

Treasury Committee

Oral evidence: The work of the Financial Regulators Complaints Commissioner, HC 145

Wednesday 15 June 2022

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Members present: Mel Stride (Chair); Harriett Baldwin; Anthony Browne; Kevin Hollinrake; Siobhain McDonagh; Alison Thewliss.

Questions 1 - 115

Witnesses

I: Amerdeep Somal, Financial Regulators Complaints Commissioner, Office of the Complaints Commissioner; Ivona Poyntz, Chief Operating Officer, Office of the Complaints Commissioner.

Examination of Witnesses

Witnesses: Amerdeep Somal and Ivona Poyntz.

Q1 **Chair:** Good afternoon and welcome to the Treasury Select Committee and our hearing this afternoon into the work of the Financial Regulators Complaints Commissioner. We are very pleased to be joined by two witnesses, who I am going to ask to introduce themselves to the Committee.

Amerdeep Somal: I am Amerdeep Somal, the Complaints Commissioner to the Financial Regulators. I am pleased to meet you all.

Ivona Poyntz: My name is Ivona Poyntz. I am the chief operating officer of the company and I am also an investigator.

Q2 **Chair:** Welcome to you both. Thank you for coming. I want to channel my questions in two distinct directions. One is about you as an organisation, as it were, but I then want to move on to look at some of the scrutiny that you are conducting, how you think that is going and what you think you should be looking at in the case of the FCA and others, etc.

Let us start with you as an organisation. Amerdeep, you have been in post now for about 18 months. When you first arrived and looked at the organisation, what conclusions did you come to? Where did you think you



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needed to focus effort? Where did you think the organisation and the approach needed to be improved? What progress have you made in those areas?

Amerdeep Somal: I have been in post now for 20 months. My initial view is that there was some room for improvement, particularly around the systems, infrastructure and databases, making sure we capture reliable and accurate case management information, particularly around themes that are emerging from the work that we see and do, so that we can have more sophisticated and accurate reporting for the purposes of reporting in our annual report and reporting to Parliament through the Treasury Select Committee.

Another aspect was the level of direct involvement with the regulators themselves, and in particular with the FCA, because the vast majority of the work is with the Financial Conduct Authority, so setting up more regular dialogues at executive director level with the FCA, and also meetings with the chair of the audit committee and the chair of the board itself.

While it is important to have an arm's length relationship as the independent scrutineer, it should not mean that you do not really get into the bones of the organisation and really get a test of the temperature and the mood music either. That was part of what I decided to do.

A third aspect is improving the skill set within my team and within the office—I recruited new people; some people moved on naturally—and making sure that we had a broad set of investigators who were drawn from diverse backgrounds, not just from the industry. It was a shift away from the staff I had inherited, which is really important in terms of public confidence and really demonstrating independence from the financial regulators.

Q3 **Chair:** Let us go to the first one of those and the data management side. Can you describe in a bit more detail the inadequacies that were there and what steps you have taken to put those right? What were the consequences of it not being right?

Amerdeep Somal: The systems were old and clunky. Management information could not be pulled out just by pressing one information, which made reporting purposes very difficult, so it really did require a completely new infrastructure. It also meant that, year-end or quarterly, we were having to manually extract the information and then put it into an intelligible form whereby we could report to the regulators on their performance, so it was unsatisfactory for so many reasons.

Q4 **Chair:** Was case management really being impacted negatively as a consequence of having these poor systems, or was it more, just as you have described, the reporting on the amalgamated information, if you like, that was the problem?



Amerdeep Somal: There was certainly a lot of room for improvement, and we have made that. It meant that a lot of important investigative time and resource was taken up on tasks that, quite frankly, we could not spare the capacity on. We were using investigator resource on pulling out case management information when they should be doing the job they are hired to do, which is getting on and investigating how the financial regulators are doing against their regulatory functions. It was important that we did the work and I am pleased to say that we have really borne the fruits of that.

Q5 **Chair:** You mentioned the changes to the team. Are you happy with the team that you have at the moment, or is there still further work to be done?

Amerdeep Somal: No, absolutely delighted.

Q6 **Chair:** Give us a sense of the size of your operation.

Amerdeep Somal: It is five in total. It is a small, busy, dedicated and hardworking team with a broad set of skills, experience and backgrounds. It lends itself very well.

Chair: So you are happy with all of that.

Amerdeep Somal: Delighted, yes.

Q7 **Chair:** Can I just turn now to some of the things that you focused on in your 2020-21 annual report? You stated there that you had identified issues of confidentiality and transparency as being important. You particularly focused on the FCA's progress in implementing its transformation programme, which this Committee has shown quite a lot of interest in as well, and improvements in the FCA's complaints management process as being key areas for your attention. Can you just talk to us a little bit about that and what you have been doing in those areas? Do you have any concerns, for example, with the transformation programme at the FCA? Could you update us with a view from where you are of how it is doing in those areas?

Amerdeep Somal: On confidentiality and transparency, I have really been pushing the financial regulators, the FCA in particular, around shifting culture. The starting point should be, unless something is restricted by statute—section 348 of FSMA, which, of course, lends itself to the risk of prosecution if confidential information is disclosed—that they really need to look critically, asking themselves, “Is there good justification for not divulging this information from a policy perspective?”

Q8 **Chair:** You felt in the past that maybe they have leant too strongly into that position.

Amerdeep Somal: Absolutely.

Q9 **Chair:** How are they doing at the moment? Have they improved?



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Amerdeep Somal: It is certainly getting better. It absolutely is, and we are having more robust conversations: “Tell me. Explain to me why you say this should not be disclosed for section 348 reasons, because it is not statutorily restricted. I would like to understand why you say the nature of this information is such that it should not be disclosed”. It is really challenging them around that, and those are conversations which probably did not happen before, but they are happening now on a more regular basis.

That is really important, because one of the big complaints that we get, in particular from complainants but also sometimes firms, is when they say, “We do not understand what has gone on here. We do not understand why the FCA is saying that we cannot be told this”. For any regulator, trust and confidence are really important, because you get legitimacy through that. If you can explain things to people, they are more likely to accept the outcome. Whether they like it or not, they will accept it.

It is about getting to that balance. If something is restricted by statute, of course it will not be disclosed, because we cannot risk somebody being prosecuted, but it is the greyer, softer areas where there needs to be that open thinking and dialogue. It might be that I still reach the same conclusion that it is right that it should not be disclosed, but I would like to test the policy area and why.

Q10 **Chair:** As we focus on appropriate transparency here, I think that what you are saying is that they have been deficient in that area in past. Your feeling is that they are improving, and are listening and engaging. Are they where you think they should be in that respect now or do they have further progress to make?

Amerdeep Somal: There is room for further progress. By way of an example, when I was appointed the complaints commissioner, one of the first things I spoke to them about was my firm commitment to transparency and the importance of it. It is something that they said that they were fully signed up to at the FCA. I sent them a protocol or an MOU, 12 months ago, around how transparency should operate between the FCA, the financial regulators and me. It is a fairly short-form document of a few pages. It has taken the best part of 12 months for them to respond, and I am now working through their response to see whether we are going to reach an agreement around what that protocol, the understanding and how we operate around transparency and confidentiality will look like. It has taken 12 months, which I find a little—

Q11 **Chair:** Why has it taken 12 months? What have they said when you have chased them up?

Amerdeep Somal: I am going to have that conversation. We received the document earlier this week, I believe.

Q12 **Chair:** But you would not, presumably, have waited 12 months to chase



them up.

Amerdeep Somal: We chased them up several times, yes.

Q13 **Chair:** What did they say when you chased them up?

Amerdeep Somal: What was the response, Ivona?

Ivona Poyntz: "We're really sorry. It's being checked for sign-off and we'll update you shortly". That was the continuous response, month after month. We have sent three chasers.

Q14 **Chair:** Could you share any of that correspondence with the Committee?

Amerdeep Somal: I will look at it. If it is not marked restricted or confidential, I am sure we can and we will send it to the Committee, of course.

Q15 **Chair:** It might be interesting. Thank you. Sorry, we were going through that list, weren't we? Tell me about the transformation programme. What is your assessment of how the FCA is doing at the moment and what concerns do you have there?

Amerdeep Somal: I had a very recent meeting with the FCA two weeks ago on its progress against the transformation programme. They are working through it. They are making some progress on the transformation programme. Some of the actions are work in progress. It is a big raft of work, as the Committee will appreciate, so it is going to have to be staged. It is going to be impossible to do everything all at once, and so, of course, they have prioritised certain areas of it, as you would expect.

The main area that the Committee will be interested in, in terms of the actions yet outstanding, is really around fraud on the perimeter.

Q16 **Chair:** Can you tell me a bit more about that? You have been engaged with them and looking at what they are doing, and they have updated you. What thoughts have you come away with particularly in terms of areas where you think they might not be up to speed or where we would probably all want them to be?

