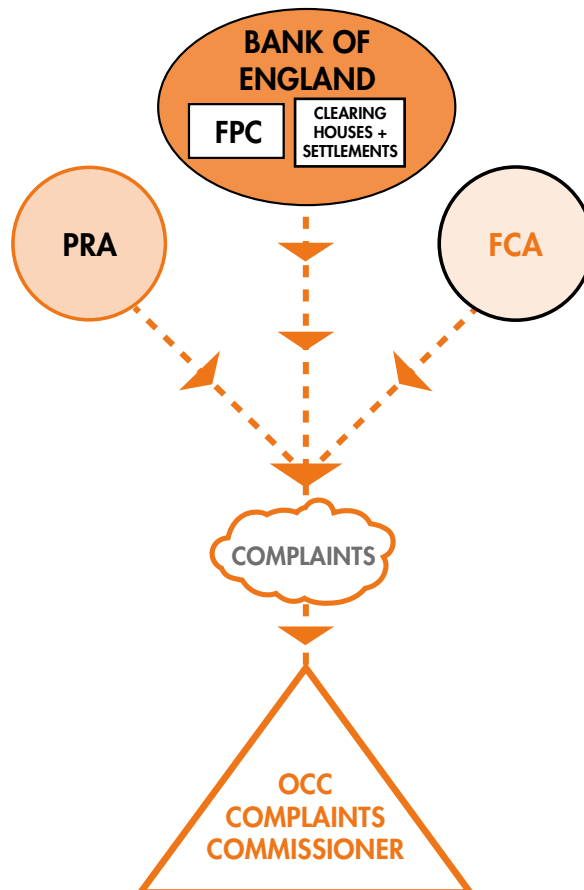

Office of the Complaints Commissioner Annual Report for 2013/14



Complaints Against the Financial Services Authority

(extract from rules made pursuant to the Financial Services Act 2012)

1 About the Complaints Scheme.

- 1.1 Part 6 of the Financial Services Act 2012 (the 2012 Act) requires the regulators to maintain a complaints scheme for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of their relevant functions.
- 1.2 The relevant functions of the Financial Conduct Authority (the FCA) and the Prudential Regulation Authority (the PRA) are their functions other than their legislative functions. The relevant functions of the Bank of England (the Bank) are its functions under Part 18 of the Financial Services and Markets Act 2000 (FSMA) (recognised clearing houses) and under Part 5 of the Banking Act 2009 (inter-bank payment systems), other than its legislative functions.
- 1.3 The regulators are also required to appoint an independent person (referred to from this point as the Complaints Commissioner) to be responsible for the conduct of investigations in accordance with the complaints scheme (the Scheme).
- 1.4 The Scheme provides that there may be two distinct stages for each complaint. In the first stage the regulators will investigate any complaint that meets the requirements of the Scheme and take whatever action to resolve the matter they think is appropriate. In the second stage the Complaints Commissioner will investigate complaints that are referred to him following a stage one investigation where the complainant remains dissatisfied.
- 1.5 The Scheme has effect from 1 April 2013.

2 Definitions

- 2.1 In this Scheme:
 - a) 'complaint' means any expression of dissatisfaction about the manner in which the regulators have carried out, or failed to carry out, their 'relevant functions'.
 - b) 'firm' includes any person who is or was a person authorised under FSMA, Recognised Clearing Houses and payment systems under the Banking Act 2009;
 - c) 'Upper Tribunal' means the Upper Tribunal (Tax and Chancery Chamber) established under the Tribunals, Courts and Enforcement Act 2007; and
 - d) 'legislative functions' of the regulators are defined in Clause 85 (4) to (7) of the 2012 Act.
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Annual Report for 2013/14

This is the First Annual Report of the Office of the Complaints Commissioner to the FCA, PRA and Bank of England

It covers the period from 1 April 2013 to 31 March 2014.

Matters covered in its content are:

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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. After the introduction of the Financial Services Act 2012 (the 2012 Act), Sir Anthony's appointment was extended for a further six months until 30 April 2014. 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 2012 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 (1990-1991), Governor of the College of Law (1991-1997), 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 (1996-1999), 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). He 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), Principal Ombudsman to the Personal Investment Authority Ombudsman Bureau (1997-2000) and as a member of the Board of the Pension Protection Fund (2007-2013).

