

26 September 2019

Final report by the Complaints Commissioner**Complaint number FCA00607***The complaint*

1. You wrote to me on 10 August 2019 asking me to investigate your complaint against the FCA.

What the complaint is about

2. You are a Member of Parliament, and the background to your complaint is the widespread concerns about the behaviour of a major bank, which is a matter which has been the subject of extensive publicity over several years, and remains the subject of inquiries.
3. However, the focus of your complaint to me is the treatment of an ex-employee of the bank. In its decision letter of 1 August, the FCA summarised your concerns as follows:

you are unhappy that the FCA:

- *didn't sanction [the bank] for its treatment of [its ex-employee]; and*
- *may not have followed its own processes for handling whistleblowing disclosures.*

What the regulator decided

4. The FCA's decision was this:

I regret that we are be unable to investigate your complaint under the Scheme. Paragraph 3.2 of the Scheme explains that a complaint "can be made by anyone who is directly affected by the way in which the regulators have carried out their functions." On review of the information you have provided, for the purposes of the Scheme, I do not consider that you have

been directly affected by the actions/inaction of the FCA in respect of this complaint.

Should [the ex-employee] wish to raise a complaint about the FCA's handling of the above matters, [they] can ask you to represent [them] for the duration of the complaint.

Why you are unhappy with the regulator's decision

5. In your email to me, you say:

The FCA ... claim I am not 'directly affected' and as a result will not consider my complaint. Surely as [the ex-employee] made [their] disclosure to me as a 'prescribed person' and I then have responsibilities to deal with this matter appropriately, I am very much directly affected?

My analysis

6. I start by setting out a procedural point, which I referred to in earlier correspondence. The FCA has correctly quoted from the Complaints Scheme: complaints can only be made by someone 'directly affected' by what the regulators are alleged to have done (or not done), or by someone acting on that person's behalf. As I understand it, you do not have the ex-employee's permission to act on their behalf.
7. You have, however, argued that because a protected disclosure was made to you, and you had a responsibility to deal with the matter appropriately, you were 'directly affected'.
8. I have looked at this argument carefully, but I am afraid that I do not accept it. While in theory you could bring a complaint about the way in which the FCA has treated you, having carefully studied the considerable correspondence between you and the FCA which preceded your complaint, it seems to me that your real complaint is about how the FCA has, or has not, taken action in response to the treatment of the ex-employee. You have been dissatisfied with the answers which the FCA has given in response to your concerns about that matter; but even if your criticisms of the FCA's actions or inactions in this matter are well-founded, that would not in itself make you a directly affected person for the purposes of this Scheme.

9. It seems to me that the position is as follows:
 - a. The ex-employee could make a complaint on their own behalf;
 - b. The ex-employee could choose to ask you to act on their behalf;
 - c. There are other mechanisms – in particular, the Treasury Select Committee – through which Parliamentarians’ concerns about the performance of the FCA can be raised;
 - d. You are not a directly affected person under the terms of this Complaints Scheme.

My decision

10. I am sorry to disappoint you, but I consider that the FCA was right to exclude your complaint from the Complaints Scheme.

Antony Townsend
Complaints Commissioner
26 September 2019