

04 January 2023

Final report by the Complaints Commissioner**Complaint number 202201639***The complaint*

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

What the complaint is about

2. The FCA summarised your complaint as follows:

My understanding of your complaint is that you are unhappy that the FCA failed to protect you and others when refusing to authorise your funeral plan provider.

You have said the FCA has left you with no one to approach due to the closure of Funeral Planning Authority which voluntary helped with disputes between providers and customers. You have also explained that the FCA didn't put any safeguards in place to protect customers if providers were not authorised by the FCA. You have asked for an explanation as to why no safeguards were put in place to protect consumers such as you and your brother.

What the regulator decided

3. The FCA excluded your complaint, they advised you:

After carefully considering the information, you have provided, we have concluded that we cannot investigate your complaint under the Complaints Scheme.

This is because the Complaints Scheme covers the investigation of complaints that arise in connection with the exercise of, or failure to exercise, any of the FCA's relevant functions.

The 'relevant functions' of the FCA are defined in the Complaints Scheme and Part 6 of the Financial Services Act 2012, and broadly speaking cover the FCA's regulatory functions that arise under the Financial Services and Markets Act 2000, or such other functions as may be ordered by HM Treasury.

Expressly excluded from the definition of 'relevant functions' is anything from the FCA's exercise of legislative functions or standards review functions. 'Legislative functions' of the FCA include the making of rules, and the issuing of general guidance.

Your complaint relates to the UK government's decision to regulate funeral plan providers through secondary legislation passed in January 2021. This legislation brought the sale and administration of funeral plans within the FCA's remit from July 2022. The FCA issued a Consultation Paper (CP21/4) in March 2021 which proposed the FCA's framework for regulating funeral plans. The consultation closed in April 2021. A Policy Statement (PS21/8) was issued in July 2021. Your complaint is about the government's decision to regulate the pre-paid funeral plans market and the subsequent rule making by the FCA following this. Therefore, your complaint is excluded from being considered under the Complaints Scheme, as confirmed in paragraph 3.4(c) of the Scheme.

I am sorry if you feel that the FCA has not put in place safeguards to protect consumers of providers who were not authorised. Prior to July 2022, the pre-paid funeral plan market was not regulated. This meant there were no statutory protections for consumers and the FCA had limited powers to intervene in the market, for example the FCA did not supervise firms and could not take enforcement action if they were not following our rules. This is part of the reasoning as to why the UK government passed legislation to bring pre-paid funeral plans within the FCA's regulation.

On our website, here, we explain that if you have a plan with a firm that is not authorised, you should contact them and ask for a refund. Some existing firms who were not authorised were permitted to carry out funeral plans until 31 October 2022 but not sell any new plans. Over time, these firms were looking to transfer their plans to an authorised provider or wind down their business. On the website link above, there is a list of firms who are not authorised with links to updates about their plans. Please note we cannot guarantee the accuracy or reliability of any statements on the firm's website.

Why you are unhappy with the regulator's decision

4. You have asked me to review the FCA's decision.

Preliminary points (if any)

5. It is important for me to highlight, matters which are excluded from the Scheme which I am unable to investigate.

Section 3.4 (c) of the Complaints Scheme provides:

[Exclusions to the Scheme](#)

3.4 Excluded from the Scheme are complaints:

c) in relation to the performance of the regulators' legislative functions as defined in the 2012 Act;

My analysis

6. You have told me:

I am completely confused and lost. I complained to the FCA who say I can't complain to them

Due to government decision to regulate prepaid funeral plans we are left in a position where company no longer operates

The FCA say they cannot interview or assist as company not regulated by them due to FCA essentially making them cease trading

There was a voluntary organisation that would have been intermediaries and assist between pre-paid funeral providers and

customers if disputes arose, but they too have ceased to exist due to new legislation

The government and FCA presumably assumed all companies told cease to stop trading would either be taken over by another company or refund its customers - however nothing was put in place by government or FCA to ensure this happened which leaves customers with no redress to get their monies back

Myself and my brother (I am his carer) paid in full for funeral services plans which have ceased trading as of 31/10/2022 and still have not updated us on what is happening except to say we can cancel the policies at a cost of almost £300 each as technically we are cancelling the policy

How can this be correct

The government acted to protect people who have bought pre paid funeral plans but it appears due to lack of safeguards put in place the government have let a large percentage of us slip through the safety net

I don't understand why protecting the many is justified by causing people such as ourselves financial hardship

My brother has special needs and I have stage four cancer we don't need this stress and being expected to lose out because government/FCA are protecting some customers of prepaid funeral plans but not all.

7. I am sorry to hear about your health and whilst I sympathise with your situation, the FCA were right to tell you that your complaint is excluded from the Complaints Scheme. Therefore, neither the FCA nor my office can investigate your complaint.
8. As the FCA have informed you, any pre-paid funeral plan sold before July 2022, is not regulated by the FCA. I can understand your frustration as the Funeral Planning Authority (FPA) ceased operating on 29 July 2022. It may be

worthwhile raising this with your MP to see if they can assist you with your complaint.

9. In response to my preliminary report you have told me:

I don't believe my complaints have been answered

I advised I was not complaining about law I was complaining about FCA actions around implementing law

FCA advised me to seek legal advice instead of advising me of claim back and time limitations - FCA should I feel have advised us of options instead of directing to third parties

10. As I have explained above, I can only look into complaints that fall within the remit of the Complaints Scheme as set out by the Financial Services Act 2012 and by the Financial Services Market Act 2000.

11. Under the Complaints Scheme I am not able to look at complaints that look at the legislative function of the FCA, this includes its function in making rules and issuing general guidance. I cannot review complaints against financial services providers/firms or the Financial Ombudsman Service (FOS).

My decision

12. Whilst I know it will disappoint you, for the reasons outlined above, I am unable to investigate your complaint as it is excluded from the Complaints Scheme.

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Complaints Commissioner

04 January 2023