

09 August 2022

**Final report by the Complaints Commissioner****Complaint number FCA001675***The complaint*

1. I took the decision to investigate all three of your separate complaints into one single investigation. My office informed the FCA on 8 June 2022 that it should expedite your third complaint and once that had been issued to you, I would then investigate all three matters together.
2. Therefore, this report will address all three separate complaints you had with the FCA. I can see the FCA also mentioned this towards the end of its decision letter dated 30 June 2022 that I had registered all your complaints under one reference.

***Complaint Number One****What the complaint is about*

3. In its decision letter to you dated 18 February 2022 the FCA described your complaint as follows:

*Part One*

The FCA and/or the Bank of England (BoE) have told banks in private to stop payments being made to cryptocurrency exchanges. If this is correct, then it is in the public's interest and should be made public.

*Part Two*

You believe the FCA and/or the BoE has privately asked UK banks not to allow their customers to move money onto cryptocurrency exchanges in order to avoid a banking crash due to a mass migration of their customers money onto cryptocurrency accounts which offer higher interest rates.

### *Part Three*

You understand the concerns the FCA has about specific branches of Firm A; however, you believe the banks have conflated these concerns and are applying them to all retail customers instead of applying them to those who might be considered high risk. You believe that those who understand the risks involved should be allowed to make their own decision on whether to pay money into cryptocurrency exchanges.

#### *What the regulator decided*

4. The FCA did not uphold your complaint.
5. In Part One of your complaint the FCA stated that it was for each bank to make their own assessments of risk and decide which products, services and functionality to offer to their customers. It also referenced a Dear CEO letter from the PRA to regulated firms in 2018 and found that the Regulators position around crypto assets had been made publicly.
6. In Part Two of your complaint the FCA stated the relevant supervision team at the PRA also confirmed that the PRA did not instruct Firm M (in private or otherwise) to stop payments made into cryptocurrencies. They also stated that the PRA have not asked banks privately or otherwise not to move money onto cryptocurrency exchanges in order to avoid a banking crash.
7. In Part Three of your complaint the FCA shared a First Supervision Notice dated 25 June 2021 that had been shared with Firm A. It also set out the concerns the FCA had with the firm and reiterated the risks that investing in cryptoassets, or investments and lending linked to them, generally involves taking very high risks with investors' money and consumers should be prepared to lose all their money if they invest in these types of products. The FCA stated it was for individual firms to decide the levels of risk they take on and that some may choose to restrict payment to certain firms based on their own assessment of the risk. The FCA shared that any concerns which are firm specific would be better dealt with firstly by the firm and then the FOS.
8. In conclusion of your complaint overall, the FCA stated it had gathered information from both the FCA and the Bank of England (BoE) and found no evidence of express instruction to UK Banks to stop their customers from

transferring money to cryptocurrency exchanges. The FCA explained some firms may have taken the decision to do so, but the FCA concluded that the firms did so independently.

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

9. You informed us that you wanted us to have a copy of the call recording that took place between you and the FCA on 24 February 2022 which put forward your explanation of why you were referring Complaint Number 1. I have listened to this call recording and have summarised your complaint points that you outlined in the call as follows:
10. You believe that Bank A is using a directive or directives from the FCA, as their reasoning to suspend people from making financial exchanges, where you could make purchases of crypto currencies, non-crypto currencies and regulated assets. You say that the Banks are doing this so that it has a higher balance sheet than it would otherwise.
11. You feel the Banks are using the directive to stop customers taking their capital off their bank balances, to invest it in exchanges that might offer cryptocurrencies. You allege that this is what the Banks are saying and this is what the Financial Ombudsman Service (FOS) allege the Banks are saying.
12. You feel the Banks are using the FCA's Press Releases and Articles as being a directive that they have no choice but to comply with. Your argument is that the Banks would have to be legally compelled to comply with the FCA. You reiterated that the Banks are saying to FOS in cases that they could not allow you and other customers to make any more of those transactions.
13. You feel the Banks are misquoting the FCA and using the FCA as justification for their reasons to stop customers making the transactions. You feel the Bank are prepared to misrepresent the situation to FOS, they are misleading, have lied and twisted the information coming out of the FCA.
14. You feel the FCA knew what was going on but are not prepared to comment. You feel the FCA's main role is to protect consumers but if it is going to shy away or hide it won't look good if the national press then see it.

