

02 July 2025

Final report by the Complaints Commissioner**Complaint number 202500121***The complaint*

1. The complainant referred a complaint to me on 9 April 2025 against the Financial Conduct Authority (FCA) regarding its regulatory position on the treatment of legally protected disability benefits, such as Personal Independence Payment (PIP) and Employment and Support Allowance (ESA), in affordability assessments undertaken by financial firms. The complainant argues that the FCA has failed in its duties by allowing firms to treat these benefits as disposable income, contrary to domestic legislation and the rights of disabled individuals. The FCA excluded the complaint on the basis that it related to its legislative functions, which are excluded from investigation under the Complaints Scheme.
2. **Outcome:** While I found that the FCA's overall approach to the complaint was not unreasonable based on the complainant's original submissions to it, I also found that the complainant's referral to my Office presented a materially reframed complaint raising new legal arguments that fall within the scope of the Scheme and which were not previously put to the FCA explicitly. Therefore, in my Preliminary Report I recommended that the FCA reconsider the matter in light of these expanded submissions and investigate the modified complaint. The FCA has accepted this recommendation.

Background

3. The complainant raised concerns to the FCA about how financial firms are permitted to include disability benefits in creditworthiness, debt enforcement and

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affordability assessments. These concerns relate to the potential harm such practice could cause to disabled consumers.

4. The FCA responded by dividing the complaint into two parts:

Part One: Whether the FCA's handling of queries and information provided to the complainant was adequate.

Part Two: Whether the FCA's rules and guidance, particularly CONC 5.2A.16(G) and Policy Statement 18/19, are adequate or require review.

5. The FCA declined to consider Part Two, stating it was excluded from the Complaints Scheme under paragraph 2.9(c) as it related to legislative functions. It did not uphold Part One, finding that the complainant had been provided with all relevant information and that the FCA's guidance appropriately allowed firms discretion.
6. In its decision letter, the FCA invited the complainant to provide further information or clarification within 14 days if he believed his complaint had been misunderstood or if there was additional relevant evidence. The complainant did not do so and subsequently referred the matter to my office, restating and expanding on his concerns. He asserted that:
 - a. His complaint had been mischaracterised by the FCA as a challenge to its rule-making functions.
 - b. His complaint actually related to the FCA's failure to supervise and enforce its existing guidance in a lawful and non-discriminatory manner.
 - c. The FCA's approach enables firms to treat inalienable benefits as surplus income, contrary to statutory protections under the Social Security Administration Act 1992, relevant case law, and international human rights obligations.
 - d. The FCA's rules which allow discretion on the part of firms as to whether to include benefits in affordability assessments (including but not limited to, when making decision at the pre-lending stage and in the course of creating a payment plan following a default on borrowing) are unlawful and lead to discrimination and inconsistent outcomes, including misapplication by the Financial Ombudsman Service.

7. He requested that the FCA's regulatory approach be reviewed and amended to explicitly protect disability benefits in affordability assessments and that the Complaints Scheme be reviewed to prevent legitimate supervision-related complaints from being excluded under the guise of legislative function.

Analysis

Did the FCA fairly characterise the complaint as excluded under 2.9(c)?

8. Based on the complaint submitted to the FCA, the FCA's interpretation was not unreasonable. The complainant's original submission did request a review and amendment of FCA guidance and expressed concerns about the discretionary treatment of protected benefits. These elements supported the FCA's conclusion that the complaint was, at least in part, a challenge to the content of its rules and guidance, a function excluded from the Scheme under paragraph 2.9(c).
9. However, it is also evident that the complainant referenced relevant case law, such as Payne (2011), and international legal instruments, including the UN Convention on the Rights of Persons with Disabilities. While not fully developed, these references signalled that the complaint may have had a legal and supervisory dimension, not merely a policy disagreement. The FCA's summary of the complaint did not reflect these legal references, and thus partially under-characterised its scope.
10. That said, the complainant did not clearly or explicitly argue at that time that the FCA was acting unlawfully, nor did he take up the FCA's invitation to clarify or expand on these issues within the 14-day period. Given those circumstances, I find that the FCA's overall approach to the complaint, including its categorisation and its invitation for further information, was not unreasonable.

Does the referral to me raise matters that fall within the scope of the Scheme?

11. In my view the complainant now clearly argues that the FCA's failure lies in its interpretation, supervision, and enforcement of its rules, functions which fall within the scope of paragraph 2.6. These concerns are materially different from a challenge to the rules themselves.

12. The complaint therefore raises potentially serious legal issues relating to the protection of disability benefits, the FCA's duty to protect vulnerable consumers (FSMA s.1C), and obligations under the Equality Act 2010 and human rights law.

Decision

13. In light of the complainant's now clear legal framing and the public interest in ensuring proper treatment of protected benefits, I recommended in my Preliminary Report that the FCA re-open the complaint under paragraph 2.6 of the Complaints Scheme and consider it afresh in light of the additional information provided. To assist with this process, I proposed sharing with the FCA your complaint to my Office, and I suggested that you provide to the FCA directly all additional information which you believe supports your assertions.
14. The FCA, in its response to my Preliminary Report confirmed that it accepts this recommendation and it will be opening a new complaint for investigation, on the basis set out above.

The Complaints Commissioner

Complaints Commissioner

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