

3 August 2020

**Final report by the Complaints Commissioner****Complaint number FCA00742***The complaint*

1. On 17 May 2020 you asked me to investigate your complaint about the FCA. I have carefully reviewed the information sent to me by you and the FCA. My preliminary report was issued on 13 July 2020 and both you and the FCA have commented.

*What the complaint is about*

2. On 14 August 2019 you submitted a complaint to the FCA stating that you believed the FCA has been using heavy-handed tactics to try to obtain information from you as a whistleblower about a firm it regulates. You said that you had reported everything you know voluntarily and do not have any additional information. You said that health and medical teams 'working on behalf of the regulator' had been aggressive and you had been forced to reveal highly personal information that you now believed has become widely known, causing you distress. You said that this had nothing to do with the financial crime you had reported to the FCA and you were 'baffled as to why there has been so much focus on me/my personal information, rather than on the persons committing crimes'. You said that you had written to your FCA contact about these heavy-handed tactics, that you wanted these to stop immediately. You said that 'The policy of treating whistleblowers with suspicion, using them as bait to obtain additional information, and using heavy handed tactics has to stop. It is unethical'.

*What the regulator decided*

3. The FCA's complaint response dated 14 May 2020 divided your complaint into two parts as follows:

FCA00742

- a. Part One - *You allege the FCA has been heavy-handed towards you in relation to a whistleblowing disclosure you made about [a firm (Firm A)]. You say the FCA has applied pressure on you to provide further information – when you have already told it all you know.*

This part of your complaint was not upheld on the basis that you only dealt with one associate in the FCA's whistle-blowing team, whose communications with you were polite and reasonable and did not apply any undue pressure on you.

- b. Part Two - *You say senior members of staff at the FCA have colluded with the individuals at [Firm A] to whom you reported wrongdoing. You therefore consider the FCA to have been involved in the treatment you have received from [Firm A].*

This part of your complaint was not upheld on the basis that the FCA had not revealed your identity to Firm A and therefore 'could not have been complicit' in the way the firm has treated you.

4. The complaint response also said that the FCA is restricted in the information it can provide to 'outside parties' due to section 348 of the Financial Services and Markets Act 2000, which applies to confidential information. You were offered, and accepted, an *ex gratia* payment for the Complaints Team's delays.

*Why you are unhappy with the regulator's decision*

5. You have told me that you clarified to the FCA on 17 March that your complaint was about collusion by senior FCA employees in wrongdoing and their attempt to suppress evidence. However, you say that the Complaints Team only reviewed your correspondence with an FCA associate. It did not look into how the PRA's/FCA's investigation into the firm was carried out, nor clarify why any of the evidence provided in your correspondence to the FCA associate was not acted upon. You consider that the Complaints Team has missed the point completely. You have requested an independent review of all information, including the regulator's investigation into the firm and the senior FCA individuals overseeing the investigation.

*My analysis*

6. As a result of representations from you, the Complaints Team altered its initial wording of Part Two of your complaint to the wording set out in paragraph 3b above. It then approached the Whistleblowing team and other FCA internal teams and reviewed your engagement with the associate you had spoken to by phone and email. These communications are set out in detail in the FCA's complaint response to Part One of your complaint and it is not necessary for me to repeat them here. I agree with the Complaints Team's conclusions about the nature of your engagement with the associate in Whistleblowing, who made it clear to you what might and might not be of interest to the FCA about the information that you were sharing with him. You agree with this but say that: *If there was not any collusion, the FCA's lack of interest in wrongdoing by senior management and the disappearance of a whistleblower for over a year, is inexplicable.*
7. I accept that your complaint was that you believed senior FCA staff were colluding with Firm A in 'heavy-handed tactics'. Indeed, you had contacted the Whistleblowing associate about this immediately before you submitted your complaint, which so far as I can see was not about him personally. Your belief was that the FCA was complicit in Firm A's abusive treatment of you, applying pressure on you in relation to health and medical checks, and revealing highly personal information about you as a result.
8. These matters were considered to some extent in the FCA's response to Part Two of your complaint. As you were told, the FCA does not generally say what action has been taken in response to the information that it receives. This is because section 348 (s.348) of the Financial Services & Markets Act 2000 (FSMA) classes some information the FCA holds about firms as confidential, and restricts how that information is dealt with. In addition to this, any information that is not restricted by s.348 FSMA may be restricted due to the FCA's policy on sharing information about regulated firms and individuals.
9. 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, particularly in a case such as yours where you believe that FCA staff have colluded in what you have experienced; but it is better that I am able to see and review the confidential material. On occasions, I have persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible, especially in a whistle-blowing situation.

10. In response to Part Two of your complaint, the Complaints Team said that because the FCA had not revealed your identity to Firm A it 'could not have been complicit' in the way the firm has treated you. After reviewing the FCA's files, I can find no evidence that there has been any collusion. The information you shared with the Whistle-blowing associate was passed on according to his explanations to you, and was reviewed by the appropriate supervisory team for Firm A. It formed part of the intelligence that was used in the FCA's discussions with Firm A but your name was not revealed, although you had in fact given permission for this if required.
11. I have seen nothing to suggest that the FCA was involved in any way with Firm A's requests about your health or medical treatment or was indeed aware of this other than through your own emails to the FCA in August 2019; nor that the FCA 'colluded' in Firm A's treatment of you. I think that this might have been made more explicit in the FCA's decision letter, but I do not consider that this affected the FCA's conclusions.

*My decision*

12. While I agree with you that the FCA's complaint response did not explicitly address all the matters raised under Part Two of your Complaint, I am satisfied that there is no evidence that the FCA was involved in your health or medical referrals or any breaches of your confidential information arising from these. I am also satisfied that the FCA has not been involved in heavy handed or pressure

tactics towards you in relation to the information you provided to it about Firm A. There is nothing in the files I have reviewed that suggests the FCA has a policy of treating whistleblowers unethically. I hope this provides you with some reassurance.

13. I understand from the FCA's decision letter that the case on your allegations about Firm A has not yet been closed by the FCA, and that you will receive feedback when it is.

Antony Townsend  
Complaints Commissioner  
3 August 2020