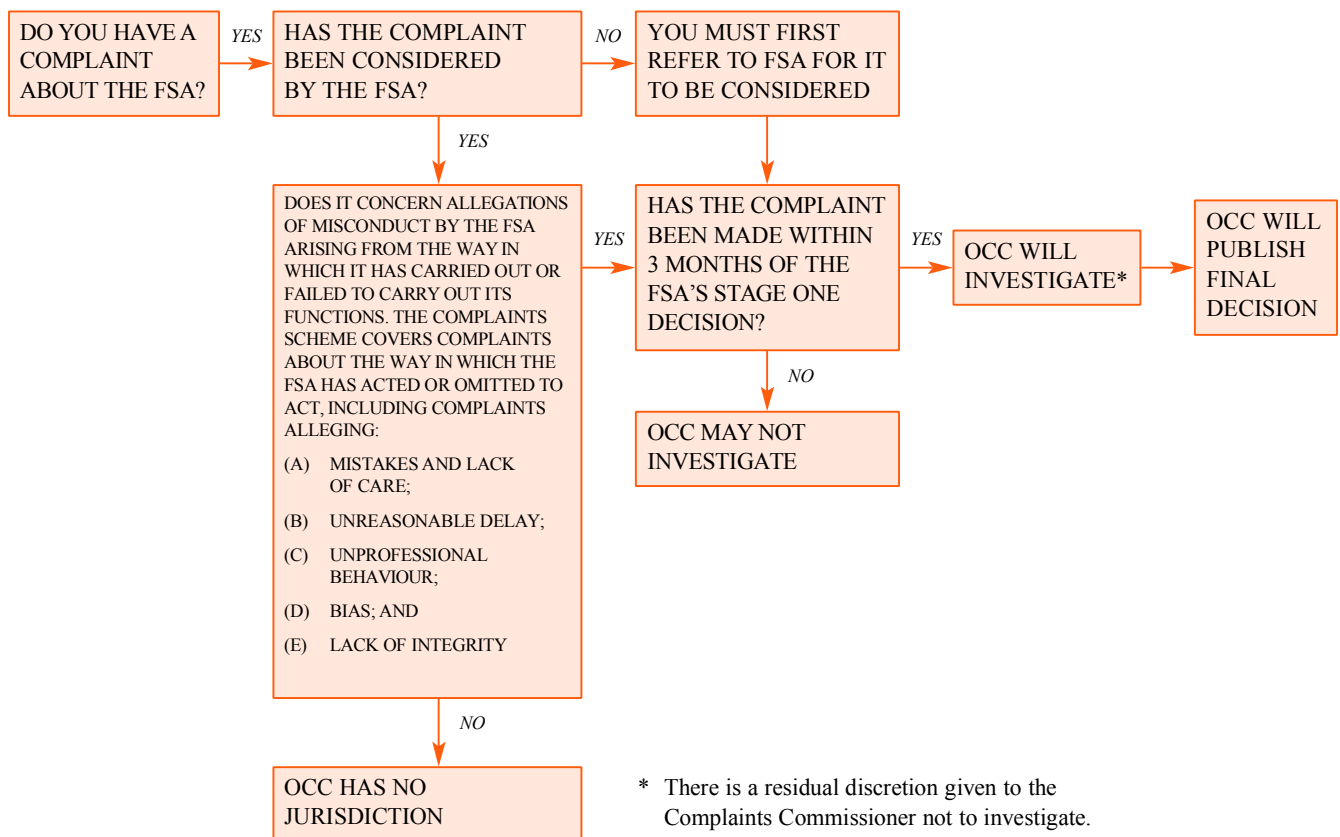


Office of the Complaints Commissioner Annual Report for 2011/12



Complaints Against the Financial Services Authority

(extract from rules made pursuant to the Financial Services and Markets Act 2000 “the Act”)

- COAF 1.1.1 (G)**
- (1) Paragraph 7 of Schedule 1 to the Act requires the FSA to maintain a complaints scheme for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of its functions under the Act (other than its legislative functions).
 - (2) The FSA is required to appoint an independent person as Complaints Commissioner to be responsible for the conduct of investigations in accordance with the complaints scheme.

COAF 1.1.2 (G)

The complaints scheme provides that there may be two distinct stages for each complaint. In the first stage, the FSA itself will investigate any complaint that meets the requirements of the complaints scheme (see COAF 1.4 (G) (Coverage and scope of the scheme)) and take whatever action to resolve the matter it thinks appropriate. A complaint will normally only proceed to the second stage if the complainant is dissatisfied with the FSA’s determination of his complaint or how it has been handled. This second stage consists of investigation of the complaint by the Complaints Commissioner, followed, wherever he finds for the complainant, by his recommendation to the FSA on the form of redress, if any, that is appropriate in the circumstances.

