

1 July 2022

Final report by the Complaints Commissioner**Complaint number FCA00931***The complaint*

1. On 7 March 2022 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. In its decision letter to you dated 13 January 2022 the FCA described your complaint as follows:

Part One

You claim that the FCA acted unethically when they forced Firm A, trading as Firm B, to close the client account that you held with them; this has caused you a financial loss, mental stress and caused the company to benefit from your loss.

Part Two

You allege that the FCA failed to provide you with any notice of the removal of permission and in doing so caused you to lose money. You did not consent to the closure of your accounts.

Part Three

You allege the FCA breached your Human Rights in removing the permissions of Firm A as Firm B.

What the regulator decided

3. The FCA did not uphold Parts One and Two your complaint and excluded Part Three of your complaint.
4. In Part One the FCA decided it had acted swiftly and carried out its regulatory function. The FCA explained it also considered the risks involved in the actions taken which were appropriate steps taken to protect consumers. In Part Two of

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your complaint the FCA reiterated that appropriate steps were taken to protect consumers.

Why you are unhappy with the regulator's decision

5. You are unhappy with the FCA as you feel it is the FCA's fault for your severe financial loss, by closing your trading account without your consent. You have also referenced the FCA's offer of £75 ex gratia to you which you have not accepted.

Preliminary points (if any)

6. I agree with the FCA's decision to exclude Part Three of your complaint, that it is better dealt with by another means and that you should seek independent legal advice. As such, I have not investigated this element of your complaint. Issues connected to whether your Human Rights have been breached is a legal matter and if you wish to pursue this issue you should seek independent legal advice as the FCA suggested.

My analysis

7. I am sorry to hear about the financial loss you have suffered and the trouble and upset this has caused you.
8. I have looked at all the information that has been provided to me including the FCA case file. I have also sought further enquiries with the FCA during this investigation to grasp the wider work the FCA has conducted in the area of contract for differences (CFD) products and providers and those firms connected to this matter. This is so that I can see the internal workings of the FCA in this area observing first-hand whether I feel the FCA's actions have been reasonable or fallen outside the bounds of reasonableness. In these respects, I am subject to confidentiality obligations. I have also taken into consideration all the points you have raised in response to my preliminary report.
9. 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. Similarly, information from the FCA shared with me via a sharing

gateway is given to me exclusively so that I can see the insights of the work the FCA has undertaken in certain sectors. This at times is classed as confidential information as it has been in this case. 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.

10. I hope it provides some reassurance to you that based on my observations of the FCA's actions and the wider work it has undertaken in this area, I am satisfied the FCA have acted appropriately in its oversight and acted where the need arises. I appreciate you may want further information shared with you, but due to the confidential restrictions that I am bound by I am unable to give further details on this. 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 confirmed with you in its Decision Letter, there is no general right for members of the public to know the outcome of reports the FCA makes. 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.
11. You mention that you feel it is the FCA's fault for your severe financial loss by closing your trading account without your consent. Overall, having looked at the actions of the FCA and its reasons for intervening when it did, I am unable to agree that it was the FCA's actions that caused a financial loss. In the interests of consumer protection, I think the FCA was proactive in its approach to prevent further harm and did so justly keeping matters at the forefront.

12. I can see with regards to the actions the FCA took, it issued a Voluntary Requirements Notice (VREQ) on 12 May 2021 imposing restrictions and tight time frames for the Firm to complete and adhere to. This is publicly available to view as the FCA pointed out in its decision letter to you. The information the FCA gave you was also correct, it is not required to seek permission or consent before it takes regulatory action.
13. I am sorry I cannot share much more than this, but based on my investigation, the FCA's work in this area and the actions it took were reasonable to protect consumers.
14. Regarding compensation in this matter, the right course of action would be to make a complaint with the Financial Ombudsman Services (FOS). The FOS look at disputes between consumer and financial business here <https://www.financial-ombudsman.org.uk/> I can also see the FCA have previously referred you to the Cypriot Ombudsman.
15. During my observations of the VREQ which has been published on Firm A's The Financial Services Register Entry, I note the following in the fifth paragraph of the VREQ:
 - 5) By 13-5-2021, 1 calendar day after acceptance of the VREQ, the Firm must display on all websites used by it in the course of providing regulated activities, including but not limited to Website 1, Website 2 and Website 3, a notice of such size and prominence that all viewers of the website will inevitably see and be able to read it, which states: "Firm A, trading as Firm B, is not permitted to provide regulated financial services to residents of the United Kingdom."
16. Having evaluated this I can see that '...Website 2 and 3...' do not display the above notice required by the FCA. It appears only '...Website 1...' alone displays the notice above. As such, I am concerned that the FCA may not have noticed this and subsequently acted on this to ensure the promotional marketing of the Firm is clear, fair and not misleading in ensuring that Firm A is complying with paragraph 5 of the VREQ.
17. I ask the FCA to respond on this point and confirm with me whether it accepts my observations and the need for action to be taken in respects of the other

websites 2 and 3 that currently do not display the notice. It would be helpful for me to understand more from the FCA's perspective, what actions it takes to ensure compliance in this area. Subsequently, I would like the FCA to explain what measures are currently in place (if any) to ensure that Firms such as Firm A, comply with VREQ requirements – this is specific to the VREQ requiring website notices i.e.: paragraph 5 of the VREQ. As an example, does the FCA check the Firm's website/s on the date stipulated in the VREQ as a 'one off check' for the FCA to be satisfied whether paragraph 5 has been adhered to? Pending this does the FCA take necessary action if required? Alternatively for instance, does the FCA complete periodical website checks to ensure regular compliance of paragraph 5 of the VREQ? I would like the FCA to share more with me on this.

18. If the FCA accepts action is needed to ensure that Firm A's websites 2 and 3 are updated to include the required website notice, I urge the FCA to act on this immediately and update me of its actions in relation to this. I would also ask the FCA to inform me of what it will do going forward to ensure preventative measures are in place so that matters such as these are not repeated in the future and Firms are adhering to website notices required.
19. If the FCA does not accept my observations and finds otherwise it should explain to me the reasons why.
20. The FCA provided a response to me regarding paragraphs 15 to 19 above of my report. Due to confidentiality restrictions that I need to adhere to, I am unable to share the FCA's response.

My decision

21. Although I have not upheld your complaint points, I put forward the following recommendations for the FCA. I **recommend** the FCA provide training across its Supervision Division as soon as possible, to ensure a consistent approach is followed when checking the implementation of VREQ requirements. Training should include:
 - a. 'Check requirements' in place that all VREQ elements have been successfully implemented by Firms and/or individuals

- b. Functioning FCA systems in place to keep a record that VREQ requirements have been successfully implemented, including dates of implementation, who carried out the checks and recording evidence of the changes to support that VREQ requirements have been successfully implemented
- c. A Quality Assurance function in place to record the actions taken by the FCA individual/s checking all VREQ requirements have been successfully implemented

Amerdeep Somal
Complaints Commissioner
1 July 2022