



Complaints Commissioner

# Reviewing how the financial services regulators consider complaints

**Annual Report**  
2022/23



# Complaints Commissioner

Annual Report and Accounts 2022-2023  
(for the year ended 31<sup>st</sup> March 2023)

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



# Contents

## **ANNUAL REPORT 2022-2023**

This is the Annual Report of the Complaints Commissioner.

It covers the period from 1<sup>st</sup> April 2022 to 31<sup>st</sup> March 2023

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# Introduction by the Commissioner

## Foreword by the Commissioner

This is my third report since I was appointed as Complaints Commissioner, dealing with complaints against the Financial Services Regulators.

The Complaints Scheme (the Scheme), and my role in it, were established by Parliament in 2000 to provide an independent assessment of complaints against the Financial Conduct Authority (FCA), the Prudential Regulation Authority (PRA), and the Bank of England (BoE)'s functions in relation to banking clearing houses, central securities depositories and inter-bank payment schemes. My role as the independent Commissioner serves a wider purpose in the governance and accountability of the regulatory system. As I explained in my previous report, without such a Scheme, not least as the Regulators enjoy statutory immunity from being sued for damages in most circumstances, there is a risk that the Regulators could exercise, or just as importantly, fail to exercise their very significant powers in a way which damaged individuals and firms. In light of the statutory immunity there are limited options for alternative routes to redress.



Nevertheless, there are some potential issues connected with the Scheme which I felt would benefit from further scrutiny and which I highlighted when I gave oral evidence at a formal hearing before the Treasury Select Committee (TSC) on 15 June 2022 (<https://committees.parliament.uk/committee/158/treasury-committee/news/171389/mps-discuss-complaints-about-financial-regulators-with-complaints-commissioner/>).

On 22 June 2022 the Chairman of the TSC wrote to me to enquire, amongst other, the key reforms that I would like to see introduced at the Office of the Complaints Commissioner to enable me to carry out my role more effectively. I highlighted the following:

### Recommendations

The Regulators can choose not to accept the Complaints Commissioner's recommendations as has happened in several cases, including those connected to London Capital & Finance plc (LCF) and Keydata Investment Services Ltd. The recommendations are not enforceable. Therefore, it is the Commissioner's view that the robust scrutiny of the Regulators which the primary legislation envisioned the Commissioner could provide is in practice not available. So, there is a need for either primary legislation to increase the Complaints Commissioner's powers such as a power to direct or some other mechanism whereby the FCA is asked to report to the Treasury with its reasoning when it does not accept a recommendation.

### Appointment

The Complaints Commissioner is appointed for a three year term by the Regulators and His Majesty's Treasury (HMT) approves the appointment. It is my view, as it was of my predecessor that this term should be a non-renewable 5 years, so there is no potential for the incumbent to be influenced by the prospect of renewal.

## **Financial Services and Markets Bill**

At the time of writing this Annual Report the Financial Services and Markets Bill (FSM Bill) is currently before Parliament and has tabled some amendments to the Financial Services Act 2012. It is anticipated that the Bill may receive Royal Assent by the time my report is published. The changes that the Bill will make to the Regulatory Framework will move to address some of the concerns that I raised to the TSC earlier this year as I have outlined above.

Specifically, in relation to the appointment of the Complaints Commissioner the Bill amends the FSA 2012 Act to make HMT rather than the Regulators responsible for the appointment of the position going forward. I welcome this amendment as it provides a clearer separation between the Complaints Commissioner and the Regulators.

The FSM Bill will require the Regulators to include a summary of instances where they have not complied with the Complaint Commissioner's recommendations in their response to the Complaint Commissioner's Annual report, including their reasoning for not complying with the recommendations to HMT. I welcome this amendment which reflects the concerns I raised at TSC and I hope will result in improved accountability of the Regulators where they decide to not comply with recommendations made by the Complaints Commissioner.

## **Funding**

The funding of the Office of the Complaints Commissioner comes from the Regulators who have arranged for the FCA to remit the funds. This can create a perception in the public that the role is not truly independent (although I can confirm the Regulators have not encroached on my independence in practice). Consideration should be given on whether if funding came directly from HMT or was directed by it, rather than came directly from the FCA, there would be greater assurance to the public as to the independence of the role.

During the year, I have been working on developing my policy with respect to two main themes: transparency in complaints handling and ex gratia compensation as a remedy under the Scheme. I turn to these below.

Last year I identified a need to establish a developed policy between the Regulators and I about the extent of the statutory restrictions, the ambit for exercise of the Regulators' discretion, and the interaction of these issues in the context of transparent complaints handling in keeping with the principles of openness and transparency that should characterise a complaints scheme. It was my intention to introduce a memorandum of understanding between the Regulators and my office. Following discussion with the Regulators, an agreement was reached in December 2022 to incorporate our joint commitment to being as transparent as possible in the discharge of our functions under the Scheme in a revised Protocol which is now published on my website:

[The Financial Conduct Authority](#)  
[The Bank of England](#)

In my view, this is a significant step forward in establishing a clear policy on this issue.

