

**FCA Unrestricted**

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**Private & Confidential  
Sent by email**

Mr Ben Tomeo

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12 December 2014

Our Ref: 3907

Dear Mr Tomeo

Since writing to you on 4 December 2014, I have finished my investigation into the matters raised in your correspondence in accordance with the complaints scheme (the Scheme). Once again, please accept our apologies for not providing you with this substantive response within our 16 week deadline.

**Your complaint**

In our letter of 31 July 2014, we explained the Scheme and outlined our understanding of your complaint in relation to the provisions of the Scheme. To reaffirm our understanding of your complaint, you alleged:

*Element One*

The Financial Conduct Authority is colluding with HSBC to cover up an alleged fraud which was said to have been perpetrated by HFC Bank limited ("HFC").

In your letter of 7 August 2014 you asked that this element should specifically deal with the fact that separate responses to similar enquiries were issued by the FCA and HSBC to different individuals but contained exactly the same wording. You would also like to know who drafted the identical wording that appeared in both responses.

I have considered this as an allegation of 'lack of integrity' on the part of the FCA.

*Element Two*

That the Financial Services Authority, and later the Financial Conduct Authority, failed to take appropriate actions in response to the fraud allegations made by Mr Nicholas Wilson and to properly establish the facts.

I have considered this as an allegation of 'failure to regulate' on the part of the FSA/FCA.

As you may be aware the FCA took over from the FSA on 1 April 2013. From this point onwards both the FSA and the FCA will be referred to as the Authority.

## **Decision**

My letter explains, below, that I have not upheld Element One of your complaint. However, I have found that there was an error in judgment by the FCA in including wording provided by HSBC in its response.

I have partially upheld Element Two of your complaint. I am satisfied that the steps taken by the Authority at the time that Mr Wilson made his whistleblowing report and since the Authority became responsible for the regulation of consumer credit have not been unreasonable. My reason for partially upholding this element is that the Authority is not able to confirm that Mr Wilson's whistleblowing report was sent to the OFT in November 2013 and therefore there was a potential delay of 4 months in providing the report. For this oversight I hope you will accept my sincere apologies on behalf of the Authority.

## **Background**

Mr Nicholas Wilson is a former employee of Weightmans Solicitors ("Weightmans") who acted for John Lewis Partnership regarding their debt recovery activities. Mr Wilson alleges that whilst working at Weightmans he uncovered a serious fraud being perpetrated by HFC Bank Limited a subsidiary of HSBC.

Mr Wilson alleges that "collection charges", which he referred to as unlawful contingency fees were being added to balances of those consumers who had defaulted on certain HFC loan accounts. Mr Wilson states that this fraud will have affected hundreds of thousands of consumers and that he has successfully managed to obtain redress for some customers that he has acted for.

Mr Wilson states that he reported his employer to the Law Society in 2006 but that no action was taken and that following him reporting his firm he was dismissed. Mr Wilson commenced an employment dispute and eventually a claim of unfair dismissal which I believe was settled. Mr Wilson states that he has breached the "gagging order" contained within the settlement agreement by raising this issue publicly.

In 2010 the Office of Fair Trading (the OFT), which was responsible for the regulation of the Consumer Credit market up until 1 April 2014, imposed a requirement order on HFC.

Mr Wilson states that he reported this activity to the Authority in August 2012 and to the Solicitors Regulatory Authority.

You stated in your email of 4 July 2014 that the Authority's failures have directly contributed to Mr Wilson continuing to be virtually unemployable and on the verge of losing his firm.

Mr Wilson made a request for information from the Authority under the Freedom of Information Act (FoIA). Wording used in the response appears to be identical to wording issued by HSBC in its own correspondence with a customer and, as a result, Mr Wilson has concluded that the FCA is colluding with HSBC to cover up the alleged fraud.

Mr Wilson maintains a blog specifically about this matter and regularly uploads articles about the FCA. Mr Wilson is also an active contributor to "Twitter" on this matter.

