

**PROTOCOL FOR THE RELATIONSHIP BETWEEN THE OFFICE OF THE
COMPLAINTS COMMISSIONER (Commissioner)**

AND THE BANK OF ENGLAND (Bank)

ISSUED December 2022

References to the Bank in this Protocol shall include the Bank and the Prudential Regulation Authority (PRA).

RECITALS

The Complaints Scheme (Scheme) applies to the Bank in relation to the exercise of, or failure to exercise, its relevant functions. As set out in sections 85(2) and 85(3) of the Financial Services Act 2012 (the FS Act), the relevant functions of the:

- i. PRA are its functions conferred by or under the Financial Services and Markets Act 2000 (FSMA), other than its legislative functions; and
- ii. Bank of England are its functions under Part 18 of the FSMA (recognised clearing houses and CSDs) or under Part 5 of the Banking Act 2009 payment systems, other than its legislative functions.

The Bank's legislative functions are described in section 85 of the FS Act and broadly comprise its powers to:

- i. make rules
- ii. issue certain statements; and
- iii. in the case of the PRA only:
 - give certain directions;
 - issue certain guidance; and
 - make certain technical standards and EU exit instruments.

In order to ensure the effective functioning of the Scheme, the Bank and the Commissioner agree that the following Protocol will be observed. For the avoidance of doubt, the content of this Protocol is supplementary to, and does not replace or override, the express provisions of the statutory Scheme.

1. Communication

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- 1.1. The Bank and the Commissioner are committed to procedural fairness and to being open and transparent in dealing with complainants and issuing decisions on complaints, unless there are legal restrictions or other compelling reasons to the contrary.
- 1.2. All communication between the Bank and the Commissioner, in connection with individual complaints, will take place between the Bank's Complaints Team (Complaints Team) and the Commissioner, unless it has been agreed otherwise in the circumstances of the case.
- 1.3. The Bank and the Commissioner will meet at least every six months to discuss matters of policy, procedure and review complaints.
- 1.4. At least one meeting every year will be a tri-partite meeting between the Financial Conduct Authority (FCA), the Bank and the Commissioner.
- 1.5. The Bank and the Commissioner shall be free to arrange ad-hoc meetings, outside of the meetings referred to at paragraphs 1.3 and 1.4 above, to discuss any matters.

2. Investigation – preliminary

- 2.1. Where a complainant sends a complaint to the Commissioner in the first instance without raising the complaint with the Bank, the Commissioner will usually give the Bank the opportunity to carry out an investigation of the complaint. Where the Commissioner decides to conduct an investigation into the complaint without giving the Bank the opportunity to first carry out an investigation, the Commissioner will explain to the Bank and the complainant the reasons for this decision in writing.
- 2.2. Where a complainant refers a complaint to the Commissioner and in so doing raises new matters subsequent to, or arising from, the Bank's own investigation or decision, the Commissioner will provide the Bank with the opportunity to carry out an investigation of these new matters and respond to the Commissioner.
- 2.3. Where the Commissioner decides to investigate a complaint outside of the three-month time limit set out in the Scheme, the Commissioner will explain the reasons for this decision in writing to the Bank and the complainant.

3. Investigation – provision of documents/information

- 3.1. The Bank will afford the Commissioner all reasonable co-operation, and authorises the Commissioner to obtain such resources as they may reasonably require to discharge their duties under the Scheme, in accordance with the provisions of paragraph 11 of this Protocol.
- 3.2. In particular, the Bank will, unless otherwise agreed, within five working days of a request from the Commissioner, and subject to paragraph 7 of this Protocol, provide:
 - a) an electronic copy of the complaint investigation file (the complaints file) which shall include correspondence from the complainant, a chronology (where appropriate), copies of Bank internal correspondence relating to the complaint and any evidence gathered in relation to the complaint; and
 - b) such other resources and information as may be required by the Commissioner, provided such information is not stored in a physical or electronic archive. If the information is stored in archive, the Bank will provide the information without undue delay and will keep the Commissioner informed of progress in retrieving the information.

