

Annual Report of the Complaints Commissioner for 2001/2

Introduction

The new arrangements for the handling of complaints introduced as part of the implementation of the Financial Services and Markets Act 2000 (FSMA) envisage the appointment of an independent Complaints Commissioner to investigate complaints against the Financial Services Authority. On 3 September 2001, Rosemary Radcliffe was appointed to be the first Complaints Commissioner under these new arrangements. This is the first Annual Report of the Complaints Commissioner; it covers the seven-month period from 3 September 2001 to 31 March 2002.

Because this is the first such Report, it starts, by way of background, by summarising the new complaints arrangements envisaged in the Act: the scope of the new Complaints Scheme and the procedure for investigating complaints, including the role of the Complaints Commissioner. It goes on to describe the work done since 3 September to establish the Office of the Commissioner and then provides a summary of the enquiries and complaints handled in the seven months to 31 March 2002. It concludes with some comments on experience to date; after only seven months these are inevitably brief, but in future years such comments will be a key feature of the Annual Report.

The new complaints scheme and the role of the Complaints Commissioner

Under the FSMA, the FSA is required to set up a Complaints Scheme for investigation of complaints against it. A consultation paper (CP 73) was published by the FSA in November 2000 setting out the key features of a proposed Scheme and, following a full programme of consultation, the text of the Scheme was published in a further paper (CP93) in May 2001. It is also described in detail in the FSA Handbook. The Scheme, which is in two parts, came into operation on 3 September 2001. The Main Scheme deals with complaints against the FSA in relation to its exercise of its powers under FSMA, both before and after the extension of the FSA's powers on 1 December 2001 ('N2'). There is also a Transitional Scheme to deal with certain complaints arising under previous legislation. The Transitional Scheme covers complaints about the FSA in relation to its responsibilities under the Financial Services Act 1986 and, between 1 June 1998 and 1 December 2001, under the Banking Act 1997; and complaints about the PIA, IMRO or SFA before 1 December 2001. The procedures for the Main Scheme and the Transitional Scheme are very similar.

The Scheme covers any expression of dissatisfaction about the way the FSA (or, under the Transitional Scheme, PIA, IMRO or SFA) has carried out or failed to carry out its role. In summary, this may include complaints about mistakes or lack of care, unreasonable delay, unprofessional behaviour, bias and lack of integrity by FSA staff in their day-to-day work. In line with the provisions of FSMA, however, the Scheme will not normally extend to complaints which could be dealt with more appropriately in some other way, for example by referring the matter to the Financial Services and Markets Tribunal, or to expressions of dissatisfaction with the FSA's regulatory policy and judgement.

Under the Scheme, there are two stages for handling a complaint. First, the FSA carries out an initial investigation of any complaint which, in its view, falls within the Scheme. These investigations have to be carried out by a member of staff of appropriate seniority and who has had no previous involvement in the issue. Where the FSA finds a complaint to be well-founded, it will consider how best to put the matter right; this may include an apology to the complainant, explaining what went wrong, putting in place procedures to stop the error being repeated, or offering an ex-gratia payment.

If a complainant is dissatisfied with the outcome of the FSA's investigation, or how it has been handled, he may refer the complaint to the independent Complaints Commissioner. In addition, if the FSA decides not to investigate a complaint itself, the Commissioner has the power to review the complaint to decide whether or not it should be investigated. This constitutes the second stage of the investigation process. The role of the Commissioner, who must be fully independent of the FSA, includes conducting her own enquiry into any complaint which she decides to investigate; reporting to the complainant and the FSA on the results of that investigation; and, where she so decides, publishing her report (or any part

of it) and requiring the FSA to publish the whole or part of its response. She can also recommend that the FSA take appropriate action to put matters right; for complaints relating to post-N2, but not before, this may include recommending the FSA to make a compensatory payment to the complainant. The FSA, in turn, must respond to any points the Commissioner has raised. The Commissioner is also required to publish an Annual Report, which may include information on trends in complaints and their subject matter and on any general lessons which she considers the FSA should learn.

