



Complaints Commissioner

Reviewing how the financial services regulators consider complaints

Annual Report
2020/21

Complaints Commissioner

Annual Report and Accounts 2020-2021
(for the year ended 31st March 2021)

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

ANNUAL REPORT 2020/21

This is the Annual Report of the Complaints Commissioner

It covers the period from 1st April 2020 to 31st March 2021

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Introduction by the Commissioner

Foreword by the Commissioner

This is my first report as Complaints Commissioner, after five months in post.

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 oversight of the recognised clearing houses and interbank payment systems. My role as the independent Commissioner serves a wider purpose in the governance and accountability of the regulatory system. 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 with no system for holding them to account.



During this year, 393 complaints were dealt with by my office. I issued decisions in 96 of the complaints I received. In 78 of these, the regulators' decision was upheld, although there were 62 recommendations and suggestions made. My predecessor pointed out in his last annual report that the fact that a high proportion of complaints are not upheld did not necessarily mean that the Scheme was operating satisfactorily, and indeed he found it was not. The issues which were highlighted last year included significant FCA delays in handling complaints, significant regulatory issues not being identified by the FCA Complaints Team, the failure to address suggestions for improvement to the Scheme, and in particular the regulators' failure over many years to clarify the policy on compensation under the Scheme. It was suggested that consideration should be given to periodic independent assurance of the effectiveness of areas of the regulators' functions about which concerns arose from the operation of the Scheme.

Since then, there have been some developments in addressing the issue of compensation and improvements to the Scheme. In July 2020 the regulators launched a joint consultation on the Scheme, which closed in October 2020. The consultation asked how the Scheme's language could be improved to make it more accessible to consumers. It also clarified the regulators' policy on making ex gratia compensatory payments. My predecessor responded to the consultation to say that the suggestions on compensation 'represent an explicit fettering of compensation for direct financial loss, which makes it especially important that there is proper consultation before it is adopted. I suggest that the approach should be that compensation for demonstrable financial loss caused by the regulators (as distinct from principally caused by regulated firms) should be for the full loss, save in exceptional circumstances.' I share this view. The FCA has assured me there will be no fettering of my discretion and told me no final decision has been made on the outcome of the Scheme consultation.

I am also currently developing my own policy position on these and other matters. It is my hope we will reach common ground in offering fair and transparent outcomes for complainants.

My office sees a small number of complaints, but these may point to concerns indicative of a wider problem. Although the Scheme cannot be a substitute for the wider prompt and public quality assurance my predecessor urged the regulators to undertake, nevertheless, my role provides independent scrutiny. The Scheme exists not only to put things right by recommending remedies and compensatory payments on an ex gratia basis for affected complainants, but can and does form part of the democratic accountability framework for assessment of the

regulators' performance, through shining a more general light upon how the regulators act or fail to act in the discharge of their relevant functions. My reports enable me, where appropriate, to ask the regulators to provide assurance that other complainants are not affected and to make more general recommendations and observations about the operations of the regulators. This is reflected in the Themes Section of this report. I have also recently submitted a response to the Financial Services Future Regulatory Framework Review Phase II highlighting these points and the unique place of the Commissioner's role in the accountability and scrutiny arrangements for UK financial services regulation. The FCA has accepted the suggestion my predecessor made, and which I support, for an external independent quality assurance function of the FCA Complaints Team. This will be undertaken by my office going forward through examination of the relevant material and meetings to discuss.

One area I will be focusing my attention on centres on the issues of confidentiality and transparency. Some constraints are imposed on the Scheme by the confidentiality requirements of the legislation under which both the regulators and I operate. Nevertheless, as my predecessor pointed out in one of his reports, this regime 'must not be used as a screen to avoid proper scrutiny and reflection'. In some cases, I have seen the regulators have offered transparency and given further information to complainants, including in cases where complaints are excluded, which has been particularly helpful and welcome. However, there is 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. This is an area I will continue to work on with the regulators, with a view to maximising transparency in published decisions as much as reasonably possible.

I will also be monitoring the FCA's progress in implementing its Transformation programme, which seeks to improve its approach to the regulation of firms and responds to a number of issues that have been raised in complaints to my office, as well as to recommendations made in reports published by Dame Elizabeth Gloster and Mr Raj Parker. I return to this in the Themes Section below.