Amerdeep Somal: The register is a big part of the transformation programme, but that has largely come out because of the independent review by Dame Elizabeth Gloster and also my review into the oversight by the FCA into London Capital and Finance. Some recommendations have been implemented around culture, working in silos, opening up systems and processes, better communication across the organisation and training of staff across different departments, and that is really positive. We have already seen some benefits to that. More recently, in some of the investigation reports that I have seen, there has been more joined-up working between supervision, authorisations and enforcement.

Q17 **Chair:** The question really was not so much where you were content with what was going on, but where you were perhaps less certain that they



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were where you would want them to be on these things. Are there areas that you are concerned about across the transformation programme?

Amerdeep Somal: No, not particularly. I have a particular eye now on looking at how quickly they go through the piece around the perimeter, because that is really important, and particularly around fraud, etc., but I do not have any specific concerns about their progress so far on the transformation programme.

Q18 **Chair:** You mentioned IT in the context of your own operations. Do you have any thoughts on the transformation programme in respect of the IT or data element of that, which is quite a large part of it?

Amerdeep Somal: The FCA has invested a lot in IT and its systems and processes, and also into revamping the register itself. We have done similar investment in our own IT and data capturing, etc. I have yet to see the product of their data capturing that I could confidently comment upon.

Chair: Ivona, do you have anything to add on any of those points?

Ivona Poyntz: Yes, only to say that the interest of the commissioner in the transformation programme comes because of her reports on Keydata and LCF, which were published. We have asked for updates on the transformation programme, but I would say that we are not statutorily entitled to them. The FCA has voluntarily agreed to keep us updated, especially as that would have an effect on recommendations that the commissioner made in the FCA and LCF reports. We have had one update, which was quite recent.

One thing that I would add, probably, Amerdeep, is that the register might feature in that, and I know that you have thoughts on the register and how they are working to improve that.

Amerdeep Somal: Would you like me to comment on the register, Mr Stride?

Chair: Yes, if you could. Thank you.

Amerdeep Somal: The register was an important aspect of the Dame Elizabeth Gloster review into London Capital and Finance, and it was even more of an important part of the review that I did into the LCF oversight by the FCA. The issue for me about the register has been around its accuracy and provenance, and also the halo effect.

One of the points that I made in the LCF report was the extent to which the FCA should consider making substantial payments for errors on its register that directly cause loss to consumers. It is my view—and I express it in the report—that the FCA should, and it is the FCA's view that it should not, due to the statutory immunity that it enjoys. It also cites the social policy reflected in court decisions as the reason as to why it should not do so.



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The other issue connected to the register is the halo effect, of course. In response to my final report on LCF, one of the comments that the FCA made was that the halo effect was an unavoidable consequence of the legislative framework. I was very concerned when I received that response that, if the halo effect was left to remain without adequate mitigation, investors would not be able to grasp from the register, when they checked it, that, while a firm is regulated, the product or the activity that it was undertaking may not be. As you know, Dame Elizabeth Gloster, in her report, described the register as unintelligible and that it contained insufficient warning.

As of the end of May of this year, the FCA began to make changes to the upgrading of its register, and it updated me recently on that. The FCA has now taken some steps to mitigate the halo effect. You will know that it has this "use it or lose it" agenda, which is an initiative to prevent firms that are not using their permissions from benefiting from the halo effect, and also the use of new FCA powers so that it can move more swiftly to cancel or change what regulated business or activities firms are permitted to do; and specifically, when firms are not using those permissions, it can swiftly change or cancel them. My view remains that there is still more work to be done around the register.

Q19 **Chair:** Is that an area of concern?

Amerdeep Somal: Yes, it is.

Chair: You very kindly set out the various recommendations here, which we are aware of.

Amerdeep Somal: Yes, it remains a concern for me. Absolutely it does, yes.

Chair: You feel that they are not moving quickly enough.

Amerdeep Somal: I would like the Committee to take note, because I know that you will have a particular interest in this, but the warning message, in my view, on the register still needs to alert investors right at the forefront to the general risk associated with authorised firms selling unregulated products.

There needs to be a clear message right at the forefront, stating that sometimes authorised firms also sell unregulated products or undertake unregulated activities. Investors should check the register first and should also ask the firm to confirm in writing whether the product is regulated and what that would mean for them.

The FCA should go further and require firms to specify in their literature, whether it is their website or hard copy material, whether the product or service that they are selling is regulated. The product should be set out, regulated or not, on the firm's website, so that it has an obligation placed on it, because it is, after all, selling this product. The register should, at the forefront, also have that warning: "If you are an investor, check the



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register first and ask the firm to confirm in writing whether it is regulated and what that might mean if it is not". The FCA should also ask the firm to specify on its website, against the product, "Is this regulated or not?"

If you have as much information as possible, as clearly as possible, you are protecting all investors, not just sophisticated investors, regardless of the class of investor. It needs to be clear, simple and concise, so that all investors can understand. One of the issues in LCF was that the FCA let down all investors through systemic failures.

Q20 Chair: In the report, you mention the FCA complaints team as being an area that you wanted to focus on, and particularly the issue of delay and improvements there. What is your assessment of that aspect of its work at the moment?

Amerdeep Somal: I am pleased to report that there has been significant progress and improvement across almost all aspects of the complaint department's performance, which is hugely encouraging and most welcome. My predecessor for the previous five years, in his annual reports, commented on very poor performance, poor KPIs, delays and backlogs, etc., and they really have hugely resourced the complaints department now. It is much bigger than it was. There has been more rigorous training across all elements of the complaints department, better supervision, and a stronger quality assurance function. The quality overall of reports has improved. Sometimes it slides and, when it does, I make sure I bring it up with them, but overall there has been significant improvement, so that is definitely a tick.

Q21 Chair: That is good to see. What I would ask, Amerdeep, if you would not mind, is that you write to the Committee. You have touched on a number of areas here where there is a dissatisfaction with aspects of what the FCA is doing.

You mentioned, for example, some matters around the transformation programme. You have talked about the lack of response, for example, on your memorandum of understanding, and the correspondence around that and around transparency. You have also identified some areas around Gloster and LCF that are causing you a bit of concern or where you have strong views about things that should be done that might not be being pursued at the moment. We have the FCA appearing before us on 7 July, so, if it is possible to get something to us in good time for that, that would be extremely helpful.

Amerdeep Somal: Yes, we will make sure we do that.

Chair: Thank you very much indeed.

Q22 Kevin Hollinrake: I very much welcome the points you made in terms of a change in your approach compared to your predecessor. That is not a criticism of your predecessor. On that basis, would you look at previous complaints that have been sent to you, if people ask you to look at them again, where perhaps they did not get the result they were expecting



from your predecessor?

Amerdeep Somal: That is a very important question, Mr Hollinrake, and it is something that I deal with on a daily basis. The fact is that, once the complaints commissioner, whether it be myself or a predecessor, has issued a final report, we become *functus officio* and the matter is closed, unless there is genuinely new evidence. Often a complainant will write to me and say, "I have new evidence that the previous complaints commissioner did not have", and I might think that that is good reason to reopen it. Unless I am satisfied that it is genuinely new evidence, I will not reopen it, because there has to be new evidence. Sometimes a complainant will think it is new evidence, but, when I look at it, it has been rephrased or rebadged, and it is not new evidence at all. It is very rare indeed that I will look at something completely afresh, because I just do not get new evidence.

Q23 **Kevin Hollinrake:** What if the original complaint was from a parliamentarian who asked you to look at it again?

Amerdeep Somal: It would make no difference. I say that to a parliamentarian, and no disrespect is intended, but at the end of the day you are writing in your capacity as an investor, whether you are a parliamentarian or whatever walk of life you come from. If it is not new evidence, whoever you are, it is not going to be a reason to reopen it.

Kevin Hollinrake: Even though all these things are set up by Parliament in the first place by statute.

Amerdeep Somal: Absolutely.

Q24 **Kevin Hollinrake:** I ask because I addressed a complaint to Andrew Bailey, who refused to answer my questions because I was not a relevant person under the relevant legislation. I am not expecting you to answer this particular case, but it was quite extraordinary that somebody who is in post in an organisation that was set up by statute by Parliament would not answer that question, which is about the FCA's treatment of a whistleblower. He would not answer it, and the complaints commissioner said that he was within his rights not to answer it. Do you find that surprising?

Amerdeep Somal: I do not want to comment on specifics, but the complaints scheme only permits somebody directly, adversely affected by it, so it is going to be the person in question, who is perhaps an investor or a firm complaining about the regulator, or somebody representing them, but not somebody more distant. It has to be quite closely connected to the outcome, and that is the thinking behind the scheme.

Q25 **Kevin Hollinrake:** You have made some comments before in terms of the clarity and transparency of things on a relevant organisation's website—perhaps a regulated entirely that was selling unregulated products. As you probably know, SME lending above £25,000 is not regulated. Most people do not know that. Is it appropriate that, where



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regulated firms are advertising services such as that about SME lending, they should have to state on the advert that that product is unregulated?

Amerdeep Somal: It is unregulated. It is not that different to the point I am making about the register or the point that there should be a requirement upon firms to say whether a product is regulated, because it is giving people clear at-risk warnings, isn't it? By analogy, it follows that that would be my view.

