Complaints Commissioner

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29 June 2022

The Rt Hon. Mel Stride MP
Chair of the Treasury Select Committee
House of Commons
Committee Office
London
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Dear Mr Stride,

The work of the Financial Regulators Complaints Commissioner

Thank you for inviting me to appear before the Committee on 15 June 2022 and for your letter dated 22 June 2022. Please find below answers to questions Committee members raised on the work of my office during the oral session to which I was asked to respond to in writing, as well as my response to your letter

The Committee asked me to summarise in writing the main themes I raised with respect to my review of complaints against the Financial Conduct Authority (FCA). By way of background, the Regulators – the FCA and the Bank of England (BOE) (including the Prudential Regulation Authority (PRA)) – are required under the Financial Services Act 2012 to establish a Complaints Scheme to deal with complaints 'arising in connection with the exercise of, or failure to exercise, any of their relevant functions'. I am required to publish an Annual Report, and since 2016 this has been laid by HM Treasury before Parliament.

The Act also requires the Regulators to appoint an independent investigator – the Complaints Commissioner. If complainants are not able to resolve their complaint with one of the Regulators, I independently review the complaint and can make recommendations. The recommendations I can make include issuing an apology, putting things right, or an ex gratia compensation payment. The Complaints Scheme works well in many areas, forms part of the democratic accountability framework for assessment of the Regulators' performance, through shining a more general light upon how the Regulators act or fail to act in the discharge of their relevant functions. My published reports and Annual Reports enable me to ask the Regulators to provide assurance that other complainants are not affected and to make more general recommendations and observations about the operations of the Regulators. I have seen many examples of process and organisation improvement as a result of the recommendations I have made and which were accepted by the Regulators.

There are, however, a number of issues which in my view would benefit from further scrutiny and which I outline below.

Can you outline the areas of the FCA's transformation programme where you feel further improvement can be made? (Q21)

The FCA have provided me with one update as to the progress it has made on the transformation programme. This update took place recently on 23 May 2022. The FCA talked me through 'actions completed' and 'actions it will take in the future'.
I understand implementing all the changes in the transformation programme will take time. Given the one briefing update I received on the transformation programme, although I have not yet seen any evidence in cases that demonstrate the transformation programme is not working, more robust external testing is needed for me to make any firm attestations as to the efficacy of the transformation programme. On 23 June 2022 I met with the Board and informed the Board that I look forward to more frequent briefings on the transformation programme in the coming year in this respect.

The Financial Services Register (the Register)
Can you outline the aspects of the FCA Register which require further improvement, alongside the reasons why you feel that further improvement is required? (Q18 and Q21)

There are two key issues which have been raised about the Register by both the previous Complaints Commissioner and I which the FCA has not accepted.

The first issue is to what extent the FCA should consider making substantial compensatory payments on an ex gratia basis for errors on the Register which do directly cause loss to consumers. It is my view it should and the FCA's view it should not due to statutory immunity and 'the social policy reflected in court decisions does not support imposing on a public body, under a statutory duty to make information available to the public, responsibility towards an undefined class (the public in general) for an indefinite period for an amount which cannot be anticipated.'

The danger here is that the FCA has opened an avenue to subrogate all its duties for the Register with this approach.

The second issue is the 'halo effect' connected with the Register.

The FCA stated in its response to my Final Report on the FCA's oversight of London Capital & Finance (LCF) that 'any halo effect is an unavoidable consequence of the legislative framework.' (https://www.fca.org.uk/publication/corporate/response-to-complaints-commissioner-final-report-fca-oversight-lcf-15-march-2022.pdf)

I am concerned if the halo effect is left to remain without adequate mitigation, investors will not be able to grasp from the Register that whilst a Firm is regulated, the activity in which they are investing may not be. It is important to also highlight that the Dame Elizabeth Gloster Independent Report (the Gloster Report) report also identified related criticisms of the Register, and that it was unintelligible and contained insufficient warning.

