

20 December 2023

Final report by the Complaints Commissioner**Complaint number 202300368***The complaint*

1. On 8 August 2023, you asked me to review a complaint about the FCA.

What the complaint is about

2. You have been in correspondence with the FCA since May 2023 about the issues you have experienced in trying to transfer your pension as a result of requirements under the Pensions Scheme Act 2015 legislation and the related FCA rules. You initially started out speaking with the Whistleblowing Team, who passed you to the Supervision Team. You were not satisfied with the responses you received from the Supervision Team so your concerns were passed onto the FCA's Complaint Team.
3. When you made your complaint to the FCA's Complaint Team it set out that the question you were still seeking a response to was whether 'full financial advice' was mandated by the regulatory framework for pension transfers under the Pension Schemes Act 2015 or was specific advice on the 'safeguarded benefits' all that was required.

What the regulator decided

4. The FCA set out in its finding to your complaint that it:

...did not uphold your complaint because although you may not agree with the answers that you received from the FCA, the information and advice given to you by the FCA was correct and appropriate.

Why you are unhappy with the regulator's decision

202300368

5. Although there were other concerns you relayed to the FCA, I will only address the complaint point you have brought to my attention for review, which is that you disagree 'most emphatically', with the way in which the 'FCA spent three months showering you with sludge and pushing your concerns into a department that couldn't deal with them'. Essentially your complaint is that the FCA failed to directly address the question you put to it in May 2023.
6. In your complaint to my office you have set out that in order to remedy your complaint you do not want the FCA to apologise to you and you are not seeking compensation. You have set out that what you want is for the FCA to put things right by doing things right in the first place.

My analysis

7. Your complaint stems from you wanting to transfer your private defined contribution pensions (with safeguarded benefits) into a more modern flexible defined contribution scheme. Having spoken with your existing pension provider and to the Pension Wise helpline you have set out that you were aware that you were required to obtain appropriate advice and that it had to be specific to the type of relevant transaction. You were informed that this advice needed to be obtained from an FCA regulated adviser. The issue was that you allege all the advisers you spoke to insisted that they were required to provide you with 'full' advice, which you did not want, need or wish to pay for.
8. Believing there was a scam involving FCA regulated advisor who you believed were attempting to scam pensioners out of hefty percentages of their pensions by misrepresenting the advice requirement in the Pensions Act Scheme 2015 you approached the FCA's Whistleblowing team who informed you that you could not make a complaint to their team, and then passed your concerns onto the FCA's supervision hub. They advised you that they had received your information in relation to the issue with the advisers and passed it onto the relevant teams to consider but informed you that you would not be provided with any update from the information that you had provided. This is when the clock really started on the issues you have complained to my office about, being when your concerns and questions were left unanswered about what advice the

Pensions Scheme Act 2015 legislation actually requires to be provided to consumers who wish to transfer their safeguarded benefits.

9. On 25 May 2023 you asked the FCA a question in terms that you felt could not be misrepresented and misunderstood. You asked the FCA, "Is 'full financial advice' a legal requirement for pensions transfers, or is specific advice on the 'safeguarded benefits' all that is required?"
10. You further refined the question on 5 June 2023 to say Is 'full financial advice' mandated by the regulatory framework for pensions transfers under the Pensions Scheme Act 2015 or is it appropriate advice on the 'safeguarded benefits' all that is required?'
11. I referred to this matter in my preliminary report and received substantial comments from both you and the FCA, which I will refer to below.
12. You have clarified to me that your query is as follows: 'Is it possible to ensure a member with safeguarded benefits understands the security provided by such benefits, and what they would lose if they were to exchange them for flexible benefits, without the adviser doing a thorough review of the client's personal circumstances in full?' You also say 'By 'full financial advice' I am referring to the FCA's own interpretation of "an individual's personal circumstances in full" (see 13c of the PR), which is considerably more extensive, invasive, time-consuming and expensive than simply "advice about [my] pension plan in the round".'
13. On 23 June 2023 the FCA wrote to your MP and sent you a copy to address the question you asked, phrasing it as follows: Is 'full financial advice' mandated by the regulatory framework for pension transfers under the Pension Schemes Act 2015, or is appropriate advice on the 'safeguarded benefits' all that is required' The FCA said:
 - a. Firms are required under legislation to give individuals appropriate independent advice for transferring away from schemes with safeguarded benefits. They must also comply with the FCA's regulatory standards to provide advice which is suitable for each individual client. This may be commonly referred to as 'full financial advice'

