

20 December 2019

Final report by the Complaints Commissioner**Complaint number FCA00598***The complaint*

1. On 15 July 2019 you asked me to investigate a complaint about the FCA. I have carefully reviewed the papers sent to me by you and the FCA and further information supplied to me by the FCA at my request. My preliminary report was issued on 21 November 2019 and both you and the FCA have had the opportunity to comment.

What the complaint is about

2. You contacted the FCA about your long-standing dissatisfaction with a pension plan you hold with Firm A. You wanted to know whether and on what basis your pension was regulated by the FCA. You were sent conflicting information about this and your correspondence was referred to the FCA's Complaints Team.

What the regulator decided

3. The Complaints Team divided your complaint into two parts:
 - a. Part One – that you received conflicting information – was upheld.
 - b. Part Two – your complaint about Firm A – was not investigated.

Why you are unhappy with the regulator's decision

4. You consider that the FCA's response did not provide the answers you were seeking.

Preliminary points

5. Under this Complaint Scheme (the Scheme) I am only able to consider your complaint in so far as it relates to the actions or omissions of the FCA. The Scheme is not designed to resolve individual complaints about firms nor does it

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cover either the Financial Ombudsman Service or the Pensions Ombudsman, both of whom you have approached about Firm A. You can find the Scheme rules on my website: <http://frccommissioner.org.uk/complaints-scheme/>

6. I have, however, asked the FCA to make further enquiries of the FOS and the Pensions Ombudsman as part of my investigation into your complaint.

My analysis

7. The underlying basis for your complaint is your dissatisfaction with a pension policy you took out with Company B and which was later taken over by Firm A. As well as approaching the FCA, you complained about Firm A and this policy to the FOS in 2015. Your complaint was not upheld by the FOS, although you dispute the basis for this. You also approached the Pensions Ombudsman, although they could not consider your complaint as it had already been considered by the FOS. You also continue in correspondence with Firm A itself about your pension benefits.
8. You approached the FCA because you wanted to know whether your pension policy was regulated. Your policy is a Section 32 (S32) Guaranteed Minimum Pension (GMP) plan. You were initially told incorrectly that the FCA does not regulate this type of policy. In a detailed letter to you dated 25 October 2018, Andrew Bailey, Chief Executive of the FCA, apologised for this error and confirmed that “*S32 plans are indeed regulated policies which fall under [FCA] supervisory oversight*”. Unfortunately, when you continued to correspond with the FCA about your pension, its Consumer Contact Centre (now the Supervision Hub) repeated the incorrect position that your pension is not regulated. This was clearly very unhelpful and added to your confusion about your pension plan.
9. This aspect of your complaint was upheld by the FCA’s Complaints Team and recommendations were made to improve Supervision Hub’s knowledge management, training materials and communications, with feedback provided to relevant staff. You were also offered an apology and an *ex gratia* payment of £50 by the Complaints Team. I consider that this was an appropriate response to this aspect of your complaint.
10. The FCA’s Complaints Team declined to investigate what it identified as your complaint about Firm A because it said that this did not relate to one of the

FCA's 'relevant functions' as defined by the Complaints Scheme. In my view, this scoped your complaint too narrowly. It seems to me that in asking whether your pension was regulated by the FCA you were also asking 'what is the FCA doing about' the issues that concern you about your pension. This is confirmed by the detailed response provided to you by Andrew Bailey, and his indication that the FCA "*will fully consider any further information you provide in our ongoing supervision of [Firm A]*". The Complaints Team also asked you for permission to contact the FOS and the Pensions Ombudsman to find out more but then did not follow this up. As part of my investigation, I asked them to do so and I have now had sight of the FOS's decision on your complaint dated 30 September 2015, and copies of emails about your complaint to the Pensions Ombudsman.

11. The FCA has told me the following about your complaint to the FOS:

- a. The Financial Ombudsman Service's Adjudication letter to [you] confirmed that [Firm A] has been willing to pay GMP at the maturity date of October 2014, with [your] fund value being in excess of GMP... [The letter] gives the same explanation as Andrew Bailey's letter to [you] in relation to (with-profits) fund performance and eligibility for tax free allowance. We understand that [you] would like to receive a lump sum. This would require the policy to be transferred to another provider which would be willing to pay it as a lump sum, as explained by the Financial Ombudsman Service. [You] would need to seek mandatory advice since [your] fund value is in excess of £30,000.
- b. The Financial Ombudsman Service's Final Adjudication letter states that the '*Financial Conduct Authority had confirmed in 2014 that it had no concerns with [Firm A's] operation of its with-profits fund*'. Although the FCA did not issue a public statement to this effect, the Financial Ombudsman Service has located and supplied an email from the FCA dated 22 May 2014, stating that:

Supervision have advised that we do not have supervisory issues with [Firm A's] with-profits management in general and there are no current supervisory actions targeted to that area.

12. I also asked the FCA to provide me with up to date information about work it has done concerning S32 pension plans in general and its supervision of Firm A. Some of the information I have seen is confidential and cannot be shared with you. This is because section 348 of the Financial Services & Markets Act 2000 (s.348 FSMA) classes some information the FCA holds about firms as confidential, and restricts how that information is dealt with. What I can tell you is that the FCA has carried out work on the fair treatment of with-profits customers in relation to Firm A. In addition, the FCA has recently carried out (29 March 2019) a market-wide thematic review of the treatment of with-profits customers. The findings can be found here: <https://www.fca.org.uk/publication/thematic-reviews/tr19-03.pdf>.
13. Although I consider that the FCA's Complaints Team scoped your complaint too narrowly, I am satisfied that it did not have to provide you with detailed information about its supervision of Firm A. As Mr Bailey explained to you, the FCA welcomes information that assists with the FCA's supervision of firms, but it is unable to provide feedback about action it may or may not have taken. I realise that this leaves you with many questions about your pension that you feel have not been answered satisfactorily, but as explained in paragraph 5 above, this is not something I can help you with under this Complaints Scheme.
14. In your latest correspondence with me, you have again referred to the fact that you were told that your pension is not regulated, or is only partly regulated. You have also told me that you are now seeking £360,000 compensation from the FCA for '*over 15 years of stress and anxiety*' caused by your pension plan. In response to my preliminary report you have told me that Firm A has broken the FCA Principles of business: 1. Misleading 5. Market conduct 6. Customer interests 7. Communication and that you have asked the FCA for assistance without success.
15. I understand that you are very anxious about your pension and I agree that it was very unfortunate that the FCA told you twice that your pension was not regulated. It has apologised for this and offered you an *ex gratia* payment. However, I am satisfied that Andrew Bailey's letter set out the correct position about the FCA's regulation of your pension plan. I have also seen evidence of supervisory work the FCA has carried out that confirms this, as set out in

paragraph 12 above. I am sorry to disappoint you but there is no basis for me to recommend that the FCA pays you any compensation in relation to your pension plan.

My decision

16. I have concluded that the FCA's response to Part One of your complaint was appropriate but that it scoped Part Two of your complaint too narrowly. Having said this, I consider that Andrew Bailey's letter to you of 25 October 2018 set out the correct position regarding the FCA's supervision of your pension with Firm A. I am therefore unable to uphold your complaint.
17. I realise that this decision is likely to leave you feeling disappointed but I hope that you will understand how I have reached it. Unfortunately, neither I nor the FCA can assist you further. You have been advised previously to approach either an independent financial adviser or your local Citizens Advice Bureau for help with understanding what you can do next about your pension. I strongly recommend that you take up one of these options. I understand from your response to my preliminary report that you have now approached your MP for assistance.

Antony Townsend
Complaints Commissioner
20 December 2019