

The Financial Conduct Authority's response to the Annual Report 2018–19 of the Office of the Complaints Commissioner

July 2019

The Financial Conduct Authority's response to the Annual Report 2018–19 of the Office of the Complaints Commissioner

(For the year ended 31 March 2019)

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

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Introduction

The Financial Services Act 2012 requires the Financial Conduct Authority, the Prudential Regulation Authority and the Bank of England to have arrangements for the investigation of complaints against them, known as the Complaints Scheme.

The regulators are also required to appoint an independent person (the Complaints Commissioner) to be responsible for the conduct of investigations in accordance with the complaints scheme.

We take complaints against the FCA very seriously and aim to deal with most of them within eight weeks. Most of the complaints that we deal with are resolved without needing to be referred to the Commissioner.

The Commissioner plays a crucial role as an independent figure overseeing the Complaints Scheme. We use the Commissioner's knowledge and experience to add to our existing understanding of complainants' problems, improve our responses and learn from our mistakes.

The Complaints Commissioner's Annual Report for 2018-19 gives us a useful insight into the FCA's handling of complaints and the work and progress of the complaints team over the past 12 months.

Complaints against the FCA

Received Complaints

In 2018-19 the FCA received 1,075 complaints. As table 1 shows, this is a significant increase on previous years.

This increase was largely due to the number of complaints involving two firms, London Capital & Finance PLC (LCF) and the Collateral Companies (Collateral). These two firms went into administration which prompted significant numbers of their investors to complain to us (a total of 550).

Table 1 Number of complaints received

Year	Complaints Received
2018-19	1,075
2017-18	557
2016-17	590 577*
2015-16	464 590*

*Figure corrected September 2020

Complaints and Allegations

A complaint can contain several allegations. When we conclude our investigation of the complaint, each allegation will have an outcome. For example, we could receive a complaint that includes two allegations. Once we have investigated, we might uphold one allegation but not the other. Because of this, when we talk about the outcomes of complaints, we assess the outcomes of allegations as shown below in table 2.

Table 2 Year on year comparison

	2018-19		2017-18	
	Received	Closed	Received	Closed
Complaints	1,075	718	557	575
Allegations	1,584	967	807	767

Outcomes of allegations considered by the FCA

In table 3 and figure 1 below, we show an analysis of the outcomes of allegations for 2018-19. These outcomes are:

Partially upheld or upheld complaints

This is where we have investigated a complaint and on the evidence available, we have either agreed with all or some of the allegations made by the complainant.

Not upheld complaints

This is where we have investigated a complaint and on the evidence available, we have not agreed with the allegations made by the complainant.

Deferred complaints

This is where a complaint relates to, or arises from, any form of ongoing action by the regulators. It will not normally be investigated by either the regulators or the Complaints Commissioner until it can be done so without prejudicing or compromising the ongoing action.

Complaints not investigated

This is where for several reasons, we do not investigate a complaint. For example, it may be outside the scope of the Scheme, or about something that is specifically excluded from the Scheme, such as the exercise of our legislative functions, including making rules and guidance.

