

07 December 2017

Dear Complainant

Complaint against the Financial Conduct Authority (FCA)**Our reference: FCA00358**

Thank you for your email of 19 June 2017 setting out your further complaint against the FCA. Before finalising my decision, I invited comments on my preliminary report from both you and the FCA. The FCA did not comment. Your representative submitted comments which I have carefully considered, and I refer to some of them below.

Your complaint

You have been in correspondence with the FCA over a number of years about bank X's conduct in connection with your EFG loan. You have alleged file falsification, record keeping inaccuracies, and fraud by bank X. This culminated in your complaint to the FCA. The FCA issued a decision letter to you on 25 November 2016.

The elements of complaint which the FCA investigated were:

- (1) You allege the FCA has improperly disclosed information to bank X
 - a. Tipping off bank X into an investigation into central file falsification by
 - (i) quoting to bank X part of a confidential email you sent to the FCA; and
 - (ii) referring bank X to a press article; and
 - b. Disclosing the identity of a whistle-blower to bank X
- (2) You allege that the FCA acted unreasonably in the actions taken in response to your allegations against central file falsification against bank X, culminating in a letter to you of 5 February 2016 from a member of the FCA's staff.

The FCA did not uphold the two elements of your complaint.

You referred element (2) above to me which I investigated (decision letter FCA00287 issued 19 June 2017).

You then asked me to consider element (1) on 19 June 2017, and this decision letter addresses it.

My consideration of your complaint

I turn to the first part of your complaint, namely that the FCA tipped off bank X about an investigation into central file falsification by

- (i) quoting to bank X part of a confidential email you sent to the FCA; and
- (ii) referring bank X to a press article;

The FCA's response to these matters was that the information released to the bank was sent after the publication of at least one press article which confirmed that a police investigation was taking place: on 27 November 2015 you were quoted as saying that you had taken your case to the police and been promised an investigation. I find the FCA's response that the information was already in the public domain reasonable.

In my view, it would have been better if the FCA had explicitly sought your permission before disclosing details of your complaint to the bank. The FCA's point that the bank was already aware of your complaint has some force, but it is very important for public confidence that regulators err on the side of caution in disclosing information – a point which the Treasury Select Committee has made to the FCA. Having said that, I do not consider that you have suffered any detriment in this matter.

I appreciate that you have raised wider issues about this element of complaint in your response to my preliminary report, such as the competence and actions of an FCA employee in their interactions with bank X, and your concerns about different versions of a letter held on file by bank X. However, they go beyond the scope of this particular complaint. I understand that you may be raising the former with the FCA as a new complaint. If you remain dissatisfied after the FCA has answered that complaint, you can, of course, approach me.

I now turn to the second part of your complaint, that the FCA disclosed the identity of a whistleblower to bank X.

In its decision letter to you the FCA stated:

'You are specifically concerned that the redacted email you have seen of December 2015 identifies the individual under redaction – [person Y]. I can tell you that having reviewed the original computer record of the unredacted e-mail, that no one is named in the December 2015 email'

I have also seen the unredacted email of 2 December 2015 referred to above and can confirm the FCA are correct. Therefore, I do not uphold this element of your complaint.

You remain concerned that although a specific name was not mentioned in the email above, another individual, Y, was identifiable by implication. These concerns have been raised in the context of another complaint submitted by Y, which is the subject of a separate investigation, and more appropriately dealt with there.

Conclusion

For the reasons given above, I am afraid that I cannot uphold your complaint. I understand you may be disappointed with my decision but I hope you can appreciate why I've reached it.

Yours sincerely



Antony Townsend
Complaints Commissioner