- b. We require that when firms give pension transfer advice, they must give a personal recommendation which is suitable for each client's individual circumstances. In practice, advice firms are likely to refer to this as 'full financial advice'.
 - c. The pension transfer rules require advisers to consider an individual's personal circumstances in full and properly consider the various options available to them. We expect advisers to get to know their clients: to understand their knowledge and experience of the sort of transaction being considered, to be fully aware of their financial situation, and to appreciate what the client is trying to achieve. Clearly, there is a cost to obtaining such advice, but the level and structure of advisory fees is a matter for advisers themselves.
14. You wrote to the FCA on 26 June 2023 to say it had not really answered your question.
15. I do not agree with you that the FCA has not answered your question: in my view it has. I appreciate you do not agree with the FCA's explanation, and you have said why you consider the FCA rules do not align with the primary legislation. As I mentioned above, there has been protracted correspondence between you and the FCA on this matter.
16. It is apparent to me that this correspondence has not reached a satisfactory conclusion for you.
17. I will explain that I cannot interpret legislation under the Complaints Scheme (only a court can provide a definitive interpretation of rules and legislation).
18. I reiterate my conclusion above that the FCA has answered your question, and I provide below a summary provided by the FCA in response to my preliminary report of the various points which have been discussed between you:
19. "Full advice' and 'specific advice': These are not terms in the primary legislation. The wording of the primary legislation uses the word specific in its dictionary sense (i.e. clearly defined or identified, precise detail) rather than as a title for a type of advice.

20. The legislation you refer to is Regulation 3 of the Pension Scheme Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 states:

For the purposes of the definition of 'appropriate independent advice' in section 48(8) of the Act, the advice must be specific to the type of relevant transaction proposed by the member or survivor.

This means the following:

- That the advice should be directly about the individual client based on their circumstances and attitude to risk. The advice should not be generic or based on other individuals.
- That the advice should not just be regulated advice in the general sense, but regulated pension transfer advice. Only financial advisers with the correct permissions can give regulated pension transfer advice.

21. We believe this was explained to The complainant in the email of 1 August 2023. We appreciate that The complainant does not accept our explanation and that he interprets the primary legislation in a different manner.

22. To clarify, the primary legislation explains in Chapter 2 paragraph 48 section 8: In this section "appropriate independent advice" means advice that (a) is given by an authorised independent adviser, and (b) meets any other requirements specified in regulations made by the Secretary of State;

23. 'Appropriate' refers to the type of advice, for example a firm who gives advice on a pension transfer must hold the appropriate permissions and give advice in line with the rules that apply to that type of advice. In this instance appropriate advice on a pension transfer cannot be provided by a firm which does not have pension transfer permissions, but can give regulated advice (e.g. for investment advice).

24. This means that the advice must come from a firm who hold the correct permissions, and the firm must follow the applicable rules.

25. The extent of the advice and the steps within the advice are governed by FCA rules (COBS 19). The FCA rules refer to full pension transfer advice in the context of either abridged (where a recommendation to transfer cannot be

made) or full advice (where a recommendation can be made). The FCA rules do not refer to specific advice.

26. We understand that [the complainant] consider that the FCA rules do not align with the primary legislation. However, the FCA rules was consulted on, and legal consideration was given to, the accuracy and lawful nature of the rules. The complainant may consider that the primary legislation refers to a category of advice he refers to as specific advice which would enable him to receive a cheaper form of advice. However, this is not an accurate interpretation of the legislation.
27. Irrespective of the legislation and FCA rules, firms are permitted to charge fees that they consider to reflect the amount of work any advice would cost and also the level of risk the firm is exposed to (in relation to potential future complaints). Even if firms were allowed to narrow the focus of the advice (which they are not) then it does not follow that the advice fees would be any lower”.

My decision

28. It is my view that the FCA has answered your question, therefore I do not uphold your complaint that it has not. It has also provided the information above which I hope you find helpful. It is not open to me to go any further under the Complaints Scheme on the matters you raise. If you disagree with the FCA’s interpretation, your only recourse is to obtain a ruling by the courts on the interpretation of rules.

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Complaints Commissioner

20 December 2023