



Complaints Commissioner

Reviewing how the financial services regulators consider complaints

Annual Report
2019/20

Complaints Commissioner

Annual Report and Accounts 2019/2020
(for the year ended 31st March 2020)

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(as amended by the Small Business, Enterprise and Employment Act 2015)

ANNUAL REPORT 2019/20

This is the Annual Report of the Complaints Commissioner

It covers the period from 1st April 2019 to 31st March 2020

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Introduction by the Commissioner

Foreword by the Commissioner

This is my final report as Complaints Commissioner, after six years in post.

The Complaints Scheme, and my role in it, were established by Parliament in 2000 to provide a means by which individuals – both consumers and regulated firms and individuals – could obtain redress for problems caused by the actions or inactions of the financial services regulators. Without such a Scheme – and particularly given that the regulators enjoy statutory immunity from being sued for damages in most circumstances – there is a risk that the regulators could exercise (or fail to exercise) their considerable powers in a way which damaged individuals with no system for holding them to account.

Complaints under this Scheme are nearly always dealt with by the regulators first. In practice, almost all the complaints relate to the work of the Financial Conduct Authority (FCA), which is not surprising, given the nature and scale of its responsibilities. Complainants who remain dissatisfied then have the right to approach me for a review of their complaints. Over 90% of complainants do not escalate their complaints to me, and in a significant majority of the complaints which I investigate, I uphold the regulator's decision – although I may sometimes make suggestions for improvement.

That does not mean, however, that the Scheme has been operating satisfactorily. It has not.

I should make clear that the FCA has been candid with me about the problems which it is facing. New senior managers have recently been put in charge of the complaints function and I have seen their ambitious plans for improvement, which I support. It is clear to me that the FCA's Board recognises the issue. The data suggests that there are the beginnings of improvement in performance, and I recognise that the planned improvements will take time to take effect. I acknowledge, too, that over the past 18 months, the Complaints Team has experienced a major spike in complaints arising from the problems with Collateral and LCF (though most of these complaints have been deferred), and a more recent increase in 'normal' complaints. These are real problems, which are referred to in the Themes section.

However, the fact remains that during the period of this report, the Scheme has not been operating well. The causes of this are threefold.

First, the FCA's complaints function is simply not coping with the volume and complexity of its work. The individuals in the Complaints Team are working very hard but – despite my repeated interventions to urge the FCA to strengthen the complaints function – the FCA has still not succeeded in dealing with its backlog or effectively strengthened its quality control. I give examples of the results of these failings in the Themes Section. Many complainants are suffering appalling delays.

Second, there are clear examples of significant regulatory issues not being identified, despite complaints investigations. This may, in part, be due to the overload experienced by the Complaints Team but – not for the first time – this Report cites examples of matters which ought to have been uncovered by the FCA's investigations, and shortcomings which the FCA was reluctant to admit. A well-functioning complaints scheme is a tool for continuous improvement. While there are examples of the FCA responding to complaints with system improvements – most notably in its work to improve the FCA's registers, referred to in the Themes section – other matters are not being identified as they should be.

Finally, the regulators' failure to address suggestions for improvement to the Scheme, and in particular to clarify the policy on compensation under the Scheme, suggests a reluctance to give the needs of complainants sufficient priority, though I am pleased to say that at the time of writing it appeared that they were finally about to issue a consultation on the issue.

Despite my repeated warnings over a sustained period – the FCA has not yet established a complaints function with the resilience required to deal with the kinds of problems which an organisation of its size and responsibilities requires.

The shortcomings not only affect individual complainants – sometimes very significantly – but also have the potential to undermine confidence in the regulatory system. In the past few years, the FCA has established several independent inquiries to look at major examples of consumer detriment caused by large firm failures. One problem with these inquiries is that they tend to be delayed because of regulatory action, with the result that their conclusions are published long after the events which they are considering, and their recommendations may relate to historic rather than current practices.

The result is that there is no prompt and public system of quality assurance. The Complaints Scheme, as it is currently operated, does not adequately address this gap, since the number of complaints which I consider is small. At best, I can indicate concerns that what I have uncovered *may* be indicative of a wider problem. This leaves an unsatisfactory gap. The FCA has been developing internal quality assurance procedures in its Supervision Department, but I have yet to see the results feed through into the complaints which I consider. And in any event, an internal QA process – however good it may be – is not a substitute for more public assurance. In my view, serious consideration should be given to:

- a. Improving the Complaints Scheme to make it more readily understandable to complainants, and clarifying the policy on compensation under the Scheme;
- b. Giving the Complaints Commissioner (or another independent person) a wider role in periodic quality assurance of the operation of the regulators' complaints functions;
- c. Regular publication of the steps taken by the FCA to review the operation of its functions and to address concerns, including those arising from the Complaints Scheme – for example, the triaging of data received by the Supervision Hub, the maintenance of the Register, and the effectiveness of supervisory responses to intelligence.

Without these measures, I consider that there is a danger that the Complaints Scheme will continue not to meet its objectives, and that wider lessons about regulatory effectiveness will not be adequately addressed.