Another area I will continue to focus on is the progress the FCA Complaints Team is making in addressing the issue of delay and improvements in its complaint handling process. I recognise that over the past 12 months, the Complaints Team has experienced some operational difficulties during these unprecedented times due to the Covid pandemic. The FCA's Complaints Team has been undergoing a significant change programme. The FCA has invested additional resource into the Complaints Team, with greater assurance and oversight at senior levels in recognition this is an important area of its work. The FCA has shared with me its management information across its complaints function. This shows improvement in several areas, most importantly there has been significant improvement in eliminating the backlog of cases. The FCA has been regularly liaising with me to keep me updated on the improvements being made and will continue to do so. I will continue to monitor the situation.

I conclude by thanking all my colleagues in my office for continuing to work with professionalism and resilience through a challenging time, and for their significant contributions throughout the year.

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, the Prudential Regulation Authority, 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 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.

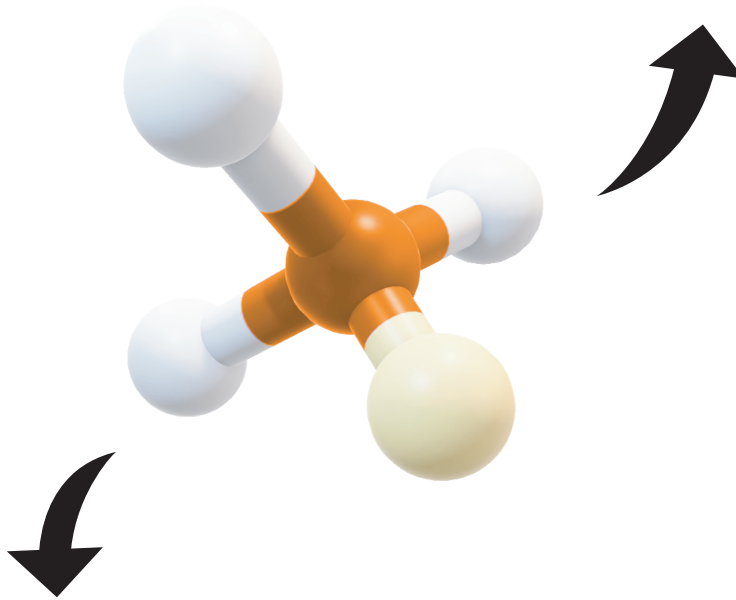
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The year at a glance: FCA, PRA and BoE

393 COMPLAINTS DEALT WITH



46% OF CONCLUDED CASES WERE ABOUT THE FCA'S OVERSIGHT OF FIRMS, RULES OR SCHEMES. THE REMAINING 54% OF CASES INCLUDED 4 PRA CONCLUDED CASES



90% OF CASES DEALT WITHIN 8 WEEKS

62 RECOMMENDATIONS AND SUGGESTIONS MADE (60 to the FCA and 2 to the PRA)

3

Overall Scheme Statistics for 2020/21

The Commissioner dealt with 393 complaints during the year, compared to 275 the previous year (circa 43% increase compared to the previous year). Not all complaints received progress to a formal investigation under the Scheme. During the period, the Commissioner issued decisions on 96 complaints. 37 complaints were not concluded and will be reported on next year.

3.1

Table 1: Total complaints dealt with (FCA, PRA and Bank of England and other not about the financial regulators)

Complaints and enquiries dealt with	2020/21	2019/20
Complaints in progress at start of period	30	30
New enquiries and complaints received	305	215
Re-opened enquiries and complaints	58	30
Total number of complaints and enquiries dealt with	393	275
Complaints and enquiries closed during the year	356	245
Complaints and enquiries in progress at end of period	37	30

295 complaints and enquiries were about the FCA, seven were about the PRA (two jointly with the FCA), one was about the BoE (jointly with the FCA).

About 23% of the 393 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 increase in complaints about the FCA (295 vs 205 last year) was due in part to an increase in complaints related to the FCA's oversight of London Capital & Finance PLC (LCF) as well as one other firm, for which the Commissioner received 21 complaints.

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

4

Bank of England and Prudential Regulation Authority statistics from 1st April 2020 to 31st March 2021

The Scheme covers complaints about the BoE's oversight of the recognised clearing houses and interbank payment systems, and against the PRA (which is part of the BoE).

4.1

Complaints against the Prudential Regulation Authority

The Commissioner dealt with seven complaints against the PRA between 1st April 2020 and 31st March 2021.

The Commissioner concluded four complaints and issued a report for each one.