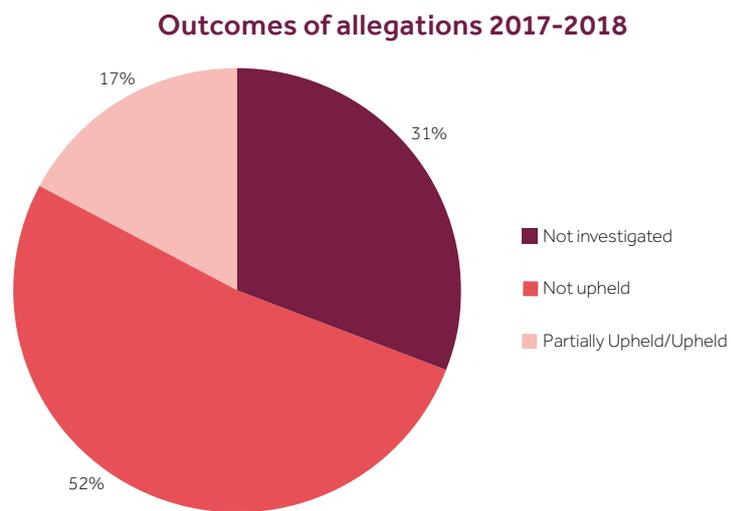
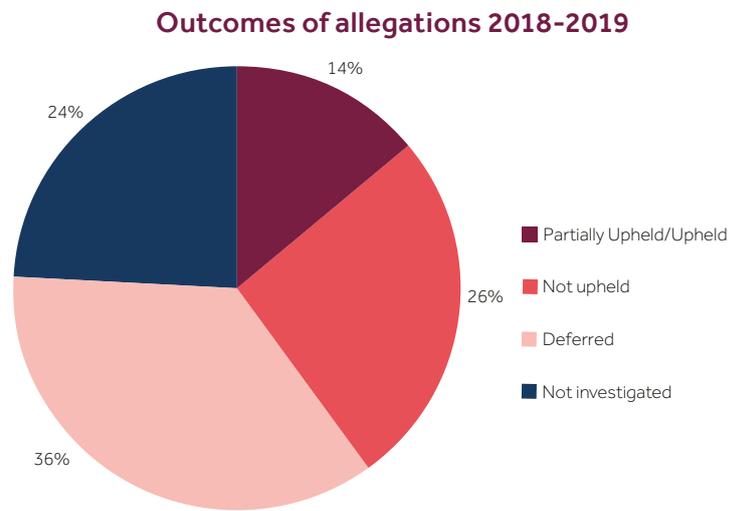
We may also decide not to investigate a complaint under the Scheme if we believe it would be more appropriate to deal with it in another way, for example through legal proceedings.

We give a full list of reasons we may not investigate a complaint in paragraph 3 of the [Complaints Scheme](#).

Table 3 outcomes of allegations

Outcome	Total
Partially upheld/upheld	130
Not upheld	249
Deferred	352
Not investigated	236
Total	967

Figure 1 Outcomes of allegations



Performance

During the year, we closed 718 complaints, up from 575 in the previous year. Of these, 130 complaints were upheld or partially upheld and 249 complaints were not upheld. The balance of 588 complaints were either deferred or not investigated.

We have deferred investigating the complaints about LCF and Collateral pending the outcome of related ongoing FCA investigations. It is not always necessary for an investigation to conclude before we can investigate a complaint. But we do need to be sure that our investigations do not prejudice the ongoing action. We regularly review our deferral decisions to ensure that we consider these complaints under the Complaints Scheme as soon as possible. As agreed with the Commissioner, we will review deferred cases every 6 months to ensure that it is still appropriate to defer the complaints.

The Commissioner reviewed 71 complaints in the year and disagreed, or partially disagreed, with our decision in 18 cases. This represents 25% of the cases he reviewed and just under 5% of the complaints we investigated that led to substantive conclusions.

We aim to deal with complaints promptly. As a result, we have a target of closing 75% of the complaints that we receive within eight weeks. Excluding deferred cases (as these would positively distort the result) we closed 75% of cases within eight weeks. This result was down on the 80% achieved in 2017-18 as shown in table 4. In part, this is because we have seen an increase in the complexity of cases which require a more extensive investigation and so take longer to resolve.

Table 4 Percentage of complaints resolved within 8 weeks

Year	
2018-19	75%
2017-18	80%
2016-17	42%

Themes

In his Annual Report, the Commissioner outlined four key themes:

- Problems with the Financial Services Register.
- The adequacy of information given to regulated firms and individual complainants.
- Concerns about the speed and adequacy of responses to information.
- Problems with delays in complaint handling.

The Commissioner helpfully referred to several decisions involving these issues, and noted that most of the issues that he raised have been resolved. We deal with each in turn below.

