Paul Carlier (Financial Markets Expert at Finscope Consulting Limited) – Written evidence (EGC0024)

I provide this submission as a two-time bank whistleblower, and so speak with experience that is as significant and relevant to this call for evidence, as the scars are deep and ongoing.

Background

I worked as a Foreign Exchange trader over a period of 28 years and for many of the world's largest banks including UBS, Lehman Brothers, Chase Manhattan and Natwest to name but a few.

My first whistleblower 'experience' came when I re-joined UBS in 2010, having worked there previously between 1996-99. I refer you to the FCA Final Notice issued to UBS[1] in November 2014 and that accompanied a fine of £233,814. [four other banks were also sanctioned at the same time for the same offences and with fines totalling £1.1billion]. I refer you to this extract from Page 15 of that notice:

> 6. *In November 2010, a whistleblowing report was submitted regarding potential misconduct in UBS's FX business. Further concerns were raised within UBS by whistleblowers in December 2011, in February / March 2012, in October 2012 and in December 2012. These concerns alleged that UBS FX traders were, amongst other things, engaging in improper trading in collaboration with unspecified third parties, disclosing client confidential information and trading on that information. UBS failed adequately to investigate these issues and to consider the risks of misconduct within the spot FX business.*

The whistleblower disclosures that I made are those highlighted in yellow in that extract. My second whistleblower 'experience' came whilst working at Lloyds Banking Group between 2012-2014.

On both occasions I and my family suffered significant detriment and catastrophic financial and mental health consequences. On both occasions the FCA played a role that was anything but 'transparent' and not only failed to prevent harm, actually compounded the harm caused by the firm and subsequently sought to cause their own harm when they sought to conceal their role and avoid accountability for their actions.

I therefore have grave reservations about some of the FCA's views put forward in their consultation paper, their claims as to transparency and accountability, and especially these positions:

[1] https://www.fca.org.uk/publication/final-notices/final-notice-ubs.pdf

"It also encourages witnesses and whistleblowers to inform our enforcement and supervisory work"

[…]

> *"the likelihood it will…..help our investigation, for example by encouraging potential witnesses or whistleblowers to come forward"*

My Submission

1. I welcome this new approach by the FCA. Naming firms when opening an investigation is a significant deterrent and will help achieve the objectives that the FCA declares that it seeks.
2. However, I and many others have found to our cost since the financial crisis that what the FCA [and previously the FSA] says publicly, especially in respect to whistleblowing, is rarely consistent with the approach or narrative that the FCA is actually using internally.
3. Indeed, I struggle to see how the FCA's historic and ongoing poor treatment of whistleblowers gives them any right to encourage whistleblowers to step forward, or on what basis they believe their information will be so valuable when they routinely fail to engage with the whistleblowers and/or ignore or bury 'valuable' information provided by whistleblowers, and rather bury the whistleblower along with it.
4. In the past decade the FCA and various senior executives within it have all made various public declarations as to a commitment to, and high regard of, whistleblowers. Indeed, FCA SYSC18[2] was introduced in 2016 with much FCA fanfare and prohibited the causing of detriment to a whistleblower.

'Silence in the City 2' vs FCA SYSC18

5. A study conducted in 2020 by Protect, *'Silence in the City 2'*[3], and for the purpose of evaluating the effectiveness of SYSC18, found that a shocking 70% of all employees at financial services firms who had blown the whistle in the four years since its implementation had still suffered detriment.
6. Whereas over that same period the FCA had not taken any action against any financial services firm for causing detriment to a whistleblower in breach of SYSC18.
7. If we refer to the FCA's own data[4] we find that for the five years, 2016-2020, there were 5,306 confirmed whistleblower reports to

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[2] https://www.handbook.fca.org.uk/handbook/SYSC/18/?view=chapter
[3] https://public-concern-at-work.s3.eu-west-1.amazonaws.com/wp-content/uploads/images/2020/06/19125704/Protect-SILENCE-IN-THE-CITY-2-2020.pdf
[4] https://www.fca.org.uk/freedom-information/data-whistleblowing-disclosures-received-fca-december-2021

the FCA. This does not include the many more whistleblowers who did not escalate their disclosures to the FCA for fear of further detriment from their employer.

8. Therefore, the Protect findings demonstrate that at least 3,714 (70% of the number of whistleblower reports received by the FCA) financial services whistleblowers had likely suffered detriment over that period, but the FCA had failed to take any action against any firm for the breach of SYSC18 this represented and failed to protect any of those whistleblowers who suffered the detriment.
9. How is this possible?
   Quite simply, it is not possible if the FCA is acting in accordance with its statutory duties and its obligations to enforce the relevant law and FCA codes, its obligations to deliver the protections to consumers and whistleblowers alike, and consistent with its own declarations as to transparency, independence and accountability.