4. Investigation – access to additional information or individuals

- 4.1. It is expected that the majority of investigations will be desk-based.
- 4.2. If, exceptionally, the Commissioner wishes to ask additional questions of, or meet with, any Bank staff, the Bank will allow the Commissioner access to any Bank staff at or above Scale C, as may reasonably be required. For the avoidance of doubt, the access provided to Bank staff under this paragraph shall only be for the purpose of asking questions about a particular complaint.
- 4.3. The Commissioner will inform the Complaints Team in advance to arrange a date and time for a meeting to take place. Unless otherwise agreed, such meetings are to take place within 10 working days of receipt of the request unless the individual cannot reasonably attend within that timescale in which case the individual will be expected to attend a meeting with the Commissioner as soon as reasonably possible thereafter. There will be an agenda provided by the Commissioner before any such meeting.
- 4.4. The Bank will use all reasonable endeavours to ensure that Bank staff attend such meetings as requested by the Commissioner, and will advise the Commissioner where it believes alternative arrangements might be helpful, such as inviting different Bank staff to the meeting.
- 4.5. Any Bank staff invited to attend a meeting may invite additional attendees to any such meeting.

- 4.6. If the Commissioner requests additional information beyond that which was gathered by the Bank for the purpose of its investigation into the complaint, the Bank shall provide such information within 10 working days. If the Bank is unable to provide the information within this timeframe, the Bank will seek agreement from the Commissioner in writing for an extension of time to provide a response.

5. Investigation – criticism of individuals

- 5.1. The Commissioner's normal approach is that the member/s of staff will not be singled out for criticism personally, but rather criticism will relate to the Bank or a Division of the Bank where relevant. However, if, in the opinion of the Commissioner, any member of Bank staff at Scale C or above may be the subject of criticism in a report then both the Bank and the relevant member of staff will be given written notice of the criticism and afforded an opportunity to respond to the Commissioner before such preliminary report or any draft is finalised or published or provided to any third party, including the complainant.
- 5.2. Any response, from the Bank or the member/s of staff, must be provided within 10 working days of having received written notice of the criticism, subject to the granting by the Commissioner of any request for a reasonable extension of time within which to respond.

6. Investigation – report and publicity

- 6.1. Without prejudice to paragraphs 5.1, 6.4 and 7.2, the Commissioner will provide a preliminary report to the Bank and the complainant simultaneously.
- 6.2. The Bank and the complainant shall have the opportunity to respond to the preliminary report and the Commissioner, when providing the preliminary report, will confirm the date by which responses shall be provided, which will be a minimum of 15 working days from the date the report is shared with the Bank and complainant.
- 6.3. If either the Bank or the complainant requests an extension to the time limit for responding, and the Commissioner agrees, the Commissioner will inform both the Bank and the complainant in writing of the new date by which responses shall be provided.
- 6.4. In advance of providing a preliminary report to the complainant (as set out in paragraph 6.1 above) the Commissioner may provide a draft of the report to the Bank for the purposes of consulting on particular aspects of the report, such as factual accuracy, matters of confidentiality or to provide opportunity for the member/s of staff to respond to specific criticism as set out in paragraph 5 above.

