

1 July 2022

**Final report by the Complaints Commissioner****Complaint number FCA001651***The complaint*

1. On 9 February 2022 you asked me to investigate a complaint about the FCA.

*What the complaint is about*

2. In its decision letter to you dated 26 January 2022 the FCA described your complaint as follows:

## Part One

Mr X alleges the FCA was responsible for ensuring that a suitable contract existed between Firm X (Principal) and (Authorised Representative (AR)) at the point that AR was approved as an AR of Firm X.

The contract did not clearly set out the activities that Firm X had authorised AR to carry on. As a result, Mr X's complaint to the Financial Ombudsman Service was not upheld and he has received no compensation, despite losing his pension after receiving advice from AR that it was not authorised to give. This allegation is of a failure by the FCA in its approval of AR as an AR of Firm X.

## Part Two

Mr X alleges that the FCA allowed AR to give pension advice without having the necessary permission or authority. We have interpreted this as an allegation of a failure to adequately supervise AR and its Principal Firm X.

To resolve Mr X's complaint, he is requesting compensation of the value of his pension that was lost.

*What the regulator decided*

3. The FCA did not uphold the complaint. In Part One of the complaint the FCA explained that although Mr X believed the FCA should have not approved the AR as an appointed representative for Firm X, the FCA was not involved in the appointment. In Part Two of the complaint the FCA cited Section 348 of the Financial Services and Markets Act 2000 (FSMA) which it explained limited information that the FCA could share. The FCA stated that it was satisfied with the actions taken of the supervisory team when it reviewed the action that it had taken.

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

4. You are complaining that the FCA has failed in its principal objective of '...protecting customers...' This is with regards to the FCA's monitoring of Principal/Appointed Representative.
5. You have disagreed with aspects of the FCA's response citing that they appear to be incorrect - you have additionally provided supportive points in respect of this.
6. You believe systemic failure is one of Regulation by the FCA and Supervision and you have additionally provided supportive points in respect of this.
7. You state that a complaint was referred to the Financial Ombudsman Service (FOS) and it was rejected on the basis of Firm X not being responsible for the actions of its Appointed Representative. You mention neither FOS nor the FSCS will assist Mr X to be put back in the position he would have been in had he not been mis-sold the pension transfer.
8. Mr X's investment failed and he lost his only pension asset. You would like to know who (unless it is the FCA) is going to take responsibility for the regulatory failings.

*Preliminary points (if any)*

9. During my analysis of this complaint, it is my intention to look at and investigate the points that are appropriate and closely connected with the Complaints Scheme. General complaint points that have been made in connection with consumers is not something I am able to look at without individual consent.

10. I am also only able to investigate complaints about the regulators. Complaints about the Financial Ombudsman Service (FOS) and the Financial Services Complaints Scheme (FSCS) is not something the Complaint Scheme deals with. You would need to seek independent legal advice in relation to challenging both.

*My analysis*

11. I am sorry to hear about the financial loss your client suffered and the detrimental impact this has had on him.
12. I think it is worth setting out the background of this case. Your client was advised by an Appointed Representative (AR) of Principal Firm X in August 2014 to transfer his Standard Life personal pension into a Qualifying Recognised Overseas Pension Scheme (QROPS) with Group X in Gibraltar. Your client was then further advised to invest this pension fund (after significant IFA fees and charges) into an unregulated, collective investment Fund X. This investment failed and Mr X has lost his investment and therefore his only pension as a result.
13. The AR is no longer trading and your client has been to the Financial Services Compensation Scheme (FSCS). The FSCS informed him that all claims should be directed to the Principal Firm X. Your client raised a complaint with the Principal Firm X which was then referred to the Financial Ombudsman Service (FOS). FOS did not uphold the complaint, stating that the Principal Firm X was not responsible for the actions of its Appointed Representative. Your client then approached the FCA who did not uphold the complaint.
14. I have looked at all the information and evidence relevant to this case. I have also analysed the actions that the FCA took. Overall, I believe the FCA acted reasonably in certain areas. There are however other areas, where I feel the FCA could have done better. Given Mr X's personal experience and the problems that persisted on this case (which you have highlighted), I agree that there are valid arguments that the Principal Firm and Appointed Representative area is problematic. It was brought to light last year in the case of Greenshill Capital that the firms in question may have been using the Appointed Representatives regime for purposes well beyond those for which it was

originally designed. More on this can be accessed here:

<https://committees.parliament.uk/committee/158/treasury-committee/news/156684/treasury-committee-reports-on-lessons-from-greensill-capital/>