- COAF 1.1.3 (G)**
- (1) The complaints scheme is made by the FSA in accordance with its obligations under paragraphs 7 and 8 of Schedule 1 to the Act.
 - (2) Where the Act requires the FSA to make a particular arrangement as part of the complaints scheme, this is recognised in the following text by the use of the word “must”. In contrast, where a provision in the complaints scheme states that someone “will” do something, this denotes that the FSA is committing itself or the Complaints Commissioner to some action which, though not specifically required by the Act, is nevertheless viewed as necessary to give effect to the intentions of the Act.
 - (3) Each provision in the complaints scheme is, consistent with the style and format of the Handbook, identified by the letter “G”. It nevertheless constitutes a definitive statement of the complaints scheme which the FSA is required to maintain.

COAF 1.1.4 (G)

The complaints scheme has effect from 3 September 2001.

COAF 1.1.5 (G)

In this complaints scheme, “complaint” means any expression of dissatisfaction about the manner in which the FSA has carried out, or failed to carry out, its functions under the Act other than its legislative functions.

(NB. G = Guidance)

Annual Report for 2011/12

This is the Eleventh Annual Report of the Office of the Complaints Commissioner.
It covers the period from 1 April 2011 to 31 March 2012.

Matters covered in its content are:

	Page
Sir Anthony Holland – Biography	2
1 Overview	3
2 Statistics	5
3 Themes and Issues	8
APPENDIX A Extracts from the OCC Booklet	15
APPENDIX B Expenditure	18

Sir Anthony Holland

Sir Anthony was appointed as the Financial Services Complaints Commissioner on 3 September 2004 for a three year term. He was reappointed as the Complaints Commissioner for further three year terms on 3 September 2007 and 3 September 2010. The position of the Complaints Commissioner was created by the Financial Services and Markets Act 2000 to provide an independent means by which the regulated industry and consumers could have an independent adjudication on complaints against the Financial Services Authority. H.M. Treasury's approval is required under the Act for the appointment or dismissal of the Commissioner.

During his varied career Sir Anthony has served as the Chairman of a Social Security Appeals Tribunal, President of The Law Society (1990-91), Governor of the College of Law (1991-97), on the Council of JUSTICE (this is the British Section of the International Commission of Jurists) 1991-2001, as Chairman of the Executive Board of JUSTICE (1996-99), a member of the Council of the Howard League for Penal Reform (1992-1999), a member of the Criminal Injuries Compensation Appeals Panel (2000-2005), Chairman of the Northern Ireland Parades Commission (2000-2005), Chair of the Northern Ireland Legal Services Commission (2004-2007), Chairman of the Standards Board for England (2001-2008), and was a lay member of the International Governing Council of the Royal Institution of Chartered Surveyors (2002-2008). His appointments in the financial services industry include a period as a first instance Chairman of the Securities and Futures Authority (1993-2000) and Principal Ombudsman to the Personal Investment Authority Ombudsman Bureau (1997-2000).

In addition to his position as Complaints Commissioner he is also a member of the Board of the Pension Protection Fund, a member of the Investigatory Powers Tribunal and a member of The Speaker's Committee for the Independent Parliamentary Standards Committee.

1 Overview

Since 1 April 2011, the Office of the Complaints Commissioner (OCC) concluded 161 cases. Individual consumers account for 78% of overall complainants compared to 70% of complainants last year, the remainder being made up of solicitors on behalf of their regulated clients, Members of Parliament and individual firms.

Background to the Complaints Scheme

The FSA is required by Paragraph 7 of Part One of Schedule 1 of the Financial Services and Markets Act 2000 (FSMA) to operate a Complaints Scheme for investigation of complaints against itself. The Scheme came into operation on 3 September 2001. The relevant rules are set out in Complaints against the FSA (COAF) and which are made pursuant to Paragraph 7 of Part One of Schedule 1 of FSMA. The Complaints Scheme is essentially reactive (as opposed to proactive) in that the Commissioner's powers derive from receiving a complaint. To be eligible to make a complaint the complainant must be seeking a remedy, which may include an apology, in respect of some inconvenience, distress or loss which has been suffered as a result of being directly affected by the FSA's actions or inactions. It should be noted that the FSA under FSMA is immune from liability in damages for any negligent act. That immunity does not apply if bad faith is proven or if the FSA acted in a way which is incompatible with a convention right under the Human Rights Act 1998. Appendix A contains more details of the Complaints Scheme. As part of the complaints arrangements there must be a Complaints Commissioner (the Commissioner) who is independent of the FSA and is able to conduct impartial investigations.

Statutory Information relative to Office of the Complaints Commissioner, a company limited by guarantee

Chairman and Director Sir Anthony Holland

Company Secretary Ivonna Poyntz

Statutory accounts have been lodged at Companies House.

Current Proposal by the Coalition Government to changes to the Financial Services and Markets Act 2000 (FSMA)

The necessary legislative changes will be achieved by amending FSMA rather than by starting from a fresh blank sheet of paper. The relevant amending Bill is now before Parliament and is going through the various stages involved in that process. It is hoped that all the relevant stages will be concluded before the end of 2012.

During 2012 the FSA will move to a “twin peaks” regulatory model being a Prudential Regulatory Authority (PRA) and a Financial Conduct Authority (FCA). There will be two independent but co-ordinated groups of supervisors for banks, insurers and major investment firms covering prudential and conduct.