Q26 **Kevin Hollinrake:** So you would support that approach that made it clear.

Amerdeep Somal: That is my view.

Q27 **Kevin Hollinrake:** I very much welcome that. Thank you.

In terms of London Capital and Finance, you seem to think most of the problems in the FCA are particularly in that area about the perimeter—I think that that is what you said. Are you sure that that is the only problem in the FCA, in terms of LCF and others? To me, LCF was one of a long string of failures by the FCA. For example, it ignored evidence for years about HBOS Reading, RBS, where lending collapsed, Woodford and Blackmore Bond. In all these cases, we have seen what I wish I could say was a reactive approach from the FCA, but it does not even appear to be that. It just does nothing. Are you sure that you can define the problems at LCF as being ones around a lack of clarity about the perimeter?

Amerdeep Somal: The problems around LCF were about the register not being clear and accurate enough. My view was that it was misleading. The FCA disagrees with my description of it. Dame Elizabeth Gloster described the register as unintelligible and with insufficient warnings. Information was not tied up. The dots were not joined up, etc. It was not a singular issue but a multitude of issues over a long period, which led to systemic failures and people working in silos and not sharing information, etc. So many different red flags should have alerted the FCA to have stepped in earlier.

You cited various cases. Keydata is another one, on which I published a report perhaps six months earlier, where the failures were not that different to LCF. There were some distinctions, but again it was about people not talking to each other, systems and processes, and information and intelligence not being acted upon, etc.

There tend to be common things emerging from these cases and, of course, the FCA had accepted that there were systemic failures in London Capital and Finance. In fact, they described it as a truly unique and exceptional case. What you are saying is that it was not unique at all, because you have seen it before.

Kevin Hollinrake: That is exactly what I am saying.

Amerdeep Somal: I have dealt with cases—and Keydata was one—where there were some very similar failures, so I take your point.



Q28 Kevin Hollinrake: On that basis, in terms of the progress that you are seeing within the FCA, are you confident it is making progress in these areas and that it does now act on intelligence and information?

Amerdeep Somal: There is certainly a very strong drive to push through the transformation programme as quickly as possible, but it needs to be done properly. It needs to be comprehensive and effective. I have no doubt about that at all.

I met very recently within the interim chair, and we touched upon the transformation programme and the board's real drive to oversee that piece of work, so I can give the Committee that assurance, and that is very fresh as well.

I can only go by the information that I see. Since the transformation programme has started, there are no red flags for me such that I would want to say to the Committee, "You need to keep your eye on this". If there is anything, of course I would report to the Committee on that.

Q29 Kevin Hollinrake: I certainly cannot speak on behalf of the whole Committee, but I would be keen to understand whether you feel that they are now able to act on information and intelligence, where they clearly have not been before. That would be an area of focus that I would really welcome you paying attention to and letting us know if you think they are now addressing that problem. It is a glaring problem in all these cases. The FCA had all the information right at the start, and yet it simply has not acted.

Amerdeep Somal: It is a really important point that you make. It is a point that I made in Keydata and that that has come up in London Capital and Finance, too. The FCA had information from multiple sources—on the face of it, reliable—and did not act upon it. It is something that I will take away, as you are particularly interested in it. If there is anything that would alert me that they are not discharging that responsibility as they should be, I will write to the Committee about it.

Q30 Kevin Hollinrake: The Chair asked some questions earlier about the register, and you have spoken about that quite a lot in your evidence so far. Are you surprised, on the basis that the regulator was so heavily criticised in the Gloster report, that, when you made recommendations about things it should do in terms of changing its approach to the register, it did not simply accept it and agree?

Amerdeep Somal: Yes, I was surprised. There has been a real defensiveness around the register, and that has in part been because they have invested so heavily in the register over a number of years. They have revamped it several times and, despite that revamping of the register, there have still been significant failures based on the accuracy and the provenance of the register. The register is the FCA bible, and people rely on it before they make investment decisions, so the accuracy of the register is really vital to investor and firm confidence, who firms want to do business with, etc.



I was surprised and disappointed. Where some of the recommendations were accepted, it felt a little bit like the low-hanging fruit was taken. Perhaps I am being cynical, but that is how it felt. Equally, I will say when I still think that the improvements are not sufficient, and I have told the Committee that I still do not think that the commentary on the register about the warnings is sufficient, particularly around the updated consumer protection warning under the firm name. The wording that I have suggested is not there. Under consumer protection, still there is not a warning under the firm name. I just think to myself, "Is that not the obvious place to put it?" That is where a consumer or a firm is going to go. Put it right at the beginning. If you have multiple warnings, is that not a good thing?

Q31 Kevin Hollinrake: I would agree with you. Are you frustrated that you do not have the powers to order it to do this?

Amerdeep Somal: This is an interesting tension, because, when the complaints commissioner role came into being, FSMA envisaged that the complaints commissioner would have very far-reaching powers. If one just reads *Hansard* and the debate that took place at the time in the House, there was quite a rigorous and robust discussion around the role of the complaints commissioner and what it would look like, etc. From the letters and emails that I get, particularly from investors, they say, "Well, what's the point? You made a recommendation here, and they can say, 'Well, we like that bit. We'll cherry pick that. We don't like that bit, and so we won't have that'."

Quite understandably, they are left with a sense of frustration. What is the point if you have a complaints commissioner set up by statute, where the regulator can say, "Well, we like that bit and we'll have that, but we don't like that bit, so we'll say no to that"? I don't think it is a really good look for a regulator either, so one of the points is going to be whether the complaints commissioner should have a power to direct a recommendation, which you see in other jurisdictions. That is something that you might want to think about.

There have been some real improvements through the recommendations that I have made, whereby there has been organisational learning and improvement. There was a recommendation around them rectifying the register around the firm, because they had put misinformation on the register, and the FCA agreed to rectify the register and take out the reference to the firm being unco-operative and that it had breached a particular principle.

They have improved the way in which they deal with deferrals of complaints, so now they update complaints at least every six months, and they update me too. In the past, complaints could be sitting there waiting years before they heard again from the FCA. In Keydata, for example, the case was on deferral for very many years, which was very frustrating for complainants. After my constant pushing on LCF, they have now published their guidance around ex gratia compensation



payments for distress and inconvenience caused by complaint handling delays. That is not something that they wanted to do, but they did, in response, eventually do that. It is now published.

There are many recommendations that we have made where there has been organisational learning, but does the complaints commissioner have the teeth that were envisaged by FSMA? In short, I would think not.

Q32 Kevin Hollinrake: You said that investors are frustrated about the fact that you cannot order the FCA to do this kind of stuff. Are you frustrated about that also? It sounds like you are.

Amerdeep Somal: I am there to act as an independent scrutineer, and that is what I do. In this job, you do not make many friends. You manage to upset everybody at some point or other, because you are giving your independent view. I feel frustrated for complainants, whether they be firms or investors, when they have an award from me. They get a letter and think that they are going to get an ex gratia compensation payment. While I make it very clear that this is in the gift of the regulator, when the regulator says not, they naturally have a sense of disappointment. It is about managing that. I do as best as I can to say, "This is what I have awarded you, but it is down to the FCA as to whether it accepts the recommendation". When I lay it down on the line very straight and then the FCA says, "We are not going to", it must be very upsetting for them.

Q33 Kevin Hollinrake: In how many cases have they done that, over the last 12 months or the time that you have been in post?

Ivona Poyntz: We are in the process of finalising our annual return, which will be with you shortly. There have been maybe three where they have not accepted it. In my opinion, usually recommendations are not accepted when there is an award for an ex gratia compensation payment, for example, for regulatory or supervisory failings, or maybe even the register. Compensatory payments, apart from ones for complaint handling delays, are quite difficult for them to accept. They accept most other recommendations. In the case of LCF, as you know, they did not accept the recommendation concerning compensation.

Q34 Kevin Hollinrake: Could you write to us and let us know how many and the type of case?

Amerdeep Somal: I was going to suggest that. We are very happy to do so and will follow up with that. Essentially, the short answer is that, on complaint handling delays, they will almost always pay up. They are fairly trivial amounts, of course. If it is anything to do with financial loss or regulatory/supervisory failure, no.

We had a case some time ago when the FCA did pay for regulatory/supervisory failure. That was a case concerning a cloned firm. When a number of other of people similarly claimed, they had short shrift from the FCA, which said, essentially, "We cannot guarantee the accuracy



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of the register, so we are not going to make any payment for your losses". That was an interesting position to take.

Q35 **Chair:** Can I just follow up on one point that Kevin raised there? I think that what you are saying, Amerdeep, is that only a complainant can make a complaint, or somebody who is representing that complainant. Is that correct?

Amerdeep Somal: Somebody adversely affected.

Q36 **Chair:** Can a Member of Parliament represent a complainant under those circumstances?

Ivona Poyntz: Yes, and it has happened.

Chair: I just wanted to clarify that.