One PRA complaint was jointly with the FCA. The Commissioner agreed with the PRA's decision on the substantive issue in all four cases. However, in one case (PRA00015) the Commissioner invited the PRA to consider if there was a lacuna in the provisions of the Friendly Society Act 1992. The PRA's response was that this was a matter for which HM Treasury was responsible and the PRA would raise the issue with them. The Commissioner made recommendations in a further case that the PRA offer an apology and an ex gratia payment to the complainant for delays in handling the complaint. The PRA have accepted these points and have made the apology and ex gratia payment. She also recommended that final decision letters are not marked as 'private and confidential,' to ensure this does not go against the principles of transparency and public accountability. The PRA accepted that it would review the wording on a case by case basis but to clarify to addressees that they can choose to share the final response letter as they wish. The Commissioner also recommended that the PRA consider putting in place an indicative scale for ex gratia payments for complaint handling delays, which the PRA has committed to consider further.

Three complaints were 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 BoE between 1st April 2020 and 31st March 2021. This complaint (jointly against the BoE and the FCA) was excluded, however, the Commissioner issued a report and made a recommendation that the BoE/PRA reminds itself of the requirements of the Scheme, in particular the fact that complainants must be told about the right to refer their complaints to the Commissioner for an independent review. The Commissioner further suggested that it would be helpful if the BoE/PRA and the FCA had a process of better collaboration in responding to joint complaints. The regulators have accepted this recommendation and have confirmed they fully understand the requirements of the Scheme.

5

Financial Conduct Authority Statistics from 1st April 2020 to 31st March 2021

The Commissioner dealt with 295 complaints and enquiries against the FCA. The 44% increase in complaints this year was due in part to an increase in complaints related to the FCA's regulation of London Capital & Finance PLC (LCF) as well as one other firm, for which the Commissioner received 21 complaints. Not all complaints received progressed to a formal investigation under the Scheme.

There were some complaints about the FCA's oversight of the Financial Ombudsman Service which the Commissioner will not review to avoid the perception of a conflict of interest given her previous role as Independent Assessor for the Financial Ombudsman Service. The FCA is making separate arrangements with the President of the Law Society with the agreement of HM Treasury for the appointment of an alternate investigator for these cases.

5.1

Table 2: Complaints dealt with during the year

Complaints and enquiries dealt with	2020/21	2019/20
Complaints and enquiries at start of period	26	27
New complaints and enquiries received	212	148
Re-opened enquiries and complaints	57	30
Total enquiries and complaints, of which:	295	205
Complaint referred to regulator for stage one investigation	11	31
Complaint referred to regulator for further investigation	0	2
Complaints deferred due to ongoing regulatory action	108	47
Complaint deferred pending completion of stage one by regulator	20	24

In 11 instances, complainants approached the Commissioner for an investigation without complaining to the FCA first. None of the 11 complainants gave exceptional reasons why the FCA should not investigate the complaint first, so they were referred to the FCA.

In another 20 instances, complainants whose complaints were already being considered by the FCA asked the Commissioner to intervene and conduct her own investigation. The primary reason for these requests was the FCA's complaint handling delays. The Commissioner decided not to intervene in any of these complaints. Seven of the complainants referred their complaints to the Commissioner once the FCA had completed its review during this period.

There are 108 complaints which had been deferred by the FCA due to ongoing regulatory action. The Commissioner supported those deferral decisions made by the FCA.

5.2

Table 3: Decisions in concluded complaints

Concluded complaints	2020/21	2019/20
Case decisions issued by the Commissioner		
Complaint excluded ^{note 1}	10	5
Complaint reviewed without formal investigation ^{note 2}	6	0
Complaint formally investigated ^{note 3}	75	58
Total ^{note 4}	91	63

Notes to Table

Note 1 Certain complaints cannot be considered under the 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 ten complaints and issued a report 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 six complaints and issued a report 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 We now show the number of complaints investigations rather than the number of complainants. The Commissioner concluded 91 complaints. Five of these were linked to a further 108 complaints referred to in table 2 about the FCA’s oversight of five firms. The FCA had deferred the investigation of these complaints due to continuing regulatory action and the Commissioner agreed with this deferral.

