

4 March 2021

Final report by the Complaints Commissioner

Complaint number Case Ref FCA00548

The complaint

1. On 27 November 2020 you complained to me about the FCA's investigation of your complaint. My preliminary report was issued on 8 February 2021 and both you and the FCA have had the opportunity to comment

What the complaint is about

2. In its decision letter to you dated 8 October 2020 the FCA described your complaint as follows:

Part One:

You have been informed that from late 2015 to the end of 2016, a member of the Supervision team visited a number of Firm A's clients to seek evidence to support a view that the firm was operating an inappropriate business model. You believe this member of the team made threats, serious and unproven allegations and used bullying tactics. You also claim that one of your clients, Client A, raised this with the Complaints team but claim the FCA refused to investigate the matter further.

Part Two:

You claim the Supervision team misrepresented information concerning Firm A's annual profits in Enforcement's Notice of Appointment of Investigators letter (hereinafter 'the Enforcement Notice Letter') dated 13 December 2016. You believe this was used as the primary reason to justify further questions and investigation into the business of Firm A. You also claim that there was incorrect information regarding the status of Firm A's staff (CF1) on the Financial Services Register (FS Register) and a failure to disclose information about the ownership status/organisation structure of Firm A within Firm B's group. You say it was

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agreed that a scheduled re-organisation would only conclude if the FCA agreed to the Change in Control, but as this was not granted the transition was not completed. However, a letter from the Supervision team dated 16 November 2016 alleges a breach of the requirements for notification of the Change in Control and, as far as you are aware, this error has never been corrected.

Part Three:

Following the FCA's request for the appointment of a Skilled Person pursuant to Section 166, Firm A conducted an exercise to appoint a suitably qualified firm, Skilled Firm B. You claim that the Supervision team manipulated this process by disclosing the commercial terms quoted by Skilled Firm B to Skilled Firm A to encourage Skilled Firm A to present a more competitive quote. You believe this led to significant issues with the process which had a negative impact on Firm A.

Part Four:

During the Skilled Person's review process, you claim the FCA consistently sought to instruct Skilled Firm A to operate outside the scope of the review, to force Firm A to accept their conclusions and implement actions which Firm A did not agree to. During a meeting in May 2018, you claim a member of the Supervision team told Firm A that 'it did not matter what they thought'. You believe the way in which the review was conducted ultimately led to Firm A's insolvency.

Part Five:

Between 2017 and 2018, you claim the Supervision team prevented Firm A from engaging a number of compliance officers. During some of the interviews, particularly 12 January 2018 and 5 July 2018, the candidates alleged that FCA staff were bullying, aggressive and made allegations against senior managers within Firm A. As a result, Firm A found it difficult to appoint a CF10, CF10a and CF11. You say Firm A asked whether a suitable authorised firm could be appointed in the interim to avoid breaching threshold conditions, but the FCA provided inconsistent and misleading responses to this. This led the FCA to request that Firm A's permissions be suspended.

Part Six:

In 2018, the Supervision team put significant pressure on Firm A to force it to adopt voluntary requirements on its permissions (VREQ). You say the form of VREQ issued by the FCA was unclear and had significant negative implications for Firm A/ Firm B. The FCA provided inconsistent guidance on the interpretation of the August 2018 VREQ and further alleged breaches of the VREQ in September 2018 to third parties without investigation.

Part Seven:

You claim the Supervision team made multiple requests for information on short notice. The same data was requested on a number of occasions with no consideration for the burden placed on the staff at Firm A.

What the regulator decided

3. The FCA did not uphold Parts 1 to 7 of your complaint.

Why you are unhappy with the regulator's decision

4. You provided me with a 13-page letter dated 27 November 2020 and an 11-page Appendix document in which you lay out your comments on the FCA decision. You also provided me with a large bundle of papers which you say is supporting documentation.
5. Your main complaint points pertaining to the FCA investigation of your complaint can be summarised as follows:

Element One

You state, '...I wish to refer the manner in which the complaint was investigated...'

Element Two

You state, '...I wish to refer the conclusion reached on my complaint in the investigation...'

Element Three

You mention '...the Complaints Investigator incorrectly recorded the nature of my complaint...'

Element Four

Delay

Element Five

Independence

Element Six

Ignoring evidence

Element Seven

False statements - You state ‘...the Complaints Investigator has made a number of factually false statements in her decision letter and used these as a basis for her decision...’