15. You feel the FCA decision letter answers your questions in a binary way, but it is not a binary issue. What the FCA are saying is different to what the organisations it regulates is saying. You sent the FCA an email on 23 February 2022 which the FCA located whilst on the call with you. The FCA stated it would refer the information on, but it would not be able to confirm what would be done with the information. You stated that if the FCA received the information this was fine.
16. It was discussed towards the end of the call that the FCA could not investigate the actions of the Bank and the Bank not allowing the transactions into the cryptocurrencies. You mentioned to the FCA that you understood this but for you, the call discussion that had just taken place put forward your explanation of what the issue was.

*Preliminary points (if any)*

17. It is important to note that any specific complaint about individual Firms or Banks are for the FOS and therefore not something I will be able to consider. I can however look at the actions of the FCA in relation to concerns and/or information, a member of the public has shared about Firms or Banks.
18. It is my intention in this investigation to review and look at your main complaint points, what is appropriate and closely connected under the Complaints Scheme. I have considered the material which I have found to be most relevant to your case.
19. Other than your specific requests for the call recording that took place on 24 February 2022 to be used as your complaint testimony for Complaint Number One, you have not provided any specific complaint points or testimony with respect to Complaints Number Two and Three with either me directly or for the FCA to share with me. The FCA has shared that you wanted these further two complaints reviewed by me as you were unhappy with the outcome regarding both cases. As such, I have further completed a review of the FCA's investigation and decision of Complaints Number Two and Three.

*My analysis*

20. You forwarded information to the FCA on 23 February 2022. Your concerns which you highlighted during the call, are the FCA's Press Releases and

Articles are being used as a directive or directives to justify the Banks behaviour for it not allowing customers making financial exchanges, where you could make purchases of crypto currencies, non-crypto currencies and regulated assets. Your concerns after raising this with the FCA are that the FCA knew what was going on but are not prepared to comment.

21. I can see from the information available to me that the FCA shared the information you forwarded, to the relevant area on 27 April 2022.
22. After my further enquiries with the FCA on this, it transpires that although the information you shared with the FCA was sent to the relevant area on 27 April 2022, the FCA Complaints Team did not hear back from this area in relation to the information you shared with it. So, there was no confirmation that the area successfully acknowledged receiving the information. As an area of feedback for the FCA, I would suggest in such instances where it is sharing information or intelligence received from the public, the FCA Complaints Team confirm with the relevant area that the information has been successfully received and acknowledged at the very least and this has been recorded against the case.
23. Thankfully, I can see during the investigation of your third complaint, the information you forwarded was shared again with the relevant team later, on 16 June 2022. This time it was acknowledged and received by the relevant team on 20 June 2022. The FCA Complaints Team additionally state that it spoke with the relevant team about the information you forwarded on 21 June 2022. I am pleased that the information was shared and eventually acknowledged. Unfortunately, I am unable to share much more than that as I am subject to confidentiality obligations.
24. The sharing of confidential information given to the FCA about firms is restricted by law under FSMA. 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. This can be frustrating for complainants, but it is better that I am able to see the confidential material. In this instance I can confirm that based on the FCA case file and my further information requests sought whilst looking at your case, I am satisfied the FCA have taken on board the information you shared with them and used it appropriately where the need arises. I hope this is helpful and gives you the reassurance that concerns you raise were eventually escalated appropriately.

25. It is at the FCA's discretion and within its policy whether updates on reported concerns can be provided. It must be noted that the FCA welcomes information from consumers who report concerns. The FCA are unable to let you know what is done with the information you provided to them. 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. Equally 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. There is a good explanation of the statutory and FCA policy restriction on information sharing here <https://www.fca.org.uk/freedom-information/information-we-can-share>
26. The Office of The Complaints Commissioner has in the past persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible. As such and as the FCA briefly discussed during your call on 24 February 2022, there is no general right for members of the public to know the actions the FCA may or may not take owing to confidentiality obligations
27. I understand you feel the FCA decision letter answers your questions in a binary way, but for you it is not a binary issue. However, on review I think the FCA investigation and decision letter addressed the concerns you raised. For the purposes of my investigation, I have access to the FCA case file which means I as the Commissioner can see all actions taken by the FCA and the internal correspondence on complaints. I have looked at the FCA's investigation into your complaint and the internal correspondence. Having reviewed the FCA's actions taken in your case, I have found that the FCA proactively took steps to

Speak with other internal areas of the business, to ensure a thorough investigation into your complaint.

