

02 November 2023

Final report by the Complaints Commissioner**Complaint number 202300328***The complaint*

1. On 9 July 2023, you asked me to review a complaint about the FCA.

What the complaint is about

2. The FCA set out in its decision letter to you that your complaint was as follows:

you are unhappy with the Pensions Increase (Review) Order 1999. You say the review of your pension in 1999 has now left you with a shortfall of £165,601 in the value of your pension today. To resolve your complaint, you are seeking for the FCA to compensate for this loss.

What the regulator decided

3. The FCA concluded that it could not investigate your complaint under the complaint scheme. It set out:

...expressly excluded from the definition of 'relevant functions' is anything arising 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 a statutory instrument set by parliament that prompted a review of pension suitability. This is not something we can investigate under the Complaints Scheme as it was an exercise of legislative functions.

Why you are unhappy with the regulator's decision

4. You wrote to my office on 9 July 2023 and asked me to further investigate your complaint raised with the FCA and set out the background to the events that have led up to your complaint.

My analysis

5. I am very sorry to hear about the stress you have experienced and the impact it has had on your mental health, following your realisation that the performance of yours and your wife's pension is not as you expected.
6. Unfortunately, I do have to agree with the FCA's position set out in its decision letter that it cannot investigate your complaint under the Complaint Scheme. The FCA correct set out that the Complaint Scheme expressly excludes investigations that relate to legislative functions. As such I have also excluded your complaint.
7. I note that in your response to my preliminary report you set out that you did not believe your complaint was about the FCA's 'legislative function or Parliamentary Statutory Instrument', rather you felt that your complaint is about 'the regulator guidelines that were used in compensation calculations'. Unfortunately, I do still consider that your complaint is about the FCA's legislative function, this is because this function includes the FCA's role in making and setting rules, guidance and regulations. As such I cannot consider a complaint about guidelines set by the FCA and my position remains that your complaint is excluded under paragraph 3.4(c) of the Complaint Scheme.
8. I am pleased to see that the FCA in its decision letter has outlined what avenues you might be able to take follow in relation to your dissatisfaction with the performance of your pension and and/or your concerns about your retirement.
9. Whilst I know you are unhappy with the response to the complaint you made to the FCA, it was right to tell say your complaint could not be reviewed under the Complaints Scheme. I appreciate you allege that the statutory instrument did not have the effect it allegedly promised it would with respect to pension recalculations. It was appropriate for the FCA to suggest that you may want to contact your MP or a Member of the House of Lords to make them aware of the impact that the statutory instrument has had on yours and your wife's pensions raise. Information about how to do this is available at:
<https://www.parliament.uk/get-involved/contact-an-mp-or-lord/>.

My decision

10. I know my decision will disappoint you, but I agree with the FCA's decision to exclude your complaint and I also exclude it. This is my final report.

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Complaints Commissioner

02 November 2023