Last year there was a concern that there would be a separate complaints process for the PRA and the FCA. That is no longer the proposal and the proposal now is for a continuation of the complaints system as currently carried out by this office for both the PRA and the FCA. It is also intended that this external complaints scheme will cover the Bank of England’s regulatory functions in relation to recognised clearing houses and payment schemes.

Until the amending Bill becomes an Act it is difficult at this stage to make any further useful comment.

It is anticipated that the legal completion in terms of formal and legal operation as two separate organisations, will occur sometime in the early part of 2013. At that point this office will then address the tail end of the FSA complaints where the Stage One process has not satisfied the complainant and will, at the same time, commence to address the consideration of complaints that emanate from the two separate organisations that are referred to above. That in turn assumes that an amended form of Complaints against the FSA (COAF) is in place to take account of the widening jurisdiction of the Commissioner.

2 Statistics from 1 April 2011 to 31 March 2012

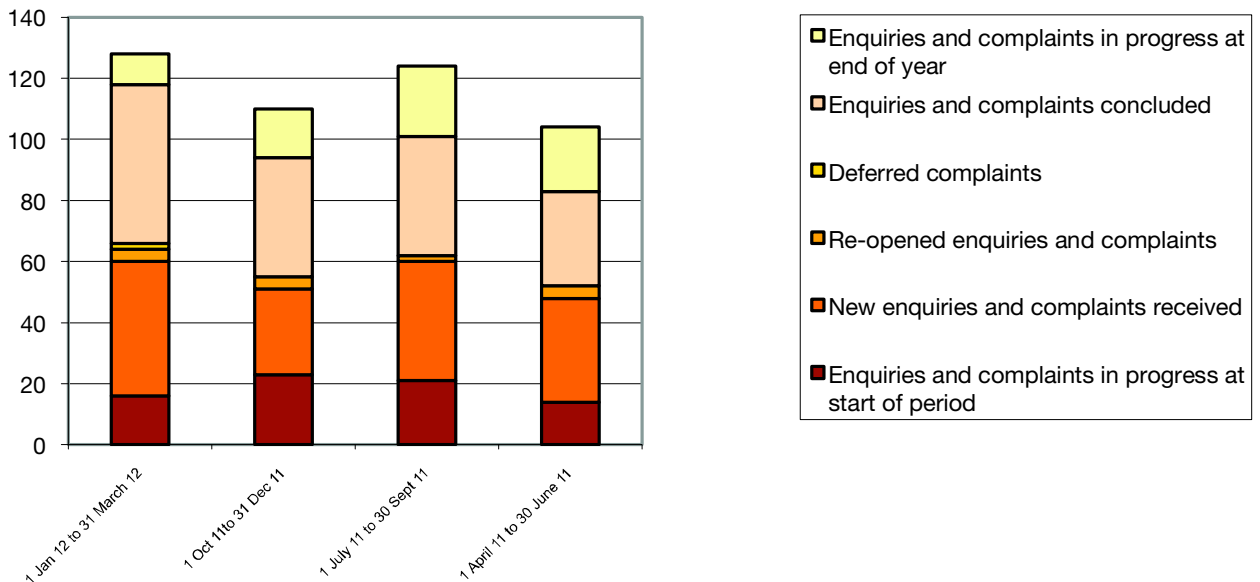
2.1 Enquiries and complaints received during the year

The table below shows the number of enquiries and complaints received by the Commissioner during 2011/12. The volume of new and re-opened complaints received during the year amounted to 159 for the year ended 31 March 2012 as compared to 167 in the previous year. The volume of complaints received and concluded is evenly spread over the quarters with a slight peak in volume during the fourth quarter.

Table 1 Enquiries and Complaints Received during 2011/12

	2011-12	1 Jan 12 to 31 March 12	1 Oct 11 to 31 Dec 11	1 July 11 to 30 Sept 11	1 April 11 to 30 June 11	2010-11
Enquiries and complaints in progress at start of period	14	16	23	21	14	16
New enquiries and complaints received	145	44	28	39	34	152
Re-opened enquiries and complaints	14	4	4	2	4	15
Deferred complaints	2	2	0	0	0	2
Enquiries and complaints concluded	161	52	39	39	31	167
Enquiries and complaints in progress at end of year	10	10	16	23	21	14

Enquiries and complaints received by quarter, 2011/12



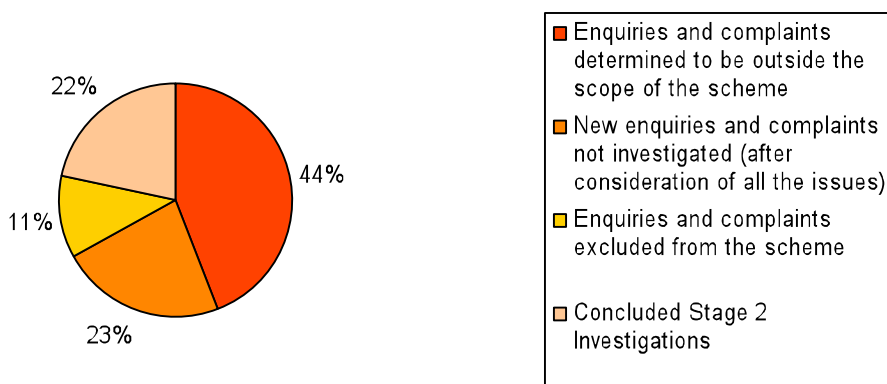
2.2 Enquiries and complaints concluded during the year

The table below shows the enquiries and complaints concluded during the year.