As of the end of May 2022, the FCA began to make changes to upgrading its Register with the aim of making it more user friendly. The FCA has provided me with updates where it has

tried to bridge the lack of clarity internally and externally within the Fraud perimeter. The FCA has taken some actions to mitigate the halo effect such as the 'Use it or Lose it' initiative to prevent firms who are not using their permissions from benefiting from the halo effect. This is coupled with the use of new FCA powers to more swiftly cancel or change what regulated activities firms are permitted to do, specifically when firms are not using their permissions.

On 1 June 2022, the FCA informed me about the implemented updates to its Register. The recent changes include updated consumer protection wording. However, it is my view that there is more that needs to be done. For example, the word 'risk' is still not present anywhere in the Register warning notes. The warning message in the Register still does not alert investors to general risks associated with Authorised Firms selling unregulated products. This risk was a key finding of the Gloster report in the deficiencies she identified and that of my own report. There should be in my view, a clear message stating that sometimes Authorised Firms also sell unregulated products and as such, investors should check the Register and ask the Firm to confirm in writing before deciding to invest. The FCA should require Firms to give that clarity on their own website about whether each product or activity is regulated by the FCA. This way sufficient risks are highlighted in a simple and concise way that all investors can understand.

Ex gratia Compensation

There is currently an outstanding Complaints Scheme consultation. My view is that the FCA's approach to compensatory payments on an ex gratia basis in the LCF cases is unjustified and does not stand up to scrutiny. I have noted that de facto, compensatory payments on an ex gratia basis due to supervisory or regulatory failings on the part of the FCA will never be available to complainants despite the FCA saying there are exceptional circumstances where it might be, so long as the FCA relies on:

1. Its self-devised test of 'sole or primary cause' in its Remedies Statement (which was never subject to public consultation by the FCA);
2. Its binary interpretation of 'direct dealings' in paragraph 7.14 (b) of the Scheme;
3. Its self-devised test that such payments should only be made in 'exceptional circumstances,' which is not encapsulated in the Scheme, and not defined in detail by the FCA.

In my view, this is inconsistent with the statute and with the published Complaints Scheme, which draws no such distinctions and pursuant to which ex gratia compensatory payments arising from regulatory and supervisory failings should be available in practice.

The FCA does not agree with my view. I would also like to clarify that during my appearance before the Committee I informed the Committee that the FCA Remedies Statement was published in June 2020. I was informed by one of my staff that the Remedies Statement was published in 2021 and not 2020 and I informed the Committee of this correction. This has been doublechecked after my appearance and I would like to clarify with the Committee that my initial observations were correct, the FCA Remedies Statement was published in June 2020 as I originally stated.

Can you provide the Committee with the number of, and type of, recommendations that you have made in the last 12 months which have been rejected by the regulators? (Q34)

Can you provide the type of case which these rejected recommendations relate to? (Q34) Can you provide the amount of compensation that you recommended be paid out by the regulators, alongside the actual amount paid by each of the regulators during the last twelve month period for which figures are available? (Q38 and Q112)

I was asked about the numbers of recommendations that the FCA has chosen not to accept in the last 12 months. In the last year (being the period covered in my 2021-2022 Annual Report), out of the 74 remedies I recommended, the FCA did not accept eight and partially accepted four. The following is a summary of the types of cases and the recommendations that were not fully accepted by the FCA.