Antony Townsend
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.

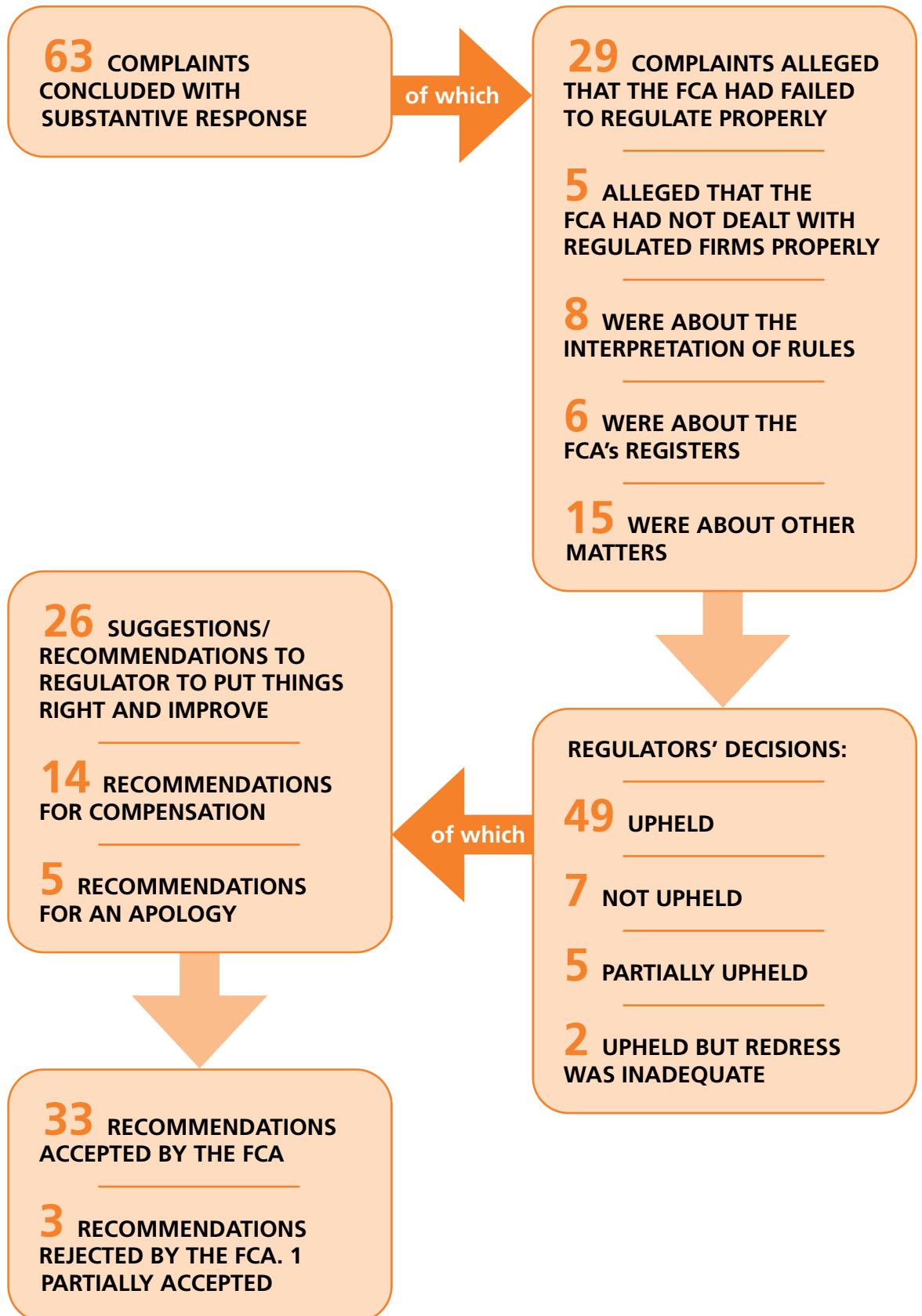
If complainants are not able to resolve their complaint with one of the regulators, the Commissioner considers the complaint and, if he upholds it, can make recommendations. The recommendations the Commissioner can make include issuing an apology, putting things right, or an ex gratia compensation payment.

The majority of complainants are individual consumers and small regulated businesses.

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

2

The year at a glance



3

Overall Scheme Statistics for 2019/20

The Commissioner dealt with 275 complaints during the year, compared to 206 the previous year (a 35% increase compared to a 3.5% increase the previous year). This increase was smaller than the increase in complaints received by the FCA, but since there is a lag between the FCA receiving complaints and complaints reaching the Commissioner, and since the FCA deferred a large number of complaints during the year, it is not possible to draw any firm conclusions on whether there is a change in the proportion of cases which are referred from the FCA to the Commissioner.

