

22 March 2019

Final report by the Complaints Commissioner**Complaint number FCA00516***The complaint*

1. You complained to me that you were unhappy with the FCA's response to your complaint about your endowment funds.

What the complaint is about

2. You had two with-profits endowment policies administered by firm X which matured in 2016 and 2017. You consider that the maturity value you received was lower than your reasonable expectations, and had been reduced for 'nebulous and unsubstantiated reasons'.
3. You asked the FCA to ensure that firm X complies with the FCA's policy and regulations.

What the regulator decided

4. The FCA did not uphold your complaint. It said that the earlier correspondence between you, your MP, and the FCA had been properly handled. It was satisfied that its Supervision Department had made proper inquiries of Firm X in response to your concerns. The FCA said it could not provide further details due to confidentiality restrictions.
5. The FCA also explained that disputes between individuals and firms were matters for the Financial Ombudsman Service (FOS), and it understood that you had referred the matter back to the FOS, which was the right thing to do.

Why you are unhappy with the regulator's decision

6. You have concerns about the FCA's regulation of firm X between 2001 and the date your policies matured. (Element One)

FCA00516

7. You do not think confidentiality restrictions should apply to the information you requested, which is firm X's payouts on policies similar to yours for the period 2001-20017 (so you can assure yourself you have not been treated any differently from other policy holders). (Element Two)
8. You feel you 'were robbed' of £30,000 on the maturity of your policies. You claim this is because your reasonable expectations about maturity values have not been honoured by firm X. You have submitted this complaint to the Financial Ombudsman Service which is now reviewing it. (Element Three)
9. You feel the FCA should have asked your permission before discussing your case with firm X. (Element Four)
10. You do not feel the FCA complaints department should have investigated your complaint because it is 'nonsense' for an organisation to investigate itself. (Element Five).

Preliminary points

11. You are in correspondence with a number of organisations and individuals about your complaint, and you have asked me if I can review the outcome of the correspondence with the third parties once you receive it. I have explained to you that under the Complaints Scheme my role is to consider the actions or inactions of the FCA only. I cannot review the actions of any other organisations. If, after I have issued my final decision, you receive genuinely new evidence about the FCA which casts doubt on my conclusions, I would be prepared to review that.
12. You have asked me to postpone my report until your case at the Financial Ombudsman Service (FOS) has been finalised so that I do not prejudice the decision of the FOS. The FOS and I are independent of each other and we review different matters. I am reviewing your complaint against the FCA and the FOS is reviewing your complaint against firm X. I have taken no view about your complaint to the FOS, so my report should have no effect upon the outcome of your FOS case.
13. You have expressed concern about my independence in this matter because the regulators have appointed me (ratified by HM Treasury). My independence is protected by the Financial Services and Markets Act 2000 (the Act). I can and do

uphold complaints against the FCA as set out in my Annual Report – see <http://frccommissioner.org.uk/wp-content/uploads/OCC-Annual-Report-2017-2018.pdf>.

My analysis

Element one

14. Having studied the FCA's records I can say that I am satisfied that the FCA has reviewed the issues you raise as part of its regulatory oversight of firm X. Unfortunately, I cannot say any more than that, and I recognise that that will be frustrating for you.
15. I recognise that there is a difficult balance to be struck between protecting confidential information and the need to give consumers sufficient information and confidence to judge whether or not the regulatory system is operating effectively.
16. Like the FCA, I am required by law 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. On occasions, I have persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible
17. Based on the information I have seen on this case, I am satisfied that the FCA did engage properly with firm X in response to your concerns. Therefore, I am unable to uphold this element of your complaint.

Element Two

18. You want to be sure that firm X has not treated you differently from other policy holders. You feel the best way to gain this assurance is for the FCA to compel firm X to provide you with data on all the maturity values from 2001-2017 on policies similar to yours.
19. The FCA's response is that this data cannot be released due to confidentiality restrictions. I find this response reasonable.
20. The FCA has, however, been monitoring data from firm X regarding maturity value of payouts. From what I have seen the FCA's actions have been reasonable.

Element Three

21. You feel you are owed an extra £30,000 on top of the maturity value of your policies. Amongst other things, you have concerns about a telephone call you had with a member of staff at firm X, during which you were given incorrect information. The firm has apologised that you were given incorrect information, offered you an ex gratia payment for distress and inconvenience, but it does not consider that this created an entitlement as you were told that maturity values were not guaranteed. You do not agree with the firm's position, and you have complained to the FOS on this matter. The FOS is investigating.
22. I agree that the FOS is the appropriate organisation to deal with this complaint, and that it is not a matter which the FCA or I can consider under the Complaints Scheme.

Element Four

23. You do not believe that the FCA speaks to members of the public and therefore you complained to your MP who wrote to the FCA to ask questions on your behalf. As part of its review into your complaint and in order to reply to the questions of your MP, the FCA discussed your case with firm X.
24. The FCA did not, however, ask for your permission to do so.
25. It is not the case that the FCA does not speak to members of the public. Having reviewed the evidence, I am satisfied the FCA's motivations in disclosing your name to firm X were to be helpful, and the fact that it disclosed your name to firm

X has not been detrimental to you or your case - indeed, I think it is clear that it assisted the FCA's work, and your complaint was already well known to the firm. Nonetheless, I think it would have been preferable for the FCA to have sought your consent, and I **recommend** that in future cases of this type the FCA seeks the complainant's permission for disclosure if there is any doubt about the matter. The FCA has accepted this recommendation (but has advised there may be exceptional cases where this is not possible). You have asked me to conclude that the FCA has breached s348 of the Financial Services and Markets Act 2000: I do not consider that it has, since that section relates to information received for certain regulatory purposes, but only a court could make a ruling on that matter.

Element five

26. The FCA's ability to investigate complaints against itself in the first instance is provided by the Act. Under the Complaints Scheme, the FCA usually do their own investigation first, as that is generally the swiftest way of resolving matters. If complainants are dissatisfied with the outcome of the FCA investigation, they can ask me for an independent investigation. I am also able to investigate complaints without waiting for the FCA to investigate first if there are particular reasons which the complainant asks me to consider.
27. The fact that the FCA investigated your complaint first has not disadvantaged you and therefore I do not uphold this element of your complaint.

My decision

28. The root of your complaint is that your with-profit endowment policies with firm X have not delivered the maturity values which you reasonably expected. I appreciate this is disappointing for you. However, from the evidence available to me, this is not the fault of the FCA. From what I have seen, the FCA's actions have been reasonable.
29. The FCA has tried to be helpful in liaising with firm X about your complaint to satisfy itself that your case was handled fairly. However, the FCA did not ask for your permission before contacting firm X with your details. I **recommend** that the FCA takes steps to ensure that in future cases of this kind it seeks the complainant's permission for disclosure and the FCA has accepted this

recommendation but has advised there may be exceptional cases where this is not possible.

30. Finally, I recognise that you find it frustrating that you have had to pursue your concerns with several organisations, and that no one organisation can consider the totality. I am sorry about this, but I am afraid that that is the way in which financial services regulation has been established by Government and Parliament. If you are unhappy about this I suggest you approach your MP. I am unable to consider matters other than those which relate to the actions of the FCA.

Antony Townsend
Complaints Commissioner
22 March 2019