

13 October 2021

Final report by the Complaints Commissioner**Complaint number FCA00872***The complaint*

1. On 21 May 2021 you asked me to review the outcome of your complaint to the Financial Conduct Authority (FCA). The FCA's Decision Letter is dated 4 December 2020. Under the Complaints Scheme, complaints should be referred to my office within three months of the FCA's Decision Letter. In your case I have decided that there is good reason to consider your complaint outside this time.
2. I have carefully reviewed the documents that you and the FCA have sent to me. My preliminary report was issued on 16 August 2021 and both you and the FCA have commented.

What the complaint is about

3. On 30 April 2018 you complained to the FCA about matters related to the loss of your and your wife's pension funds. Your complaint was paused between 10 September 2018 and 28 February 2020 with agreement for personal reasons.

What the regulator decided

4. The FCA's Decision Letter is dated 4 December 2020. Your complaint was considered in 4 parts which I have anonymised as follows:
 - a. Part One – Failure to take action in 2012 when you originally reported matters of concern to the FSA (replaced by the FCA on 1 April 2013).
 - b. Part Two – Failure to adequately supervise a SIPP operator (Firm B), resulting in the theft of your pensions. Inadequate action by the FCA to oversee and supervise the sale of Firm B. Failing to ensure that Firm B maintained adequate Professional Indemnity Insurance and capital adequacy to pay out on current claims against them at that time, despite the

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FCA being aware that there were more than 1200 complaints lodged against Firm B. This directly compromised your position. The net result was that Firm B placed themselves in insolvency administration to avoid paying claims against them.

- c. Part Three – Failure to exercise simple due diligence by the FSA in relation to another investment scheme that could only ever have been operated as a CIS or UCIS and regulated or supervised by the FSA. Although this investment was stopped by the FSA in 2009 it was wrongly allowed to be resumed by the FSA shortly following this.
 - d. Part Four - Your family has been put at risk by the FCA more recently where they published your details as a person who had submitted complaints to the Financial Ombudsman Service on their website.
5. The FCA did not uphold your complaint. Its decision was that, although you and your wife have experienced the loss of your pension funds and this has had a huge impact on your health and wellbeing, this was not due to the actions or inactions of the FSA/FCA. You had already received an apology for the FCA's data breach in March 2020 and the FCA did not believe that the breach had caused you risk. You were offered an ex gratia payment of £100 for delay in the FCA's complaints handling between February and December 2020.

Why you are unhappy with the regulator's decision

6. You have provided me with further information and a detailed commentary on the FCA's Decision Letter explaining why you disagree with the outcome on Parts 1 to 3 of your complaint. You have also drawn my attention to what you consider to be an error in the FCA's response to Part 4. You continue to hold the FCA responsible for the circumstances that led to the loss of your pension funds and you say that they have applied a 'loss adjuster's mentality' to your concerns.

My analysis

Parts 1, 2 and 3

7. You have lost pension funds invested on behalf of you and your wife via Firm B in 2012. You complained to the Financial Ombudsman Scheme (FOS) in relation to Firm B, although the losses incurred exceeded their cap of £150,000 per

investor. Subsequently Firm B entered insolvency and your claim was passed to the Financial Services Compensation Scheme (FSCS). I am very sorry indeed to learn of the losses that you have incurred and the effect this has had on your health and well-being.

8. This Complaints Scheme does not cover either the FOS or the FSCS. As Commissioner, I can only consider the actions or inactions of the regulators, in your case the FCA. Unfortunately, your funds were invested in an unregulated product. This was permitted at the time, although from 2014 retail investors like yourselves are no longer able to transfer a defined benefit pension without regulated advice.
9. I note that in your correspondence to me dated 14 September 2021, you have set out that whilst it was permitted for retail clients to invest in unregulated products prior to 2014, you think that this 'statement is very far from the truth and is also ambiguous.' You explained that:

prior to the outright ban on UCIS and NMPI in 2014 there were in fact strict rules, controls and criteria that had to be applied by regulated IFA prior to any communication in any form of a UCIS investment to a retail client, could even be communicated to a retail client. Besides this, there was an outright ban on the promotion or communication in any form of UCIS investments.
10. Firm A, the firm that you and your wife engaged with to affect the transfer of your pension was not a regulated firm. The FCA was not, and still is not required to regulate unregulated products or firms, although it should have regard to authorised and regulated firms who use their status to promote and encourage people to invest in unregulated products.
11. You correctly reported to the FCA in 2012 your concerns about Firm B, plus two investment schemes, one that you had decided not to invest in as well as the one that you had. The FCA explained to you that it had noted your concerns but would not be able to tell you about what it had done about this. You continued to contact the FCA about your concerns between 2013 and 2018.
12. On 30 April 2018 you were referred to the Complaints Team who asked you to provide further information to clarify the complaint issues. Following an agreed

deferral of your complaint between September 2018 and February 2020, the Complaints Team recommenced its complaint investigation in May 2020 and sent you a summary of the complaint issues being considered in October 2020. This was followed by the FCA's Decision Letter dated 4 December 2020.

13. During the time that your complaint was deferred there was a material change, in that Firm B failed and was placed into administration. As a result, the FSCS is accepting claims against Firm B. These steps were taken to protect consumers.
14. The FCA's Decision Letter has provided you with some information about the regulatory steps taken in respect of Firm B and the other matters you reported. The letter also explains the confidentiality regime under which the FCA operates.
15. The FCA welcomes information from people who report concerns. However, as you were told, it does not generally say what action has been taken in response to the information that it receives. 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. In addition to this, any information that is not restricted by s.348 FSMA may be restricted due to the FCA's policy on sharing information about regulated firms and individuals, who also have legal protections. Under this policy, the FCA will not normally disclose the fact of continuing action without the agreement of the firm concerned. This means that, as you were told, there is no general right for members of the public to know the outcome of reports that they make.
16. Like the FCA, I am required 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 material.
17. In your case, after reviewing the confidential material, I am satisfied that the evidence shows that the FCA was appropriately aware of the issues you had

raised and that its decisions about whether or when to take regulatory action and what form that action should take were within its discretion as a regulator. I am also satisfied that the further information about the regulator's actions and approach provided to you in the FCA's complaint response was appropriate and reasonable in all the circumstances.

18. As a result, I do not uphold your complaints about the FCA's supervision and regulation of Firm B or the two investment schemes that you reported to them.

Part 4

19. As a result of a data breach, some of your personal details were made publicly available by the FCA on its website between November 2019 and February 2020. You were notified of this and received an apology on 5 March 2020.
20. You have suggested to me that the FCA's Decision Letter mistakenly refers to the data breach as being in respect of those who had complained to the Financial Ombudsman Service (FOS). You believe that this is incorrect, as you are sure that the information published on the FCA website was about people who had put a complaint into the FCA and not the FOS. Having reviewed the FCA's files, I am not clear that this was in fact an error. However, I asked the FCA to clarify this in response to my preliminary report and, if there has been a typographical error, to offer you an apology for this. The FCA has told me that a mistake was made in the Decision Letter. I am pleased to note that in acknowledgement of this mistake the FCA issued a letter of apology to you on 8 September 2021, and provided me with a copy of the letter.
21. Nevertheless, I am satisfied that an apology was the appropriate remedy for the nature of the data breach and I do not uphold this element of your complaint.

My decision

22. I have not upheld your complaints for the reasons stated above. I appreciate that you will find this outcome very disappointing, particularly given the financial loss that you and your wife have incurred and the impact this has had. However, I hope that you will understand my approach and why I have reached my decision.

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Complaints Commissioner

13 October 2021