

The Financial Conduct Authority's response to the Complaints Commissioner's Annual Report 2019–20

July 2020

The Financial Conduct Authority's response to the Complaints Commissioner's Annual Report 2019–20

(For the year ended 31 March 2020)

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)

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/version/3

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.uk/official-documents

© Financial Conduct Authority copyright 2020

The text of this document (this excludes, where present, the Royal Arms and all departmental or agency logos) may be reproduced free of charge in any format or medium provided that it is reproduced accurately and not in a misleading context.

The material must be acknowledged as the Financial Conduct Authority copyright and the document title specified. Where third party material has been identified, permission from the respective copyright holder must be sought.

Any enquiries related to this publication should be sent to us at the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.

This publication is available at <https://www.gov.uk/official-documents>

ISBN 978-1-5286-2085-7

CCS0620788514

Printed on paper containing 75% recycled fibre content minimum.

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office.

Contents

Introduction	P6
Complaints against the FCA	P8
Outcomes of allegations considered by the FCA	P9
Performance	P11
Themes	P12
Conclusions	P16

Introduction

The Complaints Scheme

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

The way we do this is set out in the Financial Services Act 2012. This requires the Regulators, the Financial Conduct Authority, 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 Regulators are also required to appoint an independent person (the Complaints Commissioner) to be responsible for conducting investigations in line with the Complaints 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. We aim to investigate and address most of the complaints we receive within 8 weeks.

The Commissioner plays a crucial role in the effective operation of the Scheme, as the independent figure overseeing the Complaints Scheme. The Complaints Commissioner's Annual Report for 2019-20 reflects his concerns around delays and quality issues in the Complaints Team, which we acknowledge. However, we think it is important to put these points into context.

Volumes of complaints increased substantially in 2019-20

The past year has been particularly busy for our Complaints Team, during which we concluded more complaints than in any previous year.

Some of the complaints we receive relate to issues that are the subject of current regulatory action. In line with the Complaints Scheme, these are not normally investigated (by either the Regulators or the Commissioner) until such action has concluded. So we have to defer these complaints.

However, excluding the deferred complaints, we have seen a 68% increase in the number of complaints this year compared to 2018-19. Despite this, we are pleased to note that the number of complaints referred to the Commissioner has not substantially increased. We are also reassured that in 49 of the 63 complaints the Commissioner concluded this year, he fully upheld the FCA's investigation and decision. Whilst there were 14 complaints where the Commissioner did not fully uphold our decision, this represents less than 2% of the overall number of complaints that we determined during the year.

The Commissioner's report also sets out more detail about the specific concerns he had in 7 of the 14 cases in which he did not fully uphold our decision. However, based on the small sample of cases seen by the Commissioner, the ability to draw general conclusions about the majority of complaints that were determined by the FCA without reference to the Commissioner is limited.

The transformation plans will continue to drive improvements

We are pleased that the Commissioner recognises the positive changes we have made in recent months, including the ambitious plans underway for improving our performance and effectiveness – both in considering the complaints themselves and learning from the outcomes.

These improvements will take time to take effect and filter through into the cases the Commissioner reviews. There is still more work to be done.

We are fully committed to making further changes through our ongoing improvement and transformation plans, and we will continue to share our progress with the Commissioner. This will include providing assurance on the improvement of our performance as the outcomes of these changes materialise over the coming months. We will effect change through various initiatives such as strengthening our quality assurance and root cause analysis, linking with the wider FCA Transformation Programme as highlighted in our Business Plan 20/21.¹

We have included more information about our improvement and transformation plans and our response to the specific recommendations the Commissioner raised in the in the Themes and Conclusions sections of this document.

Summary of FCA complaints considered in 2019/20

1,392

complaints closed, or reviewed and deferred

63

Decisions reviewed by the Complaints Commissioner

49

Decisions fully upheld by the Complaints Commissioner

14

Decisions not upheld, or additional recommendations made

¹ www.fca.org.uk/publication/business-plans/business-plan-2020-21.pdf p11

Complaints against the FCA

Complaints received

In 2019-20 the FCA received a total of 1,276 complaints which, as shown in Table 1, represents a significant further increase to the already elevated level we had received in 2018-19.

