

The Financial Conduct Authority's Response to the Complaints Commissioner's Annual Report 2022/23

July 2023

The Financial Conduct Authority's response to the Complaints Commissioner's Annual Report 2022–23

(For the year ended 31 March 2023)

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Introduction

In this report we respond to the points raised in the Complaints Commissioner's Annual Report and give an update on our work to continually improve our complaint handling performance.

Our investment in complaints handling has created further improvements in our operational performance during 2022/23 against all of our operating service metrics. We will continue to consolidate and build on this in the coming year, including in terms of quality and customer service in light of the continued changing nature of the complaints we receive.

We aim to provide a professional service to those that bring complaints to us by meeting our operating service metrics and giving clear and helpful answers to complaints. We have continued to see a shift in the complexity and nature of the complaints referred to us, with a significant increase in the number of active group complaints which involve multiple complaints about the same issue.

One of our key aims is to use what we learn from complaints, so that we can make improvements. We still have more to do but have made progress during the year.

We are pleased that the Commissioner agreed with our decisions in the vast majority of the complaints that they concluded during the last year. However, we note the Commissioner's themes and observations and are committed to continue making improvements to these areas.

The dedication and professionalism of our colleagues at the FCA has been central to our improvements and put us in a strong position to make further progress and deal with the challenges of the coming year.

The Complaints Scheme

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

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

The Scheme explains that complaints can be made in connection with the exercise of, or failure to exercise, any of the Regulators' relevant functions. The FCA Board has oversight of the FCA's operation of the Scheme through its Board Audit and Risk Committees and takes a close interest in complaints handling and outcomes.

The Regulators have historically been required to appoint an independent person, approved by the Treasury – the Complaints Commissioner (the Commissioner) – to be responsible for conducting investigations in line with the Scheme. When changes in the Financial Services and Markets Act 2023 come into force the role will be appointed directly by the Treasury going forward. The legislation also includes other provisions on the accountability of the Regulators. We have been working with stakeholders in readiness for the changes and we welcome the update to the legislation.

We expect to resolve most of the complaints we investigate in a timely and satisfactory way, and without being referred to the Commissioner. However, as the independent figure overseeing the Scheme, the Commissioner plays a crucial role in its effective operation and our accountability mechanisms.

We welcome the Commissioner's scrutiny. It gives us independent insight about where we are doing well and where we could improve. It also supports us, or the Treasury where legislative change is required, to consider and apply relevant findings and recommendations from individual complaints to the broader regulatory setting. Importantly, the Commissioner's scrutiny also supports transparency through the publication of both Final Reports issued on individual complaints and their Annual Report.

Our [public response](#) to the Commissioner's 2021/2022 Annual Report explained that the Regulators are consulting on a revised version of the Complaints Scheme. The aim is to make it more user-friendly and give a more detailed description of our approach to ex gratia compensatory payments to help complainants understand what they can and cannot expect from the Scheme. The revised Complaints Scheme was initially delayed while we completed the 3 independent reviews underway at the time of the consultation, and we had aimed to have implemented the revised Scheme by now. However, because of the potential changes to the Regulators' accountability and potential resulting changes to the Scheme, we reluctantly concluded that it would not be appropriate to finalise or publish any changes to it until after the legislative process concluded. Now the new legislation has received Royal Assent we will publish the revised Complaints Scheme and Policy Statement as soon as possible.

Our Complaint & Outcome Definitions

When we receive complaints under the Scheme which are low impact, and can be dealt with quickly and easily, then we may ask for them to be investigated by the area that is the subject of the complaint. These complaints are referred to as **local area complaints**.

If we receive a complaint under the Scheme that the Complaints Department investigates and provides a response to, then we refer to this as a **standard complaint**. Local area complaints are referred to the Complaints Department for further investigation as a standard complaint if the complainant remains dissatisfied after the initial response.

We can also receive multiple complaints about the same event or issue. We class these as a **group complaint**.