Q37 **Alison Thewliss:** This follows on quite neatly from Kevin's points, because I want to ask a bit about compensation and the ex gratia payments. You highlighted some of the issues that were there, but do you feel that the current range of remedies under the complaints scheme is fit for purpose? Is there anything additional that you think would be useful as part of that?

Amerdeep Somal: The range of remedies covers everything that I would need it to. It can be anything from a straightforward apology, and I will say, for example, what level it needs to be at. If I think that it is a very significant systemic failure, I will say it needs to come from the chair of the board, from an executive director or from the complaints team. It could be, for example, rectification—so correcting an incorrect entry on the register, or some sort of restitution—or an ex gratia financial payment. As I say, I can award anything I like, but ultimately it is up to the regulator to decide what, if anything, it will pay.

Q38 **Alison Thewliss:** You mentioned three cases. I am not sure if you would be able to confirm this to the Committee or if that is something that you need to write to us on, but what is the difference between what you have recommended and what gets paid out?

Amerdeep Somal: We will write to you on that, because, as you will appreciate, we deal with many cases. Can we write to you as a follow-up on that?

Q39 **Alison Thewliss:** Yes, because it would be interesting to know the differential between the two. If you are saying it should be lots of money, and they are saying not very much, then that is quite an issue.

Amerdeep Somal: It is a very good point and we will write to you, Ms Thewliss.

Q40 **Alison Thewliss:** Thank you. Are you able to give us any sense of the number and the value of ex gratia compensation payments offered to complainants year on year? Is that going up?



Amerdeep Somal: I think it is going up. Ivona, what would you say?

Ivona Poyntz: Yes. The highest monetary awards were in the Keydata case, where, for distress and inconvenience, and supervisory failings, the award was somewhere in the realm of £5,000. That was not accepted. This was one of your cases, Amerdeep, last year, because of course last year straddled between two commissioners.

When the FCA did not accept that, the commissioner's position changed slightly with LCF, in that we were no longer going to pursue monetary amounts that can easily be rejected, but Amerdeep looked at the scheme as a whole, which is what LCF did, and compensation as a point of principle, really. In the way it is written at the moment, unless some things change, there may never be *ex gratia* compensation for supervisory or regulatory payments paid out. Amerdeep can expand on that.

Amerdeep Somal: You will be aware that there has been a complaints scheme consultation. It has been out there now for two years. We are still awaiting the FCA position on that. It has been delayed a number of times now.

Q41 **Chair:** Was it delayed unacceptably on the part of the FCA, in your view?

Amerdeep Somal: I understand that they received a voluminous amount of responses—over 3,000—to the consultation, so there was clearly a very strong interest from investors and firms around the complaints scheme consultation. As well as the sheer volume, we were given certain dates about when there would be a finalisation to it, and that has slipped and slipped. The last I heard was that they were awaiting the interest rate hedging product review by John Swift QC, which was published just before Christmas last year, and we have not had an update so far on when it is going to happen, have we?

Ivona Poyntz: There was an update on the FCA website that things might begin to move in April 2022, but they did not, and there has been no further update.

Q42 **Alison Thewliss:** Can you tell me a bit more about the sole or primary cause test and what your current stance is on that, given the differences with the FCA?

Amerdeep Somal: That is a really interesting and delicate subject. The FCA put out a remedy statement in June 2020, which was not subject to consultation. Essentially, as I see it, *ex gratia* compensation payments due to supervisory or regulatory failures on the part of the FCA will, in practice, never be available to complainants, despite the FCA saying that there are exceptional circumstances where they might be, as long as the FCA relies on this—in my view—self-devised test of sole or primary cause in its remedy statement, which, as I say, was never put out for consultation, and its binary interpretation of direct dealings in the complaints scheme.



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The FCA has interpreted that as speaking to somebody—so, telephone contact—in which case somebody relies upon information that is misinformation. They make an investment decision and there are losses caused. My view is that that is a very binary interpretation, because, in the modern day, people rely on the register, don't they? They do not pick up the phone and talk to somebody, which is why I come back to the importance of the register, its accuracy, and the sufficiency, clarity and conciseness of its warnings. How many people are going to pick up the phone? That is really a very narrow interpretation of direct dealings, because most people now go on the register, check it and make decisions based it.

Also, its self-devised test of such payments should be made only to people in exceptional circumstances. That is not encapsulated in the scheme and is not being defined in detail by the FCA.

In my view, the approach that the FCA is taking to ex gratia compensation is not consistent with the statute or with the existing published complaints scheme, because it draws no distinction and simply refers to ex gratia compensation. It draws no distinction between compensation for financial loss, supervisory or regulatory failures, distress and inconvenience, or complaint handing delay.

In practice, I do not think that financial compensation will be available on an ex gratia basis if the FCA goes down this line, and we have a very strong difference of views about this. Let us just take LCF as a case in point, perhaps, because it is quite current. The FCA described that as truly unique and exceptional. It is accepted that there were systemic failures on a major level in the case of LCF; and yet, despite that, they think that they should not be making right any financial loss.

I ask myself, "If you do not make it in a case like that, when will you make it?" They need to answer that question. I think the Committee would want to know: "Give us some circumstances in which you think you would make it, if you do not make it in a case that you describe as having systemic failures and being truly unique and exceptional?" That is the bit that I, as somebody who works in complaints and has done for very many years, struggle to understand.

Q43 Alison Thewliss: You mentioned asking people to pick up the phone. Are they that prescriptive about it? It cannot be in writing or by email.

Amerdeep Somal: "Direct dealings" is talking to somebody.

Alison Thewliss: If somebody were to send it in an email, that would not count either.

Amerdeep Somal: That is the interpretation that they have had.

Alison Thewliss: That is very narrow indeed, and there will be lots of people who would not prefer to speak on the phone either. They might write or email, or do something of that kind.



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Amerdeep Somal: We do know how many people received financial compensation for direct dealings, and we could send that information, if you wish, after the hearing.

Alison Thewliss: That would be useful.

Ivona Poyntz: It is about 11 people.

Amerdeep Somal: Yes, it was a very small number—11 people—applying the description and the tests that they have come up with. There is a divergence of views, but that is what the complaints commissioner is here to do. If I think that something is wrong and unjustified, and does not stand up to scrutiny, it is my role to shine a torch on that, and I hope that I have done so through the LCF report.

Q44 **Alison Thewliss:** That is useful, thank you. The True and Fair Campaign stated that, by using the sole or primary cause test, “The FCA therefore appears to have deliberately sought to make the scheme worthless and anti-consumer by applying an illegal test, even though the amounts actually paid by the FCA are derisory anyway”. Does that accord with your experience of this?

Amerdeep Somal: I recognise the language in that. Alan and Gina Miller at the True and Fair Campaign wrote to me. They copied me into quite a bit of correspondence that they had with the FCA and with the Treasury Select Committee, and they have written to me as well. Some of their correspondence was an appendix to my report on LCF, and it is something that they feel very passionately about.

I recognise some of that. It is that sense of frustration, and they are not the only ones. I have had people write to me, saying that the sole or primary test is something that the FCA has tried to slide in through the back door and through the remedy statement, which was not subject to public consultation, and it is unfair and inappropriate. I do think that the way it has come about looks inappropriate and feels unfair, because the FCA accepts that there were systemic failures on a major level, but it does not think that it should compensate people, unless they have had direct dealings, which it describes as telephone contact.

All types of investors expected better from the FCA and LCF. Having this link that they are relying on between compensation and causation is interesting, because I do think that it is appropriate that, in certain circumstances, you should restrict ex gratia payment, because you are going to have some people who—and I paraphrase—perhaps are a little bit relaxed or foolish, have not really done their research, and want to get rich very quickly. It looks too good to be true, probably because it is, but there is the reckless or greedy investor, versus other people who were more cautious and did not really understand the risk, and so there should be a sliding scale. I do not think that one size fits all, but it is about making sure that there is proper consideration and that the door is not shut just completely.



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The HMT scheme, for example, was capped at £68,000. It was a really good scheme. It was a very difficult situation, but it should not be unlimited either, because there has to be investor personal responsibility.

Q45 Alison Thewliss: There is certainly a logic to that. Does this kind of situation make it all but impossible for people, for example, in the Football Index issue, where the FCA and the Gambling Commission did not take responsibility, to get any compensation from anybody in that situation?

Amerdeep Somal: I am not sure that that falls under my remit. What do you think, Ivona?

Ivona Poyntz: No, we have not had any complaints.

Amerdeep Somal: We have never had a complaint of that nature.

Q46 Alison Thewliss: So the FCA did not appear to take on any responsibilities, despite perhaps a suggestion that it might have had some degree of remit for it.

Amerdeep Somal: Is it regulated by the FCA?

Alison Thewliss: It should have been regulated by the Gambling Commission, but the product was being sold as if it were an investment product.

Amerdeep Somal: But not regulated by the FCA, no, so it would not fall within its remit and, therefore, it would not fall within mine.