Element Eight

‘...Mis-use of confidentiality protection...’

Element Nine

Procedure - You allege ‘...the FCA Complaints system itself is not fair and balanced...’

6. I have also looked at the substantive matters relating to your complaint regarding the FCA investigation. In order to substantiate your complaint, you highlight the following in relation to the FCA Supervision Team:

Element Ten

‘...Gave the management of Firm A the impression that they were being forced to comply with Supervision’s will...’

Element Eleven

‘...Failed to adequately encourage Firm A to seek professional advice when being faced with very important situations...’

Element Twelve

‘...Provided factually inaccurate and misleading information to the Enforcement Division...’

Element Thirteen

'...Made unsubstantiated serious accusations about people and firms...'

Element Fourteen

'...Gave contradictory and incorrect guidance, advice and instructions...'

Element Fifteen

'...Conducted their relationship with the Skilled Person outside the guidance in the FCA's Handbook...'

Element Sixteen

Aggressive and bullying behaviour. You state, '...Three members of staff report aggressive and bullying interviews for CF10, CF10a and CF11 appointments...'

Element Seventeen

'...Repeated information requests which breach the principles of good regulation...'

Preliminary points

7. I have reviewed all the material you have provided to me. I have also been provided with the FCA case file. The documents provided on this matter from both you and the FCA were in voluminous, there were thousands of papers to be analysed and I have considered the material which I have found to be most relevant to your case. It is not my intention in this investigation to review every single complaint point, but rather look at what is appropriate and closely connected under the Complaints Scheme.
8. It is important for me to highlight for the purposes of my investigation, matters which are excluded from the scheme which I am unable to investigate.
9. Section [3.2 of the Complaints Scheme](#) provides:

'Complaints can be made by anyone who is directly affected by the way in which regulators have carried out their functions, or anyone acting directly on such a person's behalf.'
10. You have made references to several third parties in your case for example clients of your firm, other firms and law firms. I cannot investigate issues where

parties have not provided their authority for their particular case to be investigated.

11. In your complaint you made references to contradictory and incorrect FCA guidance. [3.4 c\) of the Complaints Scheme](#) provides exclusions from the Scheme:

‘...c) in relation to the performance of the regulators’ legislative functions as defined in the 2012 Act...;’

12. Under the Scheme I am unable to investigate issues connected to the FCA’s legislative functions such as the issuing of FCA general guidance, policy statements, and issuing of statements. Therefore, I have only looked at areas that are appropriate for me to investigate under the Complaints Scheme.

My analysis

Background to your complaint:

13. This complaint stems from the investigation into Firm A where you allege, ‘...the FCA Supervision Team deliberately with prejudice sought to bring about the closure of Firm A...’ I have highlighted the elements of your complaint in relation to the FCA’s investigation and the Complaints Team’s investigation into this report.

Element One

You state, ‘...I wish to refer the manner in which the complaint was investigated...’

14. I have been able to review the FCA case file and how the Complaints Investigator conducted your investigation. I appreciate there may have been areas where you disagreed with the FCA complaints process.
15. Due to confidentiality I am unable to comment on exactly what I have had access to, specifically for restricted confidential documents. I can say that I am satisfied with the work of the Complaints Investigator. The manner in which they investigated your complaint did not cause me any serious concerns and it is reassuring being able to share my confidence in this instance.

Element Two

You wish to refer the conclusion reached on your complaint in the investigation.

16. In their conclusion, the Complaints Investigator summarised overall why parts one to seven of your complaint were not upheld. Overall, I am satisfied that the Complaints Investigator came to the right conclusions in their decision letter and have explained this in the other elements of my report, also referring to the information and evidence I have reviewed.

Element Three

You state ‘...the Complaints Investigator incorrectly recorded the nature of my complaint...’

17. Many of the factual inaccuracies you allege I have addressed later in my report. I have looked at the FCA decision letter and am unable to see any substantial issues as to its layout or the nature in which your complaint was recorded.

18. It is often helpful in an extensive complaint matter such as this, for the decision letter to be set out in separate headings, so that one can chronologically go through all the aspects. So, I don’t think the FCA Complaints Investigator was wrong to do this.