In addition to his position as Complaints Commissioner he is a member of the Investigatory Powers Tribunal.

1 Overview

Since 1 April 2013, the Office of the Complaints Commissioner (OCC) concluded 146 cases. Individual consumers account for 88% of overall complainants compared to 78% of complainants last year, the remainder being made up of solicitors on behalf of their regulated clients, IFAs, Third Parties and individual firms.

Background to the Complaints Scheme

The Complaints Commissioner (the Commissioner) was initially created to investigate complaints about the Financial Services Authority (FSA). These investigations were completed within the scope of the Complaints Scheme which was put in place as a result of the provisions of the Financial Services and Markets Act 2000 (the FSMA).

Although the FSMA was amended by the Financial Services Act 2012 (the 2012 Act), Part 6 of the 2012 Act still maintained a requirement for the regulators to maintain a complaints' scheme for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of their relevant functions.

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 actions or inactions of one of the three current regulators, namely the Financial Conduct Authority (FCA), the Prudential Regulatory Authority (PRA), and the Bank of England but only in respect of its oversight of the banking clearing houses and payment settlement schemes or, under the Transitional Complaints Scheme, the FSA.

Prior to its replacement, the FSA consulted on the rules of the Complaints Scheme (Complaints against the regulators) in a consultation paper (CP12/30) and subsequently confirmed these rules in the policy statement (PS13/7). Under the rules of the Transitional Complaints Scheme it is no longer possible to bring a complaint against a regulator which preceded the FSA or about events which occurred before 1 December 2001. It should be noted that the regulators under the Act are immune from liability in damages for any negligent act. That immunity does not apply if bad faith is proven or if the relevant regulator(s) acted in a way which is incompatible with a convention right under the Human Rights Act 1998.

As part of the complaints arrangements there must be a Complaints Commissioner who is independent of the regulator(s) and is able to conduct impartial investigations. The appointment has to be approved by H.M. Treasury.

The Complaints Scheme offers those who have been directly affected by the way in which the regulators have carried out their functions, or anyone acting directly on such a person's behalf, provided that the complaint meets the requirements of the Complaints Scheme with a way of challenging the relevant regulator which does not incur costs unless the complainant takes specialist or legal advice or looks to challenge the decision through a Court process.

The Office of the Complaints Commissioner operates under the umbrella of a company limited by guarantee (Registered number 5171304) and its registered office is at: 3rd Floor, 48-54 Moorgate, London EC2R 6EJ. The Complaints Commissioner is a director of the company.

The Commissioner can be contacted as follows:

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

Telephone: 020 7562 5530

Fax 0207 256 7559

Email: complaintscommissioner@fsc.gov.uk

Website: www.fsc.gov.uk

2 Bank of England and PRA Statistics from 1 April 2013 to 31 March 2014

As the PRA is a subsidiary of the Bank of England and as a single Complaints Team is responsible for the investigation of complaints against both of these bodies, the Commissioner intends, in this Annual Report, to combine his report about the complaints he has received about both of these regulators.

2.1 Bank of England Statistics

The Commissioner did not receive any complaints concerning the Bank of England in respect of its oversight of the banking clearing houses and payment settlement schemes during the period 1 April 2013 to 31 March 2014.

2.2 Prudential Regulation Authority Statistics

The Commissioner received five complaints about the PRA during the period 1 April 2013 to 31 March 2014. The complaints the Commissioner received were related to similar issues and were all made by consumers.

Although the PRA had initially excluded the complainants concerns from consideration under the Complaints Scheme, following referral to the Commissioner it became apparent that the issue giving rise to the complaint was subject to complex and intensive ongoing regulatory action by the PRA. As such, although the Commissioner could understand why the PRA had excluded the complaints from the Complaints Scheme he felt that, due to the ongoing regulatory action another outcome for the complainants may have been a more appropriate way of handling the complaints. As such, and in accordance with a request he received from the PRA, the Commissioner deferred his investigation into the complaints until such time as the PRA had completed its ongoing complex regulatory action. Once that ongoing action has been completed the five complainants may be able to refer their complaint back to both the PRA and, if they remain unhappy, to the Commissioner.