Q47 Alison Thewliss: Just to move on slightly from that and talk more widely about the performance of the office of the complaints commissioner, do you expect the number of cases dealt with in 2021-22 to have increased over the period? In the prior year, there were 393 cases.

Amerdeep Somal: We have been very busy; let us put it that way.

Ivona Poyntz: There have been more than double that this year in the annual returns coming out. Some of the cases that we have recorded have been over 400 LCF complaints, and what happened there was that there was one report published that covered most of the complainants on our website. When you talk about performance, we are talking about resources and investigator hours involved in logging and corresponding with people and their individual issues. We have counted these, as does the FCA in its own stats, as individual cases.

We are close to 900 for the year, and it has been very taxing, especially straddling the Covid era, in terms of managing that, but our service standards have not been breached, which is a good thing.

Q48 Alison Thewliss: That is quite an increase. Your annual report for 2020-21 states that about 23% of those 393 complaints were about financial



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services providers or other bodies, not the regulators, and people were then directed elsewhere. Does that perhaps suggest that there needs to be greater clarity about your purpose and where you can help? Is there more that you are doing towards directing people better before they put those complaints in and then eat up a lot of your time?

Amerdeep Somal: We see an awful lot of complaints that just are not our business. They are matters for the Financial Ombudsman Service, because it is a complaint about a specific firm. We have improved our messaging, our website and our externally facing information, but there is clearly more to do, because we are still getting them. We get complaints about all manner of organisations that have nothing to do with financial services at all. It might be something to do with rail, for example.

We are shortly going to be revamping our website to make it more fit for purpose and more interesting, so that younger people come to it and are drawn to it. Typically, it tends to be people who are more mature, so we want to make it more appealing to everybody. Part of that will be making sure that that messaging is much clearer, more concise and more upfront. Here am I saying some of the messaging from the FCA needs to be like that. We are going to be doing exactly the same thing.

Q49 **Alison Thewliss:** In July 2021, you stated that you reverted to an eight-week timescale for the completion of decisions from 12 weeks. Were you able to manage that?

Ivona Poyntz: Yes. We did not breach the 12 weeks and, recently, we have reverted to eight weeks after issuing and dealing with first Keydata and then LCF, so we are back to eight weeks again. Eight weeks is the maximum. Quite often, decisions are made much earlier, but, in order to manage expectations, we say eight weeks.

Q50 **Alison Thewliss:** What number of cases go over eight weeks?

Ivona Poyntz: We have had possibly only two this past year.

Amerdeep Somal: It tends to be a couple of days.

Alison Thewliss: Given the number that you are dealing with, that is quite good.

Amerdeep Somal: We are a very small and very busy office. Our caseload has gone up 137% in the last year. Despite that, the KPIs are brilliant, even if I say so myself, so I am really proud of the team's performance. We have put in our budget proposal for an uplift in our funding, because we expect that there will be further big cases coming our way. We could expect Woodford and cases of that nature, so we can expect that we will need additional resources.

Q51 **Alison Thewliss:** Do you find that you get the information that you need from the regulators in a timely manner to allow you to do that?



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Amerdeep Somal: Not always, no. One of the issues that I regularly raise when I have my meetings with the FCA is about the quality of the information in the files. As far as I am concerned, I should have a complete file when the FCA sends its file over to us. It is all done electronically. I should have access to all its information, including the confidential information, so that I can give that assurance to complainants about having reviewed everything.

Sometimes, we get information very late in the day. I have issued a preliminary report; both sides—the complainant and the FCA—have had the report. Just as an example, even though we have requested call recordings several times and been told they do not exist, they suddenly pop up, and we have to do a major rewrite of the report and explain to a complainant, “You know I said this. Well, guess what? I have changed my view on it, because I have listened to these call recordings”, so that is a very difficult situation to manage.

I have had those conversations. I have had a very similar conversation very recently, only this week, about the importance of making sure that the file is truly complete.

Q52 **Alison Thewliss:** That certainly would affect how people see you and perceive your service, if you are not getting that information.

Amerdeep Somal: It would. It is resource intensive. We are a small, busy team. We want to make sure that our reports are completely accurate, based on all the information, and so it should be provided in a timely way. If there is an assurance that certain information does exist, we should be able to rely on that. When information then comes through late, we have to start doing some more work.

Alison Thewliss: That is useful. Thank you very much.

Q53 **Anthony Browne:** Sorry for arriving slightly late after the beginning. A school of primary school kids came to visit me and they were a bit late, so I missed some of your earlier answers, and I apologise if some of my questions repeat them.

Amerdeep Somal: Not at all, thank you.

Q54 **Anthony Browne:** I just want to clarify one thing first. Who are the complainants who come to you? Are they individuals? Can small businesses do it? What about regulated small businesses, which the FCA has a lot of, or is it just the unregulated?

Amerdeep Somal: Ivona, you have the figures on this, do you not?

Ivona Poyntz: Yes, anyone who is affected—small businesses, firms or solicitors.

Q55 **Anthony Browne:** And those that are regulated by the FCA or PRA as well.



Ivona Poyntz: We have had firms that are unregulated complaining as well. For example, in last year's report, you will see that unregulated firms were concerned that regulated firms were manifesting unsavoury business practices, which the FCA was not clamping down on and which were bringing the industry into disrepute. If you are affected by the FCA in any way, shape or form, you do not need to be regulated to complain.

Q56 **Anthony Browne:** Sorry, that was just to clarify in my head. My question is really about the complaints scheme and the draft proposals—the new one that you touched on earlier. It also picks up on your answers to Kevin and Alison earlier. In short, how do you think the complaints scheme operates at the moment? Clearly, you are worried about the fact that the FCA does not have to award the compensation that you recommend, but what would be your three top things about it?

Amerdeep Somal: If it is a wish list or a shopping list—

Anthony Browne: Yes, we like wish lists.

Amerdeep Somal: I like wish lists too. The public, investors and firms do question the legitimacy, if you have a complaints commissioner who can make recommendations only. Should there be a power to direct? That is the first.

Secondly, the term of the complaints commissioner is an important one. It is a three-year term renewable for a second term of three years. On the face of it, that sounds fine, but my view and that of my predecessor was that the complaints commissioner is such an important role that there should be one term of five years. I am not suggesting that this is the case for one moment, but you could have a commissioner who had one eye on reappointment, and that should not be an influencing factor.

Q57 **Anthony Browne:** Who reappoints you?

Amerdeep Somal: The appointment itself is also something that you might want to think about. It is made by the regulators. There is an independent person on the panel, who is the president of the Law Society, and there is a person from the Treasury on the panel, but the recommendation is made to the Treasury, which confirms the appointment.

Q58 **Anthony Browne:** So it is, basically, the poachers appointing their own gamekeeper.

Amerdeep Somal: The regulators make the appointment, rubber-stamped by the Treasury, and that is interesting in itself.

Third is funding. This all comes to the independence of the office. What is so important to public, investor and firm confidence is the funding. Sometimes, people will say, "Well, how can you be truly independent? You get paid by the regulators", and I always think that that is a fair challenge. I can say as much as I like, "Well, I am truly independent",



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and my reports and the position that I have taken on, for example, LCF and compensation are a strong demonstration of my independence.

Funding comes from the regulators, so a question mark for me is whether thought should be given to the funding coming, for example, directly from the Treasury. It is the financial regulators that I report about.

Q59 Anthony Browne: Do they have full discretion over what funding to give you?

Amerdeep Somal: Absolutely.

Anthony Browne: So they could decide to cut your budget to zero, theoretically.

Amerdeep Somal: Do you want to explain how it works in practice, Ivona?

Ivona Poyntz: Yes. In FSMA 2000, it does say that the regulator—at that time, the FSA, and now the regulators—will provide reasonable expenses to the commissioner. It is not really defined what “reasonable” is. We have had scrutiny, which we are in the process of discussing with the regulators now, about the extent to which it is appropriate. We are not obligated to have an independent audit, because the company is very small. However, each commissioner so far, including Amerdeep, has agreed to have independent scrutiny, and we have, for example, Price Bailey auditing us this year. This is to provide transparency and accountability to the public and the regulators as to how we manage the finances.

Perceptionally and in other aspects, the independence of the office can be challenged, which is why Amerdeep was saying that one thought would be for the Treasury to fund it.

Q60 Anthony Browne: That funding issue is a clear conflict, but the Treasury would not want to fund it because it comes out of taxpayers’ money. What you might need to do is get the Treasury to direct the FCA to fund it from its fees, which are from the industry. That would be the sensitivity of the Treasury. Anyway, the FCA should not have discretion over your funding.

Amerdeep Somal: No. Those would be my three wish lists, if you like, but the accountability and transparency for me is really important as the complaints commissioner, because it is such an important role. We are not legally required to have an external audit, but I always have one. As it is public funds, ultimately, there should be that openness around it and I am fully signed up to that. Conversations need to be had about, for example, the level at which I should be explaining to the FCA where the money is being spent. Micro-detail is not appropriate, because it is an independent office, so how many staff, working patterns and all of that really is none of their concern. If the workload has gone up 137% and I have put in a budget proposal for an uplift, I expect it to be delivered.



