

21 November 2019

Final report by the Complaints Commissioner**Complaint number FCA00665***The complaint*

1. On 17 October you asked me to review a complaint which you had made to the FCA, and which had not been upheld.

What the complaint is about

2. Although the regulations affecting pension transfers are complex, the heart of your complaint is relatively simple. To protect people with pension savings, FCA rules require that anyone seeking to transfer funds out of a defined benefit (DB) scheme must seek independent financial advice first.
3. Your complaint is that the effect of this is that, even for people like you with considerable knowledge of the pensions sector, everyone is forced to seek advice from a small number of independent financial advisers who, in your view, charge extortionate rates for such advice. You would like there to be a system of exemptions to enable well informed investors to sign some kind of waiver to enable them to make pension transfers without being charged extortionate rates for advice which they do not need.

What the regulator decided

4. The FCA did not uphold your complaint. It explained that complaints about the FCA's rules, codes and general guidance are excluded from this Complaints Scheme. It did, however, go on to explain the purpose behind the safeguards for people wishing to transfer pensions savings out of DB schemes, and drew your attention to a current FCA consultation on possible changes to the way in which firms are allowed to charge for pensions advice.

Why you are unhappy with the regulator's decision

5. In your complaint to me, you say:

I am being forced by a 'catch-all', unnecessarily blunt regulatory protocol to pay a significant sum of money for advice that I neither need nor want (and am qualified so to decide) and that is on an increasingly challenged assumption I can even find an IFA prepared to execute the transaction in the first place!... the reality of my situation is that I will be made financially worse off by at least £3k as a direct consequence of a regulation which is unfit for purpose (in my specific case) and which manifests in my being exploited by unscrupulous IFA's for 'advice' which I neither need nor want, will reject and am qualified by experience so to do.

My analysis

6. I sympathise with your position, but I am afraid that I cannot investigate your complaint under this Scheme. The rules of the Scheme are clear – matters such as the making of rules, codes, and general guidance are excluded from the Scheme, so the FCA was right to exclude your complaint.
7. It is not uncommon for regulation to have to strike a difficult balance between protecting vulnerable clients and not unnecessarily restricting people who are less vulnerable. Whether the current regulatory requirements strike the right balance in this case is clearly a matter for continuing debate, but it is not a matter which I can resolve.
8. In your response to my preliminary report, which set out the arguments above, you have reiterated your concerns, emphasising the following points:
 - a. The potentially significant '£ & time' costs associated with actually finding an Advisor who is even prepared to execute my transaction as an 'insistent client' (I refer you to my original comments re the difficulty of same)
 - b. The wholly unacceptable costs, time & inconvenience associated with being forced to engage in such a charade. In my particular case, NONE of the associated protocols & likely outcomes are for my benefit as an investor; they manifest themselves in Trustees being forbidden by the FCA from executing my direct instruction and by the FCA facilitating subsequent

financial exploitation of me by an IFA (assuming I can find one) who is acutely aware I don't need, want or place any value in their advice but that I have no other choice as a direct consequence of a well intended regulatory protocol being utterly inadequate in terms of providing legitimate exemption for both parties

- c. A deadline of 14th November from Trustees re the validity of my DB TV quote; should I miss it as a direct consequence of this legitimate challenge, there is no guarantee that any subsequent application will be at least equal to the sum currently quoted which means I will have been unreasonably financially penalised by a process not fit for purpose (in my particular case) - from whom do I seek recompense for same and any/all of the above ?

9. I understand your points, but they do not alter my decision. The requirement for independent advice derives from the Pensions Act 2015, and the associated regulations. As I explained in paragraph 6, the making of rules and regulations are clearly exempted from this Scheme. While you are of course entitled to lobby for changes to the legislation and regulations, using the arguments which you have made to the FCA and me, that is not a ground for making a complaint under this Scheme.

10. I cannot advise you on the question of recompense: you would need to seek legal advice on that.

My decision

11. I am sorry to disappoint you, but I cannot uphold your complaint.

Antony Townsend
Complaints Commissioner
21 November 2019