

**PROTOCOL FOR THE RELATIONSHIP BETWEEN THE OFFICE OF THE
COMPLAINTS COMMISSIONER (Commissioner)
AND THE FINANCIAL CONDUCT AUTHORITY (FCA)
ISSUED December 2022**

RECITALS

The Complaints Scheme ('the Scheme') applies to the FCA in relation to the exercise of, or failure to exercise, its relevant functions. As set out in section 85 (2) of the Financial Services Act 2012 (the FS Act), the relevant functions of the FCA are:

- i. its functions conferred by or under the Financial Services and Markets Act 2000 (FSMA), other than its legislative functions and its standards review functions; and
- ii. such other functions as the Treasury may by order provide.

The FCA's legislative functions are described in section 85 (4) of the FS Act and broadly comprise its powers to:

- i) make rules;
- ii) issue codes under section 119 of FSMA;
- iii) issue certain statements;
- iv) give certain directions;
- v) issue certain general guidance;
- vi) make certain technical standards; and
- vii) make certain EU exit instruments.

As set out at section 85 (4A) of the FS Act, the FCA's standards review functions are the FCA's functions under section 10 of the Financial Guidance and Claims Act 2018.

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

1. Communication

- 1.1. The FCA and the Commissioner are committed to procedural fairness and to being open and transparent in dealing with complainants and issuing decisions on complaints, unless there are legal restrictions or other compelling reasons to the contrary.

- 1.2 All communication between the FCA and the Commissioner, in connection with individual complaints, will take place between the FCA's Complaints Department (Complaints Department) and the Commissioner, unless it has been agreed otherwise in the circumstances of the case.
- 1.3 The FCA and the Commissioner will meet at least every three months to discuss matters of policy, procedure and review complaints.
- 1.4 At least one meeting every year will be a tri-partite meeting between the FCA, the Bank of England/Prudential Regulation Authority (Bank/PRA) and the Commissioner.
- 1.5 The FCA and the Commissioner shall be free to arrange ad-hoc meetings, outside of the meetings referred to at paragraphs 1.3 and 1.4 above, to discuss any matters.

2. Investigation – preliminary

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

3. Investigation – provision of documents/information

- 3.1 The FCA will afford the Commissioner all reasonable co-operation, and authorises the Commissioner to obtain such resources as they may reasonably require to discharge their duties under the Scheme, in accordance with the provisions of paragraph 11 of this Protocol.
- 3.2 In particular, the FCA will, unless otherwise agreed, within five working days of a request from the Commissioner, and subject to paragraph 7 of this Protocol, provide:
- a) an electronic copy of the complaint investigation file (the complaints file) which shall include correspondence from the complainant, a chronology (where appropriate), copies of FCA internal correspondence relating to the complaint and any evidence gathered in relation to the complaint; and
 - b) such other resources and information as may be required by the Commissioner, provided such information is not stored in a physical or electronic archive. If the information is stored in archive, the FCA will provide the information without undue delay and will keep the Commissioner informed of progress in retrieving the information.
- 3.3 Where information provided to the Commissioner includes call recordings relevant to the complaint, the FCA will arrange for a written transcript of lengthy recorded telephone conversations to be prepared, if specifically requested by the Commissioner. These may take up to 10 working days to provide, particularly if the transcribing needs to be outsourced.

4. Investigation – access to additional information or individuals

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

- 4.5 Any FCA staff invited to attend a meeting may invite additional attendees to any such meeting.
- 4.6 If the Commissioner requests additional information beyond that which was gathered by the FCA for the purpose of its investigation into the complaint, the FCA shall provide such information within 10 working days. If the FCA is unable to provide the information within this timeframe, the FCA will seek agreement from the Commissioner in writing for an extension of time to provide a response.

