

13 June 2019

Final report by the Complaints Commissioner**Complaint number FCA00536***The complaint*

1. On 24 December 2018 you asked me to investigate a complaint against the FCA while the FCA was still investigating your complaint. I wrote to you to say that in the circumstances it was desirable for the FCA to complete its own investigation into your complaint, as that is usually the swiftest way of resolving matters.
2. The FCA completed its investigation but you were not satisfied with the outcome. On 28 March 2019 you asked me to investigate your complaint about the FCA in relation to firm X.

What the complaint is about

3. You were an employee of firm X, a non-financial services firm based in country A, and allege that you discovered fraud within the company. You whistle-blew to the Chairman of the company but no action was taken and subsequently your employment with firm X was terminated, which you say amounted to whistle-blower victimisation. You say firm X has also violated country A's listing obligation and disclosure requirement by not reporting your whistle-blower complaint.
4. Firm X has its securities listed in country A and country B, but also trades via a Global Depositary Receipt (GDR) on the London Stock Exchange (LSE) as 'Y' on a Multilateral Trading Facility (MTF). You wished the FCA to investigate firm X. You contacted the FCA telephone whistleblowing line first. You were told the FCA would not investigate firm X as it considered it had no remit, and it suggested that you contact the competent authority responsible for financial regulation in country B as your concerns fell under its remit.
5. You then made a complaint.

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What the regulator decided

6. The FCA did not uphold your complaint. It said that the information which you had supplied had been properly referred to the relevant FCA teams, and that the guidance that you should refer the matter to the competent authority in country B was correct. It also said that in its view the Public Interest Disclosure Act 1998 (PIDA) does not create a duty upon the FCA to investigate matters referred by whistle-blowers, but rather creates protections for employees who make certain disclosures about their employers.
7. The FCA offered you £75 because of its delays in dealing with your complaint.

Why you are unhappy with the regulator's decision

8. You approached the competent authority in country B but it did not act. You made the FCA aware of this, but the FCA simply reiterated its view that the matters fell within that authority's remit. You feel the FCA is 'passing the buck' and ought to take action against firm X given that the competent authority in country B will not.
9. You feel the FCA should, at the very least, liaise with the competent authority in country B to demand it opens an investigation into firm X with respect to its *corporate governance failure, whistleblower victimization and financial CSR fraud/irregularities*.

My analysis

10. Your allegations are about a firm based in country A. While the firm's securities are traded in London, they are not listed here, the company does not make its regulatory announcements here, and the FCA is not the relevant competent authority in the European Union for reviewing the company's financial statements.
11. I think the FCA's position that the relevant competent authorities for firm X are the authorities in countries A and B is correct.
12. The FCA told you that 'the FCA was unable to find anything in your disclosure which was relevant to its remit'. This was because the FCA's internal guidance at that point was inadequate: it did not identify the fact that there were circumstances under which the FCA could take action – the guidance has

subsequently been revised. However, I can see that FCA supervision teams reviewed the information you provided. After careful consideration, the FCA decided it would not be taking any action based on the information you had provided, taking into account the all the relevant circumstances of this case, and in particular the remits of the authorities in countries A and B.

13. I am satisfied that the FCA has not ignored the information which you have provided, and has given it proper consideration. The fact that the authorities in countries A and B will not act is understandably frustrating to you, but that is not the fault of the FCA.

My decision

14. I am sorry about the difficult situation in which you find yourself, but for the reasons given above I agree with the FCA's decision on your complaint. I note that at an earlier stage you were wrongly told that the FCA had no remit, though I don not think that that affected the outcome of this matter, and the FCA has now revised its guidance.
15. I appreciate you are unhappy with my decision, and in your response to my preliminary report you have quoted from statements I have made in which I have criticised the FCA for not pursuing matters sufficiently. I appreciate how frustrating you find the position, and your genuine concerns about the matters which you have raised; and I see from your email of 12 June that you have raised these matters again with the authorities in the country concerned. but However, having carefully looked at the circumstances of your case I am satisfied that the FCA's decisions were reasonable in all the circumstances.
16. I note that it took the FCA almost eight months to deal with your complaint – it has already apologised for this, and offered you a payment, but I consider such delays are particularly unfortunate in cases involving whistleblowing.

Antony Townsend
Complaints Commissioner
13 June 2019