Table 2 Enquiries and Complaints concluded 2011/12

	2011-12
Enquiries and complaints determined to be outside the scope of the scheme	70
New enquiries and complaints not investigated (after consideration of all the issues)	45
Enquiries and complaints excluded from the scheme	16
Concluded Stage 2 investigations	30
Total enquiries and complaints concluded	161

2011-12 Complainant Summary



The number of complaints and enquiries concluded during the year amounted to 161 compared to 167 the previous year. Complaints which were excluded from the scheme usually relate to the performance of the FSA's legislative functions under FSMA. Non-investigated complaints include cases where the complainant has not been directly affected by the way in which the FSA has carried out its functions (COAF 1.2.1 (G)) as well as instances where the FSA has upheld a complaint at stage 1 investigation, and offered a sufficient remedy (for example an apology), but the complainant has chosen to escalate the complaint to the Commissioner without a clear reference to the intended outcome. In circumstances where the FSA has addressed outstanding issues in its stage 1 investigation in a satisfactory manner, there is no benefit to be gained from a secondary investigation of the same issue.

In cases where the Commissioner deems the complaint to be outside the scope of the scheme or decides not to investigate, a report is issued to both the FSA and the complainant explaining in detail the reasons for the decision taken.

2.3 Stage 2 investigations during the year

The table below gives information about the stage 2 investigations undertaken by the Commissioner during 2011-12.

Table 3 Stage 2 investigations 2011-12

Stage 2 Investigation	2011-12
at start of period	8
started during the period	27
Concluded during the period	30
In progress at end of period	5

The Commissioner tends to publish (anonymised) Stage 2 final decision letters on the OCC website except in cases where the complainant explicitly asks the OCC not to. The FSA has never asked the Commissioner not to publish a decision.

Common themes amongst the Stage 2 investigations concluded during the period centred around fee disputes between firms and the FSA and late submissions of RMAR forms. These seem to be recurring issues year on year and the Commissioner has issued further information on these issues in 'Views of the Commissioner' on the OCC website. This year, there were, additionally, a number of complaints connected with Authorisation and Land banking schemes, especially where the latter were being operated as a collective investment scheme.

The Commissioner upheld a number of complaints during the period (some not published due to a request from the complainant). The total number of published complaints during the period was 25.

2.4 Type of complainant

The information below highlights that enquiries and complaints have predominantly come from individual members of the public rather than from organisations during the year.

Table 4 Type of Complainant 2011-12

Type of complainant	1 April 11 to 31 March 12
Individual Members of Public	121
Independent Financial Advisers	6
Solicitors	3
Members of Parliament	0
Firms/Groups	30
Third Parties	1
Total enquiries and complaints concluded	161

The figures shown in the table above only relate to complaints which were considered under the complaints scheme and do not include cases which were treated as enquiries and referred to other bodies (e.g. a firm, the FSA, the FOS or the FSCS) for consideration. The majority of complainants continue to be individual members of the public.

3 Themes and Issues

The Commissioner has dealt with a variety of complaints during the course of the last year. Some that fell within his jurisdiction while others that were not ones that he could investigate were re-directed to the appropriate organisation. A number of recurring themes emerged during the course of the year, some of which are listed below:

FSA Responsibilities

The Commissioner has received a number of complaints alleging that the FSA has not had sufficient regard to its statutory duty to protect consumers and has, in effect, prioritised the interests of a regulated firm and regulation generally over those of consumers. Whilst the Commissioner can appreciate why consumers may hold this view and accepts that the FSA, as the UK's financial services regulator, has a statutory duty to protect consumers, he also has to be mindful of the way in which the FSA's general duties are set out in Section 2 of the Financial Services and Markets Act 2000 which describes the FSA's general duties in the following manner:

- (1) In discharging its general functions the Authority must, so far as is reasonably possible, act in a way –
 - (a) which is compatible with the regulatory objectives; and
 - (b) which the Authority considers most appropriate for the purpose of meeting those objectives.
 - (2) The regulatory objectives are –
 - (a) market confidence;
 - (b) public awareness;
 - (c) the protection of consumers; and
 - (d) the reduction of financial crime.
 - (3) In discharging its general functions the Authority must have regard to –
 - (a) the need to use its resources in the most efficient and economic way;
 - (b) the responsibilities of those who manage the affairs of authorised persons;
 - (c) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
 - (d) The desirability of facilitating innovation in connection with regulated activities;
 - (e) the international character of financial services and markets and the desirability of maintaining the competitive position of the United Kingdom;
-

- (f) the need to minimise the adverse effects on competition that may arise from anything done in the discharge of those functions; and
 - (g) the desirability of facilitating competition between those who are subject to any form of regulation by the Authority.
- (4) The Authority's general functions are –
- (a) its function of making rules under this Act (considered as a whole);
 - (b) its function of preparing and issuing codes under this Act (considered as a whole);
 - (c) its functions in relation to the giving of general guidance (considered as a whole); and
 - (d) its function of determining the general policy and principles by reference to which it performs particular functions.
- (5) “General guidance” has the meaning given in section 158(5).