The issue of compensation under the Scheme has been under discussion for several years and my predecessor highlighted the Regulators' failure over many years to clarify its policy on it. The joint consultation on the Scheme launched by the Regulators in July 2020, which is not yet finalised, addressed the issue in some respects, but neither my

predecessor nor I were satisfied with the Regulators' approach. In last year's annual report, I highlighted some of the issues which concerned me. The Regulators are working to finalise the consultation response and revised Complaints Scheme and has said that The Financial Services and Markets Bill 2022-23 currently going through Parliament contains provisions relating to the accountability of Regulators and its view is that it would be most appropriate to finalise changes to the Complaints Scheme after this process has concluded. The process of reviewing matters connected to the issue of compensation is therefore ongoing and I hope to be able to report more fully next year.

During this year, 421 cases were dealt with by my office, compared to 492 excluding LCF in the previous year. The figures for last year exceptionally further increased by 443 complaints about the FCA's regulation of LCF, for which I issued one report. There were a few matters that touched on matters relating to LCF, but these were addressed as individual matters this year rather than a group complaint. This year's figures are more representative of the average caseload of this office.

I made substantive decisions in 185 of the complaints I received, compared to 129 last year (excluding LCF). Of these, one was about the PRA, one was a joint complaint about the PRA and the FCA and the remainder were about the FCA.

In 20 instances my decision differed from that of the FCA's, being that:

- in 5 instances I disagreed fully with the FCA's decision;
- in 15 instances I partially disagreed with the FCA's decision;

In another 17 instances I agreed with the FCA's decision but criticised aspects of the FCA's policies/processes/procedures/remedies.

There were a further 27 instances where I issued a decision, but I did not refer back to the FCA on these cases and I did not make any assessment of an FCA decision outcome.

I did not disagree with the PRA's decisions. It is worth noting at this point that PRA regulates far fewer firms than the FCA which is one reason I receive far fewer complaints about the PRA on an annual basis.

Overall, I made 62 recommendations, suggestions or criticisms. Of these, one criticism was about a joint complaint between the FCA and the PRA and one suggestion was about the PRA complaint.

I found the reason for most of the complainant's dissatisfaction with the FCA centred upon its oversight role of firms and the customer service received from the FCA Complaints Team and other departments.

I conclude this year by thanking all my colleagues in my office for continuing to work with unstinting professionalism and resilience for which I am profoundly grateful.

**Amerdeep Somal**

Complaints Commissioner



## **Complaints against the Financial Services Regulators**

The Financial Regulators Complaints Commissioner was established by Parliament to provide an independent review of complaints against the Financial Conduct Authority (FCA), the Prudential Regulation Authority (PRA), and certain aspects of the Bank of England (BoE).

If complainants are not able to resolve their complaint with one of the Regulators, the Commissioner considers the complaint and, if she upholds it, can make recommendations. The recommendations the Commissioner can make include issuing an apology, putting things right, or an ex gratia compensation payment.

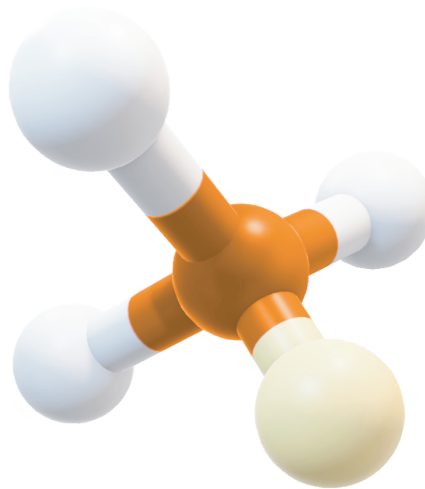
Most complainants are individual consumers and small regulated businesses.

The Commissioner is committed to working openly and being accountable. Her office is one of very few complaints organisations which publishes nearly all complaint reports, and it is further committed to working in accordance with the principles of good complaints handling set by the Ombudsman Association.

# 2

## The year at a glance

421 CASES DEALT WITH



IN 11% OF CONCLUDED CASES,  
THE COMMISSIONER DISAGREED  
OR PARTIALLY DISAGREED  
WITH SOME ELEMENT OF  
THE FCA'S DECISION  
(BUT NOT WITH THE PRA)



90% OF CASES DEALT  
WITHIN 8 WEEKS



62 RECOMMENDATIONS,  
SUGGESTIONS AND  
CRITICISMS MADE

# 3

## Overall Scheme Statistics for 2022-2023

The Commissioner dealt with 421 cases during the year, compared to 492 the previous year excluding 443 complaints about the FCA in connection to London Capital & Finance plc (LCF). Not all complaints progressed to a formal investigation under the Scheme. During the period, the Commissioner issued decisions on 185 complaints compared to 129 last year. 40 complaints were not concluded and will be reported on next year.