3.1

Table 1: Total complaints received

Complaints and enquiries dealt with	2019/20	2018/19
Complaints in progress at start of period	30	20
New enquiries and complaints received	215	153
Re-opened enquiries and complaints	30	33
Total number of complaints and enquiries dealt with	275	206
Complaints and enquiries closed during the year	245	176
Complaints and enquiries in progress at end of period	30	30

205 complaints were about the FCA, two were about the PRA (jointly with the FCA), one was about the Bank of England (jointly with the FCA).

About 23% (64) of the 275 complaints were about financial services providers or other bodies, not the regulators, and in those cases we directed the complainants to other organisations which could help them.

The increase in complaints about the FCA (205 vs 169 last year) is due to 47 complaints related to the FCA's oversight of four different firms, including London Capital & Finance PLC (LCF) and the Collateral Companies. These complaints were deferred by the FCA while regulatory action was being pursued.

The Office of the Complaints Commissioner also processed three subject access requests under the Data Protection Act 2018 during the year.

4

Bank of England and Prudential Regulation Authority statistics from 1st April 2019 to 31st March 2020

The Complaints Scheme covers complaints about the Bank of England's oversight of the banking clearing houses and payment settlement schemes, and against the Prudential Regulation Authority (which is part of the Bank).

4.1

Complaints against the Prudential Regulation Authority

The Commissioner dealt with two complaints against the PRA between 1st April 2019 and 31st March 2020.

One complaint (which is about both the FCA and the PRA) was still being investigated by the regulators at the end of the period covered by this report. The complainant will have the opportunity to refer their complaint to the Commissioner if they wish once the regulators conclude their investigations.

The second complaint (which is against the FCA and the PRA) was still being investigated by the Commissioner at the end of the period, and will be included in next year's statistics.

4.2

Other complaints against the Bank of England

The Commissioner dealt with one complaint about the Bank of England between 1st April 2019 and 31st March 2020. This complaint (against the BoE and the FCA) was not concluded during the period, and will be included in next year's statistics.

5

Financial Conduct Authority Statistics from 1st April 2019 to 31st March 2020

The Commissioner dealt with 205 complaints against the FCA. The 21% increase in complaints this year was mainly due to 47 complaints related to the FCA's oversight of four different firms which had been deferred by the FCA because of continuing regulatory action by the FCA.

In addition to the 205 complaints, the Office of the Complaints Commissioner (OCC) dealt with three subject access requests under the Data Protection Act 2018, and a complainant who unsuccessfully sought leave from the courts to judicially review the Commissioner's final report on his complaint.

5.1

Table 2: Complaints dealt with during the year

Complaints	2019/20	2018/19
Complaints at start of period	27	19
New complaints received	148	118
Re-opened complaints	30	32
Total complaints, of which:	205	169
Complaint referred to regulator for initial investigation	31	17
Complaint referred back to regulator for further investigation	2	4
Complaint deferred by FCA and OCC due to continuing regulatory action	47	0
Complaint deferred pending completion of initial investigation by regulator	24	18

In 31 instances, complainants approached the Commissioner for an investigation without complaining to the FCA first. None of the 31 complainants gave exceptional reasons why the FCA should not investigate the complaint first, so they were referred to the FCA. It is not clear why there has been such a large increase in complainants approaching the OCC directly. This is something which the Office will explore.

In one instance, the FCA had completed its investigation, but the Commissioner was not satisfied that the investigation was sufficient. The FCA agreed to conduct a further investigation. In a second instance, the FCA asked to recall a complaint as it was not satisfied with its initial review, and the Commissioner agreed.

In another 24 instances, complainants whose complaints were already being considered by the regulators asked the Commissioner to intervene and conduct his own investigation. The primary reason for these requests was the FCA's complaint handling delays (which are discussed further in the Themes section of this report).

5.2

Table 3: Decisions in concluded complaints

Concluded complaints	2019/20	2018/19
Initial case decisions issued by the Commissioner		
Complaint excluded ^{note 1}	5	6
Complaint reviewed without formal investigation ^{note 2}	0	2
Complaint formally investigated ^{note 3}	58	63
Total ^{note 4}	63	71

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).

Note 2 When considering a complaint, the Commissioner sometimes decides that a review of the regulator’s complaint records is sufficient, and he does not need to undertake a full investigation with further inquiries. (The Commissioner has access to all the regulators’ records.)

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 We now show the number of complaints reports rather than the number of complainants. The Commissioner concluded 63 complaints. Three of these were linked to a further 37 complaints about the FCA’s oversight of three firms. The FCA had deferred the investigation of these complaints due to continuing regulatory action and the Commissioner agreed with this deferral. A further seven complaints were related to a fourth firm. The FCA is currently investigating these complaints.

5.3

Table 4: Concluded complaints according to subject matter*

Concluded complaints by allegation type	2019/20	2018/19
Failure to regulate adequately, of which	30	35
the FCA has failed to regulate a firm and/or group of firms	15	23
the FCA has failed to oversee the FOS	3	4
the FCA has failed to regulate 'schemes': RBS GRG, IRHP, card protection scheme, BACS	5	3
fraud: the FCA has failed to deal with fraud in regulated and unregulated firms	7	5
Regulated firms or individuals complaining that the FCA has failed to deal with them properly, of which	5	10
complaints about FCA Enforcement	2	5
complaints about FCA Authorisation	3	5
The FCA has issued financial penalties to firms unfairly	1	10
Whistleblowing, of which	3	1
disclosure of identity	1	–
failure to act on information	2	–
inadequate processes	–	1
Interpretation of rules	8	6
FCA Register	6	3
Other	12	6
Total	65	71

*The number of themes may be more than the number of complaints as some complaints are about more than one issue.