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- 6.5. The Commissioner will normally issue a final report within 15 working days of the deadline set out in 6.2 above (as amended pursuant to 6.3).
- 6.6. When the Commissioner issues a final report to the Bank and the complainant, the expectation is that the Commissioner will also publish it. If the final report will be published, the Commissioner will indicate to the Bank and the complainant a date for publication. This will be at least 10 working days after the date the final report is issued to the Bank and the complainant. The Commissioner will notify both the Bank and the complainant in writing if there are good reasons not to publish a final report, or any part of it.
- 6.7. The identities of individuals will be anonymised in the final report before it is published unless the Commissioner has already notified the Bank in advance in accordance with paragraphs 5.1 and 6.4 above.
- 6.8. The identities of firms will be anonymised in the final report before it is published unless the Commissioner has already notified the Bank in advance in accordance with paragraphs 6.4 above, and subject to 7.3 below.
- 6.9. Where a final report is published, the Commissioner will usually publish the final report on the first and third Thursday of each month (or, if such date falls on a bank holiday, the first working day following).
- 6.10. Where the Commissioner will not publish the final report on the date notified under paragraph 6.6 above, the Commissioner will notify the Bank as soon as reasonably practicable, but, in any event, no less than two working days in advance of such date, and inform the Bank of the new publication date.
- 6.11. The Commissioner will notify the Bank immediately when a final report has been published.

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6.12. Where:

- a) the final report states that a complaint is well founded; or
- b) the Bank has been criticised in the final report; or
- c) the Commissioner makes a recommendation; or
- d) the Bank otherwise wishes to provide a written response to the final report,

the Bank will supply its written response to the Commissioner two working days before the date of publication. The Bank will publish its response at the same time as publication of the final report, and send a link to the Commissioner to its published response on the same day.

6.13. In cases where the Bank does not provide a written response to the final report, the Bank will acknowledge receipt of the final report after it has been issued to the Bank by the Commissioner and at least two working days before the date of publication.

6.14. Where the Commissioner has recommended that the Bank should offer a remedy to the complainant and the Bank accepts the recommendation, the Bank will aim to offer the remedy before publication of the final report.

6.15. On a quarterly basis, the Bank will inform the Commissioner what steps, if any, the Bank has taken to implement any recommendations and suggestions made in the Commissioner's reports.

7. Confidentiality

7.1. The Bank and the Commissioner are committed to being as transparent as possible in the discharge of their functions under the Scheme.

(i) The Bank shares all information relevant to a complaint with the Commissioner. In exceptional circumstances, where this is not possible due to legal restrictions on the Bank being able to share the information further, the Bank will provide the Commissioner with an explanation of the reasons for not being able to share the information and, so far as possible, the nature of the information.

(ii) The Bank is entitled to ask that any information provided to the Commissioner remain confidential, on whatever relevant grounds they invoke (there may be grounds for confidentiality that arise for reasons other than a statutory prohibition). The Commissioner will conscientiously consider any such representations, having balanced all the relevant considerations and give adequate reasons when the Commissioner disagrees with the Bank.

(iii) Each party to this Protocol bears responsibility for their own decision-making in relation to the identification and disclosure of information, including 'confidential information' within the meaning of section 348 FSMA and information whose disclosure may be subject to other legal restrictions in respect of its sharing.

7.2. Where the Bank has provided the Commissioner with information which it has not disclosed to the complainant:

(i) The Bank will identify any legally privileged information that it provides to the Commissioner. The privileged information will not be referred to in any report or communication with the complainant unless agreement has been reached, on a case by case basis, between the Commissioner and the Bank.

(ii) When the Commissioner considers it necessary and so requests, the Bank will identify the relevant legislation or legal framework applicable to the information, including providing an appropriate level of detail in its explanation of why it considers the information to be confidential or legally privileged to enable the Commissioner to discharge their functions.

(iii) If the Commissioner requires further explanation about the Bank's assessment of information as confidential the Bank will provide it within a reasonable time.

(iv) The Bank is equally committed to being open and transparent with complainants. The parties to this Protocol acknowledge that, even where the statute does not prohibit disclosure, it may nevertheless be rational to withhold the disclosure of confidential information. Where a decisionmaker relies materially upon confidential information in reaching a decision on a complaint, fairness may require that the complainant is still provided with a gist of the relevant information where possible and subject to the relevant legal framework.