This increase was partially due to receiving further complaints about London Capital & Finance plc (LCF) and the Collateral Companies (Collateral), which was also a feature in 2018-19. However, many of those complaints relate to issues that are the subject of current regulatory or other action. So we have deferred investigating them under the Complaints Scheme until those actions are concluded.

Table 1 Volume of complaints received

Year	Total complaints received	No of complaints, excluding deferred	% change excluding deferred
2019-20	1,276	848	+68
2018-19	1,075	504	-8
2017-18	557	546	-6
2016-17	590 577*	580	

*Figure corrected September 2020

Excluding all the complaints where any allegation has been deferred, the overall number of complaints received has risen by 68% from the volume received in the previous year.

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. So, when we talk about the outcomes of complaints, we present the outcomes of the allegations as shown below in Table 2.

Table 2 Year on year comparison

	2019-20		2018-19	
	Received	Closed or Deferred	Received	Closed or Deferred
Complaints	1,276	1,392	1,075	718
Allegations	1,924	2,198	1,584	967

Outcomes of allegations considered by the FCA

In Table 3 and Figure 1 below, we show an analysis of the outcomes of allegations for all complaints concluded or deferred in 2019–20. As above, when a complaint has more than one allegation, then each allegation may have a different outcome.

The possible outcomes are:

Upheld or partially upheld

This is where we have investigated an allegation and, on the evidence available, we have agreed with all or some of the allegation made by the complainant.

Not upheld

In this case, we have investigated an allegation and, on the evidence available, we have not agreed with the allegation made by the complainant.

Not investigated

This is where we do not investigate an allegation. There are several reasons why this might happen. For example, the allegation may be outside the scope of the Scheme, or about something that is specifically excluded from it, 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.

There is further information about the reasons why we may not investigate an allegation in paragraph 3 of the Complaints Scheme.

Deferred

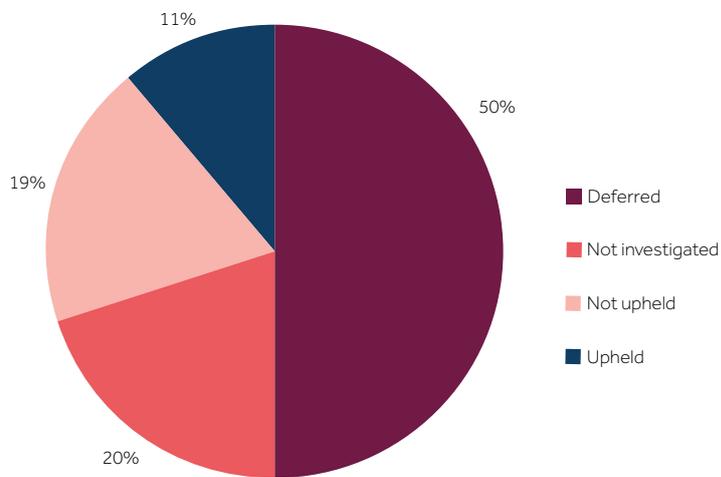
This is where an allegation relates to, or arises from, any form of ongoing action by the Regulators. In line with the Scheme, such allegations will not normally be investigated by either the Regulators or the Complaints Commissioner until that can be done without prejudicing or compromising the ongoing action.

