

The Financial Conduct Authority's response to the Complaints Commissioner's Annual Report 2020/2021

July 2021

The Financial Conduct Authority's response to the Complaints Commissioner's Annual Report 2020–21

(For the year ended 31 March 2021)

Presented to Parliament pursuant to section 87 of the Financial Services Act 2012 (as amended by the Small Business, Enterprise and Employment Act 2015)

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Contents

Introduction	6
The Complaints Scheme	7
Improvement plans	8
Complaints performance	10
Themes	15
Conclusions	18

Introduction

In this report, we respond to the points raised in the Complaints Commissioner's Annual Report, and update on key performance measures and the progress made in our improvement plan for the handling of complaints.

We welcome the first report from Amerdeep Somal, since she was appointed to the role of Complaints Commissioner ('the Commissioner') in November 2020.

We note the Commissioner's foreword acknowledging that, despite the pandemic, the FCA has made significant advances in delivering our improvement plans referenced in last year's report and in reducing the backlog of complaints, which has been a consistent reference point in the Annual Report in recent years. We agree there is still more to do. We are continuing to focus on improving our adherence to service levels - providing an excellent service to all complainants is important to us.

Through our improvements over the last year, we have significantly enhanced our complaints-handling system and underlying data, making how we process and record complaints data more effective. This included a comprehensive data cleanse of the information we held about previous complaints. During this, we identified certain anomalies in the historic data, including some duplicate complaints, which we have now removed from the data to improve its integrity. So the figures in this report differ slightly from those reported in previous years.

The Commissioner has referenced matters concerning our public consultation, our approach to compensation, confidentiality and transparency considerations. She has mentioned the Commissioner's office providing an external independent quality assurance function, through examining relevant management information (MI) and meetings to discuss. These are important matters and will remain the subject of ongoing dialogue between us and the Commissioner.

The Complaints Scheme

Complaints are important to us as they help us learn lessons and improve our performance. We take them seriously and aim to resolve complaints quickly and sensitively, treating complainants with courtesy and empathy.

The Financial Services Act 2012 requires the Regulators, namely the Financial Conduct Authority ('the FCA'), the Prudential Regulation Authority and the Bank of England, to have in place arrangements for the investigation of complaints against them. This is known as the Complaints Scheme (the Scheme).

The Regulators are also required to appoint an independent person – the Commissioner – to be responsible for conducting investigations in line with the Scheme. We expect most of the complaints we investigate to be resolved in a timely and satisfactory manner, and without being referred to the Commissioner.

The Commissioner plays a crucial role in the effective operation of the Scheme, as the independent figure overseeing it.

Improvement plans

Last year we set out our commitments to making significant changes through our plans for improving how the Scheme operates. We said this would include providing assurance on our performance improvements as the outcomes of the changes materialised. We have regularly updated the Commissioner on the progress of our change programme.

Over the last year we have made substantial investment in our people, data and systems capability. We:

- significantly increased the resources in the Complaints Team and improved the training and support available to our people
- improved data integrity through system upgrades and with a significant data cleansing exercise that enhanced our management information (MI) and oversight
- improved our quality assurance processes and overhauled our complaints handling infrastructure, processes and guidance

As a result, we have seen marked reductions in the backlog of complaints and improvements in the quality of our investigations and responses.

We have also enhanced the way we work with the rest of the organisation to ensure we get better at identifying and learning the lessons available to us from the complaints we receive, and at implementing improvements to the way the FCA operates. We will continue to develop how we share the learning and insights from our investigations and from root cause analysis with our Executive and Board Committees, which will provide valuable input to our broader work to transform how we carry out our role as a regulator.

That said, we acknowledge that we still have work to do to ensure we appropriately leverage the investments we have been making and embed good practice both within the Complaints Team and more widely across the FCA.

During the next year, we will be further increasing the permanent headcount in the team, including at a senior level, and continuing to improve the training and support for complaints investigators. We will ensure the improvements to our processes and system changes are embedded effectively. We will undertake a broader thematic analysis of the complaints we receive to better understand their root causes, so we can continue to identify and implement improvements to our broader practices across the FCA.

