

4 January 2023

**Final report by the Complaints Commissioner****Complaint number 202201605***The complaint*

1. On 28 September 2022 you asked me to investigate a complaint against the FCA.

*What the complaint is about*

2. In its decision letter the FCA described your complaint as follows:

You say you raised concerns about your employment onboarding to Firm A via emails with the CEO and the Colleague Experience Director on 9 and 12 April 2021. You feel you were subsequently racially discriminated, victimised, and your contract with the firm was terminated. You raised this matter with the FCA's Whistleblowing Team and are unhappy with the outcome of their investigation as you feel that the racist treatment you received from the firm has been ignored.

You say the FCA was biased and showed lack of care in its inaction and in its response to your concerns, perpetuating severe emotional and wellbeing damage and a significant financial loss.

To resolve your complaint, you are asking the FCA to enforce the firm to compensate you £3.84 million, assumed 5 years' loss of wages.

In your email of 8 August 2022 you explained, 'I am also seeking a formal apology from the Firm along with the compensation detailed from the Firm'.

### *What the regulator decided*

3. The FCA did not uphold your complaint. The FCA provided a background to your matter in its decision letter including the liaison between yourself and the FCA Whistleblowing team between November 2021 and July 2022.
4. The FCA explained the legislation when it comes to sharing confidential information about Firms including what the FCA can and cannot do.
5. It reviewed the actions taken by the Supervisory Team and confirmed that the allegations you made were considered and assessed thoroughly. It also stated that the FCA could not intervene on a whistleblower's behalf and investigate individual complaints about the Firms it regulates. It was also noted that you had taken your grievance to an employment tribunal which was an appropriate avenue to resolve matters with the Firm.

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

6. In your complaint to me you asked me to review the FCA's decision and its inaction in this case. Therefore, I have set out the elements of your complaint below that I have reviewed:

#### *Element One*

You say you raised concerns about your employment onboarding to Firm A via emails with the CEO and the Colleague Experience Director on 9 and 12 April 2021. You feel you were subsequently racially discriminated, victimised, and your contract with the firm was terminated. You raised this matter with the FCA's Whistleblowing Team and are unhappy with the outcome of their investigation as you feel that the racist treatment you received from the firm has been ignored.

#### *Element Two*

You say the FCA was biased and showed lack of care in its inaction and in its response to your concerns, perpetuating severe emotional and wellbeing damage and a significant financial loss.

#### *Element Three*

To resolve your complaint, you are asking the FCA to enforce the firm to compensate you £3.84 million, assumed 5 years' loss of wages.

In your email of 8 August 2022 you explained, 'I am also seeking a formal apology from the Firm along with the compensation detailed from the Firm'.

*My analysis*

7. I have considered all the information that has been provided to me in this complaint which includes the FCA case file. In addition, I have also sought my own further enquiries with the FCA whilst I have investigated your concerns. This was to ensure that I was able to review all the information including confidential material applicable to this case in reviewing the FCA's investigation and decision.

*Element One*

8. In the FCA's decision letter it informed you of its position when it comes to sharing confidential information about Firms including what the FCA can and cannot do. It also explained the legislation behind this. It is important to highlight that I am also subject to confidentiality obligations. 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. 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.
9. With regards to the concerns, you raised with the FCA about your employment onboarding to Firm A, you originally raised this with the FCA on 17 November 2021. From this date onwards, whilst I cannot share exactly all of the information that has been shared with me for the purposes of your complaint, I can confirm that based on the FCA case file and my further information

requests, I am satisfied the FCA took on board the information you shared with it, with regards to the concerns you raised about your employment onboarding to Firm A and used it appropriately where the need arose. I hope this is helpful and gives you the reassurance that concerns you raised were escalated appropriately.

10. I am also aware that the FCA also reached out to you on 4 April 2021 and asked if you had any wider concerns about failings at Firm A which you wanted to make the FCA aware of, other than the way you were personally treated by the firm. This further demonstrates that the FCA did not ignore the concerns you raised about Firm A and actively wanted to make sure you were able to voice these concerns seriously. As such, I have not upheld Element One of your complaint.

#### *Element Two*

11. With respect to Element Two of your complaint I can see due consideration was given to the concerns you raised and in addition, shared appropriately internally with the FCA when it was required. For example, I am aware you provided the FCA with further information on 8 April 2022 regarding your concerns with Firm A. The FCA responded to you on 20 April 2022 and confirmed that the information had been passed to Supervision.

From my review of the FCA's actions in relation to this part of your complaint, I am satisfied that the FCA took appropriate action and gave genuine thought to your concerns. I could not see any instances where the FCA was biased or showed lack of care in response to your concerns. I am sorry I cannot share the information I have seen in relation to this point. 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, there is no general right for members of the public to know the actions the FCA may or may not take owing to confidentiality obligations.

12. It must be noted that the FCA welcomes information from consumers who report concerns. However, as the FCA communicated with you in the decision letter, they are unable to let you know what is done with the information you provided

to them. 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. The FCA shared in its decision letter the explanation of the statutory and FCA policy restriction on information sharing here <https://www.fca.org.uk/freedom-information/information-we-can-share>

### *Element Three*

13. In relation to Element Three of your complaint the FCA stated that it was not able to intervene on your behalf and could not investigate individual complaints about the Firms it regulates. It recognised that you had taken your grievance to an employment tribunal and this was the appropriate avenue to resolve matters with Firm A. Having considered the information and evidence, I agree with the FCA that this element cannot be investigated under the Complaints Scheme and the most appropriate route is to go through the employment tribunal for compensation and a resolution.

### *My decision*

14. In summary, Element One and Element Two of your complaint have not been upheld and Element Three of your complaint has not been investigated.
15. Nevertheless, further to your conversations with my office and my own enquiries made with the FCA, the FCA showed me in its response to my office that the FCA gave the matters you raise proper consideration. However, due to confidentiality reasons, I cannot disclose what actions, if any, the FCA took based on the information you provided, this is due to the legislation that I am required to adhere to. However, I can assure you that your concerns have been properly considered.

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Complaints Commissioner  
4 January 2023