3 FCA/FSA Statistics from 1 April 2013 to 31 March 2014

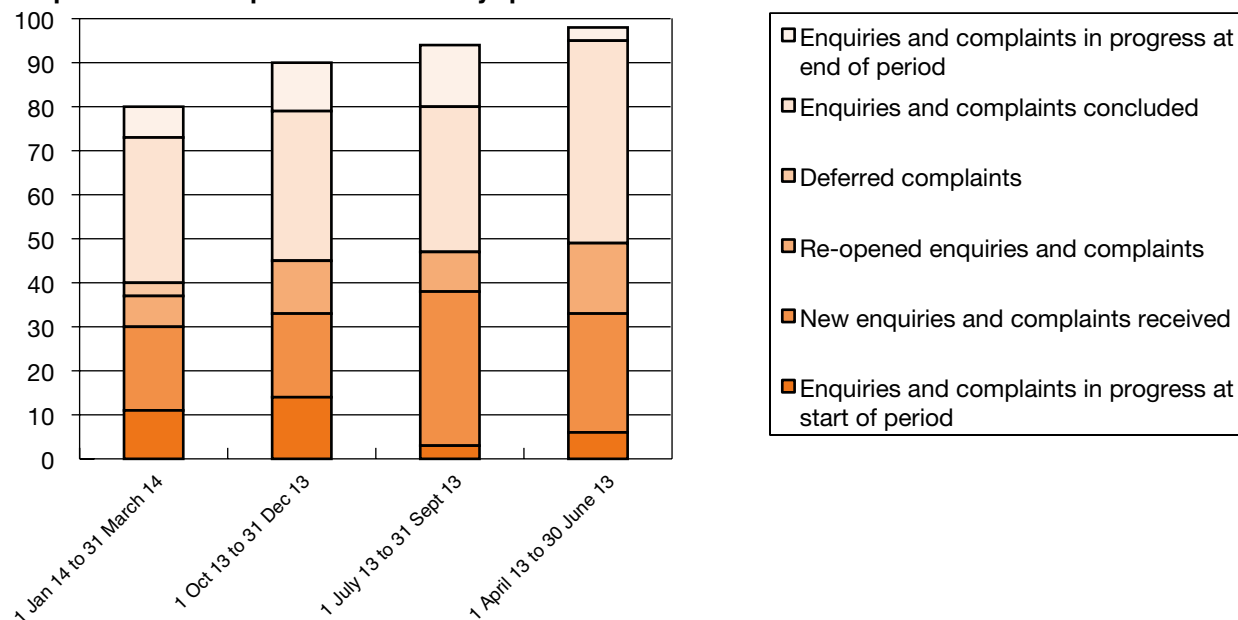
3.1 Enquiries and complaints received during the year

The table below shows the number of enquiries and complaints received by the Commissioner during 2013-14. The volume of new and re-opened complaints received during the year amounted to 144 for the year ended 31 March 2014 as compared to 127 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 second quarter.

Table 1 Enquiries and Complaints Received during 2013-14

	2013-14	1 Jan 14 to 31 March 14	1 Oct 13 to 31 Dec 13	1 July 13 to 30 Sept 13	1 April 13 to 30 June 13	2012-13
Enquiries and complaints in progress at start of period	6	11	14	3	6	10
New enquiries and complaints received	100	19	19	35	27	108
Re-opened enquiries and complaints	44	7	12	9	16	19
Deferred complaints	3	3	0	0	0	3
Enquiries and complaints concluded	146	33	34	33	46	128
Enquiries and complaints in progress at end of period	7	7	11	14	3	6

