

17th November 2014

Dear Complainant,

**Complaint against the UK's Financial Services Regulators
Reference Numbers: FSA01617 and FCA00033**

Thank you for your letter of 11th September 2014.

As the rules of the scheme under which I consider complaints can be found on our website at www.fsc.gov.uk, I do not intend to set them out fully below.

Your complaint

From your letter I understand that you are unhappy with the actions of the Financial Services Authority and the Financial Conduct Authority (the regulators) in relation to:

1. the consideration of the whistleblowing information which was received.
you say that the regulator did not consider adequately or follow up sufficiently the information contained within the whistleblowing disclosures that you made.
2. the scope of the investigation.
you are unhappy about the regulators' alleged failure to take sufficient investigative and enforcement action against both Firm ADM and Firm S and against their Dutch based parent, Firm A in relation to the whistleblowing disclosures that you made.
3. the lack of action being taken against the individuals concerned.
you have indicated that you are unhappy that the regulators do not appear to have taken action against the senior management at either Firm ADM or Firm S.
4. the drafting of the Final Notice.
you do not believe that the Final Notice the FCA issued on 7th August 2014 either correctly summarised Firm S's failures or correctly set out the cause or actions which led to these failures.

My position

I have obtained and reviewed the FCA's complaint file. From this I understand that, when arriving at its decision not to investigate elements 2, 3 and 4 (as set out above), the FCA has relied upon paragraph 3.5 of the Complaints Scheme (which excludes the investigation of complaints resulting from the regulator's general policies or the use of its discretion).

Whilst the Complaints Scheme does exclude the investigation of complaints about the regulator's general policies or the use of its discretion, it only does this "where no unreasonable, unprofessional or other misconduct is alleged". In this case it is clear that you are suggesting that you believe that the regulator has acted unreasonably. As such I do not believe that the regulator can rely upon this paragraph of the Complaints Scheme to exclude the investigation of your complaint.

I have therefore studied further information from the FCA about the nature of the investigation it undertook into the conduct of Firm S. I did this to satisfy myself that the regulator did consider all of the issues which were brought to its attention and that it acted reasonably when assessing the information provided to it, when undertaking its investigation (including assessing what remedial action Firm S needed to undertake) and when drafting the Final Notice.

The FCA has provided me with this information and as a result I am satisfied that the decisions taken by the FCA were reasonable given the information available to it (both as a result of the information you provided and that which was discovered as a result of its Enforcement investigation). I would also add that I am satisfied that the FCA considered adequately the overall position when drafting the Final Notice.

I am mindful of the comments which the FCA made in its letter of 9th June 2014 where it explained that "the FCA is afforded discretion as to how it approaches its investigations into such matters and will, by necessity, make judgements on how best to frame its investigations, taking account of factors such as the strength of the evidence available and the strongest chance of a successful outcome". This does not, to me, appear an unreasonable position for the regulator to adopt given that it has limited resources and has a statutory objective that it must use these responsibly.

I appreciate that you are disappointed with the manner in which the FCA considered the whistleblowing information, and that, although the regulator has assured you that it did consider your comments, it is unable to tell you what it did due to the confidentiality provisions in Section 348 of the Financial Services and Markets Act 2000¹.

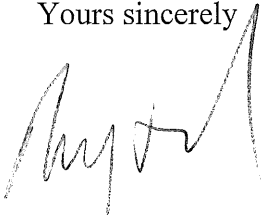
However, from the information the regulator has provided to me, it is clear to me that your concerns were considered and acted upon. The regulator assessed in some detail all of the information you provided about the conduct of Firm ADM (and to a lesser degree Firm S) and, based upon its assessment of all of the information available to it, took what I believe is a reasonable course of action.

I know that you dispute this view and also believe that the findings it made against Firm S, as set out within the Final Notice, did not address all of the misconduct you believe occurred, did not attach responsibility to specific individuals (all of which you raised with regulator), did not summarise correctly Firm S's failures, nor did it address, in your opinion, the whole period of time during which Firm S failed to act appropriately.

¹ as amended by provisions contained within ss16 to 24 of Part 2 of the Financial Services Act 2012

Whilst I can understand your concerns in this regard, the regulator has provided me with a clear and rational explanation about why it considers that the action that it took against Firm S was appropriate and that the Final Notice summarises appropriately its concerns and findings. Again, the provisions of Section 348 of the FSMA prevent me from commenting further on this. I hope that you will accept my assurances that, upon an independent review, I have concluded that the regulators' actions were reasonable.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Antony Townsend', written in a cursive style.

Antony Townsend
Complaints Commissioner