

Helpline: 020 7066 9870
Email: complaints.scheme@fca.org.uk
Website: www.fca.org.uk/about/complain-about-regulators



Sent by email
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25 February 2022

Our Ref: 207817374

Dear Mr Clarke

Further to my email of 11 February 2022, I am writing to let you know I have now completed my investigation into your complaint.

I am very sorry to hear of the difficult circumstances you have been facing and the impact that this situation has had on you.

Before setting out my response to your complaint, I would like to apologise that it has taken us longer than we had anticipated to provide this response. I return to this point later in my letter.

Your complaint

Your complaint was made on 12 October 2021. On 9 November 2021, we wrote to you with a summary of our understanding of your complaint. You provided comments on our summary in your emails of 23 November 2021, 6 December 2021, 13 December 2021, and 7 January 2022, which I have considered in my investigation. In essence, you are complaining about the situation you find yourself in having acted as a whistleblower and consider that the FCA are responsible.

Decision

My letter explains, below, that I have not upheld your complaint.

I appreciate this will not be the outcome you were seeking. I hope the explanations given below will help you to understand why I reached these conclusions.

Background

On 9 June 2021, you emailed the Whistleblowing Team. You explained that you would like to speak to someone regarding the diversity and inclusion situation in HSBC. You explained you are a senior manager within Transaction Banking.

On 17 June 2021, you emailed the Whistleblowing Team and asked if they had received your email of 9 June 2021.

On 17 June 2021, the Whistleblowing Team emailed you with a further information request form. The email also explained the next steps, how the team will protect you and your disclosure, how you will know what action has been taken (including what information they can share publicly) and an explanation that the FCA is unable to give legal advice.

On 18 June 2021, your case officer from the Whistleblowing Team emailed you to introduce themselves. They requested further specific information about the concerns you were raising. The case officer also provided you with the option to speak about the issues.

On 25 June 2021, you responded to the case officer's email. Your email enclosed a OneDrive link to a report that you had prepared which answered the questions that the case officer had asked. You also attached a completed 'further information request' form (the Whistleblowing Team had emailed this to you on 17 June 2021).

On 1 July 2021, the case officer emailed you. They explained that they were aware that you were due to deliver your report to the UK and US Board of Directors on 25 June 2021 and asked for the response you had received. They also asked that you send the information you had provided in either a zip file or send it in smaller chunks by email.

On 4 July 2021, you responded. You explained the press had published details of your report and HSBC's response. You included the following three links:

<https://www.efinancialcareers.com/news/2021/07/ian-clarke-hsbc-diversity>

<https://www.businessinsider.com/hbsc-bipoc-employee-memo-systemic-racism-sexism-discrimination-investigation-report-2021-7>

<https://www.bloomberg.com/news/articles/2021-07-01/banker-s-portrait-of-racism-at-hsbc-prompts-an-internal-probe>

On 5 July 2021, the case officer responded to your email. They confirmed that the links you had provided had been sent to the firm's supervisor to monitor the coverage. They also made you aware that whilst the FCA won't confirm the existence of a whistleblower, given the published information the firm might reach their own conclusions.

On 5 July 2021, you responded to the case officer. You explained that you were unhappy with the case officer's response and explained that unless there was an improvement in the handling of the disclosure, you would be reluctant to assist the FCA further.

On 7 July 2021, the case officer responded. They explained that they will treat your confidentiality request very seriously.

On 9 July 2021, you responded to the case officer. You explained that you felt reassured, and you enclosed a PDF version of your report.

On 12 July 2021, the case officer responded. They asked if you had any objections to them sharing the report with their supervisors.

On 13 July 2021, you responded confirming that you had no objections.

On 13 July 2021, the case officer responded confirming your report had been provided to supervisors for their review.

On 13 July 2021, you emailed the case officer. You explained there had been an incident at HSBC "*whereby Adequate Challenge was proven to be inoperable within our Transaction Banking business globally.*" You attached evidence and asked that the case officer send it to the supervisors.

On 14 July 2021, the case officer responded and confirmed they will pass the evidence you had sent to the supervisors. They explained that your signature was on page 3 and asked if you would want this redacted so that you could not be identified.

On 15 July 2021, you responded to the case officer confirming that you were fine with them passing the information to the supervisors without redaction as you had removed any markers which identify it came from you. You also explained that your report and cover email (which

you had attached to the email) had been posted on LinkedIn. You queried whether the FCA should issue a statement. You provided a link to the post and explained you had nothing to do with it but that the author had tagged you.

On 16 July 2021, the case officer responded and explained that they will relay the information you had provided to the firm's supervisors.