28. The FCA went to several lengths internally, actively reaching out to several different departments as well as reaching out to the Prudential Regulation Authority (PRA) to provide you with meaningful answers to your concerns and complaint. From my observations it appears the FCA have not made any statements to individual banks regarding their ability to allow payments from consumers to crypto asset firms and have not prevented them from doing so. This is both more widely and in relation to Firm A. The FCA confirmed this with respects to private correspondence/meetings as well as any public statements from the FCA. The FCA mention it is for each bank to make their own assessments of risk and decide which products, services and functionality to offer to their customers. The FCA highlighted in its decision letter that if you were not happy with the service you received from a bank or any other financial service provider, the right course of action is to raise directly with the firm in the first instance and pending the outcome if you remain unhappy, a referral to the FOS.
29. The FCA have additionally warned of the risks attached and the unlikely protection investors would receive if things went wrong. On the 7 March 2019, the FCA published this on its website:  
<https://www.fca.org.uk/consumers/cryptoassets>
30. I can also see from my investigation that the PRA also did not ask banks privately or otherwise not to move money onto cryptocurrency exchanges in order to avoid a banking crash. The FCA shared the link to the [PRA's Dear CEO letter](#) dated 28 June 2018 in its decision letter. This letter sets out the PRA's expectations regarding firms' exposure to crypto-assets.
31. For the reasons outlined above I do not think the FCA did anything wrong in this instance regarding Complaint Number One. I have put the suggestion forward that the FCA should confirm with the relevant area that the information shared from the public has been successfully received and acknowledged, at the very least by the relevant department and this has been recorded against the case.  
As such, I have not upheld Complaint Number One.

## *Complaint Number Two*

### *What the complaint is about*

32. In its decision letter to you dated 28 April 2022 the FCA described your complaint as follows:

#### *Part One*

On 24 February 2022, you called the FCA's switchboard to speak to a Complaints Team investigator about a separate complaint. You are unhappy with the switchboard operator because they wouldn't provide details of a Complaints Team's manager or transfer the call.

You have alleged that the switchboard operator was obstructive and that the FCA was trying to make the situation difficult for you.

To resolve your complaint, you would like the call with the switchboard operator listened to.

#### *Part Two*

You are unhappy that Bank A misled the Financial Ombudsman Service (Ombudsman) and yourself with a false submission which inadvertently perverted the course and outcome of an investigation the Ombudsman were undertaking on your complaint. You believe this to be a breach of the FCA's DISP rules.

### *What the regulator decided*

33. The FCA did not uphold Part One of your complaint and excluded Part Two of your complaint.
34. The FCA excluded Part Two of your complaint as it related to the actions or inactions of the FOS which was not a matter for the Complaints Scheme. The FCA then confirmed in its decision letter that the information you passed onto the FCA concerning Bank A, had been passed to the relevant area.
35. In Part One of your complaint the FCA considered the calls you had with it on 23 and 24 February 2022. It reviewed how the Switchboard Operator handled your calls and whether the correct guidance was given. The FCA found that the



Switchboard Operators handled your calls professionally and provided the correct guidance. The FCA explained as a matter of policy it does not disclose the names of people who work at the FCA and aren't able to transfer the call to a manager unless a specific name is provided. It also added that the Complaints Team have a dedicated helpline number solely used for the administration of its complaints work which allows a message to be left where the Investigator in turn will return the call to discuss the concerns with the complainant.

*My analysis*

36. I agree the FCA was right to exclude Part Two of your complaint for the reasons it gave and that this is more appropriate for the FOS. I note that in its decision letter the FCA stated that the information you shared against Bank A, had been passed onto the relevant Supervisory Team. However, this appears to be a mistaken emphasis here as I can see the reason for the FCA confirming this was based on internal discussion that the information had been shared. As mentioned earlier in my report under Complaint Number One, whilst the information may have been sent to the relevant area there was no acknowledgement or confirmation from that area that the information had been received. It would have been sensible at this point during the investigation of your second complaint, for the Complaints Team to check that the information had been acknowledged and the response received from the relevant area, rather than rely on the email alone that had been sent on 27 April 2022. I repeat the same feedback for the FCA as I did in Complaint Number One, I would suggest in such instances where the FCA is sharing information or intelligence received from the public, the FCA Complaints Team confirm with the relevant area that the information has been successfully received and acknowledged at the very least and this has been recorded against the case.
37. In Part One of your complaint, you were unhappy with the way the switchboard handled your calls as they were unable able to put you through to the investigator who was unavailable and they were unable to put you through to their manager. You were additionally unhappy they would not give you the name of the manager, they could only put you through to the FCA Complaints line.