Proportionately, the themes this year are similar to last year, with three notable exceptions being:

1. The decrease in regulated firms or individuals complaining that the FCA has failed to deal with them properly;
2. The decrease in firms complaining the FCA has issued financial penalties unfairly;
3. Complaints about the FCA register have notably increased.

The decrease in complaints about financial penalties is welcome and most likely due to a combination of factors: consumer credit firms (which constituted the overwhelming majority of complainants in previous years) which transitioned to FCA regulation in 2014 are likely to be bedding down new procedures to ensure compliance, while at the same time the FCA has evolved its GABRIEL system to make it more user friendly and efficient.

This year a number of complainants have raised the FCA register as a significant issue. This is addressed in more detail in the Themes Section.

In 29 instances complainants alleged that the FCA was failing to regulate the financial services industry properly, and in most cases the complaint was about the regulation of a specific firm. In these cases, as in previous years, most of the complainants had also complained to the Financial Ombudsman Service.

As last year, complaints about interpretation of rules and fraud were notable themes.

5.4

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

Concluded complaints	2019/20	2018/19
Regulator's decision fully upheld	51	53
Regulator's decision partly upheld	5	7
Regulator's decision not upheld	7	11
Total	63	71

The Commissioner upheld the large majority of the FCA's decisions, and in many of these cases, the Commissioner also made suggestions and recommendations for process improvements within the FCA. Some of these are considered in the Themes section.

5.5

Table 6: Remedies recommended by the Commissioner

Remedies recommended for concluded complaints	2019/20	2018/19
Apology	5	3
Put things right for complainant*	9	7
Recommendations for improvements within the FCA	11	3
Compensation	14	7
Suggestions for improvements within the FCA or criticism	6	11
Total	45	31

*2018/19 statistics presented a combined figure of 10 for putting things right for complainant and recommendations for improvement within FCA

Note: in some cases there were multiple remedies.

The Commissioner asked the FCA to offer or increase ex gratia compensation to 14 complainants. He recommended ex gratia compensation for two main reasons: issues with delays in the complaints handling and/or poor communication from the FCA (in some of these cases the FCA had already offered a payment, and the Commissioner increased it); and instances where the actions of the FCA contributed to the complainant's financial loss.

Out of the 37 remedies identified, the FCA did not accept three and accepted one partially. Two were related to losses the complainant had incurred in part due to the FCA register being inaccurate. In these cases, the Commissioner recommended the FCA offer a substantial ex-gratia payment to the complainants which the FCA did not accept on the grounds that the principal cause of the loss was a scam.

In one case, the Commissioner recommended that the FCA consider whether it should take steps to record telephone calls that lead to decisions about a firm's activities and which will affect individuals and businesses. The FCA considered the recommendation but after a pilot did not accept it. In another case, a firm complained about a fees issue. The Commissioner recommended the FCA waive 50% of the fee but the FCA did not accept this recommendation and offered the firm a £50 ex gratia payment (please see page 21).

The FCA accepted the rest of the recommendations, which the Commissioner welcomes, but in some cases there were delays in implementing his suggestions and recommendations (excluding apology and compensation) and in one, internal reviews are continuing which means the FCA has not yet implemented what the Commissioner recommended.

5.6

Table 7: Type of complainant

Type of complainant	Excluded	Formally investigated	Total 2019/20	Total 2018/19
Independent Financial Adviser	0	2	2	2
Firms	0	8	8	24
Consumer	4	46	50	43
Solicitor on behalf of firms	0	1	1	0
MP	1	0	1	0
Third party	0	1	1	2
Total	5	58	63	71

This year, there was a marked decrease in complaints from firms.

Complaints from businesses and individual advisers are thematically different this year compared to last year, when they tended to be about administrative and fees issues, and about the way in which the FCA was interacting with the firm. Of the ten firms (two of which were not regulated by the FCA) and two IFAs who complained, seven claimed they were directly affected by the FCA's actions. There were:

1. Two complaints about the FCA's authorisations department, which were not upheld.
2. Two complaints about the FCA's enforcement department. Neither was upheld, but recommendations were made in both cases. In one case the Commissioner recommended that the FCA increase the ex gratia payment to the complainant, which the FCA accepted. In the other case, as explained under Table 6, the FCA considered the recommendation that telephone calls should be recorded, but did not accept it.
3. One complaint was about fees. The Commissioner upheld the complaint and recommended the FCA waive 50 % of the fee. The FCA did not waive the fee, though offered a small compensatory payment (see the Themes section for further details).
4. One complaint was about the FCA Register. The Commissioner disagreed with the FCA's exclusion of this complaint from the Scheme, but did not uphold the substance of the complaint.
5. One complaint was that the FCA was discriminating against a business owner on disability grounds. The complaint was not upheld.
6. One complaint was about how the FCA had dealt with a firm. This was not upheld.