Element Four

Delay - you initially complained to the FCA on 7 December 2018. You received your first letter from the FCA on 19 September 2019 and then the final FCA decision letter dated 8 October 2020 which was 13 months later.

19. I can appreciate waiting this long would have understandably been frustrating for you. The issue of delay is something that my office has raised with the FCA previously.

20. On this occasion I’m pleased to see the FCA recognised the delays caused with your complaint and subsequently apologised in its decision letter to you. The FCA offered you an ex-gratia payment of £250.00. I think the amount offered is fair and reasonable given the circumstances of your case and the delays caused. Whilst it is unfortunate it took a significant amount of time to get a decision on your matter, I am satisfied that the FCA have dealt with the delay appropriately.

Element Five

Independence - you suggest:

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the FCA Complaints Investigator betrays a bias and lack of independence...it gives me the appearance of a process designed to try and protect the FCA having realised that a legitimate and serious claim could be pursued rather than attempt to evaluate the FCA's own staff and practices

21. I have been able to review the manner in which the Complaints Investigator conducted your investigation. Based on what I have seen, I am unable to conclude that the Complaints Investigator lacked independence and therefore carried out a biased investigation.
22. It is fair to say that this case is a lengthy and at times, a complicated matter, so I am pleased to see that the Complaints Investigator took the time to carry out a thorough independent investigation. This involved liaising with several cross-departmental staff within the FCA. Being able to see the communications, information, evidence gathered, it does not appear to me that the investigation was biased by any means. In fact, the rigour applied, suggests the very opposite.

Element Six

Ignoring evidence – you have stated specifically, ‘...Complaints Investigator did not simply ask for a copy of the recordings so that she could hear the truth for herself...’

23. My understanding is that you have these recordings in your possession, but you have not provided them to the FCA nor myself. I am unable to comment or make a finding in an area where I lack the evidence. In my preliminary report I invited you to provide these recordings to me so that I could review this. However, you did not respond and I did not receive any further evidence in relation to this from you.
24. I can also see that you provided the Complaints Investigator with witness statements by email on 4 August 2020. You feel the Complaints Investigator has ignored this evidence. I can see the Complaints Investigator did consider the witness statements and has referenced this on page four of the decision letter. I am therefore satisfied that the Complaints Investigator did not ignore this evidence and took this into account in their investigation
25. You have also provided me with the same witness statements. The witness statements refer to two separate firms who themselves had received visits from

the FCA. They cite certain behaviours of one FCA staff member in particular. I do not have a record of what was said during these visits, as I have not been provided with evidence such as recordings. So, I cannot be sure what was discussed at the time. I am therefore unable to look at this element any further.

26. Overall, I am satisfied that the Complaints Investigator took into account the evidence that you provided to them and cannot see that they ignored evidence they received from you.

Element Seven

False statements - You state the Complaints Investigator, ‘...made a number of factually false statements in her decision letter and used these as a basis for her decision...’

27. I understand you feel that there were ‘factually false statements’ in the decision letter. I have touched on this in more detail in other elements of this report.
28. An area which I feel the Complaints Investigator did not fully grasp in the decision letter, was the issue of instructing a third party for the Controlled Functions of Firm A. I go into more detail on this topic in Element Fourteen of my report.
29. Based on the evidence I have been provided with, I have reached a different view to the Complaints Investigator when looking at the decision letter under Part 5 of the FCA decision letter that you, ‘...misinterpreted the 30 July 2018 meeting’s messages...’ I discuss this element of Controlled Functions more in Element Fourteen. Placing this element in isolation, overall based on what I have seen, I am not persuaded that there are ‘factually false statements’ within the decision letter.

Element Eight

You mention the FCA’s, ‘...Misuse of confidentiality protection...’ and you allege ‘...the FCA repeatedly seeks to hide behind the confidentiality rules when it suits them...’

30. 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. Confidentiality is a debate that was voiced by my predecessor. It appears to me that being provided with meeting notes was something that was requested and important for Firm A.