On 20 July 2021, you emailed the case officer. You explained that you were preparing to resign from HSBC and had attached your letter of resignation (this was not actually attached) to the email. You asked if any of the FCA supervisors would like to speak to you.

On 26 July 2021, the case officer responded and explained that the letter of resignation was not attached. They also explained that they had reached out to the supervisors to determine whether a call was needed. They asked if this was something that the supervisors were interested in the future after your resignation if you would still be open to the FCA contacting you.

On 27 July 2021, you responded to the case officer. You explained that you would be willing to speak to the FCA after you had left HSBC and asked if you should report the situation to the US Securities and Exchange Commission (SEC) or if the FCA will contact them.

On 30 July 2021, the case officer responded. They explained that the FCA supervisors were reviewing information within the public domain together with the information you had provided, and they were making enquiries regarding this. They noted your offer to speak with them and explained that they will revisit later if still required. They asked you to send any further information you wish the FCA to consider and explained that you could speak to the case officer.

In relation to your query about reporting the matter to the SEC, they explained that whilst the FCA does engage with overseas regulators, it might be more expedient for you to contact the SEC directly.

On 3 August 2021, you emailed the case officer. You explained that you had resigned, and you had also reported the situation to the SEC. You explained that you had received threats from HSBC for you to cease and desist speaking up. You attached documents showing the issues you were having and explained the documents could be shared with the supervisors.

On 6 August 2021, the case officer responded. They explained that the email chain you had supplied refers to "legally privileged and confidential information". They asked whether you were authorised to share this with the FCA and if you were uncertain, you should seek legal advice.

On 8 August 2021, you responded. You explained that as all the information originated from you, you felt that you could share it with the FCA.

On 13 August 2021, the case officer responded. They confirmed that the information you had provided was of interest and had been forwarded to the supervisors. The case officer from the Whistleblowing Team reiterated that you could speak to them and they were open to receiving any further information.

On 31 August 2021, you emailed the case officer. You provided more information about HSBC. You also mentioned that you were working with the Financial Times to print a story in the next 10 days. You explained that you felt that the FCA has not communicated the progression of the case and might make a complaint.

On 2 September 2021, the case officer responded. They explained that the supervisors were still assessing the matter and the review was ongoing. They explained that speaking to the firm takes time and whistleblowing cases can remain open for months. They also provided details on how to make a complaint.

On 1 October 2021, you emailed the case officer. You explained that you were homeless and unemployed; you also attached a document that you had created called "Diversity and Inclusion in the financial sector".

On 8 October 2021, the case officer responded, explaining they will share the document with supervisors.

On 8 October 2021, you responded to the case officer and confirming that they could share the document with supervisors. You also explained that you were exploring taking legal action against HSBC and expressed your disappointment with the FCA.

On 12 October 2021, the case officer responded providing a link on how to complain about the FCA.

On 12 October 2021, you raised a complaint with the Complaints Team and explained to the case officer that you had complained.

On 13 October 2021, the case officer responded acknowledging your email.

On 22 November 2021, you emailed the case handler and expressed your dissatisfaction as to how your whistleblowing case had been handled.

On 29 November 2021, the case officer responded. They explained that that they were aware that you were open to engaging with the supervisory team. They explained that the team were making further enquiries and if a discussion was required to assist their review, this will be facilitated.

On 1 December 2021, you emailed the case officer and explained that you were not keeping well, and that you had moved from New York City to London.

On 6 December 2021, you emailed the case officer and explained that you had provided evidence that HSBC's Head of HR for America had broken the law by illegally retaliating against you over your status as a whistleblower, yet she hadn't been suspended.

On 7 December 2021, the case officer responded and provided you with the Samaritans contact details.

On 8 December 2021, you responded to the case officer explaining your dissatisfaction.

Findings

To investigate this complaint, I have liaised with the Whistleblowing Team and Supervision to understand what happened in your case and to assess whether the whistleblowing procedures were carried out correctly. I looked into the correspondence you had sent and reviewed internal systems to consider the matters you have raised in your complaint.

You are unhappy about the FCA's perceived inaction relating to a whistleblowing case which you were involved in. This concerns whistleblower case 49194.

You have explained that you were part of the HSBC. In June you raised a wide-reaching whistleblower case against the bank concerning your report that proved institutional racism at the firm. Over the ensuing months you provided further evidence of wrongdoing including what you have said was concrete proof of crimes committed by the firm against you under the Equality Act and Whistleblower regulations. You have said that the retaliations led to your forced resignation from the firm and you are now both homeless and unemployed with no prospect of further employment within the industry due to fear from other banks of unspecified repercussions.

