

4 December 2019

Final report by the Complaints Commissioner**Complaint number FCA00654***The complaint*

1. On 16 September 2019 you complained to me that the FCA had not upheld a complaint you had made about its management of its Mutuels Register.

What the complaint is about

2. In its letter of 16 July 2019, the FCA described your complaint as follows:

Part One

You contacted the FCA's Whistleblowing Team in relation to [Association X] as there are no returns filed on the Mutuels Register for this society for the financial year 2017/18. As a result, you believe the FCA is failing to maintain the Mutuels Register which means members, like yourself, are unable to view the financial records. You claim that the returns for 2014/15 were also not submitted. You have been waiting for a response from the FCA's Mutuels Team for over two months, and you believe someone in the team is 'covering up' for the society.

Part Two

You are unhappy that the Whistleblowing Team forwarded your email internally within the FCA as it was your understanding that you would remain anonymous.

What the regulator decided

3. The FCA partly upheld part one of your complaint, because you had not received a prompt and full reply to your inquiry. It did not, however, uphold the remainder of part one. It explained that

The society is registered under the Co-operative and Community Benefit Societies Act 2014. The Act states that a society must send the FCA their annual return and accounts within seven months of the financial year end. Under the Act, the FCA has the power to prosecute and/or cancel registration if a society fails, after notice by the FCA, to submit its annual return and accounts.

There is a duty on a society to submit annual returns and accounts to the FCA on time. Where they fail to do so, they commit an offence. The FCA routinely takes action against societies to enforce this requirement, but it does not follow that the FCA must take action on every occasion. For this reason, I am unable to agree with your view that the FCA is failing to maintain the Mutuels Register.

Due to confidentiality and policy restrictions, I am unable to comment further on what action, if any, will be taken in light of this. Further information can be found here - <https://www.fca.org.uk/freedom-information/information-we-can-share/>. While I appreciate you may remain unhappy with this response, I am satisfied that the team are acting appropriately.

4. The FCA did not uphold part two. It said that, in 2018, you had agreed that similar information which you had then supplied to the Whistleblowing Team could be forwarded to relevant departments within the FCA; and that the information which had supplied this year was not a whistleblowing disclosure, and it was therefore not unreasonable for the Whistleblowing Team to forward the information to the Mutuels Team. The FCA did note, however, that the information which was forwarded this year by the Whistleblowing Team had inadvertently included the reference number of your previous whistleblowing disclosure, and apologised for that.

Why you are unhappy with the regulator's decision

5. In essence, you are dissatisfied with the FCA's decision because:
 - a. You continue to believe that the Whistleblowing Team should not have forwarded your details to the Mutuels Team without your permission;

- b. You have not received a satisfactory response to your question as to why no action appears to have been taken against Association X despite its apparent failure to submit its accounts on time or at all.

My analysis

6. The sequence of events this year was as follows. On 3 May 2019 you emailed the Whistleblowing Team saying that, although it was 15 months after the year end, the 2018 accounts for Association X had still not been posted on the FCA website, and that accounts for earlier years, including 2015, were missing.
7. Your query was forwarded to the Mutuels Team, which replied to you on 8 May, saying 'I have checked and the last annual return filed was in 2017'. You responded the same day, saying that the reply did not fully answer your query.
8. Having heard nothing further, you submitted a formal complaint on 23 May.
9. The Complaints Team undertook a thorough investigation into your complaint, seeking information from the Mutuels Team and the Whistleblowing Team.
10. It is clear from the internal emails that the Mutuels Team recognised that they ought to have chased the missing accounts. The Team said that although missing accounts were often chased, there was 'no set process'.
11. The Whistleblowing Team reported to the Complaints Team its understanding that, following your whistleblowing in 2018, the missing 2015 accounts had been submitted but not uploaded on to the website. In relation to the fact that your 2019 query had been forwarded to Mutuels without your permission, the Team said that your email had been redacted to turn it into a general query, without reference to your original whistleblowing.
12. These responses formed the basis of the Complaints Team's decision letter, summarised in paragraphs 3 and 4 above.
13. When I investigated your complaint, I asked the FCA some further questions. In particular, I was concerned about the apparent lack of action in relation to the missing accounts – even after you had raised concerns – and what seemed to me to be an unsatisfactory explanation of why your details had been disclosed by the Whistleblowing Team to the Mutuels Team.