Four firms claimed they were indirectly affected by the FCA's actions. They were:

1. Two complaints about the FCA's alleged failure to deal with firms which affected the business of the complainants. The complainants were unrelated IFAs who felt affected when firms they had recommended to clients later became subject to FCA scrutiny. The Commissioner upheld one and partly upheld another complaint. The FCA accepted the recommendations in both cases.
2. One complaint was about the FCA's oversight of the Interest Rate Hedging Products redress scheme and one about the FCA's oversight of payments systems regulations. Neither firm was regulated and neither complaint was upheld.

The Scheme continues to be used almost exclusively by individual consumers and by small businesses. It can also be seen that, across all types of complainant, the majority of complaints referred to the Commissioner merit a formal investigation. Complaints from consumers tended to be about alleged failures to regulate firms effectively.

Delays and quality problems in the FCA's Complaints Team

The work of the Commissioner during the year has been dominated by the problems caused by delays in the FCA's complaints handling. Despite repeated warnings from the Commissioner over several years, including representations to the FCA's Board, and promises by the FCA to improve matters, the situation has deteriorated further during the year. There were signs of improving output in the second half of the year, but these have not yet been reflected in the cases reaching the Commissioner. The Commissioner's office has had to deal with significant numbers of complainants who are at their wits' end because complaints have been delayed, deadlines have been missed, the FCA has failed to send promised updates, and investigators have left and been replaced part-way through investigations.

It is important to explain the context here. Data supplied to the Commissioner by the FCA shows that from the end of December 2018 two things happened. First, there was a surge in complaints about two firms where investors had lost money – Collateral and London Capital and Finance (LCF). Those complaints had to be processed, though most of them were deferred pending independent inquiries into the firms and therefore did not require immediate investigation. Second, from the summer of 2019 there was a significant increase in other complaints. In broad terms, there was a doubling in the annual number of complaints received by the FCA between the two-year periods 2016/18 and 2018/20. Excluding the deferred complaints, 'normal' complaints declined between 2016/17 and 2018/19, but in 2019/20 were around 50% higher than the historic norm, and 70% higher than the preceding year.

Faced with this increase in complaints, it is not surprising that the FCA struggled to deal with the workload. However, the problem it faced was exacerbated by the fact that it had not established a team with the capacity and resilience to cope with such fluctuations, nor with appropriate management information to enable it to manage. Furthermore, the Complaints Team suffered from high staff turnover. The result was that it struggled both with the complaints it deferred – many of which were inappropriately 'closed' – and with the 'normal' complaints where long delays, failures to update appropriately, and changes of investigators were commonplace.

A stark example of this is the complaint FCA00700. The complainant had waited for fifteen months for his complaint to be investigated by the FCA, with repeated delays and several changes of investigator. In October 2019 he had been told that the investigation was near completion, but that there were some 'important elements' which needed further investigation. In November, he was told that the previous investigator had left, and that it was not possible to say what the 'important elements' were nor when the complaint would finally be resolved.

The Commissioner had to draw in the newly appointed executive director to look at the matter before there was a recognition that this was a problem. This is indicative of the serious problems in the FCA's complaints function which, despite the best efforts of its individuals, is simply overwhelmed with work and unable to deliver a consistently effective function.

While the FCA can point to the major increase in complaints, this is not a sufficient explanation, because some of the underlying problems pre-date these increases. Despite the Commissioner's repeated urgings over a prolonged period, the FCA has never succeeded

in establishing a Complaints Team with the stability, capacity, capability and resilience to cope with the nature and level of complaints which an organisation of the FCA's size, complexity, and responsibilities receives. The result is not only delays but problems of quality: because the Complaints Team lacks the capacity to pursue thoroughly, and to double check, the Commissioner repeatedly finds that complaints have been wrongly classified and under-investigated.

The Complaints Scheme *requires* the FCA to give complainants timescales, *requires* the FCA to ensure that complaints are dealt with by people with sufficient seniority, and *requires* the FCA to resolve the complaint as swiftly as possible, *with the aim of satisfying the complainant*. In too many of the cases that reach the Commissioner, the FCA is not meeting the Scheme's requirements.

A well-functioning complaints system not only delivers prompt and helpful responses to complaints, but is also a vehicle for improving quality. The FCA has been undertaking some admirable work to improve the accessibility and reliability of its registers, and this is an excellent example of learning from complaints and putting consumers' needs centre stage. Nonetheless, the fact remains that – despite repeated requests – the FCA is still unable to provide reliable timescales to complainants, or regular updates to the Commissioner on progress in response to his recommendations, and the systems for using information from complaints to inform the improvement of regulatory processes remain underdeveloped.