We also propose to enhance our engagement and information-sharing with the Commissioner, improving the regular MI we share. In turn, this will support the Commissioner in being able to understand our performance in relation to the handling of all complaints, and not only those that are referred to her by complainants.

Summary of FCA complaints considered in 2020/21

Summary of FCA complaints considered in 2020/21

1,470

complaints closed, or reviewed and deferred

91

Decisions reviewed by the Complaints Commissioner

78

decisions fully upheld by the Complaints Commissioner (Fully agreed with the FCA outcome)

13

Decisions not upheld, or additional recommendations made (Did not fully agree with the FCA outcome)

Complaints against the FCA

In 2020/21, the FCA received a total of 1,596 complaints which, as shown in Table 1, is the third consecutive year where we have seen significant increases in the volumes of complaints received.

As last year, a substantial proportion of the increase has been due to receiving large numbers of complaints about our regulation of London Capital & Finance plc ('LCF'). There have also been a significant number of complaints relating to failed firms and issues that are the subject of current regulatory or other action, where we have deferred investigating these under the Complaints Scheme until the ongoing regulatory actions are concluded.

Excluding all complaints where the investigation of any allegation has been deferred, the overall number of complaints received increased by 47% last year, and a further 21% this year.

Table 1: Volume of complaints received

Year	All complaints received in the year	No. of complaints, excluding deferred	% change
2020/21	1,596	946	+21%
2019/20	1,261	781*	+47%
2018/19	1,081	532	-3%
2017/18	557	550	

*Some complaints that had been included in last year's data were deferred after year-end due to regulatory action commencing whilst the complaints were being investigated.

Complaints and allegations

Each individual complaint may contain multiple allegations, and when we conclude a complaint, every allegation made will have a separate outcome. For example, if we receive a complaint that includes two allegations, after we have investigated, we might uphold one of the allegations but not uphold the other. In previous years we only had the capability to report on the outcome of allegations, and each complaint may have multiple allegations. As a result of the improvements we have implemented to our case management system since last year's report, we are now able to report outcomes at a complaint level and have used that as the basis for our reporting this year.

Table 2: Year-on-year comparison

	2020/21		2019/20	
	Received	Closed or deferred	Received	Closed or deferred
Complaints	1,596	1,470	1,261	1,392

Outcomes of complaints considered by the FCA

In Table 3 and Figure 1 below, we show an analysis of the outcomes for all complaints concluded during 2020/21. As explained above, while each allegation will have an individual outcome, we can now report outcomes at complaint level, rather than by individual allegation. The possible outcomes for a complaint are:

- Upheld
This is where the outcome of all allegations made within one complaint have been investigated and upheld in favour of the complainant.
- Partially upheld
This is where there are multiple allegations with different outcomes, at least one of which has been investigated and upheld in favour of the complainant, although there are other allegations made that have not been upheld or not investigated.
- Not upheld
This is where at least some of the allegations in a complaint have been investigated but none have been upheld.
- Not investigated
This is where we have decided to 'not investigate' all of the allegations made in a complaint. There are several reasons for this. For example, the allegations made may be about something that is specifically excluded from the Scheme, such as the exercise of our legislative functions, including making rules and guidance. We may also decide not to investigate an allegation under the Scheme if we believe it would be more appropriate to deal with it in another way, for example through legal proceedings.

If any allegation made in the complaint has been investigated, the complaint will have an outcome of upheld, partially upheld or not upheld.

There is further information about the reasons why we may not investigate an allegation in paragraph 3 of the Complaints Scheme. However, even though a complaint is not investigated, we may still provide a comprehensive response to the complainant providing further information or useful reference sources relevant to the subject matter of their complaint. This is referenced further under the Commissioner's theme of "FCA and rule-making" and our response to this theme below.

