

12 April 2022

Final report by the Complaints Commissioner**Complaint number FCA001665***The complaint*

1. On 23 February 2022 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. The FCA summarised your complaint as:

My understanding of your complaint is that you are unhappy with the pension rules. You have explained that you believe “*people should be able to invest where they want and have full control following positive advice to transfer*”. You state that “*expensive ongoing advice*” is not needed.

You believe the anyone transferring a pot should be able to transfer the pot to wherever they want provided they are FCA approved or get advisers out of the system so people can have proper control over their future.

What the regulator decided

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

After carefully considering the information, you have provided, we have concluded that we cannot investigate your complaint under the Complaints Scheme.

This is because the Complaints Scheme covers the investigation of complaints that arise in connection with the exercise of, or failure to exercise, any of the FCA’s relevant functions.

The 'relevant functions' of the FCA are defined in the Complaints Scheme and Part 6 of the Financial Services Act 2012, and broadly speaking cover the FCA's regulatory functions that arise under the Financial Services and Markets Act 2000, or such other functions as may be ordered by HM Treasury.

Expressly excluded from the definition of 'relevant functions' is anything arising from the FCA's exercise of legislative functions or standards review functions. 'Legislative functions' of the FCA include the making of rules, and the issuing of general guidance.

Your complaint relates to pension rules, which is an exercise of our legislative functions. Therefore, your complaint is excluded from being considered under the Complaints Scheme, as confirmed in paragraph 3.4(c) of the Scheme.

As your complaint relates to legislation enacted by Parliament, it is not something that we can investigate under the Scheme because it does not relate to an exercise of the FCA's relevant functions.

We have recently made changes to the rules on pension transfer advice in the Financial Services Handbook. However, paragraph 3.4(c) of the Scheme sets out that a complaint about the performance of the regulators' legislative functions (including making rules) is excluded from the Scheme.

Why you are unhappy with the regulator's decision

4. You have asked me to review the FCA's decision.

Preliminary points (if any)

5. It is important for me to highlight, matters which are excluded from the Scheme which I am unable to investigate.
6. Section 3.4 (c) of the Complaints Scheme provides:

Exclusions to the Scheme

- 3.4 Excluded from the Scheme are complaints:

- c) in relation to the performance of the regulators' legislative functions as defined in the 2012 Act;
7. I also should explain that the Complaints Scheme is concerned with the actions or inactions of the FCA. It cannot deal with complaints against banks, IFAs, individual firms, nor is it a redress service for individual consumer complaints. The Financial Services and Markets Act 2000 explicitly provides for a consumer redress service separate from the FCA.
 8. 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 Financial Ombudsman Service (FOS).
 9. 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 could not lead to redress for you personally.

My analysis

10. You have told me:

We sought advice last year on a pension transfer, at the conclusion of which the financial adviser declared in his report that it was in our interest to transfer out of the DB pension into a Defined contribution scheme.

All well and good, then it came to where the pot of money (CETV) was to be invested. We said that we were experienced investors and that we wanted to invest the money with Firm X and not the Firm Y he recommended.

He then declared that following consultation with Firm Y (his associated platform) that if we did not want to invest the money with them then he would change his advice to "not in your interest to transfer".

Firm Y charges £7000 a year for their platform and will only deal with financial advisers, and the financial adviser wanted a further £7000. So, he was giving us no choice but to allow £14,000 to be taken from our pot on transfer when we could have transferred to interactive investor and paid £500 in the first year and thereafter. He and Firm Y would have gladly taken £14,000/annum.

Smacks of extortion or blackmail? Yes, this was clearly my view, so I wrote to the FCA asking for clarification of their guidance, as the claim made by Firm Y and the financial adviser was that if our pot of money did not go to them, then they would not be compliant with FCA rules.

11. I note you are unhappy with the FCA's response, however the FCA investigator was right to tell you your complaint was excluded from the Complaints Scheme and therefore could not be investigated. Whilst the FCA excluded your complaint, I am pleased to see they provided you with information on the Pension legislation and the FCA's work and the advice process. Furthermore, the FCA have informed you to contact your MP in relation to amendments to the legislation.
12. In addition to raising the issue to change the legislation, if you want to raise a complaint about the firm who provided you with advice last year then you may wish to refer your complaint to the FOS. I note you did not accept the advice of the IFA and whether the FOS accept your complaint is a matter for FOS and not something I can advise you on.
13. In response to my preliminary report, you have told me:

I am not seeking a change in the Law as you imply, I am seeking to make sure that the FCA as the guardians of Financial legislation carry out their duties to uphold Govt legislation and do not seek to undermine or subvert it against the interest of people who come into contact with the pension transfer rules.
14. I am sorry, but as I have explained above your complaint relates to pension rules, which is an exercise of our legislative functions, as such your complaint is excluded from being considered under the Complaints Scheme.

My decision

15. Whilst I know you will be disappointed with my decision, I am unable to investigate your complaint as it does not fall within the remit of the Complaints Scheme.

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Complaints Commissioner

12 April 2022