

16 September 2022

Final report by the Complaints Commissioner**Complaint number FCA001722***The complaint*

1. On 18 May 2022 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. The FCA summarised your complaint in its decision letter dated 25 February 2022, setting out that you were unhappy with the FCA's perceived inaction relating to the whistleblowing case in which you were involved and said that 'in essence, you are complaining about the situation you find yourself in having acted as a whistleblower and consider that the FCA are responsible.

What the regulator decided

3. The FCA did not uphold your complaint. It set out that having investigated the complaint it was satisfied that the actions of the Whistleblowing Team and Supervision Team were reasonable in the circumstances.

Why you are unhappy with the regulator's decision

4. You wrote to my office on 18 May 2022 and set out the following:

Element One

You have never received any information back from the FCA on how it is using the information you provided to tackle the problem.

Element Two

The FCA has cited s.348 of the FSMA as its reason for not engaging with you, but you do not understand the application given you are already a 'declared whistleblower' and that the details of your report are already in the public domain through news and press.

Element Three

Unlike Azeem Rafiq, you have not been invited by the FCA to speak to the investigation team, parliamentary committee or anyone with any authority to speak on behalf of an involved competent authority, to check their understanding of the gravity and nature of my allegations and evidence.

Element Four

The FCA has not taken up your offer to connect to your network of active bank whistleblowers who remain at work within the Firm, many of whom are open to providing it with their own expansive evidence that support your report findings.

Preliminary points (if any)

5. It is not my role to substitute my regulatory judgement for the FCA's. The FCA has considerable discretion in how it applies its finite resources. But I can consider whether its actions or inactions are within the bounds of what a reasonable regulator would do and I have access to the FCA's confidential papers to enable me to make that assessment.
6. I note that in your response to my preliminary report you wanted to clarify that the complaint as set out in the FCA's decision letter and restated in paragraph 2 of this report (above) was not an entirely accurate capture of your position. I note that this paragraph was extracted from the FCA decision letter so I have not amended the wording. However, for clarity of your position I note that in your response to my preliminary report you stated your position as follows:

‘to be clear, I do not hold the FCA responsible for the situation I am in. I hold a number of senior leaders at Firm X (though also at other firms) responsible, due to their verifiable retaliatory actions which I maintain are in breach of both the Public Disclosure Act and FCA Whistleblower Handbook. I am concerned at the FCA's lack of meaningful action.....’

My analysis

7. In reviewing your complaint, I have had access to the FCA's files in relation to your complaint and I have reviewed the information that you have sent to the

FCA and to my office. You have also provided details of your LinkedIn page and your company website which have provided further detail and insight in relation to the matters involved in relation to your complaint, your report, as well as your wider focus to drive through change in relation to diversity and inclusion both in the financial service industry and society in general. You have also provided a detailed response to my preliminary report received on [25 August 2022](#), which I have reviewed and taken into consideration when preparing my final report into your complaint.

8. You first contacted the Whistleblowing (WB) Team of the FCA on 9 June 2021, by email, setting out that you would like to talk to someone regarding the diversity and inclusion at Firm X. You went onto have numerous communications with the WB team and you provided them with a substantial amount of information. You provided the FCA with your report into institutional racism at Firm X and provided further evidence throughout the investigation. As a result of providing the evidence to the FCA, you have said that you were forced to resign from the Firm and that you are now not able to secure further employment within the financial service industry. I am sorry to see that from the information that I have reviewed it has clearly been a very difficult and stressful time for you.
9. The FCA's decision letter set out in detail the interactions you had with the WB Team and Supervision Team and there is no value in me duplicating this within my report.

Elements One and Two

10. In my view the principal cause of your complaint is the fact that you have not been given all the information about actions which the FCA is taking as a result of the information you have supplied it with. I recognise that, even if you had the information, it is possible that you would take the view that the actions which the FCA is taking are insufficient, but I understand that it may reassure you that your concerns have not been ignored.
11. Unfortunately, as you have pointed out, the FCA has set out to you that it is unable to provide you with updates in regard to the actions it has or may be taking because section 348 of the Financial Services and Markets Act 2000

requires it to protect the confidence of information. The FCA does not generally say what action has been taken in response to the information that it receives. 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. In addition to this, 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. Under this policy, the FCA will not normally disclose the fact of continuing action without the agreement of the firm concerned. 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>. This means that there is no general right for members of the public, even whistleblowers to know what action if any the FCA took.

12. Having reviewed the FCA's file and read the correspondence between you and the FCA, I can see that the FCA did set this out to you at the start of your interactions with the WB team in its email to you dated 17 June 2021, and that it did repeat the restrictions s.348 FSMA imposed in further emails with you later in its interactions with you. I do note that these later emails were from the FCA's Complaints Team and not the WB Team. I do feel that whilst the WB team did explain the limitations on the amount of information that it could share with you at the start of its interactions with you, it could have managed your expectations better through the process by reiterating the restrictions each time it corresponded with you about your case.
13. I note that in your response to my preliminary report you set out your frustrations that you feel that the use of s.348 FSMA has been applied to protect Firm X and its use 'obliques visibility on due process, rendering it impossible to reach a positive view on accountability.
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. Please be assured that where appropriate I shall continue to pursue this matter with the FCA.

