

01 September 2022

Final report by the Complaints Commissioner**Complaint number FCA001719***The complaint*

1. On 11 May 2022 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

Part One

You want to complain about the process used to terminate your defined benefit (DB) transfer permissions in March 2021.

You object to the process for three reasons:

- The process served no benefit to consumers and the only party to benefit was the FCA.
- The FCA have been intentionally negligent in their regulation of the PI market to shrink this area of advice while claiming all other parties are responsible for the situation. [see Part Two]
- The FCA have ignored who you are, your firm, and punished you with no consideration of the wider circumstances. You believe this has amounted to a witch-hunt, including public labelling of your firm as ‘a danger to consumers’.

You allege the elimination of small firms (like yours) from the market is an intentional outcome of a process contrived for that purpose, and the result of intentionally poor regulation of the professional indemnity market. You allege the process was vindictive and unfair and as a firm you have been treated worse than firms suspected of criminality, and no avenue for appeal or constructive discussion was made available to you. You believe the actions of the FCA are an intentional act of unjustifiable punishment

and consider this to be a vile attack on you and your firm. You claim the FCA have no evidence of your firm causing harm to consumers or poorly performing but have still removed your firm from the market without any discussion, assistance or right to appeal. You claim this classification of you as 'causing harm to consumers' is libellous and the FCA have no right to be publicly vilifying you in this way.

Part Two

You allege that senior management and policy makers in the FCA have intentionally inserted an impossible requirement for firms to source PI cover for DB transfer cases completed to simply to save face. You claim it is clear this process is leaving investors almost unprotected as DB only run-off PI cover does not exist in the market. You believe it is contemptible behaviour for an organisation meant to provide consumer protection and the FCA conduct in relation to PI cover has been laughable and dishonest in equal measure.

You believe it is an intentional act of FCA regulation to manipulate the population of directly regulated IFAs, as the lack of constructive suggestion to insurers struggling to evaluate the risks of small firms makes obtaining PI cover difficult and expensive.

Part Three

You claim you have repeatedly asked three questions of the FCA which have been ignored. You would like specific and direct answers to these questions:

Please can you confirm the position of the FCA is that a firm like us holding additional capital (£18,000 from your table) is more likely to "...be able to meet their liabilities as they fall due", than a PI policy covering each case up to £500,000?

Please can you confirm the FCA are happy to accept responsibility for the firm's lack of PI cover, if any claim arises which exceeds the firm's capital, but is less than £500,000, since it will be the FCA's direction causing insufficient cover for the firm to be in place?

Please confirm that, if the firm is unable to add the additional capital advised in your table, and the firm ceases trading as a result of your decision, the FCA is comfortable such an outcome is intended by the regulation? FG21-3 Paragraph 1.3 states: “We will carry on our work to identify and stop those firms which we consider are causing harm to consumers, including the appropriate removal of poorly performing firms from the market.”

What the regulator decided

3. The FCA did not uphold your complaint. In its decision letter dated 3 March 2022 (Appendix 1) it explained that (in summary):
 - a. With respect to Part One the FCA said that the treatment of your firm was not outside the standard process followed for other firms. There is no correspondence which can be categorised as vindictive or libellous.
 - b. With respect to Part Two, the FCA provided a detailed overview of its work in the DB Transfer market and explained that the FCA consumer protection objective means the FCA strategy is to focus on removing firms from the market who do not meet the requirements to offer suitable advice or fail to have adequate PII in place. This is to protect consumers but will have the impact of reducing the number of firms in the market.
 - c. With respect to Part Three the FCA said it had addressed your queries and explained why it had reached that conclusion.

Why you are unhappy with the regulator’s decision

4. You wrote to me on 11 May 2022 (Appendix Two) and in summary you say:
 - a. You feel your firm has been labelled as one ‘causing harm to consumer’ unfairly, that the FCA has not proved how your DB transfer clients have benefited from the new process, that you were given no opportunity to appeal the FCA’s process, which you feel is unfair (Element One).
 - b. You feel the FCA is disregarding the outcome of consumers you gave DB advice to with the loss of your permissions and that smaller firms like yours are ‘collateral damage’ in this process, as it seems only firms with higher turnover can secure the required new cover (Element Two).

- c. You do not feel the FCA has answered your questions and you explain why you believe this (Element Three).

My analysis

5. The background to your complaint is that your firm, which offered DB pension transfer advice, was unable to obtain the cover required by the FCA in 2021, and therefore you say you reluctantly submitted an application to vary your permissions, which means you will not be offering this type of advice in future.
6. You remain deeply frustrated by this for the reasons you give in your complaint letter.
7. I have carefully reviewed both the FCA's file on this case and its decision letter to you dated 3 March 2022 and your complaint letter dated 11 May 2022.
8. The FCA has explained to you that its policy is for the benefit of consumers in the round, and that it is applying the policy across the board to all firms offering DB transfer advice. It has explained the requirement for PII cover is the same for all firms: it is 'non binary' and that the FCA will not enter into negotiations with individual firms on this matter. It recognises that there are concerns about the rising cost and availability of PII for firms advising on DB transfers. It knows that firms which provide suitable advice to consumers may face higher premiums than in the past, and that some of them may have difficulties in securing adequate PII cover. Its position remains that firms need to have PII policies in place in order to protect them and their consumers.
The FCA provides much greater detail in its decision letter on its policy and thinking in this area.
9. I should make it clear that it is not my role to say what I would have decided had I been the regulator. My task is to assess whether or not the decisions were within the range of decisions which the regulator could reasonably have taken, in the light of its statutory duties and policies.
10. I consider that the FCA policy interventions to raise the standard of DB transfer advice cannot be said to have been unreasonable, the decision having been reached after careful analysis of the factors involved in a way which helps the FCA deliver its consumer protection and market integrity objectives.

11. I recognise that the FCA policy interventions will have the impact of reducing the number of firms in the market, as has happened to your firm. I have sympathy with your situation, but in my view the FCA is right to pursue a strategy which requires that firms have adequate PII policies in place to protect them and their consumers. I can see that you repeatedly refer to your own clients and how they specifically are benefitting from the FCA's [policy] interventions, and that despite the FCA's explanations you feel your firm has been somehow singled out.
12. I have not seen any evidence that your firm has been singled out in any way. The facts of the matter are that you became unable to purchase the required PII and you could not continue to have permissions to write new DB pension transfer business in line with its policy as applied to all firms who offer DB transfer advice.
13. I turn to the FCA's response to the three questions you posed. It is not my intention to repeat the various arguments both you and the FCA have put forward (and which can be found in Appendix 1 and 2) on the issue of whether your questions have been answered or not. My view is that the FCA has provided you with sufficient information to address your queries. It has explained that that DB transfer advice liabilities cannot be covered by additional capital.

My decision

14. I have sympathy for your situation, however, I do not think the FCA's policy interventions to raise the standard of DB transfer advice can be said to have been unreasonable. In my view, the FCA decision letter dated 3 March 2022 very thoroughly addresses the background thinking and aims of the FCA policy in this area and provides a detailed and reasonable explanation about the regulatory background, as well as a clear understanding of the potential issues some firms would face as the FCA strives to fulfil its customer and market integrity objective.
15. Your firm has not been treated outside the FCA's processes, and although you object to these, I do not think they were unreasonable for the reasons given above.

16. I understand you continue to feel aggrieved as you were not able to secure additional PII cover and have had to exit a market you worked for in many years, but for the reasons I give above, I do not uphold your complaint.

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Complaints Commissioner

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