

07 November 2022

Final report by the Complaints Commissioner**Complaint number 202201163***The complaint*

1. On 11 August 2022 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. In its complaint letter the FCA described your complaint as follows:

My understanding of your complaint is that you are unhappy with the First Supervisory Notice (FSN), Second Supervisory Notice¹ (SSN) and related FCA publication: issued by the FCA in relation to Firm A advice on transfers from the British Steel pension Scheme (BSPS). You believe these documents contain inaccuracies and that you were not given a fair opportunity to respond. In summary, you have also explained that the matter has caused a great deal of stress and loss of business. Further, you say:

“Firm A has opted not to proceed to the Upper Tribunal given the cost and time involved, hence the complaint route has been chosen.”

It appears that the remedy you are seeking is the publication, on the FCA’s website, of your response to the SSN, or to appeal the matter.

What the regulator decided

3. The FCA concluded that your complaint was not one that it could investigate under the Complaints Scheme, as it would be more appropriately dealt with in another way by appealing to the Upper Tribunal. The FCA cited [3.6 of the Complaints Scheme](#) stating it would not investigate complaints that it reasonably considered could have been, or would be, more appropriately dealt with in another way. It also added that as set out between 6.4 and 6.7 of the

SSN, the Upper Tribunal is the agreed route for such appeals. It did not feel the Complaints Scheme was the appropriate forum to appeal regulatory decisions made by the FCA; primarily because it does not have the power to amend or overturn regulatory decisions that have been made.

Why you are unhappy with the regulator's decision

4. You are unhappy with the FCA's issuing of the FSN, the SSN against your practice and the consequences that have arisen as a result of these Notices.

Preliminary points (if any)

5. I've considered all of the information and evidence that has been provided to me from yourself and the FCA in investigating this complaint. I also acknowledge the complaint you made directly to the FCA on 22 June 2022.
6. During my analysis of your complaint, I have looked at and investigated the points that are appropriate in this case.
7. In your response to my preliminary report you quoted 3.1 and 3.6.4 of the Ombudsman rules. I am unable to look or comment on other Ombudsman organisations and their rules. My role is to investigate complaints about the financial regulators.

My analysis

8. I understand that you are unhappy with the notices against your Firm, however the information the FCA gave you was correct. You would need to appeal to the Upper Tribunal as outlined in the Second Supervisory Notice and the FCA's decision letter. This is the right course of action and I am sorry but this is not a matter for the Complaints Scheme.
9. I agree with the reasons the FCA gave you in its decision letter, specifically citing [3.6 of the Complaints Scheme also here](#) <https://frccommissioner.org.uk/complaints-scheme/> which provides as follows,

Complaints that are more appropriately dealt with in another way

3.6 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

referring the matter to the Upper Tribunal or by the institution of other legal proceedings).

10. In your response to my preliminary report you have mentioned that the FCA quoted ‘...between 6.4 to 6.7 of the FSN/SSN the appropriate route to complain...’ I am afraid the FCA did not say this in its decision letter. The FCA informed you,

We consider this would be more appropriately dealt with by appealing to the Upper Tribunal. This is because, as set out between 6.4 and 6.7 of the SSN, the Upper Tribunal is the agreed route for such appeals.

11. The FCA then correctly informed you of the following,

The Complaints Scheme is not the appropriate forum to appeal regulatory decisions made by the FCA; primarily because it does not have the power to amend or overturn regulatory decisions that have been made.

12. The FCA also said in its decision letter,

After carefully considering the information you have provided, we have concluded that this is not a complaint we would investigate under the Complaints Scheme. Paragraph 3.6 of the Complaints Scheme provides that we will not investigate complaints that we reasonably consider could have been, or would be, more appropriately dealt with in another way.

13. You state in your response that you have,

studied all correspondence relating to the Notices and there is no mention stipulating the Upper Tribunal route is compulsory. If this route was the compulsory complaint route, this should clearly be documented to avoid any misunderstanding.

14. I believe the FCA did make things clear enough on page 8 of SSN Notice that you had the right to refer the matter to the Tribunal by way of a reference notice. You were also provided with the contact details and email address of the Tribunal, along with information and guidance about the Tribunal and further instructions on what you needed to do.

15. I realise this may not be the answer you were hoping for, but I agree with the FCA that a referral to the Upper Tribunal in respect of the notices is appropriate. I also think the FCA were transparent and clear about this.

My decision

16. I am sorry but given the reasons above in my report, I have not upheld your complaint.

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Complaints Commissioner

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