

03 April 2024

Final report by the Complaints Commissioner**Complaint number 202300507***The complaint*

1. On 07 October 2023, you asked my office to review a complaint about the FCA.

Your complaint to the FCA

2. In its letter of 5 October 2023 the FCA described your complaint to it as follows:

Part One

“You are unhappy that Firm A said that it would reinvestigate your complaint in light of the new information that you had provided but they have now said there is no case to answer. You are unhappy that they did not follow FCA rules, and your solicitors have told you to come to us.

You have explained that Firm A set up a contract for your brother-in-law and sister on 2 occasions without asking them health questions, you state that this is against FCA rules, the contracts also were not signed. You state that your late brother-in-law should have been sold enhanced annuity and as a result lost around £20k. You state that Firm A have acted illegally and stole his money.

You have explained that you have been to the Daily Mail who said this is a case that they would like to pursue.

You have tried to speak to Firm A, and they have said that the issue is with their legal department, and that they don't need to answer your questions.”

Part Two

“You are unhappy with a call that you had with the Supervision Hub on 19 September 2023.”

Part Three

“You are unhappy that the Ombudsman at the Financial Ombudsman Service who made the final decision on your brother in law’s complaint did not have the specialist knowledge or qualifications to deal with the complaint. You state that the decision he made was flawed and wrong. You have explained that you have watched Dispatches and are aware that the people who work at the Financial Ombudsman Service are not subject matter experts.”

Part Four

“You are unhappy with an email that you received on Friday 15 September 2023 from Executive Casework (ECU). You are unhappy with the following:

- that it was sent at 16:56 on a Friday. You state that this meant you could not respond
- no person was named in the sign off
- with the response in general and that it stated that ECU won’t be taking any further action
- the email states that there is an attachment, but you state that nothing was attached”

Part Five

“You are unhappy with an email you received on 21 August 2023 from ECU stating that they cannot intervene. In your email to the Complaints team on 25 September 2023, you explained that you would like the FCA to instruct Firm A to put matters right by re-calculating the first annuity based on a joint enhanced annuity rate at the time of sale. You would also like the second annuity to be recalculated based on an enhanced annuity rate.”

What the regulator decided

3. The FCA concluded that it could not investigate Part One and Part Three of your complaint under the Complaints Scheme. The FCA upheld Part Two of your complaint and did not uphold Part Four and Part Five of your complaint.

4. The FCA stated the following in relation to Part One of your complaint:

“After carefully considering the information you have provided, we have concluded that we cannot investigate your complaint under the Complaints Scheme.

This is because the Complaints Scheme covers the investigation of complaints that arise in connection with the exercise of, or failure to exercise, any of the FCA’s relevant functions.

The ‘relevant functions’ of the FCA are defined in the Complaints Scheme and Part 6 of the Financial Services Act 2012, and broadly speaking cover the FCA’s regulatory functions that arise under the Financial Services and Markets Act 2000, or such other functions as may be ordered by HM Treasury.

Your complaint relates to the actions of Firm A. That is not something we are able to investigate under the Complaints Scheme because your complaint is not arising in connection with the exercise of the FCA’s relevant functions.

It is not within the FCA’s remit to investigate complaints about the firms it regulates as this is the responsibility of the Financial Ombudsman Service. The Financial Ombudsman Service is the single dispute resolution scheme established by the Financial Services and Markets Act 2000 (FSMA). It aims to provide consumers with a free and independent service for resolving disputes between consumers and businesses quickly and informally. The Financial Ombudsman Service is operationally independent from the FCA. I understand that you have already been to the Financial Ombudsman Service, we have no remit to intervene in the decisions the Financial Ombudsman Service makes on individual complaints.”

5. The FCA stated the following in relation to Part Two of your complaint:

“To investigate your complaint, I considered whether the call was handled in line with our expectations. I have listened to the call, and I am sorry that you did not receive the standard of service we expect to provide.

The supervisor incorrectly told you that you were in communication with FCA staff member A. I can see that you were in communication with an FCA staff member A, but this matter was closed in January 2021. Instead of keeping you on hold the Supervisor should have at the start of the call explained that ECU cannot take calls and will be in touch. The Supervisor should have also asked if you wanted to speak Complaints team to discuss your query about the letter you received from FCA staff member B.