The Complaints Team has recently been relocated in the FCA and is under new senior management. The Commissioner has discussed the improvement plans with the new management. He considers that the proposed reforms are ambitious and sensible, and he does not doubt the good intentions. There have recently been signs of a better grip on management information, and of strengthening of the team, and output appears to be picking up. However, he has to note that this is not the first time that improvements have been promised, and he considers that in the absence of a sufficiently large, stable, and capable team with the confidence to investigate matters fearlessly, and the resources and expertise to undertake genuine quality assurance, such plans will not resolve the underlying problems.

Cases of interest

Theme 1: accuracy of registers

Complaints involving the register were again a significant feature of the year. The Commissioner is aware of, and commends, the programme of work which the FCA has been undertaking to improve the usability and reliability of the register (see above). He has, however, been worried about the FCA's attitude when concerns have been raised about inaccuracies in register entries. In both the cases below, significant weaknesses in the system were not picked up by either the Authorisations department or by the Complaints Team in its investigations. Given that the accuracy of registers is core to a regulator's work, this is a matter of concern.

FCA00503 – errors in entry of an EU passported firm

In this case, a complainant lost an investment in an Austrian firm which, it turned out, was a fraudulent clone. The firm appeared as a 'passported' EU firm on the FCA's register despite the fact that it should have been removed from the register 12 years earlier. This was a result of an error made by the FSA.

The complainant bore some responsibility for her losses since she had not followed the FCA's advice to make further checks with the Austrian regulator. The Commissioner made a recommendation that the FCA should compensate her for 50% of her losses, because the register error had been a significant contributory factor in her losses, but the FCA did not agree, on the grounds that the principal cause was the fraudulent firm, and the complainant ought to have followed the FCA's advice.

Although the Commissioner understood the FCA's arguments, he had a wider concern that his investigation had uncovered significant weaknesses in the FCA's registration processes which the FCA's own investigation had not identified. The FCA undertook to take remedial measures to address these, which it has now done.

FCA00654 – serious register errors not picked up by Registration or Complaints Team

In this case, the complainant had alerted the FCA to the fact that an association included on the FCA's Mutuals Register had not submitted accounts as it was required to do. The complainant had also raised concerns about the association's finances. The Commissioner's investigation revealed a series of errors and confusion which the FCA's investigation had not uncovered. These included not following up missing information, and posting clearly inadequate accounts on the FCA website. In his conclusion, the Commissioner said:

The Complaints Team's decision letter said that 'I am unable to agree with your view that the FCA is failing to maintain the Mutuals Register', but my reading of the confidential papers does not reassure me that there is an effective system for ensuring that the information required by law to be included on the Mutuals Register is sufficiently monitored. The statutory requirements are there for a purpose.

The FCA's explanation – that it has to prioritise its actions, and that it cannot follow up every breach – does not seem to me to be adequate in this case. Information suggestive of possible financial impropriety in an association which had failed to submit its accounts promptly – or whose accounts had been returned by the FCA as inadequate – was not promptly followed up, and the FCA's record keeping appears to have been poor.

I am pleased to say that, in response to my preliminary report, the FCA has:

- a. Acknowledged that, in this instance, the matter was not dealt with appropriately. Errors were made, the information you provided should have been treated as a priority, and the FCA wishes to apologise;*
- b. Recognised that the overall process requires review. The FCA has committed to
 - i. taking immediate action on all current similar instances,*
 - ii. instituting a revised process with regular monitoring of the Mutuals Register and immediate follow-up action,*
 - iii. reviewing internal processes and guidance to promote consistency.**

In summary, I uphold your complaint, and congratulate you on your persistence. I am pleased that the FCA has responded positively, though I consider that it should not have required my intervention for the FCA to address what was clearly a significant issue.

Theme 2: supervision of firms

Unsurprisingly, alleged failures in the supervision of firms make up a large proportion of the complaints reaching the Commissioner, since firm failures are likely to result in investors losing their money. Many of these complaints to the FCA arise when the complainant has tried, and failed, to obtain compensation from the Financial Ombudsman Service (FOS) or the Financial Services Compensation Scheme (FSCS).

The Commissioner acknowledges that the FCA does not, and cannot, operate a 'zero failure regime'. It has to concentrate on the most acute risks, and cannot pursue every piece of information which it receives. Nonetheless, the public are entitled to expect that it will react to significant information.

FCA00535 – failure of supervision, failure of Complaints Team to identify problems

This was a complaint about the FCA's supervision of a firm, and the Commissioner was critical of the FCA's inadequate response to information. The Commissioner said:

I have dealt with these matters before, particularly in my published decision on the Connaught Series 1 Income Fund. Although the facts of your complaint differ, I continue to see a number of cases where IFAs, consumers and others report concerns about a firm or a fund to the FCA, sometimes over several years, and where there is a mismatch between stakeholders' expectations and the perceived actions of the regulator. Some of this mismatch arises from the confidential environment in which the FCA operates, both under the Financial Services and Markets Act 2000 and because of its own policy approach, which means that action which the FCA is taking is not apparent to complainants. Some arises due to the passage of time and different approaches taken now and in the past by the FCA and its predecessor organisation, the FSA. However, I continue to have concerns about a lack of effective prompt action by the FCA in some cases. I have also commented that the FCA could do more to explain and clarify its approach to these matters, a matter which the FCA is now addressing.....

