

12 August 2019

## Final report by the Complaints Commissioner

### Complaint number FCA00595

#### *The complaint*

1. On 3 June 2019 you asked me to investigate a complaint about the FCA. I have carefully reviewed the papers sent to me by you and by the regulator.

#### *What the complaint is about*

2. In April 2019 you made a formal complaint to the FCA that it had illegally restrained your bank accounts between August 2018 and April 2019, causing you *extreme stress and financial hardship without reason or cause*. You also complained that in March 2019 the FCA had illegally harvested and analysed your bank records without your consent or a court order.

#### *What the regulator decided*

3. The FCA declined to investigate your complaint under the Complaints Scheme (the Scheme). The FCA's complaint response of 31 May 2019 said that you had failed to show that you were directly affected by the regulator's actions or inactions (paragraph 3.2) and that even if you were your remedy lay elsewhere (paragraph 3.6). The FCA said that this was because:

*A restraint order can only be imposed by order of the court; therefore it is the court you would need to make representations to and not something which can be investigated under the Scheme.*

#### *Why you are unhappy with the regulator's decision*

4. In your response to the FCA you said that the complaint response completely missed the point that the FCA did not have a Restraint order against you, therefore any action the FCA took against you was illegal. You said that it was ridiculous to say that you were not affected by having your accounts restrained.
5. You have also told me that:

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- a. The FCA have *failed to recognise and understand that they did **NOT** have the authority to Restrain **ALL** of [your Bank] accounts: the Court Order they refer to only granted them permission to seek the whereabouts of the funds held in one particular [Bank] account.* By restraining all your accounts they have caused you financial loss and hardship as one of the accounts had a balance of £10,000 which you intended to use on a personal matter; this has also caused you a great deal of stress and inconvenience.
- b. The second part of your complaint is that the FCA have requested a Production Order from ALL your banks. You understand that the FCA is a regulator and needs to investigate. However you dispute its powers to *unilaterally request Production Orders on any individual; you are **NOT** under investigation and therefore permission should have been sought from you or the Courts.*

#### *My analysis*

6. To review your complaint, I have had access to confidential material and the FCA's files. I have also had sight of the Restraint Order issued in July 2018.

#### *Bank accounts*

7. The FCA's files show that you were served with a copy of the Restraint Order on 1 August 2018. Although you are not named as an Alleged Offender, you are a named person in that order, which prohibits you from certain actions, including disposing of, dealing with or diminishing the value of monies formerly held (my emphasis) in a named bank account. The FCA states that none of your bank accounts have been restrained and I have not seen any evidence that they were.
8. In response to my preliminary report you have asked me to look at bodycam footage of what was said to you by the FCA when the Restraint Order was served on you. You say that you were led to believe that all your accounts with the named bank were restrained and that the impact on you was the same as if they had been. I asked the FCA to comment on this matter and they have told me that the bodycam footage only covers the period from 7am to 11am. Witness statements for the subsequent period have been taken and these show that you were told by a police officer (translating into another language for you his understanding of the words of the FCA officer) that your bank account was being

frozen. This is clearly not what the Restraint Order says and the FCA regrets any miscommunication. It says that its policy is not to explain such an order and that the FCA's officer's firm recollection is that he asked the police officer to inform you that the Order affected you and that you should consider it carefully and consider obtaining legal advice on it. This is clearly what should have happened but I accept that the evidence suggests that you were misinformed by the police.

9. Despite this, the evidence also shows that the police officer twice advised you to seek legal advice and the Restraint Order also states that anyone affected by it can apply to have it varied or discharged so far as it relates to them and sets out the procedure for this. I do not accept your view that being led to believe that your accounts were restrained had the same impact on you as if they had been because you had the opportunity to seek legal advice and were advised to do so both by the police officer and the Restraint Order itself, I therefore agree with the FCA that this aspect of your complaint is covered by paragraph 3.6 of the Scheme, which states that:

*3.6 The regulators will not investigate a complaint under the Scheme which they reasonably consider could have been, or would be, more appropriately dealt with in another way (for example by referring the matter to the Upper Tribunal or by the institution of other legal proceedings).*

10. Nevertheless, the FCA's Complaints Team should have considered your allegation about what was said to you when the Restraint Order was served, which you raised with them on 29 May 2019, before issuing its complaints response. The evidence shows that there is clearly some discrepancy between the witness statements from the police officer and the FCA officer at the scene, pointing to a misunderstanding.
11. Although there is no evidence to show that what happened was anything other than a misunderstanding, I **suggest** that the FCA reminds its enforcement staff of the importance of ensuring that miscommunication does not occur in similar situations in the future, particularly where (as in your case) information is being communicated by another organisation and translation is involved.

### *Bank statements*

12. The FCA's files also show that the FCA has obtained your bank statements using its powers under Section 173 of the Financial Services and Markets Act 2000. In response to my preliminary report you have said that as Complaints Commissioner, I 'should know if the FCA have acted within the confines of the law or not.' However, that is not my role under the Scheme and you would need to seek legal advice on how to challenge the exercise of those powers. Again, I consider it was reasonable for the FCA to conclude that paragraph 3.6 of the Scheme applied to this aspect of your complaint.

### *Applicability of Paragraph 3.2*

13. The FCA's complaint response also said that Paragraph 3.2 of the Scheme applied to your complaint. This states that:

*3.2 Complaints can be made by anyone who is directly affected by the way in which the regulators have carried out their functions, or anyone acting directly on such a person's behalf, provided that the complaint meets the requirements of the Scheme. To be eligible to make a complaint under the Scheme, a person must be seeking a remedy (which for this purpose may include an apology) in respect of some inconvenience, distress or loss which the person has suffered as a result of being directly affected by the regulators' actions or inaction*

14. My understanding is that the FCA considered that this paragraph applied to you because your bank accounts were not in fact restrained. I consider that the complaint response could have been better worded. You were clearly 'directly affected' by being a named person in the Restraint Order and being subject to having your bank statements analysed. However, paragraph 3.6 applies to this part of your complaint too. If you consider that the FCA has acted incorrectly then your remedy is to seek legal advice or apply to the court.

### *My decision*

15. For the reasons stated I am not able to uphold your complaint. However, I have **suggested** that the FCA reminds its enforcement staff of the importance of ensuring that miscommunication does not occur in similar situations in the future.

I realise you are likely to be disappointed by this outcome but I hope you will understand the basis for my decision.

Antony Townsend  
Complaints Commissioner  
12 August 2019