

11 May 2016

Dear Complainant,

**Complaint against the Financial Conduct Authority
Reference Number: FCA00101**

Thank you for your correspondence about your complaint against the Financial Conduct Authority (FCA). I have reviewed all the information you and the regulator have provided us with, as well as considered your and the regulator's comments following my Preliminary Decision. My Final Decision on your complaint is explained below.

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.

As you can find full details of how I deal with complaints at www.fsc.gov.uk I do not intend to set them out fully below. If you need further information, or information in a special format, please contact my office at complaintscommissioner@fsc.gov.uk, or telephone 020 7562 5530, and we will do our best to help.

Your complaint

Your complaint is two-fold. In element one you allege that the FCA dismissed your whistleblowing report about firms C and P on the grounds that it did not meet their risk appetite and the information was not detailed enough to be considered further, without giving you the opportunity to provide more detailed information and contemporaneous evidence of your concerns, which you had offered to provide.

In element two you allege that the FCA did not act in the public interest and in fact decided to "cover up" wrongdoing out of loyalty to the [financial services] industry, by refusing to properly consider the information you provided and refusing to look at the additional information and proof you have in your possession.

The background to your complaint

You wrote to the FCA's Whistleblowing team on 23rd June 2015, making allegations about the conduct of firms C and P, namely that around 2006 - 2008 they exposed consumers to potential future losses and failed to rectify the breaches that you identified and brought to their attention, including the allegation that non-trained and unauthorised individuals within a call centre were giving advice to consumers about investments. You also informed the FCA

that you held contemporaneous evidence to support your allegations, which you were happy to provide on request.

On 13th July 2015 the FCA wrote to you, advising you that they would not be taking further action on the information you had provided. The FCA did not ask you for further information or evidence before making their decision.

You made a formal complaint to the FCA about this, but in August 2015 the FCA's Complaints Team excluded your complaint on the grounds that it amounted to "no more than dissatisfaction with the FCA's general policies or with the exercise of, or failure to exercise, discretion where no unreasonable, unprofessional or other misconduct is alleged". The Complaints Team did, however, invite you to supply further evidence to support your allegations.

You then referred the matter to me and, following correspondence with you and the FCA, I concluded that the FCA had been wrong to exclude your complaint. As a result, the matter was referred back to them for a proper investigation.

The FCA then investigated your complaint, as set out in elements one and two above, but in their letter dated 12th February 2016 they rejected it on the grounds that the "*intelligence you provided was given appropriate consideration and the decision taken by the FCA was not an unreasonable one*". Following this, you referred the matter back to me.

My findings

Element one

Having reviewed all the correspondence between the various teams within the FCA, and having received their answers to a number of questions I posed to them, I have decided to uphold this element of your complaint.

The FCA, in their response to your complaint, stated that they were not taking further action on the matter. In essence, their grounds for rejecting your complaint were that the information which you had provided had been appropriately considered. In my view, this conclusion was manifestly wrong.

In your whistleblowing email to the FCA dated 23rd June 2015, you clearly stated that "*I still have records of correspondence between me and [firm] C and in some cases me and [firm] P which proves all of the [allegations] and you can ask for on request*". You made it clear that further evidence was available. My investigation has revealed that Supervision initially only received a summary of your allegations in the form of an intelligence log. They were unaware of your offer to provide further information. It was for that reason that, when the Complaints Team asked Supervision why no further action had been taken, Supervision responded that you "did not give sufficient information to warrant a detailed investigation" and "we could not form a judgement based on the disclosure alone in absence of more specific evidence".

When, following your complaint to the FCA, your offer of producing supporting evidence was brought to the attention of Supervision, they asked that you provide this to them, through a letter from the Complaints Team, dated 10th August 2015. The letter did not make it clear that there had been an administrative oversight in the handling of your original whistleblowing report.

The FCA, following my Preliminary Decision, have confirmed that changes have been made to their procedures to ensure that when further evidence is offered by a whistle-blower, this

will be requested by the team before the information is disseminated to the relevant areas, or if this is not possible, the existence of such evidence will be made very clear in the intelligence log created.

Furthermore, my review of the papers has shown that the FCA's explanations for not acting on the information you supplied have not been consistent – it has been suggested both that the matter could not be taken forward because of inadequate information, and that the FCA had sufficient information to determine that no further action was required. The first explanation is inconsistent with your offer to supply further information, and the second explanation is inconsistent with the fact that the FCA – while rejecting your complaint in August 2015 – invited you to supply further information.