## **Investigation**

In carrying out my investigation I have liaised with the Authority's Information Access Team (IAT), the Supervision team responsible for the oversight of HSBC and the Authority's Whistleblowing team. I have also reviewed all relevant electronic records relating to this issue held by the above mentioned teams along with Mr Wilson's blog at <http://nicholaswilson.com/>

## Findings

Mr Wilson has alleged that HFC has been / is perpetrating a fraud on vulnerable customers by way of adding "collection charges". It is important to note at the outset that at the time that Mr Wilson reported his allegations to the Authority (which is discussed in more detail later) the regulation of the Consumer Credit activities referred to were the responsibility of the OFT. Whilst HSBC and HFC were both regulated by the Authority at that time, the activities that were in question fell under the Consumer Credit Act 1974. In addition, whilst Mr Wilson is alleging that a criminal offence has been committed, the Authority takes an interest in such allegations but is not the prosecuting authority for such matters.

It is reasonable to expect that Mr Wilson, having worked in the industry, would have recognised that the appropriate regulatory authority to report his suspicions to would have been the OFT. Having reviewed his blog and interview which Mr Wilson gave to Sarah Poulton it is clear that he has never approached the OFT regarding this matter.

As explained above, at the relevant time the Consumer Credit Act 1974 fell under the remit of the OFT. On 22 November 2010 the OFT imposed requirements (pursuant to section 33A of the Consumer Credit Act 1974) on HFC to address concerns that debt collection charges were being calculated by reference to a percentage of the outstanding debt rather than by reference to actual costs incurred. There were 5 requirements imposed on HFC and one exception.

The full requirement details and press release are located at:

- <http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/news-and-updates/press/2010/119-10> and
- [http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared\\_of/press\\_release\\_attachments/HFC-requirements.pdf](http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared_of/press_release_attachments/HFC-requirements.pdf).

It is our conclusion that whilst Mr Wilson chose to report this matter to the Authority it should more appropriately have been reported to the OFT at the relevant time, and potentially to the police.

### *Element One*

It is important to note that my investigation of this element has entirely concentrated on the wording that you have alleged confirms collusion between the Authority and HSBC. I have not considered any other aspects regarding IAT's response or the decisions made as I consider that these would be more appropriately dealt with in another way should there be any dissatisfaction. This is because alternative appeals arrangements are already in place to deal with such matters. These involve an internal review of the request response and ultimately a referral to the Information Commissioners Office.

Mr Wilson submitted a request under FoIA in February 2014 requesting details of what the Authority had done in terms of investigating his complaint made in 2012. Mr Wilson asked for specifics of how many letters and phone calls had been made in relation to his complaint.

IAT dealt with his request and in doing so they liaised with the appropriate areas of the Authority including Supervision and the General Counsel Division.

The response of 10 April 2014 explained that the Authority did not hold information on the actions taken by its predecessor and therefore was unable to provide information requested. In order to be of assistance IAT provided additional information which included the wording given below, which has caused both you and Mr Wilson to believe that the Authority is colluding to cover up an alleged fraud.

*"Prior to 2010, when HFC sent an account to solicitors to recover outstanding debts (e.g. on personal loans, credit and store cards), it added a charge to reflect the costs of the recovery. HFC's agreements with customers gave it the right to do this and the fee was added after the customer had defaulted on the loan/credit card payments."*

Due to confidentiality restrictions, under s348 of the FSMA, I am restricted as to what I can say on this point. As consent was provided by the firm for the inclusion of the wording, I am able to confirm that the wording was indeed provided by HSBC. However, I do not find that the inclusion of the wording is evidence of any collusion. My finding, having reviewed all the relevant records, is that the Authority exercised poor judgment in including the wording provided by HSBC in its response and this point is accepted. However, this is said with the advantage of hindsight and I do accept that it was only included in an attempt to try and be helpful with no malicious intent.

It is important to note that at the time the FoIA response was sent to you - 10 April 2014 - the Authority had only had responsibility for Consumer Credit for 10 days.

In your letter of 7 August 2014 you asked whether Douglas Flint of HSBC has informed the Authority that HSBC is 'in dispute' with Mr Wilson. You also asked whether John Lewis has contacted the Authority to request an investigation into the conduct of HSBC and its solicitors. For reasons which I have outlined numerous times during this response, I am unable to provide you with a response to these questions as I consider them to be captured under s348 of the FSMA.

#### *Element Two*

Mr Wilson first contacted the Authority about this issue on 14 December 2012 when he spoke with the Whistleblowing team. He stated that the OFT had issued a notice about the activity he was reporting being in breach of OFT guidelines but explained that HFC were a subsidiary of HSBC. The information relayed at this time was much the same as that contained on his website. The Whistleblowing team took the details over the phone and sent a follow-up email to Mr Wilson, at his request, confirming the details of the telephone conversation and advising him of confidentiality restrictions imposed on the Authority under section 348 of FSMA which limit the disclosure of confidential information.

