

05 August 2021

Final report by the Complaints Commissioner**Complaint number FCA00916***The complaint*

1. On 5 April 2021 you complained to me about the FCA's investigation of your complaint. My preliminary report was issued on 4 June 2021 and you have commented.

What the complaint is about

2. In its decision letter to you dated 31 March 2021, the FCA described your complaint as follows:

My understanding of your complaint is you are unhappy with the requirement to take financial advice when considering transferring your pension which has guaranteed benefits.

You state that you wish to transfer your pension into a platform of your choice and self-invest your funds. You feel that the fees that financial advisers charge is too high, and their services do not add value.

By way of remedy you request the ability to transfer your pension without having to receive advice.

What the regulator decided

3. The FCA did not formally investigate your complaint under the Complaints Scheme. The FCA explained that as part of your complaint related to legislation enacted by Parliament, it was not something that it could investigate under the Scheme because it was not considered one of the FCA's relevant functions.
4. The FCA added that paragraph 3.4 (c) of the Scheme sets out that a complaint about the performance of the regulators' legislative functions (including making rules) is excluded from the Scheme.

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5. Even though the FCA did not formally investigate your complaint it additionally provided you with information in relation to pension legislation and the FCA's work.

Why you are unhappy with the regulator's decision

6. You are unhappy that the FCA's response has not aided you to transfer your pension funds to the platform you have researched.
7. You want the FCA to allow you to transfer your pension funds in the manner you chose without an Independent Financial Adviser's (IFA) approval. You feel that the requirement and expense of doing this is unacceptable.

Preliminary points

8. It is important for me to highlight, matters which are excluded from the Scheme which I am unable to investigate.
9. Section 3.4 (c) of the Complaints Scheme provides:

Exclusions to the Scheme

3.4 Excluded from the Scheme are complaints:

- c) in relation to the performance of the regulators' legislative functions as defined in the 2012 Act;

10. I also should explain that the Complaints Scheme is concerned with the actions or inactions of the FCA. It cannot deal with complaints against banks, IFAs, individual firms, nor is it a redress service for individual consumer complaints. The Financial Services and Markets Act 2000 explicitly provides for a consumer redress service separate from the FCA.
11. The FCA does have a statutory duty to secure an appropriate degree of protection for consumers. It does so by regulating the financial industry through the setting of standards which firms must meet, and by taking enforcement action where that is justified. It does not investigate individuals' complaints against the firms it regulates, that is the role of the Financial Ombudsman Service (FOS).
12. That does not mean that the FCA cannot investigate concerns arising from information about individual complaints, but it investigates those in the context of

considering whether or not regulatory action is justified, rather than whether or not the individual requires redress. Any action the FCA may or may not take could not lead to redress for you personally.

My analysis

13. In your correspondence to me dated 5 April 2021 and your response to my Preliminary Review on 20 June 2021, you have set out the frustrations you have experienced, and continue to experience in your interactions with different IFA firms and what you consider to be a lack of relevant 'expertise', their 'unbiased' advice and their treatment of people in your position, 'as though you are dumb'.
14. As set out in my preliminary points, I can only investigate the actions or inactions of the FCA. Any complaints that you have about the actions or inactions of IFA firms should be directed to the FOS to investigate. For this reason, my analysis will only address the aspects of your complaint that relate to the FCA.
15. I am sorry about the frustrations you feel in relation to having to obtain an independent financial adviser to facilitate the transfer of your pension funds to a platform of your choice.
16. In its decision letter the FCA gave you a full explanation of the actions it has taken to deal with the problem of poor advice given to people seeking to transfer out of defined contribution (DC) pension schemes and of the new legislative requirements which Parliament has introduced. The arguments for tightening up this area of pensions advice are clearly very strong ones.
17. The fact that you have not yet been able to find an IFA that you consider has the relevant expertise, understands your position and will facilitate the transfer of your pension funds to your investment platform of choice is unfortunate, but the FCA cannot be held liable for this, since the requirement to obtain advice was imposed by Parliament and, in any event, the FCA has immunity from being sued for damages, with very few exceptions.
18. The FCA does not have the power to disapply these legislative requirements, so I would suggest you continue to look for an IFA that meets your requirements.
19. I am not in a position to say whether or not they would be willing to give the advice you want. However, for the reasons which I have given I do not think that

the FCA can be held liable for this; and there was a clear need for it to take regulatory action in this area.

20. I am pleased to see that the FCA Complaints Investigator provided you with a catalogue of additional information and resources for you to review which included various websites, videos and guidance articles. I would suggest that you refer to the FCA decision letter which lists various resources, specifically contacting The Pensions Advisory Service which offers free and impartial guidance as the FCA has suggested.
21. I also note that the FCA identified that the remedy you sought for your complaint is to have the legislation in this area changed to allow individuals to transfer their safeguarded benefits without the requirement to obtain advice. I am pleased to see that the FCA has suggested that another avenue that you could pursue to achieve your desired outcome, is to contact your local MP or Member of the House of Lords to present your personal views.

My decision

22. I am sorry but due to the reasons outlined above your complaint is excluded under the Complaints Scheme and I will not be able to investigate your complaint. The FCA was right to exclude your complaint due to the nature of it pertaining to its legislative functions, which cannot be investigated under the Complaints Scheme.

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Complaints Commissioner

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