

06 July 2023

Final report by the Complaints Commissioner**Complaint number 202300005***The complaint*

1. On 3 April 2023, you asked me to investigate a complaint about the FCA. I issued my preliminary report on 21 June 2023.

What the complaint is about

2. You lodged a complaint with the FCA setting out that you believed that the FCA has significantly failed in the supervision of a financial adviser by granting their deauthorisation in 2013 and these shortcomings have resulted in you having to seek redress through the courts.
3. To resolve your complaint, you were seeking a formal response from the FCA regarding its oversight of pension redress reviews for this adviser, the due diligence that was undertaken in the deauthorisation process and you wanted to know what action the FCA might bring against the adviser on your behalf.

What the regulator decided

4. In its decision letter to you the FCA concluded that it could not investigate your complaint under the Complaints Scheme. It set out that under 3.3 of the Scheme explains that “complaints should be made within 12 months of the date on which the complainant first became aware of the circumstances giving rise to the complaint. Complaints made later than this will be investigated under the Scheme only if the complainant can show reasonable grounds for the delay.”
5. The FCA set out that from the information you provided in your complaint, the circumstances giving rise to this complaint would appear to be matters you were first aware of on 15 March 2020 when the financial adviser informed you that they had undertaken and complied with the pension redress review requirement

laid down by the FSA, yet this complaint was not submitted to the FCA until more than 12 months later. I note that in your response to my preliminary report you informed me that you had started to complete your complaint to the FOS about the adviser immediately following the adviser's letter. I note that you did not complain to the FCA at that time.

Why you are unhappy with the regulator's decision

6. You consider that it is incorrect that your complaint has been rejected on the basis of it being lodged more than 12 months from the date that you became aware of the circumstances giving rise to the complaint. You believe that you did make the complaint within 12 months of you becoming aware of the circumstances giving rise to the complaint.
7. You have urged me to reconsider on your behalf.

Preliminary points

Background

8. Your complaint stems from pensions advice you obtained from a financial adviser in the early 1990's. You believe that you may have been poorly advised to transfer out of a defined benefit scheme pension into a personal pension plan.
9. In 2018 you complained about the financial adviser to the Financial Ombudsman Service (the FOS) who informed you that the financial adviser was no longer trading and they directed you to complain to the Financial Services Compensation Scheme (FSCS).
10. The FSCS told you that that they were unable to assess your claim as they couldn't find enough evidence to suggest that the financial adviser wouldn't be able to pay for your claim themselves. You then returned to FOS to pursue this matter and from the timeline you provided it appears that in November 2019 the FOS contacted the financial adviser with your complaint.
11. On 15 March 2020 you received a response from the financial adviser rejecting your complaint. He claimed that he undertook and complied with the pension redress review requirement laid down by the FSA but also claimed that he didn't

review your transfer as you had appointed a different adviser at the time a review was required.

12. You considered that there were a number of inaccuracies in the rejection letter from the financial adviser and that he had rejected your complaint on invalid reasons, so you contacted the FOS again and they assigned a new case assessor in January 2021. After two years you were informed that the FOS were unable to assess the complaint due to the financial advisor being granted deauthorisation by the FCA.

My analysis

13. I have reviewed the timeline and evidence you have provided to my office along with the FCA decision letter and complaint file.
14. I note that in your complaint email dated 3 April 2023, you have set out that you and your representative believed that you had lodged your complaint via email on 4 April 2020. I have reviewed the email that you are referring to and this was sent to the FOS, not the FCA and was a complaint in relation to the actions of the financial advisor and not in relation to the actions of the FCA and its role in the deauthorisation of the financial advisor. The FOS and the FCA are separate entities that consider different matters, and the complaints you have made to each of the entities are also different.
15. As set out by the FCA in its decision letter, section 3.3 of the Scheme explains that “complaints should be made within 12 months of the date on which the complainant first became aware of the circumstances giving rise to the complaint.
16. From my review of the information available to me, I consider that you were actually aware of the circumstances leading to your complaint at the time from when the FOS informed you that the financial advisor was no longer trading when you made your complaint to it in 2018. Any concerns you had around the financial advisor no longer trading and the FCA’s role in relation to this could have been made at the time and not once you had exhausted other avenues through other regulators.
17. I agree with the FCA that you were further put on notice in the letter from the financial advisor on 15 March 2020, when he rejected your complaint informing

you that he had undertaken and complied with the pension redress review requirement laid down by the FSA but hadn't reviewed your transfer. His response identified that the requirements of the pension redress review were laid down by the FSA (the FCA's predecessor) and if you had concerns about this you could have approached the FCA at that time, alongside any complaint about the individual financial advisor you wished to make to the FOS.

18. I note that in your response to my preliminary report you have set out that you do not think that it is normal practice in a complaint to submit the same claim to multiple different bodies, especially where an Ombudsman has agreed to investigate the claim. I disagree with you on this point. I consider that the complaints are two separate complaints, one being about the actions of the financial advisor to the FOS and the other a distinct one being a complaint about the FCA's supervision of the financial advisor and its oversight of the pensions redress review.
19. Consequently, I agree with the FCA that you were on notice more than 12 months before you lodged your complaint with the FCA in March 2023. For this reason I **do not uphold** your complaint.
20. Finally, I want to note that it is disappointing to see that you have been passed from one regulator to another over the course of your complaint. I feel that this has exacerbated your frustration with your situation. I do appreciate that some of the delays you experienced may have been an unfortunate consequence of the difficulties the regulators like most business experienced as a result of the pandemic.
21. In your response to my preliminary report, you set out that there is no reference material or guidance issued by the FSCS or FOS about raising complaints with the FCA. Whilst I have considered this point, it is my position that the FCA Complaint Scheme is publicly available information on its website, and it is easily searchable on internet search engines. Whilst I will not comment on what information other regulators issued to you, I do consider that the information to make a complaint to the Complaint Scheme was publicly accessible and available for you to find.

My decision

22. I know that my decision will sadden you as I have not upheld your complaint.

23. In your response to my preliminary report, you asked whether your rights to pursue a judicial review would be detailed. A complainant who wishes to challenge the Commissioner's decision can apply to the High Court (at their own expense) to seek leave to apply for a judicial review of the Commissioner's decision. The Court itself must give leave before it considers whether or not there should be a judicial review of the decision. An application for leave to apply for judicial review must be made to the Administrative Court Office at the Royal Courts of Justice in London or at the District Registry of the High Court in either Birmingham, Cardiff, Leeds or Manchester within three months of the date of the Commissioner's decision letter. A complainant who wishes to consider doing this may wish to seek their own legal advice (which will be at their own cost) before approaching the High Court, since complex legal issues may arise.

24. This is my final report about your complaint.

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Complaints Commissioner

06 July 2023