5.3

Table 4: Concluded complaints according to subject matter

Concluded complaints	2020/21	2019/20
Failure to regulate, of which	41	30
the FCA has failed to regulate a firm and/or group of firms	16	15
the FCA has failed to oversee the FOS	10	3
the FCA has failed to regulate 'schemes; or applied rules incorrectly	9	5
fraud: the FCA failed to deal with fraud in regulated and unregulated firms	1	7
deferral of complaints about FCA's regulation of firms	5	–
Firms not complying with disability regulations	4	0
Regulated firms or individuals complaining that the FCA has failed to deal with them properly, of which	10	5
complaints about FCA Enforcement	6	2
complaints about FCA Authorisation	4	3
Whistleblowing, of which	5	3
disclosure of identity	–	1
failure to act on information	2	2
inadequate processes	3	–
Interpretation of rules	4	8
FCA Register	5	6
FCA Data Breach	6	–
Other	16	11
Total	91	63

Proportionally, the trends this year are similar to last year, with four notable exceptions being:

1. New complaints arising from the FCA's data breach;
2. New complaints arising from the FCA's rules on overdraft charges;
3. The increase in regulated firms or individuals complaining that the FCA has failed to deal with them properly;
4. New complaints about financial services providers treatment of vulnerable customers with disability and accessibility issues.

In February 2020, the FCA became aware that it had inadvertently published confidential information about the number and nature of new complaints made against the FCA and handled by the Complaints Team between 2 January 2018 and 17 July 2019. The publication of this information was a mistake by the FCA, and the data was removed from the FCA website. The Commissioner received six complaints about this matter. The FCA had upheld all complaints about the data breach and given complainants referral to the Information Commissioner. The Commissioner agreed this was the right approach.

On 6 April 2020 the FCA introduced new rules about the charges on bank overdraft facilities: changes were that banks could charge a simple annual interest rate – without additional fees and charges. This benefitted most customers, but there were some for whom the new charges represented an increase in overdraft costs. The Commissioner reviewed five complaints on this subject matter. These complaints were excluded from the Scheme; however, the Commissioner was satisfied that the FCA had provided the complainants with additional information on both the rationale behind the overdraft changes, and the options available to them in the circumstances.

A greater number of complaints this year compared to last were about the FCA's authorisations and enforcement departments. Complaints about authorisations were primarily from individuals seeking approved person status but who had not achieved it, and complaints about enforcement were primarily from individuals who were subject to enforcement action but felt the process was too drawn out.

This year several complainants have raised the FCA's oversight of financial services firms' disability policies as a significant issue. This is addressed in more detail in the Themes Section.

In 41 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. Most of the firms complained about cannot be disclosed due to confidentiality reasons, however, two published reports were in connection with the Connaught Fund and the Co-op bank. The Commissioner also reviewed the FCA's continued deferral of five investigations into complaints about its regulation of firms, including LCF. The Commissioner agreed with the deferral in all five cases.

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

5.4

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

Concluded complaints	2020/21	2019/20
Regulator's decision upheld	78	51
Regulator's decision partly upheld	2	5
Regulator's decision not upheld	11	7
Total	91	63

The Commissioner upheld the large majority of the FCA's decisions, however 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	2020/21	2019/20
Apology	12	5
Put things right for complainant	7	9
Recommendations for improvements within the FCA	26	11
Compensation	14	14
Suggestions for improvements within the FCA or criticism	1	6
Total	60	45

Note: in some cases, there were multiple remedies.

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

Out of the 60 remedies identified, the FCA did not accept five and accepted one partially. Of the recommendations the FCA did not accept, two were related to losses incurred by the complainants. In these cases, the Commissioner recommended the FCA offer a substantial ex gratia payment to the complainants to partially cover the losses they had incurred, which the FCA did not accept on the grounds that it felt the principal cause of the investment loss was a scam in one case, and in the other case the FCA did not agree to reimburse professional costs that may have been incurred by the complainant for quantifying their losses.

The Commissioner's review of a complaint connected to the Connaught Fund ([FCA00504](#)) resulted in four recommendations about internal FCA processes (although the complaint was not upheld). The FCA did not accept three of these.

In one case, the Commissioner upheld a complaint about the FCA passing information internally against the complainant's wishes and recommended that the FCA apologise to the complainant. The FCA declined to do so, as it felt it had apologised to the complainant previously.

In a different case, which the Commissioner did not uphold, the Commissioner invited the FCA to consider whether it could provide a fuller explanation to the complainant about certain actions it took. The FCA considered it but declined to provide further explanations as it felt the Commissioner's report had provided a full account of the events already.

The FCA partially accepted a recommendation in another case. A firm's application for an individual to be approved resulted in an FCA file note about the firm which the complainant challenged. The Commissioner's recommendations resulted in the FCA amending its record

to say that no breach of principle 11 had occurred, and reference to the firm being non-cooperative were deleted.

