

19-6-2017

Dear Complainant

Complaint against the Financial Conduct Authority
Reference Number: FCA00293

Thank you for your email of 17 March 2017. I have now reviewed the information sent to me by you and the Financial Conduct Authority (FCA), and your response to my preliminary decision of 1st June 2017, and am able to write to you.

How the complaints scheme works

Under the complaints scheme, I can review the decisions of the FCA's Complaints Team. If I disagree with their decisions, I can recommend that the FCA should apologise to you, take other action to put things right, or make a payment.

What we have done since receiving your complaint

I have reviewed all the papers you and the regulator have sent to my office. Both you and the FCA have had the opportunity to comment in response to my preliminary decision. I have carefully considered the points made and, although they have not altered my decision on your complaint, I have made further reference to them below.

Your complaint

On 18 November 2016, you complained to the FCA about aspects of its regulatory investigation into your business (Firm A). Following an exchange of emails, the FCA Complaints Team identified four elements to your complaint as follows:

Element One

You alleged that an FCA supervisor was intimidating and threatening in trying to coerce you to agree to a voluntary requirement (VREQ) and that they also expected you to complete it within an unreasonable timeframe. You sought legal advice as you felt your firm's product was not a non-standard product. You stated that the FCA did not confirm in writing that the product involved was a non-standard product, or explain the reasons why.

Element Two

You are unhappy with Enforcement's engagement with you. You alleged that during an interview several enforcement staff members were passing post-it notes to one another and continually pointing at things, which you found to be unnecessary intimidation. You also claimed one staff member made a 'chopping gesture' to prevent the other staff from continuing down a line of questioning which may have proved detrimental to Enforcement's case.

Element Three

You alleged the FCA blackmailed [another firm, Firm B], into informing all your clients that they had been invested into a non-standard product. You stated this resulted in you receiving a mass number of enquiries and a potential liability of £6,000,000.

Element Four

You indicated you had adverse information on a firm which you claim resulted in you contacting the FCA's Whistleblowing Team. You felt this information was not dealt with appropriately and stated you were told to "fill your boots" when you suggested you would raise your concerns with Action Fraud.

Regarding Element Two, the FCA said it would not normally investigate complaints that are connected to continuing action by the FCA, in this case its Enforcement Team's actions with the Firm. It referred you to paragraph 3.7 of the Complaints Scheme (the Scheme). However, the FCA said that in this instance it believed there were exceptional circumstances which warranted their investigation.

The FCA's complaint response was issued on 13 March 2017. No elements of your complaint were upheld. You are dissatisfied with this response and have asked me to investigate. You have told me that you wish to complain about the FCA and five of its employees, and that you would like a face to face meeting with me to discuss and release further evidence of what you consider to be criminal behaviour by the FCA which has severely impacted your personal health and professional life. You have also told me that your evidence of a senior staff member's conflict of interest was disregarded; although this element is not in the current complaint documentation you consider that it points to "a massive element of cover up on the part of the FCA". In addition, you now wish to include a complaint that an FCA staff member breached principles in giving instructions (and effectively financial advice) that your clients' pension investments should be left in cash causing them loss.

My position

Under the Scheme, I have not considered the FCA's decision to conduct a regulatory investigation into the Firm; there are alternative avenues open to you to challenge regulatory decisions at a later stage. I have, however, considered the FCA Complaints Team's investigation and response to form a view on whether it was reasonable in all the circumstances. My approach has been to consider, first, whether the FCA Complaints Team acted reasonably in scoping the matters it would investigate as it did and whether any other matters should also be investigated. I have then reviewed the FCA's complaint investigation and the reasonableness of its response.

Scope of the FCA's complaint investigation

On 1 December 2016 the FCA Complaints Team wrote to you to outline its understanding of your complaint based on your letter of 18 November. You responded on 2 December with further points that indicated where you considered your complaint had not been summarised accurately. In response to this, some changes were made to the complaint elements. I am satisfied that these changes incorporated all the complaint elements set out in your letter of 18 November.

In your complaint to me, you refer to an alleged conflict of interest involving a staff member, and to a staff member acting inappropriately by effectively giving financial advice and instructing that your clients' funds should be held in cash. As these matters have not been formally raised with the FCA under the Scheme I am unable to consider them now. I do, however, note that you emphasised to the FCA, and have told me, that you consider some staff behaviour amounted to criminal actions. This is not something I can address under the Scheme (suspected criminal behaviour should be reported to the police).

My Office does not usually conduct face to face meetings with the parties or review evidence that has not been considered by the FCA. If you wished to send me further evidence, I would expect to share that with the FCA to obtain their comment upon it.