Table 3: Outcomes of concluded complaints

Outcome	Total
Upheld	66
Partially upheld	191
Not upheld	191
Not investigated*	372
Deferred	650
Total	1,470

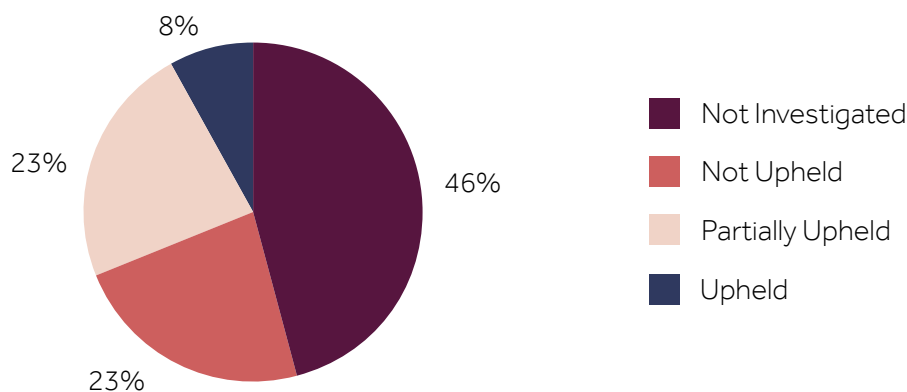
*This includes complaints that are out of scope, not investigated or withdrawn.

The increase in 'partially upheld' complaints this year is mainly driven by upholds of allegations relating to "poor service in complaints handling". During the year, another process change that has been made is to ensure we add an allegation relating to the complaints handling when there are delays or other service issues arising during our handling of a complaint. As we focused on concluding the oldest complaints this year (to clear the historic backlog), there was a high number of complaints concluded where an allegation relating to complaints handling was added because the complainant had experienced unacceptable delays or poor service in the handling of their complaint.

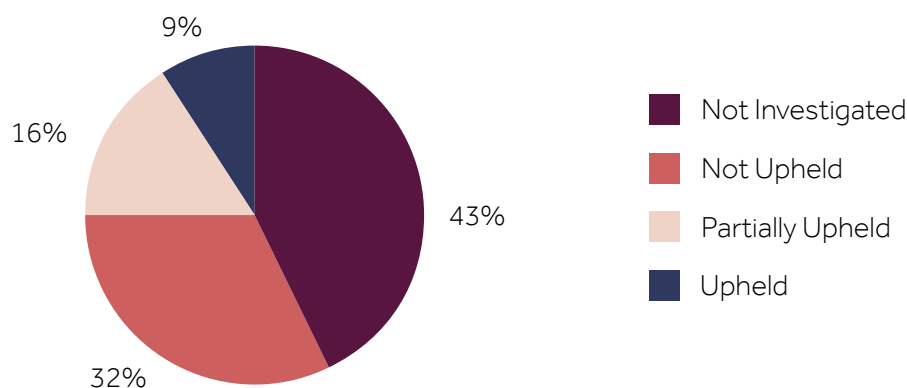
The data on outcomes of concluded complaints does not include deferred complaints, as the outcome of those will be reported once the investigation has been undertaken and the complaints have been concluded.

Figure 1: Outcomes of concluded complaints

2020/21



2019/20



Performance

In total, 820 complaints were concluded in 2020/21, a 14% increase from the 718 complaints concluded in 2019/20, and a 100% increase on the 410 complaints concluded in 2018/19.

This year we also received 650 complaints where the investigations have been deferred. This happens when an allegation relates to, or arises from, any form of ongoing action by the Regulators. In line with the Scheme, neither the Regulators nor

the Complaints Commissioner will normally investigate such allegations until that can be done without prejudicing or compromising the ongoing action.

We review all decisions to defer the investigation of a complaint at least every 6 months to ensure we are concluding all complaints under the Scheme as soon as possible. Through one of the process enhancements we introduced in the last year, we now also update all complainants regularly during the period of deferral.

The Commissioner concluded a decision on 91 complaints, compared to 63 last year. Of these decisions, the Commissioner fully agreed with our decision in 78 complaints (49 in 2019/20). This represents full agreement in 86% of cases, compared to 78% in the previous year.

In 13 complaints the Commissioner did not fully uphold our decision. This represents 14% of the complaints the Commissioner concluded in the reporting period and less than 2% of the overall volume of complaints we fully concluded in 2020/21.