5. Investigation – criticism of individuals

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

6. Investigation – report and publicity

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

- 6.5 The Commissioner will normally issue a final report within 15 working days of the deadline set out in 6.2 above (as amended pursuant to 6.3).
- 6.6 When the Commissioner issues a final report to the FCA and the complainant, the expectation is that the Commissioner will also publish it. If the final report will be published, the Commissioner will indicate to the FCA and the complainant a date for publication. This will be at least 10 working days after the date the final report is issued to the FCA and the complainant. The Commissioner will notify both the FCA and the complainant in writing if there are good reasons not to publish a final report, or any part of it.
- 6.7 The identities of individuals will be anonymised in the final report before it is published unless the Commissioner has already notified the FCA in advance in accordance with paragraphs 5.1 and 6.4 above.
- 6.8 The identities of firms will be anonymised in the final report before it is published unless the Commissioner has already notified the FCA in advance in accordance with paragraphs 6.4 above, and subject to 7.3 below.
- 6.9 Where a final report is published, the Commissioner will usually publish the final report on the first and third Thursday of each month (or, if such date falls on a bank holiday, the first working day following).
- 6.10 Where the Commissioner will not publish the final report on the date notified under paragraph 6.6 above, the Commissioner will notify the FCA as soon as reasonably practicable, but, in any event, no less than two working days in advance of such date, and inform the FCA of the new publication date.
- 6.11 The Commissioner will notify the FCA immediately when a final report has been published.
- 6.12 Where:
- a) the final report states that a complaint is well founded; or
 - b) the FCA has been criticised in the final report; or
 - c) the Commissioner makes a recommendation; or
 - d) the FCA otherwise wishes to provide a written response to the final report,
- the FCA will supply its written response to the Commissioner two working days before the date of publication. The FCA will publish its response at the same time as publication of the final report, and send a link to the Commissioner to its published response on the same day.
- 6.13 In cases where the FCA does not provide a written response to the final report, the FCA will acknowledge receipt of the final report after it has been issued to the FCA by the Commissioner and at least 2 working days before the date of publication.

- 6.14 Where the Commissioner has recommended that the FCA should offer a remedy to the complainant and the FCA accepts the recommendation, the FCA will aim to offer the remedy before publication of the final report.
- 6.15 On a quarterly basis, the FCA will inform the Commissioner what steps, if any, the FCA has taken to implement any recommendations and suggestions made in the Commissioner's reports.

7. Confidentiality

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

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

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

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

- 7.2 Where the FCA has provided the Commissioner with information which it has not disclosed to the complainant:

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

(ii) When the Commissioner considers it necessary and so requests, the FCA will identify the relevant legislation or legal framework applicable to the information, including providing an appropriate level of detail in its

explanation of why it considers the information to be confidential or legally privileged to enable the Commissioner to discharge their functions.

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

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

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

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

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

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

8. Annual Reports and Management Information (MI)

8.1 The Commissioner will prepare their annual report as required by the Scheme (the Annual Report) which will include the number and nature of the complaints received; on-going and concluded investigations during the period; and any matters arising under the Scheme which the Commissioner considers should be brought to the FCA's notice.

- 8.2 The FCA will provide the Commissioner with any information the Commissioner may reasonably request about the number and type of complaints or about the handling or investigation of complaints generally in order to assist the Commissioner to prepare their Annual Report. The Commissioner will provide similar information to the FCA to assist the FCA in preparing its response to the Commissioner's Annual Report.
- 8.3 In advance of providing the final version of the Annual Report to the FCA, the Commissioner will provide the FCA with a draft of the Annual Report to enable the FCA to provide comments on matters of fact contained in or omitted from the Annual Report.
- 8.4 The Commissioner will provide the FCA with the final version of the Annual Report at least 20 working days before the date it will be laid before Parliament to allow the FCA to consider the Annual Report, to prepare the FCA's public response and to address any questions raised by the FCA Board.
- 8.5 By 31st March of each year, the Commissioner, the FCA and the Bank/PRA will agree a timetable for the activities outlined in paragraphs 8.1-8.4 above.
- 8.6 At the end of each quarter (in July, October, January and April) the FCA will provide the Commissioner with an MI pack listing all currently open and deferred Stage 1 complaints, all complaints opened and/or closed in the period (Local Area, Stage 1 and Stage 2), an update on all open and closed Stage 2 recommendations, and details of the outcomes of QA testing on complaints undertaken during the previous quarter.
- 8.7 At least quarterly, the FCA will provide the Commissioner with a summary confirming the volumes of any significant 'group complaints', those being individual complaints that relate to similar matters or arise from common events and which are, therefore, being investigated or deferred jointly as a "group". This summary will include the expected timescale for the next planned review of deferral decisions, or for issuing final decision letters, to enable the Commissioner to plan ahead and secure any additional resources that could be needed for considering Stage 2 referrals from individual complainants.
- 8.8 On a bi-annual basis (in November/December and May/June of each year) the Commissioner will provide a written report to the FCA Board which will include the number and nature of complaint referrals received; on-going and concluded Stage 2 investigations during the period including summary outcomes; and any matters arising under the Scheme which the Commissioner considers should be brought to the Board's notice.

9. Correspondence following the Commissioner's Final Report

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

10. Review

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

11. Finances

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