Establishing the office of the Commissioner

The first task of the Commissioner on appointment in September 2001 was to establish the Commissioner's Office and ways of working, and to prepare a budget. In doing this the following five objectives were borne in mind against which performance will be measured:

- the statutory responsibility of the Commissioner to ensure that independence is maintained and that complaints are investigated without favouring the FSA (the FSA for their part are obliged to provide the Commissioner with the resources required to discharge her responsibilities);
- the need for potential complainants to be aware of the Scheme and how it works and to be able easily to access it when they need it;
- the need for complaints to be dealt with quickly and fairly, and for like cases to be treated alike;
- the need for highly cost-effective use of resources to support a Scheme the ultimate cost of which is borne by the financial services industry; and
- the need to assist the FSA as well as complainants to reap the benefits of the Scheme, by helping them to ensure that mistakes, once identified, are rectified and processes and procedures improved in the light of experience.

Additionally, planning and set-up has had to be done without the benefit of information on the likely take-up of the Scheme; the FSA has major new responsibilities under the FSMA and the Complaints Scheme is also new. In these circumstances predicting the number, size and scope of complaints is extremely difficult.

In the light of these considerations, in establishing her Office the Commissioner has focused on two aspects: set-up, and planning for on-going activity.

Set-up activity has had two principal components. First, there is the need to communicate the Scheme and the role of the Commissioner to those who, potentially, need to know about it or who have a role in informing others about it. This has involved the development of the Commissioner's website and the preparation of guidance booklets and other material, and a programme of meetings with relevant representatives of the media, industry organisations and associations, and parliamentarians, which is on-going. The Commissioner welcomes the opportunity to explain the Scheme and her role to relevant audiences in the financial services industry. Second, there is the need to develop, agree and document all the processes, procedures and protocols to be used in the handling and investigating of complaints, which is essential to achieving speedy, fair and cost-effective investigation of complaints. Of key importance here are the working arrangements between the Commissioner's Office and the FSA and, in particular, the FSA's Company Secretariat, which has responsibility for administering the Complaints Scheme within the FSA. All these processes will, of course, be kept under review in the light of practical experience both with the number and scope of enquiries and investigations.

On-going activity is at present being planned for on the basis of a 'minimum cost' operating model. This provides for limited office accommodation (separate from the FSA), secretarial support for the Commissioner, and some support with the documentation and handling of enquiries and with investigations. This will accommodate the handling of a reasonable number of 'routine' enquiries; it has been reviewed on the basis of experience in the first seven months of operation (see below) and will be reviewed again in the summer of 2002. It is, of course, highly probable that, over the next year, there will be more and/or larger and/or more complex enquiries; to the extent that additional resources are required these will have to be provided by suitably-qualified staff on a project-by-project basis.

Enquiries and complaints

In the seven months since the new Complaints Scheme came into operation 65 files have been opened relating to enquiries and complaints received.¹ 27 files were opened between 3 September and 31 December 2001; 38 between 1 January 2002 and 31 March 2002. The files may be analysed as follows:

Complaints outside the scope of the Complaints Scheme	32
Complaints relating to Equitable Life	9
Initial enquiries not leading to a formal complaint and file closed	4
FSA response made to complainant and file closed	4
In progress at 31 March 2002	16
Total enquiries and complaints received	65

Of the 32 complaints found, on investigation, to be outside the scope of the Scheme, around two thirds were complaints which should properly have been directed to the Financial Ombudsman Service (FOS). These included complaints relating to a product or service where the complainant remained dissatisfied with the response received from the regulated firm providing, or advising upon, the product or service. They also included complaints about the way in which, under the old arrangements, a complaint about a firm regulated by one of the former self-regulating organisations was handled. These complainants have all been advised to approach FOS. In a small number of instances they proved to be complaints about how FOS had done its job and thus, potentially, were a matter for the Independent Assessor, and these complainants have been directed to him. Other complaints adjudged to be outside the scope of the Scheme related to matters which should properly be referred to the Pensions Ombudsman, to matters which have already been fully investigated and reported upon under the old arrangements, and to matters before the Financial Services and Markets Tribunal.

