

13 March 2026

**Final report by the Complaints Commissioner****Complaint numbers 202500442 and 202500121***The complaint*

1. On 22 August 2025, you submitted a complaint to my office about the FCA, and I have summarised your complaint as follows:

**Element One:** The FCA has failed to comply with the recommendation made in my 2 July 2025 Final Report (“**Final Report**”)<sup>1</sup> and has created a new complaint instead of reopening your original complaint. The FCA has undermined my recommendation and the integrity of the Complaints Scheme.

**Outcome: Not upheld**

**Element Two:** The FCA is misinterpreting, failing to supervise and enforce CONC 5.2A. Because the FCA is breaching legislation and case law, it is permitting a regulatory gap, in which FCA Handbook rules allow firms to include disability benefits within ‘income’ according to their commercial discretion. The FCA is therefore indirectly discriminating against disabled people.

**Outcome: Not upheld***Background*

2. On 13 March 2025 you complained to the FCA about its guidance on whether firms should include disability benefits in affordability assessments. You asserted that the FCA should issue guidance to the effect that disability benefits are protected from being classed as ‘income.’

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<sup>1</sup> <https://frccommissioner.org.uk/wp-content/uploads/202500121-Issued-02-July-2025.-Published-07-August-2025.pdf>  
202500442 and 202500121

3. On 26 March 2025 the FCA issued its first Decision Letter and excluded the complaint set out in Element Two above from the Complaints Scheme under paragraph 2.9(c), as it related to legislative functions. It explained that the relevant FCA Handbook rules were designed to be flexible, and that complaints about FCA guidance were excluded from the Complaints Scheme.
4. You referred your complaint to me, in which you asserted, among other things, that firms' discretion to treat disability benefits as income was unlawful. I considered that the concerns you raised with me introduced new legal arguments which had not been previously sent to the FCA, and therefore I issued a Final Report on your complaint. In this I concluded that the updated submission fell within the scope of the Complaints Scheme and warranted formal consideration by the FCA, so I recommended that the FCA review a revised version of your complaint.
5. This was not a finding on the substance of the complaint, but a procedural recommendation.
6. The particular issue which I recommended the FCA review concerned potential legal issues relating to the protection of disability benefits, which could have a bearing on how they are interpreted for the purpose of treating them as income.
7. The FCA accepted this recommendation and agreed to open a new complaint for consideration. On 22 August 2025 the FCA issued its second Decision Letter. It held that the legal matters you referred to did not provide a basis for interpreting "*income*" in CONC 5.2A as excluding disability benefits, and that there are no general legal principles which would require firms or the FCA to interpret it as such.
8. This means firms could lawfully interpret income as including disability benefits but should not automatically assume disability benefits are available to help repay credit. The FCA guidance sets out that it expects firms to provide customers with a level of care that is appropriate given the characteristics of the customers themselves and the broader circumstances. Therefore, firms should use their discretion on how to treat disability benefits, based on the particular circumstances.

9. On 22 August 2025 you complained to my office as you were not satisfied with the FCA's response.

### *Analysis*

*Element One: The FCA has failed to comply with the direction made in my Final Report and has created a new complaint instead of reopening your original complaint. The FCA has undermined my recommendation and the integrity of the Complaints Scheme.*

10. In my Final Report dated 2 July 2025 I recommended the FCA review your complaint afresh and it agreed to open a new complaint for investigation. This is what I expected the FCA to do, and what it agreed to do.
11. Although I recommended that the FCA review your complaint, I also recommended that it “*consider it afresh in light of the additional information provided.*” The FCA confirmed it would be opening a new complaint, and precisely because it has followed my recommendation, it has not undermined the integrity of the Complaints Scheme. There is no difference in the treatment of the substance of the issues by reference to whether it is a reconsideration of a new complaint. You have therefore not been adversely affected by this.
12. You have subsequently commented that the Final Report must say if the FCA complied with my direction that it reopen your original complaint. Firstly, I can make recommendations to the FCA, but I do not have the authority to direct the FCA to take action. I can, however, make recommendations. As noted above, by opening a new complaint, I consider that the FCA followed the substance of my recommendation.
13. For the above reasons, I do not uphold this element of your complaint.
14. You asked that we also not assign a new reference number to this complaint. Unfortunately, this is not possible for legal reasons. My Final Report of 2 July 2025 concluded the previous complaint, and I have no grounds to amend it. In order to consider further issues, I have to open a new complaint.
15. For the above reasons, I do not uphold Element One of your complaint.

