

11 May 2018

## **Final report by the Complaints Commissioner**

### **Complaint number FCA00445**

#### *The complaint*

1. On 19 March 2018 you asked me to investigate a complaint about the Financial Services Authority (FSA) and the Financial Conduct Authority (FCA). I have carefully reviewed the papers sent to me by you and by the regulator. My preliminary report was issued on 13 April. I have not received any comments from you on that report and the FCA has confirmed to me that it has no comments.

#### *What the complaint is about*

2. On 23 November 2017 you emailed the FCA's Whistleblowing Team about the time taken to act on concerns you had raised with the FSA in 2012 about a Firm (the Firm). The FCA's Complaints Team confirmed to you on 4 January 2018 that it would investigate your email as a complaint about the FCA.

#### *What the regulator decided*

3. The FCA Complaints Team did not uphold your complaint because it considered that the actions taken by the FSA and FCA were appropriate. The complaint response said that confidentiality restrictions and FCA policy did not allow it to disclose details of the actions taken in response to your 2012 disclosure, or the reasons for the requirements more recently imposed on the Firm.

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

4. You remain concerned that the FCA took no action in 2012/13, allowing the Firm to continue causing harm to clients until 2017. You also consider that delays in implementing FCA decisions have enabled the Firm to circumvent FCA regulations and transfer clients into a new regulated firm with the same staff based in the same building using the same bad practices, possibly overseen by their former boss (not part of the new firm) without the required FCA permissions.

#### *My analysis*

5. I can appreciate how frustrating it must be not to know in detail what has happened about the information you have provided to the FCA. The FCA welcomes information and intelligence bringing forward issues for its consideration. However, as you were advised, the FCA will not generally provide feedback on 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 (FSMA) classes some information the FCA holds about firms as confidential and places restrictions on 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

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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. As a result, there is no general right for information providers to know the outcome of reports that they make.

6. 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.
  
7. Based on the information I have seen in this case, I am satisfied that the FCA's complaint response was reasonable in the circumstances and that there is no other confidential material that can be released to you. 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.

*My decision*

8. For the reasons stated I do not uphold your complaint. I realise that you will probably be disappointed by my decision but I hope you will understand how I have reached it.

Antony Townsend

Complaints Commissioner

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