- Four cases (FCA00814, FCA00816, FCA00818 and FCA00844) where my recommendations were partially accepted were in relation to Keydata Investment Services Ltd in which the FCA did not agree to the full increase in the ex gratia payment for distress and inconvenience that I recommended but they did agree to a smaller increase.
- In one case (FCA00956) I recommended that the FCA should review (with a view to amending) the wording in its acknowledgement letters/emails and the FCA said it had reviewed and did not accept the recommendation as it was satisfied that it did not need to be amended.
- In one case (FCA001338) I recommended the FCA review the wording of its update letters, the FCA did not accept this on the basis that the relevant correspondence had already been reviewed and updated in response to a recommendation made in another recent complaint. In this same complaint the FCA also declined my suggestion to carry out a review about the information it held about Professional Indemnity Insurer (PII) cover for firms first authorised by the Financial Services Authority in 2005. It did not feel it was necessary as all authorised firms submit the same PII information to the FCA under their regulatory returns, irrespective of the date when they were first authorised.
- One case (FCA001381) related to the FCA's system which I recommended should be reviewed to ensure it was user friendly. The FCA spoke with the team that ran it and were satisfied that it was sufficient. It did set out that there were actions that they were able to explore around user experience that were already under way.
- In one case (FCA00925) I asked the FCA to provide me with an update on its work towards an alternative to mobile verification for customers of mobile service providers, which it did not do.
- In one case (FCA001538) I recommended that the FCA should correct its decision letter in which it incorrectly referred a complainant to the Financial Ombudsman Service (the FOS) in relation to a complaint that was not within the FOS's jurisdiction. I considered that this would result in the complainant spending further time pursing a complaint that was clearly not something the FOS would consider. The FCA did not accept the recommendation on the basis that it was up to FOS to determine jurisdiction.
- In addition to the above recommendations that the FCA did not accept, there were a further three recommendations related to the LCF complaints and impacted of total of 443 cases. I made two recommendations in relation to the FCA Register that were not accepted. Firstly, I recommended that the FCA uphold 'allegation five' that the FCA

Register in the case of LCF was misleading. Secondly, I recommended the FCA take steps to mitigate the halo effect in its Register given the inevitability of the halo effect which it could do by providing adequate warnings to consumers, of the risk of unregulated products sold by Authorised Firms. The FCA disagreed its Register in the case of LCF was misleading. Whilst the FCA have made some changes to its Register since my LCF report, it remains that most importantly, there is still no warning even at the forefront of the Register alerting investors to 'general risks associated with Authorised Firms selling unregulated products.' The third recommendation that the FCA did not accept was my recommendation that the FCA abrogate its causation test altogether otherwise known as its Remedies Statement and withdraw its decisions on LCF complaints to which this approach has been applied and re-decide the LCF complaints in accordance with paragraph 7.14 of the Complaints Scheme. The FCA disagreed that the Remedies Statement was a new test and stated that the most appropriate remedy was an apology under the Complaints Scheme (not including the LCF complainants who had direct dealings with the FCA during which they received incorrect information).The FCA disagreed that it should re-decide the LCF complaints in accordance with paragraph 7.14 of the Complaints Scheme as it had already assessed all complaints in accordance with the paragraph 7.14 factors and it felt no purpose would be served by considering these again by reference to the same factors.

In the last year I made recommendations and suggestions on two PRA cases. In one case (PRA00019) the PRA accepted a recommendation to apologise and make an ex gratia payment of £75 for the time taken to investigate the complaint. In the same case I also recommended that the PRA consider putting in place an indicative scale of ex gratia payments it may offer for any delays in complaint handling. The PRA advised that they were at the time carefully considering the responses to Consultation Paper (CP/8/20) on the Complaint Scheme and would ensure that this recommendation in this area was reviewed as part of this.

In the second PRA case (PRA00021) I made a suggestion rather than a recommendation. This case was in relation to a whistle blower. I suggested that the PRA may wish to consider the proportionality of corresponding with a complainant for seven months in order to explain why it would not take regulatory action in relation to incorrect classifications made by a bank and an un-investigated alleged £4billion variation in the banks reporting, when that same energy could have been better used in sending a letter to the bank in question asking them to reclassify and explain the variance to it. The PRA noted the suggestion and advised that it had already taken steps to address this, in particular they set out that they were already seeking to improve the clarity and consistency of communications by teams at the bank that interact with members of the public.

I did not make any recommendations to the BOE on any cases in the past year.

I was also asked to provide some further details about the aggregate amount of ex gratia compensation that my office has recommended the FCA should pay to complainants compared to the amounts that it has in fact compensated. As noted, I have been in office over two reporting periods to date from which the following aggregate figures have been compiled following my appearance.