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Q61 **Anthony Browne:** I was going to ask a question where the only answer that you can give is no, but I am going to ask it anyway. Given that the FCA appoints and reappoints you, and supplies your budget, over which it has huge discretion, and you do not have the power to direct it, does all that compromise the way that you operate in any way?

Amerdeep Somal: No is the short answer.

Q62 **Anthony Browne:** I told you that you would say no, but from an external perspective it does not give confidence, with all due respect.

Amerdeep Somal: Mr Browne, you are completely right to raise it. That is exactly what people say when they write to me: "How are you independent? You get your money from the FCA. It appoints you and renews your term with approval by the Treasury," etc. So perception is important.

Q63 **Anthony Browne:** It does seem extraordinary, but do you know why you are set up in that way?

Amerdeep Somal: It is just that, historically, that is the way it has been.

Q64 **Anthony Browne:** It is the way you were set up, but normally, when the Government set up ombudsmen or whatever, you look at the governance in a certain way to make sure that they are independent and can tackle the industry or whatever it is.

Amerdeep Somal: Absolutely.

Q65 **Anthony Browne:** Coming to the proposed new complaints scheme, when I read this, I was shocked that, as you mentioned, it was the FCA that is writing the new draft complaints scheme, which has been delayed by two years. Not only does it fund you, appoint you and reappoint you, and you cannot direct it, but it is writing the whole rulebook as well, effectively. Have you had any visibility of the changes to the complaints scheme that it is thinking about?

Amerdeep Somal: We have had visibility and we have seen various drafts of it, haven't we, Ivona?

Ivona Poyntz: Yes.

Amerdeep Somal: This started long before I came into post. I have been in post for nearly 20 months. Ivona is the corporate brain, really.

Ivona Poyntz: What we have seen is the consultation paper as it went out and, since then, both the previous commissioner and Amerdeep have written publicly their thoughts on the consultation, just like any other person would comment. Subsequently, we have had meetings with the FCA on this. Where we are at the moment is that the FCA has said to us that it is considering its position and that it is not finalised yet, so we are also waiting to see if and how its thinking will move forward from the consultation paper.



Q66 **Anthony Browne:** Do you think it will strengthen the regime or weaken it?

Ivona Poyntz: It is hard to say.

Amerdeep Somal: As the situation is at the moment, with the remedy statement and the position I gave in my report on LCF, my view is that the position it has taken and applied on some of the cases that I dealt with, particularly on its approach to compensation, is setting up a scheme whereby people have to jump various hurdles to even stand a chance of anything, aside from complaint handling delays, unless, in its view, there are exceptional circumstances. Even then, there was talk of a cap for direct loss.

At what point can the regulator go from blunder to blunder, be directly responsible for losses, and still say, "Well, that's £10,000. That's your lot"? Where is the fairness in that?

Q67 **Anthony Browne:** You make recommendations about the amounts of compensation, and sometimes they listen to you and sometimes they do not. Do you make recommendations about systems change in any way, if you identify systemic failings, where you just say that they should do something slightly differently or whatever else, rather than recommending just the compensation in an individual case?

Amerdeep Somal: Yes, absolutely. There have been some significant improvements as a result of recommendations around process and organisational improvement. You probably missed this, Mr Browne, because it is one of the first things we talked about. The FCA finally published its ex gratia indicative scale of payments around compensation for distress and inconvenience, and complaint handling delays, but again that was a push.

I also asked it to give urgent attention to ensuring that people with mental health disabilities are not caused further distress through the way in which the FCA deals with them, and also the firms that it regulates. As a result of that, the FCA put in place a raft of measures around accessibility and reasonable adjustments for complainants with mental health difficulties, which is hugely welcome too.

The FCA has also ensured that its staff in its complaints handling department have been given training around its approach to confidentiality and how it applies it, and around transparency. I also recommended that the FCA revisit its register about EEA-passported firms that had ceased trading, where the address was no longer shown on the register for a firm that was no longer authorised—things like that, so there have been real improvements around process.

Ivona Poyntz: An interesting thing that comes up under the complaints scheme is that in many cases the commissioner will not uphold a complaint, and yet, through the course of the investigation, the commissioner notes that there are areas that need improvement. Many of



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these suggestions and recommendations that Amerdeep was talking about are current cases where the complaint was not upheld.

Q68 **Anthony Browne:** The FCA has its powers given to it by the Treasury. These various shortcomings may not compromise your independence, because you are independent minded, but it has the appearance of that. Have you talked to the Treasury about it?

Amerdeep Somal: I have periodic meetings with the Treasury. I will write to the Treasury if there is a matter that I think that it particularly needs to be sighted on. For example, I contributed to the consultation on the regulatory framework recently, so I wrote to the Treasury about that.

Q69 **Anthony Browne:** But your appointment and reappointment, and the funding, are directly with the Treasury.

Amerdeep Somal: My predecessor did that, so the Treasury is sighted already, but I am happy to follow up with the Treasury on the same points again.

Anthony Browne: I am sure that we will follow it up one way or the other.

Amerdeep Somal: The governance framework is an interesting one. In terms of public confidence, it is a good opportunity to look at whether it is right.

Q70 **Anthony Browne:** On some of the specifics of the new regime, you mentioned the £10,000 cap, which you are opposed to. Do you think that there should be no cap?

Amerdeep Somal: No, I do not think that there should be no cap, but £10,000 is an arbitrary sum where the FCA has caused direct losses. There has to be a sliding scale. There has to be discretion. You have to throw in the mix, for example, the level of risk and whether somebody had spread their bets or put all their eggs in one basket, what the level of warning and the sufficiency of it was, and culpability and responsibility for investors. All of that needs to go in the mix.

Q71 **Anthony Browne:** I agree, but that is a slightly different issue. If you have an investor who is genuinely blameless and the FCA genuinely seriously messed up, should there be any cap on the compensation that they can get in terms of loss?

Amerdeep Somal: My predecessor wrote to the Treasury and the FCA about this, and said, "I do not understand why there is a £10,000 cap proposed, when you have caused the loss. You should be paying for all of it", and my position is no different.

Q72 **Anthony Browne:** Did you get a response from the FCA about that?

Amerdeep Somal: "We do not agree".

Q73 **Anthony Browne:** Another thing that has been raised is the cost of the



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scheme. You talked about the ex gratia payments at the moment. The True and Fair Campaign has said that the compensation was £7 per complaint, but the cost of running the commissioner's office is £1,300 per inquiry or complaint. I assume that you recognise those figures. In other words, for every £200 from operating, you successfully award £1 of compensation. Is that right?

Amerdeep Somal: I recognise the figures because the True and Fair Campaign wrote to me and copied me into that correspondence, so I did see the breakdown that it had calculated.

Q74 **Anthony Browne:** A lot of people would be quite surprised that it is, effectively, £200 of administrative costs for every £1 of compensation awarded, just in terms of appearance of the effectiveness of the complaints commissioner.

Amerdeep Somal: I can assure you that we undertake thorough, rigorous investigations, and that is clearly borne out by the investigation reports that I publish. Most recently, you can see a report of nearly 250 pages on LCF. That all takes time. We are a very small, very busy office, and the awards I make are ones that I think are fair and reasonable in all the circumstances. The circumstances will vary from case to case, and sometimes I make no award.

Q75 **Anthony Browne:** The absence of an award could be because the behaviour has not been that bad, as it were.

Amerdeep Somal: Absolutely, and sometimes it is the investor's behaviour as well, not just the FCA's behaviour.

Q76 **Anthony Browne:** In terms of the new compensation scheme rules that the FCA is devising, you mentioned that you have written to the FCA, but have you had any involvement? I know that you are relatively new, so did your predecessor have direct involvement? Did you talk to the FCA about what should be in scope and out of scope, and what changes are needed, or was it just one letter that you wrote?

Amerdeep Somal: Ivona was here when it started, so perhaps she could answer.

Ivona Poyntz: There were discussions, and we knew that the complaints consultation would touch upon some issues, such as using plain English, but when it comes to compensation there has never been either a clear policy or agreement. The previous commissioner spent six years trying to have meaningful discussions with the FCA on what the compensation element of the scheme should look like. He even published his own guidance on the website, and the regulators did not really have much to say until they issued the consultation paper. The rest, as they say, is history, in the sense that we are still waiting for their final position on it.

Q77 **Anthony Browne:** Do you think it makes it more user-friendly or not?

Ivona Poyntz: In terms of using plain English, yes. That is my opinion.



Amerdeep Somal: Some of the language is more accessible. It is not concise. If you give people a short document, they are more likely to read and understand it. It is the same for anybody. It is the same for me too. The moment you start to make something that starts to resemble *War and Peace*, people switch off—a bit like Committee papers, I guess.

Q78 **Anthony Browne:** Indeed. Sorry, they are great Committee papers. As a last question, if there is going to be a change to some of the things that you want, in terms of appointment, powers to direct and the funding, that would, presumably, require primary legislation. Do you want legislation to reform the powers that you have and the overt independence of the commissioner?