Sometimes we have to defer our investigation into a complaint where it relates to ongoing regulatory action. This is referred to as a **deferred complaint** and can relate to a standard complaint or a group complaint.

Each individual complaint may contain several allegations, and when we conclude a complaint, every allegation made will have a separate outcome. For example, if we receive a complaint that includes 2 allegations, our investigation might uphold one of the allegations but not uphold the other.

The possible outcomes for a complaint are:

- **Upheld:** This is where we have investigated all allegations made within one complaint and upheld them all in favour of the complainant.
- **Partially upheld:** This is where there are multiple allegations with different outcomes, at least one of which we have investigated and upheld in favour of the complainant, although there are other allegations that we have not upheld or not investigated.
- **Not upheld:** This is where we have investigated at least some of the allegations in a complaint, 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 may be about something that is specifically excluded from the Scheme, such as the exercise of our legislative functions (which includes 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 the Upper Tribunal.

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

Continued Performance Improvements

In our public response to the Commissioner's 2021/2022 Annual Report, we explained that we were continuing to invest in our people, systems, data and processes to improve the timeliness and quality of our investigations and responses.

In particular, we explained our commitment to building on our improved performance against our standard and local area complaint operating service metrics and reducing delays for standard complaints. We have made significant improvement in this area, as demonstrated in Tables 5 and 6 below.

Table 1/Figure 1 below shows that we received 242 more complaints in 2022/23 compared with 2021/22 - a 20% increase.

For our standard and local area complaints, we substantially improved on our performance against our operating service metrics, delivering a 23 percentage point increase in cases closed within 8 weeks. We do not include group complaints in this metric as these are often deferred due to ongoing regulatory action.

The nature of the complaints we receive has seen a further significant shift in the last year. We are seeing higher volumes of more complex group complaints and we expect this trend to continue. As at end March 2023, we had a total of 1,264 open group complaints. Of these, 988 were deferred as we are currently unable to progress the complaints investigation, often due to on-going regulatory action. During 2022/23 we received 594 group complaints compared to 380 in 2021/22, which is a 56% increase.

We also committed to increasing the availability and accessibility of Complaints management information across the FCA, with detailed information now being shared across the organisation. This means we are more data led in our understanding of the volumes, nature and causes of complaints, which helps us in becoming a more effective, innovative and adaptive regulator. For example, insights from complaints have helped inform some of the changes we are making to the FCA Register.

In the coming year we will continue to use data and analytics to further build our understanding of the causes of complaints and how we can improve.

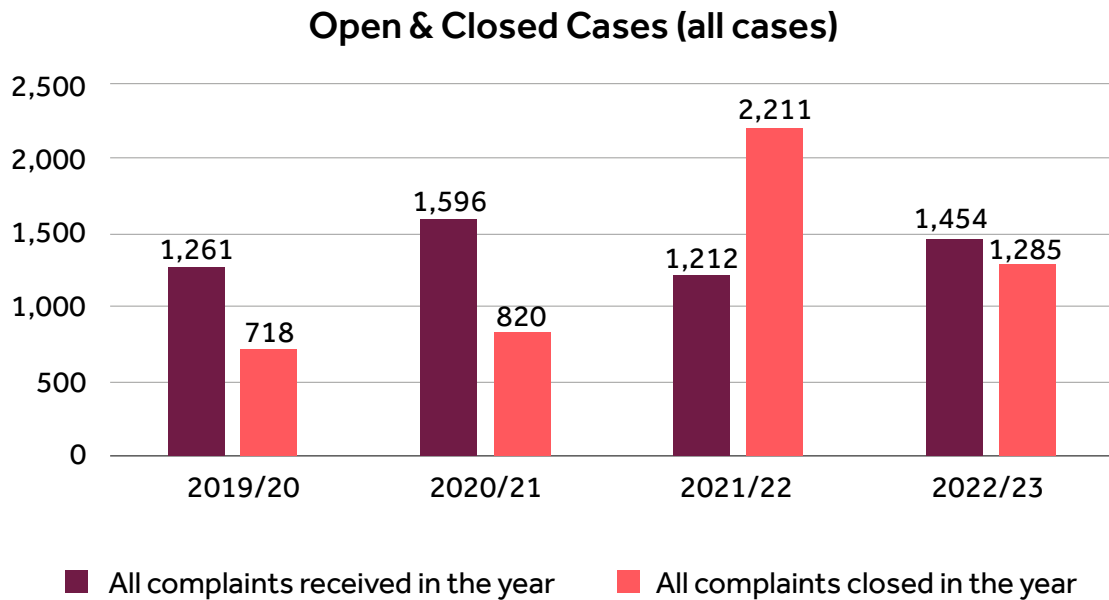
Table 1. Year-on-year open and closed cases