You feel that FCA's lack of action has put you in the circumstances you find yourself in today. You feel that a statement by the FCA corroborating your findings could have changed your situation. You feel instead, the FCA has accepted all the information you provided for months

without providing you with any information regarding your case. You have explained that you were not permitted to speak to the supervisor and to date the FCA has not confirmed that it is formally investigating the bank for the hate crimes against ethnic minorities that you have alleged.

You have detailed the actions you have taken documenting the racism you and others endured which was submitted to the bank's CEO. You worked with some of the bank's senior leadership to implement your recommendations to end this behaviour but the 'faction' led by the CEO that wished to sustain the status quo ultimately won out with no material implementation of your recommendations.

Ultimately you are unhappy with the FCA as you have said you shared accounts of experiences confidentially with the FCA under the whistleblowing email account and the FCA has never provided any response to those matters but merely acknowledged receipt of your information.

You have explained that the FCA has not discussed nor indicated to you any offer of compensation available to you in exchange for losing your career as part of this whistleblowing case, despite you having been passing it information for 4 months now - 2 of which preceded your resignation. You have advised that your report on racism in banking (and specifically at HSBC) is also available for download from your website www.deilightconsulting.com/project-speak-up

In order to resolve your complaint, you would like:

1. The FCA to make a public statement explaining that institutional racism will not be tolerated and that the contents of your report is of great concern and will be looked into.
2. You would like the FCA, the Bank of England and the PRA to consider recruiting you given your understanding of the challenges facing the industry surrounding racism.
3. You would like to know whether you qualify for compensation because of the evidence you submitted under the whistleblowing regulations.
4. You want the FCA to work with the SEC on this matter.
5. You would like to speak to the case manager as you feel that they are currently only receiving HSBC's version of the story. You have questioned why the case manager is so reluctant to speak to you. You have advised that you are happy to sign an NDA.
6. You would like to understand what the FCA intends to do about your case. You have said that you have lost a \$200,000 per year job because you followed FCA whistleblower procedures and were retaliated against.

I will explain below why I have not upheld your complaint.

Before outlining my findings regarding the specific points of your complaint, I want to highlight the strict confidentiality restrictions the FCA is bound by under section 348 of the Financial Services and Markets Act 2000 (FSMA) and the FCA's own policy. This is explained further, here: <https://www.fca.org.uk/freedom-information/information-we-can-share>.

Not all the information we hold is covered by section 348 FSMA. This is because we also hold information we have created rather than just received, such as:

- our opinion on whether a firm is complying with our rules
- what actions we should take next when making inquiries into a firm or market, and
- setting out the factors for and against making a new rule.

These restrictions limit the scope of the information the FCA can give you regarding any actions the relevant departments may have taken. I can see that in the Whistleblowing Team's email to you on 17 June 2021, they explained the FCA is limited on the information it can share and set details of why this is.

However, I have reviewed the actions of the Whistleblowing Team and Supervision, namely their handling of your disclosure. As a result, I can confirm that they acted appropriately, and your disclosure was sent to the relevant parts of the FCA for consideration in accordance with expectations in these cases.

Due to the restrictions noted above, I am unable to comment on what action, if any, has been taken by the FCA.

We don't usually make public the fact that we are investigating (or have investigated) a particular firm or individual. This is partly to protect the effectiveness of our investigation, as publicity might encourage people to destroy or hide evidence, and partly because announcing an FCA investigation can damage reputations. We understand that not revealing what action we may have taken can be frustrating. But we do carefully consider the information you give us and we value it.

You have outlined six things that you would like the FCA to do to resolve your complaint. I have provided a response to each of these below.

The FCA's stance on diversity and inclusion

You have explained that you would like the FCA to make a public statement explaining that institutional racism will not be tolerated and that the contents of your report is of great concern and will be looked into.

The FCA does not tolerate racism of any form. You can read about why diversity and inclusion matters to us [here](#). This explains our vision and the actions we have taken.

The FCA has also published a joint Discussion Paper with the PRA and Bank of England on diversity and inclusion in the financial sector, which can be found [here](#). The paper explains that we want to begin an open discussion with industry and other stakeholders on how we should use our powers to further diversity and inclusion within firms. It clarifies why we as regulators care about diversity and inclusion, the importance of data, and options for driving change through policy.

You can read more about the FCA's work around diversity and inclusion in the following publications:

<https://www.fca.org.uk/about/diversity-and-inclusion-why-it-matters-us/our-ethnicity-action-plan>

<https://www.fca.org.uk/news/speeches/why-black-inclusion-matters-us>

For the reasons I have previously set out, the FCA is unable to comment on what actions, if any, have been taken with regards to your report. In relation to a public statement, the FCA has made a number of such statements in regard to its stance on diversity and inclusion, as above.