The FCA accepted the rest of the recommendations, which the Commissioner welcomes, but in some cases, there were delays in updating the Commissioner on whether the recommendations were implemented. The Commissioner's office and the FCA (following investment in its systems) are currently putting in place a new process which will track the status of recommendations and their implementation. The Commissioner will be monitoring this 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	Not investigated	Excluded	Formally investigated	Total 2020/21	Total 2019/20
Individual Financial Adviser	1	1	2	4	2
Firms	0	0	7	7	8
Consumer	5	9	52	66	50
Deferral of 5 investigations linked to 108 complaints	0	0	5	5	–
Solicitor on behalf of individuals	0	0	4	4	0
Solicitor on behalf of firms	0	0	0	0	1
MP on behalf of individuals	0	0	1	1	–
MP	0	0	1	1	1
Third party on behalf of individuals	0	0	2	2	–
Third party on behalf of firms	0	0	1	1	1
Total	6	10	75	91	63

This year, there was a marked increase in complaints from individuals. Nearly half of all complaints from consumers were about the FCA's alleged failures to regulate firms effectively.

There were 12 complaints from firms and IFAs during the year (one of which was brought by a third party), with two main themes emerging. Three complaints were about the FCA Authorisations process and four complaints were about the FCA not taking action against firms the complainants had business disputes with.

Of the eight firms (four of which were not regulated by the FCA) and four IFAs (three of whom were no longer authorised by the FCA) who complained, eight claimed they were directly affected by the FCA's actions. Specifically:

1. Three complaints were about the FCA authorisations process. In one instance, a firm applied to be regulated and complained about the protracted authorisation process. The FCA partly upheld this complaint, however the Commissioner fully upheld it. In another case (<https://frccommissioner.org.uk/wp-content/uploads/FCA00841-Issued-31-December-2020-Published-19-January-2021.pdf>), a firm's application for an individual to be approved resulted in an FCA file note about the firm which the complainant challenged. The FCA did not uphold the complaint however the Commissioner did. The Commissioner's recommendations resulted in the FCA amending its record to say that no breach of principle 11 had occurred, and reference to the firm being non-cooperative was deleted. The FCA did not, however, fully accept all of the Commissioner's recommendations. The third complaint was excluded.
2. One complaint was about the FCA's enforcement department. The complaint was not upheld, but the Commissioner suggested that the FCA consider, in the context of its work on Defined Benefit pension transfers and the PII market, the concerns raised by the complainant about the impact of the shrinking PII market and withdrawal of cover. The FCA has said it is continuing work in this area.
3. One complaint was about the FCA data breach. This complaint was upheld by the FCA and the Commissioner agreed.
4. One was about a firm's difficulties in using the FCA's Gabriel system. This complaint was upheld by both the FCA and the Commissioner, who recommended an increase in the distress and inconvenience payment the FCA had offered the complainant, as well as inviting the FCA to seek feedback from the complainant about their experience in using the system. The FCA accepted these recommendations.
5. One complaint was about the FCA register. This complaint was not investigated, on the basis that it raised several complex issues which had already been reviewed in previous reports.
6. One complaint was about the FCA not accommodating the disability of a business owner when liaising with him. This complaint was not upheld.

Three firms and one IFA claimed they were indirectly affected by the FCA's actions. The complaints were about the FCA's alleged failure to deal with firms and/or individuals which affected the business of the complainants (three of whom were not regulated). The complainants felt affected when they had disputes with firms and individuals, they had business dealings with and felt the FCA was not regulating the latter properly. The FCA did not uphold these complaints and the Commissioner agreed.

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 complaint, most complaints referred to the Commissioner merit a formal investigation.

The following significant themes emerged across the section of complaints reviewed by the previous and current Commissioner during the year.

FCA supervision and regulation of firms

Complaints about the way the FCA regulates and supervises firms have continued to be at the centre of the Commissioner's work. Complaints about alleged failures in the supervision of firms are understandably made by those who consider that the regulator's actions or inactions have contributed to them losing money.

One notable theme arising in respect of this is a large number of decisions the FCA made to defer complaints, which was agreed by the Commissioner with respect to the FCA's oversight of several 'collapsed' firms. These include complaints alleging regulatory failings in the FCA's oversight of LCF, Connaught, and the Woodford fund, among others. In broad terms, these complainants allege that some regulatory actions or inactions of the regulators' supervision of these firms contributed to their loss.