The Financial Services Register

The FCA is required under section 347 of the Financial Services and Markets Act 2000 (FSMA) to keep a record of authorised persons. This is commonly known as the Financial Services Register. In several of his Final Reports, the Commissioner made recommendations to improve the accuracy and usefulness of the information we hold on the Register. The Commissioner reported:

"The FCA is aware of all these issues [with the Financial Services Register]. It is clear that it recognises that the Register is not currently adequate as a public protection tool. It is difficult to understand, and sometimes inaccurate. This has clear implications for consumer protection. The poor design of the Register system, which the Commissioner has drawn attention to in previous reports, coupled with the complexity and lack of clarity arising from the distinction between regulated firms and regulated products mean that consumers sometimes believe that they have more regulatory protections than they really do."

The Financial Services Register is a public record of firms, individuals and other bodies that are, or have been, regulated by the PRA and/or FCA. Consumers can search the Register to find out whether a firm they are using, or plan to do business with, is authorised or by the PRA and/or FCA, or is exempt. In our opinion, we believe the Register operates in the way intended but we do recognise that there is a need improve the data integrity and accessibility to the public.

The FCA has started a comprehensive programme of work which is designed to improve the Register. This includes a project that will change the way the FCA maintains the information on the Register. Its aim is to remove incorrect or out of date information. Work is already underway to ensure the Register is more consumer friendly to use.

As part of the work we will:

- Publish the new certified persons data from firms.
- Implement a new user interface and design which we hope will deliver a better, more accessible and intelligible experience for the users.
- Introduce help for consumers to better understand the terms we use.
- Implement an improved search engine so users can better access the data they need and, further down the line, introduce guided user journeys focused on specific user needs.

Along with this, there is a data cleanse project which will deliver an annual confirmation by firms that their data has been checked and is correct plus a date stamp which will show Register users the last time the firm details were updated or the date of the confirmation.

The FCA has already committed to undertaking this work, and the project teams have taken the Commissioner's comments into account when putting these projects into place.

Whether a firm is on our Register remains a prudent step that consumers should take. However even if the name appears on the Register, we recommend that consumers should also consider other warning flags about scams as highlighted in our [ScamSmart Campaign](#).

Information given to regulated firms and individual complainants

The Commissioner commented:

"The FCA considers huge quantities of information every day, and has to make decisions about what to pursue. Many matters may not be priorities, even if the informant understandably feels strongly about them. In other cases, the FCA may act but be unable, for reasons of confidentiality, to tell the informant what it has done. This inevitably means that many informants will be disappointed by the FCA's apparent lack of action, or sceptical about the effectiveness of the FCA's response."

The FCA continuously aims to improve how it handles the significant amount of information it processes. We recognise that whilst confidentiality is very important, we should also try to share as much information as we can with complainants in an open and honest way. We have taken on board the comments made by the Commissioner and we will review our approach to complaints and sharing information.

Speed and accuracy of responses to information

The Commissioner has referred to his concerns regarding both the speed and accuracy of the way that the FCA passes information around internally and as a wider point, how the FCA provides assurance that satisfies public confidence. He comments:

"The FCA should consider publishing a fuller explanation of the steps which it is taking to control and quality assure the supervision process, and the effectiveness of those steps: this would provide a fuller picture than investigations into individual complaints can do."

We agree that it is important for us to be transparent about how we regulate firms. In March 2019, we published our 'Approach to Supervision and feedback statement' which explains the purpose of, and our approach to, supervising firms and individuals and the public value it delivers.

It sets out:

- Our role in ensuring fair and honest markets.
- Why and how we prioritise our supervision work.
- How, in practice we supervise the firms and individuals we regulate.

More details can be found in the full paper, [Our approach to Supervision](#)

In addition, we have reviewed and enhanced our key controls by process (Proactive, Reactive and Thematic) and quality assurance (QA) activities.

We have defined what we mean by quality in Supervision. The definitions have been designed and agreed with the Supervision senior leadership team to target the most important aspects of our decision making and processes. We have focused on 6 categories:

- Records management.
- Handling sensitive information.
- Adherence to process.
- Exercising judgement.
- Evidencing.
- Communications.

