

16 July 2025

Final report by the Complaints Commissioner

Complaint number 202400259

The complaint

1. On 01 July 2024, you submitted a complaint about the FCA to my office. I summarise the key issue of your complaint as follows:
2. Element One: The FCA's oversight of Firm X (a pension provider) with regards to pension transfers is inadequate. Outcome: Not upheld.
3. Element Two: The FCA's oversight of the pension industry: specifically, the transfer of Defined Benefit (DB) pension into a Defined Contribution (DC) pension. Outcome: I ask the FCA to provide me with feedback on its review of all the relevant information listed below and whether it believes there is a risk that persistent customers are not being adequately supported by firms due to either a lack of understanding of the relevant rules or an overly risk-averse approach, and are therefore experiencing harm as a result. I recommend the FCA updates me in six months' time.
4. Element Three: The FCA's Supervision Hub and Complaints Team handling of your complaint. Outcome: I have upheld this complaint element. I recommend the FCA apologises to you and ensures that it provides adequate quality assurance on responses it sends out. The FCA has accepted my recommendation.

Background

5. In 2022 you attempted to transfer out of your DB pension into a DC pension. You allege that you encountered effectively unsurmountable obstacles, and you feel the FCA should be taking action to "fix" what you consider the pension

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industry's systemic and widespread irregularities and non-compliance with rules and regulations.

6. You say the FCA regulations state that you ought to take pension advice for DB transfers over £30,000, which you did. Your IFA's advice was that it was in your best interests not to transfer out of the DB scheme. You disagreed with this advice and you have provided detailed reasons for why you disagree. You attempted to challenge your IFA's advice through the Financial Ombudsman Service (FOS) but it found in favour of the IFA.
7. You understand, however, that you are free to "override" financial advice even if it advises against a transfer, and to proceed as an insistent client. The reality, you allege, is that this is virtually impossible (which is why you attempted to challenge your IFA's advice). You say that:
 - a. The majority of pension providers *require "IFA approval that a transfer is in my best interest"*, which you claim is not in accordance with the rules and regulations (which state that advice is required but neither the legislation nor the FCA rules require either the ceding scheme or the receiving scheme to check the outcome of that advice).
 - b. When you eventually found a pension provider, Firm X, to accept the pension transfer against your IFA advice (on the basis that you were an insistent client), the transfer process was fraught, was subject to much correspondence, took over six months, and the provider cancelled the transfer on the day the CETS value expired quoting unspecified FCA rules. You have provided a letter from Firm X which says:

"We have concluded that our responsibility is to adhere to the more recent guidance by our regulator, the FCA, that transfers from Defined Benefit schemes should only be completed when independent financial advice has been sought and a recommendation to transfer is made have been designed to protect your and all customers best interests. The later guidance we believe take [sic] priority over requirement historically been written into legislation given the risk of a poor customer outcome. We also believe that the government wouldn't have been aware of or considered the risk of a poor customer outcome when

they drafted the Stakeholder legislation and havent [sic] taken the opportunity to review and update the legislation in recent years. Given the conflicting requirements placed on providers as a result of the legislation and guidance not being aligned, we are engaging with other product providers and intend to seek clarification on this point with the HMRC and FCA".

You have pointed out that there is no FCA rule which requires the independent financial advice to include a recommendation for transfer in order for a provider to accept the transfer, and the FCA has confirmed this.

You claim a DSAR you submitted to the provider shows it admitted internally it may be breaching the rules but that as it did not understand them, it felt it could not proceed before liaising with the FCA. No such circumstances took place. Your view is pension provider Firm X and others are not clear on the rules and regulations and breach them. You have asked the FCA to investigate the provider for breach of FCA rules but the FCA has not responded to your request.

- c. The vast majority of IFAs do not handle insistent clients and the only one you found who would do so required a minimum fund transfer of £250,000 (which you did not have) to cover an indemnity.
- d. You paid your IFA circa £4,000 for pension advice. The outcome was a recommendation not to transfer out of your DB scheme, you strongly disagree with this. Your view is that as advisers are paid a fee for advice regardless of outcome, as required by FCA rules, they are unnecessarily taking the *"easy route by not endorsing transfers"*. You say *"The FCA seems to have created a hostile environment for IFAs where anything other than an outcome to not transfer exposes them to the risk of severe penalties"*.
- e. You are also concerned that the FOS and your pension provider has suggested you find another IFA who might provide you with the outcome you desire. You have provided a letter from the IFA's firm which says *"Nonetheless, it is perfectly feasible that another Pension Transfer Specialist and financial adviser at a different firm may take an opposite*

view and be prepared to process the transfer for you.” You have provided the FOS decision on your case and that also states that another IFA may have approved the transfer.