### 3.1

**Table 1: Total complaints and enquiries dealt with**

Complaints and enquiries dealt with	2022-2023	2021-2022
Complaints in progress at start of period	47	37
New enquiries and complaints received	374	898
Total Number of complaints (*)	421	935
<b>Total number of complaints and enquiries dealt with (excluding LCF)</b>	<b>421</b>	<b>492</b>
Complaints and enquiries closed during the year (excluding LCF)	381	445
Complaints and enquiries in progress at end of period	40	47

285 complaints were about the FCA, three about the PRA.

112 of the 421 complaints were about financial services providers or other bodies, not the Regulators, and in those cases, they were directed to other organisations which could help them.

The decrease in complaints about the FCA (285 compared to 348 last year excluding LCF) is largely due to a change in methodology in reporting on complaints dealt with; re-opened complaints which do not lead to re-investigation of a complaint are not reflected in the figures for this year. The office does, however, enter into correspondence with a number of complainants sometimes extensive, which is currently not being reflected in the work being reported. We are looking to further revise reporting methodology next year so we can reflect this additional work more fully.

The Office of the Complaints Commissioner processed nine subject access requests under the Data Protection Act 2018 (related to complaints against the FCA).

Additionally, two complainants sought leave for judicial review of the Commissioner's decision on their complaint which the court refused.

# 4

## Bank of England and Prudential Regulation Authority statistics from 1<sup>st</sup> April 2022 to 31<sup>st</sup> March 2023

The Scheme covers complaints about the Bank of England's functions in relation to clearing houses, central securities depositaries and inter-bank payment systems, and against the Prudential Regulation Authority (which is part of the Bank).

### 4.1

#### **Complaints against the Prudential Regulation Authority**

The Commissioner dealt with three complaints against the PRA between 1<sup>st</sup> April 2022 and 31<sup>st</sup> March 2023. One had been carried over from the previous year (PRA00021). This complaint was about statistical and regulatory reporting returns made by Firm X to the PRA which allegedly contained £4 billion variation in reporting. The PRA chose not to investigate based on immateriality.

The Commissioner did not disagree with the PRA's decision but noted that 'the PRA may wish to consider the proportionality of corresponding with you over a period of seven months in order to explain why it will not take regulatory action even though some of the classifications were wrong and there was an uninvestigated alleged £4 billion variation in reporting, when that same energy could have been better used in sending a letter to the Bank asking it to reclassify and explain the variance'.

The PRA said it had 'fed back the findings from the investigations to the relevant areas, along with the Complaints Commissioner's note on the proportionality of the approach taken'.

The Commissioner exercised her discretion and did not investigate a joint complaint against the PRA and FCA. The complaint related to an allegation that the Regulators were not regulating Firm X appropriately because of a lack of clarity about the firm's back office operations in setting limits on an expat trading account held in Jersey which involved liaison between the Jersey and UK entities of Firm X. Nevertheless, the Commissioner criticised the PRA and the FCA for excluding the complaint as a dispute between an individual and a financial services provider and failing to identify that the complainant had outlined another complaint which was potentially eligible under the Scheme, being about the regulator's failure to oversee a regulated firm.

A further complaint was also received this year and is still being investigated by the Commissioner at the end of the period and will be included in next year's statistics.

### 4.2

#### **Complaints against the Bank of England**

There were no complaints about Bank of England's functions in relation to clearing houses, central securities depositaries and inter-bank payment systems during the reporting year.

# 5

## Financial Conduct Authority Statistics from 1<sup>st</sup> April 2022 to 31<sup>st</sup> March 2023

The Commissioner dealt with 285 complaints and enquiries against the FCA compared to 348 (excluding LCF) in the preceding year. Not all complaints received progressed to a formal investigation under the Complaints Scheme.

### 5.1

**Table 2: Complaints dealt with during the year**

Complaints and enquiries dealt with	2022-2023	2021-2022
Complaints and enquiries at start of period	46	33
New complaints / enquiries received	239	315
Total enquiries and complaints (excluding LCF)	285	348
Complaints received about LCF	0	443
<b>Total enquiries and complaints, of which:</b>	<b>285</b>	<b>792</b>
Complaint referred to Regulator for stage 1 investigation	–	–
Complaint referred to Regulator for further investigation	–	–
Complaints deferred due to ongoing regulatory action	29	13

Of the 285 complaints and enquiries which related to the FCA, 183 were concluded with a decision, compared to 129 the previous year. A further 64 were enquiries which did not progress to a formal investigation and were closed and 38 FCA related cases remain open and will be included in the figures for next year when they are concluded as either enquiries or concluded complaints.