Enquiries and complaints received by quarter 2013-14



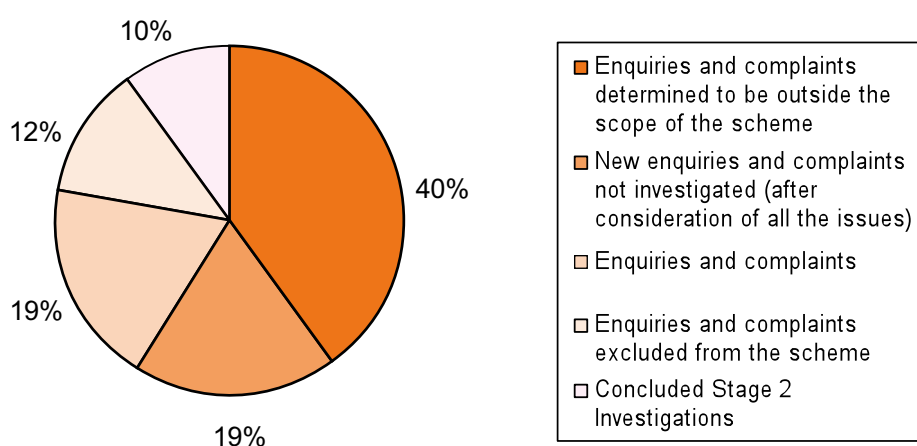
3.2 Enquiries and complaints concluded during the year

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

Table 2 Enquiries and Complaints concluded 2013-14

	2013-14
Enquiries and complaints determined to be outside the scope of the scheme	59
New enquiries and complaints not investigated	27
Post investigation enquiries/complaints	28
Enquiries and complaints excluded from the scheme	17
Concluded Stage 2 Investigations	15
Total enquiries and complaints concluded	146

2013-14 Complaint Summary



The number of complaints and enquiries concluded during the year amounted to 146 compared to 128 in the previous year. Complaints which were excluded from the scheme usually relate to the performance of the FSA's and FCA's legislative functions under the FSMA and 2012 Act respectively. 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 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 and/or FCA 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 or FCA and the complainant explaining in detail the reasons for the decision taken.

3.3 Stage 2 investigations during the year

The table below gives information about the Stage 2 investigations undertaken by the Commissioner during 2013-14

Table 3 Stage 2 investigations 2013-14

Stage 2 Investigations	2013-14
At start of period	3
Started during the period	15
Concluded during the period	15
In progress at end of period	3

The Commissioner tends to publish (in an anonymised form) Stage 2 Final Decision letters on the OCC website except in cases where the complainant explicitly asks the OCC not to. Neither the FSA nor the FCA have asked the Commissioner not to publish a decision.

Of the Stage 2 investigations the Commissioner undertook during the period 14 were in relation to the FSA with the remaining one being in relation to the FCA.

Common themes amongst the Stage 2 investigations concluded during the period centred around the protection both the FSA and the FCA are able to provide to consumers in relation to ‘boiler room’ operations. 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 and has also made a further comment in the ‘Themes’ section of this Annual Report. This year, there were, additionally, a number of complaints connected to the amount of information the regulator can disclose generally in relation to ongoing action it is taking or the action it has taken against a regulated firm.

The Commissioner upheld a number of complaints during the period (some not published due to a request from the complainant). The total number of Stage 2 decisions published during the period was 11.

3.4 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 2013-14

Type of complainant	1 April 13 to 31 March 14
Individual Members of Public	128
Independent Financial Advisers	7
Solicitors	2
Members of Parliament	0
Firms/Groups	8
Third Parties	1
Total enquiries and complaints concluded	146

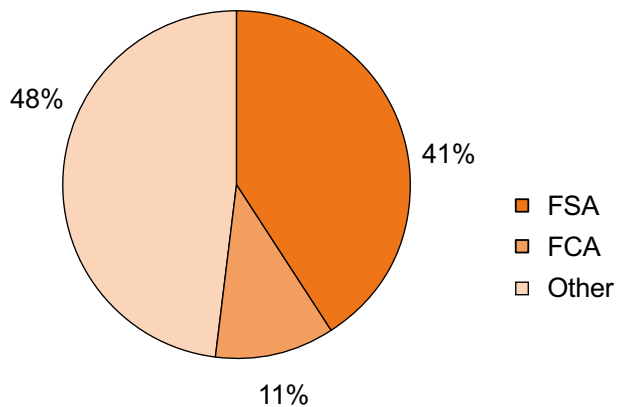
The figures shown in the table above relate to complaints which were considered under the complaints scheme.