On 24 December 2012 the Whistleblowing team sent Mr Wilson's intelligence on to the Supervision Division.

On 11 February 2013 Mr Wilson made contact and requested a meeting with the Authority to discuss this matter further. The Whistleblowing team responded and reminded Mr Wilson that under s348 of the FSMA the Authority was restricted as to what information it could relay back to him and advised that should colleagues in Supervision wish to meet with him they would be in touch.

On 28 October 2013 Mr Wilson called the Whistleblowing team again to find out if any action was taken as a result of the information he provided.

Following this call, it was determined by the Supervision team that as the intelligence related to consumer credit activities it should be passed to the OFT. A request for the intelligence to be shared was made by the whistleblowing team to the appropriate team within the Authority on 13 November 2013. Unfortunately, following a review of the file in February 2014 (as a result of further correspondence from Mr Wilson) it became unclear as to whether the intelligence had indeed been passed on to the OFT as there was no record of a confirmation on

file. The intelligence was sent to the OFT on 18 March 2014. The team responsible has implemented a new process to try and ensure that this situation could not occur again when disseminating intelligence to other organisations.

When the Whistleblowing team receives information it disseminates this appropriately throughout the wider business. The areas that received this information did not initially provide feedback to the Whistleblowing team on the quality or relevance of the information provided or what actions may/may not be taken as a result.

The Authority later put in place a policy whereby recipients of whistleblower intelligence will provide an acknowledgement and feedback to the whistleblowing team.

I am satisfied that the Authority did take appropriate steps regarding the intelligence provided by Mr Wilson. The information was disseminated, considered and deemed to be outside of the regulatory remit and given this it was deemed appropriate to disseminate the intelligence to the OFT. It is unfortunate that an oversight on the Authority's part meant that, on the balance of probabilities, there was a delay in the Authority sending Mr Wilson's intelligence to the OFT and we sincerely apologise for this.

Following the change in regulation on 1 April 2014 the Supervision team responsible for HSBC has reconsidered the information that has been provided by Mr Wilson along with the information on his blog. As explained above, the Authority has restrictions imposed on it under s348 of FSMA with regard to the treatment of confidential information. Due to these restrictions I am unable to confirm what action, if any, has been taken following the consideration of the information supplied by Mr Wilson. I understand that this response will be disappointing to you but we are bound by the legislation that has been put in place. However, I am able to confirm that I am satisfied that the steps taken by Supervision have been reasonable and appropriate.

## **Conclusions**

Subject to the comments below, I have not upheld Element One of the complaint as I have found no evidence that the Authority is / was colluding with HSBC to cover up a fraud. As explained above, at the time Mr Wilson made his report and his FoIA request, the Authority was not responsible for the regulation of Consumer Credit.

Whilst I have not upheld this element of your complaint, I feel that the Authority made an error in judgment by including the wording provided by HSBC in its response to your FoIA request. I sincerely apologise on behalf of the Authority for any confusion and concern this may have caused.

I have partially upheld Element Two of your complaint. Whilst I am satisfied that the steps taken by the Authority at the time that Mr Wilson made his whistleblowing report and since the Authority became responsible for the regulation of consumer credit have not been unreasonable; due to an oversight, there was a delay of approximately 4 months in the Authority providing Mr Wilson's intelligence to the OFT.

If you are dissatisfied with the outcome of this investigation, you may refer your complaint to the Complaints Commissioner who may decide to carry out his own investigation. A referral to the Complaints Commissioner should usually be made within three months of the date of this letter, although a referral outside the three months' time limit may, where there are adequate reasons for the delay, still be considered by the Complaints Commissioner. If you decide to contact him, please write to:

Office of the Complaints Commissioner  
48-54 Moorgate  
London  
EC2R 6EJ  
Telephone: 020 7562 5530  
Email: [ComplaintsCommissioner@fsc.gov.uk](mailto:ComplaintsCommissioner@fsc.gov.uk)

Yours sincerely



**Michelle Broadhurst**  
Senior Complaints Investigator  
FCA Complaints Team  
Corporate Services