There has been a significant increase in the number of complaints handled by my office where the complaint has been deferred by the FCA due to ongoing regulatory action. This year, 29 cases dealt with by the Commissioner's office were in relation to the FCA's oversight of 9 firms and remain deferred due to ongoing regulatory action.

The Commissioner also receives a large number of enquiries each year, these can include but are not limited to:

- complaints which have not yet been considered by the FCA;
- complaints that are currently being considered by the FCA and as such it is not appropriate for the Commissioner to step in;
- enquiries that relate to non-financial services matters (not within the remit of the Complaint Scheme);
- complaints which have been deferred pending the outcome of continuing regulatory action. This year there were 29 complaints which have been deferred from further investigation pending the outcome of continuing regulatory action: and
- two complaints were investigated but were withdrawn before the Commissioner published her decision.

## 5.2

**Table 3: Decisions in concluded complaints**

Concluded cases	2022-2023	2021-2022
Case decisions issued by the Commissioner		
Complaint excluded <sup>note 1</sup>	16	37
Complaint reviewed without formal investigation <sup>note 2</sup>	21	24
Complaint formally investigated <sup>note 3</sup>	116	55
Complaint sent back to FCA	1	–
Deferred <sup>note 4</sup>	29	13
LCF <sup>note 5</sup>	–	443
<b>Total</b>	<b>183</b>	<b>572</b>
<b>Total excluding LCF</b>	<b>183</b>	<b>129</b>

**Notes to Table**

**Note 1** Certain complaints cannot be considered under the Complaints Scheme because they relate to “legislative functions”. Generally, this means complaints about the Regulators’ rules, the guidance they have issued, and the Regulators’ general policies. It also includes complaints which should be dealt with through other formal processes (such as disciplinary cases through the Upper Tribunal). The Commissioner considered 16 complaints and issued a decision explaining why the complaint was excluded.

**Note 2** When considering a complaint, the Commissioner sometimes decides that a review of the Regulator’s complaint records is sufficient, and there is no need to undertake a full investigation with further inquiries. (The Commissioner has access to all the Regulators’ records.) The Commissioner considered 21 complaints and issued a decision which explained why a full investigation would not be undertaken.

**Note 3** The formal investigation process is where the Commissioner undertakes a full investigation into the complaint. In two instances, the Commissioner issued a preliminary report but did not proceed to a final report at the request of the complainant.

**Note 4** 29 Complainants submitted complaints which were deferred by the Commissioner due to ongoing regulatory action by the FCA. These 29 complaints were about the FCA’s regulation of nine different regulated firms. In 20 of these complaints the Commissioner was already on notice that complaints relating to these firms were deferred, accordingly the Commissioner deferred the complaints without reverting back to the FCA.

**Note 5** In 2022 the Commissioner dealt with 443 complaints that related to the FCA’s oversight of London Capital & Finance (LCF) for which she issued one report.

## 5.3

**Table 4: Concluded allegations**

	2022-2023	2021-2022
<b>FCA</b>	<b>319</b>	<b>129</b>
Confidentiality/Information Sharing	5	–
Customer Service FCA	49	–
Failure in Regulator Online Systems	4	–
Failure of Regulators complaint investigation	35	–
Failure to authorise <sup>note 1</sup>	4	–
Failure to deal with regulated Firm/Individual properly	29	26
Failure to oversee the Financial Ombudsman Service (FOS)	13	1
Failure to regulate a firm/ group of firms/industry/activity:	76	55
of which Failure to regulate a firm	(52)	–
of which Failure to regulate an industry/activity	(24)	–
Failure to regulate schemes (e.g. Interest Rate Hedging Products (IRHP)) Interpretation of rules	8	16
Failure to resolve personal dispute with firm	8	–
FCA Register	3	3
Fees/Fines/Invoices	27	–
General Data Protection Regulations (GDPR) Data Protection Act (DPA)	1	–
Guidance/Rules	5	6
Market Oversight	5	–
Other	35	17
Request to Re-open/Re-investigate complaint element	1	–
Scope of Complaint	4	–
Whistleblowing	7	5

**Notes to Table**

**Note 1** This category relates to matters where the complainant has been unsatisfied with the FCA's authorisation process for various reasons.

This year there are a number of notable differences to the trends from last year, as follows:

1. New and significant additions to the trends are complaints about the FCA customer service and about the failure of the Regulators own complaint investigation;
2. A substantial amount of complaints about Fees/Fines/Invoices;
3. Emergence of complaints about Market Oversight;
4. The increased number of complaints which alleged the FCA failed to oversee the FOS;
5. Continuation of complaints by regulated firms or individuals that the FCA has failed to deal with them properly;
6. Continuation of Whistle blower complaints;
7. Increase in the number of complaints referred to my office which are deferred.

