

Rt Hon Mel Stride MP
Chair
Treasury Select Committee
House of Commons
SW1A 0AA

4 July 2022

Our ref: C220701C

Dear Mel,

Further to the letter that the FCA's previous Chair sent you in June 2020¹ setting out changes we were making to the FCA's handling of complaints, and recent discussions with your Committee on the same subject, I thought it would be helpful to set out an update on our progress, including operational performance and transparency.

Operational performance

As we set out in our letter, we have made considerable investment in the FCA's Complaints Department to improve its capacity and capability, including systems improvements and better management information. This investment has led to significant improvements in our operational performance. We have resolved our backlog of standard complaints², improved compliance with our service standards since the backlog was reduced and significantly reduced volumes of deferred complaints, following resolution of London Capital & Finance plc (LCF) complaints last year. We closed 170% more cases last year than we did the previous year (820 closures in 2020/21 and 2,211 closures in 2021/22, including 1,184 complaints about regulation of LCF).

We are continuing to place significant focus on ensuring that we deliver a good service to complainants. Last year the Complaints Commissioner agreed with our outcomes in 89% (110 of 124) of the complaints that she independently examined and concluded (excluding LCF complaints), compared to 86% (78 of 91) in the previous year. Cases where the Commissioner did not agree with our outcomes represents under 1.5% (14 of 1,027) of the overall volume of Stage 1 complaints³ we concluded in 2021/22, excluding LCF.

Over the next year, the Complaints Department will be increasing the availability and accessibility of complaints management information across the organisation so that all areas can understand better what is causing complaints. This insight, along with recommendations made by the Complaints Department in Stage 1 cases and those from the complaints reviewed by the Commissioner, will help us to improve more quickly the way we do things across the FCA which, ultimately, is one of the purposes of the Complaints Scheme.

Transparency

In her evidence at the Committee on 15 June, the Commissioner referred to a proposed Memorandum of Understanding ('MOU') regarding transparency and confidentiality.

¹ <https://committees.parliament.uk/publications/1655/documents/29727/default/>

² We classify complaints as standard (all excluding group and deferred), group (multiple complaints about a single aspect) and deferred (where, due to ongoing regulatory action, we need to defer our consideration of the complaint).

³ A Stage 1 complaint is one handled by the relevant regulator's Complaints Department. Stage 2 relates to complaints referred to the Commissioner where the complainant is unsatisfied with the outcome at Stage 1.

Transparency is very important to the FCA and is fundamental to the role the Commissioner performs and the effectiveness of the Complaints Scheme. We are committed to working with the Commissioner to find a way to continue to improve this and our approach to confidentiality. We think both we and the Commissioner seek to achieve the same objective - to be as transparent as we can whilst successfully navigating the complex legal and policy frameworks in place.

At present, alongside the Complaints Scheme, the FCA and the Commissioner have an agreed Protocol which sets out how we work with each other. This document was defined with previous Commissioners as a way of ensuring the effective functioning of the Scheme and provides clear ways of working between the organisations in areas such as the provision of documents and information, reporting and management information, and confidentiality.

Under the Protocol, the Commissioner has full access to all our investigation papers when investigating a complaint and asks for supplementary information either during the course of her investigation or as part of her Preliminary Report, which is in line with the legal gateway we have to share confidential information with the Commissioner.

The Protocol was last reviewed in 2018, and we have been reviewing it in tandem with the transparency requests made by the Commissioner (not least because the Protocol contains our existing arrangements around confidentiality). We also worked with the other Regulators under the Complaints Scheme⁴ who were designing their own Protocol with the Commissioner. Our aim was to ensure consistency across the Regulators as far as possible, which has resulted in additional issues being raised and further amendments being proposed.

On 6 July last year, the FCA received initial proposals for a separate new MOU from the Commissioner where she proposed a similar approach across all the Regulators under the Scheme. The FCA subsequently discussed these proposals in detail with the Commissioner and her team in a meeting on the 26 July and sent over our initial response by email on the 28 July.

Whilst we have not appended this email in its entirety because the rest of its content related to other matters, on the transparency MOU, Sheree Howard, FCA Executive Director of Risk & Compliance, said:

Like you, I am committed to ensuring we have a common position on transparency. However, as we discussed, I am mindful of the impact of creating another document to maintain and review, and for complainants to engage with. Given we are due to review the Protocol, I think it would be extremely helpful to embed the principles of transparency in this, and as Robin [Jones] mentioned, we can revise the wording to shift the tone as necessary.

I look forward to hearing your views on this once you have had the time to consider. Following this, we will then provide more detail comments on the wording.

The Commissioner responded on 9 August stating she disagreed with this position, inviting further comments.

Since that time there have been various discussions at a working level between the FCA and the Commissioner's office, and also with the PRA and Bank of England (given the aim of consistency across the Regulators), regarding the approach to the Protocol and its contents. For example, the Regulators met with the Commissioner and her team on 1 December 2021 to discuss the Protocol where they recognised that the Protocol and the MOU discussions overlapped and needed coordination to ensure the finalised Protocols were appropriate.

After this meeting the FCA sent the Commissioner our proposed changes to the Protocol, on 26 January 2022, and the Commissioner responded on 9 February. Since then, we have been working with the other Regulators to coordinate our response. The FCA sent our response in May and we understand the Bank responded shortly afterwards.

⁴ Namely the Prudential Regulation Authority (PRA) and the Bank of England.

I understand that the Commissioner is sharing her original letter regarding the MOU, and her response to our reply, so here I attach our latest response in May 2022, noting that there was further correspondence at working level between the various parties between these dates. Clearly, we would have liked to conclude these discussions sooner, and we accept that they have been impacted by other work, including the Complaints Department's focus on enhancing its operational performance, as well as needing to discuss the matters across all the parties. However, we have continued to discuss these matters with the Commissioner's Office and the other Regulators with the aim of agreeing a suitable way forward.

The FCA fully supports the principle of ensuring transparency of decision-making consistent with the legal framework in place, including in our complaints handling. We are seeking to conclude the discussions with the Commissioner and other Regulators on these matters promptly. The FCA Board has been engaged on these topics throughout.

I hope the Committee finds this update useful. Nikhil Rathi and I will of course be happy to discuss these points further at the Committee hearing on 7 July.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Richard Lloyd". The signature is written in a cursive, flowing style.

Richard Lloyd

Interim Chair, Financial Conduct Authority

Enc:

Letter dated 31 May 2022 from FCA to OCC