Complaints relating to Equitable Life received to date (9 in number) are, potentially, also outside the scope of the Scheme in that they relate either directly to Equitable Life or to the FSA's regulatory judgements in relation to Equitable Life. The Commissioner is currently considering whether any complaints relating to Equitable Life might raise, additionally, issues about how the FSA discharged its own responsibilities and whether, in the light of the other investigations being undertaken by the Parliamentary Ombudsman and others, there might be complaints which should properly be investigated by the Commissioner.

In four cases, initial enquiries about the Scheme followed up by correspondence have not resulted in a formal complaint and the files have now been closed. And in four further cases investigations by the FSA, and reports from the FSA to complainants, have elicited no further response from the complainant and the files have now been closed.

The remaining 16 cases are still in progress. These include one case where the Commissioner has concluded an investigation and circulated a Preliminary Report to the complainant and to FSA for comment. They also include cases where information is still being sought from the complainant and/or the FSA to assist the Commissioner in deciding whether the matter falls within the scope of the Scheme, and cases where the FSA is conducting its own investigation.² These 16 complaints relate to allegations concerning failure on the part of FSA (or predecessor bodies) to investigate allegations about, or to act in relation to a dispute with, a regulated firm (6); unreasonable failure to provide information on request (4); failure to investigate allegations concerning the publishing of misleading information by regulated firms (3); to unreasonable delay in processing an application to resign from PIA (1); to the manner in which an investigation was conducted by PIA (1); and to the handling of a pensions mis-selling case (1).

¹ A file is opened in all cases where there is correspondence with or about an actual or potential complainant; simple telephone enquiries not requiring any follow-up are separately logged but do not result in a file being opened unless there is subsequent correspondence.

² Note that not all cases under investigation by the FSA result in a file being opened by the Commissioner. This is only done where the Commissioner's Office becomes directly involved in the matter, hence the FSA's records of the number of 'active' complaints will not necessarily correspond to the Commissioner's records.

Conclusions

With only very limited experience of the new arrangements, and as yet no fully completed investigations, it is too soon to comment on trends. The following observations, however, may be made:

- experience to date suggests that the number of enquiries is increasing over time; the level of enquiries in the three months to 31 March 2002 was running at 1.4 times the level of enquiries in the three months to 31 December 2001;
- a significant number of complaints, around half to date, prove, on investigation, to be outside the scope of the Scheme; this suggests, first, that much remains to be done to disseminate information about the new arrangements, and in particular about the respective roles of the Financial Ombudsman Service (FOS) and the Complaints Commissioner; and, second, that time is needed, and will continue to be needed, carefully to review the information provided by complainants so that they can be advised where to go for help;
- complaints thus far have tended to focus on alleged failures adequately to investigate or to follow up matters relating to regulated businesses or to provide information or respond in a timely fashion to enquiries; there is as yet little evidence of complaints relating to unprofessional behaviour, to bias, or to lack of integrity; and
- from the Commissioner's perspective, the working arrangements with the FSA, and in particular with FSA's Company Secretariat, have been operating smoothly, albeit that the flow of complaints, and the work associated with, first, determining whether or not they fall within the scope of the Scheme and, second, implementing further enquiries has been greater both for the FSA and for the Commissioner than was assumed initially; the implications of this will need to be kept under careful review.

Rosemary Radcliffe

Complaints Commissioner

April 2002

This Annual Report covers the seven month period following the appointment of the Complaints Commissioner in September 2001. To minimise costs, on this occasion it is being distributed with the FSA's Annual Report. It can also be downloaded from the Commissioner's website <http://www.fsc.gov.uk> and additional hard copies can be obtained by writing to:

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