

25 June 2019

Final report by the Complaints Commissioner**Complaint number FCA00557***The complaint*

1. You complained about the actions of the FCA's Consumer Contact Centre (CCC) and other actions of the FCA in relation to two firms, Firm X and Y.

What the complaint is about

2. You complained that the advice you received from the CCC that you should raise your concerns about Firm X with the Financial Ombudsman Service (FOS) was incorrect, which resulted in you wasting four months of your time because the FOS advised you that it could not deal with your complaint as it is about the conduct of Firm X in connection with the administration of your pension. You were told to approach the FCA again.
3. You also complained that Firm Y acted in breach of the FCA's rules when selling you your pension product and that the FCA would not investigate your concerns.

What the regulator decided

4. The FCA upheld your complaint about the CCC and offered an apology and informed you that improvements had been made in CCC processes to try to ensure that the same mistake will not happen again.
5. It did not, however, investigate your complaint about Firm Y as it deemed this a new complaint. You were told that your concerns had been passed on to the relevant supervisory team and that you could provide further information if you wished, through the CCC.

Why you are unhappy with the regulator's decision

6. Whilst you accepted the apology and improvements put in place by the FCA in response to your complaint, you believe that you should have been

FCA00557

compensated for the time wasted and the distress and inconvenience caused.

(Element one)

7. You believe the FCA either did not understand your complaint about Firm Y or put two complaints “in one to save time and effort”. Your complaint about Firm Y was put to the FCA at the same time as your complaint about the CCC and it should have been investigated accordingly. *(Element two)*

My analysis

Element one

8. I consider that the FCA made the right decision to uphold your complaint, as the Associate taking your call on 3 January 2019 clearly did not identify that you were complaining about an occupational pension transfer and the actions of the pension provider, which would place your complaint outside the remit of the FCA and the FOS and within the remit of the Pensions Regulator and the Pensions Ombudsman.
9. I agree with the FCA’s decision to apologise to you and for improvements to be implemented in the CCC. However, in my view it should have offered you a distress and inconvenience payment as the error by the CCC Associate resulted in wasted time and effort for you. I therefore **recommended in my preliminary report** that the FCA offer to pay you £50 in compensation.
10. The FCA has accepted this recommendation. You stated in your response that you will not accept the “trivial compensation” in light of all that you have suffered.
11. I made this recommendation in the light of the administrative errors made by the FCA and not as a means of redressing your overall complaint and losses. The recommendation will remain in place, but it is for you to decide whether or not you accept it.

Element two

12. In its decision letter dated 1 March, the FCA stated that while you included Firm Y on your complaint form dated 11 February, it did not focus on your complaint about this firm because “you specifically referred to Firm X” in your previous correspondence. The decision letter did, however, confirm that the information you provided had been passed onto the relevant teams within the FCA.

13. There was further correspondence between you and the Complaints Team following this letter, in which it was explained that the FCA does regulate firms which provide pension transfer advice, such as Firm Y, and it welcomes information from consumers as this can inform its supervisory work. The FCA might investigate concerns arising from information about individual complaints (depending on a number of factors), 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 as a result of the information you provided would not lead to redress for you personally.
14. The FCA correctly advised you that your individual complaint about Firm Y's actions at the time of the sale, which you are complaining about, would have to be adjudicated by the FOS. It is my understanding, which you confirmed to be correct in your response to the preliminary report, that the FOS did not uphold your complaint about this. You asked the FCA to discuss these potential rule breaches with the FOS and it is your view that the reason your complaint was not upheld is because the FCA would not comment about the potential breaches of COBS rules. You were correctly advised that the FCA would not be able to intervene in this way.
15. It is the role of the FCA to supervise the conduct of firms authorised by it, and while it welcomes information from individual consumers about concerns over the conduct of these firms, it is not within its statutory remit to intervene in individual cases or give feedback to individuals about its work in the way you are expecting it to. I note that you believe that under section 138D of FSMA the FCA is obliged to investigate your complaint as an individual against a regulated firm, and that the FCA informed you that while this provision allows an individual to take legal action against a regulated firm or individual which contravenes the FCA's rules, in its view it does not mean the FCA is obliged to investigate this complaint.
16. It is not within my remit to interpret legislation, that is the role of the courts, therefore I cannot adjudicate this point . I note from your comments that you have now sought independent legal advice.

17. While the FCA should have formally included your complaint about the alleged breaches of its rules by Firm Y in its investigation and decision letter, I note you believe that taking these steps would have led to a different outcome in your complaint, but I disagree. The Complaints Team were correct to refer the information provided by you to the relevant supervisory team. I therefore consider that the FCA did not act unreasonably when dealing with the substance of your complaint, as set out in *Element two*.

My decision

18. For the reasons set out above, I agree with the FCA's decision to uphold Element one of your complaint but **recommend** it offers to pay you £50 for the inconvenience caused by providing you with incorrect information on 3 January 2019.

19. In relation to Element two, I conclude that the FCA's actions were not unreasonable and the information provided by you was forwarded to the relevant team.

Antony Townsend
Complaints Commissioner
25 June 2019