Reporting period	Number of complaints with compensation recommendation	Number of complaints FCA agreed to pay	Total amount Commissioner recommended	Total amount FCA agreed to pay	Difference between recommended compensation and paid compensation
2020-2021	16	14	£6,450	£3,950	-£2,500 (and an undefined costs amount)
2021-2022	9	4	£11,775	£6,425	-£5,350

Can you provide the number of complainants who received compensation because of direct dealings with the regulators? (Q43)

There were 12 LCF complainants who received compensation because the FCA decided they had direct dealings with the FCA in respect of their LCF investments.

Transparency and confidentiality

Can you provide the Committee with the correspondence between the Office of the Complaints Commissioner and the Financial Conduct Authority (FCA) relating to the Memorandum of Understanding on transparency? (Q14)

I identified a need to establish a developed policy between the Regulators and I about the extent of the statutory restrictions, the ambit for exercise of the Regulators' discretion, and the interaction of these issues in the context of transparent complaints handling in keeping with the principles of openness and transparency that should characterise a Complaints Scheme.

I appreciate the need to protect confidential information makes it difficult for the FCA to always demonstrate the adequacy of its supervisory arrangements. Nevertheless, more can and ought to be done to maximise transparency in the investigation reports. There has been an abundance of reliance on confidentiality policy and s348 of the Financial Services and Markets Act (FSMA) 2000 as a reason not to disclose information without any explanatory notes on why this is rational and fair. There have been inconsistent efforts at telling me what the 'gist' or nature of the information is that the FCA states is confidential, which has made it more difficult for me to make my own independent assessment on whether the FCA is right to rely upon confidentiality as a reason not to disclose it. To address this, in July 2021 I wrote to the FCA with a proposed draft Memorandum of Understanding (MOU) between the FCA and my office on Transparency and Confidentiality. It is of concern to me that, despite prompts from my office, the FCA did not respond to my draft proposal until 31 May 2022.

The matter remains under discussion with the Regulators.

I attach a timeline (Appendix 1) of the correspondence between my office and the FCA on this subject, as requested. I have included a draft Memorandum of Understanding (MOU) between the FCA and OCC on Confidentiality and Transparency, which was sent by email to the FCA on 6 July 2021 and a letter I sent the FCA on 9 August 2021, as well as a timeline of the communication I had with the FCA in which I asked for updates. The FCA has informed me that it would prefer to share the relevant correspondence with the Committee itself,

alongside a letter to you which provides an update on its approach to transparency.

Independence and powers of the Complaints Commissioner

During the session, discussion took place around the possibility that the Complaints Commissioner might have the power to direct the regulators. If introduced, what matters would you like the power to direct to cover? (Q80)

Can you outline the key reforms that you would like to see introduced at the Office of the Complaints Commissioner to enable you to carry out your role more effectively? (Q81)

There are aspects of the Complaints Commissioner's role that may need to change to provide greater assurance to the public of the independence of the role.

Recommendations

The Regulators can choose not to accept the Complaints Commissioner's recommendations as has happened in several cases, including LCF and Keydata. The recommendations are not enforceable. Therefore, the robust scrutiny of the Regulators which the Act envisioned the Commissioner could provide is in practice not available. So, there is a need for either primary legislation to increase the Complaints Commissioner's powers such as a power to direct or some other mechanism where the FCA is asked to report to the Treasury with its reasoning when it does not accept a recommendation.

Appointment

The Complaints Commissioner is appointed for a three year term by the Regulators and HM Treasury approves the appointment. The term is renewable once for a further three years.

It is my view, as it was of my predecessor that this term should be a non-renewable 5 years, so there is no potential for the incumbent to be influenced by the prospect of renewal.

Funding

The funding of the Office of the Complaints Commissioner comes from the Regulators who have arranged for the FCA to remit the funds. This can create a perception in the public that the role is not truly independent (although I can confirm the Regulators have not encroached on my independence in practice). Consideration should be given on whether if funding came directly from HM Treasury or was directed by it, rather than the FCA, there would be a greater assurance to the public of the independence of the role.

