

7 November 2019

Final report by the Complaints Commissioner**Complaint number FCA00667***The complaint*

1. You complained to me on 18 October 2019 because you were dissatisfied with the Financial Conduct Authority's (FCA) response to your complaint about the interactions between you, the FCA, and the Financial Ombudsman Service (FOS).

What the complaint is about

2. In its decision letter, the FCA summarised your complaint as follows:

You contacted the FCA's Customer Contact Centre, now known as The Supervision Hub ('The Hub'), requesting to know whether the FCA or the Financial Ombudsman Service, are responsible for dealing with regulated firms who breach the DISP 1.6 Complaints time limit rules. The wider context of your complaint was your dissatisfaction with a final response received from the Financial Ombudsman Service. The Hub told you to escalate your concerns to The Independent Assessor. You also stated your dissatisfaction with the lack of consistency in the process and responses you received from the Financial Ombudsman Service in relation to other complaints you raised.

To resolve your complaint, you would like to know whether the FCA or the Financial Ombudsman Service is responsible for dealing with firms who breach DISP 1.6 Complaints time limit rules.

What the regulator decided

3. The FCA told you that it had decided not to investigate your complaint, because it had decided that your complaint was 'no more than dissatisfaction with the FCA's general policies or with the exercise of, or failure to exercise, discretion where no unreasonable, unprofessional or other misconduct is alleged'.

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Complaints which fall into that category are excluded from this Complaints Scheme.

4. The FCA explained that it had passed your concern about the firm not responding to your original complaint within the time limit to the FCA's supervision department, which would consider it, although it would not be able to tell you what action, if any, would be taken. It also explained that the FCA was responsible for enforcing the DISP complaint rules.

Why you are unhappy with the regulator's decision

5. In the email which you forwarded to me, you said:
 - a. The FCA's Hub misled you to the FOS's independent assessor;
 - b. The FCA was being protectionist and not looking into errors;
 - c. The FCA had failed to respond to your question asking who was responsible for dealing with businesses which did not abide by the rules;
 - d. Contrary to what the FCA had said in its decision letter, you had made specific allegations.

Preliminary point

6. The Complaints Scheme specifically excludes complaints about the FOS. For that reason, this report looks only at what the FCA did or did not do.

My analysis

7. I appreciate that at the heart of your concerns are some very important issues relating to your investments. Unfortunately, the regulation of financial services is very complex, so it is necessary for me to start by setting out the background (which I think is familiar to you).
8. The Financial Ombudsman Service deals with individual complaints about financial services. It can order redress. Its decisions are independent of the FCA, which cannot intervene in individual cases.
9. The FOS has an independent assessor who deals with complaints about the way in which the FOS has handled cases.

10. The FCA sets rules for financial services firms, and regulates them. Those rules include the rules for complaints handling. The FCA's supervision teams consider information about suspected rule breaches, and decide what (if any) action to take. Those decisions are taken confidentially, although if a formal decision is made against a firm that will become public.
11. That is the context in which I have considered your complaint. I have carefully studied the email exchanges between you and the FCA, and I have listened to the recording of the telephone conversation you had with the Hub.
12. In my view, the FCA did its best to describe a complex situation to you. I do not agree that the FCA was wrong to refer you to the independent assessor, or that it was trying to avoid looking into errors, or that it failed to respond to your question about who was responsible for dealing with businesses which did not abide by the rules. The conversation between you and the Hub did become repetitive and a bit confused, but that was not the fault of either the FCA or you – it was a complex issue. The FCA's decision letter gave a clear explanation of the position.
13. In your response to my preliminary report, which set out the arguments above, you said that you did not accept my conclusions. In particular, you considered that I had failed to address the fact that you had been referred by the Pensions Ombudsman to the FCA, which had in turn referred you to the FOS, which had then referred you back to the FCA.
14. I realise that this must have been very annoying. However, I do not think that this means that the FCA was at fault. The resolution of your individual complaint was a matter for one or other of the ombudsmen, and I think that the FCA's suggestion that you approach the FOS was reasonable, since it was possible that the FOS would have been able to help you. As it turned out, the FOS could not help you, but it was the FOS – not the FCA – to decide whether or not your concerns fell within its jurisdiction.
15. I think that the FCA made a technical error in 'excluding' your complaint. While the FCA was right to say that most of what you were complaining about was excluded from the Scheme, since it concerned the actions of the FOS, part of

your complaint was about what you saw as the FCA's failure to give you proper advice. In my view, that should have been considered.

16. Having said that, I do not think that in practice the FCA's error made any difference to the outcome. As I have explained in paragraph 12, in my view the FCA has, in the course of the telephone conversation and its decision letter on your complaint, given you correct information. Furthermore, it has passed the information about the alleged breach of the complaints handling rules to its supervision team, for a decision on whether regulatory action is required (though I recognise that that will not help you to resolve your individual issue).

My decision

17. I recognise that you have had to spend a considerable time trying to sort out the difficulties which have arisen with your pension. This has been exacerbated by the complex regulatory structure in which two complaints organisations and one regulator had roles. However, I am sorry to disappoint you but, for the reasons I have set out, I do not uphold your complaint against the FCA.

Antony Townsend

Complaints Commissioner

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