Please be assured that we take all complaints seriously and where standards have not been met, we ensure appropriate action is taken to prevent this happening again. In this instance, feedback has been provided to the Supervisor to ensure the same mistakes do not happen again on future calls”

6. The FCA stated the following in relation to Part Three of your complaint:

“After carefully considering the information you have provided, we have concluded that we cannot investigate your complaint under the Complaints Scheme.

This is because the Complaints Scheme covers the investigation of complaints that arise in connection with the exercise of, or failure to exercise, any of the FCA’s relevant functions. The ‘relevant functions’ of the FCA are defined in the Complaints Scheme and Part 6 of the Financial Services Act 2012, and broadly speaking cover the FCA’s regulatory functions that arise under the Financial Services and Markets Act 2000, or such other functions as may be ordered by HM Treasury.

Your complaint relates to the actions, or inactions, of the Financial Ombudsman Service and is excluded from being considered under the Complaints Scheme, as set out in paragraph 3.4(e).

Here is a link to the complaints pages for the Financial Ombudsman Service: <https://www.financial-ombudsman.org.uk/consumers/how-to-complain>”

7. The FCA stated the following in relation to Part Four of your complaint:

“I have considered whether it was reasonable for ECU to have sent the email on a Friday at 16:56. ECU acted reasonably by sending the email at this time as this is during the FCA’s core working hours. The time that the email was sent did not prevent you from responding. Whilst your complaint might suggest that you considered that the time the email was sent on Friday would prohibit you from receiving an immediate reply from ECU, any response that you sent, would have been unlikely to receive an immediate response.

The email was signed off as Executive Casework Unit. FCA departments often use a departmental signature rather than individual names to sign off emails, this is usual process. You were not treated any differently to other individuals who use the FCA.

You are unhappy with the contents of the email. The email states that FCA staff member C is unable to respond to you personally, whilst you might find this frustrating an Executive Director would not be expected to respond personally to individuals as this would not be practical. The email also states that as there is nothing useful, the team could add, any further correspondence will be added your file but not responded to. Ultimately the outcome that you are seeking (that the FCA’s instructs Firm A to put things right by recalculating the annuities) is not something we can provide as we cannot get involved in individual matters. There would have been no benefit for the team to continue responding as there isn’t anything further, they could have added to what they have already said.

I have checked and the attachment the email refers to was attached to the email. It is titled RE: Letter sent to FCA staff member C re Firm A. I have attached this again.”

8. The FCA stated the following in relation to Part Five of your complaint:

“The email that ECU sent you is factually correct. As explained above it is not within the FCA’s remit to investigate complaints about the firms it regulates as this is the responsibility of the Financial Ombudsman Service.”

Why you are unhappy with the regulator's decision

9. For ease of reference I have divided your complaint to me into "Elements" which I have assessed and subsequently investigated as per the below in my report.

Element One

10. You believe the FCA has a duty of care to the consumer. You think the FCA needs to monitor and make sure Firm A makes good on its promise to fully investigate cases of mis-selling annuities highlighted to them and provide redress to those affected customers.

Element Two

11. You are unhappy that the FCA has refused to investigate your complaint as it states it does not investigate individual complaints. You are also unhappy the FCA states the matter does not come under their remit.

Preliminary points (if any)

12. I have considered all the information that you have provided to me. I have also considered the information the FCA have provided to me concerning your case known as the FCA case file in investigating this matter.
13. In your complaint letter to me you expressed your concern that you were not convinced the FCA would allow me to have access to the most relevant information. I want to assure you that I have assessed all of the information the FCA have provided to me and I saw no reason to question that relevant information was not shared with me by the FCA.

My analysis

Element One

14. I note the FCA looked at this aspect of your complaint in its Decision Letter citing it as being "Part One" of your complaint. The FCA informed you this part of your complaint was out of scope and it could not investigate it. The FCA explained this aspect was about the actions of Firm A rather than a complaint arising in connection with the exercise of the FCA's relevant functions and that this was not within its remit.

