

01 September 2022

Final report by the Complaints Commissioner**Complaint number FCA01716***The complaint*

1. On 10 May 2022 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. In its decision letter the FCA set out the following:

You are unhappy with the FCA's delayed action in the suspension of Firm Y trading as Firm X (name omitted for anonymity) which you have said resulted in a financial loss for you.

You have explained that in April/May 2020 you opened a trading account with Firm X, making a deposit of £25,000. You said you were reassured that they had 'financial passporting' rights from the FCA to act on CFD trades for UK residents.

The FCA suspension of the firm took place on 28 May 2020, however you were contacted by the firm after this date to make further trades resulting in additional financial loss. You are unhappy that the FCA did not make you aware of the suspension prior to this and the firm notified you on 3 June 2020 much later than the suspension date.

To resolve your complaint, you are seeking an ex-gratia payment in compensation of the net loss you suffered when you were unknowingly allowed to continue trading with Firm X after 28 May 2020. You feel the FCA should have suspended all activity after this date.

What the regulator decided

3. The FCA did not uphold your complaint. It set out that there were serious issues at Firm X and that the FCA took appropriate action to protect consumers from detriment. It explained that the FCA publish notices against firms on the

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website and explained that this is standard process and that it does not contact individual consumers.

Why you are unhappy with the regulator's decision

4. You emailed my office on 10 May 2022 and asked that I review the FCA's decision not to uphold your claim. My preliminary report was issued on 2 August 2022. Both you and the FCA have provided your responses to my preliminary report which I have taken into consideration in this final report.

My analysis

5. Firstly, I am sorry to hear that one of you has experienced a health issue at the start of the year which is why you did not forward your complaint to my office immediately upon receipt of the FCA's decision letter. I am also sorry to hear that because of your interactions with Firm X you have experienced financial losses.
6. You set out in your email to the FCA on 29 December 2021 that a 'succinct expression of our claim would be that if the FCA had applied the strictures on Firm Y/Firm X in a timely manner on 28th May 2020 - "with immediate effect" as per the statement in the Suspension Notice ref xxxxxx - then our trades on 29th May and 1st June would not (should not) have been allowed, and our account with Firm X would have retained its status of May 28th...'
7. I have looked at all the information and evidence in relation to this case. I have also considered the actions that the FCA took in relation to Firm X and the issuance of the First Supervisory Notice (FSN). It is my preliminary position that generally it appears that the FCA followed the appropriate steps in issuing the FSN to Firm X who are an overseas based company who were conducting regulated activities under the EEA (Service) passport regime. Having identified that there were serious issues with Firm, the FCA decided to suspend the firm to protect consumers like yourself.
8. As the FCA explained in its decision letter, the FSN was issued on 28 May 2020 but due to the Firm not having an applicable email address for the service of the notice, it was issued by postal mail to an overseas country that day and as per the relevant regulations, service of the letter was deemed to have taken place

five business days after it was posted to the firm, being 4 June 2020 (30 and 31 May 2020 were weekend days and did not count as service days).

9. I appreciate the point you raised in your complaint email to me that 'in this day and age when countless financial transactions are undertaken daily throughout the world almost instantaneously' that it seems questionable that the communications with Firm X could only be undertaken by 'snail mail' postage. I have also noted that in your response to my preliminary report you set out that you find the 'excuses both facetious and risible in the context of financial services operating 24/7!'
10. Having reviewed the information relating to your complaint I am satisfied that as a result of there not being an agreement between the FCA and a firm for service to take place via electronic communications, the requirement was to effect service of the notice by overseas postal mail. Accordingly, I am satisfied that the FCA acted appropriately in accordance with the regulations by effecting service of the FSN on Firm X allowing five business days for overseas postal mail.
11. The FCA published the FSN on 1 June 2020. In my preliminary report I set out that this is the one aspect that was not entirely clear in my review of the FCA file, the FSN was issued on Thursday 28 May 2020 and sent via overseas post on the same day. It is not clear why the FCA did not publish the FSN on Friday 29 May 2020 and instead published it on Monday, 1 June 2020.
12. I note that the FSN states that by 1 June 2020 the firm must display on all its trading platforms and websites used in the course of providing regulated activities, a notice to inform viewers/users that it is not permitted to provide regulated financial services to residents of the UK, but it does not state that this is the date on which the FCA will publish the FSN. In my preliminary report I invited the FCA to explain in its response to my preliminary report, the reason the FSN was published on Monday, 1 June 2020. The FCA in response to my preliminary report has now provided my office with an explanation about the steps taken and details of the events that resulted in the publication of the FSN on 1 June 2022. I am satisfied based on the information provided to me that there was a reasonable explanation why the FSN was not published until 1 June

2022. However, the FCA has advised that I am not able to share the details of its explanation due to it containing confidential information.

13. This is because section 348 (s.348) of the Financial Services & Markets Act 2000 (FSMA) classes some information the FCA holds as confidential information, and restricts how that information is dealt with. There is a good explanation of the statutory and FCA policy restrictions on information sharing at <https://www.fca.org.uk/freedom-information/information-we-can-share>.
14. 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. On occasions, I have persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible.
15. Based on the information provided by the FCA in response to my preliminary report I understand and accept that the information provided is confidential under section 348 of the FSMA, but I can confirm that I am satisfied with the FCA's explanation and that the actions taken were reasonable in the circumstances. I realise that this leaves you with concerns and unanswered questions but I hope you will be reassured that I have reached this conclusion after independently reviewing the confidential material.
16. Under the FSN the requirement was for Firm X to inform its clients that it could no longer conduct regulated activities with UK clients. I am satisfied that it was not the responsibility of the FCA to do this and the FCA was not in a position to be able to contact all Firm X's UK clients. The FSN set out that by 4 June 2020, the firm must notify all its clients who are resident in the UK by email that it is no longer able to provide investment services to them and will be taking all

reasonable steps to return all balances held by Firm X on their behalf and that it had to close all open trading positions and liquidate positions into pound sterling balances and make payments to their clients' accounts by 11 June 2020. The FCA in its decision letter did set out that as a matter of law, Firm X had until 4 June 2020 to comply with the FSN and cease all regulated activities in the UK, it noted that it had until 4 June 2020 due to 30 and 31 May 2020 being weekend days. It appears from the information available including your own acknowledgement that the firm contacted its clients on 3 June 2020 and as such complied with these requirements of the notice.

17. It is unfortunate that because of the service requirements the timings did result in a small window where you undertook further trades which ultimately resulted in you suffering financial losses. However, it does appear that the steps taken by the FCA were appropriate and reasonable and in line with the relevant regulations. It is for this reason that is my preliminary position that I agree with the FCA's decision not to uphold your complaint.
18. The Complaints Scheme does not look at individual complaints about the actions of firms. I note that from my review of the file and the decision letter that I can see that you have been advised that any complaint that relates to the actions of the firm should be directed to the Ombudsman in that country. As the company is not based in the UK it is not the Financial Ombudsman Service in the UK, rather a complaint must be lodged with the equivalent Ombudsman in the relevant country. I can see from the file that you have lodged a complaint with the relevant Ombudsman in the country where Firm X is located. I hope that this avenue of redress will enable you to recover some of your losses.

My decision

I know that you will be disappointed that my final decision is that I have not upheld your complaint.

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Complaints Commissioner

01 September 2022