3.5 Organisation to which new enquiries/complaints relate to

The Commissioner received 100 new complaints and enquiries during the period. The information below highlights that 48 of these related to enquiries which were not for his office. Of the remaining 52 new enquiries the Commissioner received, and where he has been able to assist the complainant, 41 related to the FSA with 11 relating to the FCA. It was not unsurprising that the majority of the complaints the Commissioner received where he was able to assist a complaint related to the FSA given that the FCA only assumed responsibility as the conduct regulator on 1 April 2013.

Table 5 Organisation to which new enquiries/complaints relate to 2013-14

Organisation to which new enquiries/complaints relate 2013-14



4 Themes and Issues

As the Commissioner set out in Section 2 of this Annual Report the complaints he received against the PRA all related to a similar issue which in turn related to a complex and intensive ongoing regulatory action against a major firm. As the Commissioner has deferred his investigation into the five complaints he received, until such time as he is approached by the complainants once the PRA has completed the regulatory action, the Commissioner will make no further comment about these complaints.

However, the Commissioner has dealt with a variety of other complaints during the course of the last year. Some fell within his jurisdiction while others, that were not ones that he could investigate, were re-directed to the appropriate organisation. From an examination of those relating to the FCA and the FSA which fell within the Commissioner's jurisdiction a number of recurring themes emerged during the course of the year, some of which are listed below.

As all of the following relate to complaints about the FSA, the FCA or both of these organisations, the Commissioner has simply referred to the organisation as the regulator.

Financial Services Act 2012

Since the publication of the Commissioner's last Annual Report the 2012 Act came into effect on 1 April 2013. The 2012 Act created three new relevant bodies subject to the complaints procedures carried out by the Commissioner. They are the PRA and the FCA with the third body being the Bank of England but only in respect of its oversight of the banking clearing houses and payment schemes.

The new legislation resulted in new rules governing the Complaints Scheme and a new Transitional Complaints Scheme being introduced. The new Complaints Scheme rules "Complaints against the Regulators" was issued in PS13/7 and introduced a new Transitional Complaints Scheme which now only allows the Commissioner to consider complaints stemming from complaints about FSA and events which occurred after the 1 December 2001. It is no longer possible to consider complaints concerning events which pre-date the appointment of the FSA as the financial services regulator (i.e. 1 December 2001).

Since the introduction of the new Complaints Scheme the Commissioner has continued to address a number of ongoing and new complaints about the actions or inactions of the FSA where the Stage 1 process has not satisfied the complainant. In addition the Commissioner's office has now started to address complaints about the actions or inactions of the FCA and the PRA.

Publication of Decisions

Previously, when the Commissioner had concluded his investigation, only cases where he had undertaken a Stage 2 investigation were published on his website. However, during 2013 to assist with the transparency of the work and investigations he undertook he decided that he would look to publish all of the Decision Letters that he issued on all of the investigations he had undertaken.

This means that in addition to the Final Decisions (issued after a Stage 2 investigation) the Commissioner will also publish the Decision Letters for cases which he has chosen not to investigate further and those which he had excluded from the Complaints Scheme and the Transitional Complaints Scheme.

However, it should be noted that when a complainant refers a complaint to the Commissioner, the decision on whether the Decision Letter is published on the Commissioner's website rests

with the Commissioner (although he will usually comply with the complainant's wishes). For clarity the Commissioner would emphasise that, although the regulator is able to comment upon his Decisions and the contents of the Decision Letters, regardless of the regulator's views on the Commissioner's findings, the regulator is unable to prevent the publication of a Decision Letter. The regulator has not requested that the Commissioner refrain from publishing any of his Final Decisions.

Rationale for the Regulator's Decisions

The Commissioner has received complaints from a number of individuals that the action taken by the regulator was inappropriate given the information available to it. Clearly to allow the Commissioner to consider complaints of this nature it is important that the regulator is able to provide sufficient documentation to support its decision making process. This is particularly important where decisions made in good faith at the time, with the benefit of hindsight, later could appear to be incorrect or events could possibly have been handled differently.