From this it can be seen that, although the Financial Services and Markets Act 2000 requires the FSA to discharge its regulatory objectives, it does not set an order of prioritisation in which its statutory objectives must be considered and effectively provides the FSA with a discretion over how it prioritises its objectives and how it carries out its duties stipulating only that it must act in a way which:

- (a) is compatible with the regulatory objectives; and
- (b) the Authority considers most appropriate for the purpose of meeting those objectives.

The composite effect of these provisions is to create an inevitable tension between market confidence, through the exercise of the FSA's regulatory powers and the protection of consumers. In effect the FSA has to balance sensitivity and careful judgement with the statutory requirements of all of its regulatory objectives. Issues like the ones raised in many of the complaints the Commissioner receives therefore will inevitably involve a consideration of difficult and differing courses of action for any regulator when seeking to deal both with prudential regulation and consumer protection. As such, the FSA has to make a careful but balanced judgement upon how it discharges its duties.

It is interesting to observe that the inevitable tension has arisen on two occasions this year. The first in the context of Product A when the FSA was accused of being far too slow in taking action given serious concerns following a preceding investigation. The second where, in relation to Product B, the FSA was accused of being far too hasty and using inflammatory language thereby causing the Product provider in question being unable to meet all the consequent demands of investors in seeking to realise their investment.

Compensation

The Commissioner has continued to identify that complainants are increasingly looking for financial compensation as a remedy for their complaint. When assessing such complaints, the Commissioner has to consider the manner in which the issue of a compensatory payment is addressed in the Financial Services and Markets Act 2000.

The Financial Services and Markets Act 2000 stipulates in Schedule One that the FSA is exempt from liability in damages. It does however also state that the exemption does not apply if a relevant act or omission, that is the subject of a complaint to the Commissioner involves “*bad faith*” on the part of the FSA which can be proved; or the complaint about the behaviour of the FSA stems from an “*act or omission*” that was unlawful within the provisions of section 6 (1) of the Human Rights Act 1998. The exemption from liability depends upon the FSA not acting in a way that is incompatible with a convention right.

When responding to complainants who have requested a compensatory payment, the Commissioner has highlighted the statutory exemption and asked the complainants to comment further. In doing this, a number of complainants have then gone on to allege “*bad faith*” on the part of the FSA. The Commissioner holds the view that “*bad faith*” is a serious allegation which attracts a heavy burden of proof. This is because fundamental to the legitimacy of public decision making is the principle that official procedures should not be infected with improper motives such as fraud or dishonesty, malice or personal self interest. Given the extremely serious nature of an allegation of “*bad faith*”, a mere assertion of “*bad faith*” is not evidence of “*bad faith*” and a complainant must provide the Commissioner with sight of the documentary or such other evidence which would support this allegation.

Should a complainant be unable to provide such evidence the Commissioner considers that an allegation of “*bad faith*” cannot not be sustained within that basic requirement. Assertions and implications are easily made but are not, and never can be, sufficient to produce a finding of “*bad faith*” on the part of a public authority or individual within that authority without clear evidence of malicious wrong doing being provided.

Cold calls, ‘boiler rooms’ and/or cloned firms

The Commissioner has received a number of complaints from consumers who have been the victims of “boiler room scams”. Many of the individuals who contact the Commissioner have ‘invested’ and lost considerable amounts of money following a ‘cold call’ from someone or some firm with which they have had no previous relationship. When reviewing these complaints, the Commissioner understands that increasingly those running boiler room scams are frequently using the details (names and FSA authorisation numbers) of firms which are passported into the UK from other European countries. The Commissioner believes that those running the boiler rooms do this to give an air of legitimacy to their operation and to suggest that they are authorised by the FSA.

Clearly, as the firms have provided an FSA authorisation number, any general check with the FSA will indicate that the firm (boiler room) is authorised by it. However, the Commissioner is also aware that those running the boiler rooms in question can be persuasive. Despite the FSA often recommending that the consumer should not enter into any transaction with the boiler room, consumers often, to their detriment, ignore this advice. Ultimately, a regulator can only do so much to emphasise that cold calls regarding investments are often from boiler rooms and should always be avoided. Consumers must take responsibility for their own actions and it cannot be repeated too often that such calls are never worth listening to on the part of the consumer and that old adage “*If it’s too good to be true then it probably is*” is still as true as ever. There is little that the FSA can do in these cases other than to emphasise that the only safeguard is to invest only in authorised products through an authorised representative with whom they have an established relationship or one that they know to be genuine.