Of decisions issued by the Commissioner, 33 included a recommendation. In total there were 60 separate recommendations, of which the FCA fully accepted 54. There were three main areas of focus:

- 26 related to suggested improvements in our processes or procedures
- 14 were for an ex gratia compensatory payment (some of which were for an increased payment to that already offered by the FCA)
- and 12 recommendations were for apologies to the complainant

We aim to deal with complaints promptly and set ourselves a target to close 75% of all complaints we receive within 8 weeks. This year we closed 56% of cases within 8 weeks (excluding those complaints that had been deferred or that were being investigated as part of a group of similar complaints). This is less than achieved in previous years.

The percentage of complaints closed within 8 weeks has been impacted this year by our deliberate focus on clearing older cases, and also due to managing a large influx of group complaints relating to our regulation of LCF and relating to failed firms.

Table 4: Percentage of complaints resolved within 8 weeks

Year	SLA met
2020/21	56%
2019/20	68%
2018/19	75%

Despite the improvements already made, we recognise our current performance is still not providing an acceptable level of service to many complainants, and we have steps in place to further improve performance over the coming year, as part of our ongoing change programme. We will improve by embedding the recently enhanced processes, by increasing the team resources, and by focusing on further reducing the backlog of older complaints. Accordingly, we expect the percentage of complaints we conclude within 8 weeks to increase during 2021/22.

Improving our performance under the Scheme

Despite a further substantial increase in the number of complaints received in 2020/21, the overall volume of open complaints at year end was similar to 2019/20. We have been able to maintain the level of open complaints through improving operational management, strengthening our resources and having more effective oversight and governance.

Comparing our performance from 2019/20 to 2020/21, we have also achieved:

- a 32% reduction in the number of complaints older than 6 months
- an 87% reduction in complaints older than 12 months and
- a 36% reduction in the average age of open complaints

Although we have made substantial progress and improvements in our performance through our transformation work, we fully recognise that we still have more work to do. We will continue working to fully embed and leverage the changes we have implemented over the last year, to ensure we continue to improve, and then maintain, the operational performance and service that we provide to individuals and firms that make complaints about the FCA. Our 2021/22 Business Plan is focused on ensuring that we deliver this objective.

Themes

In her Annual Report, the Commissioner outlined 4 key themes:

- FCA supervision and regulation of firms
- FCA and rule-making
- FCA data breach and
- vulnerable complainants

FCA supervision and regulation of firms

A large proportion of the complaints we have received about the supervision and regulation of firms is because of an increase in groups of complaints about failed firms or investments such as LCF.

In many cases, these are complaints that we have not yet been able to fully investigate due to ongoing regulatory action. However, as the Commissioner has commented, we have worked with her office to implement a robust review process to ensure complaints are investigated as soon as reasonably possible. We have kept both the complainants and the Commissioner updated regularly throughout the deferral period.

In relation to the Independent Reviews of LCF and Connaught, we accepted all the recommendations and lessons learned in the Reports and are providing public updates on our progress, as outlined in our report 'Implementing the recommendations from the Independent Reviews'. We note the Commissioner references that previous investigations by her predecessor identified similar concerns and some issues were also evident in the investigation of Keydata which relates to actions of the Financial Services Authority between 2002 and 2009. We have reviewed the lessons from the investigation of these complaints in the context of our current activity to address the issues raised in the Independent Reviews.

Since the end of the reporting period we have also updated on [our approach to handling the deferred complaints](#) relating to LCF and Connaught.

FCA and rule making

Each year the FCA receives complaints which are excluded from the Scheme and hence not investigated (see Figure 1). The most common exclusion is because a complaint is about our rules or legislative functions. Even though these complaints are excluded, the Complaints Team, supported by other areas, and in particular our Policy teams, work together to give complainants information and explanations about the relevant rules and, where possible, highlight other organisations that may be able to help. We are pleased that those efforts have been welcomed by the Commissioner.

We agree that it is important that we offer helpful information to consumers and firms that bring complaints. But it is also critical that we consider how to increase the information available to the public generally around the reasons for rule and other changes we make, as well as improving understanding of the remit of the Scheme. This will help both enhance wider knowledge and understanding of our work and reduce the volume of complaints made by consumers or firms about matters where the Scheme is not the right route for raising those concerns.

Greater clarity on what the Scheme covers will avoid complainants being disappointed when they are later informed their complaints are out of scope. We will be considering how to further address this as part of our ongoing improvement plans in 2021/22.