In most cases, when asked to do so, the regulator is able to provide detailed contemporaneous notes which set out the regulator's rationale for making the decisions that it did or to support the actions that it took. By doing this the regulator is able to provide a rationale showing why it made the decisions that it did and, more importantly, show that the decisions that it made were rational and proportionate.

However, it is disappointing that in some cases it is unable to do this. In one such case the regulator was asked to provide a rationale to explain why it felt that it was appropriate to take the action that it did and then, when asked to review its decision, was again unable to provide a clear rationale to support its decision and actions. Clearly where the legislation (both FSMA 2000 and the 2012 Act) impose a responsibility upon the regulator to balance its judgements and to show fairness it is essential that the regulator can always provide a rationale (completed at the time) to show that the required assessments were carried out.

Where the regulator is unable to do this it is not acceptable for the regulator to adopt a position that it followed its normal procedures as its rationale. Likewise, it is not acceptable for the regulator to state that it would have considered the position but did not document it. Where this is the 'rationale' it must be assumed that the regulator did not consider the situation adequately and therefore did not comply with its requirements as set out within the relevant legislation (irrespective of what the procedure guide may state). It is equally disappointing in the case in question those making the decisions appear to have misunderstood the regulator's duties as set out within the relevant legislation.

The Regulator's Responsibilities

The Commissioner has continued to receive a number of complaints alleging that the regulators (both the FSA and the FCA) have not had sufficient regard to its statutory duty to protect consumers.

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 continues to understand that increasingly those running the 'boiler room' scams are frequently using the details (names and regulator's 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/FCA authorisation number, any general check with the Conduct Regulator will indicate that the ('boiler room') firm is authorised by it. The Commissioner is also aware that those running the 'boiler rooms' in question can be persuasive. Despite the conduct regulator 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 any regulator 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.

The Commissioner has also received a number of referrals from consumers who are unhappy with business decisions which have been taken by listed firms and feel that due to the 'problems' which these firms face (and the impact this is having on the consumer) that the regulator should undertake an investigation into the firm. Whilst the Commissioner does have some sympathy for the consumer, particular where they have lost a considerable amount of money as a result of an investment made into the firm, the Commissioner is mindful that the regulator's responsibility is limited to ensuring that there have been no breaches of the relevant legislation.

In short this means that the regulator cannot investigate or review decisions made by the board of a firm (be it a regulated firm or one whose shares are listed on a regulated market) unless these decisions have led to a breach of one of the regulator's rules. Where the decisions made by the board amount to a claim of a breach of the fiduciary duty owed to a shareholder or fraud then the appropriate manner to challenge the directors is for the shareholders to seek to challenge the directors through a Court process or by referral to the police.

The use of the Complaints Scheme to stop or challenge the outcome of Enforcement Action.

The aim of the Complaints Scheme is to allow those who are unhappy with the actions or inactions of the regulator to be able to challenge the regulator's actions. However, the Complaints Scheme is not designed as a way in which the subject of Enforcement Action by the regulator can stop or challenge the completion or outcome of Enforcement Action the regulator is undertaking.

The Enforcement Process will often involve the conduct of an individual being challenged in a robust manner. The Commissioner accepts that this unfortunately will not be a pleasant experience for the subject of the Enforcement Action and will often lead to claims that during interviews, by asking 'searching' questions and challenging the responses provided by the subject of the Enforcement Action, the regulator's interviewer is acting inappropriately.

The Commissioner holds the view that the Complaints Scheme should not prevent the regulator undertaking Enforcement Action particularly as the regulator has a statutory time frame by which it must issue a Warning Notice to the subject of the investigation. In most cases the Commissioner feels that the appropriate forum to challenge the regulator's actions (specifically any 'rebuttal' of answers provided during an interview) is through the Regulatory Decision Committee (RDC) or the Upper Tribunal.

The Commissioner also holds the view that where a settlement is reached between the subject of the Enforcement Action and the regulator, the Complaints Scheme cannot be used as a way of reopening the investigation and/or challenging the agreed settlement. The Commissioner feels

that it is worthy of mention that, where the subject of the Enforcement Action is unhappy with the terms of the proposed settlement they should either look to negotiate a revised settlement with the regulator before settling or refer the matter to the RDC as, in the Commissioner's view, settlement should bring finality to the whole Enforcement Process.