The FCA's confidentiality regime must not be used as a screen to avoid proper scrutiny and reflection or, where appropriate, admission of clear failings. Although the FCA engaged positively and openly with the further questions I raised, I am concerned that the FCA's complaints process was both badly delayed and did not get to all the issues underlying your complaint.

FCA00683 – failure to take action on a serious allegation of fraud,

In this case, a financial adviser complainant expressed his 'incredulity' that the FCA had not followed up a serious allegation which he had raised about another adviser and firm. The FCA had initially concluded that the complaint was concerned with an individual dispute, and was a civil matter. The FCA Complaints Team upheld this view.

The Commissioner agreed with the complainant. He was particularly concerned that, as in other cases which he had considered, the FCA appeared to consider that because the police took the lead in many fraud cases, fraud was in some way of little interest to the regulator. He said:

It appears to me that the FCA – while correctly identifying that your complaint arose from a dispute between you and firm X which was a civil legal matter which was not for it to resolve – failed to recognise that the information which you had supplied had potentially significant regulatory implications as well.

On the face of it, a serious allegation had been made against you – a person who had been authorised by the FCA – and you had made a serious allegation against another person and firm X in relation to false accusations and a failure to co-operate with police inquiries. While the FCA could clearly not reach any immediate conclusions on the basis of your information, I am surprised that it did not consider that further inquiries would be wise.

The FCA accepted the Commissioner's decision. The Commissioner was concerned that, on two occasions, the FCA had dismissed as of no regulatory interest matters which, if true, were clearly highly relevant to its regulatory remit.

Theme 3: delays in regulatory processes, lack of candour about extent of failings, and the impact upon financial services firms

In a small number of cases, I have been concerned that the FCA's reluctance to accept the extent of its failings has given complainants a misleading impression of what happened. The FCA needs to have the confidence to admit its failings fully and candidly.

FCA00484 – delays in passing on information

This was a case where failings in the passing on of potentially important information from the CCC (now the Supervision Hub) to the supervision department, inadequate supervision of the firm, and the complainant being given inaccurate information were exacerbated by a badly delayed complaint response which did not get to the bottom of the issues, and gave an inadequate description of the FCA's shortcomings. The Commissioner concluded:

*In my view a compensatory payment under the Scheme should be made because, after serious delays, the FCA's complaints process failed to provide you with a fully substantiated response to your concerns, and you were misled on one significant point. **I recommend** that the FCA offers to pay you a further £350 to reflect this, in addition to the £150 already offered to you by the FCA for its complaints handling delays (if not already accepted), a total of £500. In response to my Preliminary Report the FCA has indicated that it will make this offer.*

FCA00642 – failure to abide by, and respond on, statutory deadlines – failure to admit to extent of shortcomings

The complainant in this case had applied for authorisation from the FCA. The application was complex. The focus of the complaint was on the fact that, despite repeated requests, the FCA had not responded to a question about the statutory deadline for its consideration of the application, a deadline which it had breached. This included a refusal to give information about the statutory deadline during a telephone call with the complainant's solicitor.

The FCA upheld the complaint, but said that it had been caused by human error. The Commissioner disagreed. He said:

I consider that the FCA's explanation that the matter was 'human error' is wholly inadequate. If the FCA knew what the statutory deadline position was during the..... phone call – and if it did not know, how was it managing the application to the deadline? – it should have disclosed it then. The fact that – according to the note of the call – the FCA declined to cover the matter during the call (despite having been put on notice of the issue for over six weeks) inevitably leads me to one of two conclusions: either it was reluctant to disclose the position, or it was reluctant to admit that it did not know the position. Neither conclusion does the FCA any credit.

The case highlights the Commissioner's view that, on occasions, the FCA is reluctant to be wholly candid about its own failings.

FCA00659 – failure to compensate for expectations on fee waiver

In this case, the complainant approached the FCA about cancelling his firm's authorisation. In fact, he had already missed the deadline for cancellation for the year in question, but he was wrongly advised by the Supervision Hub that he would not be charged if he submitted his cancellation application promptly.

When the error came to light, the Supervision Hub considered that his fee should be waived, given the wrong advice which he had been given; but the FCA's finance department disagreed, and the FCA Complaints Team said that it was fair to charge him because by the time he received the advice from the Supervision Hub he had already missed the deadline.

The facts were not in dispute, but the Commissioner's view was that the FCA should waive half the fee to acknowledge the false expectation which had been raised by the FCA's error. The FCA disagreed, but offered £50 for distress and inconvenience.

It is the Commissioner's view that this case illustrates the FCA's reluctance to place itself in the shoes of complainants, and its tendency to stick rigidly to questions of legal liability rather than considering matters in a more rounded fashion. The objective of satisfying the complainant – which is part of the statutory Scheme – is not given sufficient priority.