7.3. Where the Bank has provided the Commissioner with information that the Commissioner wishes to disclose and

(i) the Commissioner is concerned that the information may be subject to statutory confidentiality restrictions under section 348 of FSMA, or

(ii) the Bank has indicated the information is subject to statutory confidentiality restrictions under section 348 of FSMA, or is confidential for other reasons and therefore should not ordinarily be disclosed, the Commissioner will provide the Bank with a copy of the information in the form in which the Commissioner proposes to include it in a report or otherwise disclose it and seek the Bank's views on the disclosure before a copy of the report is provided to any other person, including the complainant. The Commissioner will take into account the views of the Bank as to whether, or to what extent, the information could properly be disclosed giving adequate reasons when the Commissioner disagrees with the Bank.

- 7.4. If the Commissioner discloses confidential information to a complainant, they will provide appropriate warnings regarding onward disclosure of that information.

8. Annual Reports and Management Information (MI)

- 8.1. The Commissioner will prepare their annual report as required by the Scheme (the Annual Report) which will include the number and nature of the complaints received; on-going and concluded investigations during the period; and any matters arising under the Scheme which the Commissioner considers should be brought to the Bank's notice.
- 8.2. The Bank will provide the Commissioner with any information the Commissioner may reasonably request about the number and type of complaints or about the handling or investigation of complaints generally in order to assist the Commissioner to prepare their Annual Report. The Commissioner will provide similar information to the Bank to assist the Bank in preparing its response to the Commissioner's Annual Report.
- 8.3. In advance of providing the final version of the Annual Report to the Bank, the Commissioner will provide the Bank with a draft of the Annual Report to enable the Bank to provide comments on matters of fact contained in or omitted from the Annual Report.
- 8.4. The Commissioner will provide the Bank with the final version of the Annual Report at least 20 working days before the date it will be laid before Parliament to allow the Bank to consider the Annual Report, to prepare the Bank's public response and to address any questions raised by the Prudential Regulation Committee.
- 8.5. By 31st March of each year, the Commissioner, the FCA and the Bank will agree a timetable for the activities outlined in paragraphs 8.1-8.4 above.

9. Correspondence following the Commissioner's final report


- 9.1. Where the Bank receives communication from a complainant which contains new and relevant information connected to a complaint that has received a final report from the Commissioner, the Bank may refer that matter to the Commissioner for review. If the Commissioner decides that further investigation will need to be undertaken, the Commissioner will write to the Bank setting out the nature of the further investigation required.


10. Review

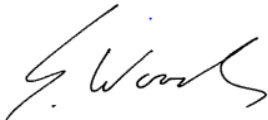
- 10.1. This Protocol should be reviewed if there are any changes in arrangements between the FCA and the Bank concerning the investigation of complaints.
- 10.2. The Commissioner and the Bank may also, by mutual consent in writing, agree alterations and amendments to this Protocol at any time.
- 10.3. Following any such alterations and amendments described in paragraph 10.2 a new Protocol will be prepared by the Bank and provided to the Commissioner.
- 10.4. In any event, the Protocol will be reviewed at least every two years by the Commissioner and the Bank.

11. Finances

- 11.1 The Bank, in conjunction with the FCA, will provide the Commissioner with sufficient financial and other resources as the Commissioner may reasonably require to undertake their role under the Scheme.
- 11.2 Each year, the Commissioner will submit a budget forecast and funding request schedule to the FCA’s Finance Department. If during the financial year significant additional resources are required over the agreed budgets or headcount, the Commissioner will notify the FCA’s Finance Department in writing in a suitably timely manner to enable the FCA, Bank and Commissioner to meet to discuss the additional resources required.

Signed by:  on 17 January 2023
Amerdeep Somal
Complaints Commissioner

 on 16 January 2023
Jon Cunliffe, Deputy Governor for Financial Stability
On behalf of the Bank



EXECUTION VERSION

..... on 13 December 2022

Sam Woods, Deputy Governor for Prudential Regulation

On behalf of the PRA