

5 April 2018

Final report by the Complaints Commissioner**Complaint number FCA00429***The complaint*

1. You initially wrote to the FCA Complaints Team on 18 September 2017 raising nine elements of complaint. The background to this complaint is that the Financial Ombudsman Service (FOS) upheld a complaint you had in 2012 against your Independent Financial Adviser (IFA) on issues surrounding your pension, but due to circumstances which you have described concerning the relationships between the FOS, the annuity provider, and your IFA you did not receive compensation. In particular, you are concerned that the Ombudsman made his decision conditional upon the actions of third parties. You consider that the FCA ought to do something about this.

What the regulator decided

2. The FCA Complaints team provided you with a decision letter dated 15 December 2017 in which it condensed your complaints to six. It upheld three of your complaints (essentially, those relating to the manner in which it had responded to your complaints) and did not uphold a further three (essentially, those in which you had challenged the FCA's explanations about why they would not intervene into the FOS's handling of your complaint).

Why you are unhappy with the regulator's decision

3. In your letter to me you explain that the FCA has told you numerous times that it cannot interfere with the FOS decision. However, you say you 'didn't ask for any interference on any decision, I asked the FCA to make the FOS honour its promise to me - to ensure that I am not out of pocket - and to penalise the FOS for breaking its rules and guidelines'.
4. You are also unhappy with what you see as the FCA's attitude towards you – you cite two examples (though there are a number of others raised in your correspondence with the FCA). The first is a failure to give you a promised update on the progress of the investigation of your complaint, and the second the way in which a letter which you wrote to the FCA's Chief Executive was handled.

My analysis

5. There has been a large volume of correspondence between you and the FCA, which I have studied. It is clear to me that the FCA has explained to you in considerable detail the different roles and separation of functions of the FCA and the FOS, as well as what your options are if you are dissatisfied with the FOS. However, it remains your view that the FCA could and should penalise the FOS for what you see as its failings

to honour its duty to ensure that you are compensated for the losses which the FOS itself has found you are owed.

6. One of the issues covered in the correspondence between you and FCA is the circumstances in which the FCA can intervene in the work of the FOS. In its letter of 25 August 2017, the FCA said

The FCA were not given the powers to investigate or intervene in individual cases. This is not our role as the regulator.

7. You have repeatedly made the point to the FCA that you are not asking them to overturn the FOS's decision – which was in your favour. Your complaint is about the way in which the FOS chose to implement the decision which – for complex reasons – has led to a position in which you have been denied compensation.
8. I understand the distinction you have made, but I do not think it alters the position. The legislation governing the work of the FCA and FOS clearly requires an operational separation between the two organisations. The fact that your complaint is about the implementation of the decision in your favour does not, in my view, change the position that it would be wrong for the FCA to intervene.
9. That leads to the question of whether, even though the FCA cannot intervene in your particular case, your case raises more general issues that the FCA should take forward, given its duties of oversight of the FOS. The FCA, in its letter of 15 December 2017, explained to you that

Shortcomings in the Financial Ombudsman Service's performance in a particular case or cases, even if established, is not evidence of a systemic failure that may require the FCA's intervention, or support a conclusion that the FCA had failed in its duties. A "systemic failure" is a failure that might call into question the Financial Ombudsman Service's ability to fulfil its functions, and therefore justify FCA intervention.

10. In its letter of 25th August 2017, the FCA told you that the information about your case had been passed to the "relevant teams" within the FCA to consider, although the FCA would not be able to provide you with any further information. This was the correct step for the FCA to take.
11. As mentioned above, you cited two particular examples of what you saw as mishandling of correspondence. In relation to the first, I see that during the course of its investigation, the FCA did not update you as promised in November 2017. It apologised to you on 26 January 2018. Clearly, you should have been updated, but you have received an apology.
12. You also raise points about how the FCA have handled your letter of 7 December 2017 to the Chief Executive of the FCA, and the FCA's letter to you of 26 January 2018. These points go beyond the scope of the complaint which I am investigating, but I have invited the FCA to address these matters in separate correspondence with you, which it has agreed to do.

My decision

13. I have looked very carefully at the correspondence about your complaint. I recognise that as a result of failings for which you are in no way responsible, you have been left significantly out of pocket.

14. Your IFA, an annuity provider, the FOS and the FCA have all been involved in the circumstances giving rise to your complaint. My role is to look only at the actions of the FCA. In my view, although there were some failings in the FCA's correspondence to which you have drawn attention, the FCA were right to say that they could not become involved in your individual case, and they have tried to give you full explanations of their rationale.
15. In the course of your correspondence, you have raised some broader issues about the accountability of the FOS – those are issues of public policy, and relate to the way in which Parliament has established the arrangements for regulation of financial services. Those issues are beyond the scope of this Complaints Scheme.
16. For these reasons, while I am sorry about the situation in which you find yourself, I am afraid that I cannot uphold your complaint.

Antony Townsend

Complaints Commissioner

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