Additionally, when agreeing a settlement with the subject of Enforcement Action the Commissioner believes that the regulator should ensure that the settlement agreement brings the entire process to a complete conclusion and does not allow certain aspects of that process to be reopened. In the Commissioner's view where the settlement agreement allows certain aspects of the investigation to be considered under the Complaints Scheme this could, in effect, if the Commissioner was to find against the regulator, question the entirety of the regulator's actions and in turn any penalty which it (or the RDC/Upper Tribunal) applied to the individual or firm which was the subject of the Enforcement Action.

The Pension Review

Over the past 12 months the Commissioner has received a number of complaints from Consumers who were victims of pension mis-selling and received redress under the regulator instigated Pension Review by way of pension augmentation. The consumers who have contacted the Commissioner have now come to retire and found that the benefits they are (likely) to receive are less than those which they believed that they were likely to have received from their employer's pension scheme.

All of the consumers who have contacted the Commissioner have looked to the regulator either to provide additional redress or to instruct the relevant adviser/provider to provide additional redress.

As many of the consumers who have contacted the Commissioner accepted redress before 1 December 2001 the Commissioner has been unable to consider these complaints as the rules of the new Transitional Scheme exclude complaints about events which occurred prior to the 1 December 2001. However, a number of complainants did accept redress after 1 December 2001 and therefore can be admitted into the new Transitional Complaints Scheme.

Whilst the Commissioner has sympathy for those consumers who accepted redress after 1 December 2001, he is mindful that a consultation exercise was undertaken prior to augmentation being selected as the most appropriate remedy for offering redress to those who had neither retired nor were imminently about to retire. The Commissioner is also mindful of the fact that, when conducting the augmentation consultation exercise, consideration was given to what assumptions should be used. The Commissioner would also emphasise that, he understands that the guidance the Securities and Investment Board (SIB) and Personal Investment Authority (PIA), as the relevant regulators at the time, issued to the industry was based upon the feedback it received from all interested parties (including consumer groups) during the consultation process.

Although the Commissioner has sympathy for the position the affected consumers now find themselves in, it does not mean that the regulator was wrong to allow the use of assumptions or that the recommended assumptions were wholly incorrect. Unfortunately, given the number of variables involved in the augmentation exercise, specifically the reliance upon future growth and interest rates, making any prediction was always likely to be difficult. The Commissioner would stress that, when the consultation exercise was undertaken in the mid-1990s, nobody could have predicted the prolonged and adverse economic conditions which started in the late 1990s and have continued to date (with particular emphasis being placed upon the events which started in 2008).

The Commissioner is also aware that whilst, in many cases the assumptions which were applied have not produced the expected benefits, redress was accepted in full and final settlement of all future claims arising out of the transfer. This is important as it clarifies that, by accepting the offer of redress, the consumer does so on a full and final basis. This has the effect of meaning that, by accepting the offer/augmentation, the consumer accepts the future risks associated with calculation (i.e. that the envisaged benefits may not be achieved) and that they are no longer able to make any future claims under the plan regardless of the shortfall at retirement.

Electronic applications and reporting

The Commissioner has also received complaints from members of the industry who are unhappy that the regulator has required them to submit electronic applications to become authorised and to submit their required regular reports in an electronic format.

The Commissioner can appreciate why some firms may prefer to submit applications and reports on a paper based basis. Nevertheless, the FSA (as the regulator which preceded the FCA) sought views from the industry on this proposal, and the majority of the industry were in favour of its introduction. Given this, and as the Commissioner feels that regulation is now in the electronic age, the Commissioner does not believe that it is unreasonable for the regulator to impose this requirement upon firms especially as, to reduce costs, the regulator itself intends to use this medium for communicating with firms.

The Commissioner is also mindful that the regulator has to be mindful and economical of how it utilises its resources. Adopting this approach, where all firms are required to submit electronic applications together with a valid email address so that the regulator can correspond with firms (together with a requirement that all required reports are submitted electronically), allows the regulator to achieve this statutory objective.