Year	All complaints received in the year	All complaints closed in the year
2019/20	1,261	718
2020/21	1,596	820
2021/22	1,212	2,211*
2022/23	1,454	1,285

* This number is high due to the investigation and closure of 1,184 complaints involving our supervision of London Capital & Finance plc (LCF) in this financial year, where the

majority of complaints were received in 2018/19 and 2019/20 and deferred due to the Independent Review into the FCA's regulation of London Capital & Finance plc.

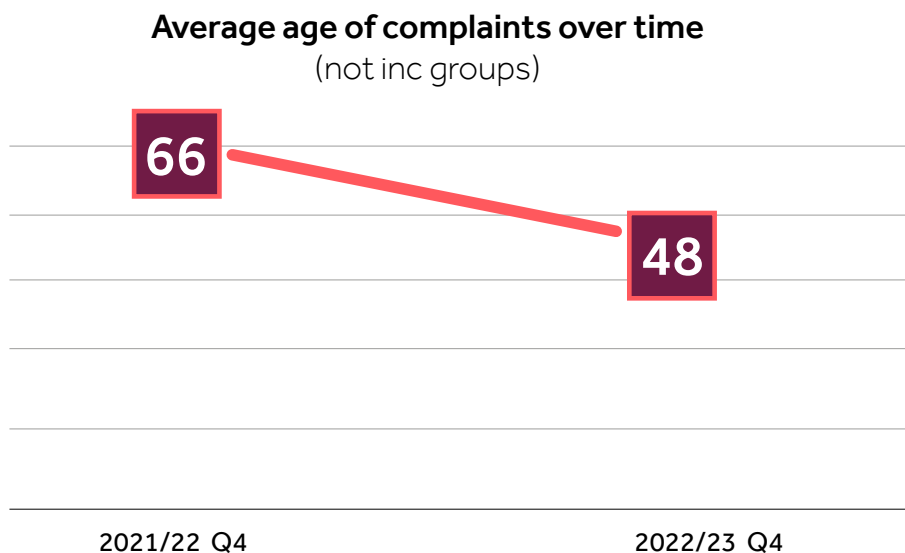
Figure 1. Year-on-year comparison of all open vs closed complaints



Last year, we continued to resolve our backlog of standard complaints, which does not include group or deferred cases. We are now operating without a backlog of standard complaints.

Our average age of open standard and local area complaints has also reduced further since the end of the 2021/2022, from 66 days in quarter 4 to 48 days in quarter 4 2022/2023 (see Figure 2). We are now communicating with complainants and answering complaints at a pace which broadly meets our operating service metrics (Table 5).

Figure 2. Average age of standard and local area complaints over time



We have achieved these improvements by implementing changes to our ways of working. For example, we have set up a Triage and Early Resolution function within the Complaints Department which aims to identify and conclude less complex complaints more quickly.

We have continued to invest to improve the quality of our complaint handling. We have piloted and rolled out enhanced quality assurance measures which place the complainant journey and customer service at the centre of our quality reviews, providing robust challenge over both our decisions and how we communicate with complainants. We will continue to prioritise the quality of our complaint handling as we build on this, as well as making other changes.

This will help us respond to some of the comments made by the Commissioner around our complaint handling service and aligns with our aim of continuously delivering a high-quality complaint-handling service.

