Complaints Commissioner

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Final report by the Complaints Commissioner

Complaint number FCA00010 by Clive Rosier

The complaint

1. This complaint is the culmination of a long series of problems which you, Clive Rosier, have encountered in your dealings with the FSA and FCA.

What the complaint is about

2. Although the elements of your complaint are many and complex, I can categorise your concerns under the following headings:

   a. The way in which the FSA issued a news release arising from enforcement proceedings taken against you;

   b. The way in which the FSA handled proceedings in the Upper Tribunal;

   c. The way in which the FCA showed your register entry following the conclusion of the court proceedings;

   d. The way in which the FCA handled the recovery of a debt against you;

   e. The manner and protracted nature of the handling of your complaint about these matters.

History

3. It is necessary to summarise the long history of this complaint. I must start by emphasising that this history contains only what I consider to be the main events in a record which runs to well over 1,000 pages, all of which I have studied. This summary is intended to give a flavour of the problems into which this complaint has run, and to identify the main areas of dispute. It is not, in my view, necessary to record every interaction, although I have had to go into considerable detail.

(i) The initial investigation into your firm and court proceedings

4. The Financial Services Authority (FSA - predecessor of the FCA) undertook an investigation into your firm, Bayliss & Co (Financial Services) Limited, starting in 2010. In 2014 the Upper Tribunal upheld the FSA's decisions to remove your firm's permissions, to impose a £10,000 fine upon you, to withdraw your approvals to perform significant influence functions in relation to your firm, and more generally to prohibit you from performing any significant influence functions in relation to regulatory activities. You appealed these findings to the Court of Appeal, but were not successful, the proceedings concluding in 2017. The findings of the court are binding upon me, and I include this description as background only.

(ii) The news release

5. During the proceedings before the Upper Tribunal, the Judge considered the FSA's behaviour in relation to an emailed news release about your case which had been issued to certain publications in 2013. You had applied for publication of the FSA's notices to be stayed pending the outcome of the Tribunal proceedings, but the Tribunal had not agreed (although it had agreed to a shorter delay). When you saw the news release, you complained to the FSA that it was inaccurate. The FSA responded to you that it had 'complied fully with Judge [X's] directions on publication' and denied that the press release had been inaccurate or defamatory.

6. In fact, the release had been significantly misleading. It failed to give proper prominence to the fact that the FSA's decisions at that time were subject to further proceedings; its headline using the word 'banned' was misleading; a quotation was attributed to a senior member of staff who had not in fact seen it; the procedure for approvals of the release had not been followed; and you had been referred to by your surname only.

7. The Judge in the Upper Tribunal was highly critical of the FSA's approach to the press release. He said that the FSA's claims that it had complied fully with his directions had been 'somewhat disingenuous'; that the FSA had 'simply adopted a policy of blanket denial without investigating the merits of [your] complaint'; 'the initial attitude the Authority demonstrated in response to [your] complaint fell well

below what the Authority would expect from firms it regulates when handling customer complaints'; and that 'Such an approach can be an indication of a cultural failing'.

8. The Judge pointed out that the FSA had only admitted its errors after you had referred the matter to the Tribunal, and that the FSA had initially apologised to the Tribunal only and not to you.

9. In the light of these serious concerns, the Judge made six recommendations for the FSA's future handling of news releases. The Judge also drew your attention to the possibility of a referral to this Complaints Scheme.

10. You complained to me about these matters during the proceedings in 2014, and I referred your complaint to the FCA. It decided – and I agreed– that your complaint should be deferred until the outcome of the proceedings was known.

(iii) The conclusion of the court proceedings

11. In October 2017, at the conclusion of the court proceedings, the FCA published the final decision notices. Against your entry in the Financial Services Register the word 'banned' appeared. There is no dispute that this occurred, although the precise presentation of the word 'banned' is in dispute, and I deal with that later in this report. On 6 October, the FCA identified the error, the next day you complained about it, the erroneous entry was removed three days after that pending further consideration, and the matter was referred to the FCA Complaints Team.

12. You reminded the FCA on 6 October 2017 that the complaint matters deferred from 2014, including the possibility of compensation, should now be considered. Your complaint, therefore, now encompassed the deferred events of 2014 and the new complaint about the 2017 register entry.