The Commissioner has agreed with the FCA's decision to defer such complaints because in all cases, there was some sort of continuing regulatory or other action, which the Commissioner felt would produce material relevant to the complaints; and because undertaking a parallel investigation into these matters would be unhelpful as it could prejudice other investigations and at the same time divert resources from the relevant areas within the regulator dealing with the matter. She welcomes the fact that, following a recommendation made by her predecessor, the FCA is now reviewing such deferral decisions every six months and providing regular updates to deferred complainants.

The issue of the FCA's regulatory failings in supervising firms has also been the subject of wider public interest this year following the Treasury's publication and the FCA's response to [Dame Elizabeth Gloster's](#) report into the FCA's regulation of London Capital & Finance plc (LCF) between 1 April 2014 and 30 January 2019 and the FCA's publication and response to a report by [Mr Raj Parker](#) into the FSA and FCA's handling of the Connaught income fund series 1 and connected companies.

The Commissioner is pleased to note that the FCA accepts the recommendations made by Dame Elizabeth and Mr Parker, whose reports bring to further public notice issues that the Commissioner's reports have highlighted for several years, including instances of:

- a. The lack of a holistic approach to regulation;
- b. An over-emphasis on the regulatory perimeter;
- c. Poor record-keeping and inadequate technology systems.
- d. Failing to act speedily or at all;
- e. Failing to respond to or pass on information and intelligence;
- f. Poor staff training and a lack of engagement with or understanding of the regulator's remit over fraud and financial crime.

The Commissioner has also recently finalised decisions arising from her investigation into long-deferred complaints into the FSA's regulation of another firm, Keydata Investment Services Ltd (Keydata) up to 2009, which raised very similar concerns. Although her published final reports on these complaints do not fall into the statistics for the period of this Annual Report, they are mentioned here due to their significance. While acknowledging that the events occurred many years ago and that the FCA has implemented significant changes since then, the impact of the distress caused to these complainants cannot be underestimated. The Commissioner is further concerned that some of the issues identified by the FSA in 2009, about its supervision of Keydata, recurred in similar form in the FCA's oversight of the Connaught Income Fund Series 1 and LCF. Over the coming year she will be monitoring closely the improvements the FCA is seeking to make through its Transformation programme – <https://www.fca.org.uk/news/press-releases/financial-conduct-authority-senior-appointments-transformation> – as well as the recommendations it has accepted in her final reports on the Keydata complaints.

The Commissioner is aware that the FCA often has to exercise some difficult regulatory judgements in its oversight of firms. Whilst the issues identified in the Keydata complaints were of concern, she acknowledges that there have also been cases in the past year, such as FCA00548 – <https://frccommissioner.org.uk/wp-content/uploads/FCA00548-Issued-04-March-2021-Published-30-March-2021.pdf> – in which the FCA's regulatory approach and complaints investigation was appropriate, timely and effective. The publication of this case illustrated the importance – not least for public confidence – in having a means to test that the regulators are undertaking their relevant functions reasonably, and that the regulators have dealt with complaints thoroughly and fairly.

In reviewing complaints about the FCA's oversight of firms, the Commissioner sees and assesses independently the inner workings of the regulators on a regular basis. This is an important part of a feedback mechanism, providing valuable insights that must form part of the framework for accountability, scrutiny and assessment of the regulator's performance. Apart from providing remedy for directly affected complainants, in many cases the Commissioner will also make recommendations and suggestions for improvements related to the regulators' processes or procedures, to cover issues highlighted above.

During the period, the Commissioner made 26 such recommendations. Although these did not always directly contribute to a personal remedy for complainants, the implementation of such recommendations can lead to significant public benefits. For example, the Parker report was commissioned by the FCA in response to final decisions published by the previous Complaints Commissioner in 2016 following complaints made by George Patellis ([FCA00114](#)) and Adam Nettlehip ([FCA00084](#)).

The Commissioner has made these, and other points in her response to the Financial Services Future Regulatory Framework Review (<https://frccommissioner.org.uk/wp-content/uploads/OCC-FSRFR-response-final-15-February-2021.pdf>)

The Commissioner sees the regulators' complaints function as important in providing opportunities for organisational improvement, and this applies not just to the regulators but also to the Commissioner's own practices and procedures. Her work has led to an evaluation and further development of policy in the areas of determining issues related to compensation as proposed in the recent Complaints Scheme consultation, as well as

refreshing the Office of the Complaints Commissioner's GDPR and Data Protection Act 2018 procedures among others.

FCA and rule making

Each year, a substantial number of complainants approach the Commissioner because they are dissatisfied with either: the FCA's interpretation or application of rules; the lack of rules in certain aspects of financial services, or, what they perceive to be unfair rules.

