

30 August 2023

Final report by the Complaints Commissioner**Complaint number 202300197***The complaint*

1. You wrote to my office on 3 May 2023 setting out that you did not agree with the findings and outcome of the FCA's decision letter dated 7 March 2023.

What the complaint is about

2. In its decision letter the FCA set out your complaint as follows:

My understanding of your complaint is that you have a funeral plan with Firm X whose application to become an authorised prepaid funeral plan provider was rejected by the FCA. You have informed us that Firm X has since gone into administration.

You feel that the FCA handled the company 'too heavily' by not allowing the company to comply with the FCA's demands so that they could continue to trade. You also believe that if we had made attempts to negotiate with Firm X or provide them with the necessary steps on how to obtain a license, then this would have mitigated the risk of them going into administration.

By not granting Firm X their licence, you feel you are now at risk of potentially losing your funeral plan in 11 months' time or approximately £2000 each. You feel that any potential losses caused by this rejected application will be the FCA's fault.

To resolve your complaint, you are seeking that when the Administration period comes to an end or when the plans are transferred, that the FCA gets in touch with all the plan holders to make good their losses via a payment.

What the regulator decided

3. The FCA did not uphold your complaint it set out that:

Although Firm X were not able to meet the requirement for authorisation, I do not believe this was the responsibility of the FCA. The firm were able to

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access the website and the applicable rules prior to application. The FCA is not able to authorise a firm that is not able to demonstrate it can meet the required standard.

Why you are unhappy with the regulator's decision

4. In your complaint to my office, you set out that you did not agree with the FCA's findings or outcome in their decision letter. In particular you said:

It is as simple as the FCA deciding to regulate Funeral Plan Providers and their OPINION on how these plan providers operate, that will lead to ours and others financial loss.

My analysis

5. You entered into a funeral plan with Firm X. The plan you entered into was taken out before 29 July 2022 when new regulations came into force to regulate the pre-paid funeral plan market. Since the new regulation came into effect Firm X has gone into administration. It does not appear that the administrators managed to secure the transfer of its existing funeral plans to FCA authorised funeral plan providers.
6. Your complaint sets out that Firm X has not been able to meet the requirements to become an authorised funeral plan provider under the new regulations and you consider that the FCA has handled the company too heavily and for this reason the company can no longer trade. As a result of this and the fact that the administrators have not managed to transfer yours and other existing funeral plan holders plans onto FCA authorised funeral plan providers means that you are now potentially looking at a loss of approximately £2000. I am really sorry to hear about the potential losses that you face. I do appreciate that this situation must be very frustrating and upsetting for you.
7. Having reviewed the information available to me in relation to your complaint and the decision letter issued to you by the FCA, I am satisfied that the FCA's position not to uphold your complaint was reasonable.
8. The government consideration and consultation in relation to this sector started in 2018 and its response was published on 1 June 2019. In January 2021 the government made legislation to bring prepaid funeral plan firms within the remit of the FCA with the full FCA regulatory framework coming into force 18 months after the legislation was made.
9. Relevant key dates in the lead up to the introduction of the new regulations were:

- March 2021 the FCA launched its consultation into pre-paid funeral plans and closed on 13 April 2021.
- June 2021 - the FCA put details up on its webpage for firms who offered pre-paid funeral plans about how to become authorised.
- July 2021 - the FCA issued its policy statement in relation to the pre-paid funeral plan regulations. This set out that the new regulations would take effect from 29 July 2022.
- August 2021 - the FCA publish 'Funeral Plans: If you already have a plan' document. This provided information to consumers about the upcoming changes, this did not provide any advice to consumers.

10. It is my opinion that there was ample notice to firms within this sector to firstly consult with the government and FCA about the proposed introduction of regulation and following on from that to consult with the FCA and prepare to comply with the new regulatory framework. Most firms offering pre paid funeral plans did achieve the relevant standard, the FCA set out that 87% of firms became regulated when the new regulations came in.
11. In relation to Firm X, on 27 July 2022 the FCA issued a decision Notice to Firm X refusing the firms application, a final notice was issued in September 2022. The firm had not met the resources and suitability threshold conditions. The FCA set out that it had interviewed senior staff, reviewed customer calls, the firms sale scripts and the firms website. The firm failed to evidence its compliance when given the opportunity.
12. I have not seen any evidence that the FCA handled the company too heavily. I agree with the FCA that it was not the responsibility of the FCA to ensure that Firm X were able to comply with the new regulations, it provided access to relevant materials for firms to do so, and unfortunately for you, the firm who you entered into a plan with had not prepared itself to meet the relevant requirements. As such I have **not upheld** your complaint.
13. I note that the FCA has issued an updated statement since you made your complaint to my office confirming that:

The administrators were unable to finalise a deal with an alternative funeral plan provider. This means that funeral plans won't be provided for Firm X customers after xxxxxxxx 2023. No refunds will be available for any contributions customers paid before the administration.

14. The FCA also has a link to the administrators frequently asked questions page which in relation to any questions about refunds directs you to the citizens advice bureau website (<https://www.citizensadvice.org.uk/consumer/somethings-gone-wrong-with-a-purchase/getting-your-money-back-if-you-paid-by-card-or-paypal/>).
15. Finally, I note that in your complaint to my office you have set out that the FCA should have had a strategy in place to give formal protection to the plan holders via a compensation scheme as the FCA would have known that there would be some plan providers what would or could not meet the requirements that the FCA imposed.
16. This point was not set out or addressed in the decision letter issued by the FCA on 7 March 2023, and it appears to relate to the legislative role of the FCA and would most likely be excluded under paragraph 3.4 of the complaint scheme and as such it would most likely not fall within my remit to consider if you had raised this point with the FCA. As such I have not considered this point.
17. I would note that the government and the FCA undertook consultations in relation to the introduction of the new regulations, inviting comments from the industry. If you have concerns about the legislation and regulations that have come into force you may wish to raise this issue with your local member of parliament.

My decision

18. I know my decision will disappoint you, but I am unable to uphold your complaint.
19. This is my final report about your complaint.

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Complaints Commissioner

30 August 2023