15. The FCA needs to ensure its operational objectives also delivers good outcomes for consumers and the market. This ties in with the FCA's recent consultation on improving the Appointed Representatives regime and tackling harm from this model. Details on the consultation can be accessed here: <https://www.fca.org.uk/publications/consultation-papers/cp21-34-improving-appointed-representatives-regime>
16. This consultation paper outlined the FCA's proposed changes to the Appointed Representatives (AR) regime. The proposed changes aim to reduce potential harm arising across the sectors where they operate ensuring that the regime delivers good outcomes for consumers and markets. This consultation launched on 3 December 2021 and closed this year on 3 March 2022. From an improvements perspective the FCA should consider sharing helpful resources and literature such as this in the future as this was not shared with you in the FCA decision letter. Given Mr X's personal experience and the fact that separately, the FCA made the decision to launch this consultation, I think it is fair and reasonable to highlight that the FCA needs to do more to prevent harm across this sphere of Principal Firms and Appointed Representatives. I say this particularly where Principal Firms are not fully adhering to what is required of them, not just when they appoint an AR, but the process following this. Harnessing consumer protection and protecting the financial market involves setting the standards to which Principal Firms should adhere to when it comes to their own oversight and control of Appointed Representative's once appointed.
17. I think it is a positive step that the FCA recognised the need for this consultation. Primarily, I would like the FCA to keep me updated with the developments and work in this area, specifically its Policy Statement once it is ready. In my preliminary report I originally recommended that the FCA keep me updated with its work in improving the Appointed Representatives regime, specifically updating me with its outcome of the consultation and Policy

Statement once it is ready. In the FCA's response to my preliminary report it has accepted this recommendation and will make arrangements with me once the Policy Statement is published which is expected to be at the end of July 2022. I accept the FCA's response on this therefore this recommendation is no longer required.

18. You mention that you disagree with aspects of the FCA's response citing areas that are incorrect. I have looked at the reasons you have provided for objecting and have no specific concerns with the way the FCA have defined Principal Firms, Appointed Representatives and how they work. You have also noted in your response to my preliminary report, '...at no point does the FCA appear to have checked if there was an agreement in writing between and, if so, if it was actually compliant or deliverable...' I have subsequently made further enquiries with the FCA on this. The FCA have informed me,

The AR Notification Form does not ask whether there is a contract in place and further this is not something that we check

19. I hope this addresses your concerns and provides you with more helpful context.
20. The consultation paper also provides some details of what the FCA currently asks for when registering Appointed Representatives and what it is proposing to ask for going forward which may be of assistance to you (paragraphs 3.11 to 3.13 in particular). <https://www.fca.org.uk/publication/consultation/cp21-34.pdf>
21. Overall the information the FCA gave you was correct. An Appointed Representative is a firm or person who carries on a regulated activity on behalf, and under the responsibility of, a firm authorised by the FCA (the Principal Firm). In appointing an Appointed Representative, the Principal Firm assumes responsibility for the regulated activities the Appointed Representative carries out. As I have mentioned earlier in my report, the FCA have recognised the significant problems in this area and the need for proposed changes.
22. You raise the point that '...The FCA response does not address the failings of the FCA to adequately regulate the Financial Services Market in respect of Appointed Representatives appointed by Regulated Principals...' I think the FCA could have shared further information with you such as sharing the FCA

consultation, much like I have shared earlier on in my report. I think at the very least, this would have been helpful and provided you with some transparency showing that the FCA is aware of problems in this market and that it is very much on the radar of the FCA. This would have highlighted what the FCA is doing to try to reduce potential harm and ensure the regime delivers good outcomes for consumers and markets in the spirit of its consumer protection objective.

23. You state that a complaint was referred to the Financial Ombudsman Service (FOS) and it was rejected on the basis of Firm X not being responsible for the actions of its Appointed Representative. You also mention neither FOS nor the FSCS will assist Mr X to be put back in the position he would have been in had he not been mis-sold the pension transfer. You state that Mr X's investment failed and he lost his only pension asset. You would like to know who (unless it is the FCA) is going to take responsibility for the regulatory failings.
24. These are valid concerns and I am sorry to hear of Mr X's loss. FOS and the FSCS are independent public bodies in their own right. So, it is not my role nor the FCA's role to challenge FOS decisions or those of the FSCS. I agree that Mr X should have access to a redress scheme in respect of his pension. However, I feel in this case that would be more appropriately positioned with the FOS regarding the dispute. Operating as a public body means that if one is unhappy with a decision, they have the right to apply for leave to challenge this via the courts. I am not sure whether FOS have already informed you of your right to apply for a judicial review against its decision, but if you are unhappy with FOS's decision, the next course of action is seeking leave to challenge its decision and you might also seek independent legal advice about that. I am also aware that the Serious Fraud Office (SFO) is investigating the pension fund that went into liquidation where Mr X lost his pension. This was also shared with you in the FCA's decision letter.
25. I think it is also important to share in my report that whilst I have analysed the actions of the FCA and its Supervisions division, there are areas that I unfortunately will not be able to divulge into due to the restrictions that I am bound by. The sharing of confidential information given to the FCA about firms is restricted by law under FSMA. 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.