This year, a notable theme has been the dissatisfaction of some complainants about the latter, namely the FCA's rules on overdraft fees (<https://www.fca.org.uk/news/press-releases/fca-confirms-biggest-shake-up-overdraft-market>). Although these rules were introduced to benefit a large majority of overdraft users subject to disparate charges, they have nevertheless had a negative impact on a small proportion of customers.

These complaints are excluded under the Scheme. In the very early days of the Scheme's operation, such an exclusion would have been applied with no further commentary or explanations. Over the years, the Scheme has evolved to become more focused on the needs of complainants. So, in this case, even though these complaints were excluded, the FCA provided considerable information to the complainants about why and how these changes had come about, and what the complainants' options were if they were personally adversely affected by the changes. In turn, the Commissioner was able to provide an independent comment (for example FCA00691 <https://frccommissioner.org.uk/wp-content/uploads/FCA00691-FR-publication-04-03-2020.pdf>). In these cases, although the Commissioner agreed the complaints were excluded, the independent review provided further reassurance to the complainants that their concerns had been heard, and that there were options available to them. In this way, the Scheme has evolved into an important mechanism for transparency and accountability on the part of the regulators even in some areas which are excluded, which is important for sustaining consumer confidence in the regulatory system. The practice of offering helpful information to consumers in excluded complaints is one which the Commissioner welcomes and one which has an important role for laying out the regulators' decision-making rationale on important issues and promoting a culture of customer focused transparency and service.

The FCA data breach

In November 2019 the FCA published on its website a response to a Freedom of Information Act request which inadvertently included certain embedded underlying confidential information about complainants' data held by the FCA, which was a mistake. The FCA reported the data breach to the Information Commissioner's Office. This event led to several complaints, simultaneously both to the Complaints Commissioner and the Information Commissioner. This event also raises questions about the referral rights of complainants in such cases to the Complaints Commissioner when there is some overlap of jurisdiction, and what complainants can expect in such circumstances. The complaints were upheld both by the regulator and the Complaints Commissioner in this instance, but there is ongoing work being undertaken in this area to ensure a transparent and clear outcome path for complainants.

Vulnerable Complainants

The Commissioner has seen an increase in complainants with a vulnerability this year. Such complainants fall into two broad categories: there are those who allege that they have had difficulties with the firms they are dealing with and that the FCA has done little to ensure firms treat vulnerable customers fairly; and there are complainants who allege the FCA itself has not treated members of the public with a vulnerability appropriately.

These are not matters which fall under the Scheme unless they are connected with the FCA's exercise of its relevant functions. In the cases the Commissioner reviewed, even though they did not fall under the Scheme, the FCA nevertheless provided responses to both of these categories of complaint which the Commissioner welcomes. The 2020 global Covid-19 pandemic in particular has had a serious impact on vulnerable individuals and the Commissioner invites the FCA to continue to monitor both firms and its own adherence to issues affecting the vulnerable, which the FCA accepts.

The FCA has undertaken a number of initiatives during the year with respect to its work on vulnerable customers. It would be of further benefit if the FCA expanded its web page on vulnerable customers to include the totality of the work it is undertaking.

Separately, there is the matter of how the FCA itself treats vulnerable customers. The Commissioner has found genuine intent on the part of the FCA to provide a good service to anyone approaching it with a vulnerability; however, in practice, complainants have highlighted issues including but not limited to the wording on its website and other published information for complainants. During the past year the FCA undertook a number of measures including making explicit where complainants should let the FCA Complaints Team know if they require reasonable adjustments to allow them access to the Scheme or to make a complaint, e.g. by providing documents in larger print and communicating by telephone in addition to writing; developing changes to its website to make this clearer and address other recent signposting issues and considering the further adjustments it can make for complainants who might experience barriers to using its service. The FCA is also making further changes to the wording in its acknowledgment email in accordance with GDPR requirements around health data and to prompt complainants about whether they might require reasonable adjustments, which is due for implementation in the second quarter of this financial year. The FCA has informed the Commissioner that it has also implemented a number of ongoing initiatives to improve how it handles communications with vulnerable individuals. The Commissioner also invited the PRA to review its complaints website and complaints scheme accessibility, which the PRA accepted, with changes due to be implemented in the third quarter of 2021.

This is an example of how the Scheme has had a positive impact in focusing the regulator on increasing its social responsibility responsiveness to issues of vulnerability even when they do not fall under the Scheme. In this way, the benefits of the Scheme and the Commissioner's constructive dialogue with the regulator have very real and demonstrable impact in advancing an improved framework of interaction between the regulator and vulnerable members of the public. The Commissioner is also pleased to note that the FCA has recently published its updated vulnerability guidance for firms on the fair treatment of vulnerable customers: <https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf>.