31. I can see that the core of your matter in relation to confidentiality, is not being provided with meeting notes between the FCA and Firm A. 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. On this occasion I can see that it may be likely that the FCA created their own internal notes of meetings for the purposes of their investigation. Whilst this may not have been possible, in my preliminary report I invited the FCA to respond to this part of your complaint, as to whether they would be able to be more transparent in providing you with meeting notes they currently hold, regarding the meetings between the FCA and Firm A. The FCA responded and informed me that where they were able to, they provided you with meeting notes that you requested such as the meeting notes provided for the meeting that took place on 22 May 2018. The FCA also stated that other requests you had made for the disclosure of meeting notes were declined, because of personal data and S348 information contained in the notes.
32. The FCA also helpfully provided Supervision and Enforcement's stance on providing copies of their notes of meetings with firms. Whilst Supervision will not always provide copies of their notes of meetings with Firms, they have confirmed that they will summarise meetings such as providing a follow up email, should there be any follow up questions or information requests. Alternatively, they would provide a feedback letter.
33. The FCA's Enforcement current internal policy means they are unable to provide internal meeting notes to individuals who attended the meeting or any third

parties, as the notes they take at meetings are for their own record of that meeting and not intended to be taken as an 'independent set of minutes'. Irrespective of this, the FCA has informed me that it is open to considering the sharing of any further meeting notes you may request at this stage between yourself and Firm A on a case by case basis. This will of course be in consideration of the FCA's policies and restrictions under FSMA, to determine the sensitivity of any meeting notes requested and whether this disclosure would assist you in understanding how the FCA deal with the matters among other things.

Element Nine

Procedure - You told me that the '...the FCA Complaints system itself is not fair and balanced...'

34. Having examined the background work the Complaints Investigator undertook into your complaint and the conclusions they reached, I am satisfied that they carried out a fair investigation. Based on all of the information and evidence I have seen, I don't feel it appropriate for me to go into all of the reasons as to why I think the Complaints Investigator provided a balanced view. A review of the relevant information and evidence means I am able to determine that the FCA Complaints System on this occasion was applied in a manner that was fair, balanced and detailed.

Element 10

You state that the FCA, '...Gave the management of Firm A the impression that they were being forced to comply with Supervision's will...' You mentioned specifically in your testimony that your firm '...was forced to act in relation to the VREQ and Firm A were forced to appoint Skilled Firm A for the s166 review...'

35. There were several bundles of documents to consider in this case and it is fair to say those documents reached numbers in the thousands. I have had a chance to consider all of the information very carefully including your testimony, complaint points, supplementary evidence and the FCA case file. From what I can see, the representative from Firm A who was in liaison with the FCA during the investigation, showed that their preference initially was to use Skilled Firm A for the s166 nominations and indeed spoke very positively about them. This was

also the FCA's preferred choice. I can also see that the FCA offered to interview another firm that Firm A expressed preferred interest in, for the s166 review.

36. I am pleased to see the FCA were trying to consider all avenues here in order to accommodate (where possible) a skilled firm of Firm A's choosing. Ultimately, it was the FCA who was the decision maker in the appointment of the s166 skilled person. The FCA reserve the right to do so in certain situations. I can see the FCA did not go with the preferred choice of Firm A for the s166 review and this does not mean the FCA did anything wrong by doing so. It was not for Firm A to pick and choose. As such I am unable to conclude that the FCA acted inappropriately towards Firm A in their decision making for the s166 review.
37. I can appreciate that a firm may instantly feel pressured once they are on the radar of the FCA, specifically with an FCA investigation. However, in this instance from what I have seen it is difficult to see that Supervisions or the FCA in general, forced Firm A to comply with their measures. There may have been instances where the FCA needed to be straight talking and provided tight timeframes for information requests, but this is the nature of FCA investigations.
38. If the FCA have valid concerns over a Firm and their practices they have the right as the regulator to be authoritative when justified. For example, when the FCA have a genuine reason to protect consumers and believe there is a real risk of consumer harm and need to act quickly when they are provided with intelligence.

VREQ

I have reviewed all the information and evidence in relation to the VREQ communications. Despite Firm A's efforts, I can see the FCA were concerned as there had been no suitably appointed candidates for certain FCA Controlled Functions (CF) roles for Firm A, for some 10 months. In their email to Firm A on 27 July 2020, the FCA highlighted that,

All authorised firms are required to meet the Threshold Conditions on an ongoing basis – see <https://www.handbook.fca.org.uk/handbook/COND/2/?view=chapter> . As a consequence of the firm's repeated failure to identify and appoint suitable individuals to conduct the CF10 (Compliance Oversight), CF10a (CASS

oversight) and CF11 (Money Laundering Reporting Officer) roles since 12 October 2017, we remain of the view that the firm does not have appropriate non-financial resources and therefore is not meeting the appropriate resources threshold condition under COND2.4.