26. The Office of The Complaints Commissioner has in the past persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible. As such and as the FCA confirmed with you, there is no general right for members of the public to know the outcome of reports the FCA makes or the actions that it takes. However, I can confirm that based on the FCA case file which has been provided to me, I am satisfied the FCA have taken on board information what has been shared with them and used it appropriately where the need arises.
27. During my investigation of this complaint notably the Financial Services Register for the Principal Firm shows the Principal Firm being an authorised firm in the UK's temporary permissions regime holding temporary permission for Insurance Distribution or Reinsurance Distribution. The Register also provides the Principal Firm's details including a URL link to the Principal Firm's website. Following this URL leads you to the Principal Firm's website. I am concerned to learn that certain links and sections of the Principal Firm's website at the bottom of each page particularly where it states '...Financial Services Authority...' and '...Regulated and Authorised...' do not work or lead access to the appropriate Regulatory website being advertised, which would misleadingly indicate that the Principal Firm holds regulated and authorised permissions for the Regulator it references on its website. Furthermore, in the '...About Us...' section of the website under the subheading '...Why the UK...' the Principal Firm advertises services for example for '...UK residents...' stating the following, '... we can also advise on wealth management and capital solutions for UK residents...' This is just one example of the advertising on the Principal Firm's website that does not

match with the permissions for which it is authorised for. From the Financial Services Register as mentioned previously, it shows that the Principal Firm holds temporary permissions for Insurance Distribution or Reinsurance Distribution only. The Register does not mention that the Principal Firm can advise UK residents on wealth management and capital solutions. It is advisable that the relevant department within the FCA which focuses on monitoring the marketing and advertising of Firms, immediately review the marketing and advertising on this Principal Firm's website to ensure the Principal Firm is not misleading investors and acting outside of its authorisations. In my preliminary report I asked the FCA to provide a response on this point and confirm whether it accepted my observations and the need for the Register entry to be updated. The FCA responded to me and informed me of what it will do going forward by making changes to the Register entry, to make the distinction clear between a Principal Firm's responsibilities with respect to current versus former Appointed Representative. The FCA have also provided me with a response regarding the concerns I raised in relation to the Firm's website. I am bound by confidentiality restrictions on this aspect so I will be unable to share details of this.

28. I also have further concerns in other aspects of the Financial Services Register. The Register also shows four separate Appointed Representatives appointed by this Principal Firm, the Register states,

**Who is this firm connect to?**

This firm is responsible for regulated activities of the firms listed below

29. Subsequently four separate Appointed Representatives are listed. Based on the information and evidence I have seen, this Register entry in respect of Appointed Representatives does not correlate. I question whether this part of the Register needs to be completely updated to show that the Principal Firm no longer is responsible for any regulated activities of the firms listed in the '...Who is this firm connect to?' section of the register. In my preliminary report I asked the FCA to respond on this point and confirm whether it accepts my observations and the need for the Register entry to be updated. The FCA responded on this point and provided it would update this wording to clarify that



the Principal is no longer responsible for activities of former Appointed Representatives once their relationship has come to an end.

30. The FCA stated that it expects to be able to make the Register changes by the end of September 2022 which I accept.
31. Overall I note your concerns and understand why you have raised points surrounding the FCA's monitoring of Principal Firms and Appointed Representatives given the loss suffered by Mr X. In this instance I think the FCA for the most part acted appropriately when it needed to subject to some improvements where it could have shared its work around the consultation .
32. I myself observed my own concerns regarding the Register entry for the Principal Firm. However, the FCA has provided me with a response on these points and also provided me with a response with respect to my request for updates once its Policy Statement is published. I am happy with the FCA's response and in light of this, no further recommendations are required.

*My decision*

Once again I am sorry to hear about the financial loss your client suffered and the detrimental impact this has had on him, I do hope his situation improves. Given the reasons outlined above in my report I am unable to uphold this complaint.

Amerdeep Somal

Complaints Commissioner

1 July 2022