Large banks: suspension of dividend payments

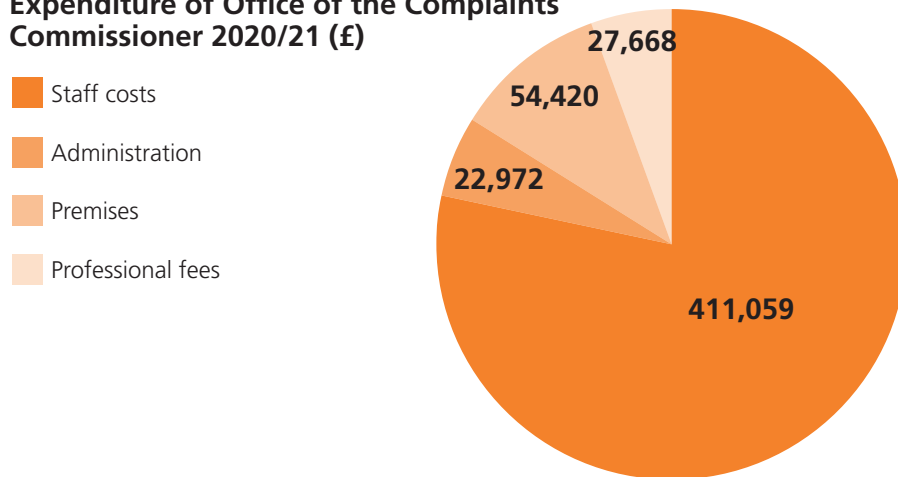
In March 2020 the PRA welcomed the consideration given by Boards to suspend dividend payments and buybacks on ordinary shares until the end of 2020 and requested the cancellation of payments of any outstanding 2019 dividends as well as cash bonuses to senior staff in response to the Covid -19 pandemic. This led to a number of complaints from members of the public who did not receive their shareholder dividends. Whilst the Commissioner sympathises with the affected complainants, given the uncertainty that Covid-19 provided, she considered it was not inappropriate for the PRA to have requested the cancellation of payments of any outstanding 2019 dividends , given its role to 'promote the 'safety and soundness' of these firms – that is, to promote their resilience against failure, and to help ensure that they avoid causing harm through any disruption to the continuity of their provision of financial services'.

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.

Expenditure for the year ending 31st March 2021 was £516,119 compared to £449,551 the previous year, an increase of circa 15%. This was mainly due to several initiatives during the year to improve case handling. This has included hiring additional staff, upgrading the case management system, and incurring legal costs in relation to a complainant who sought leave for judicial review of the Commissioner’s decision on his complaint.

Expenditure of Office of the Complaints Commissioner 2020/21 (£)



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 former Complaints Commissioner, who left the company on 31 October 2020, and whose total remuneration for 2019/20 was £130k (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>

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 until November 2020 when the timescale was increased to 12 weeks to consider Covid pandemic impact on resourcing as well as staff turnover. Overall service standard targets were met during the year.

During the period, the Commissioner dealt with one issue arising around service standards. The complainant was offered £250 for the inconvenience.

The Office of the Complaints Commissioner uses customer satisfaction surveys to monitor service standards. A survey is sent out three months after a case is completed. 27 recipients completed part or all the survey. The results are as follows:

	Tend to agree	Tend to disagree
The website was accessible and provided information which was relevant	20	7
I was kept updated throughout the process	20	6
I was contacted in a way that suited me (email, telephone etc) and when agreed	22	4
Found it easy to make my complaint to the Complaints Commissioner	20	6
Happy with time taken to provide decision	16	10

Over 75% of respondents tended to be satisfied with the service they received from the Office of the Complaints Commissioner apart from the length of time taken to issue a decision. A separate question asking respondents how long they expected the Commissioner to take to reach a decision showed that six respondents expected a decision in less than a month and an additional 13 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 will be looking to revert to an eight week timescale for completion of decisions from July 2021.

Unlike last year, when all but one respondent were dissatisfied with the outcome of their complaint, this year seven respondents tended to be satisfied. 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'.

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 31st March 2020

	2020/21 £	2019/20 £
Administrative expenses	(516,119)	(449,511)
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 2021 nor 2020, other than those included in the profit and loss account.

The audited accounts for the period ending 31st March 2021 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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