Resources

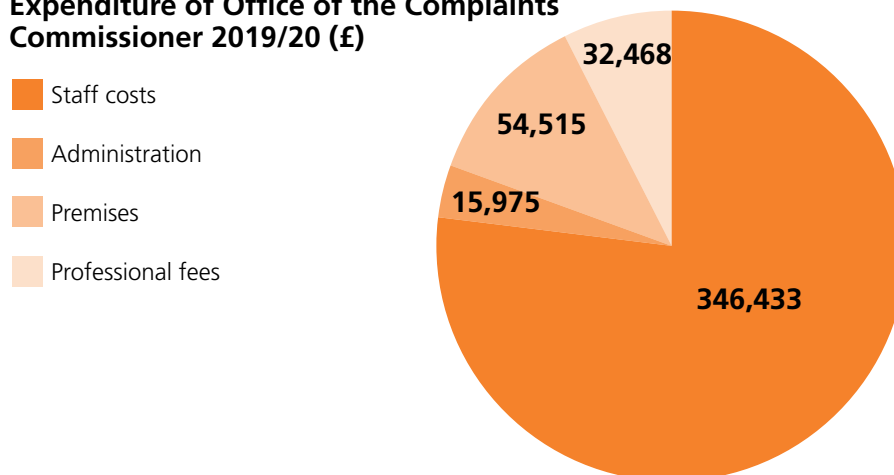
Under the Complaints Scheme, the Commissioner must be provided by the regulators with “sufficient financial and other resources to allow him to fulfil his role under the Scheme properly”. The Commissioner confirms that he has had the resources he requires.

Although the caseload for the Commissioner has risen 20% since he took up his appointment in May 2014, steps have been taken to ensure that resources are used as efficiently as possible.

Expenditure for the year ending 31st March 2020 was £449,392 compared to £426,259 the previous year, an increase of 5%. This was mainly due to legal fees incurred during the year in connection to a complainant who (unsuccessfully) sought leave for judicial review of the Commissioner’s decision on his complaint.

The breakdown of expenditure by broad category is as follows:

Expenditure of Office of the Complaints Commissioner 2019/20 (£)



Expenditure in 2020/21 is projected to be £461,400.

The organisation has undertaken a number of initiatives during the year to improve case handling. This has included staff training on unconscious bias, and the introduction of customer service standards questionnaires, as well as monitoring and reporting against published service standards.

Environmental initiatives

1. The Office recycles as much waste as possible.
2. All the records of the Office are held digitally, to reduce the use of paper.

Remuneration

The highest paid employee of the Office was the Complaints Commissioner, whose total remuneration for 2019/20 was £156k (2018/19 £156k).

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 <https://frccommissioner.org.uk/wp-content/uploads/Quality-and-Service-Standards-April-2020.pdf>

Formal performance measures for service standards were introduced for the first time during the year. 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, and updates the complainant every four weeks. The Office aims to complete complaints within eight weeks, although this depends upon the complexity and the need for further inquiries.

Targets for the overall speed of investigations were exceeded during the year as follows:

Cases completed by	Target	Actual	Performance
8 weeks	75%	80%	exceed
16 weeks	90%	100%	exceed

During the period, there were two service standard complaints. One was about a member of staff. This complaint was reviewed by the Complaints Commissioner and the Chief Operating Officer and was not upheld. A second complaint was about the complainant receiving a letter with underpaid postage. This complaint was upheld and the complainant was offered £50 for the inconvenience.

The Office of the Complaints Commissioner introduced customer satisfaction surveys to monitor service standards. A survey is sent out three months after a case is completed. One quarter of recipients completed the survey.

	Tend to agree	Tend to disagree
The website was accessible and provided information which was relevant	8	3
I was kept updated throughout the process	8	3
I was contacted in a way that suited me (email, telephone etc) and when agreed	9	2
Found it easy to make my complaint to the Complaints Commissioner	8	3
I understood the Complaints Commissioner's role and powers	7	4
The process was clearly explained to me	8	3

Over 73% of respondents tended to be satisfied with the service they received from the Office of the Complaints Commissioner.

Although satisfaction with the standards of service was relatively high, all of the complainants who responded to the survey had not had their complaints upheld, and all but one was dissatisfied with the outcome of the complaint. The majority of those complainants were not satisfied that the Commissioner's decision was fair, transparent, and impartial. 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. The Commissioner continues to review how feedback from complainants is obtained.

APPENDIX

Expenditure

Profit and Loss Account

For the year ended 31st March 2020

	2019/20 £	2018/19 £
Administrative expenses	(449,391)	(426,258)
Other operating income	–	–
Operating Loss	–	–
Interest receivable	–	–
Profit on ordinary activities before taxation	–	–
Tax on profit on ordinary activities	–	–
Profit on ordinary activities after taxation	–	–

All amounts relate to continuing operations.

There were no recognised gains and losses for 2019 nor 2020, other than those included in the profit and loss account.

The audited accounts for the period ending 31st March 2020 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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