

2 September 2019

**Final report by the Complaints Commissioner****Complaint number FCA00597***The complaint*

1. On 4 June 2019 you complained about the FCA's decision not to uphold some complaints which you had made about its actions.

*What the complaint is about*

2. In its decision letter of 31 May 2019, the FCA described your complaint this way:

*Part One*

You allege that all your transcripts from your interviews with the FCA have been supplied to third parties and you believe the redacted sections of said transcripts are clearly legible if they are held up to the light once printed.

*Part Two*

You provided information to the FCA's Whistleblowing team confidentially and you are unhappy as you believe it was forwarded to at least one member of the *Enforcement Team*.

*Part Three*

When you clarified your concerns with an FCA associate and asked if you should notify the Serious Fraud Office of these concerns, you were told to "fill your boots".

*What the regulator decided*

3. The FCA decided that Part One of your complaint should be dealt with as a data protection issue rather than under the Complaints Scheme, and referred it to the FCA's data protection department.

4. On Part Two, the FCA decided that your complaint was out of time. It said that the Complaints Scheme rules state that complaints should normally be made within 12 months of the complainant first becoming aware of the matter, unless the complainant can 'demonstrate any reasonable reasons for the delay', and that in its view you had had an opportunity to raise the matter with the Complaints Team in 2015/16 when you made a complaint about related matters.
5. The FCA decided that Part Three of your complaint had already been investigated, and a decision had been issued by me: the matter was therefore closed.

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

6. In your letter to me, you say:

*I am astounded at the content of the response [the FCA] provided given that such serious criminal activity has been whistle blown to the FCA, on more than one occasion, and is again being "kicked in to the long grass".*

*For... the Complaints Investigator, to state that because some of the initial whistle blowing was over twelve months ago no action will be taken is beyond belief and goes to prove that crime certainly pays and that some individuals are clearly above the law. Indeed, this matter had been raised at an earlier stage and can be considered as "on-going"!*

*It is the FCA's responsibility to protect individuals and if action had been taken when I whistle blew, the demise of the Fund could have been avoided. The Action Fraud that I raised has had no outcome as yet, however, a detective at the Serious Fraud Office has messaged me to state that they are a small team with a limited budget.*

*My analysis*

7. I should start by commenting on the background to this complaint. It involves some complex matters, alleged criminality, regulatory actions, and a number of individuals. You made complaints about the way in which the FCA had handled the regulatory proceedings which I considered, but did not uphold, in 2017.
8. This report focuses upon the three issues described in paragraph 2.

(i) *Part One*

9. The FCA decided that your complaint about the adequacy of the redaction of certain documents was a data protection issue, and therefore should be dealt with outside the Complaints Scheme. Paragraph 3.6 of the [Complaints Scheme](#) says that *The regulators will not investigate a complaint under the Scheme which they reasonably consider could have been, or would be, more appropriately dealt with in another way.* Issues to do with data protection come under the remit of the Information Commissioner, and there are statutory processes for dealing with complaints of that kind, so I consider that it was reasonable for the FCA to say that Part One should be considered elsewhere.
10. In your letter of 28 May to the FCA Complaints Team, you complained that you had been ‘fobbed off’ by the response you had had from the FCA’s data protection officer, who had asked for further evidence from you, and urged the FCA to ‘take a more proactive role in this very serious breach’. You also attached some additional information.
11. I have looked carefully at the records. On 14 May 2019, the Data Protection Officer of the FCA said that they had investigated your complaint, but had been unable to reproduce the result you had reported – i.e. seeing redacted text when holding a document against the light. They asked you for further evidence of the matter, but I understand that you have not supplied anything. However, they also reported that they had uncovered a different potential problem, and that it had reported the matter to the Information Commissioner’s Office. I am satisfied that the FCA has done so properly, and has followed the ICO’s advice.

(ii) *Part Two*

12. The FCA decided to rule out part two of your complaint on the grounds that it was more than 12 months since you became aware of the circumstances. In your letter of 4 June to me (quoted in paragraph 6), you say that to rule out action because ‘some of the initial whistle blowing was over twelve months ago’ is ‘beyond belief’.
13. I think you may be addressing a different point. The FCA was not ruling out regulatory action about the wider matters which you had raised: it was simply excluding your complaint about its handling of a particular piece of information.

The FCA's decision seems to me to have been correct. You have given no reason why you could not have complained in 2016/17, when you made your original complaint.

*(iii) Part Three*

14. This is straightforward. You complained to me about this matter in 2017. I investigated. There is nothing new here, and the matter cannot be reopened.

*My decision*

15. I have carefully considered the matters which you have raised, but I have not upheld your complaint, for the reasons which I have given.

Antony Townsend

Complaints Commissioner

2 September 2019