There are more allegations reviewed than number of complaints. This is because many cases have multiple elements which are not limited to one theme. This year has seen the Office of the Complaints Commissioner adopt a new approach to capturing the trends and themes in the complaints it handles (which means we do not have equivalent data for the previous year: we have marked this with n/a). This year the Office of the Complaints Commissioner is recording complaint elements about the FCA customer service and complaints investigations. Whilst it appears that this is a new trend in this table this year, these are not new elements that have suddenly arisen, rather they were previously subsumed under the primary complaint theme and have this year been separated out to provide a clearer picture of the breadth of matters the Complaints Commissioner investigates. Elements relating to customer service complaints have ranged from people being upset about the FCA's telephone answering services, delays in processes, perceived inappropriate attitudes of staff amongst other issues. Elements relating to failure of the Regulators complaint investigations have included complaints about delays, failure to consider relevant information, failure to provide information amongst other things. These elements have always existed and made up a reasonable proportion of the elements that the Commissioner considers; this year we have been able to set this out in this table. The Commissioner will continue to monitor these elements.

The apparent increase in complaints about the alleged failure of the FCA to regulate/oversee firms and industry/activity again partially highlights the effects of the new method of recording complaints used by the Office of the Complaints Commissioner. In the previous year, we recorded 55 recorded allegations about failure to regulate.

The increase in the number of complaints which allege that the FCA failed to oversee the FOS actually sees a return to similar levels from 2020/21. This is in part due to the fact that these cases have stopped being investigated by an Alternative Solicitor, external to the Office of the Complaints Commissioner. The Commissioner considers that the perceived conflict that may have initially been present, on account of her previous role as Independent Assessor to the FOS has now elapsed and she considered these cases herself.

There was an apparent increase in complaints about Fees/Fines/Invoices this year. Most complainants who complained about the FCA annual fee, were small firms who incurred an increase which they cited was disproportionate to the size of the firm. This was also a common theme in last year's annual report. The FCA increased fees to consumer credit activities which had fallen behind the fees for other activities. It explained the increases in its April 2021 consultation paper. Whilst we agreed with the FCA that these complaints were excluded from the Complaints Scheme as they related to the FCA's legislative functions, we suggested that there may be a debate to be had about the merit of the FCA's approach to fees and that the complainant(s) may wish to raise the matter with their Members of Parliament.

Numerous complainants also raised complaints about FCA late fees. These complaints varied from firms having access issues with the FCA reporting system, to firms not receiving reminders to submit returns and firms not being able to submit due to staff having Covid.

There has been a steady continuation of a similar volume of complaints by regulated firms or individuals that the FCA has failed to deal with them properly. Previously these have been set out by departments, this year they have been captured under one main overarching heading.



Complaints relating to Whistleblowing have also been consistent in their numbers from last year to this. These have mainly centered on complainants' concerns that the information they provided has not been passed onto relevant departments and actions taken. There have been complainants' frustration with the lack of information that is provided to them about any investigation that follows on from the information provided by the complainant.

Market Oversight whilst not vast in number has newly featured in the table this year. These elements considered matters relating to the suspension of shares on the London Stock Exchange., including Evraz Plc shares following a statement by the Foreign, Commonwealth & Development Office statement following the start of the Russian and Ukrainian conflict.

Confidentiality and section 348 of the Financial Services & Markets Act 2000 has been a key feature in some of the complaints. The Commissioner has previously discussed the need for transparent outcomes for complainants and the tendency of the FCA to overly rely on the confidentiality as a reason not to disclose information. Overall, the Commissioner does feel that there has been an improvement in this area. In cases where this has been questioned the Commissioner has found that on balance she has been satisfied the explanation the FCA provided for not giving information was reasonable. The Commissioner did highlight in one case that the confidentiality provisions had not been appropriately applied (FCA001674). This continues to be an issue that the FCA is acutely aware of and the Commissioner will always satisfy herself that there is no inappropriate use in relying upon the confidentiality provisions. The updated protocol (<https://frccommissioner.org.uk/wp-content/uploads/FCA-OCC-Protocol-Executed.pdf>) signed this year clarified that the Commissioner had the capacity to provide further information where she felt it was necessary.

## 5.4

**Table 5: Commissioner's decisions in cases which were investigated and concluded**

Commissioner's decision	Number of complaints
Agreed with FCA decision	119
Agreed with FCA decision – with some criticism of the FCA (policies/processes/procedures/remedies)	17
Disagreed FCA decision	5
Partly disagreed with FCA decision; agreed with some elements but disagreed with others	15
Other decision	27
<b>Total</b>	<b>183</b>

The Commissioner concluded 183 complaints with a substantive decision. Of these, the Commissioner disagreed with the FCA's decision in 5 complaints and partly disagreed (the Commissioner agreed with some elements and disagreed with other elements) with the FCA's decision in another 15 complaints. In 17 cases the Commissioner agreed with the FCA decision but criticised aspects of the FCA processes and/or procedures. In a further 27 instances the Commissioner's issued a decision but did not refer back to the FCA on these cases and did not make any assessment of an FCA decision outcome.