39. The FCA also requested Firm A to consider the VREQ which was, designed to mitigate the on-going risk the firm poses to its clients as a result of its failure to appoint suitable candidate to perform the CF10, CF10a and CF11 roles. Please note that if the firm fails to agree the terms of and sign this voluntary requirement, then the matter will be referred to Enforcement for action to be taken by the FCA to impose the requirement via recommendation to the Regulatory Decisions Committee.
40. I appreciate that you feel the VREQ was forced upon you. In essence, due to the severity of the issue from the FCA's perspective, the FCA had numerous concerns regarding Controlled Functions of Firm A and Firm A not meeting the required threshold conditions of [COND2.4](#). So, I can see why the FCA's communications by this point, put Firm A on notice as to their intentions if Firm A did not agree to the terms of the VREQ. The FCA were at the very least open and honest about their next steps should Firm A not agree with the VREQ. By this point, I think the FCA had a right to communicate their valid concerns and from looking at their communications I am unable to agree that they forced Firm A to act in relation to the VREQ.

Element Eleven

You mention the FCA

Failed to adequately encourage Firm A to seek professional advice when being faced with very important situations. The original drafting of the VREQ would clearly have denied Firm A the ability to refer matters to professional advisors and there was an obligation on the FCA to encourage access to professional support.

41. Based on the evidence I do not agree with this point. I can see that at least on one occasion, on the August 2018 in the FCA's letter to you, they informed Firm A specifically in relation to the VREQ, '...you may wish to take independent legal advice on the position...'

42. I am also aware, during the Phase 2 part of s166 review, Firm A had instructed Law Firm X who were in liaison with Skilled Firm A (skilled person) regarding your matter. As you had professional legal advice during this phase raising disputes, I can see no reason why you would not have been able to seek legal advice and disputed other areas of concerns. The onus would have been on Firm A to seek legal advice regarding other points and I am unable to hold the FCA to account in this regard.

Element Twelve

You have told me the FCA,

Provided factually inaccurate and misleading information to the Enforcement Division. You mention specifically that the FCA 'made false statements about Firm A's profits and the data the FCA used is factually and untrue' and 'P6 is incorrectly described by the FCA and have raised issues with the FCA understanding P6's distinction and service.'

43. An overview of the complaint clearly provides the dispute you have with the FCA as to Firm A's profits and the definition of P6. I shall start with the issue of profits of Firm A.

Firm A profits

44. In the FCA's decision letter the Complaints Investigator explained that the FCA had,

followed standard practice by consulting Companies House, GABRIEL returns and data from the firm to arrive at the view of Firm A's capital resources and profitability. To assess this, Supervision generally consider the GABRIEL returns firms supply to the FCA (on a quarterly or half yearly basis) which includes the FSA 001 balance sheet return, FSA 002 income return and FSA 003 capital adequacy return. The Supervision team have followed their standard processes in assessing profitability in this case by considering GABRIEL returns submitted by the firm, in addition to publicly available records.

45. Having reviewed the FCA case file I can see that the Complaints Investigator gave you the correct information. I have checked what appears to be the

standard practice of Supervisions when calculating profits. I appreciate you feel that the FCA calculated the profits of Firm A incorrectly but based on the evidence I have reviewed I am unable to see that there was any error made. I do not have a record of any other figures or evidence you may have provided to the FCA outlining a discrepancy. I invited you to provide me with alternative evidence in my preliminary report to consider and review, however you did not provide me with a response or any further evidence.

P6

46. Discrepancies over the definition of 'P6', its distinction and service are not elements that I, as the Complaints Commissioner can signify and give the final say on. That is not for the purpose of the Complaints Scheme. However, I can look at whether the actions or inactions of the FCA in this area were problematic in any way, that this meant it had a detrimental impact on Firm A.
47. From my findings I cannot see that the FCA have defined 'P6' so inaccurately, this has resulted in the FCA likely breaking away from their relevant functions, having a widespread harmful impact on Firm A as a result. I can see that the FCA were fully aware of how P6 worked, particularly that it was marketed and aimed at IFA's with the IFA being the client of Firm A. I understand there may have been areas or passages from the FCA's communications, where you did not agree with their description of P6. However, overall and based on all the evidence I have seen, in my view, the FCA were on the same page as to the definition P6 and how it functioned. I found this to be continuous throughout their investigation.

