

03 August 2021

Final report by the Complaints Commissioner**Complaint number FCA00919***The complaint*

1. On 7 April 2021 you complained to me about the FCA's investigation of your complaint.

What the complaint is about

2. In its decision letter to you dated 3 March 2021, the FCA described your complaint as follows:

My understanding of your complaint is you are unhappy that you are unable to transfer your pension. You state that you have considered the different retirement options available to you and feel a transfer will lead to the best outcomes for you and your family. You have sought advice from 4 independent financial advisers who all recommended you stay in your current pension scheme and are not willing to facilitate a transfer. As your pension scheme is not permitted to allow a transfer to proceed without confirmation that you have received appropriate regulated advice, you are unable to transfer.

You feel that you should be able to choose which retirement option to take from your pension.

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.
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 with the treatment you have received while trying to transfer your pension and the FCA's response to the issues you have had.
7. You feel that you should be able to choose which retirement option to take from your pension.
8. You think that the FCA's guidance to consumers is not clear, this is because even though neither the legislation, nor the FCA's rules prevent insistent clients transferring their pensions against advice, the legislation does prevent the trustee of the pension fund authorising the transfer, without obtaining written confirmation that the member has taken appropriate regulated advice.

Preliminary points (if any)

9. It is important for me to highlight, matters which are excluded from the Scheme which I am unable to investigate.
10. 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;

My analysis

11. I am sorry about the difficulties you are having finding an independent financial adviser (IFA) who is willing to facilitate a transfer of your pensions. You have spoken to 4 IFA's as requested by firm X, the trustee of your pension. Unfortunately, you have not been able to get an IFA to provide you with the relevant confirmation that you have received appropriate regulated advice to

facilitate the transfer of your pension. Firm X require this in order that they are allowed to release your pension funds. You then complained to the FCA and to me.

12. 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 benefit (DB) 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. While it is very unfortunate that you have encountered difficulties in obtaining the required written confirmation from the advisers, 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.
13. The fact that the 4 IFA's have not been able to provide you with the relevant confirmation that you require to transfer your pension does not necessarily mean that no IFA firms who are active in the DB advice market will provide you with the required written confirmation that Firm X requires to transfer your pension. I would suggest you continue to look for another IFA.
14. I am not able to say whether or not they would be willing to give the required confirmation. 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.
15. Under the Scheme I am unable to investigate issues connected to the FCA's legislative functions, this includes the provision of guidance that it has set out to consumers about the transfer of pensions. Your complaint is about the FCA's legislative functions and asking for a change in the legislation. As such I will not be able to investigate your complaint under the Complaints Scheme.
16. I note that 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.

My decision

17. I realise you may be disappointed with my decision and 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

03 August 2021