13. On 30 October 2017 the FCA issued you with a letter about the money you were required to pay as a result of the conclusion of the court proceedings. You responded on 9 November essentially saying that the debt should not be pursued at that stage because of your outstanding complaint and the fact that, in your view, the Upper Tribunal's requirements had not been met. On 27 November, the FCA decided that the debt should be pursued.

iv) The handling of your complaint

14. On 2 November 2017 the FCA sent a letter summarising your complaint as follows:

> *Part One*
>
> *The FCA is in contempt of directions from the Upper Tribunal (Tribunal).*
>
> *Part Two*
>
> *The information in a Notice is deliberately misleading and does not represent the facts of compliance breaches 10-20 years ago when the Tribunal found no detrimental consequences to consumers.*
>
> *Part Three*
>
> *You believe there were unnecessary derogatory comments against your name on the Register. You consider it inappropriate to display 'BANNED' in capitals and red.*

15. You responded on 6 and 10 November 2017 explaining why this summary failed to encompass a number of matters, some of them deferred from 2014. On 5 December, you were told that the investigation of your complaint had been transferred to another investigator, and that you would receive a more detailed update by 19 December. This was adjusted to 5 January following further exchanges between you and the Complaints Team.

16. On 5 January 2018, the FCA sent you a revised description of your complaint as follows (referring back to the original description in paragraph 14 above):

> *Part One*
>
> *I am afraid that in the course of reviewing your complaint, Part One of your complaint has been incorrectly assessed as being within the scope of the Scheme. Please accept our apologies for this….As you will be aware, Part One of your complaint concerns:*
>
> *"The FCA is in contempt of directions from the Upper Tribunal (the Tribunal)."*
>
> *Paragraph 3.6 of the Scheme explains that the FCA "will not investigate a complaint under the Scheme which they reasonably consider could have been, or would be, more appropriately dealt with in another way"……If you*

believe that the FCA has failed to comply with the directions of Judge [X] then the appropriate way was for this matter to be resolved refer this make [sic] to the Tribunal and to make representations to it on this……

Parts Two and Three

I am continuing to review whether these parts of your complaint are within the scope of the Scheme and I hope to revert back to you in the next two weeks about this.

Part Four

You have explained in your letter of 10 November that you would like to complain about the conduct of Mr [X]. I note that you have referred to the criticisms made by the judge in his letter. I would be grateful if you could expand on your allegations about Mr [X], and tell us how you would like the matter to be resolved by us.

I would be grateful if you could provide me with your specific allegation on Part Four by 18 January 2018.

17. You responded on 12 January (and again on 31 January), complaining about the FCA's decision to exclude a part of the complaint which had already been accepted, and drawing attention to the extensive information already available to the FCA in relation to your complaint.

18. On 8 February 2018 the FCA apologised for failing to acknowledge your correspondence, but saying that it was 'unable to provide you with a more detailed response at the current time'.

19. There followed correspondence between you, the Upper Tribunal and the FCA, following which the FCA conceded on 13 March 2018 that it should not have excluded Part One of your complaint.

20. The FCA wrote to you on 23 April to say that it was 'aware that a number of response deadlines have been missed', apologising, and saying that it aimed to respond by 27 April.

21. On 2 May, the FCA sent you a further revised description of your complaint. You objected to this, principally that it appeared to exclude from your complaint an allegation about the Tribunal having been misled – the FCA said that this should

have been dealt with in the proceedings. It also said that your complaint about the delays in handling the complaint was being treated as a separate complaint.

22. The FCA had another attempt at formulating your complaint on 23 May. This time, it excluded another part of your complaint – that the FCA had failed to fulfil undertakings made to the court – on the grounds that that should have been dealt with in the court. You objected to this revised formulation.

23. In August 2018, it became apparent to the FCA that the complaint you had made in November 2017 about the debt (see paragraph 13 above) had not been responded to. In the same month, you sought my help – having made inquiries of the FCA, I responded that it appeared that both complaint investigations were reaching their conclusion, and it was best to await that.

24. On 20 August 2018, the FCA apologised for having failed to respond to your email of 30 May, and gave its response. You wrote a long email on 23 August explaining why you disagreed with the FCA's analysis.

25. The FCA issued its final description of your complaint on 30 August (with which you disagreed), and proceeded to investigate it.

26. On 7 September 2018, you received an apology from the FCA for the fact that the FCA 'could have done more to progress your complaint sooner', and for the delay in dealing with your complaint about the delay.

27. The FCA intended to complete its investigation by 21 December 2018, but this date was pushed back, and the FCA's decision was finally issued on 21 February 2019.