15. Having studied the FCA's files I can say that I am satisfied that the complaint team's investigation into the actions of the WB Team and Supervision Team was reasonable and thorough and that the FCA has not ignored the information which you have provided and has given it proper consideration. Unfortunately, I cannot say any more than that, and I recognise that that will be frustrating for you and 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. On this basis I **do not uphold** this element of your complaint.
16. I note that you emailed me on 4 August 2022, to highlight that to date nobody from the FCA (or any other organisation) has debriefed you following the information you provided as a Whistleblower on racism, being a year on from your resignation with the Firm. I appreciate that this must leave you feeling incredibly frustrated and it is my understanding that at the time of writing my report that you have still not been provided with any information regarding the conclusion of the WB case. In reviewing the information on file, I can see that in its initial email to you dated 17 June 2021 the WB team did set out that:

When our review is complete, we can also contact you to inform you of our decision. Again, we are restricted in what we can say but we will try and provide you with as much information as we can, which hopefully should provide you with an understanding of our review.

On this basis, it is my understanding that you should still expect to receive some form of update and the conclusion of the WB team review, however I do not

know when this might be or what level of information it may contain. I would **ask** that the FCA provide me with notification when this occurs so that I can satisfy myself that it has complied with its stated actions at the end of the review.

Element Three

17. You have questioned why you have not been invited to speak to the investigation team, parliamentary committee or anyone with any authority to speak on behalf of an involved competent authority, to check their understanding of the gravity and nature of your allegations and evidence. You used the appearance of Azeem Rafiq , (a cricketer, who testified to parliament's Digital, Culture, Media and Sport Committee about his experiences of racism while playing for Yorkshire Cricket) as a comparison.
18. I can only comment in relation to the complaint you have raised and in relation to the actions or inactions of the FCA in relation to your complaint. As such I cannot comment on why you have not been invited to speak to a Parliamentary Committee about your experiences with Firm X. You may wish to speak to your member of parliament about your experience to discuss the possibility of presenting evidence to a Parliamentary Committee or contact the clerk to the committee directly. You have indicated in your response to my preliminary report that you intend to do so. In relation to the FCA not inviting you to speak to its investigation team, I am satisfied that the WB team associate that you liaised with by email offered on a number of occasions to discuss your case with you. Having reviewed the FCA files I am also satisfied that your requests to the WB team to speak with someone with authority on your case were elevated to the relevant areas and to the appropriate levels of seniority by the WB team associate and that they were advised that their enquiries were ongoing and that it would not speak to you at that time.
19. I do however appreciate why you would like to speak to someone in relation to the complaint you have raised in relation to Firm X, to check that the FCA understand the 'gravity and nature' of your allegations and evidence. You restated this position in your response to my preliminary report saying that whilst you acknowledge that the FCA has 'heard' your complaint you do not

believe that it has listened and it cannot do this by way of 'an email, a letter, a dossier or a call with a clerk'. You indicate that you feel that the only effective way for the FCA to 'actively listen' to you would be an in person meeting. In the summary of your response to my preliminary report you set out that should the FCA be able to convince you through its response to you that it has understood you correctly then you would be able to 'graciously and gratefully walk away'.

20. I note that my Predecessor, in case [FCA000584](#) set out some recommendations in relation to Whistleblowing cases, in particular he set out that he recommended that:

the FCA considers the importance of demonstrating to whistleblowers that it has fully understood the information supplied and giving whistleblowers the opportunity to provide supplementary information and clarification.

It appears from your complaint to me that the FCA has not managed to demonstrate to you at this time that it has fully understood the information you supplied to it, and perhaps there would have been and still could be some merit to having someone speak with you to demonstrate that it had a proper understanding of the issues you had raised. As noted above in paragraph 20 you have indicated that this could go some way to resolving this matter to the extent that you could walk away once the FCA had demonstrated its understanding. This being said, I am satisfied that overall, the WB team in its correspondence did invite you call and discuss the matter with them and that it also passed up your requests to speak to someone with authority within the FCA. As such I have **not upheld** this element of your complaint.

Element Four

21. In your complaint you set out that you are disappointed that the FCA has not taken up your offer to connect to your network of active bank whistleblowers who remain at work within the Firm, many of whom are open to providing it with their own expansive evidence that support your report findings.
22. I am only able to address your concerns about matters falling under the remit of the Complaints Scheme, the details of which can be found through the following link: <https://frccommissioner.org.uk/complaints-scheme/>. In particular, I can only

consider the actions or inactions of the FCA (and the Bank of England) in relation to its regulatory role.

23. The decision whether or not to connect to your network of Whistleblowers is a business decision and does not fall within the remit of the Complaint Scheme. As such I have **not investigated** this element of your complaint.
24. If any of your connections wish to raise specific complaints about Firm X they should go to the FCA website page about Whistleblowing (<https://www.fca.org.uk/firms/whistleblowing>) to find out more information and they can contact the Whistleblowing team via the following email address whistle@fca.org.uk and the FCA will then consider the information they provide and liaise directly with the individual whistleblower on a confidential basis.

My decision

25. This is my final report about your complaint. I understand that you may be disappointed that I have not upheld your complaint.

Amerdeep Somal
Complaints Commissioner
16 September 2022