15. The FCA recognised that you had been to The Financial Ombudsman Service (FOS) in respect of your concerns regarding Firm A and emphasised that it was the role of FOS to investigate complaints about Firms not the FCA.
16. The information the FCA gave you was correct. I understand you feel the FCA should monitor and make sure Firm A investigate cases of miss-selling annuities and subsequently provide redress in those cases where it is due. However, it is not the responsibility of the FCA to ensure Firms are investigating individual complaints fairly and reasonably. That is the role of the FOS and in turn, if there is redress due, FOS is the independent body that was set up by Parliament to make such decisions.
17. Similarly, this is not an area that I can investigate for you. This is because the previous Complaints Scheme to which both the FCA and I were subject before the Scheme was revised and which is relevant here provided the following,

“Part 6 of the Financial Services Act 2012 (the Act) requires the regulators to maintain a complaints scheme for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of their relevant functions.”
18. The above remains the case with the Revised Scheme. If it is helpful, the link to the Complaints Scheme (previous and revised) is here [Complaints against the Regulators \(The FCA, PRA and the Bank of England\) November 2023](#). You will find the previous Complaints Scheme under Appendix C.
19. In reviewing your complaint and the FCA file I can see that the FCA Supervision Department did review your concerns regarding the Firm in question. The FCA sent you an email on 11 November 2020 clarifying this and reiterated that because of its policy and the legislation that governs the FCA's work, this prohibited the release of information to you about the Firm. As such, it could not disclose the details of any action or further follow up work it may take in respect of the information you had shared with it. So whilst the FCA were right to not investigate this element of your complaint, I am pleased to see that the Supervision Department still took the time to consider your concerns and used that information appropriately.

20. In summary, Element One of your complaint is not about the FCA's relevant functions so the FCA were right to not investigate it for the reasons it gave. So I am sorry to say that I too cannot investigate this Element of your complaint. Complaints about individual Firms such as Firm A are for the FOS.

Element Two

21. The other aspect of your complaint the FCA determined it could not investigate was referred to as "Part Three" of your complaint in its decision letter. You were unhappy about the Final Decision you had received from FOS and did not feel the Ombudsman had the knowledge or qualifications to deal with your matter. You also thought the decision was flawed and wrong.

22. The FCA explained that this complaint did not relate to any of its relevant functions. The FCA then stated complaints relating to actions or inactions of the FOS were excluded from being considered under the Complaints Scheme as per paragraph 3.4 (e) of the previous Complaints Scheme. This part of the previous Complaints Scheme provided the following:

"3.4. Excluded from the Scheme are complaints:

(e) complaints about the actions, or inactions, of the Financial Ombudsman Service, the Financial Services Compensation Scheme or the Money Advice Service"

23. The above also remains the same with the new [Revised Complaints Scheme](#), complaints about the actions or inactions of FOS cannot be investigated under the Complaints Scheme as they are excluded. I understand you are unhappy with the FCA refusing to investigate this aspect and the reasons it gives for not doing so. However, the FCA were correct in their assessment, this aspect would be excluded under the Complaints Scheme and generally speaking, one would need to refer this matter to the more appropriate body which in this case is the FOS.

24. I understand you have already approached the FOS and received a Final Decision in respect of your complaint regarding Firm A. If you are unhappy with the decision and have not accepted it, it would appear from the resources available on FOS's website that you would need to explore whether you wanted to start judicial review proceedings against the decision. You can find out more

about this here <https://www.financial-ombudsman.org.uk/who-we-are/make-decisions>

25. For the reasons I have given above I am sorry to disagree with you, but I do not uphold Element Two of your complaint.

My decision

26. I appreciate this was not the outcome that you were hoping for and I am sorry to disagree with you.
27. In Element One of your complaint I agree with the FCA that this cannot be investigated as this is out of scope. Individual complaints about Firms such as Firm A, cannot be investigated under the Complaints Scheme, this is a matter for the FOS.
28. In Element Two of your complaint I agree with the FCA that as this was about the actions or inactions of the FOS, this matter is excluded under the Complaints Scheme and therefore I cannot investigate it.

Rachel Kent
Complaints Commissioner
03 April 2024