Amerdeep Somal: That is the mood music that I am getting from people who are interested in what we do, which is that the complaints commissioner needs to have more teeth.

Anthony Browne: Yes, and that would require legislation.

Amerdeep Somal: It would require primary legislation, certainly for directions, absolutely.

Q79 **Anthony Browne:** Sorry, I said that was the last question, but I will ask one more. You mentioned the power to direct. Do you have views on what the scope of that should be? There is the power to direct compensation, but, in terms of the other reforms that the FCA makes, there have to be some limits to what you can direct.

Amerdeep Somal: We will take that away and think about it, and happily write to you, but my initial thought is that it is really around the power to be able to direct and enforce the remedies. That is where people get upset, because they think that they are onto something. The Commissioner has recommended something, so they are going to get an apology, rectification of the register and a financial award on an ex gratia basis, and then the rug is pulled away from them and, naturally, they are upset. That is where public interest lies.

Q80 **Anthony Browne:** If you could write to us with what reforms you would like to see—your wish list, some of which you have said now—in letter form, just to be more precise, that would be very much appreciated.

Amerdeep Somal: Thank you for asking the question.

Q81 **Siobhain McDonagh:** My questions look to consider your views on the performance of the regulators that the office of the complaints commissioner oversees. In 2021-22, what were the characteristics of complaints made against the FCA? Were there any worrying trends? What were the key themes?

Ivona Poyntz: I am just going to consult the annual report. We have a table in the annual report. It is table 4, on page 12. Here, we have broken down the complaints according to theme. One of the things that we note is the primary complaint. About half of complainants are



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concerned about how the FCA has regulated either a firm that they are having trouble with or an industry, or whether there are some rules in place—let us say, pension transfers from defined benefit schemes or something like that—that are, you could say, directly impacting them, and so they would like some more regulation in that area. That is the main thing that people were complaining about.

Also, last year, I do not know if you recall, but there was an FCA data breach, which was a big thing, when it inadvertently published details of a number of its complainants on its website. We had a great number of complaints about that. Most of them went to the ICO.

Also, during the pandemic, there was a change of the rules on overdraft charges with the introduction of a flat rate, which meant that some people were worse off. Most people were meant to be better off with a flat rate, but some were worse off, so we had a number of complaints about that, because they had had to change banks.

For the first time, we saw a trend appear about the treatment of vulnerable customers, both by their financial services providers and by the FCA itself.

These were the main things to come out from last year.

Q82 Siobhain McDonagh: How would you describe the relationship between the FCA and the office of the complaints commissioner? You sometimes get pushback from the FCA. Has that led to any problems?

Amerdeep Somal: It is the kind of relationship that I would want with a regulator. I have worked in regulation for 25 years in different respects, and it is really important to have a tension and not to be close to the regulator. We agree on some things. We sometimes disagree on things, and that is probably reflective of my independence. They are respectful of the fact that I am independent.

We maintain a cordial, professional relationship, but it does not mean that we will not have direct conversations when it is appropriate to do so either, because I am in a unique position whereby I have far-reaching powers and can have an insight into the inner workings of the organisation. If there is anything that particularly causes me any concern, I will speak to them about it. I would say that a necessary tension is there, and that is good for the independence of my office.

Q83 Siobhain McDonagh: For 2021, out of the 60 remedies identified, the FCA did not accept five, and accepted one partially. This led to dissatisfaction among some complainants that your recommendations were not enforceable. Do you feel frustration that your recommendations are not enforceable?

Amerdeep Somal: I have spoken to this briefly already, but it is a source of frustration for those complainants. You have to ask yourself whether I should have more powers to be able to enforce—in my view,



absolutely. As the external independent scrutineer, you have looked at the information and the facts, investigated, been rigorous and comprehensive, and you have come to a well-rounded judgment about it, so why would you make recommendations if you are not going to be able to enforce them? It is really important. It is certainly a discussion that needs to be had.

Q84 Siobhain McDonagh: Have you had any discussion with the Treasury about legislative steps that might make your findings enforceable?

Amerdeep Somal: No. It is something that I will write to them about.

Q85 Siobhain McDonagh: What impact do you think large staff turnover at the FCA has had on its ability to carry out core functions? Are you concerned that the ongoing pay disputes at the authority and its difficulty in retaining staff is impacting on its ability to meet its core functions?

Amerdeep Somal: You are asking me about matters that just fall outside my jurisdiction completely. Staffing and operational matters are for them and not for me. I do not get involved in any of that. Sorry not to be more helpful.

Q86 Siobhain McDonagh: In your 2021 annual report, you state that “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”. Has this new process now been implemented?

Ivona Poyntz: Yes, it has.

Q87 Siobhain McDonagh: Has it improved the tracking of recommendations and implementation?

Ivona Poyntz: Yes, we track the implementation. Prior to the report that you are reading for last year, there was a gap in the system, in that the commissioner would provide recommendations, the FCA would accept or not accept them, and then the commissioner would never again hear about what had happened.

With this new system, we are tracking to make sure that these recommendations are implemented, and one of the things that we are looking to do next year is to take it one step further and to analyse if there is any social benefit, or any benefit to the public at large, from some of these recommendations. It goes beyond just whether an individual complaint was upheld, and looks at what improvements or systems enhancements were made within the FCA that would benefit both firms and the public at large.

Q88 Siobhain McDonagh: Finally, you mentioned earlier the FCA data breach. In your 2021 annual report, you stated that “there is ongoing work being undertaken in this area to ensure a transparent and clear



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outcome path for complainants". Could you provide us an update on that progress?

Ivona Poyntz: Yes. Some of these complaints were concluded after the annual report was published. What happened there was that the majority of them were redirected to the ICO. We then entered discussions with the FCA on the issue of which complaints fall within the scheme and which do not. There is discussion about relevant functions and, if it is not a relevant function, it does not fall within the scheme. We have not finalised those discussions yet, though. We have sent a letter, and that is another one that they have not replied to.

Q89 **Harriett Baldwin:** I will try to find the questions that have not already been asked. I recognise that most of your complaints are to do with the FCA, but you do get some from time to time against the PRA and the Bank of England itself. Can you tell us what the characteristics of those complaints were, please?

Ivona Poyntz: This has to do with the stats, and I have the figures here. For the annual report that you are asking about, there were four complaints that we had finalised and three that were carried over. The three that were carried over had to do with the pressure that the PRA was purportedly exerting on banks to cancel 2019 dividends. Those were concluded this year.

The ones that we looked at had absolutely no common theme at all. For example, they involved things such as, in one case, the PRA's recapitalisation exercise with respect to the Co-operative Bank and how that had caused a dilution of the shares for some complainants.

Q90 **Harriett Baldwin:** Did the complaints always come from shareholders or did they sometimes come from banks?

Ivona Poyntz: The PRA complaints for this particular report were all from consumers. In one case, there was an exclusion. The person was complaining about the conduct of firms and it was passed to the FCA. Sometimes, individuals cannot make the distinction between what the PRA and the FCA respectively regulate, so they will go to the PRA, get an exclusion or a referral to the FCA, and then come to the commissioner, and sometimes the same thing will happen.

One other complaint was about how the PRA dealt with a friendly society's application to convert to a limited company.

Q91 **Harriett Baldwin:** That turned out to be a Treasury issue, did it not?

Ivona Poyntz: Yes. There is no theme to any of them.

Q92 **Harriett Baldwin:** In 2020-21, the Bank of England and the PRA accepted all the recommendations that you made. How is that likely to compare to the recommendations this year?

Ivona Poyntz: I believe that they have accepted them this year as well.



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- Q93 **Harriett Baldwin:** Can you summarise what the recommendations are?
- Ivona Poyntz:** This is going to be in the annual report, which has not yet been laid before Parliament, and which is due to be laid before Parliament on 16 July.
- Harriett Baldwin:** So no.
- Amerdeep Somal:** It is not in the public domain yet.
- Q94 **Harriett Baldwin:** Can you say whether you think that the recommendations have been acted upon and implemented?
- Ivona Poyntz:** Yes, we do not have any major areas of concern.
- Amerdeep Somal:** Certainly, they accepted all the recommendations, and I have no reason to believe that they have not been implemented.
- Q95 **Harriett Baldwin:** In response to your annual report, the PRA and the Bank of England state that "the commissioner recommended that the PRA and Bank remind themselves 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. We have confirmed that we fully understand the requirements of the scheme". Has that turned out to be true, would you say?
- Amerdeep Somal:** Yes, absolutely.
- Harriett Baldwin:** You have seen a marked change in terms of behaviour.
- Amerdeep Somal:** I have to say that they are very quick to respond to recommendations and very positively receive them, so, yes, there has been no issue.
- Q96 **Harriett Baldwin:** In your business planning and forward-looking budgeting, do you continue to expect that the number of complaints about the FCA will be much higher than those about the Bank of England and the PRA?
- Amerdeep Somal:** Yes, traditionally it has had far more complaints.
- Q97 **Harriett Baldwin:** As Anthony was saying earlier, the budget is determined by negotiation between you and the FCA.
- Amerdeep Somal:** That is how it is working out in practice, whereas the legislation just tells us that we can ask for a reasonable amount. What I think is reasonable might not be the same as what they think is reasonable.
- Q98 **Harriett Baldwin:** Indeed, and who will prevail?
- Amerdeep Somal:** It has to be me, because, if I do not get the money that I need, I cannot be running an effective operation, which is so important. It is in the interests of the regulator to ensure that my office is



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as resourced as it needs to be in order to be as effective as possible and to hold them to account as quickly as possible.