14. In response to my queries, the new explanation was that, contrary to what was being said internally earlier this year, the 2015 accounts had been received but had been returned because they were incomplete.
15. A cancellation notice was issued to Association X on 19 August 2019, and the Register updated to state that the notice had been issued. The missing accounts were then submitted, and Association X's status was changed back to 'Registered' on 23 October.
16. In relation to the disclosure of your name to the Mutuels Team, I was told that the Whistleblowing Team was simply asking a factual question for the Mutuels Team to answer without approaching the Association, and that in any event the Mutuels Team would not disclose an inquirer's name if they approached an association for further details.
17. My conclusions are these. You are looking for reassurance that the FCA takes effective action against mutuals which fail to comply with the statutory requirements. The FCA has explained to you that it does not always take action in respect of every breach, and that some of the actions which it takes are confidential. That is correct, but I remain unconvinced that the FCA's handling of this matter has been reasonable. I note the following matters of concern:
 - a. When you first drew attention to the missing accounts in 2018, the 2015 accounts were already well over two years overdue (and the 2017 accounts about six months overdue). Given that you were raising concerns about financial matters at Association X, I am surprised that no action was taken to regularise the situation;
 - b. The explanations as to what happened to the 2015 accounts have varied. There appears to have been confusion at the FCA as to whether they were received, when they were received, and why they were not uploaded on to the Register;
 - c. It appears significant that effective action to regularise the position only occurred after you had made a formal complaint;
 - d. You have drawn my attention to the fact that the 2018 accounts, recently posted on the website, are neither signed nor dated by the auditor.

18. In relation to the disclosure of your name, having studied the documents I am satisfied that your name was not disclosed outside the FCA. Nonetheless, given that you had previously been categorised as a whistleblower, that your whistleblowing case had been closed, and that your new query was clearly related to the original whistleblowing report, I think it would have been good practice for the Whistleblowing Team to seek confirmation that you were content for your information to be disclosed again within the organisation.

My decision

19. The Complaints Team's decision letter said that 'I am unable to agree with your view that the FCA is failing to maintain the Mutuels Register', but my reading of the confidential papers does not reassure me that there is an effective system for ensuring that the information required by law to be included on the Mutuels Register is sufficiently monitored. The statutory requirements are there for a purpose.

20. The FCA's explanation – that it has to prioritise its actions, and that it cannot follow up every breach – does not seem to me to be adequate in this case. Information suggestive of possible financial impropriety in an association which had failed to submit its accounts promptly – or whose accounts had been returned by the FCA as inadequate – was not promptly followed up, and the FCA's record keeping appears to have been poor.

21. I am pleased to say that, in response to my preliminary report, the FCA has:

- a. Acknowledged that, in this instance, the matter was not dealt with appropriately. Errors were made, the information you provided should have been treated as a priority, and the FCA wishes to apologise;
- b. Recognised that the overall process requires review. The FCA has committed to
 - i. taking immediate action on all current similar instances,
 - ii. instituting a revised process with regular monitoring of the Mutuels Register and immediate follow-up action,
 - iii. reviewing internal processes and guidance to promote consistency.

22. I do not consider that the FCA's disclosure of your name internally was a serious breach, particularly since you had consented to the disclosure of much more sensitive information in your original whistleblowing case, but I consider it would have been good practice to have sought your permission.
23. In summary, I uphold your complaint, and congratulate you on your persistence. I am pleased that the FCA has responded positively, though I consider that it should not have required my intervention for the FCA to address what was clearly a significant issue.

Antony Townsend
Complaints Commissioner
4 December 2019