension arrangements together with consumers who have pension arrangements which offer guarantees are prevented from having the same access to the entirety of their funds as consumers who hold defined contribution arrangements.

You feel that the FCA has acted inappropriately by retaining rules which do not comply with the freedoms that the Chancellor announced.

My position

In considering this case, I have reviewed the regulator's investigation records and the arguments it put forward. I have also reviewed provisions of the Pensions Schemes Act 2015 (the Pensions Act) which is the legislation which introduced the pension freedoms which has generated your complaint.

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I know that you are unhappy with the FCA's decision that it could not consider your complaint. However, having carefully considered the matter, regrettably I have to tell you that I agree with the FCA's decision that this is not something I can consider under the Complaints Scheme. The FCA was right to say that your complaint is about legislation and rules, and that these are not matters for this Scheme.

Although I am unable to consider your specific complaint about the FCA's rules, I hope the following will help clarify the overall position as I understand it. As you are aware, from 6th April 2015 the Government introduced legislation which allowed consumers who held defined contribution (or money purchase) pension schemes which did not include any guarantees to access the entirety of their pension fund as a lump sum. However, whilst the holders of defined contribution pension schemes could have this freedom, the holders of defined benefit arrangements or arrangements which offered guarantees could generally only be granted these freedoms if independent advice had been sought and the pension arrangement had been transferred to a personal defined contribution arrangement (which is something which can usually only be carried out by an authorised/approved pension transfer specialist).

Although the Pensions Act allows holders of defined benefit arrangements or arrangements which offered guarantees to access their pension funds as a lump sum, the legislation (at s48) requires the pension trustees to be satisfied that the consumer has received advice from a pension transfer specialist as to the consequences of accessing their fund. This is a requirement as, by transferring, the consumer is effectively giving up all of the guaranteed benefits attached to their pension arrangements and this could be to the consumer's long-term financial detriment.

From the information which you have provided I understand that the pension arrangements which you wish to access contain a guaranteed minimum pension and your advisers have indicated that due to the FCA's rules you are unable to access your pension. I am unable to comment upon the actual advice which your advisers have given you. However, what I can say is that the legislation, the guidance issued by the Pensions Regulator, and the FCA's rules do not prevent consumers from accessing their funds providing that certain conditions are met. Full details of the FCA's position and its rules surrounding Pension Freedoms can be found in Policy Statement 15/12 which was issued in June 2015 (<https://www.fca.org.uk/static/fca/documents/policy-statements/ps15-12.pdf>).

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