

The Financial Conduct Authority's response to the Annual Report 2016–17 of the Office of the Complaints Commissioner

July 2017

The Financial Conduct Authority's response to the Annual Report 2016–17 of the Office of the Complaints Commissioner

(For the year ended 31 March 2017)

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 Complaints Commissioner's Annual Report for 2016–17 contained useful critique and insight into our performance over the year.

We consider his role to be a key part of our accountability. We value the important role that the Commissioner carries out and appreciate his insight and advice on areas where we can make improvements to our processes.

We take complaints against the FCA very seriously and we aim to deal with most complaints within eight weeks. The majority of complaints that we deal with are resolved without the need for referral to the Commissioner. We are encouraged that the Commissioner feels that the large majority of the complaints that he sees are dealt with fairly by the FCA, although we recognise that there is more for us to do.

We regret that the Commissioner has had reason to repeat the recommendations made in his last Annual Report, particularly in relation to delays in handling complaints. We have increased the resources available to the Complaints Team, recruited more senior investigators with experience of dealing with complex cases and implemented revised procedures to address this issue.

The FCA Complaints Team has instigated a continuous improvement programme that specifically looks at items such as the way we engage with complainants. This includes reviewing the tone of our communications and operating an effective root cause analysis on the complaints we receive. For the most complex cases, a Senior Adviser has been appointed to lead investigations. In addition to the initial technical changes, we are now focusing on the user friendliness and tone of the wording, which is in line with the Commissioner's findings on ensuring fairness and accessibility.

It will take time for the benefit of these changes to take full effect but we continue to focus on it and welcome the Commissioner's continued monitoring.

There is an ongoing piece of work to review the Complaints Scheme. We plan to make the proposed technical improvements and amendments to the Scheme available for consultation shortly.

Stage 1 complaints

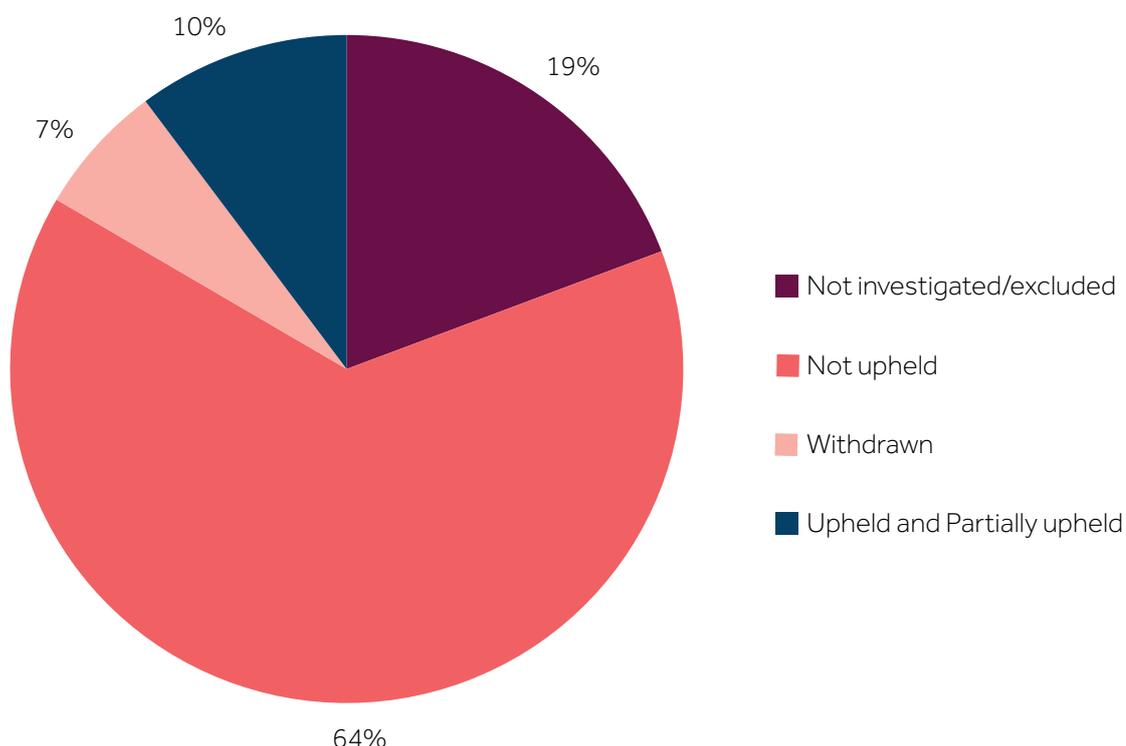
In 2016–17, the FCA received 577 complaints compared to 590 in 2015–16, 464 in 2014–15 and 268 in 2013–14. This increase in complaints is mainly attributable to the growth in our remit since taking on the regulation of consumer credit on 1 April 2014 and a high volume of complaints relating to Interest Rate Hedging Products (IRHP).

During the year, we concluded 884 complaints, which comprised 1,687 separate elements. This is a significant increase on the 532 elements concluded in the previous year and is a result of many of the complaints, particularly those concerning IRHP, containing multiple elements. We resolved 42% of complaints within eight weeks of receipt. This is notably lower than last year, primarily due to 137 IRHP and 129 Enhanced Capital Notes (ECN) cases that were resolved after eight weeks had elapsed. These cases were high in volume with a significant degree of complexity. These factors meant that in order to carry out the appropriate level of investigation and consideration, they took longer than eight weeks to close. In addition, the Complaints Team increased its available resource and focused this on resolving older outstanding cases that were also over eight weeks old. Together, these factors reduced the percentage closed within eight weeks from last year's results.