FCA data breach

In July 2019, we received a Freedom of Information Request asking for statistical data on complaints received under the Scheme for the calendar years 2018 and 2019. The data was compiled using a spreadsheet, which mistakenly included two hidden data fields that contained personal data.

Although complaints received about the data breach fell outside the scope of the Scheme, we upheld the complaints and provided additional information to reassure complainants as well as providing referral rights to the Information Commissioner's Office ('ICO'). Our complaint decisions were upheld by the Commissioner. We will continue to work with the Commissioner on complaints where there may be some overlap in jurisdiction to ensure the complainant is fully and appropriately informed of the right escalation route.

Complainants in vulnerable circumstances

We are pleased the Commissioner acknowledges the steps we are taking to improve the effectiveness of our communications with complainants, including changes we have already implemented this year to our website and correspondence to improve accessibility to the Scheme and the customer experience. There are also further improvements in train, including changes we have proposed to simplify the Scheme wording under the current [Consultation](#).

Ensuring fair access to financial products and services that meet the needs of different consumer groups is an important area of focus for us as a regulator. We have recently published a Discussion Paper jointly with the Prudential Regulation Authority and Bank of England, on [Diversity and Inclusion in Financial Services – working together to drive change diversity and inclusion in financial services](#). This Discussion Paper marks the first stage of opening up a formal discussion with stakeholders - setting out our role as a regulator, why we care about diversity and inclusion, the importance of data and options for policy changes to drive better outcomes. For more information about our regulatory role in relation to diversity and inclusion, please see: www.fca.org.uk/about/diversity-and-inclusion-why-it-matters-us/our-role-regulator-why-diversity-and-inclusion-matter-financial-services. Further detail about our organisational diversity and inclusion progress and initiatives over the last year is set out in our [Annual Diversity Report](#), published today (15 July 2021).

The Commissioner has also reflected on the FCA's wider work on the fair treatment of vulnerable consumers, which is another key priority for us. Our Principles for Businesses require firms we regulate to treat all their customers fairly and we expect firms to exercise particular care with consumers with characteristics of vulnerability or in vulnerable circumstances.

With the Covid-19 pandemic exacerbating challenges for many, we acted quickly to help firms manage the impact of the crisis on all customers, including those with characteristics of vulnerability. We communicated with firms on how they could help customers in vulnerable circumstances. We also published guidance for firms about supporting consumers in financial difficulty due to Covid-19, using our emergency powers to advance our consumer protection objective. This guidance was accompanied by information for consumers worried about payment difficulties as a

result of the pandemic. We will continue to use our insight to understand the issues consumers are dealing with, including as a result of coronavirus.

As the Commissioner notes, in February 2021 we published finalised guidance on the fair treatment of vulnerable customers. This makes clear that we want customers with characteristics of vulnerability to experience outcomes as good as those for other consumers. It is designed to drive improvements in the treatment of vulnerable consumers and bring about a practical shift in the actions and behaviour of firms. We will formally evaluate firms' progress in embedding this guidance in 2023/24.

Conclusions

This is the Commissioner's first Annual Report after 5 months in post, and we welcome her constructive observations of the Regulators' application of the Scheme.

We are pleased to have made good progress this year regarding the operational performance of the Scheme as a result of the significant investments we have made to improve the team resources and structure, and enhance our systems, processes and capability. All of this has had a positive impact on the service we provide. We welcome the Commissioner's recognition of this progress and look forward to working with her over the coming year as we introduce further improvements.

Looking ahead, we expect another busy year as we continue to enhance and embed the changes we have already made, as well as responding to a significant volume of complaints as the various ongoing regulatory actions conclude and we can investigate certain deferred complaints.

We are strongly committed to continuously improving the service that we provide to the consumers and firms who complain to the FCA and enhancing our learning from them.

We want this to remain a transparent journey and, as a sign of our intent, we have agreed with the Commissioner that we will provide her with more information about our performance under the Scheme than we have done historically. We will facilitate more detailed and in-depth regular reviews. This has been made possible by our investment in the function and associated systems and processes over the 15 months to March 2021.

We agree with the Commissioner that our complaints function is important in identifying opportunities for organisational improvement. We will continue to use the information we discover through our investigations to help the FCA improve the services it delivers.