Exceptional Circumstances

The Commissioner has received a number of complaints from consumers who are either unhappy with the regulator's decision to defer its investigation of a complaint until such time as its ongoing regulatory action has been completed or with the time it is taking to complete its investigation of a complaint.

The Commissioner can understand why such situations can be frustrating for complainants and why they would like the Commissioner to intervene. However, regard must be made to the rules of the Complaints scheme which states, at paragraph 6.12, that "*before the relevant regulator(s) have had the opportunity to conduct or complete an investigation, the Complaints Commissioner will consider whether it would be desirable to allow the relevant regulator(s) that opportunity before conducting his own investigation*". The inclusion of the requirement setting out that the "*Commissioner will consider whether it would be desirable*" in the Commissioner's view means that, for him to intervene, the complaint must show why their circumstances are exceptional i.e. the complainant must provide evidence or an explanation setting out why it would be inappropriate or unjust for the complainant to await the outcome of the regulator's own investigation before the Commissioner intervenes.

The Commissioner feels that the two examples may assist with the clarity of his views and his approach to this difficult position. Where a complainant has already incurred a financial loss, this would not, in the Commissioner's view make the circumstances exceptional, as, even if the loss was substantial, the loss has already occurred and will remain whether the Commissioner intervenes or not. However, if the complainant faces bankruptcy proceedings and these proceedings are *directly related* to the regulator's actions or inactions (i.e. the proceedings would not have occurred has it not been for the regulator's actions or inactions) then this may amount to exceptional circumstances. Upon consideration and depending upon the

complainant's claims, the Commissioner may therefore feel it necessary for him either to liaise with the regulator or, alternatively, himself to undertake further investigations before deciding "*whether it would be desirable*" for the regulator to undertake or complete its own.

Some Concluding Thoughts

This being my final report it is inevitable that I have some generalised views formed over the past 9½ years. When I first took up this post I followed, what I was told, was a period when the legislation putting this office in place was not working well, for whatever reason. I believe that in addressing what I thought were the problems that the regulator would come to regard my input into its activities in a more positive light. I took the view that any complaints system if carried out with genuine independence and with the clear purpose in mind to help the regulator both the industry and the consumer would inevitably benefit. Over the years, after some initial defensiveness on the part of the regulator, that turned out to be the case to the benefit of everyone involved.

Latterly, however, I have noticed an increasing and regrettable defensiveness on the part of the regulator creeping back in when faced with what it regards as problematic views. This has been coupled with what I have detected to be a certain heavy handedness when involved in its enforcement procedures. This report is not the place to identify individual decisions arrived at or currently under consideration but it is the place to signify my concerns.

Statutory regulation by its very nature is not an easy task nor sometimes is it a very pleasant activity for those involved. Uninformed criticism is commonplace as well as uninformed allegations of either being too tough or exercising a light touch unnecessarily. Getting it right is a constant battle for all concerned. Nonetheless this office, in that context, can assist. It is independent of all and has considerable experience of looking for hidden agendas as well as invalid complaints particularly by the Industry. Consequently if it is to be of any value, as it should be, to the regulator its judgements should be recognised for what they are, namely an independent view following a thorough investigation. All organisations need to be accountable particularly where they are the repository of regulatory powers that can, in some cases, be draconian in their impact, although usually entirely justified.

My current wish therefore is that the regulator continues to regard this office as an opportunity to learn from mistakes that are inevitable in any large organisation so that it can always be regarded as the successful and respected regulator it seeks to be.

My final wish is to thank all my staff who have been with me since I arrived and set up this office in its present form. They are a credit to any independent complaints scheme that is charged with handling complex and demanding investigations.

APPENDIX A**Expenditure**

Profit and Loss Account
For the year ended 31 March 2014

	2014	2013
	£	£
Administrative expenses	(567,405)	(556,332)
Other operating income	567,405	556,332
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 2014 nor 2013, other than those included in the profit and loss account.

The audited accounts for the period ending 31 March 2014 are available from the Registrar of Companies, Companies House, Crown Way, Maindy, Cardiff, CF14 3UZ. The company's auditors are Bishop Fleming.