Table 3 Outcomes of allegations

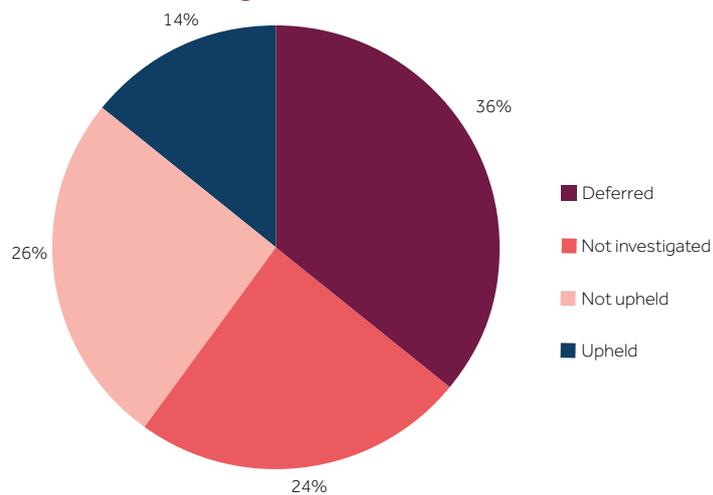
Outcome	Total
Partially upheld/upheld	232
Not upheld	424
Not investigated	449
Deferred	1,093
Total	2,198

Figure 1 Outcomes of allegations

Outcomes of allegations 2019-2020



Outcomes of allegations 2018-2019



Performance

During the year, we closed, or reviewed and deferred, a total of 1,392 complaints, comprising 2,198 allegations. This is a significant increase from the 718 complaints that were closed or deferred in 2018-19 (comprising 967 allegations).

In total, there were 734 complaints fully concluded this year, and these included 232 allegations that were upheld or partially upheld, 424 allegations that were not upheld and 449 allegations that were not investigated (e.g. because they fell outside the scope of the Scheme or were more appropriately dealt with in another way). A further 1,093 allegations have been deferred due to ongoing regulatory action.

It is not always necessary for an ongoing regulatory action to conclude before we can investigate a complaint, but we do need to be sure that investigation by the Complaints team will not prejudice the ongoing action. We regularly review our deferral decisions to ensure we consider all complaints under the Complaints Scheme as soon as possible.

The Commissioner reviewed 275 complaints and enquiries in the course of the year, and concluded a decision on 63 complaints. Of those, the Commissioner fully upheld our decision in 49 complaints, which is over 75%. There were 14 complaints where he did not fully uphold our decision, which represents less than 2% of the overall volume of complaints we fully concluded in 2019-20.

We aim to deal with complaints promptly and set ourselves a target to close 75% of all complaints we receive within eight weeks. This year we closed 68% of cases within eight weeks. This is less than the 75% achieved in 2018-19, and the 80% the year before, as shown in Table 4. This has been partly due to an increase in the volume of complaints received and partly due to their complexity, as complex complaints require more extensive investigation.

Table 4 Percentage of complaints resolved within 8 weeks

Year	SLA met
2019-20	68%
2018-19	75%
2017-18	80%

Themes

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

- delays and quality problems in the FCA's Complaints Team
- accuracy of Registers
- supervision of firms
- delays in regulatory processes, lack of candour about extent of failings, and the impact upon financial services firms

The Commissioner has also highlighted comments from some of the decisions he has made during the year. Given the challenges faced in drawing conclusions from such a sample of cases, we address the broad themes flagged by the Commissioner below, but (with one exception) do not consider it helpful to comment further on the details of the individual cases.

Overall, we are pleased that the Commissioner recognises the FCA's significant efforts to improve performance and learn from complaints, which he acknowledges have already led to improvements.

The one instance where we do consider it necessary to respond specifically, is regarding FCA00642, which the Commissioner references to support a view that 'on occasions, the FCA is reluctant to be wholly candid about its own failings'. The full decision of the Commissioner in this case is published on his website, as is our response.

The decision notes that the FCA's conclusion after investigation was that the failure to provide the requested response was 'not acceptable' and had arisen due to 'human error'. Whilst we acknowledge that the Commissioner had concerns about this explanation, in response to being expressly invited by the complainant to 'speculate that the withholding of the information was a deliberate attempt to prolong the process to secure additional evidence', the Commissioner concluded 'I do not consider that the facts enable me to make that inference'. We fully accepted our failings in this case in our own decision letter, and upheld the complaint and apologised. We therefore do not agree that the FCA lacked candour.