Unauthorised firms

A number of complainants who have contacted the Commissioner believe that, once a referral is made to the FSA the FSA should immediately take action against the firm. The Commissioner understands that the FSA receives between around 4,000 and 6,000 complaints about the possibility of unauthorised business activity each year. Of that number, around 1,200 may be actively looked at in more detail. The FSA has to use its resources proportionately in that it is funded by the Industry (not the Government) and thus indirectly by the consumer who purchases products from the regulated industry.

The purpose of the vetting enquiry is to discover which of the approximately 1,200 enquiries relate to the most severe examples of unauthorised business posing the biggest risks to consumers. Those which represent the biggest risks are referred to the investigation teams to conduct an investigation. Because of its limited resources, the FSA has to take a proportionate and risk based approach to cases, depending on the circumstances. On average, each year, the department responsible takes legal action against between 10 and 20 firms or individuals who are suspected of conducting large scale unauthorised business operations which pose the biggest threats to consumers' assets and interests.

The vetting team has a checklist before a possible unauthorised activity can be considered to justify further and more detailed investigation. There are four main criteria –

- (i) the number of complainants;
- (ii) the amount of money involved;
- (iii) the type of activity – thus for example, mortgage advice would rank lower than deposit taking; and
- (iv) the known character of the individual involved.

Information gathering thereafter is a slow and difficult process and dictated by the boundaries that the Courts have set, before a Court will grant a freezing order. Those boundaries involve the production to a Court of verifiable evidence (usually difficult as fraudsters do not sign agreements) or at least four witnesses prepared to testify in open court. The production also of evidence of money being held in a “collection” bank account. Finally, that the alleged perpetrator has shown clear evidence of non co-operation with the FSA. This last aspect is particularly influential and important as if the ‘fraudster’ appears to be engaging with the FSA it is unlikely that the Court will provide the FSA with an injunction or freezing order to enable it to take significant action against the firm.

Late Submission of Periodic Reports

There have been a number of cases recently where the Commissioner has received complaints from firms regarding the late submission of that firm's first periodic GABRIEL return. In the cases concerned, the firms have alleged that they were unaware that they were due to submit the returns as it was their first return and they did not receive sufficient, if any, warning from the FSA.

Ultimately, the submission of a periodic return is a matter for the firm and the FSA, correctly in the Commissioner's opinion, expects the firm to have sufficient systems and controls in place to be aware of its reporting requirements. The Commissioner would add that a firm's reporting schedule is freely available from the GABRIEL system.

In these complaints the firms also alleged that the “Welcome Pack” they received from the FSA, although stressing the importance of activating their GABRIEL account and registering a principle user, did not specify the firm’s specific reporting dates. Whilst the Commissioner can appreciate this argument, the FSA has to be mindful of how it is funded and as such the “Welcome Pack” is a generic document which is sent to all newly authorised firms. Given the costs involved in tailoring the “Welcome Pack” to the requirements of an individual firm, and the fact that a firm’s reporting schedule is available from GABRIEL, the Commissioner does not believe that it is necessary for the FSA to tailor the “Welcome Pack” to suit the specific reporting schedule of a newly authorised firm.

The Commissioner would therefore urge all newly authorised firms to read fully the “Welcome Pack” and to activate their GABRIEL account and to register immediately a principal user so that any reminders the FSA may choose to send (alerting firms that their periodic return is due) are received. He would also add that whilst the FSA may hold an email address for general correspondence with a firm, the GABRIEL system works independently and will only send emails to the principal user (as often the person responsible for the submission of a periodic return is different from the person with whom the FSA will correspond in relation to regulatory matters). As such, unless a principal user is created the GABRIEL system will be unable to issue any automated reminders which the FSA may choose to issue.

The Commissioner also concurs with the FSA’s view that firms (whether newly authorised or not) should be aware of their reporting requirements and he rarely upholds a complaint (and waives the £250 late submission administration fee) in situations where the complainant alleges that a periodic return was not submitted by its due date as a result of the firm not receiving a reminder and therefore being unaware that a periodic return was due.

Misuse of the Complaints Process

The Commissioner has also received a number of complaints where the complainant has made a complaint in relation to ongoing Enforcement action and has alleged that it would be inequitable for the FSA to defer its investigation until such time as the Enforcement action has been completed and the complainant has therefore asked the Commissioner to intervene on his behalf.

In the Commissioner’s view it appears that the complainant is really attempting to use the complaints scheme as means either to stay or to stop the Enforcement action. The Commissioner would reiterate that this is not the aim of the complaints scheme and nor is it the appropriate avenue for complaints of this nature to be considered. The correct way to challenge ongoing Enforcement action is to make representations at a RDC hearing (and/or refer the matter to the Tribunal). The Commissioner would therefore strongly encourage the individual and/or firm which is under investigation always to make representations to the RDC hearing. Once the ongoing action has been completed, it is likely that the FSA can then consider the complaint and, once it has done this, if the complainant remains unhappy with the outcome then the complainant can then refer the matter back to the Commissioner.

