

27 June 2019

Final report by the Complaints Commissioner**Complaint number FCA00565***The complaint*

1. On 26 March 2019 you asked me to investigate your complaint about the FCA in relation to firm X.

What the complaint is about

2. The FCA summarised your complaint as follows:

You have provided information to the FCA about a firm that you believe has committed fraud. You have alleged that the matter was not investigated properly and are unhappy that no enforcement action has been taken against the firm.

What the regulator decided

3. The FCA did not uphold your complaint as it considered that it had taken the correct steps to ensure that your allegations against firm X were investigated properly.
4. However, the FCA recognised that the time taken to inform you of the FCA's decision to take no further action was unreasonable. It appears that there were several breakdowns in communication between the FCA's Whistleblowing team and Firm X's Supervision Team /Prudential Regulation Authority (PRA) Whistleblowing team.
5. Since then new procedures have been introduced which the FCA believe will mitigate issues like these arising again.

Why you are unhappy with the regulator's decision

6. You were not happy that the FCA has not taken action against firm X, and have referred your complaint to me.

My analysis

7. You are a former employee of the US branch of firm X, a company based in the UK. You whistleblow to the PRA and the FCA about how the firm treated loans in its accounts. You consider that the company had used these to artificially bolster tier 1 capital.
8. The PRA wrote to you in 2017 to say it had investigated your concerns but would take no further action.
9. The FCA had reached a similar conclusion, but due to internal communication failures described in 4 above, it did not inform you of its decision. The lack of communication prompted you to complain. Consequently, the FCA informed you in its decision letter of 26 March 2019 that it would take no action against firm X.
10. You are disappointed with this decision and do not understand how it was reached. The FCA Complaints Team did not provide you with further information about how the decision was reached, citing confidentiality reasons.
11. 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.
12. I have carefully studied the FCA's records (which include both liaison with the PRA and the US regulator). From those records I can say that:

- a. I am satisfied that the intelligence was shared with the appropriate areas internally.
- b. I am satisfied that consideration was given to the intelligence which you provided (it is not my role to second-guess the FCA's regulatory judgements);
- c. The FCA Complaints Team looked at your complaint thoroughly, and I consider that the explanations in its decision letter of 26 March 2019 were appropriate.

My decision

13. The FCA has already acknowledged that you were not kept properly updated about your whistleblowing. There appears to have been poor communication within the FCA (and this is not the first case of its kind which I have seen). It is notable that the PRA Whistleblowing Team seems to have kept you much better informed. I note that new procedures are in place to try to ensure such issues do not arise again.
14. On top of these communication failures, it took the FCA almost a year to deal with your complaint. It has already apologised for this, but I consider such delays are particularly unfortunate in cases involving whistleblowing.
15. I agree with the FCA that the failures to keep you informed did not affect the handling of the information which you had provided; and I note that the FCA has acknowledged its shortcomings. While I do not consider that there is any further remedy for you under this Complaints Scheme, I record my concern that this is another example of poor communication and delays in the FCA.

Antony Townsend
Complaints Commissioner
27 June 2019