

15 February 2022

**Final report by the Complaints Commissioner****Complaint number FCA001437***The complaint*

1. On 3 October 2021 you asked me to investigate a complaint against the FCA.

*What the complaint is about*

2. The FCA summarised your complaint as follows:

Part One You allege that [the Firm] were prevented from advising on pension transfers in 2017, but the FCA only notified Consumers to concerns with the Firm's standard of advice in 2020. Part Two You are unhappy with the lack of oversight and regulation by the FCA of Firm X particularly in regard to its standard of advice and dubious change of business from [.....]. You believe you should be awarded a financial payment as the FCA's inaction and poor regulation has impacted you in the medium and long term.

*What the regulator decided*

3. The FCA did not uphold Part One of your complaint and deferred Part Two of your complaint.

*Why you are unhappy with the regulator's decision*

4. You have asked me to review your complaint.

*My analysis*

## Part One

5. The FCA explains the background to the complaint as follows:
6. 'On 3 January 2018, the FCA agreed two letters with FIRM X to be sent out to clients, for those already advised to transfer out and those yet to be advised regarding their British Steel Pension Scheme (BSPS) pensions. The draft letters

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were sent to FIRM X's Director and Chief Compliance Officer Function. The letters contained the following references below:

- As a result of discussions between our regulator, the Financial Conduct Authority (the "FCA") and us, we have voluntarily applied to the FCA for certain restrictions to be imposed on the way that we carry out our business. As a result, we cannot give any advice about transferring BSPS benefits; and as you are one of our clients affected by this restriction, we wish to make sure you are aware of it and that you may have to take action as a result of it. We are therefore writing to you now to alert you to the fact that, if you still wish to receive advice about the choices you have, you will need to make alternative arrangements by finding a new regulated pensions adviser. We will not charge you for any of our work undertaken."

7. On 22 December 2017, FIRM X provided a Voluntary Requirements Notice (VREQ) to the FCA, under which FIRM X stopped providing DB transfer advice. This was applied to the FS Register on 28 December 2017.
8. In October 2020, it became clear that FIRM X were insolvent and could not afford to undertake proactive work to identify consumers who had suffered loss because of unsuitable advice.
9. The FCA decided to contact the related consumers in December 2020 so that they could make claims to the Liquidator and to the Financial Services Compensation Scheme (FSCS).
10. It is our view that from January 2018 to December 2020, the FCA had taken the necessary steps to protect FIRM X investors and informed them when it was no longer possible to secure their redress'.
11. You have said to me:
  - a. 'I did not receive the supposed Jan 2018 letter from Firm X. What proof have Firm X or FCA got that it was delivered to me.
  - b. As stated, I have not seen the 2018 Firm X letter, but the pertinent extracts from it in the Sept 16th 2021 FCA letter to me rejecting my complaint does not mention anything regarding FCA concerns regarding

Firm X giving poor DB advice. Also, it does not mention anything about a possible claim regarding this advice.

- c. Given such a serious matter, why did the FCA not send letters direct to customers in Jan 2018? As they did almost 3 years later in December 2020'.
12. You have made these points because as you did not get the letter in 2018, and by the time you received the FCA letter in 2020 the firm was insolvent and you could not be put back into the position you were before the advice you allege was unsuitable was given to you.
  13. I have raised the points you make with the FCA, and it responded that:
    - a. 'On January 2018, the FCA agreed two letters with Firm X to be sent out to clients, for those already advised to transfer out and those yet to be advised regarding their British Steel Pension Scheme (BSPS) pensions. The firm agreed it would be sending the letters in the first couple of days in January 2018. As the firm had stated it would be sending the letters, we would not ordinarily ask for evidence unless we had reason to think that they would not take the agreed action. The firm had previously co-operated with the FCA and we had no reason to believe the firm would not send the letters out.
    - b. In October 2020, it became clear that Firm X were insolvent and could not afford to undertake proactive work to identify consumers who had suffered loss as a result of unsuitable advice. The FCA decided to contact the related consumers in December 2020 so that they could make claims to the Liquidator and to the Financial Services Compensation Scheme (FSCS).
    - c. We did not contact the consumers in 2018 as at that time we were assessing if consumers had been given unsuitable advice and if a past business review was required to assess advice and provide redress, and so our diagnostic work was ongoing. We wrote to the firm's clients in 2020 as at that point it became clear that the firm would not be able to carry out a past business review as it had insufficient funds, and we therefore

wanted to alert consumers that if they were concerned about the advice, they had received they would need to make a complaint.'

14. I have sympathy with your situation. However, I do not consider the FCA's reasons for not writing to Firm X's customers in 2018 unreasonable. The firm was cooperating and it is not the FCA's role to conduct business on behalf of a functioning firm. I asked the FCA if it would nevertheless be sensible in situations such as this to ask the firm to confirm it had actually sent the letters it had said it would, even if the FCA did not ask for specific proof or evidence. The FCA responded that 'Supervision, as part of their daily regulatory work, require firms to constantly take actions according to our requests. The FCA therefore does not feel that we need to change the way we currently work because: We already ask for such evidence, but we do so according to the circumstances of each case and on a risk-based approach and 'To agree to a more wide ranging recommendation that requires Supervision to confirm that firms' have complied with all of our requests would be extremely burdensome for both the FCA and firms'.
15. In this case, it is not certain whether the firm did or did not send you a letter in 2018. The fact you did not receive a letter does not necessarily mean that a letter was not sent as it may have been sent and gone astray; or it may not have been sent at all. Because of the FCA's procedures in 2018, checks were not made with Firm X and it cannot be established definitely what happened. I am now suggesting that the FCA consider ways to improve its processes in this respect. It is disappointing that the FCA, in its response, is content with not knowing whether a firm is actually doing what it has asked of it. I don't agree, it is too much of a burden for FCA to ask firms to confirm by email that the FCA request has in fact been actioned.
16. I note that you disagree that the content of the letter, had you had it, would have informed you appropriately that the FCA had concerns about Firm X giving poor advice. This is not an element of complaint which the FCA has considered as part of its own investigation. Usually, under the Complaints scheme, I would refer you back to the FCA for an initial investigation as that is usually the swiftest way to resolve new complaints. In this case, I do not think that is necessary. You have raised a hypothetical point. As you did not receive the

letter, you have not taken action because of it. I do not think there is any grounds for investigating a complaint about how you may have interpreted a letter you did not receive.

17. You have also raised a complaint about the FCA's regulation of firm X which is deferred. The FCA has said it will review the deferral of your complaint in six months' time unless its regulatory action has concluded before then. I agree with this deferral.

Amerdeep Somal  
Complaints Commissioner  
15 February 2022