The Commissioner has received complaints from a number of members of the industry who have been informed by the FSA that it is minded to reject their applications. Those concerned have then withdrawn their application and tried to challenge the FSA’s decision through the complaints scheme by complaining that the FSA’s decision to reject the application was based on incorrect or incomplete information. Complaints of this nature simply cannot be considered under the rules of the complaints scheme.

If the FSA is minded to reject an individual's application the correct course of action for the individual to take is to challenge the FSA's decision through the Regulatory Decisions Committee (RDC) and if appropriate through the Tribunal. Whilst the Commissioner accepts that seeking legal advice or obtaining legal representation at an RDC hearing can be expensive, RDC hearings do not in themselves require legal representation and the Commissioner is aware of situations where an individual has represented himself at such a meeting and successfully challenged the Regulatory Transactions Committee's view that it was minded to reject the individual's application.

Deferring Consideration of Complaints

This issue has arisen in the past but it bears further comment since a number of complaints have arisen again this year in which the complainant has pressed the Commissioner to investigate, when the FSA has immediately refused to do so on the grounds that there is an ongoing enforcement action against the complainant.

The relevant provision in COAF 1.4.4 [G] reads as follows:

“Investigations that may be deferred:

A complaint which is connected with, or which arises from any form of continuing action by the FSA will not normally be investigated by either the FSA or the Complaints Commissioner until the complainant has exhausted the procedures and remedies under the Act which are relevant to that action. An investigation may be commenced before the completion of those procedures if, in the exceptional circumstances of the case, it would not be reasonable to expect the complainant to await the conclusion of the FSA's action”.

The contents are really self explanatory and require little elaboration. Nevertheless an unusual angle appeared this year on one aspect of this provision.

The complainant was an Independent Financial Adviser who complained, on behalf of and with the authority of his client (for whom he remained as financial adviser), that the FSA had failed in its duty of regulatory supervision of a particular product provider thus causing the client of the complainant to suffer severe financial loss. The complaint as to a failure of regulatory supervision of the product provider by the FSA was deferred by the FSA as there was an ongoing enforcement action. The complaining IFA, however, did not accept the decision to defer by the FSA and asked the Commissioner nevertheless to investigate. The Commissioner, however, not only accepted the FSA's reason to defer but expressed serious concern that the client of the IFA did not appear to have taken his case to the FOS as the advice given and taken by the complainant's client appeared to raise a serious issue of suitability.

For the complainant's adviser to urge upon the Commissioner that time was of the essence given his client's age, health and concentration of investments in the one product in question did beg the question that the complainant IFA on behalf of his client had not “exhausted the procedures and remedies under the Act which are relevant to that action”. Plainly the complainant IFA should advise his client to complain to the FOS about the advice given to the client, before using that client's health, age and consequent shortage of funds as a rationale for investigating sooner rather than later.

Delivery of Documentation under the Service of Notices Regulations.

The Commissioner was asked to consider a complaint relating to the address to which Warning Notices were sent. The FSA is required, under the Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001, to send Warning Notices to the address it holds for the individual. Where it is believed or known that the individual concerned resides overseas the Regulations also require the FSA to send a copy of the Warning Notice to a UK address for the individual. Where the recipient of the Warning Notice has not updated the FSA with a UK address or specifically stated to the FSA during the Enforcement investigation that a UK address is no longer held, the FSA will send a copy the Warning Notice to the last known UK address it holds for the individual concerned.

In the complaint concerned, the individual was receiving legal representation and had informed the FSA that the legal representative's office was to be the delivery address for documentation stemming from the ongoing Enforcement investigation. Although the FSA was aware of this instruction, and had arranged for both the Preliminary and Supplementary Preliminary Investigation Reports to be sent to the lawyer's offices, a specific instruction was not made in relation to the Regulations. As no such instruction had been made, to comply with the requirements of the Regulations, the Warning Notice was sent to the individual's last known UK address rather than to the lawyer's offices.

The Commissioner's view is that the unless a specific instruction is made to the FSA, regardless of whether documentation stemming from an ongoing Enforcement investigation is sent to the individual's legal representative's offices (rather than the individual's home or work address), the requirements of the Regulations should take priority and as such the Warning Notice will be sent to the individual's home address (and where this is overseas) to the individual's last known UK address. It is therefore important that where an individual who is under investigation wishes all documents to be delivered to a specific address (which may include the offices of his legal representative) that this is specified clearly to the FSA and that any instruction expressly states that such agreement relates to both documentation stemming from the Enforcement investigation and, should it be deemed necessary by the FSA, also for service under the Regulations.

APPENDIX A**The Complaints Scheme****Extracts from the Office of the Complaints Commissioner Booklet***Bringing a complaint against the Financial Services Authority***What is the Financial Services Authority?**

The FSA is the single statutory regulator for the financial services, general insurance and mortgage industry. Its existence and remit are set out in the Financial Services and Markets Act 2000 (FSMA).

The FSA Complaints Scheme

The scheme was set up in September 2001. It provides the arrangements required under FSMA for the FSA to investigate any complaints in connection with the FSA exercise of, or failure to exercise, its functions under FSMA, other than its legislative functions. The scheme is available on the FSA website (see end of leaflet for website address). The scheme provides an important source of information for the FSA to assess its performance as regulator and provides a system of checks and balances for its stakeholders. The FSA complaints handling arrangements are explained in a separate leaflet 'Bringing a complaint against the Financial Services Authority'.

