

22 May 2023

**Final report by the Complaints Commissioner****Complaint number 202201747***The complaint*

1. On 3 March 2023, you asked me to review a complaint about the FCA.

*What the complaint is about*

2. The FCA summarised your complaint as follows:

You are unhappy with the FCA rules and regulations around defined benefit (DB) pension transfers. You feel that the FCA's actions in this market have reduced the number of advice firms who will give DB transfer advice and pushed up the cost of such advice.

You explained that this has personally impacted your ability to use the pension flexibilities introduced in legislation. You told us that you have spent the last two years trying to transfer your DB pension in a cost-effective manner, but this has proved difficult. You explained you have been unable to access a SIPP on an 'insistent client' basis, as large cost-effective SIPP platforms do not accept insistent clients. You feel that the only way you can transfer is to use an expensive adviser who you would need to retain long-term.

You would like the FCA to review the system which you have said is broken and take action taking into consideration the impact its rules are having on people's lives

*What the regulator decided*

3. The FCA did not investigate your complaint. It said that 'Your complaint relates to pension rules, which is an exercise of our legislative functions. Therefore,

your complaint is excluded from being considered under the Complaints Scheme, as confirmed in paragraph 3.4(c) of the Scheme'

*Why you are unhappy with the regulator's decision*

4. You have said to me that 'This in effect means that the FCA cannot be held accountable for the rules they have created in relation to the transfer process of defined benefit pensions and the significant mess this has caused within the financial industry and the detrimental impact it has had for myself and people in the same position' and that 'I must admit that in writing to you I have a low expectation that you will do anything other than support the FCA's position because factually what they have told me is correct. However, I am an optimist, and I hope that you will agree that it is unjust that the FCA can side step accountability for their actions and, act accordingly'

*My analysis*

5. I should start by saying that the FCA is correct to exclude your complaint on the basis that it is about its legislative functions and paragraph 3.4 ( c ) of the Scheme provides that

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;

6. You have said you understand that the factual position is that complaints about the FCA's legislative functions are excluded from the Scheme.
7. Nevertheless, your view is that the FCA's rules on defined benefit transfer schemes are unsatisfactory, and that although it is not within my remit, I should nevertheless review your complaint, agree with you on merit and find some way to help enact the changes to legislation you wish for.
8. Unfortunately, I can not review your complaint under the Scheme, because it is excluded. This means I cannot take a position on the merit of your complaint or be involved in your attempts to change legislation. I am pleased to see that although your complaint is excluded, the FCA provided you with information on the Pension legislation and the FCA's work on the advice process. In particular,

the FCA explained: 'To protect consumers who might otherwise lose valuable DB benefits, the Government also introduced, through legislation, a requirement that a member of a pension scheme who has 'safeguarded benefits' with a value of more than a specified amount (currently £30,000) must receive 'appropriate independent advice' from an FCA-authorized adviser before converting or transferring these benefits. The legislation offers no exemptions from this requirement and the FCA does not have the power to dis-apply these legislative requirements'.

9. The above explanation is relevant because the rules you wish to challenge on your particular pension issue are primarily set out by government, and the FCA has no power to disapply them even if the exclusion about the FCA's own rules didn't apply.
10. You may wish to express your views to your member of parliament in relation to amendments to the legislation.

*My decision*

11. Whilst I know you will be disappointed with my decision, for the reasons above, I agree that the FCA was right to exclude your complaint and I also exclude your complaint.

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Complaints Commissioner

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