8. You would like the FCA to *“provide a workable mechanism for exercising the legal right to transfer”* a DB pension into a DC pension: you say the issues you have raised above show that the system isn’t working.

Preliminary points

9. You have engaged in correspondence with the FCA in order to obtain clarification on certain of its rules, regulations and guidance. You have not referred this to me directly and I have not reviewed this aspect of your interaction with the FCA.
10. You have asked me to recommend the FCA call into account your IFA and the FOS for their *“contrived advice”*. This is not something I can do under the Complaints Scheme, as my remit is to review complaints about the FCA only, and not the actions of third parties.
11. You have asked that I recommend the FCA to refund you the fee you paid to your IFA for the pension advice and any loss in death benefits if your scheme trustee obstruct the transfer of your pension to your new chosen provider. This is not something I can do under the Complaints Scheme. If you are unhappy with the advice provided by the IFA your correct course of action is to refer the matter to the FOS, and if you are unhappy with the actions of your pension trustees, you should refer the matter to the Pensions Ombudsman. I understand you have made a referral to both of these organisations.

My analysis

Element One: The FCA’s oversight of Firm X

12. You raised a concern that pension provider Firm X was breaching the rules/law by not accepting your transfer into a stakeholder pension due to unspecified FCA rules. You asked the FCA to review this and explain what rules were being referred to. The FCA complaints team initially replied that a stakeholder pension needs to meet a number of conditions to retain its status as a stakeholder pension including a requirement that the scheme accepts transfer payments in

respect of members' rights under other pension schemes, and that it has no rules preventing this.

13. In order to obtain clarity about your specific situation, I **invited** the FCA to clarify if an individual is able to transfer their DB pension into an existing stakeholder DC pension account with a firm, provided the individual has taken advice if the fund is over £30,000, irrespective of the outcome of the advice, or whether it is up to the discretion of the pension provider whether to accept the transfer into the *existing* (my emphasis) stakeholder DC account.
14. The FCA has reiterated that generally, for non-stakeholder pensions, "it is a commercial decision, having regard to the regulations and scheme rules, for pension providers whether to accept business where the advice was not to transfer. Firms have a right to take a risk-based approach to the business they wish to accept. They will also consider the extent to which other regulatory obligations cut across the way they conduct their business. For example, the obligation to act in the client's best interests (COBS 2.1). We are aware that some providers consider they would be acting against the client's best interests if they facilitated a transfer that was not advised as suitable for the client."
15. With respect to stakeholder pensions, the Pensions Regulator (TPR) is responsible for registering and deregistering stakeholder pension schemes. One key condition¹ [the seventh condition] for these schemes is the acceptance of transfer payments from other pension schemes. The FCA's position is that it is not clear that the legislation requires schemes to accept transfers in every single case.
16. You have said that you have submitted a complaint on this matter to the Pensions Ombudsman, who will make a determination on this.
17. In order to be helpful, I provide the following information for clarity: ultimately only the courts can make a final, binding legal determination on how the seventh condition should be interpreted in law. The Pensions Ombudsman can investigate and issue a binding determination, unless appealed in court.

¹ Schedule 2, paragraph 7, *Welfare Reform and Pensions Act 1999*

18. FCA Complaints Team excluded your allegation that provider X was allegedly breaching this requirement because it felt it had already answered it in a previous decision. I do not agree that it had. I invited the FCA confirm it has passed the information you provided both to the Supervision Hub and to the Complaints Team about provider X to the FCA Supervision department, (including all the points in 7 a – e above) and advise me what the outcome of the review is. The FCA has now done so. In my view, the FCA has given the matter appropriate consideration. Due to confidentiality restrictions, I am unable to share full details with you however, it is better that I, as an independent person, am able to review the file and provide my conclusions.