We still have work to do to maintain and consolidate our improved complaint handling performance. We also accept and recognise our need to continually improve, including the areas identified by the Commissioner. We will continue to adapt and enhance the tools we provide to our complaints investigators to help deliver these improvements this year.

Summary of FCA Complaints in 2022/23

Table 2: Summary of FCA Complaints 2022/23

Summary of FCA Complaints 2022/23
1,285 Complaints closed
163 *Decisions reviewed by the Commissioner (including 7 cases determined by the Alternative Solicitor)
140 Decisions fully upheld by the Complaints Commissioner or Alternative Solicitor (fully agreed with the FCA outcome)
23 Decisions that were not upheld (the Commissioner or Alternative Solicitor did not fully agree with the FCA outcome)

* The Alternative Solicitor was appointed to deal with complaints on behalf of the Complaints Commissioner where they had a conflict of interest. The Commissioner decided it was not appropriate for them to investigate such complaints because, for example, they had a conflict as a result of their previous role as the Independent Assessor for the Financial Ombudsman Service. The 163 decisions reviewed by the Commissioner or Alternative Solicitor excludes 27 complaints decided by the Commissioner that were not referred back to the FCA and did not make an assessment of an FCA decision outcome.

Complaints against the FCA

In this section, we report on the volume of complaints received and closed during the year, the number of referrals to the Commissioner and complaint outcomes.

Summary of FCA complaints in 2022/23: all complaints

Last year we received more complaints overall than in 2021/22. This is because, while we received similar numbers of local area and standard complaints than in 2021/22, we received 214 more group complaints, an increase of 56% on the previous year.

Table 3. Volume of complaints received

Year	All complaints received in the year	% Change
2022/23	1,454	+20%
2021/22	1,212	-24%
2020/21	1,596	+27%
2019/20	1,261	+17%
2018/19	1,081	-3%

Complaint closures and outcomes

In total, we concluded 1,285 complaints last year; a decrease from the 2,211 complaints we concluded in 2021/22. The decrease was due to resolving over 1,000 complaints about our regulation of LCF in 2021/22.

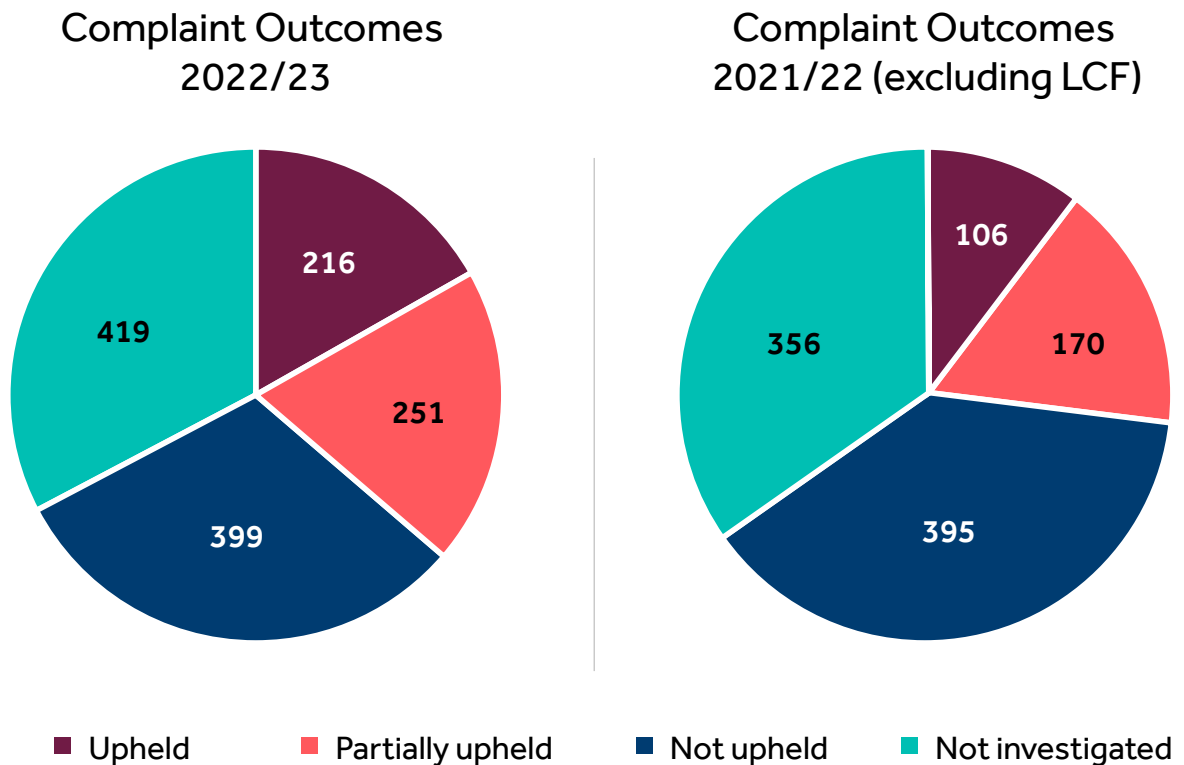
In Table 4 below, we show an analysis of the outcomes for all complaints concluded during 2022/23. Of these complaints, we did not uphold 399 (31%) and did not investigate 419 (33%). We fully upheld 216 complaints (17%), and partially upheld a further 251 (19%).