38. I have listened to the call recordings you had with the switchboard. For operational reasons, the FCA helpline provides a voicemail service where callers can leave a message, which the Complaints Team then aim to respond to within one working day. My office operates a similar approach with our phone lines, we use a telephone bureau to take our calls and we subsequently return calls within two working days. So, I cannot see any issues with the way the FCA operate their helpline from an operational point of view. However if an individual has accessibility requirements the FCA does make their service accessible in a variety of ways when the need arises here:  
<https://www.fca.org.uk/accessibility-statement/accessibility-service> I understand this has applied in your case and the FCA have adapted its service to meet your communication needs by liaising with you by telephone.
39. With respects to the FCA not disclosing the names of managers, as the FCA explained in its decision letter this is a matter of its policy which I think is reasonable.
40. For the reasons above I have not upheld Complaint Number Two. I think the FCA were right to exclude Part Two of your complaint and could not identify any issues with Part One of this complaint concerning your calls with the switchboard.

*What the complaint is about*

*Complaint Number Three*

41. In its decision letter to you dated 30 June 2022 the FCA described your complaint as follows:

*Part One*

The Complaints team have provided poor service to you as they have missed requests for call backs or failed to comply with the times and dates stated.

*Part Two*

The FCA are allowing firms to deliberately mislead the Financial Ombudsman Service to gain favourable outcomes. Whilst it is understood that the complaints

team cannot intervene, you believe that confidentiality restrictions (of whether any action can be taken) are bypassed on 6.1.2G.

*What the regulator decided*

42. In Part One of your complaint the FCA partially upheld your complaint and apologised for the service errors you experienced in bringing your first two complaints. It agreed that the Complaints Team provided you with poor service as they missed requests for call backs or failed to comply with the times and dates stated. The FCA apologised for the lack of response to your email of 4 April 2022. The FCA also recognised that there were delays in arranging contact with my office following your response on 1 March 2022, and the time it took to arrange a call to discuss the decision letter itself. As well as an apology, the FCA offered you £100 for the errors that occurred.
43. The FCA noted that you wanted to discuss the information you had shared with it concerning Bank A and the timeframe for any action that may be taken. The FCA repeated what you had been told previously where confidentiality restrictions meant the FCA were unable to provide some information. The same reasons were cited regarding the FCA's supervisory team generally not giving feedback or providing details of any action they may take. It also explained that the supervisory teams are not consumer facing generally do not speak directly to consumers. The FCA confirmed that the information you provided in respect of Bank A was given to the relevant supervisory team and it had additionally discussed this with the team and explained your circumstances. The FCA confirmed that the relevant team did not require any further information from you.
44. There was also further clarification from the FCA in relation to the email you received from the FOS investigator describing a supervisory notice as an '...FCA directive...'. The FCA clarified that the URL link the FOS investigator shared with you in their email was a supervisory notice, but this had been categorised by the FOS investigator as an '...FCA directive...' The FCA further explained to you that it had not appeared that Bank A had used this categorisation. Additionally, the FCA explained it did not feel the decision letter it sent to you on 18 February 2022 contradicted the response you received from

the FOS and the FCA did not request banks take specific action but rather, the FCA expected firms to manage the risk they take and have systems and controls in place to do this. It also disagreed that the FCA allowed Bank A to mislead the FOS.

45. With regards to Part Two of your complaint the FCA repeated what it explained to you previously, that it could not give details of conversations the FCA had with any Firms it regulates or details of actions that may be taken. The FCA went onto explain that the DEPP guidance 6.1.2G you had referenced related to the FCA's decision making procedure for giving statutory notices which are warning notices, decision notices and supervisory notices which followed detailed investigations carried out under the FCA's enforcement powers. It went on to explain that the guidance does not refer to the day-to-day supervision of a firm and the FCA do not publish details of all the actions that are taken with regulated firms.