Conclusion

The issues I have raised relevant to the Register and the remedy of ex gratia compensation are not new and they have not yet been resolved. Parliament required the establishment of a Complaints Scheme as without such a Scheme, the Regulators who enjoy statutory immunity from being sued for damages in most circumstances, there is a risk that the Regulators could exercise, or just as importantly, fail to exercise their very significant powers in a way which

damaged individuals with no system for holding the Regulators to account for shortcomings. However, for as long as the Regulators can rely on a discretion to reject the Complaints Commissioners recommendations; and have 'ownership' of the Complaints Scheme which allows them unfettered interpretation of its applicability (which in some cases I consider inconsistent with statute), I have concerns that there are no real prospects of resolving the issue of ex gratia compensation as a remedy under the Complaints Scheme, nor the issues raised above surrounding the Register.

The matters raised about the independence and powers of the Complaints Commissioner and the governance around it are important and placed for the consideration of the Committee.

If there is anything further, I can assist the Committee with, please do not hesitate to get in touch.

I am copying this letter to John Glen MP, Economic Secretary to the Treasury, Richard Lloyd, interim Chair at the FCA and Sam Woods, Deputy Governor Bank of England for Prudential Regulation and Chief Executive Officer of the Prudential Regulation Authority.

Yours sincerely,

Amerdeep Somal
Complaints Commissioner

APPENDIX 1

Appendix 1

Date	Description
06/07/21	Email sent by the Office of the Complaints Commissioner (OCC) to Financial Conduct Authority (FCA) with a draft Memorandum of Understanding (MOU) between the FCA and OCC on Confidentiality and Transparency. (Appendix 1 A)
09/08/21	Letter sent from the Commissioner, Amerdeep Somal to FCA re transparency document. (Appendix 1 B)
22/09/21	Email from FCA to the Commissioner confirming the FCA will respond to the draft MOU by the end of the month.
05/12/21	Email sent by the Commissioner to the FCA providing agenda items for a meeting to be held on 6 December 2021, one being 'No FCA response on the transparency MOU'.
23/12/2021	Email from FCA to the Commissioner stating it was continuing to work on the MOU and hoped to have an update in the New Year.
09/02/22	Email sent by the OCC to FCA on the matter of the protocol between the two organisations which refers to the Confidentiality and Transparency MOU.
07/04/22	Verbal chase at meeting with FCA for a response to the draft MOU.
31/05/2022	Letter from FCA to the Commissioner responding to her letter of 6 July 2021. (The FCA will disclose this letter separately).

Memorandum of understanding between the Financial Conduct Authority and the Office of the Complaints Commissioner on Confidentiality and Transparency

Purpose

1. The purpose of this Memorandum of Understanding (MoU) is to establish the general terms for cooperation in applying the principles of transparency and confidentiality to complaints handling under the Complaints Scheme (the Scheme) between the Financial Conduct Authority (FCA) and the Office of the Complaints Commissioner (OCC).

2. This MoU is a statement of intent and does not: (a) modify or supersede any laws, regulations and requirements in force, or applying to the Signatories; (b) affect any arrangements under other MoUs; (c) create any legally enforceable rights or obligations for the Signatories or third parties.

3. Both the OCC and the FCA are subject to applicable laws and regulations. Under the terms of this MoU, the FCA and OCC process confidential information independently of each other in accordance with the UK's relevant national provisions [sections 137Q, 207, 208, 348, 349 and 391 of the Financial Services & Markets Act 2000, and Financial Services and Markets Act (Disclosure of Confidential Information) Regulations 2001(2001/2188)].

Definitions

4. For the purposes of this MoU, "Confidential Information" means, in respect of the FCA and OCC, any information regarded as confidential by the applicable laws, regulations and requirements.

    a. “Applicable laws, regulations and requirements” means any law, regulation or requirement applicable to the FCA and for the avoidance of doubt includes any rule, direction, requirement, guidance or policy made or given by or to be taken into account by the FCA. This means that not all information the FCA holds is covered by law and legislation, but the FCA may still decide that it should not be made public due to the FCA’s internal policy on confidentiality.

b. The OCC is independent from the FCA but is also subject to the same applicable laws and regulation, however it has its own, separate confidentiality policy from the FCA.