Element Two: The FCA's oversight of the pension industry: specifically, the transfer of Defined Benefit (DB) pension into a Defined Contribution (DC) pension

19. I am aware that in recent years there have been other complainants who have raised similar points to the ones raised by you. I also see that pension provider X told you that it felt there are *"conflicting requirements placed on pension providers"*; and in addition to that you have been told to shop around for IFAs who may approve your transfer. This is potentially of concern.
20. Taken together, you allege all of this potentially points to a scenario whereby:
- a. firms are potentially unclear as to what the rules are;
 - b. firms may be potentially incentivised not to accept DB transfer out requests and IFAs similarly may be potentially incentivised not to provide transfer out recommendations.
21. This is a concern with respect to those (albeit few) who do require this service, and I **invited** the FCA to comment on how it ensures that the industry is functioning adequately in this area and that insistent clients are able to obtain service.
22. Although the FCA say it's a commercial decision if a firm wishes to accept a DB transfer or not, there is anecdotal evidence that many firms are not accepting DB transfers.
23. The FCA has said that *"we aware that some providers consider that it would not be in clients' best interests to proceed with an action which has not been*

recommended to them. We consider this is mitigated by the process that advice firms should follow when dealing with insistent clients (COBS 9.5A), or the checks that firms themselves must carry out if a consumer approaches them directly (COBS 19.1.7C). In both cases, the process focuses on ensuring that the consumer understands the risks of acting against advice". It has also said that "The issue [here] referred to appears to be confined to insistent clients where the advice firm refuses to act for an insistent client. In our Finalised Guidance (FG21/3, Advising on pension transfers), we said: "We think it would be good practice to disclose upfront whether you will arrange a transfer for an insistent client if you advise against it. If you do not act for insistent clients, you should consider including an explanation that they may incur further charges if they choose another firm to implement a transfer if you advise against a transfer. Consumers can then make an informed decision about whether to proceed to take advice from you and understand the consequences of acting against your advice, if you do not recommend a transfer." So, we have made clear that we expect firms to let consumers know before they take advice whether the firm will act for them, in the event that the consumer wants to act against the advice".

24. Given the FCA's responses, it seems to me that if your IFA did not follow the advice above (to disclose if it would arrange a transfer for you if it advised against it), then you may have recourse to the FOS on this point (as opposed to the point the FOS already considered). I also suggest you provide this information to the FCA. Although this ensures consumers are aware that the IFA will not act for insistent clients if they advise against the transfer, that does not resolve the issue about your ability to implement a transfer as an insistent client.
25. That still leaves the issue of scheme providers who appear reluctant to accept transfer requests from insistent clients who act against advice. This is, essentially, the core of your complaint and I do not think the FCA has provided a sufficiently robust response to your allegation that the system is '*broken*' in this area.
26. I recommend that the FCA considers all the documentary evidence you have provided to it, in conjunction with other related information gathered from

different sources, such as the FOS, and considers whether there are any concerns around firms advising on pension transfers and/ or executing and accepting transfer requests from '*insistent customers*'. It should also consider whether there may be or have the potential to be wider, systemic issues and whether it ought to do further work with affected regulated firms to ensure the laws, rules and guidance are understood and applied correctly.

27. I ask the FCA to provide me with feedback on its review of all the relevant information and whether it thinks there is a risk that insistent customers are not being catered to appropriately by firms because of a lack of understanding or the relevant rules or a very risk averse approach, and as a result, suffering a detriment. I **recommend** the FCA updates me in six months' time.

Element Three: The FCA's Supervision Hub and Complaints Team handling of your complaint.

28. When you raised concerns with the Supervision Hub, it responded that "*If you believe you have a legal right to have your pension transferred, and that Firm X have broken the law, then you will need to seek legal advice and contact the police about this.*" You do not think this answer was appropriate. I agree, the FCA Supervision Hub should not have referred you to the police.
29. I have mentioned above that the FCA Complaints Team excluded your complaint about its oversight of Firm X which I disagree with, and it did not review your complaint about the Supervision Hub's referral to the police even though you raised it with them.
30. I uphold your complaint, and I **recommend** the FCA apologises to you for this and ensures that it provides adequate quality assurance on responses it sends out. The FCA has accepted my recommendation.

The Complaints Commissioner

Complaints Commissioner

16 July 2025