The FCA have, in their response to my queries and recommendations in the Preliminary Decision, expressed their regrets over their failure to identify these issues before responding to your complaint to them. They have also confirmed that, considering the importance of the issues that have been raised, further training is being considered across the teams.

The FCA, at the time it dealt with your original complaint, also stated that they have “searched [their] records and found no references to the matter” (i.e. to the reports which you believed to have been made in 2008). It is, however, clear that not all the records available to the FCA were searched, but only those which were immediately accessible. The fact that firm C's current supervisor did not have personal knowledge of the matters alleged was given considerable weight.

This was despite the fact that my office had raised a number of questions and made a request for the relevant enquiries to be made. Furthermore, in your whistleblowing email you had stated that you were advised by firm C's solicitors that in 2008 firm C had notified the then Financial Services Authority (FSA), in the course of their “Close and Continuous” meetings, of all the concerns you had raised, and the FSA had confirmed that they had no concerns about the matter.

I was concerned that the FCA appears not to have attempted properly to verify your statements and the alleged statements of firm C's solicitors by reviewing your evidence and their contemporaneous files. Having looked further into their records, the FCA states that no “Close and Continuous” meetings were held with firm C during the period your allegations relate to. In the light of this discrepancy, it would have therefore seemed even more important for this issue to be looked into more fully.

The FCA have accepted this point and have now confirmed that they will contact you to obtain any evidence you have to support your allegations, should you still be willing to provide this, and will review it in conjunction with their internal records.

In summary, I conclude that:

- a. The information supplied by the whistleblowing team to Supervision did not make it clear that you had offered to provide further evidence of your allegations;
- b. The original decision by Supervision not to take further action on the intelligence which you had supplied was taken in ignorance of the fact that you had offered to supply further information;
- c. The FCA did not identify this when initially considering your complaint;
- d. The FCA wrongly excluded your complaint from the Scheme;

- e. Following my decision that there should be an investigation, the FCA's investigation was insufficient, and wrongly concluded that the information which you had supplied had been properly considered;
- f. In reaching that wrong conclusion, the FCA did not challenge the contradictory justifications given for not requesting further information from you.

I am, therefore, as stated above, upholding element one of your complaint. Furthermore, I recommended that the FCA make every effort to obtain all the relevant information from you (if you are still willing to provide it) and review it in conjunction with their internal records and take further steps as appropriate. The FCA have, as stated above, confirmed that they accept this recommendation and will contact you shortly.

The FCA have also confirmed that, following the review of your evidence and their internal systems and records, they will provide you with an update, as you requested, about the actions they will take, if any. However, the amount of information they may disclose to you will be subject to and limited by their duties of confidentiality under s 348 of the Financial Services and Markets Act 2000.

Element two

Having reviewed the second element of your complaint, while I accept that the course of action taken by the FCA in relation to your whistleblowing report was not sufficient, this appears to have been the consequence of administrative errors, insufficient communication between departments, and insufficient rigour. I have not seen any evidence to suggest that it was done out of loyalty to the financial services industry.

Conclusion

I uphold element one of your complaint and recommend:

- a. that the FCA carry out a proper and diligent assessment of the information and evidence you have in your possession, provided you are willing to share it with them;
- b. that the FCA should pay you an ex gratia compensatory payment of £300 to reflect the series of errors in the handling of your whistleblowing report and consequent complaint, which appears to have caused further concern and inconvenience to you, undermined your trust in the regulator, and resulted in months of unnecessary additional correspondence.

I do not uphold element two of your complaint as I have not seen any evidence that the FCA's failures were the result of "loyalty to the financial services industry".

In addition, I invited the FCA to consider and comment on a more general point, that is, the way information from whistle-blowers is initially assessed and distributed to the relevant areas of the FCA. I am pleased to see that they have confirmed, in response to my Preliminary Decision that they have already taken steps to improve the whistle-blowing process to ensure that special care is now being taken to obtain additional information and / or evidence from whistle-blowers and provided to the relevant areas. They are also considering additional training to the relevant areas to ensure such errors do not occur in future.

I hope that you will find my decision, and the steps the FCA is taking to rectify the matter, help to address your concerns.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Antony Townsend". The signature is written in a cursive style with a large, prominent initial 'A'.

Antony Townsend
Complaints Commissioner