Table 4: Outcomes of all complaints (standard, group & local area) closed in 2022/23

Outcome	Total
Upheld	216
Partially upheld	251
Not upheld	399
Not investigated	419
Total	1,285

Last year we upheld or partially upheld a higher proportion of concluded complaints (36% total) compared to 2021/22 (27%), excluding LCF. The proportion of complaints not upheld decreased in 2022/23 year to 31%, down from 38% for 2021/22, excluding LCF.

Figure 3. Year-on-year complaints outcomes (all complaints)



Performance

As part of the complaints process, if a complainant is unhappy with our decision, they can refer their complaint to the Commissioner for an independent review (a Stage 2 Complaint).

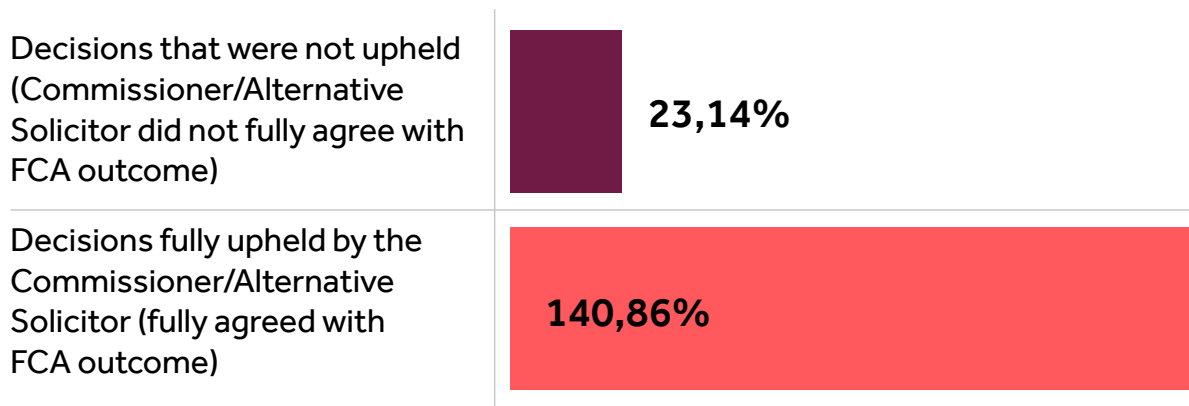
During 2022/23, the Commissioner/Alternative Solicitor reviewed and made a decision on 163 complaints referred to them, compared with 124 in 2021/22 (excluding responses about the FCA's handling of LCF). The Commissioner/Alternative Solicitor agreed with our outcomes in 86% (140/163) of the complaints that they concluded last year, compared to 89% (110/124) in the previous year.