The nature of the complaints scheme is that the Commissioner does not see all complaints that are dealt with at stage 1, just those that are referred to him. It can be expected that a greater proportion of those complainants who have had the longest delays will refer their complaints to the Commissioner. It therefore follows that, as the backlog is dealt with, over the coming months there will be more complaints referred to the Commissioner that have been outstanding for some time. Our expectation is that from the autumn, there will be fewer complaints referred to the Commissioner.

The chart below shows the outcome of the complaints that we concluded during the year.

Outcome of complaints considered by the FCA in 2016–17



There are a variety of reasons why a complaint may not be investigated. These include a complaint being outside the scope of the Scheme or a complaint being about a matter that is specifically excluded from the Scheme, such as the exercise of our legislative functions (including the making of 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 provide details of how we deal with complaints in the Complaints Scheme (the Scheme) on our website:

www.fca.org.uk/your-fca/complaints-scheme

The majority of complaints that we deal with are resolved without the need for referral to the Commissioner. During the year, the Commissioner dealt with 161 complaints, of which 116 were concluded with a substantive response. Of these, there were eight cases where the Commissioner wholly or partly overturned the FCA's decision. In percentage terms, this is 6.9% of the complaints the Commissioner reviewed. This is a significant reduction compared to the 13.3% wholly or partly overturned by the Commissioner in 2015–16.

Themes and issues identified by the Complaints Commissioner

In his Annual Report, the Commissioner has identified three themes, detailed in points (a) to (c).

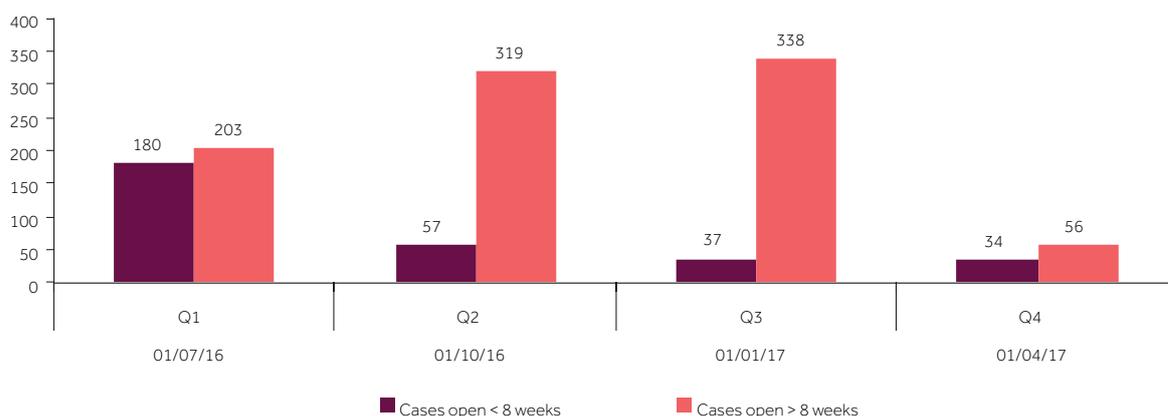
The final reports of these complaints and others can be found on the FCA website:

www.fca.org.uk/about/complain-about-regulators/complaints-commissioners-final-reports

Point (a) refers to the Commissioner alerting the FCA to emerging delays in 2016 and was highlighted in his Annual Report of 2015–16. We accepted this criticism and, as a result, we took steps to address the situation and increased the resource available to the Complaints Team. The Commissioner is correct in the observation that it was inevitable that the backlog that had built up would take time to work through the system, however we are satisfied that we have been able to provide sufficient resources to improve the matter. This is evidenced by the number of complaints in progress, which has reduced from over 300 at the height during 2016–17 to fewer than 60 complaints by the end of the period. We are continuously reviewing our ability to serve the needs of those who complain to the FCA, to ensure that we can provide the appropriate service, and we welcome the Commissioner's continued monitoring of this matter.

The table below illustrates the progress made on reducing the backlog:

Progress on backlog



Point (b) refers to 'the FCA's tendency to adopt a defensive position, especially in complex cases'. The Commissioner does provide context and say that 'most complaints handled by the FCA never reach the Commissioner, presumably because the complainant is sufficiently satisfied not to ask the Commissioner to review the complaint; and of those that do, in the majority the Commissioner is satisfied that the complaint has been dealt with thoroughly and fairly'. Nevertheless, we note the Commissioner's observation and will renew our efforts to ensure all those that bring a complaint to the FCA will be treated in an open, empathetic and honest manner.

We note that in item (ii) in point (b) the Commissioner states that the FCA has 'a tendency to exclude complaints from the Scheme'. We feel this assertion implies that we actively seek to find reasons to exclude complaints in order to avoid investigation. However, there are defined criteria within the Scheme that dictate whether a complaint should be investigated. We always seek to apply the Scheme with impartiality but this frequently involves a matter of judgement. We accept therefore that there have been occasions where we have incorrectly excluded a complaint but we use this as a learning point for future complaints of a similar nature. An example of this is complaints about the FCA's involvement in the Lloyds Bank ECN's matter – in 2015 the Commissioner overturned our decision to exclude these complaints from the Scheme, so when we received similar complaints in 2016 we changed our approach and investigated them.

Point (c) refers to our following up of Commissioner's recommendations. We welcome the Commissioner's feedback and recommendations on complaints as it helps us to improve how we handle similar issues in future. We are pleased to note the Commissioner's observation that there is emerging evidence of good practice in this respect. On rare occasions we may decide that we cannot accept a recommendation, although we only do so when we believe strongly that it would be inappropriate or impracticable for us to accept it. The Commissioner has referred to the two recommendations that we decided not to accept during the year – to put this in context, over the same period the Commissioner made 78 recommendations to us. We accept however that on those occasions where we do not accept a recommendation, we should be clear to both the Commissioner and the complainant why this is.



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