Provided factually inaccurate and misleading information to the Enforcement Division

48. In my role as Complaints Commissioner I am provided with the FCA case file, which gives me the opportunity to analyse communications between several departments within the FCA. You specifically mention in relation to an Annex A document, '...Additionally, a number of the allegations specifically refer to CF1 Director responsibilities at Firm A which Mr X did not hold...' I can see the FCA Annex document you have referred to is dated 12 December 2016. I can also see that the FCA refer to Mr X in page 6 of the Annex as '...director and

administrator of the 38 P6 mini-bonds during the relevant period...’ It is also my understanding that Mr X held the Director position until 1 September 2016. So, I can see that the FCA have accurately reflected this in the Annex Document by referring to the ‘relevant period’. You have mentioned that Mr X ‘...was able to persuade the Enforcement team to correct and re-issue the Notice...’ yet I have not been provided with this information. I can only assume that a request was put forward to the FCA, to perhaps precisely add dates to the Annex as to when Mr X held the Director position.

49. In short, I did not find factually inaccurate or misleading information, shared with Enforcement or any other department within the FCA. On the contrary, I was able to see robust and clear messaging amongst departments regarding your matter and this is reassuring. So, based on my findings above, I am unable to agree that there were issues within the FCA of sharing inaccurate and misleading information with the Enforcement Division or other departments.

Element Thirteen

50. With regards to your view that the FCA made ‘...unsubstantiated serious accusations about people and firms...’, I can see that you allege specifically in relation to the first VREQ and Principle 11 the FCA, ‘...accused your firm of a breach of the first VREQ and Principal 11, no such breach took place and the FCA were wrong to state that they did...’

[Principles for Businesses Principle 11](#) provides as follows:

11 Relations with regulators

A firm must deal with its regulators in an open and cooperative way and must disclose to the FCA appropriately anything relating to the firm of which that regulator would reasonably expect notice

51. I appreciate you feel that no such breach took place, however I can see from the evidence provided to me, that the FCA recognised that Firm A were without several controlled functions and contacted Firm A about this in January 2016. The FCA informed Firm A this was a ‘...grave serious matter...’ and ‘...have been without many of these control functions for some time, and yet have not reported this to the FCA under Principle 11...’

52. One would expect a firm in such a situation, to be open and cooperative with the FCA as required. I can see that Firm A had been without certain controlled functions since October 2015. Having been without these functions for some four months and no notice provided to the FCA, I can understand why the FCA cited concerns over this issue under Principle 11 and am unable agree that they were wrong to do so.
53. During the course of its investigation the FCA were also concerned with Firm A's actions in May 2018 when they learnt that Firm A were behaving in such a way, that may have breached the 'asset retention' requirement part of the VREQ. In brief, I can see that Firm A were trying to close a deal involving a SIPP book that held 'tainted SIPPs'. Having considered this alongside the VREQ, I can understand why the FCA were concerned and felt there may have been a possible breach of the VREQ.
54. In addition to the possible breach of the VREQ, the FCA cited concerns over Principle 11, as they were not given reasonable notice of this deal. Accordingly, in the circumstances of the investigation and the FCA's ongoing concerns, I think it is logical to have expected Firm A to have given the FCA reasonable notice of its plans to work with another firm, to acquire a client bank of "tainted SIPPs". I think the FCA were reasonable to expect that notice should have been given to them, prior to Firm's A's plans and citing a potential breach of Principle 11 was the right thing to do, given the ongoing concerns. As such, I think that it was fair for the FCA to engage on the requirement in Principle 11 for Firm A on this point.

Element Fourteen

You have told me that the FCA '...Gave contradictory and incorrect guidance, advice and instructions...'

55. You state particularly that '...Supervision advised Firm A could and could not utilise external consultants in CF10, CF10a and CF11 roles...' I can see that one of the preferences of Firm A was to use external consultants for CF roles. You mention in your letter to the FCA dated 31 July 2018 that you had made similar enquiries with the FCA in February, May and July of 2018.
56. My understanding from Firm A's letter is that in a meeting on 30 July 2018 between a member of Firm A and the FCA, Firm A were informed that the FCA

would accept a third party for the CF roles on an interim basis. There was correspondence between the FCA and Firm A going into early August 2018 regarding this specific matter.

