

**The FCA's response to the
Complaints Commissioner's Report
FCA00286
Published on 16 January 2018**

This case originated in an allegation by the complainant that, in 2015, FCA staff improperly disclosed information to a bank, including by “tipping off [bank X] into an investigation into central file falsification by sharing with bank [X] sensitive/confidential information”. The complainant claimed that they had provided this information as a whistle-blower to the FCA, and that the FCA had named the complainant to the firm in that context. These were serious allegations but they proved to be groundless, as confirmed by an FCA investigation and the Commissioner's findings.

Andrew Bailey's comments to the complainant's representative, referred to in the report, were to confirm that there was no substance to those allegations. Having repeatedly advised the complainant's representative to pursue the complaint with the Commissioner, it was appropriate, as the Commissioner has confirmed, to cease correspondence whilst that stage of the process took place.

During the course of the FCA's investigation of this complaint, however, it became clear that the complainant's name had previously been disclosed to the bank in different circumstances, in 2013. As the Commissioner's findings have confirmed, the complainant's name was provided to the bank with the intention of fully answering a question posed by the complainant and their MP, which related to the bank's response to allegations the complainant had previously made about the bank. When the complainant was informed of the 2013 disclosure, at the conclusion of the investigation into the unfounded allegation, a further complaint was made about that disclosure. It is that subsequent complaint that has led to the recommendation made by the Commissioner in paragraph 52 of his report. The FCA accepts this recommendation.

It is important to understand however the circumstances in which the 2013 disclosure was made. At that time, relevant FCA staff were aware that the complainant had expressly authorised their MP to raise this case with the bank, which the MP had duly done. FCA staff were also aware, from communications provided by the complainant, that throughout 2012 and 2013, the complainant had disseminated details of the case and allegations, to bank staff, senior management and board members of the bank, and to a range of public figures and

authorities. The complainant had encouraged recipients to share the allegations widely. Of particular relevance is that FCA staff were aware, from the documents provided by the complainant, that the bank had been informed by the complainant that the allegations would be provided to the FCA.

The Commissioner has determined that the fact of the complainant's disclosure to the FCA should be regarded differently from the complainant's other disclosures, but it is not in dispute that all parties were already aware of: the details of the complainant's case in 2013; that those details had been disseminated widely by the complainant; and that the bank had been told by the complainant that the FCA were to be notified of the complainant's case.

As the Commissioner's report shows, the FCA did not agree with this determination in the particular circumstances of this case. However, the FCA recognises that the Commissioner's investigations are an important part of the FCA's public accountability and we accept his findings. With the Report's publication the matter is now closed.

The disclosure in question took place over four years ago and the FCA's policies to support whistleblowing now reflect the Commissioner's determination. Last year, the FCA received 1,047 whistleblowing reports. Whistleblowers have contributed intelligence crucial to action taken against firms and individuals, and we are fully committed to providing them with the protection they require. Our whistleblowing function has expanded significantly in recent years and, in 2016, we introduced new rules intended to ensure that firms themselves have in place effective whistleblowing arrangements, to ensure that individuals have confidence that they can bring concerns to their employers' attention.

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