The Commissioner has agreed with the majority of the FCA's decisions, however in some of these cases, she has still considered that she should identify criticisms of the FCA policies/ processes/procedures/remedies, make suggestions and recommendations for process improvements within the FCA. The FCA has accepted most of the recommendations the Commissioner has made and provided updates to the Commissioner on the progress it has made in actioning them.

## 5.5

**Table 6: Remedies recommended by the Commissioner**

Remedies recommended for concluded cases	2022-2023	2021-2022
Apology	8	12
Stage one needed	1	–
Recommendation for improvements	22	30
Compensation and increase in ex-gratia	13	9
Other	8	–
Suggestions for improvements within the FCA or criticism	10	23
<b>Total</b>	<b>62</b>	<b>74</b>

Note: in some cases, there were multiple recommendations and/or suggestions on a single complaint.

The Commissioner asked the FCA to offer or increase ex gratia compensation to 13 complainants. Ex gratia compensation was recommended for two main reasons: issues with delays in the complaints handling and/or poor communication from the FCA. The FCA disagreed with one of the Commissioner's compensation recommendations. The Commissioner notes that the FCA itself had recommended ex gratia payments for delays in complaint handling on a few cases which she agreed with and did not recommend the FCA to do anything further.

Out of the 62 remedies identified, the FCA did not accept two. In some cases, there were delays in updating the Commissioner on whether the recommendations were accepted. From the rest of the updates received, the FCA has accepted the rest of the recommendations, which the Commissioner welcomes.

The 'other' category refers to remedies which do not fall into any of the other categories such as when the Commissioner requests the FCA provide her with a further update at a later stage on an ongoing matter.

The Commissioner continues to monitor the progress of the recommendations, to ensure that she receives the information she needs and that agreed changes are implemented.

## 5.6

**Table 7: Type of complainant**

Type of complainant	Deferred	Enquiry Only	Excluded	Multiple allegation outcomes	Not Investigated	Not Upheld	Upheld	Withdrawn	2022-2023
Total	29	64	16	67	22	43	4	2	247
Firm/Group	1	11	5	31	1	12	2	1	64
IFA	0	1	0	0	0	0	0	0	1
Individual	28	51	11	34	20	31	2	1	178
MP	0	0	0	0	0	0	0	0	0
Not Set	0	0	0	0	0	0	0	0	0
Solicitor on behalf of firm	0	0	0	0	0	0	0	0	0
Solicitor on behalf of individual	0	0	0	0	0	0	0	0	0
Third Party	0	1	0	2	1	0	0	0	4

65 complaints were received from Independent Financial Advisers (IFA), small businesses authorised or regulated or affected by the FCA. The Commissioner issued a decision on 53 of those complaints, and 12 were enquiries only.

Eight complaints received by the Commissioner were from small firms where the general theme was concern about the amount of annual fees payable by firms, the level by which these had increased in recent years and the impact of such increases being that their businesses will no longer be viable as the increases are unsustainable. This is a theme which continues from last year. The Commissioner is unable to review such complaints.

12 complaints were related to fees. The complainants, all small firms, disputed invoices or fees related to late submission of regulatory returns or missed deadlines for applications for cancellation of permissions. The latter has a common theme that small firms, often individual advisors, who apply to cancel their permissions but are required to continue to submit regulatory returns for up to one year after they cease trading, as it may take this long for the FCA to approve such applications. Failure to submit returns then resulted in administrative fees of £250 being issued, in accordance with the rules. The Commissioner did not uphold any of these complaints.

Seven complaints were related to the FCA's supervisory intervention on interest rate hedging products (IRHPs). The complainants had small firms, now defunct, which were affected by the mis-selling of IRHPs. A common theme which emerged was dissatisfaction with how the consequential loss claims had been assessed by the independent reviewers of the IRHP redress scheme, on the basis of which there were allegations that FCA has failed to ensure the banks provide appropriate redress to the businesses which suffered loss as a result of IRHP mis-selling. Prior to the Commissioner's involvement in these complaints, in June 2019, the FCA Board appointed John Swift QC to conduct a review (Swift Review) which considered the Financial Services Authority (FSA) and subsequently the FCA's supervisory intervention on IRHP over the period 1 March 2012 to 31 December 2018. The Review was published on 14 December 2021: <https://www.fca.org.uk/publication/corporate/independent-review-of-interest-rate-hedging-products-final-report.pdf>.