Outcome of the FCA's complaint investigation

In response to Element 1 of your complaint the FCA said that it was unable to find evidence of a phone call to you from a female staff member on 17 June 2015. As you have not supplied the FCA with further evidence of that phone call I am unable to comment further. The evidence I have seen shows that a phone conference took place on the morning of 15 June 2015 in which the FCA set out some serious concerns about the management of the Firm; this was followed by a letter on the same day. You were initially asked to sign a VREQ by close of business on 19 June; this was eventually finalised on 10 July 2015.

The FCA complaint response concluded that you were allowed “adequate time to consider and sign the VREQ bearing in mind the serious nature of [the] concerns...[including] additional time to seek your own legal advice”. The FCA complaint response also said that reference to ‘non-standard products’ was left out of the VREQ following representations by your solicitor, and that the supervisor agreed to this because “the FCA’s concerns were far broader than whether the products were standard or not and indicated that even if the products were standard, the consumers had still received poor advice”. The FCA complaint response accepted that it had not found evidence that Supervision “gave you a clear explanation as to why they considered some of [the Firm’s] products as being non-standard” but concluded that the evidence showed this was not the basis for their actions. Based on the evidence I have seen I consider that this response is reasonable.

In response to Element 2 of your complaint the FCA was unable to make conclusive findings about gestures made and the passing of post-it notes because Enforcement Team interviews are not usually video-recorded. The complaints investigator considered the transcripts of the audio-recordings of the interviews and these have also been supplied to me. He also made enquiries of relevant staff who said it was not unusual for team members to pass each other post-it notes or point out relevant information. It should be remembered that the purpose of such interviews is to gather evidence and test concerns about alleged regulatory breaches. The complaints investigator concluded that it was not possible to state whether the passing of notes during your interviews could be perceived as an intimidation tactic. Although I appreciate that you find this answer unsatisfactory, based on the evidence I have seen I consider that it was a reasonable response to this element of your complaint. I do not consider that the interview recordings reveal evidence of bullying or intimidation tactics.

In response to Element 3 of your complaint, the FCA’s complaint response said that it was limited in what findings it could provide to you in relation to the FCA’s correspondence with Firm B. The complaints investigator told you that he had reviewed the case file and had not found evidence which indicated the FCA used bullying tactics to coerce the firm to write to your clients. As you will be aware, under Section 348 of the Financial Services and Markets Act 2000 (FSMA) confidentiality restrictions generally apply to information obtained by the FCA in carrying out its regulatory functions. This is the way that Parliament rather than the FCA has decided that the system should operate and it applies to my Office as well as to the FCA. Based on the material I have seen, I am satisfied that the FCA’s response to this element of your complaint was reasonable in the circumstances.

In response to my preliminary decision you sent me a transcript of a phone call between

yourself and two other parties. You have told me that you will supply the actual recording provided it is not shared with a third party without your written authority. I have considered the phone-call transcript carefully, but I do not consider it is of any evidential value about what the FCA did or did not ask Firm B to do, and for that reason I do not think that there would be any point in your supplying me with a recording. As explained above, I would expect to share any further evidence you choose to send me with the FCA.

In response to Element 4 of your complaint, the FCA complaint response said that due to FCA policy and confidentiality restrictions it was unable to provide you with any further details on what happened with information you provided to its Whistleblowing Team although the information had been summarised and logged in accordance with the FCA's procedure. A staff member from the Whistleblowing Team recalled having a brief telephone conversation with you at some point after you had met the team. They did not recall using the term 'fill your boots' but apologised if they did use this terminology or gave you this impression. Although the FCA was unable to make a conclusive finding on this phone call as it was not recorded, the Whistleblowing Team offered you an apology for any insensitive language that may have caused offence.

Based on the evidence I have seen I consider that the Complaints Team's response on this element of your complaint was reasonable, although I am surprised that not all phone calls with the Whistleblowing Team are recorded. I **suggest** that the FCA considers whether it would be appropriate for it to do so.

In response to my preliminary decision you have said that the FCA's response on this element of your complaint is contradictory. Also in response to my preliminary decision, the FCA's Whistleblowing Team has commented that all calls to the Team are recorded, and all calls made to whistleblowers from the Team are recorded. However, this particular call from you was inbound and made to a member of staff's direct line – and as such wasn't recorded. The FCA have also noted that although the recording facility is in place, many whistleblowers do not wish to be recorded, due to the nature and sensitivity of the calls.

Conclusion

In conclusion, for the reasons set out above, I have not upheld your complaint. I realise you will be disappointed by my decision but I hope you will understand how I have reached it.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Antony Townsend', with a large, stylized flourish at the end.

Antony Townsend
Complaints Commissioner