

15 April 2024

Final report by the Complaints Commissioner**Complaint number 202300570***The complaint*

1. On 06 November 2023, you asked me to review a complaint about the FCA.

What the complaint is about

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

You have explained that you would like to register a formal complaint with the FCA about the Firm X pension advice process, in particular in relation to the FCA and the Financial Ombudsman Service handling of your complaint to Firm Z. You stated the following:

You referred your complaint to the Financial Ombudsman Service in December 2021. The investigator found in your favour in April 2022. Firm Z agreed to provide you appropriate redress in early 2022.

However you had concerns with the calculation process, assumptions and mathematical logic on charges. Firm Z refused to engage with you regarding your concerns with their redress offer calculation. You referred this matter back to the Financial Ombudsman Service.

You believe Firm Z tried to manipulate the calculation date to their benefit. Despite the intervention from a manager the matter had to be referred to an Ombudsman for a final decision. In June 2023 the Ombudsman issued a final decision which was upheld in your favour.

The decision refers to the original investigator decision in April 2021. However you believe the final decision has failed to consider anything

which happened after the initial complaint and the commitments Firm Z made and did not adhere to. You think the final decision failed to deliver and has not recognised the distress caused to you.

You are also unhappy with some of the content published in the final decision, you state it is defamatory and it is publicly available. You have asked for this to be removed but you have been informed by the Financial Ombudsman Service that there is no recourse. You have not stated the remedy or outcome you are seeking from this complaint. However you have stated you believe the FCA should be using its powers to ensure Firm Z goes back to the complaints it has received and mismanaged to ensure the complaint outcome is what it should have been at the time.

What the regulator decided

3. The FCA did not investigate your complaint. The FCA told you:

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.

Some of your complaint points 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).

We would also like to highlight that the FCA is not able to intervene in individual disputes with firms. You correctly referred the matter regarding your concerns with the redress calculation back to the Financial Ombudsman Service.

Where a complaint is not resolved at the informal stage, it is referred for a final decision which is what appears to have happened in your case. A final decision is the final step of the complaints process with the Financial Ombudsman Service. The FCA are not able to interfere with the decision made by an Ombudsman, including the decision to not make an award for distress and inconvenience. If you remain unhappy with the final decision issued, you may wish to consider independent legal advice.

Why you are unhappy with the regulator's decision

4. You have asked me to review the FCA's decision, and have said : 'I would like the FCA to ensure the regulated Firm Z honour their written commitment to provide a correctly calculated redress offer at the promised date of 1st July 2022, I believe that is what I have a right to expect from a regulated firm'.
5. The context which you provide connected to your request is that you are effectively asking the FCA to intervene in a FOS decision as you are not happy with the FOS outcome on your complaint.

Preliminary points

6. It is important for me to highlight, matters which are excluded from the Scheme which I am unable to investigate.

Section 3.4 (e) of the Complaints Scheme provides:

[Exclusions to the Scheme](#)

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.

My analysis

7. It should be noted, the Complaints Scheme is concerned with the actions or inactions of the FCA. It cannot deal with complaints against banks, individual firms or against the Financial Ombudsman Service (FOS), nor is it a redress service for individual consumer complaints.
8. The FCA does have a statutory duty to secure an appropriate degree of protection for consumers. It does so by regulating the financial industry through the setting of standards which firms must meet, and by taking enforcement action where that is justified. It does not investigate individuals' complaints against the firms it regulates: that is the role of the FOS. I am sorry you are unhappy with the outcome of your FOS complaint however, the FCA was right that it cannot become involved in your dispute with the FOS and it was right not to investigate this element of your complaint as it is **excluded** from the Complaints Scheme.
9. Whilst the FCA did not investigate your complaint, it did confirm the information you had provided about Firm Z was passed to the relevant department. The regulator welcomes information from people who report concerns. However, the FCA does not generally say what action has been taken in response to the information that it receives. This is because section 348 (s.348) of the Financial Services & Markets Act 2000 (FSMA) classes some information the FCA holds about firms as confidential, and restricts how that information is dealt with. In addition to this, any information that is not restricted by s.348 FSMA may be restricted due to the FCA's policy on sharing information about regulated firms and individuals, who also have legal protections. Under this policy, the FCA will not normally disclose the fact of continuing action without the agreement of the firm concerned. There is a good explanation of the statutory and FCA policy restrictions on information sharing at <https://www.fca.org.uk/freedom-information/information-we-can-share>. This means that, as you were told, there is no general right for members of the public to know the outcome of reports that they make, for the reasons outlined above.
10. You have also said that you also wish to raise a complaint about the FCA's oversight of firm X. You provide details of what you allege are wrongdoings on

the part of firm X, and you feel the FCA should be have done/be doing a better job supervising the firm.

11. You raised a complaint which the FCA did not review. Under the complaint scheme to which both the FCA and I operate to, it is preferable for the FCA to do its own investigation first, as that is usually the best way to resolve matters. Therefore I suggest you submit this complaint to the FCA. If you are not satisfied with the outcome, you can refer it to me once the FCA has issued its decision.

My decision

12. I am sorry to disappoint you, as outlined above, your complaint about the FOS is **excluded** from the Complaints Scheme. I suggest you refer your complaint about the FCA's oversight of firm X to the FCA for investigation.

Rachel Kent
Complaints Commissioner