The enhanced QA framework covers a broad range of activities which are designed to provide a level of confidence that judgements, processes, standards and controls are appropriate and adhered to. When considered together, these areas also help to foster a culture of continuous improvement, sharing best practice and building our capabilities in Supervision. It is this framework which will address any concerns regarding the speed and accuracy of responses to information and how information flows around the organisation.

We are pleased to work with the Commissioner in the future on this matter and welcome any input he may offer.

Delays in complaints handling

The Commissioner reported:

"The Commissioner acknowledges that individual members of the FCA's Complaints Team have been working hard and conscientiously, but the fact is that – not for the first time – the FCA as an organisation has failed to resource its Complaints Team adequately, with the result that complainants – many of who are anxious and/or angry and/or vulnerable – have found that the Scheme has exacerbated their difficulties.

The FCA is not currently meeting the complaints handling requirement for prompt handling which it requires of those it regulates. It has, however, acknowledged these shortcomings, and at the time of writing this report it has recruited additional staff who are being brought in to the team."

The complaints team has seen a rise in both volumes and complexity of complaints. This has led to delays in processing them, despite last year's progress in reducing the backlog of complaints. In response, we have increased the number of staff on the team by 4.5 full time equivalent employees to a total of 12.5FTE.

We have set out in an action plan for 2019- 20 how this larger team can best use its resources through the following key initiatives designed to improve service delivery to complainants:

- Improving our case management practices enabling faster responses to complainants.
- Introducing an enhanced quality assurance framework to look at outcomes and investigation methodology.
- Enhancing the current management information.
- Reviewing how we use the findings of our investigations to improve organisational practices through recommendations and feedback.
- Procedural reviews to ensure best practice is followed in the handling of complaints.
- Reviewing our approach to how we share information.

Conclusions

The 'Foreword by the Commissioner' draws several conclusions, which the FCA largely agrees with.

The FCA recognised problems with its Financial Services Register, and, as noted more fully above, has started work to ensure the Register is improved.

One of the Commissioner's recommendations was to increase the size of the team. As described above, we have already recruited additional staff to ensure we can meet demand and provide responses to complaints in a reasonable time. The FCA will regularly review the complaints team's resourcing to ensure it is appropriate for future demand.

As the Commissioner states in his report, it is disappointing that the revised Complaints Scheme has still not reached completion. However, the work on the re-drafting of the Complaints Scheme has concluded, and the regulators are preparing to consult on the proposed changes. The focus of the changes has been to make the document more accessible by presenting it in plain English, and to be clearer about our policy on compensation for complainants.

The complaints team will continue to look at how beneficial it is to defer complaints whilst wider Enforcement action is ongoing. We agree that, if possible, it would be preferable to respond to complainants without deferring. Our intention is to only defer a complaint when there is a risk of prejudicing ongoing action. Where complaints are deferred, we will review their status every six months or on receipt of new information in relation to the ongoing action.

Much of the information the FCA sees is confidential. However, we will always consider if it would be appropriate for information to be released to a complainant in cases where it would not have a negative impact on the FCA's work or breach legislation.

We note with interest that the Commissioner highlighted the decrease of whistleblowing complaints. This outcome supports the work done by our Central Supervision Whistleblowing (CSW) team, based in Supervision. The team was introduced to track and monitor whistleblowing cases passed over by the main Whistleblowing team. CSW's work has enabled whistleblowing cases to be followed and developed upon with more accountability being placed on individual supervisors. Cases for closure now require sign off by a Head of Department and there is a thorough quality assurance process in place.

Alongside this the Whistleblowing team and Supervision have developed training, established 'Whistleblowing Champions' and provided regular guidance to staff handling cases. This has enabled staff to use intelligence with more confidence, leading to the potentially quicker resolution of cases. Supervisors are encouraged to seek the support from the Whistleblowing team and the Champions with the key requirement being 'to act' but to always protect the identity of the whistleblower.

The FCA recognises that a large proportion of complainants will be vulnerable, and the complaints team will continue to monitor this on a case by case basis to ensure it is delivering a high level of customer service to all complainants.



12 Endeavour Square London E20 1JN
Telephone: +44 (0)20 7066 1000
Website: www.fca.org.uk
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