*Element Two: The FCA is misinterpreting, failing to supervise and enforce CONC 5.2A. Because the FCA is breaching legislation and case law, it is permitting a*

*regulatory gap, and firms are allowed to include disability benefits within 'income' according to their commercial discretion. The FCA is indirectly discriminating against disabled people.*

16. You provided several arguments as to why firms treating disability benefits as income may be unlawful. The FCA has reviewed your representations and concluded that the legal matters you raised do not provide a basis for interpreting “*income*” in CONC 5.2A as excluding disability benefits, and that there are no general legal principles that would require firms or the FCA to interpret it in that way.
17. I note that you disagree, but in my view the FCA has given a reasonable explanation for its position. Ultimately, only a court of law can provide a definitive interpretation. However, based on the material available, the FCA’s view appears to me to be reasonable.
18. The FCA have said that it can only take supervisory or enforcement action where there has been a breach of rules, but firms are not breaching CONC 5.2A merely by treating disability benefits as “*income*.” Therefore, I do not agree with you that the FCA is failing to enforce CONC 5.2A for the reasons you have given.
19. The FCA has clarified that disability benefits can be treated as “*income*” under CONC, but firms might, and indeed should, choose not to in certain circumstances where other FCA principles mean it would not be appropriate. This discretion prevents the rule from operating in a way that would indirectly disadvantage disabled customers.
20. If firms were required to treat disability benefits as income in every case, this could result in outcomes that fail to take account of a customer’s vulnerability or essential disability-related expenditure. By allowing firms to consider wider FCA principles, such as affordability, vulnerability, and the Consumer Duty, the regulatory framework is specifically designed to avoid direct or indirect discrimination against disabled customers.
21. Consequently, I do not consider that the FCA’s framework results in firms directly or indirectly discriminating against disabled people for the reasons you give.

22. You have now raised an additional argument that there is a regulatory gap between the FCA Handbook and Scottish law. You state that, in Scotland, disability assistance (being the umbrella term used by the Scottish Government for disability-related benefits) cannot lawfully be treated as income by firms.
23. In support of this position, you have provided your interpretations of section 46 of the Social Security (Scotland) Act 2018, Schedule 3 of the Bankruptcy (Scotland) Act 2016, regulation 6 of the Debt Arrangement Scheme Regulations 2011 and section 677 of the Income Tax Act 2007.
24. These are new interpretations which were not raised with the FCA previously, and I have, therefore, asked the FCA to comment on your points. The FCA has confirmed that the legal provisions you have referenced in support of your argument do not match the quotes or descriptions you have provided.
25. These provisions deal with matters unrelated to disability assistance, specifically:
  - a. Section 46 of the Social Security (Scotland) Act 2018 relates to appeals in the First-tier Tribunal of Scotland.
  - b. Schedule 3 of the Bankruptcy (Scotland) Act 2016 contains a list of preferred debts for the purposes of bankruptcy. It does not relate to the classification of disability assistance as income.
  - c. Regulation 6 of the Debt Arrangement Scheme Regulations 2011 gives effect to consequential amendments listed in Schedule 2 of those regulations and does not relate to the classification of disability assistance as income.
  - d. Section 677 of the Income Tax Act 2007 deals with the value of securities in foreign currency and does not relate to the classification of disability assistance as income.
26. As such, those sections do not support an argument that disability assistance cannot be treated as "*income*" under CONC.
27. For these reasons, I do not consider that your additional arguments alter my overall conclusion. And I do not uphold your complaint.

28. While I acknowledge the strength of your views, I am satisfied that the general issues you have raised have been considered as far as my remit allows.
29. Where a complainant seeks a broader determination of regulatory policy or statutory interpretation, or wishes to challenge the FCA's interpretation of its rules, such matters fall outside the scope of this scheme and are ultimately for determination by the courts.
30. I note in passing again that, even if, as a general matter, disability-related benefits may be treated as "income" for the purposes of CONC, that does not mean they must be treated as income in every case. The application of CONC will depend on the individual circumstances, including whether it would be appropriate for the firm to rely on that income in light of the customer's particular situation and the firm's wider regulatory obligations.
31. My view set out above relate to the general point you have raised about potential incompatibility of FCA rules and legal provisions. If, however, you consider that you have personally suffered individual financial detriment because of a firm's treatment of income or affordability, that is a matter more appropriately pursued through the Financial Ombudsman Service.

*Other matters*

32. You have expressed concern that the FCA may have mischaracterised your complaint. I do not consider that to be the case. While there has been extensive correspondence between you and the FCA on these issues, the matter I asked the FCA to review was whether there are any legal impediments to firms treating disability benefits as income. The FCA has concluded that there are none.
33. As explained above, the supervisory framework is sufficiently flexible to allow firms to exercise discretion in light of the customer's individual circumstances.
34. You have also asserted that classifying disability assistance as income for the purposes of regulatory analysis would constitute unlawful processing of personal data and other breaches under the UK GDPR. I do not accept that conclusion.

35. If you disagree with my position, I suggest you approach the Information Commissioner's Office.

*The Complaints Commissioner*

Complaints Commissioner

13 March 2026