Delays and quality problems in the FCA's Complaints Team

The Commissioner has laid out concerns regarding delays in the handling of complaints and quality issues. In addition to issues highlighted in his reports on individual complaints, he has also raised more general concerns. These relate to the adequacy of the information and timescales given to complainants and of some responses, and the resourcing, stability and capacity of the Complaints team.

In his Foreword, he highlights the importance of the FCA dealing with its backlog and effectiveness, strengthening quality control. He also notes the importance of identifying and addressing regulatory issues as a means of ensuring continuous improvement. We were already taking steps to deal with all of these issues.

A high percentage of complainants have received timely and adequate responses to their complaints. But it is unacceptable that some complainants have experienced significant delays in the handling of their complaints or received inadequate responses.

During the course of this year, we have implemented comprehensive steps to eliminate the backlogs in complaints handling and improve performance. We are pleased that the Commissioner is already seeing signs of improvement.

A key measure to improve service delivery has been the integration of the Complaints function into our Risk Division from 1 October 2019 to come under the stewardship of an Executive Director, following which additional senior resource has been recruited to help oversee the function and take forward changes to the current processes to improve our efficiency and effectiveness.

Towards the end of 2018/early 2019, in view of an increasing volume of complaints being received, we had increased the baseline headcount of the team by 50% and were supplementing the team with additional temporary resource. A further significant and unexpected increase in the volume of complaints received in late 2019 prompted a further re-evaluation of the resource requirements.

As a result of this, a further increase to the permanent baseline of the team by 40% was agreed, including enhancing the overall seniority of resources in the team. The team continues to be supplemented with additional temporary resources until we reach a fully sustainable position.

During the year we have made significant improvements to our management information (MI), training and other processes. We are also increasing our capacity for undertaking Quality Assurance and root cause analysis.

We have enhanced our governance and oversight to ensure the complainant's perspective is being adequately considered in all cases. We are also improving how we track the embedding of recommendations made as a result of complaints investigations. Combined with strengthening our root cause analysis of the issues that lead to complaints being made, this will help the organisation learn and ensure continuous improvement.

Accuracy of Registers

We have to keep a record of authorised persons under section 347 of the Financial Services and Markets Act 2000 (FSMA). This is commonly known as the Financial Services (FS) Register.

The Commissioner has reported concern that complaints involving the FS Register were again a significant feature of complaints this year. But we are pleased he has commended our significant programme of work over the past year to improve the usability and reliability of the FS Register.

The measures to help improve the accuracy of the FS Register have included:

- introducing a requirement for an annual attestation from firms of their details, with the date of the last attestation to be displayed on the new FS Register when launched

- an exercise to verify the records of over 6,000 passporting firms with the relevant Home State regulator
- and separate work to cross-check the FCA records with those at Companies House

Another concern raised in complaints has been users of the FS Register not fully understanding the information presented to them, or not being able to find relevant information. So our transformation project will introduce Directory and Register Enhancements (DARE). We expect the improved FS Register to go live later in summer 2020.

The new FS Register introduces significant improvements to its navigability, and will help users better understand the information it gives them. For example, sometimes users have wrongly assumed that an authorised firm is automatically regulated for any financial activities it undertakes, whereas only some of their activities might be within the scope of regulation. The new FS Register will make it clearer which particular activities each firm has permission from the FCA to undertake.

Since March 2020, we have also created a permanent Register team and started a Register Portfolio of work to manage ongoing improvements to the Register consistent with the FCA Register strategy.

We will remove the Consumer Credit Interim Permission Register in July 2020 (at the same time as the new FS Register goes live) – this will remove data that is no longer relevant following the conclusion of interim permissions, simplify the Register search results and remove duplication of firm information.

Further delivery of enhancements and new features will continue throughout the financial year 2020/21.

Supervision of firms/Delays in regulatory processes, lack of candour about extent of failings, impact upon financial services firms

The Commissioner has referred to concerns about the speed at which he believes the FCA shares information internally and takes action. In our 2020/21 Business Plan we identified four external priorities we will be focusing on over the next one to three years.

The fifth priority, our own transformation, will enable us to deliver our external priorities better. It will ensure that we are better equipped to meet both our current and future priorities. We will report on our progress on these priorities in our Annual Report and Accounts 2021/22.

