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13 November 2025

Final report by the Complaints Commissioner

Complaint number 202500401

The complaint

1. On 09 August 2025, you submitted a complaint to my office about the Financial Conduct Authority (FCA).

2. Your complaint relates to COBS 22.5.13R, an FCA rule which requires firms to automatically close out retail clients' positions when funds in a spread betting or CFD account fall to 50% of the margin required.

   Outcome: Your complaint is excluded

Background

3. You argue that the 50% margin closure rule violates your rights under Article 8 of the Human Rights Act 1998 ('HRA'), by interfering with your ability to freely use your money on a lawful activity such as spread betting.

4. You point out that negative balance protection (COBS 22.5.17R) already prevents clients from losing more than their account balance. You believe this safeguard is sufficient and proportionate, and that the 50% margin closure rule is unnecessary, patronising, and has directly caused you harm.

5. Although the FCA's position is that the rule was introduced to protect retail investors from disproportionate losses, you assert that in practice it has caused you actual financial harm. You say that you have suffered losses of between £3,000 and £5,000 directly because your positions were forcibly closed under this rule. In at least one instances, the market later moved in your favour, which would have avoided the loss had the FCA rule not intervened.

6. In its Decision Letter of 8 August 2025, the FCA explains that it cannot investigate your complaint, because it relates to a rule made by the FCA and complaints about the making of rules are excluded from the Complaints Scheme under paragraph 3.4(e).

7. However, the FCA did confirm that it forwarded your comments to the relevant team internally for their information. It also provided an explanation about the rule. The Decision Letter states that COBS 22.5.13R was introduced following the European Securities and Markets Authority's intervention and was designed to protect retail investors from significant losses.

8. The FCA maintained that your complaint was related to rule COBS 22.5.13R which is a rule made by the FCA as part of its legislative function. As such, it is excluded from the Complaints Scheme.

9. You are dissatisfied with the FCA's decision and are therefore referring the matter to me. You believe the rule is unfair because it has caused you losses while supposedly "protecting" you.

10. You argue that the FCA failed to consider the proportionality of the rule in light of human rights law. You argue that spread betting is legally considered gambling in the UK, so the FCA's 50% margin close-out rule (COBS 22.5.13R) should not apply. You believe it is unfair that your gold market position was automatically closed when your margin fell to 50%, as this would not happen in ordinary gambling activities.

11. Lastly, you believe the FCA has failed in its duty of care by not recognising the needs of informed retail clients like you, who understand and accept the risks.

Analysis

12. I have carefully considered your complaint regarding COBS 22.5.13R and your arguments that the rule has caused you direct financial loss, and has interfered with your human rights.

13. The FCA has explained, and I agree, that complaints which challenge the substance of rules themselves fall outside the scope of the Complaints Scheme. Paragraph 3.4(c) of the Scheme excludes complaints about the regulators' "legislative functions," which include the making, amending or withdrawal of

rules and guidance. This exclusion exists because rule-making is a function delegated to the FCA by Parliament, and Parliament intended that policy decisions about the content of FCA rules should be subject to consultation, judicial review, and scrutiny by Parliament, but not to investigation under the Complaints Scheme.

14. As such, I find that your challenge to COBS 22.5.13R is, in essence, a challenge to the FCA's rule-making decisions. While I acknowledge that you consider the rule to be harmful, disproportionate, these are matters which relate directly to the FCA's legislative functions. Consequently, I agree with the FCA that your complaint cannot be considered under the Complaints Scheme because it is excluded from its remit.

15. Having said that, I noted in my Annual Report for the 2024/25 financial year, that I recognise that the exclusion of the FCA's legislative functions from the Complaints Scheme is required by statute, but I remain concerned that this limitation can be deeply frustrating for complainants. Many of the issues raised with me stem directly from the FCA's rule-making or guidance, and while I am unable to investigate such matters at present, it is my view that this restriction unduly narrows the scope of the Scheme and leaves some complainants without a clear route to redress.

16. You did not raise your point to the FCA that spread betting is legally considered gambling in the UK, so the FCA's 50% margin close-out rule (COBS 22.5.13R) should not apply. Please note that although spread betting is treated as gambling for tax purposes, when it involves financial markets (such as gold, shares, or indices), it is regulated by the FCA as a form of leveraged financial trading. This is different from ordinary gambling activities such as betting on sports or horse racing, which are regulated by the Gambling Commission and do not involve margin requirements or close-out rules.

17. Because your activity involved financial spread betting, the FCA's 50% margin close-out rule applied. This rule is designed to limit potential losses when trading on leverage, and your position was closed in line with these regulatory protections.

18. In its response to my preliminary report, the FCA, whilst acknowledging my concern that the restrictions of the Complaints Scheme in relation to the FCA's legislative functions can frustrate complainants and limit the Scheme's scope, emphasised that legislation expressly prevents such matters from being investigated under the Scheme. The FCA reiterated that your comments and concerns about rule COBS 22.5.13R were referred to the relevant supervisory area, and that you were provided with an explanation of the rule and its application, which it deems appropriate in the circumstances.

19. The FCA explained that stakeholders who have concerns about the impact of its rules or guidance are encouraged to engage through formal consultation processes. It noted that the FCA is accountable to Parliament and that the lawfulness of its rules can be tested through the courts. The response also highlighted that, under the Financial Services and Markets Act 2023, the FCA is now required to keep its rules under review and has published a Rule Review Framework https://www.fca.org.uk/publications/corporate-documents/our-rule-review-framework outlining how it does so. In addition, the Cost Benefit Analysis Panel, established under the same Act, advises the FCA on assessing the likely impact of its policies. The FCA also confirmed that it continues to consider how best to help complainants understand the limits of the Scheme and that it remains committed to ongoing dialogue on these issues.

20. I note you remain dissatisfied with the rule. As you are aware, if you wish to raise concerns about the rules themselves or to suggest changes, you may wish to contact your Member of Parliament. MPs are able to take up such matters with the relevant authorities or Ministers, or to raise them in Parliament where appropriate. You have suggested that you may also take legal action against the FCA. I would advise you to seek independent legal advice before initiating any proceedings. The FCA benefits from statutory immunity under paragraph 25 of Schedule 1ZA to the Financial Services and Markets Act 2000 (FSMA) in respect of many of its regulatory and rule-making functions. This means that, in general, the FCA cannot be sued for damages arising from the exercise of those functions, provided it has acted in good faith. I should note, however, that the FCA's statutory immunity does not apply where an act is found to be unlawful under the Human Rights Act 1998. You have also said that you believe

the FCA’s rules infringe your human rights. The Complaints Scheme does not have the power to decide whether FCA rules are compatible with the Human Rights Act 1998 or to disapply those rules. Any such challenge would need to be made through the courts, for example by way of judicial review.

21. You have also indicated that you may wish to raise your concerns with the Equality and Human Rights Commission (EHRC). That is, of course, a matter for you. The EHRC has powers to consider issues relating to equality and human rights more broadly, and it may be able to advise you about your rights under the Equality Act 2010. However, it does not generally investigate individual complaints about how a regulator has applied its rules, unless there is evidence of a wider pattern of discrimination or a systemic issue.

The Complaints Commissioner

Complaints Commissioner
13 November 2025