#### *My analysis*

46. Whilst reviewing your complaint firstly, I was pleased to see the FCA got things back on track. An individual from the FCA Complaints Team called you on 30 June 2022 to go through the decision letter before sending it to you. I have listened to this call recording and found the FCA were very polite, calm and patient with you. The FCA took time to ensure it explained step by step its decision letter and the next steps to ensure you understood. The FCA apologised for the customer service you had experienced and that it was taking the matter seriously and wanted to learn from the errors to avoid this happening again. It explained it was offering a goodwill of £100 to you considering the errors caused.
47. The FCA also provided a good explanation surrounding how it could not intervene with individual FOS complaints and could not set or give the FOS any powers. This was with regards to your complaint about Bank A not allowing crypto-currency exchanges and the FCA allowing Firms to deliberately mislead the FOS. The FCA confirmed that it had by that point shared the information you had forwarded with the relevant area who had looked at the information. An

area of feedback and suggestion I put forward for the FCA is if it discusses information received from the public with other relevant areas such as Supervision in person or on the phone, it should ensure it records the discussion in the form of a file note or similar, which is subsequently saved against the case. This is so that the management of the case is such that it can be cross referenced and there is an audit trail of what was discussed.

48. On review of the investigation of this complaint I am pleased to see the speed at which the FCA Complaints Team escalated your complaint, the thoroughness of the investigation and the extra lengths the FCA went to, in ensuring your complaint got exposure from Senior Management, allowing matters to get back on track in an efficient way.
49. In Part One of your complaint the FCA were right to identify and apologise for what had gone wrong with the customer service you had received. The FCA informed you during the call of 30 June 2022 that it would learn from the errors to avoid this happening again and was offering £100 as a gesture of goodwill. I think £100 is fair and reasonable. I can also see from my own observations of the FCA case file that has been provided to me for the purposes of my investigation, the steps the FCA has taken to ensure this does not happen again. Whilst what has been shared with me is confidential, I can say that I've found the recommendations the FCA have made internally to be appropriate and reasonable.
50. In Part Two of your complaint, I understand you were unhappy the FCA would not discuss the matter with you with regards to your allegation that the FCA are allowing firms to deliberately mislead the FOS to gain favourable outcomes. You believe that due to provisions under DEPP 6.1.2G you feel the FCA are able to do this. I have looked into this and [DEPP 6.1.2G](#) provides as follows,

The principal purpose of imposing a financial penalty or issuing a public censure is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour.

Financial penalties and public censures are therefore tools that the FCA may employ to help it to achieve its statutory objectives.

51. I agree with the FCA that DEPP 6.1.2G relates to statutory notices such as warning notices and supervisory notices and not day to day supervision of Firms. I appreciate you may feel differently but this does not supersede any confidentiality restrictions. The FCA were right to highlight that it cannot disclose the details of discussions that it has with Firms it regulates nor can it share details of any actions that may be taken. As I have explained earlier in my report the FCA are unable to let you know what is done with the information you provide to them. 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.
52. For the reasons above I have not upheld Complaint Number Three. However, an area of feedback I put forward for the FCA is, if it discusses information received from the public with other relevant areas such as Supervision in person or on the phone, it should ensure it records the discussion in the form of a file note or similar. This should subsequently be saved against the case. This is so that the management of the case is such that it can be cross referenced and there is an audit trail of what was discussed.
53. I received a response from the FCA on my preliminary report. With respects to sharing information with other areas of the FCA, the FCA has informed me that the feedback I have given in my report, will help to ensure a more consistent approach when the FCA deals with information provided by complainants which has been provided to other areas. As such, the FCA state that my feedback will be discussed with the Complaints Team and its internal measures updated accordingly to reflect the proposed changes. Once the internal measures have been updated to reflect the proposed changes, the Complaints Team will also be briefed about this.
54. I also received a response from the FCA on my preliminary report with regards to recording discussions. The FCA has acknowledged the feedback I provided relating to information received from the public. The FCA has informed me that the feedback I have provided on recording discussions will help to ensure a

more consistent approach to recording and evidencing any discussions it holds with other areas of the FCA in relation to information provided by complainants. Subsequently, the FCA state that my feedback will be discussed with the Complaints Team and its internal measures updated accordingly to reflect the proposed changes. Once the internal measures have been updated to reflect the proposed changes the Complaints Team will also be briefed about this.

55. I am pleased the FCA have taken on board my suggestions in my report and view the importance of embedding them to ensure a more consistent approach.

*My decision*

56. I am sorry but for the reasons outlined in my report I have not upheld all three of your complaints.

Amerdeep Somal

Complaints Commissioner

09 August 2022