5. For the purposes of this MoU, “Embedded Information” means s348 and other legally protected information which, by a jigsaw process, that is a process of putting together disparate pieces of data, it would be possible to identify as confidential information that should not be disclosed.

6. For the purposes of this MoU, "Discretionary Information" refers to confidential information in situations where there is discretion to disclose such information. It is accepted that the FCA may choose not to disclose Discretionary Information for policy reasons, but in the interests of transparency it is also upon the FCA to explain to the complainant and the Commissioner, why it has chosen not to disclose Discretionary Information for policy reasons. It is also accepted that it is for the OCC and the exercise of the Commissioner’s discretion, to decide whether Discretionary Information should be disclosed, taking into account any representations made by the FCA and where necessary giving adequate reasons if the Commissioner disagrees with them.

7. Transparency is not a legally defined term. For the purposes of this MoU, it means ensuring:

   a. the processes through which the FCA and the OCC make decisions are understandable and open;

   b. the decisions themselves are reasoned;

   c. as far as possible, the information on which the decisions are based are available to the public.

8. For the purposes of this MoU, Confidentiality and Transparency definitions are separate from the right of the individual to have access to personal data under data protection laws.

Shared Values

9. The FCA and the OCC are committed to procedural fairness and to being open and transparent in dealing with complainants and issuing decisions on

complaints, unless there are compelling regulatory, legal or other reasons to the contrary.

10. The need (subject to statutory bars) to disclose information needs to be subject to a balancing exercise between the reasons for the asserted confidentiality on the one hand, and fairness to the complainant on the other.

11. Transparency is important in ensuring confidence in the FCA, the OCC, and the accountability of these bodies.

12. Transparency is a means of achieving due process and ensuring that parties directly involved in a complaint case are treated fairly and can understand the decisions made by the FCA and OCC.

Responsibilities of the FCA and the OCC under the Scheme

13. Paragraph 7.3 of the Scheme provides:

    "The regulators will afford the Complaints Commissioner all reasonable cooperation, including giving access to their staff and information. The regulators may, in affording the Complaints Commissioner access to information, consider the need to maintain the confidentiality of certain kinds of information. This would include, for example, taking appropriate steps to ensure that the identity of an informant is not disclosed, or maintaining the confidentiality of information given to the relevant regulator(s) under international arrangements. In any case where the relevant regulator(s) decide that they should withhold information, they will inform the Complaints Commissioner of the nature of that information and their reasons for withholding it."

14. Paragraph 7.15 of the Scheme provides:

    "The Complaints Commissioner must observe any statutory restrictions applicable to them relating to the disclosure of confidential information."

Shared commitments

Complaints which are accepted within the Scheme

The FCA and the OCC will seek to adhere to the following principles and procedures:

15. Neither the FCA nor the OCC may disclose confidential information. Nevertheless, in the interests of fairness, they will ‘gist’ such information wherever possible, that is to provide a summary of what it says, if that can be done without disclosing information which should legitimately remain confidential on other grounds. If the FCA does not gist such information to complainants, it will provide the OCC with an explanation of why it has not done so.

16. It is for the Commissioner to exercise their own independent judgment to determine what constitutes statutory confidential information considering any representations made by the FCA and making sure to give adequate reasons if they disagree with the FCA.

17. Embedded Information: If the FCA withholds Embedded Information from complainants, it will provide the OCC with an explanation. Explanations will need to be cogent, for example it will not be sufficient merely to assert that something is “embedded information” without more, unless that is self-evidently the case. The more embedded the information, or the more difficult the task piecing data together would be, the more of an explanation will need to be provided. Over time, patterns and common examples may arise which mean that the need for such explanations is reduced.

18. The OCC will give the FCA an appropriate opportunity to make representations about information they deem to be embedded.

