

Barclays CEO fined by UK Regulators for Trying to Expose Whistleblower

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Barclays CEO Jes Staley has been fined **£642,430** by City regulators and had **£500,000** of bonus clawed back by the bank after he attempted to identify an anonymous whistleblower.

In 2016, a whistleblowing member of staff raised concerns about the appointment of Tim Main to the senior position of head of the bank's financial institutions group in New York, and about Mr Staley's involvement in that appointment. It is

reported that Mr Staley is a friend and former colleague of Mr Main, that Mr Staley considered the accusation to be harassing and malicious and that the whistleblower had unfairly targeted Mr Main in an attempt to 'smear' him. Mr Staley instructed the bank's security team to identify the source of the complaint and the name of the whistleblower.

What is the legal protection for whistleblowers under UK law?

UK legislation protects whistleblowers from being subjected to any form of 'detriment' by their employer or fellow colleagues for having blown the whistle. The meaning of 'detriment' is very wide. It means being disadvantaged in the workplace, for example, by not being promoted, receiving a lower bonus, or being marginalised and isolated from decision-making. Under UK legislation whistleblowers have no legal entitlement to anonymity.

Protection for whistleblowers in financial services

However, in the regulated UK financial services sector the protections go further:

- The FCA Handbook requires regulated firms to implement and maintain effective measures to handle whistleblowing complaints – this includes where they are made anonymously.
- Firms are also required to ensure that no one under the firm's control engages in victimisation of a whistleblower and that managers are adequately trained to identify and deal with whistleblowing complaints.
- A 'whistleblowing concern' is defined more widely under the FCA Handbook. It can include a matter disclosed as being a breach of the firm's policies and procedures and other behaviour that harms or is likely to harm the firm's reputation or financial well being.
- The FCA Handbook makes clear that if a whistleblower is treated detrimentally by a colleague it may call into

question the colleague's fitness and propriety and/or continued suitability for their role. Whereas it may be possible for an individual who is found to have breached Conduct Rule 2 (due skill care and diligence) to continue in their regulated role, if they are found to have breached Conduct Rule 1, (integrity) that is likely to be career limiting.

FCA and PRA fines for retaliating against whistleblowers

In this case, the FCA concluded that Mr Staley had acted without due skill and care when he had attempted to identify the Barclays whistleblower. It did not find that Mr Staley lacked integrity to continue in the role of CEO because it accepted that he had acted in the honest but mistaken belief that he was permitted to take steps to identify the whistleblower after an investigation had taken place.

Consequently, the FCA and PRA have each fined Mr Staley 10% of his total pay package of £4.5m. The fine could have been as high as £917,800 had he not agreed to early settlement with the regulators. Barclays has also announced it will claw back £500,000 of Mr Staley's bonus.

Continued monitoring and enforcement

As a result of the enforcement and the regulators' concerns about Barclays' existing systems for managing whistleblowing issues, the bank will also have to report to the FCA and PRA annually in respect of its relevant systems and controls.

The decision marks a message from the regulators that they will take serious steps to protect whistleblowers, although some commentators have criticised the regulators' decision not to make a finding that Mr Staley acted without integrity. Mr Staley has previously apologised to Barclays's investors for his mistake.

If you or your organisation need any guidance on

[whistleblowing law](#), implementing [whistleblowing policies](#) or [bringing](#) or [defending](#) claims, please contact [Nick Wilcox](#), Partner, or [Rolleen McDonnell](#), Associate at leading employment law firm BDBF LLP.

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