

3 June 2021

Final report by the Complaints Commissioner**Complaint number FCA00895***The complaint*

1. On 22 February 2021 you asked me to review the outcome of your complaint to the Financial Conduct Authority (FCA). I have carefully reviewed the documents that you and the FCA have sent to me. My preliminary report was issued on 17 May 2021 and both you and the FCA have had the opportunity to comment.

What the complaint is about

2. Your complaint is about the FCA's response to concerns you raised about a firm.

What the regulator decided

3. The FCA did not uphold your complaint on the basis that it had acted reasonably in response to the information you had provided.

Why you are unhappy with the regulator's decision

4. You are dissatisfied with the FCA's response and have asked me to review the outcome.

My analysis

5. You successfully complained to the Financial Ombudsman Service (FOS) about the mis-selling of a defined benefit pension by a firm. You were awarded the maximum amount possible by the FOS (£150,000) with a recommendation for a larger amount given the losses that you had incurred. As I understand it, you have now received a payment of £168,000.
6. Your complaint to the FCA was that the firm had told you that it did not have professional indemnity insurance (PII) to cover more than the maximum legally enforceable award of £150,000. You also complained about statements that the firm had made to you, which you considered to be defamatory and derogatory.

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7. The FCA's response was that it had reviewed its supervision of the firm and was satisfied that it was reasonable. However, it could not give you further information about this because of the confidentiality regime under which the regulator operates. Nor could it comment on the firm's PII cover. You were invited to provide further evidence about statements the firm had made to you.
8. As you were told, the FCA does not generally say what action has been taken in response to the information that it receives. This is because section 348 (s.348) of the Financial Services & Markets Act 2000 (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 there is no general right for members of the public to know the outcome of reports that they make.
9. 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.
10. In your case, having studied the FCA's records I can say that I am satisfied that the FCA has not ignored the information which you have provided, and has given it proper consideration. Unfortunately, I cannot say any more than that, and I recognise that this will be frustrating for you, particularly since you have told me how let down you feel as a consumer. I note that the firm did not tell you that it did not have any PII cover but that due to restraints in the PII market, it 'had been unable to secure insurance against defined benefit pension claims' in the year you made your complaint and would have to pay any award directly. In addition to reviewing the FCA's supervision file for the firm in question, I asked the FCA to comment in general terms about a situation where a firm is unable to

obtain cover for a particular business line. It has told me that it has been undertaking wide-ranging supervision of firms offering defined benefits pension transfer advice since 2015 and its Guidance Consultation of June 2020 clarified the circumstances in which the FCA would expect a firm to hold additional capital resources to cover the potential liabilities from business lines excluded from PII cover: <https://www.fca.org.uk/publication/guidance-consultation/gc20-01.pdf>. Since October 2020, firms have also been submitting new data about PII, including whether policy excesses, exclusions and/or other limitations are linked to defined benefit pension transfer advice. I hope that you find this of some reassurance.

My decision

11. I have not upheld your complaint because, for the reasons stated, I consider that the FCA's response to you was reasonable in all the circumstances.

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Complaints Commissioner

3 June 2021