

22 July 2020

Our Ref: FOI7270

### **Freedom of Information: Right to know request**

Thank you for your emails of 4 May 2020 and 23 June 2020, in which you asked for information about reports made to the FCA about sexual misconduct and sexual discrimination. Please see Annex A for full details of your request.

We are handling your emails as a request for information under the Freedom of Information Act 2000 (FOIA) and our response is below.

### **Our decision on your request**

For the purposes of this request we have taken sexual discrimination to be an instance where someone is denied job opportunities or other forms of access, and sexual misconduct as all other complaints. Where both are alleged, we have counted the case only as sexual misconduct as this appears to be the more egregious offence.

For point 1, we can confirm that for the period between 1 January 2014 and 4 May 2020 there were a total of 21 reports made by individuals to our Whistle Team about sexual misconduct by individuals at firms registered to carry out insurance operations. We are unable to provide the number of reports broken at the level requested as we are exempted from disclosing it under sections 40 (personal data).

This is because the figures involved are very low and we believe the disclosure would breach the requirements of the General Data Protection Regulations ("GDPR") including the data protection principles of Article 5 and the Data Protection Act 2018 ("DPA"). There is a risk that revealing such low figures could lead to the identification of the individuals concerned. For this reason, we have concluded that this information is exempt from disclosure under section 40 (Personal data) of FOIA. A more detailed explanation of why this exemption applies can be seen in Annex B.

There was also 1 report about sexual misconduct made by a firm registered to carry out insurance operations. We are unable to provide you with the period this was reported as we are concerned the firm in question could be identified. For this reason, as the information is confidential information that the FCA has received in the course of carrying out its public function under section 348 of the Financial Services and Markets Act 2000 (FSMA). For more information on the FSMA provision please see Annex B.

For point 2, we can confirm that for the period between 1 January 2014 and 4 May 2020 there were 8 reports made by individuals to our Whistle Team about sexual discrimination by individuals at firms registered to carry out insurance operations.

For the reasons set out above we are unable to provide the number of reports broken down by quarter as we are exempted from disclosing it under section 40 (personal data) of FOIA. A more detailed explanation of why this exemption applies can be seen in Annex B.

There were also 2 reports about sexual discrimination made by a firm registered to carry out insurance operations.

For the reasons set out above we are unable to provide you with the period these were reported as we are concerned the firms in question could be identified and so we are prohibited from disclosing the information to you under section 44 (prohibition on disclosure). A more detailed explanation of why this exemption applies can be seen in Annex B.

### **Your right to complain under FOIA**

If you are unhappy with the decision we have made about your request, you have the right to request an internal review. To do so, please contact us within three months of the date of this response.

If you are not content with the outcome of the internal review, you also have a right of appeal to the Information Commissioner by phone or on their website at:

Telephone: 0303 123 1113

Website: [www.ico.org.uk](http://www.ico.org.uk)

## **Annex A**

Request received 4 May 2020:

*"Under the Freedom of Information Act, I would like to know:*

- How many sexual misconduct reports have been made to the FCA by individuals at businesses registered to carry out insurance operations (insurers, insurance intermediaries, appointed representatives)*
- I would also like to know the number of reports made to the FCA about sexual discrimination by individuals at FCA registered insurance businesses (insurers, insurance intermediaries, appointed representatives).*

*I would like the data broken down by quarter starting from Q1 2014, using the most recent quarter end date that is possible."*

You clarified your request as follows on 23 June 2020:

- 1. How many sexual misconduct reports have been made to the FCA by individuals at businesses registered to carry out insurance operations (insurers, insurance intermediaries, appointed representatives)*

*To clarify - I would like information both on and broken down into:*

- Number of reports made to the FCA by firms around sexual harassment and discrimination*
- Where it does not jeopardise this FOI, number of reports made by directly by individuals around sexual harassment and discrimination*

- 2. I would also like to know the number of reports made to the FCA about sexual discrimination by individuals at FCA registered insurance businesses (insurers, insurance intermediaries, appointed representatives).*

*To clarify - I would like information both on and broken down into:*

- Number of reports made to the FCA by firms around sexual misconduct*
- Where it does not jeopardise this FOI, number of reports made directly by individuals around sexual misconduct*

*I would like the data broken down by quarter starting from Q1 2014, using the most recent quarter end date that data is held for.*

## **Annex B**

- General right of access to information held by public authorities**

Under section 1(1)(a) of the Act, any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request. If the public authority holds information of the type specified in the request, the person requesting the information is entitled under section 1(1)(b) to have the information communicated to them. The rights in section 1(1)(a) and (b) are, however, subject to a number of exclusions and exemptions, including the following:

- Section 40 (Personal Information)**

To the extent that the information that we hold contains personal data about individuals, section 40(2)(b) of the Act provides that "[a]ny information to which a request for

information relates is also exempt information if ... first, second or third conditions listed below is satisfied."

We have applied this exemption because the first condition (as stated in section 40(3A) of the Act) is satisfied. Some of the information you have requested comprises the personal data of individuals other than yourself which, if disclosed, would breach the requirement of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) ("GDPR") including the data protection principles of Article 5 and the Data Protection Act 2018 ("DPA")

In particular, it would be a breach of the first data protection Principle as set out in Article 5 of the GDPR, to disclose such information, as it would not be necessary or fair to the individuals concerned, or lawful, where none of the conditions in Article 6(1) of the GDPR have been met. The individual(s) concerned have not given their consent for their personal details to be made public and the release of such information may be detrimental to the individuals themselves.

This is an "absolute" exemption, and so it is not necessary to balance the public interest for and against disclosing the information

- **Section 44 (Prohibitions on Disclosure)**

Section 44(1)(a) of FOIA states that information is absolutely exempt from disclosure if this is prohibited by law. Section 348 of FSMA restricts the FCA from disclosing 'confidential information' it has received in the course of carrying out its public function. FSMA allows exceptions to this in a few specific circumstances, but none of these apply to this request.

Confidential information here is defined as non-public and non-anonymised information involving a person's business or other affairs, which the FCA received.

The information you requested is confidential information under this provision. If we disclosed this information, without the provider's consent and the consent of the person the information is about, we would breach of section 348 of FSMA. This would be a criminal offence.

In many requests for information under FOIA we have to judge different factors to decide whether disclosing the requested information would be in the public interest or not. For this request, we have an 'absolute' exemption against supplying the information, and so we do not need to make this kind of judgement.