Personal experience

10. Speaking from personal experience, and from the experience of numerous whistleblowers that I have met and helped, and from the now substantial documentary record that I have, the reason for this is, broadly, twofold:

    i) When a whistleblower escalates disclosures to the FCA it will always expose their employer and/or colleague/s. It is the nature of the beast. A disclosure of wrongdoing will always expose those parties.

    However, what no whistleblower considers or will only discover later, is that invariably this disclosure will also potentially expose the FCA and because either:

a) The FCA was already aware of the wrongdoing, and that had been potentially widespread and/or longstanding, being disclosed by the whistleblower and had 'turned a blind eye' to it previously.
   Or
b) The wrongdoing had been widespread and/or longstanding and the FCA should have known about it but had failed to detect it or had ignored significant 'signals' and/or flags.
   The effect of which is to create a conflict of interest for the FCA.

    ii) The first criteria the FCA considers when determining how it will approach a case or report and if it will investigate at all, is essentially 'How exposed are we the FCA?'.

This is entirely consistent with testimony from various FCA whistleblowers, one of which was reported on by Rachel Wolcott of Reuters on 14th February 2024[5], in which it was exposed that the FCA had 'merged' it's data team and media team and that rather than treating all FOIA (Freedom Of Information Act) requests and Data Subject Access Requests objectively and lawfully, they were instead classifying them on the basis and via a box on their system *"Is this information likely to attract media attention?"* and processing them according to that criteria.

FCA Misconduct

11. Unfortunately, I and numerous other whistleblowers have discovered to our cost that the FCA response to our disclosures relies on the extent to which the FCA is exposed by the disclosures we have made, and invariably that means not only a lack of protection from detriment by our employers, but also the very real risk that the FCA will compound that detriment and even be prepared to cause detriment of their own, in order to protect themselves. I can testify to this as can other whistleblowers. Indeed, the FCA is currently facing legal action in the High Court from a whistleblower.
12. Furthermore, and for example, Peter Johnson[6] was the whistleblower from Barclays who made disclosures to Central Banks and regulators regarding the lowballing of LIBOR during the financial crisis that was dishonestly and criminally co-ordinated by the Bank of England, Government etc.
    12.1. In Chapter 8 (commencing on page 151) of Andy Verity's book 'Rigged'[7], Andy reveals that Peter was interviewed in November 2010 by various authorities including the FCA [then the FSA] and their lead investigator into LIBOR, Joanna Howard, along with multiple representatives from other agencies both UK and U.S, and during which they confirmed that he had made whistleblower disclosures and were grateful for his help and candour.
    12.2. However, Peter's testimony rather exposed the authorities and regulator and so the nature of the 'investigation' was altered and within two years Peter Johnson the whistleblower had become the focus of a contrived alternate narrative and been sacked by Barclays, and in 2014 was forced to plead guilty

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[5] https://www.linkedin.com/posts/rachelwolcott_fca-to-merge-idt-fully-with-communications-activity-7163815206140239873-HFex/?utm_source=share&utm_medium=member_ios

[6] https://www.bbc.co.uk/news/business-65916892

[7] https://www.amazon.co.uk/Rigged-Incredible-Whistleblowers-Exposing-Financial/dp/0750998857

to criminal charges to avoid a larger sentence and fine, and the threatened extradition to the U.S.

12.3. Indeed, so intent was the FCA to protect its reputation and the Bank of England and Government, that it had senior FCA executive Patrick Meaney produce a statement for the New York Federal Court that it knew to be false and for the sole purpose of helping the U.S authorities pursue the conviction of Matt Connolly[8]. Connolly was wrongfully convicted but later had his conviction overturned.

13. There is literally no substance to the FCA's claims that naming firms will encourage whistleblowers to come forward and speak up and help with their investigations, if they reveal details of an investigation and name the firms who are subject to it. Only evidence to the contrary.

FCA 'Two-Tone' regulation and narratives

14. If the FCA wants whistleblowers to come forward they need to commit to the protection of them. Whereas the FCA internally and without disclosure to the public or whistleblowers themselves, has adopted a 'Two Tone' approach whereby they have entirely separated 'protection' from whistleblowing, telling whistleblowers and the public one thing, whilst internally adopting an entirely different narrative and approach. They confirm to each and every individual that comes forward that they are being treated as a whistleblower but fail to inform them that the FCA, internally, believes it has no obligation or means to 'protect' the whistleblower, beyond preserving their anonymity.
15. It is a convenient narrative and approach enabling concealment and arbitrary discretion where none should be permitted, and is wholly wrong, disingenuous and, yes, dishonest.
16. Indeed, in March 2016 I had a meeting with the FCA in which I gave them the evidence from my own whistleblower case that had been through the Employment Tribunal in which I was denied 'protected' status by the Judge because my disclosures were not made in a specific way. This despite my following the Lloyds Bank whistleblower policy to the letter in terms of how to make my protected whistleblower disclosures. A Whistleblower policy that was based on the also 'inadequate' and misleading model policy of *Public Concern At work* (Now known as 'Protect').
17. I explained to the FCA how the Tribunal case law was inconsistent with the policy and even PIDA (The Public Interest Disclosure Act) and they needed to act and bring policies into line with that case law to prevent further catastrophic detriment to other whistleblowers because of it. I explained that the case law said that for a disclosure to be 'protected' it must include certain information

[8] https://www.bbc.co.uk/news/business-49841360

including specifically which law or regulatory code the whistleblower believed was being breached by the conduct they were disclosing.