Recruitment

You have said that you would like the FCA, the Bank of England and the PRA to consider recruiting you. You can find details on how to apply for a job in those organisations on the following recruitment pages:

<https://www.fca.org.uk/careers>

<https://www.bankofengland.co.uk/careers>

Compensation

You would like to know whether you qualify for compensation because of the evidence you submitted under the whistleblowing regulations.

Throughout 2013-2014 the FCA and the PRA agreed to carry out research into the impact of financial incentives on encouraging whistleblowing and a number of findings were made which are set out [here](#).

Ultimately, it was proposed not to introduce financial incentives for whistleblowers, like our regulatory counterparts in the US, but rather the regulators chose to implement regulatory changes necessary to require firms to have effective whistleblowing procedures, and to make senior management accountable for delivering these.

We are unable to give legal advice about your position and you may want to consider potentially seeking independent legal advice from a suitably qualified practitioner.

U.S. Securities and Exchange Commission (SEC)

You want the FCA to work with the SEC on this matter. The FCA does work with other regulators but we usually do not disclose this publicly due to the s348 restrictions outlined above. As such I am unable to confirm whether the FCA is working with the SEC on this matter.

The FCA's Whistleblowing Team

You have explained that you would like to speak to the case manager as you feel that they are currently only receiving HSBC's version of the story. You have questioned why the case manager is so reluctant to speak to you. You have advised that you are happy to sign an NDA.

The Whistleblowing and Supervision Teams are both aware of your offer to speak to the supervisor reviewing the case. The Whistleblowing Team will be in touch if there is a need for the supervisor to speak to you. Your case officer from the Whistleblowing Team has stated in emails that that they remain open to speaking to you as and when they require. If you wish to discuss the matter with your Whistleblowing Team case officer, please get in touch with them directly or let us know and we will pass on the request.

Your case

You would like to understand what the FCA intends to do about your case. You have said that you have lost a \$200,000 per year job because you followed FCA whistleblower procedures and were retaliated against.

As explained above due to s 348 restriction I am unable to discuss what the FCA intends to do with your case. The Whistleblowing Team's review remains ongoing, and once this is concluded they will send you their final feedback, whereby once again they will be limited in the information they can share.

Having looked at the actions taken by the Whistleblowing Team I am satisfied that the correct processes were followed to protect your identity as a whistleblower. As previously stated, you might want to consider seeking independent legal advice should you wish to seek compensation from HSBC.

Conclusions

I am not upholding complaint. This is because, having investigated the complaint, I am satisfied that the actions of the Whistleblowing Team and Supervision Team were reasonable in the circumstances.

I know this is not the outcome you were hoping for but hopefully you are re-assured that **your allegations are being taken seriously and fully considered**. I am sorry that this matter has been difficult for you and would also like to thank you for bringing this matter to our attention.

I do recognise the significant hardships that you have suffered. Please find enclosed a list of support organisations that may be of use to you. I hope some of this is of use to you.

The delay in considering your complaint

As I mentioned at the start of this letter, we would like to apologise for the length of time it has taken to provide you with this response to your complaint.

In recognition of any inconvenience this may have caused, **I would like to offer you an ex-gratia payment of £50**. I would be grateful if you could let me know by 11 March 2022, if you would like to accept this payment. If you require further time to consider this offer, please let me know.

If you wish to accept the offer of £50 for the time it has taken to investigate your complaint, please can you let me know the bank account details to which the payment should be sent (name on the account, sort code, account number and the name of the bank the account is held with) and I will arrange for a payment to be sent to you by electronic transfer.

The role of the Complaints Commissioner

The Complaints Commissioner is an independent person appointed by the Regulators to be responsible for the conduct of investigations in accordance with the Scheme. If you are dissatisfied with how we have dealt with your complaint, you can contact the Complaints Commissioner requesting a review of my decision. You must contact the Complaints Commissioner within three months of the date of this letter. If you contact the Complaints Commissioner later than three months, the Commissioner will decide whether there is good reason to consider your complaint.

The contact details for referring your complaint to the Complaints Commissioner are:

Office of the Complaints Commissioner
Tower 42
25 Old Broad Street
London EC2N 1HN

Telephone: 020 7877 0019

Email: complaints@frccommissioner.org.uk

If contacting the Commissioner please let them know your FCA complaints reference number, which is 207817374.

Yours sincerely



Mish Selvan

Complaints Investigator / Complaints Department
Risk & Compliance Oversight Division