

23 September 2024

THE HANDLING OF INTERNAL WHISTLEBLOWING COMMUNICATIONS BY THE CHAIR OF THE FINANCIAL CONDUCT AUTHORITY

Outcome of a review by the FCA's Senior Independent Director

INTRODUCTION

The FCA takes its responsibility towards whistleblowers extremely seriously. There are dedicated resources for both internal and external whistleblowers and the regulator seeks always to ensure appropriate action is taken in respect of allegations which meet the criteria of genuine reportable concerns.

In August 2024, a former employee of the FCA made an allegation publicly that, in the course of whistleblowing, their identity was not kept confidential by the Chair of the FCA, Ashley Alder.

In line with the corporate governance of the FCA, the Board's Senior Independent Director, Richard Lloyd, carried out an internal review of the handling of the individual's whistleblowing communications by the Chair, considering the terms of the FCA's internal whistleblowing policy in context.

The individual who made this allegation did not consent for Mr Lloyd to know their identity nor for him to see their communications.

Following the first public allegation, a second individual came forward with a similar allegation as to the handling of their whistleblowing communication to the Chair. They gave their consent to their identity and email communications to be disclosed to Mr Lloyd. They are also a former employee of the FCA, who again left some years ago.

Mr Lloyd's review therefore considered the handling of the individuals' information by the Chair in both cases. Any substantive issues contained within those email communications were outside the scope of the review, which was conducted as thoroughly and rapidly as the circumstances have allowed, and in the first case by conducting interviews without the need for that individual's identity to be disclosed. Mr Lloyd has obtained assurances that there were no other cases that should be brought within the scope of his review. The review was supported with external legal advice and Mr Lloyd also consulted the UK's leading whistleblowing charity, Protect.

THE FCA'S INTERNAL WHISTLEBLOWING POLICY

There are separate and distinct policies for internal and external whistleblowing at the FCA.

Internal whistleblowing is defined (in summary) as the disclosure, or intention to disclose, a reportable concern within the organisation. Reportable concerns can relate to suspected danger, risk, malpractice or wrongdoing at work which affects others. The policy applies to individuals who have left the FCA as well as existing employees.

Given that both individuals were former employees, Mr Lloyd's review considered the allegations solely in the light of the internal whistleblowing policy.

The internal policy states that concerns regarding an individual's employment or treatment by their manager should be raised through the FCA's grievance or equality complaints procedures, and that it will generally only be appropriate to blow the whistle about an internal policy or procedure if there are genuine concerns about the overall effectiveness or efficiency of the procedure, rather than about the outcome of specific proceedings. This is in line with widely accepted good practice, including government guidance.

The policy states that, having exhausted other internal reporting channels, or if they feel unable to do so, an internal whistleblower can raise the matter with the non-executive Chair or Audit Committee Chair, whilst making it clear that they do not have a day-to-day operational role in handling whistleblowers or their concerns.

This being the case, it is usual within an institution such as the FCA that non-executive directors do not themselves or alone carry out investigations on the variety of matters brought to their attention. More typically they will obtain appropriate advice and support to deal with those issues, and indeed they are entitled to do so.

The policy says that in most cases Internal Audit will carry out the investigation, but that in some circumstances it may be appropriate for another area of the FCA or an external party to investigate.

The policy states that an individual's identity will not be revealed without their consent, other than in exceptional circumstances. When an internal whistleblower contacts the FCA's internal whistleblowing mailbox, the dedicated team dealing with this will usually inform the whistleblower during an initial meeting that it is not possible to guarantee their complete anonymity, particularly for example where there is a legal duty on the FCA to involve others in the investigation of allegations or for safeguarding purposes. The FCA also cannot guarantee that whistleblowers will be happy with the outcome of any investigations of their concerns.

A central purpose of the approach to confidentiality in the internal whistleblowing policy is the protection of the whistleblower from possible repercussions and detriment whilst they are employed by the FCA, and to allay any fears that this could occur in respect of their employment.

FINDINGS OF THE REVIEW

The two cases within the scope of the review were highly unusual. In the course of his review, Mr Lloyd has established that they relate to matters that have been advanced by the two individuals in extensive correspondence over a number of years, raising numerous issues via various channels, some of which are in the public domain and which were not limited to possible whistleblowing concerns. The substance of the allegations in both cases has been or is being dealt with through legal proceedings or other processes including internal investigations by appropriate teams within the FCA. The more recent issues raised with the Chair for the most part concerned the way in which their allegations had historically been treated.

Mr Lloyd has concluded that the Chair, in forwarding the emails that he received directly from these two individuals to relevant colleagues internally, reasonably took the view that he was providing information to them of which they were already aware, in order to request advice on the range of matters they contained and to ensure that these were correctly addressed and progressed. The Chair routinely consults senior managers on sensitive matters, including obtaining legal advice, within strict terms of confidentiality and indeed their roles require those managers to operate under such requirements generally.

Mr Lloyd has concluded that whilst the Chair did not follow the policy to the letter, for example by asking for consent before seeking internal legal advice, his aim was simply to ensure that appropriate action was taken in respect of all the matters the complainants were raising, and he is satisfied that the Chair did so in the firm belief that there was no realistic prospect of causing harm to them in any respect.

RECOMMENDATIONS AND ACTIONS

Mr Lloyd has discussed the FCA's internal whistleblowing policy with independent external legal advisers and the leading whistleblowing charity, Protect.

A review of the policy was already well underway, some of its content previously having been identified as somewhat impractical, and a revised version which draws on relevant matters from this review will be published shortly following further input from Protect.

This will make clear and state expressly that in the rare instances of whistleblowing requiring escalation to non-executives such communications will be shared by them with appropriate internal or external expert advisers on a confidential 'need to know' basis.

This is, as in the current instances, to enable appropriate and consistent investigation and action to be taken as necessary, whilst reassuring potential whistleblowers that they and their concerns will be treated with the utmost care and in a way that preserves the integrity of the FCA's whistleblowing response.

The revised policy will clarify how and when it applies to former employees, signposting the different parts of the overall framework that individuals can use to raise any whistleblowing issues and making the appropriate points of contact clearer.

In the meantime, Board members and senior managers have been reminded of the existing policy.

The FCA's Whistleblowing Champion and the Chair have accepted these recommendations in full. The Board remains fully committed to ensuring that whistleblowers, whether internal or external, can have the fullest confidence in the secure and appropriate treatment of themselves and the reportable concerns which they bring to our attention. The FCA does and will continue to take such matters extremely seriously.

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