There was a small increase in cases upheld by the Commissioner/Alternative Solicitor last year. We note and accept the theme of information-sharing as the most common reason the Commissioner upheld a complaint and, as outlined in this response, we are putting additional measures in place to continue to improve our performance in this area.

Nevertheless, it is important to note that the vast majority of complainants accepted our decision after we concluded our investigation, with 87% of complainants (1,122/1,285) not receiving a decision from the Commissioner (this does not include deferred complaints, complaints reviewed without formal investigation and where the Commissioner was able to make a decision without referring the complaint back to the FCA).

Figure 4. Did the Commissioner/Alternative Solicitor agree with our decisions?

Outcomes of Complaints Decided by the Commissioner/Alternative Solicitor



We received 62 recommendations or suggestions within the Final Reports issued by the Commissioner, of which the Commissioner has reported we did not accept 2. The main areas of focus for the 62 recommendations/suggestions were to:

- review the information we provided to the complainant (23.3%)
- offer an ex-gratia payment or an increased ex-gratia payment to the complainant (23.3%)
- review or amend how we've communicated with the complainant (10%)
- offer an apology to the complainant (8.3%)
- change or review a process (8.3%)
- review or makes changes to a system (6.7%)

The recommendations which we did not accept relate to:

- One where the Commissioner recommended the FCA increase the ex-gratia payment already offered to the complainant. Although we have accepted the Commissioner's recommendations to increase payments in other cases, in this instance we felt our existing offer was fair.
- One where we felt our processes already sufficiently addressed the recommendation, but through a different route than that suggested by the Commissioner.

Our operating service metrics for complaints

We aim to close 75% of the standard and local area complaints we receive within eight weeks. We do not measure this service for group complaints as these are often deferred due to ongoing regulatory action. Last year we closed 83% of standard and local area cases within eight weeks. This is an increase on the previous year's performance of 23 percentage points (60%).

Table 5. Percentage of standard and local area complaints resolved within 8 weeks

Year	Operating Service Metric Met
2022/23	83%
2021/22	60%
2020/21	56%
2019/20	68%

Achieving our operating service metrics has been a priority for our complaints handling in 2022/23. We are encouraged that this focus has resulted in quicker answers to more complaints than we have delivered over the past few years. For the coming year we are committed to maintaining the operational performance we have set in 2022/23.

As set out in the Scheme, we have also set operating service metrics for acknowledging complaints within 5 working days, responding to local area complaints within 10 working days and providing complainants with a scope or decision letter within 20 working days.

Table 6 sets out our performance against these operating service metrics, showing significant improvements last year (2022/23) compared with the previous year (2021/22).

91% of local area complaints were concluded within 10 working days in 2022/23, which is an increase of 32 percentage points. We were able to deliver these significant improvements through process changes that meant the Complaints Department could identify these complaints earlier and support the investigating area as soon as possible. We also further developed the wider organisation's understanding of its role in resolving complaints through the roll out of revised mandatory e-learning on complaints for all staff and stronger focus on stakeholder relationships.

Last year we also acknowledged 98% of complaints within 5 working days compared to 93% in 2021/22 and provided complainants with a scope letter (which confirms our understanding of the complaint) or decision letter within 20 working days in 98% of cases, which was an improvement of 30 percentage points (68% in 2021/22).

Table 6. Year-on-year operating service metrics performance for standard and local area complaints

Operating Service Metric	Target	21/22	22/23
Local area complaints responded to within 10 working days	95%	59%	91%
Standard & Local area acknowledgement sent within 5 working days	95%	93%	98%
Standard complaints receive scope or decision letter within 20 working days	95%	68%	98%

Themes

In this section we consider and reflect on the commentary and main themes identified by the Commissioner in their Annual Report.

Sharing information

In their Annual Report, the Commissioner outlined a theme that we could have resolved some complaints earlier through improved communication and information-sharing with complainants. We note the Commissioner's comments and accept that we haven't always got this right. We are committed to being as transparent as we can during our complaint handling and we set out below what actions we have and are taking, along with the challenges we face.