The Commissioner's view was that although she was not bound by the Swift Review, she had to strike a balance between a proper consideration of the complaint and not undertaking an exhaustive review of the kind already undertaken by the Swift Review. Therefore, her approach was to rely on the Swift review unless there was good reason not to. The Commissioner did not agree with how the FCA had scoped the complaint and some of the conclusions it reached. The Commissioner did not uphold the complaint on the basis that it would be unreasonable to conclude that the FCA failed to ensure the banks provide appropriate redress to the businesses which suffered loss as a result of IRHP mis-selling, although she supported the criticisms raised in the Swift Review.

18 complaints contained allegations that the FCA had failed to deal with both regulated and non regulated firms properly.

Four complaints were from firms who had sought to apply for authorisation but had not been granted it. The Commissioner either did not investigate or did not uphold these complaints.

One complaint was about the FCA's lack of proper communication with the complainant which the Commissioner upheld, and one was a request for the Commissioner to review a FOS decision against the firm which the Commissioner excluded, and the complainant subsequently withdrew.

The following themes emerged across the section of complaints reviewed by the Commissioner during the year.

### **Understanding the Purpose of the Complaints Scheme**

Every year, a significant proportion of Complaint Scheme users submit complaints which seek to use it as an alternative and/or appeal service to the courts, the FOS or the Financial Services Compensation Scheme (FSCS). The Commissioner is effectively asked to resolve a personal dispute between a consumer and their financial services provider. The FCA does have a statutory duty to secure an appropriate degree of protection for consumers. It does so by regulating the financial industry through the setting of standards which firms must meet, and by taking enforcement action where that is justified. It does not investigate individuals' complaints against the firms it regulates as that is the role of the FOS. That does not mean that the Regulators cannot investigate concerns arising from information about individual complaints, but they investigate those in the context of considering whether regulatory action is justified, rather than whether or not the individual requires resolution of their personal dispute with regulated financial services provider.

The Regulators can, however, investigate complaints about their regulation or oversight of regulated firms, and in fact, the Commissioner reviewed 52 such allegations during the year.

### **Information sharing with Complainants**

A recurring theme this year is the FCA's information sharing with complainants, which I have found problematic. A substantial number of complaints could have been resolved by the FCA just through improved communication and information sharing with complainants, rather than finding their way to me as expressions of dissatisfaction with the FCA customer service and complaints handling. I have noted the following:

- Complainants have asked the FCA questions, which neither the Supervision Hub nor subsequently the FCA Complaints Team has answered- this has led to frustration on the part of complainants;
- In providing information, the FCA has not used clear and unambiguous language in a number of cases. This led complainants to come to erroneous conclusions about the matters concerned;
- In providing information, the FCA did not include full and clear explanations which led to misunderstanding and confusion on the part of complainants;
- In providing information, the FCA did not provide all the information which may have been helpful to complainants – had it done so, complainants distress may have been alleviated.

I have invited the FCA to review these issues and I will continue to monitor them going forward.

### **Vulnerable Complainants**

This year the Office of the Complaints Commissioner saw an increase in the amount of contact it received concerning vulnerable complainants. This was for a variety of reasons including those suffering from financial difficulty, those concerned with the cost of living crisis and those who were concerned with their mental health and the lack of support they were receiving for this. In some instances, complainants who were concerned for their mental health, did not know where else to go for help, which accelerated their reasons to contact us.

Whilst reviewing complaints connected to vulnerability is excluded under the Complaints Scheme, the Office of the Complaints Commissioner recognised the importance of enhancing staff communication skills and awareness, specifically when dealing with vulnerable complainants showing signs of distressed behaviour and concerns about their mental health. The Office of the Complaints Commissioner organised and put in place specialist training for staff so that staff would be equipped with the skills and confidence to be able to manage challenging conversations with complainants who were feeling vulnerable and at risk due to their mental health.

After receiving specialist briefing, the Office of the Complaints Commissioner now provides enhanced communication when liaising with vulnerable complainants, by assessing and responding to risks appropriately and signposting complainants to appropriate bodies and charities, to get them the help and support they need.

The above approach has proved immensely helpful and effective in signposting complainants to organisations and charities that are there to help and support them. This being said, the Office of the Complaints Commissioner is a small office with limited resources, consequently this can limit our ability to meet every bespoke adjustment requested, which a larger organisation may have been able to do.

# 7

## Resources and Performance

### Resources

Under the Scheme, the Commissioner must be provided by the Regulators with “sufficient financial and other resources to allow her to fulfil her role under the Scheme properly.” The Commissioner confirms that she has had the resources she requires.

#### Remuneration

The highest paid employee was the Complaints Commissioner whose total remuneration for 2022-2023 was £129,000.