57. In Firm A's letter dated 31 July 2018 Firm A asked that '...the FCA clarify its position on the CF third party...' In its letter dated 1 August 2018 the FCA gave an overview of what was expected of a firm when it came to CF positions. The FCA also stated that '...These criteria mean that it is unlikely to be possible to engage a third party and comply with them...' I do not feel that this clearly answered the query put forward by Firm A and I understand why this resulted in a 'back and forth' to substantiate this area.

58. Subsequently, Firm A responded to the FCA again in its letter dated 3 August 2018,

In light of the inconsistent communications from the FCA recently regarding the appointment of a third party, please let us know as soon as possible if this approach is not considered appropriate.

59. The FCA responded to this with a letter dated 6 August 2018 stating the following,

As to the appointment of CF10, CF10a and CF11 controlled functions, you will have noted the contents of my letter of 1 August 2018. The FCA will, of course consider any reasonable measures for the mitigation of risk but, as stated in that letter, it is hard to see how a 'third party' (in the sense a corporate body) could perform the functions in compliance with the rules.

60. It is not entirely clear to me from the information and evidence I have, what happened beyond this point. Generally, I can see Supervision had ongoing concerns surrounding Firm A and being able mitigate risk to ensure consumers were protected, was of high priority. The decision as to whether it was appropriate for Firm A to be able to use a CF third party, was ultimately a decision for Supervision.

61. If Supervision decided not to allow a third party for the CF roles based on valid concerns, then I think that this was entirely permitted and their right. However, I do find that the communications received from the FCA in its letters to Firm A were confusing and unclear. This was a query I feel the FCA should have been

able to answer without giving any confusing messages. So, I can see how this may have come across as contradictory and think the FCA could have done better. I suggest that the FCA are clearer in their communications going forward, specifically when asked for clarification on more than one occasion.

Element Fifteen

You have stated that the FCA, ‘...Conducted their relationship with the Skilled Person outside the guidance in the FCA’s Handbook...’

62. In your complaint you have referenced [SUP 5](#) of the FCA handbook where you state the Supervisions team specifically chose not to use that process. Having reviewed SUP 5, the communications between the FCA and the skilled person, I cannot see any evidence that the FCA conducted their relationship in such a way. Rather, I was able to see a professional dialogue sticking to the issue at hand and nothing more than that. For those reasons I am unable to agree with your statement.

Element Sixteen

63. In your complaint you have referenced aggressive, bullying and hectoring behaviour from the FCA during interviews for the Controlled Function (CF) appointments. Whilst there may have been instances where the FCA put forward challenging questions for the candidates, there is nothing in the evidence that portrays the behaviours you have described. I have not found aggressive, bullying and hectoring behaviour from the FCA during interviews for the Controlled Function (CF) appointments.
64. The FCA were understandably concerned about Firm A’s ability to recruit suitable CF candidates. This was after Firm A’s remaining CF vacant roles, which remained for some time. So, whilst questions may have come across as challenging, I am satisfied the FCA were not aggressive nor were they displaying bullying behaviour towards the candidates.

Element Seventeen

You state that there were, ‘...Repeated information requests which breach the principles of good regulation...’

65. During any investigation it would be usual practice to expect the FCA to send information requests within a tight frame to be completed. This would be for the purposes of their investigation, such as where they have concerns over a Firm's conduct.
66. Whilst mirroring the types of information requests the FCA sent to Firm A alongside the principles of good regulation, I am unable to see that the FCA likely breached their duties. Complying with information requests will inevitably take some time and effort. I understand it may have placed some burden on Firm A receiving information requests from the FCA, however as I have mentioned previously in my report, this is the nature of FCA investigations. I am unable to determine that the FCA's requests were so disproportionate and unreasonable on Firm A, that this was deemed unnecessary. I cannot find this placed a significant and unreasonable burden upon Firm A.

My decision

I am sorry to disappoint you with my decision, but for the reasons outlined above, I am satisfied with the FCA investigation and the Complaints Investigator's assessment in these aspects. As such, I cannot uphold your complaint.

Amerdeep Somal
Complaints Commissioner
4 March 2021