Q99 **Harriett Baldwin:** In your business planning, do you think you have enough staff at the moment or are you expanding?

Ivona Poyntz: Yes, we do have enough staff at the moment. We have submitted a budget to the FCA, which has been approved. What tends to happen during the year is that, if new issues come along, we have to resubmit the budget. Two of the things that can happen, for example, are subject access requests and judicial reviews. Any one of those is a strain on our resources. For the judicial reviews, although we do a lot in-house, ultimately we have to hire solicitors to represent us in court. The subject access requests are complex. Again, there is a lot of resource expended on that, and so some of these things comprise the budget as well.

Q100 **Harriett Baldwin:** You have had one case of judicial review, am I right in thinking?

Ivona Poyntz: Yes, one last year, and there are more this year, I am afraid.

Q101 **Harriett Baldwin:** Was the one that has happened successful against the commissioner?

Amerdeep Somal: We have never had a successful JR against the office, I am pleased to say.

Harriett Baldwin: So the judicial review case against the commissioner was unsuccessful.

Amerdeep Somal: Yes. We do not spend a lot of money in terms of our budget on outsourced legal advice, because I am a lawyer and also a judge, so I can just do a lot of it in-house.

Harriett Baldwin: But it takes up resources.

Amerdeep Somal: Exactly, so it is about deciding where my priority needs to be.

Q102 **Harriett Baldwin:** So you have had one judicial review in the past. You said that there are more this year. Can you give us an idea of how many that might be?

Ivona Poyntz: Two.

Q103 **Harriett Baldwin:** In addition to the one that you have had before?

Ivona Poyntz: Yes, two in addition.

Q104 **Harriett Baldwin:** So it could be quite resource intensive.

Amerdeep Somal: It is resource intensive, yes.

Q105 **Harriett Baldwin:** You moved offices this year as well, I believe.



Amerdeep Somal: We did.

Q106 **Harriett Baldwin:** Can you tell me the thinking behind that?

Ivona Poyntz: Yes. What happened was that our lease was terminated in the building that we were in. The landlord closed the building down and asked the tenants to relocate. We have always had a serviced office—since 2016 anyway. We were transferred across the road and negotiated better terms and conditions. You will probably see that, this year, we have decreased our expenditure on accommodation by 60%.

Q107 **Harriett Baldwin:** Are you all in the office or do you combine it with working from home?

Ivona Poyntz: When Covid struck, as most other businesses, we began to work from home, and we continue to operate mostly from home, but we do also have a hybrid model where, as necessary, we will conduct meetings either as a team or with members of the FCA or the regulators. In the case of Amerdeep, she sees the consumer panels as well and other related stakeholders.

Q108 **Harriett Baldwin:** Given that it is quite a small team, how are you measuring employee satisfaction and things like that?

Ivona Poyntz: In terms of employee satisfaction, we do not have an official measuring tool, so we do not have a survey that goes out. However, we have a number of measures in place. I have one-to-ones with staff and with Amerdeep. We are constantly talking to each other, so staff wellbeing is looked after. We have an employment assistance programme that has been communicated to staff. Any issues that arise are dealt with quickly and efficiently. We are a highly functioning, communicative team.

Amerdeep Somal: The short answer is that staff do not leave, and that speaks volumes.

Q109 **Harriett Baldwin:** I was going to ask, "What is the turnover?"

Amerdeep Somal: Well, we do not. When staff have left, which is remote, it has been because of retirement or a career change. I am delighted to say that we have really good staff stability, which is a measure of staff satisfaction.

Q110 **Harriett Baldwin:** Do you have vacancies at the moment? Has Covid impacted on your resourcing levels?

Amerdeep Somal: Not at all.

Harriett Baldwin: Just casework size.

Amerdeep Somal: Absolutely, yes.

Q111 **Harriett Baldwin:** Are there any other points that you want to make about your budget and resources? I know the financial side of things is



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something that you were particularly keen to talk about.

Ivona Poyntz: The budget has been approved but we have to speak to the FCA to explain it.

Amerdeep Somal: Sorry, I asked Ivona whether the budget had been approved. Do you want to explain?

Ivona Poyntz: Yes. We provide a budget to the FCA and it has to approve it at board level. I believe that this has happened, but we do have a meeting set up. I mentioned this earlier. They have a number of queries on the budget, which is perfectly fine, but we also need to establish a balance as to the extent to which they extend that scrutiny, so that this level of independence is maintained. If you go a little bit too far—

Harriett Baldwin: We will rely on you flagging that to this Committee, if you feel that that has gone too far.

Amerdeep Somal: For me, it is important that, as the commissioner, my office is truly independent in terms of its functioning, its funding, its governance, etc. We make a case for how much we need, which is a reasonable amount. They can ask questions around it, but micromanaging the funding at a level of detail that is not appropriate is what we need to manage, because the office of the complaints commissioner is not a department of the regulator of the FCA. It is entirely separate, and it is really important, in terms of the governance and the independence, to make that very clear.

Q112 **Anthony Browne:** I just want to follow up on a question that I asked about compensation payments. I apologise if this was covered in the bits that I missed at the beginning, but you said that you recognise the figures from the True and Fair Campaign about the FCA making total compensation of £13,475 over an 18-month period. In your annual report, I presume you publish the amount of compensation that the FCA has paid in the previous 12 months as a result of your complaints.

Ivona Poyntz: That figure has not been aggregated. The reports are published, and we know in how many we have said that there should be compensation. There is, in fact, a table that shows that. For example, in table 6, there were 14 instances in which the commissioner recommended ex gratia compensation. We know which cases they are, but we do not publish an aggregate figure. However, we could provide the Committee with that after this.

Q113 **Anthony Browne:** Could you publish an aggregate figure? I would also be very interested in what compensation you are recommending versus what gets paid. If the aggregate compensation that you are recommending is £1 million, and they pay only £13,000, there is clearly a major problem. If you were recommending £15,000 as an aggregate and they paid £13,000, that is less of a problem about them refusing. Do you have any indication of the degree to which they do not pay the



compensation that you indicate should be paid?

Amerdeep Somal: That is not something we have, but we should know and we will find out.

Q114 **Anthony Browne:** You should do, because that is incredibly material in terms of the disregard that they are giving towards your recommendations.

Amerdeep Somal: It is a really important point and we will certainly take that away.

Q115 **Anthony Browne:** Could you provide the figures for the last accounting year for the aggregate amount that you recommend should be paid in total, and that which the FCA paid? If it is out by a factor of 10, they are just completely ignoring everything that you say, whereas, if it is out by 10%, it is just an argument at the margins. There is a major material difference in the numbers there.

Amerdeep Somal: Yes, there will be cases that will skew the figures, because, for example, in Keydata I made significant awards that were not agreed to in full. We will take that away. I would be very interested to know myself.

Ivona Poyntz: Just to reiterate, the information is there, because it is in the cases. We just do not have it as an aggregate figure anywhere.

Anthony Browne: I do not know how many cases you deal with, but they are, presumably, on a spreadsheet and you can just add it up.

Ivona Poyntz: Yes, we will do that.

Chair: Thank you very much. We have come to the end, you may be pleased to know, but thank you very much indeed for appearing before us. I should have said thank you earlier for putting up with the fact that we postponed you twice at our request. I can imagine how much work goes into preparing for this and to be stood down is probably not something that you have welcomed. Also, Amerdeep, you changed your vacation arrangements in order to be here today, so I am grateful for that as well.

Amerdeep Somal: Yes, and Ivona did as well.

Chair: This session has really underscored the importance of the role that you play in scrutinising the regulators, and you have raised a very large number of issues that are of interest to the Committee, a lot of them centred on the FCA, but not exclusively, and you very generously offered to write to us on a large number of points.

I will also write to you just to clarify those points when we go through the transcript, and also probably to add some others. Just to reiterate again, the FCA appears before us on 7 July and it will be very helpful to have your feedback as immediately as possible, with all the points that you think are important and that perhaps we raise with it as part of our



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scrutiny of the FCA.

Amerdeep Somal: Could I just make two points of correction while I am here? The first is on the remedy statement. I believe I referred to it as published in 2020. It was 2021.

The second is that my colleague behind me has told me that there were 12 cases where the FCA concluded that there were direct dealings with LCF investors.

Chair: Thank you for correcting the record, and thank you both for attending. That has been very helpful. That concludes this hearing.