

30 November 2021

Final report by the Complaints Commissioner

Complaint number FCA00625

The complaint

1. On 12 January 2020 you asked my predecessor to investigate 'Mr Bailey's and the FCA's negligent, intentional and/or reckless breaches in conduct in failing to follow proper, lawful and due processes. This has caused me serious years long detriment as both a sincere and credible whistleblower (reporting in the public's interest), and a subsequent, wholly dissatisfied complainant.'
2. You asked my predecessor to consider your complaint in the light of a number of FCA policies, including those relating to whistleblowing, complaint handling, and general principles.
3. My predecessor issued a preliminary report on your complaint on 6 February 2020. You requested an extension to respond to the preliminary report, which was granted. On 3 November 2021 I invited you to submit any comments so I could finalise the report. You did not submit any comments on the substance of the report; I have therefore not conducted further investigation and the report remains the same as the preliminary report which my predecessor issued to you on 6 February. That report, written by my predecessor, reads as follows:

What the complaint is about

4. The FCA sent you two decision letters, because you had sent one complaint and then supplemented it with a further one. For the purposes of this report, I am looking at both complaints, since they are clearly interrelated.
5. The FCA described your complaints in this way:

Part One

The FCA failed to investigate properly and in a timely manner [Bank X's subsidiary] following disclosures you made about unlawful mistreatment and overcharging of its customers. You have asked that we refer to the recording of your debrief session with the FCA's investigators, and your subsequent follow-up emails under reference FCA 2001, in order to properly particularise the long-term customer detriments carried out by [Bank X's subsidiary] against its customer that you reported.

Part Two

The FCA failed to investigate properly and in a timely manner Bank X's relationship with its external auditors, [Firm Y and Firm Z] and those auditors' failures to uncover misconduct at [Bank X's subsidiary].

The FCA also failed to investigate [Bank X's] internal auditors and the audit committee chair, [Mr A], who was an ex-[Firm Z] Audit partner. Mr [A] has been on the [Bank X] Group Board since 2013. All parties failed to properly and in a timely manner uncover the misconduct and long-term overcharging carried out against customers.

Part Three

The FCA failed to investigate properly and in a timely manner the corporate culture and failings within [Bank X] and its Global Whistleblowing team. The FCA also failed to investigate properly and in a timely manner [Bank X's] Whistleblowing Champion, Mr [B]. Mr [B] has oversight as the Whistleblowing Champion to investigate properly and in a timely manner whistleblowing reports and reports of retaliation. You allege that Mr [B] failed in his oversight of other internal channels of whistleblowing reports made by staff.....

Part Four

You allege that the FCA has failed to act appropriately on your reports about [Bank X's subsidiary], because of its conflict of interest in the case of [Firm C]. You state that as a result of this, the FCA failed to act properly and timely on the disclosures you made under the FCA's reference 2001.

Part Five

You believe the ongoing failure to communicate properly and timely with you, as is required under law, guidance and good practice, including reporting back to you as appropriate regarding the whistleblowing investigation under Public Interest Disclosure Act 1998 (PIDA) has caused you distress as a whistleblower looking for equity and the rule of law to be upheld.

What the regulator decided

6. The FCA sent you two decision letters, totalling 17 pages of facts, analysis, and findings. Its decisions were as follows:
 - a. It partially upheld Part One, on the basis that, although much of what you had reported to the FCA had been followed up, there had been some delay in disseminating the information which you had supplied, and there were two issues which had not been followed up as thoroughly as they might have been;
 - b. The FCA upheld Part Two of your complaint, on the basis that this should have been followed up, probably by asking you for further information – the FCA invited you to supply it;
 - c. Part Three of your complaint was not upheld, on the basis that the FCA had followed the matter up appropriately;
 - d. Part Four of your complaint was not upheld: the FCA said that there was no evidence that there was a conflict of interest in relation to its case against Firm C;
 - e. Part Five of your complaint was upheld, because one email was not passed to the Chief Executive's office (although the information was considered), because one piece of information had been overlooked, and because the Complaints Team had taken too long to deal with your complaints.
7. You were offered £100 and an apology because of the failure of the FCA to consider all aspects of your whistleblowing, and a further £150 and an apology because of failures of communication with you, and because of the delays in handling your complaint.

Why you are unhappy with the regulator's decision

8. I have quoted from your email to me in paragraph 1. You say that you 'remain dissatisfied with the FCA'.

Preliminary points

9. I should start by making two points. First, it is not my role to substitute my regulatory judgement for the FCA's. The FCA has considerable discretion in how it applies its finite resources to the risks to its objectives. But I can consider whether its actions or inactions are within the bounds of what a reasonable regulator would do; and I have access to the FCA's confidential papers to enable me to make that assessment.
10. Second, as has been explained to you by the FCA, much of its activities are confidential – both because section 348 of the Financial Services and Markets Act 2000 requires it to protect the confidence of information which people give to it, and for policy reasons. This means that the FCA – and I – often cannot divulge the full details of what action the FCA may have taken. This is frustrating for complainants, and indeed for the FCA.

My analysis

11. I have reviewed the extensive documents relating to your complaint in detail, but I can summarise my provisional conclusions quite simply.
12. First, when you became a whistleblower, the FCA sought information from you, and gave you a considerable debrief. That debrief included information about what the FCA might do, and what it would and would not be able to tell you.
13. Second, although the FCA has admitted that there were some shortcomings in aspects of the way in which it dealt with the information which you supplied, it is very clear that it treated your concerns seriously, recognised their significance, and took action. This is not a case in which a whistleblower's concerns were belittled or ignored.
14. Third, the Complaints Team undertook a very thorough (if delayed) investigation into your complaints. This is reflected in the 17 pages of decision letters which you have received. The decision letters included a detailed analysis both of the numerous interactions between you and various parts of the FCA, and of the

elements of the concerns which you had raised with the FCA. It is worth noting that you received many replies to your inquiries over the period between your initial whistleblowing and today. These replies seem to me to have been generally helpful in approach and intention, even if they could not give you all the information which you wanted.

15. Fourth, the FCA was commendably frank about the areas in which its performance had fallen short and has offered you *ex gratia* payments and apologies.
16. Fifth, in my view the principal cause of your complaint is the fact that you have not been given all the information about actions which the FCA is taking. I recognise that, even if you had the information, it is possible that you would take the view that the actions which the FCA is taking are insufficient, but I believe that it would reassure you that your concerns have not been ignored. Unfortunately, the confidentiality requirements prevent this from happening.

My predecessor's decision

17. My preliminary view, subject to your and the FCA's comments, is that I support the FCA's analysis of your complaints and its conclusions: the FCA was right to uphold elements of your complaint, right to offer you payments and apologies, but the elements of your complaint which the FCA did not uphold are ones which I do not uphold either.
18. I recognise that this preliminary decision will be a disappointment to you. I shall, of course, look carefully at any comments you wish to make.

My decision

You have not provided any further comments, therefore my predecessor's decision stands.



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30 November 2021