

05 November 2021

Final report by the Complaints Commissioner**Complaint number FCA001089***The complaint*

1. On 5 July 2021 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

You have complained that the FCA have failed to ensure that an adequate regulatory framework was in place under which a regulated Firm would be obliged to pay out compensation for consumers who are negligently advised by IFAs, in connection with long-term insurance products.

As a remedy, you are requesting an ex gratia payment to compensate you for the fact that the FCA had permitted a situation to arise where there appears to be no regulatory protection, or system of compensation in place to compensate consumers of long-term insurance products.

What the regulator decided

3. The FCA did not uphold your complaint, they advised you:

The Scheme is in place to deal with complaints that arise from the exercise of or failure to exercise, any of the FCA's relevant functions. This is set out in paragraph 1.1 of the Scheme and Part 6 of the Financial Services Act 2012.

As your complaint relates to legislation enacted by Parliament on which the FCA's rules are based, it is not something that we can investigate

under the Scheme because it is not considered one of the FCA's relevant functions.

As your complaint relates to an inadequate regulatory framework as prescribed above, rather than the FCA's performance on how it functions according to that framework, it is not something that we are able to investigate under the Scheme as it would not be considered one of the FCA's relevant functions.

Why you are unhappy with the regulator's decision

4. You have told me that:

FCA has failed to ensure that there is an adequate investigation and compensation scheme in place to provide redress to individuals affected by negligent advice given by independent financial advisers.

The FCA appear to have concluded that my complaint relates solely to the negligent advice that [advisor x] gave me in June 2002. That is not correct. My complaint also relates to the advice that [advisor x] gave me in the period from July 2011 to July 2018 when he was authorised by the FCA. Accordingly, and contrary to the position adopted in the FCA decision, I believe this complaint does relate to the exercise of, or failure to exercise, the FCA's relevant functions.

My analysis

5. You took out an income and protection policy through an IFA to cover your mortgage repayments should you be unable to work through ill health. When making a claim on this policy it was rejected by the insurer. The IFA withheld information from you from the insurer which confirmed you were not covered for the benefits you thought you were. Furthermore, the IFA told you the claim should not have been rejected and led you to believe he was assisting you with a complaint to FOS to resolve the issue.
6. 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.

7. That does not mean that the FCA cannot investigate concerns arising from information about individual complaints, but it investigates those in the context of considering whether or not regulatory action is justified, rather than whether or not the individual requires redress. Any action the FCA may or may not take as a result of the information you provided could not lead to redress for you personally.
8. You have advised the FOS will not accept your complaint as it is out of time. This does not mean it is not within FOS jurisdiction. It is up to the FOS whether they accept a complaint that is out of time.
9. I have passed the information you have provided to me about the contact you had with your IFA from 2011 to 2018 to the FCA as some of this information was omitted from your complaint you raised with the FCA. The regulator welcomes information from people who report concerns, 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 or individual 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 there is no general right for members of the public to know the outcome of reports that they make.
10. Like the FCA, I am required to respect confidentiality This means that sometimes I cannot report fully on the confidential material to which I have access. However, as part of the Complaints Scheme, I have access to all the FCA's complaints papers, including confidential material. This is so that I, as an independent person, can see whether I am satisfied that the FCA has behaved

reasonably. Sometimes this means that all I can say to complainants is that having studied the confidential material, I am satisfied that the FCA has (or has not) behaved reasonably – but I am unable to give further details. This can be frustrating for complainants, but it is better that I am able to see the confidential material. On occasions, I have persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible. I shall continue to pursue this matter with the FCA.

11. In your case, I am satisfied on balance with the FCA's response. The FCA will not inform you of any action to be taken, or not taken, in response to the information you provided about your IFA, which is reasonable in the circumstances. I recognise that there's a difficult balance to be struck between protecting confidential information to enable us to do our job and encourage potential informants, and the need to give consumers sufficient information and confidence to judge whether or not the regulatory system is operating effectively.

My decision

12. I realise you may be disappointed with my decision but for the reasons outlined above I am unable to uphold your complaint.

Amerdeep Somal
Complaints Commissioner
05 November 2021