During the last year we have updated the [Protocol](#) which sets out how we and the Commissioner engage. This includes sections on confidentiality and information-sharing and sets out the legal and policy framework. We have also provided training to all complaints investigators on sharing information.

We are bound by a complex legal and policy framework around confidentiality which can sometimes restrict what we are able to say publicly and there are various pieces of legislation which restrict the information both we and the Commissioner can share publicly, for example, around information which has been provided to us from firms, information which might be market sensitive and personal information. Disclosing such information inappropriately can, in some instances, be a criminal offence. Where we remain unable to share information with complainants due to legal or policy constraints, we will always try to provide an appropriate explanation.

There are also occasions where we don't think it's appropriate to share information publicly. For example, we don't normally share publicly that a firm has been referred to Enforcement for investigation because such information could inappropriately damage a firm's reputation if our investigation does not substantiate our concerns. Our website has more [information](#) about the information we can and can't share.

We appreciate that complainants may believe we have not acted upon intelligence when we can't always provide them with information about our investigations or actions. In most cases, we find that that intelligence has been passed to the relevant area in the FCA and dealt with appropriately, but we know it can be frustrating for complainants when our explanation is limited to setting this out, rather than explaining the nature and detail of the work we have done. We see this particularly in complaints from whistleblowers, who have often taken a risk in giving us intelligence and understandably want to know what happened as a result.

Balancing the complex legal and policy frameworks surrounding our confidentiality requirements with the need for transparency remains a challenge both for the Complaints Department and the wider FCA. We are working hard to improve in this area

and are pleased to see the Commissioner recognise the progress we have made in their report.

There are other FCA-wide initiatives underway to improve how we handle confidential information and improve our transparency. For example, launching an internal tool to support colleagues in their decision-making around disclosure of information that is confidential under FSMA. We are also looking at how we can provide enhanced final feedback to those submitting whistleblowing disclosures to the FCA.

Customer Service

The Commissioner has made various comments around customer service throughout their report, both that provided by the Complaints Department and the wider FCA.

In 2022/23 the Complaints Department communicated with complainants on over 1,400 complaints. We recognise that, in a relatively small number of these cases we haven't provided the level of customer service we expect and we need to continually challenge and improve our service. We are committed to keeping the complainant central to our improvement strategy.

In respect of customer service from the wider FCA, we engage with thousands of stakeholders every year, such as over 58,000 calls we had with consumers through our Supervision Hub last year and many of the 50,000 firms we regulate. Across the FCA we strive to provide excellent customer service to all our stakeholders, but we recognise that sometimes the level of service we provide does not meet our standards. Where this happens, we will do our best to put things right and make necessary improvements to prevent problems recurring.

The Commissioner notes in their report that the wider FCA and the Complaints Department in particular could improve customer service by ensuring we answer complainants' questions comprehensively and clearly. We agree that there have been occasions where our responses to complainants could have been better. During the year we have strengthened our quality assurance framework to support improvement in this area and we will continue to work hard to ensure high quality responses to complainants.

The Commissioner has also pointed to issues with delays in the complaint-handling process. Over the last 2 years our focus has been to resolve the backlog of standard complaints waiting to be investigated and we have made significant improvements in this area. In 2022/23, we also reduced our average processing time from when a complaint case is received to when we issue our decision letter from 83.1 days in 2021/22 to 51.9 days in 2022/23 for standard and local area complaints.

Some complaint handling delays also occur as a result of deferred complaints. We understand that complainants want quick answers to their concerns and that a delay can be frustrating, particularly when their case has been deferred. We regularly review our deferral decisions to assess whether circumstances have changed so that complaints can now be investigated. We are committed to ensuring complainants understand where complaints can't be investigated and provide updates at least every 6 months.