### Performance

The Office of the Complaints Commissioner (OCC) is committed to meeting the standards of the Ombudsman Association Service Standards Framework and performance is monitored according to the service standards which we publish [Quality-and-Service-Standards-November-2020.pdf \(frccommissioner.org.uk\)](#).

Performance is measured based on the timeliness of investigations, the speed with which correspondence is dealt with, results from customer surveys on satisfaction with service, and the outcomes from complaints about service.

The Office of the Complaints Commissioner acknowledges complaints within three working days (in practice, usually within two), indicates the usual timescales for completion of investigations, and updates complainants every four weeks. The Office aimed to complete complaints within eight weeks. Overall service standard targets were met during the year.

The Office of the Complaints Commissioner uses customer satisfaction surveys to monitor service standards. A survey is sent out after a case is completed and published, unless complainants provide their own feedback before the survey is due to be sent. 29 recipients completed part or all the survey and a further 52 complainants provided their own feedback. The results to the survey are as follows:

	Tend to agree	Tend to disagree	Neither agree nor disagree
The website was accessible and provided information which was relevant	13	10	6
I was kept updated throughout the process	8	9	12
I was contacted in a way that suited me (email, telephone etc) and when agreed	18	6	5
Found it easy to make my complaint to the Complaints Commissioner	12	7	9
Happy with time taken to provide decision	6	17	5

Just over 54% of respondents tended to be unsatisfied with the service they received from the Office of the Complaints Commissioner. In the Ombudsman and complaints handling sector, the level to which customers are satisfied with the service they receive is strongly linked to how satisfied they are with the outcome of their complaint. One common theme among both satisfied and dissatisfied complainants was a disappointment that the Commissioner does not have the powers to enforce recommendations, or, as one complainant put it: 'you don't have the powers to put the solutions into place.'

A separate question asking respondents how long they expected the Commissioner to take to reach a decision showed that 11 respondents expected a decision in less than a month and an additional 10 in less than three months. It is understandable that complainants would like a decision as soon as possible. However, the Commissioner's investigations often rely on obtaining information from the Regulators, which prolongs the length of time taken to complete a report. The Commissioner reverted to an eight week timescale for completion of decisions from July 2022, from the temporary increase to 12 weeks during Covid-19.

From the feedback provided outside of the survey, 43 complainants were dissatisfied with the overall outcome of their complaint whilst nine complainants provided positive feedback.

Just a few of quotes from the feedback the Complaints Commissioner received:

- I would like to end on a 'thank you'. Despite the 6 observations or pushbacks from me here, there are 19 paragraphs in your response where I have none. Yours has been thus far the most considered, empathetic, reassuring, complete and human response I have received from anyone since the events of last year that ended my life as I knew it. I am grateful for that, and the many things in your letter from which I can draw reassurance.
- Please send my thanks to the Commissioner for completing such a detailed review and I am very, very impressed by how she has articulated my position, it leaves me feeling quite proud, that even with the level of frustration I feel, I must have been able to communicate my thoughts effectively and what a fantastic listener the Commissioner is.
- It should be noted, that whilst the Commissioner and I have a difference of opinion, I respect her work and the position she holds.
- Could you please convey my appreciation to the investigator and thank her for all her hard work in satisfying most of my complaint with the FCA.
- Thank you for sending the report which included responses from FCA to my questions; that was both a surprise and most welcome.
- Thank you too for taking the time to steer it through the complaint procedure, which was well-ordered, informative, quick and pleasantly communicated.
- Thank you for providing me with the response from the Complaints Commissioner, Amerdeep Somal, and I am grateful for the time taken in considering my case.
- Thank you for your detailed and professional letter. It's obvious you have looked at it in detail.

The Commissioner continues to review how feedback from complainants is obtained, and how this feedback can help inform internal systems and processes and general improvements in the transparency and accountability of the Scheme.



# APPENDIX

## Expenditure

### Profit and Loss Account

For the year ended 31<sup>st</sup> March 2023

	2022/23 £	2021/22 £
Administrative expenses	(523,832)	(566,317)
Other operating income	–	–
<b>Operating Loss</b>	<b>–</b>	<b>–</b>
Interest receivable	–	–
<b>Profit on ordinary activities before taxation</b>	<b>–</b>	<b>–</b>
Tax on profit on ordinary activities	–	–
<b>Profit on ordinary activities after taxation</b>	<b>–</b>	<b>–</b>

All amounts relate to continuing operations.

There were no recognised gains and losses for 2023 nor 2022, other than those included in the profit and loss account.

Expenditure during the year compared to the previous period.

The audited accounts for the period ending 31<sup>st</sup> March 2023 are available from the Registrar of Companies, Companies House, Crown Way, Maindy, Cardiff, CF14 3UZ. The company's auditors are Price Bailey.



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