19. The FCA maintains published guidance on “Information we can share”. That policy does not clearly maintain a distinction between different grounds for confidentiality. As such, it is important for the FCA to identify which of them it is relying upon, so that each can be considered on its own merits by the OCC. It would not be sufficient for the FCA to merely point, without more, to this guidance, because doing so does not help the OCC or complainants to understand which of the different grounds for confidentiality is being asserted.

20. Even where the statute does not prohibit disclosure, it may nevertheless be rational to withhold the disclosure of confidential information. Where a decision-maker relies materially upon confidential information in reaching a decision, fairness may nevertheless require that the parties are still provided with a gist of the relevant information.

21. There may be grounds for confidentiality that arise for reasons other than a statutory prohibition. The Commissioner will not state that the FCA's exercise of its own discretion has been unreasonable . The FCA is entitled to ask that any Discretionary Information remains confidential, on whatever relevant grounds they invoke. The OCC will consider any such representations but the ultimate decision about whether to disclose Discretionary Information will be a matter for the Commissioner's discretion, as primary decision-maker, having balanced all the relevant considerations and, where appropriate, giving adequate reasons when she disagrees with the FCA.

Complaints which are excluded from the Scheme

The FCA and the OCC will seek to adhere to these principles and procedures:

22. Provide as much information as possible to complainants on the matters they raise in order to assure them that their concerns have been heard and to provide further options to them in order to enhance public understanding and for greater transparency.

23. Pro-actively assess whether some form of action can or ought to be undertaken as a result of any concerns raised.

Governance Issues

24. The FCA and the OCC will maintain up to date transparency statements.

25. The FCA and OCC will update their websites to reflect the new information in this MoU.

Regular meeting and Review

26. The FCA and the OCC will continue to monitor the operation of this memorandum and review it annually. This does not preclude more frequent meetings at technical level on specific issues covered by this MoU.

27. The signatories agree to this MoU being made publicly available.

The undersigned, on behalf of their organisations, have signed this Memorandum of Understanding in two originals:

Amerdeep Somal

Complaints Commissioner

Financial Conduct Authority

Appendix 1b

Complaints Commissioner

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Sheree Howard
FCA
Sheree.howard@fca.org.uk by email only.

9 August 2021

Dear Sheree,

On 6 July I sent you my proposed draft Memorandum of Understanding (MOU) between the FCA and my office on Transparency and Confidentiality, which we touched on at our meeting of 26th July. You sent me your follow up email of 28th July. I have carefully considered your proposal therein, that a MOU between the FCA and the OCC on Transparency and Confidentiality is incorporated within the Protocol for the relationship between our two organisations. You explained that this is for the purpose of having a simplified and streamlined 'visual map' of the commitments between us. I agree that this would be desirable in general, however, the upcoming renewal of the protocol between us in September 2021 is also an opportunity to assess the content of that document, its purpose and function and whether it is indeed the right placeholder for the proposed MOU.

The protocol's history is that it began as an operations manual detailing the procedural steps underpinning the Complaints Scheme (the Scheme). It preceded the policy statements which the previous Commissioner began to publish on the OCC website, and where it refers to confidentiality it is narrowly referring to matters in paragraph 7.3 of the Scheme.

Whilst I appreciate that there is a need for simplicity in both arrangements between us and in communication with complainants, I believe that thinking about the Scheme has evolved over the years and the need for policy statements has emerged as a useful tool of governance, transparency and accountability, and statements of policy and MOUs on policy are features shared by Ombudsman world generally and an indication of good intent on both sides as how we should work with one another.

I intend on having a policy statement on transparency and confidentiality. Given how interdependent our organisations are with respect to these matters as concerns complaint files, it would make sense to me to have a clear and joint commitment on this as a matter of policy: and as such, I feel this ought to be separate from the protocol, which in essence is an Operations manual.

I have already referenced this in my annual report, advised the FCA Board of this when I presented my annual report to them last month, and I did not receive any adverse comment. Given this, and my reasons above, I suggest we proceed as originally planned and work on the joint MOU in the upcoming weeks.

I look forward to receiving your comments on the draft I sent you.

Yours sincerely,

Amerdeep Somal
Complaints Commissioner