As our Business Plan makes clear, we have had to adapt rapidly to the coronavirus (Covid-19) pandemic and we are determined to learn the lessons from operating during the crisis. We have had to be particularly agile and home in quickly on issues and we are looking at ways to embed these behaviours across all parts of the FCA.

More broadly, a regulatory approach which focuses on outcomes will allow us to be clearer at a time when market dynamics, innovation, societal and legislative changes are all transforming the financial landscape.

We want all firms to take the end outcomes for consumers and markets into greater account when they design and deliver services. To support this, we will be clearer with firms about the outcomes we expect them to achieve, as well as how we are targeting our own work to achieve them. Our focus on outcomes also means we are changing the way we plan, prioritise, measure and report on our work.

Through the work that we do, we receive a wealth of information and intelligence about the markets, firms and individuals we regulate, and it is critical that we get the right information into the hands of the right people to take timely action.

As part of our own transformation, we are reviewing and making changes to how we identify, collate, prioritise, disseminate and act on the information and intelligence we receive. This will ensure a more focused and coordinated approach to information and intelligence across the FCA, and will enable us to operate in a more dynamic and agile way to anticipate issues and potential threats and take action at pace.

We are also investing in our systems and processes to enable us to work more efficiently and make better use of our sources of information. Our Data Strategy, in particular, will harness the power of data and help us understand markets and consumers better. In turn, more effective use of information and intelligence will allow us to identify harm and address it more quickly when we see it. It also has the potential to reduce the regulatory burden on firms.

Finally, we are also further embedding our Quality Assurance processes across our Supervision divisions, including Authorisations, to incorporate a consistent process for root cause analysis both of individual case outcomes, and when themes are identified from our QA management information. We are also improving how we identify and embed learning from complaints investigations. We are doing this by introducing more systematic engagement between the Complaints team and our business areas. We want to ensure that we can promptly and continuously improve with what we learn.

Conclusions

The 'Foreword by the Commissioner' identifies a number of broad issues.

The Commissioner's comments regarding the need to address the backlog of complaints, strengthen quality control, and ensure that regulatory issues are identified and addressed, are all matters that we acknowledge. They are being addressed by changes we have already implemented in relation to the functioning of the Complaints team, and by further improvements we have in train over the course of this year. We have also set out in this report some of the significant work undertaken across the organisation to address the key themes identified by the Commissioner arising out of complaints (for example, the accuracy of the Register).

The Commissioner makes three recommendations, which we have responded to below.

First, he recommends that we improve the Scheme to make it more readily understandable to complainants, and that we clarify the policy on compensation. We agree that this is important, and will be issuing a Consultation paper on proposed changes to the Scheme to address these points.

Second, he recommends that the FCA should give the Commissioner (or another independent person) a wider role in periodic quality assurance of the operation of our Complaints function. As highlighted, in addition to strengthening our own quality control processes, we are also taking steps to enhance the general level of information about complaints and related management information we share with the Commissioner in our regular meetings and liaison. As part of this, we will provide assurance information to the Commissioner through sharing quality control and root cause analysis outcomes. This will include more detail on how we have changed our processes and procedures as a result of recommendations arising from complaints together with regular progress reports on our transformation plans.

Finally, he recommends regular publication of the steps taken by the FCA to review the operation of its functions and to address concerns, including those arising from the Complaints Scheme – for example, the triaging of data received by the Supervision Hub, the maintenance of the Register, and the effectiveness of supervisory responses to intelligence. As a body committed to providing public value, we are already subject to oversight and public assurance in a number of ways including: independent reviews by our Internal Audit Division; publication of the Annual Service Standards that monitor delivery against statutory and voluntary performance targets; our annual reporting cycle that includes the Annual Public Meeting; and, of course, by the Treasury Select Committee and Parliament. We will also continue to use our annual report on Complaints to demonstrate improvements made both to the operation of the Complaints function and the organisation more widely as a result of the root cause analysis we undertake.



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