18. **Whereas the whistleblower policies used by firms failed to mention this!**
19. However, and despite my bringing this to the FCA's attention in March 2016, as recently as 2023 the FCA online whistleblower form that they directed whistleblowers to use specifically told whistleblowers NOT to allege which law or code they believed as being breached by the conduct they were disclosing. They were also telling this to whistleblowers who contacted them by phone.
20. The FCA was dishonestly misleading whistleblowers and stripping protection away from whistleblowers from the outset. If you do not make your disclosure in the correct way according to that case law, you have no protection in the future should you suffer any detriment, and the FCA knows this.
21. Essentially this gave the FCA, and also the firms, an escape route should the disclosures be of a nature that the FCA would prefer to ignore, and ensure neither they or the firms could ever be held accountable if the whistleblower took their case to the Employment Tribunal.
22. Little has changed for whistleblowers despite the various claims by the FCA and other regulators and the various assurances and initiatives, such as SYSC18, as to the value they ascribe to whistleblowers and their intent to protect them.
23. **If anything, I would argue that it has never been more dangerous to be a whistleblower in the UK, because the only thing worse than no protection for a whistleblower is an illusion of protection.**

In summary

24. As mentioned, I agree with the new approach the FCA is adopting. Naming firms will rightly create a risk for the firms and potentially impact their share price, but only when there is appropriate cause. When the FCA announced their new review into car finance, the Lloyds Banking Group share price dropped by 10% due to concerns over their exposure, as did the share price of other car finance lenders. And rightly so. It is a potential exposure that the customers and shareholders should be made aware of, and the price will move accordingly.
25. CEO's and Boards of Directors at banks and large firms care about one thing only; Their share price. There pay and bonus is largely linked to it, and you will frequently see their actions driven by whatever will drive that share price higher. Often disingenuous or downright dishonest such as an announcement of job cuts because investors love that as it suggests they are driving down costs. Often this actually means getting rid of full time staff and replacing them with contractors on two or three times the pay of the staff member

just made redundant, and so actually increasing staffing costs but where these costs are published as vague contractor costs so as to conceal the increase in actual staffing costs. Smoke and mirrors.

26. The focus on share price is a key driver in both historic and ongoing misconduct, mis-selling and other wrongdoing, as well as the historic and ongoing concealment thereof. Concealment that they know will likely be rather aided and abetted by the FCA and other regulators who they know will rarely investigate and will certainly not name them.
27. Boards and senior executives at banks and large firms therefore have no incentive to prevent wrongdoing and, if anything, rather an incentive to 'allow' it to occur so that the resulting gains will boost the share price, knowing that if discovered there will be little downside.
28. Therefore, to create the deterrent and incentive to conform you have to 'hit them where it hurts', and if all they care about is the share price, then naming firms creates a very real risk to that which they value most, and will prove to be a very effective deterrent and driver of better compliance and conduct. But risks that will be proportionate and fair.
29. And let's be very clear, the unanimous rejection of this proposal by the industry and various conflicted trade bodies has little to do with the merits of this proposal, and everything to do with the threat to their share price and their personal remuneration packages.
30. Proof rather that the FCA is right on the money here with such an approach.
31. And to be further clear, if there is nothing to hide and there is no wrongdoing, then the share price will recover any loss that might have resulted from the naming of the firm. The other benefit from the proposal is that firms will be much quicker to co-operate and disclose information so as to more quickly remove any uncertainty represented by the announcement of the investigation and improve their share price.
32. However, it is wrong to say that the proposal will encourage whistleblowers to come forward. Only protection will do that, and the FCA does not and will not offer that.
33. The FCA should be forced to commit to confirming upon receipt of disclosures that the employees are whistleblowers and that they are 'protected', and also force firms they regulated to make the same confirmation to employees upon receipt of their disclosures.
34. Currently neither does and by design affording the firm the opportunity to later, often only in the Employment Tribunal, seek to deny the 'protected' status of the employee. If this 'protected' status is established upon receipt of disclosures, that will make a difference. Albeit still not enough of a difference.
35. No change of rules or laws specific to whistleblowing will make any difference if the compliance with them remains in the hands of the

same employers and regulators who are routinely failing to comply with existing law and rules.

36. Only an independent 'Office of the Whistleblower' would make the significant difference so desperately needed, and I would urge the Committee to support the "Office of the Whistleblower Bill[9]".

7 October 2024

[9] https://bills.parliament.uk/bills/2589