Of particular importance is the service we provide to complainants in vulnerable circumstances. In our response to last year's Annual Report, we highlighted how we support these complainants, which we have continued to focus on in 2022/23. In a number of FCA areas, for example, the Supervision Hub, Complaints Department and Enforcement, we provide resources for staff to help identify and support vulnerable stakeholders. We've also provided complaints investigators with additional training on vulnerability and will continue to provide tailored support and adjustments to meet complainants' needs.

Complaints about FCA Fees

We acknowledge that the Commissioner has outlined an increase in complaints about fees in 2022/23.

Annual Fees

These fees are payable each year by all authorised firms, some other bodies such as recognised investment exchanges or registered firms to cover the FCA's yearly running costs. We are funded entirely by fees and levies from the firms we regulate, and we do not receive funding from other sources.

We note the Commissioner has referred to complaints, particularly from small firms, about the level of fees they have to pay. These types of complaints fall outside of the scope of the Complaints Scheme because they involve our legislative functions. Nevertheless, we are conscious of the burden of annual fees, particularly on smaller firms and especially given the current challenging economic climate. This is why we have a robust and extensive annual consultation process on fees which runs from October to July and a consultation on periodic fees for the next financial year, from March to April. Our website has more [information](#) on these, and we welcome our stakeholders participating in the various consultations.

Late Fees

We require authorised firms to submit regulatory returns at least yearly. The nature and frequency of this reporting depends on the size and nature of each business, including what types of regulated activity it undertakes.

We attach considerable importance to the timely submission by firms of their regulatory returns. This is because this information is essential to our assessment of whether a firm is complying with the necessary requirements and standards and to our understanding of that firm's business. Where a firm does not complete a submission by the deadline, we will charge an administrative fee.

As the Commissioner sets out in their report, we have received complaints from firms that disagree where a late return fee has been issued after missing the deadline to complete a mandatory regulatory return.

When investigating complaints about late return fees we review the merits of each individual case to understand why a fee was charged and if we issued the fee correctly and fairly.

Cancelling firms' permissions

The Commissioner also recognises the complaints received, again from small firms, about the requirement to pay fees to the FCA despite applying to cancel their permissions. We welcome the Commissioner's decisions not to uphold these complaints.

We must receive applications to cancel by 31 March for solo regulated firms and the cancellation must take effect by 30 June or the fees for the financial year remain due. Our website has more information about [cancelling authorisations](#).

In addition, firms remain authorised while we progress these cancellations. This means they must continue to adhere to all FCA requirements, including submitting accurate, complete regulatory returns on time (even if those returns are nil). Failing to do so will result in us applying a late fee.

Complaints about our regulation of firms

The Commissioner explained in their report that the most common complaint was about the FCA's oversight role of firms, with allegations that we either failed to regulate an individual firm or an industry/activity.

Given regulation of firms is our core function, this is not unexpected. Our 3-year [Strategy](#) for 2022 to 2025 sets out what we aim to achieve through regulation, including for the first time how we will [measure success](#).

Conclusions

We are pleased to have continued to build on our progress during the last year (2022/2023) by improving our operational performance, resolving more complaints within our target operating service metrics than in recent years. This is because of our continued investment to improve our Complaints Department's resources, improvements in the way we share complaints data with the rest of the organisation and developing our people to provide customer-focused decisions on complaints.

Looking ahead, we aim to consolidate the progress we have made, balancing our commitment to achieving our operating service metrics with the demands of answering the substantial number of group complaints that are likely to need investigating this year.

We are committed to continuously improving the service that we provide to the consumers and firms who complain to the FCA and using our learning from them. We will continue to focus on improving customer service throughout the FCA in the coming year, including the quality of our complaint-handling, communicating with complainants as openly and transparently as we can while operating within the complex legal and policy framework around information sharing.

Our aim is to capitalise further on our data-led improvements, providing detailed and more insightful information to the wider organisation on the themes of the complaints we receive. We believe this will help us to continue to learn and improve as an organisation: a key purpose of the Complaints Scheme. We remain committed to being as transparent as possible for all the complaints we handle.