How a complaint will be treated

A complaint should be referred to the Commissioner where you are dissatisfied with the decision of the FSA investigation into your complaint or where you are not satisfied with the progress made by the FSA in its investigation of your complaint. The Commissioner has complete discretion to decide whether the complaint falls within his jurisdiction, and if so, whether or not he will investigate the complaint. Furthermore if the complaint has not already been put to the FSA, the Commissioner may decide not to investigate until the FSA has had opportunity to investigate the complaint.

If, on the conclusion of the Commissioner's investigation, it is decided that the complaint is well founded, recommendations may be made to the FSA and the complainant about how things might be put right. If the Commissioner does not uphold your complaint he will explain the reasons to you.

The Commissioner provides an independent review of complaints against the FSA and consequently aims to provide finality to the process. On occasion complainants' views differ from the Commissioner substantially and they persist with contacting the Commissioner after the issuance of his decision. However, the Commissioner is also accountable for the budgeting of his office and thus must ensure that this is spent wisely and achieves value for complainants and the wider public. Consequently there are occasions where the Commissioner has to use the discretion available to him not to investigate a complaint further. Where this happens a letter will be issued to the complainant explaining the Commissioner's stance. If the Commissioner's office is minded not to respond to any further contact from the complainant this will also be explained within the letter.

APPENDIX A

Complaints the Commissioner can deal with

The Commissioner can deal with any complaint about the way in which the FSA has carried out, or failed to carry out, its role. This includes complaints about mistakes or lack of care, unreasonable delay, unprofessional behaviour, bias or lack of integrity by the FSA and its staff. The Commissioner will investigate a complaint with a view to completing it within 20 working days. If the investigation is going to take longer than that he will write to inform you and keep you updated.

The Commissioner draws his conclusions from the evidence available to him and provides them to both the FSA and the complainant for any further submissions that either party wish to make. Once such submissions have been reviewed a final decision is published, although not in all cases. As the Commissioner provides conclusions to his independent investigation, which must be based upon the evidence available to him, unsubstantiated allegations are unlikely to be successful.

Complaints the Commissioner cannot deal with

The Commissioner does not investigate complaints about firms. Complaints about firms should be directed to the firm in question. If dissatisfied with the decision or complaint to the firm is not possible, the complaint should be directed to the Financial Ombudsman Service (FOS).

The Commissioner does not investigate complaints about firms who no longer exist or cannot meet their liabilities. Such complaints should be directed to the Financial Services Compensation Scheme (FSCS).

The Commissioner cannot investigate complaints about the legislative functions of the FSA under FSMA. This includes the making of rules, issuing codes and general guidance.

If you have a general enquiry about the financial services industry this should be addressed to the Consumer Contact Centre at the FSA.

Is there a time limit for making a complaint?

Yes. Your complaint should be made to the FSA within 12 months of your becoming first aware of the circumstances giving rise to your complaint. If the complaint is made later than this you will need to demonstrate reasonable grounds for the delay. Complaints made to the Commissioner should be made within 3 months of the FSA decision.

How can I make a complaint?

Firms must make their complaint in writing to the FSA (email, fax or letter) and in turn the Commissioner. Individuals can make their complaint in any format, however, a written complaint is preferred (email, fax or letter). If you are in any doubt as to whether you have a complaint, approach the Commissioner via the contact details provided.

APPENDIX A**Does it cost anything?**

Making a complaint to the FSA and the Commissioner does not incur any charge. However if you take specialist or legal advice you must meet these costs yourself, even if your complaint is successful.

Contact details

Office of the Complaints Commissioner
3rd Floor
48-54 Moorgate
London EC2R 6EJ

Email: complaintscommissioner@fsc.gov.uk

Tel: 020 7562 5530

Web: www.fsc.gov.uk

APPENDIX B**Expenditure****Profit and Loss Account
For the year ended 31 March 2012**

	2012	2011
	£	£
Administrative expenses	(543,743)	(472,665)
Other operating income	543,743	472,665
Operating loss	—	—
Interest receivable	—	—
Profit on ordinary activities before taxation	—	—
Tax on profit on ordinary activities	—	—
Profit on ordinary activities after taxation	—	—

All amounts relate to continuing operations.

There were no recognised gains and losses for 2012 or 2011, other than those included in the profit and loss account.

OCC expenditure, was £543,743 for the year ended 31 March 2012, compared to £472,665 the previous year. The higher costs are attributable to expenses incurred in relocating the OCC office premises in November 2011. The OCC lease at City tower expired in December 2011 and the landlord refused to renew it. OCC has now relocated to 48-54 Moorgate.

The audited accounts for the period ending 31 March 2012 are available from the Registrar of Companies, Companies House, Crown Way, Maindy, Cardiff, CF14 3UZ. The company's auditors are Bishop Fleming.

Office of the Complaints Commissioner
3rd Floor 48-54 Moorgate London EC2R 6EJ