What the regulator decided

28. The FCA's principal decisions were these:

    a. You were offered £175 as a gesture of goodwill for the delays in completing the review of your complaint;

    b. The FCA reiterated its apologies for the inaccuracies in the news release about the decision notices;

    c. The FCA apologised for 'any inconvenience' which was caused by the erroneous placing of the word 'banned' against your name in the Financial

Services Register, saying that the FCA's Enforcement Department had failed to follow its own procedures. The Complaints Team identified weaknesses in those procedures, and made recommendations for improvement. The Complaints Team also confirmed that the word 'banned' had been permanently removed from your record;

d. The FCA confirmed its earlier position that your complaint that FCA staff members had not fulfilled their promises or assurances to the Tribunal Judge was excluded on the grounds that it should have been dealt with in court;

e. The FCA did not uphold your complaint that it had failed to implement the recommendations of the Tribunal Judge – it said it was satisfied that the recommendations had been implemented;

f. The FCA confirmed its earlier position that your complaint that FCA staff had misled the Tribunal was excluded on the grounds that it should have been dealt with in court;

g. The FCA partially upheld your complaint about the head notes on the FCA's website in relation to your fines: the FCA accepted that the head notes could have been better drafted to reflect the fact that the finding of unfair treatment of customers related only to complaints handling, and not the treatment of customers generally;

h. The FCA rejected your complaint that the drafting of the fines notice implied that you and your firm were in breach of Principle 1 (the requirement for conducting business with integrity);

i. In addition to the £175 offered for the delays in handling your complaint, the FCA offered you £250 for distress and inconvenience.

Why you are unhappy with the regulator's decision

29. You responded to the FCA's decision by raising the following principal points:

a. You disagreed with the way in which the FCA had characterised your complaint as being various elements, whereas you considered it was essentially one complaint;

b. You considered that the FCA had failed to address the question of why the word 'banned' had appeared so 'gaudily/glaringly' against your name, or why

it had taken so long to permanently remove the word, thus preventing the sale of your business;

c. You considered that the FCA had wrongly exonerated senior members of staff;

d. The delays had been large, with inadequate explanations;

e. You had been offered £175 as a goodwill gesture, despite having spent 'many thousands of pounds';

f. The complaint had been inadequately particularised;

g. The FCA had been wrong to exclude the complaint about the Enforcement Team's role in relation to the news release;

h. The FCA had failed to investigate the complaint about misleading the Tribunal;

i. The FCA had failed to deal adequately with your point about unfair treatment of customers;

j. The FCA had not dealt with your point about the failure to answer your complaint about the pursuit of the debt.

Preliminary point

30. You have responded in considerable detail to the analysis in my preliminary report, and I have addressed your main points below. There is, however, one point which I should clarify. You have queried whether the FCA's Complaints Team meets the statutory requirement for an independent investigation under the Complaints Scheme. The position is that section 84(1)(b) of the Financial Services Act 2012 requires the regulators to appoint an independent person to investigate complaints (that is me), but section 87(10) permits the regulator to make 'arrangements for the initial investigation of a complaint to be conducted by the regulator' (in your case, the FCA Complaints Team).

My analysis

31. There are effectively two phases to this complaint.

32. The first phase relates to the FSA's handling of matters in 2013/14 leading up to the decision of the Upper Tribunal on 21 May 2015. It is clearly established that

the FSA's handling was poor – the question is how poor and whether the FSA's behaviour was simple incompetence or worse. Those matters were put on hold under the Complaints Scheme until the outcome of the court proceedings and the issuing of the Final Decisions in 2017.

33. The second phase relates to the way in which the decisions appeared on the register, the thoroughness of the FCA's complaints investigation and its conclusions, and the admitted delays in the complaints handling.

(i) First phase

34. The events surrounding the issuing of the news release during the Tribunal proceedings are described in paragraphs 5-10 above. In my view, they show a disturbing disregard for accuracy as well as a disregard for your rights, coupled with procedural incompetence. Of particular note is the FSA's initial blanket denial of your complaint, and its failure to apologise to you until prompted by the Judge.

35. These matters alone, as established by the Judge's findings and criticisms, clearly merit censure under this Scheme.

36. Your complaint about the proceedings includes an additional matter. Your claim is that an FSA witness deliberately misled the Tribunal about the supposed absence of other FCA staff members who could have given additional evidence to the Tribunal. This is connected with your overall complaint that the FCA has acted in bad faith.

37. The FCA excluded this element of your complaint on the grounds that you could have, or should have, raised the matter in the court proceedings. The FCA said:

> *If you believed that [the FCA staff member] was misleading the Tribunal when providing his answers, either to you, or when he gave his evidence-in-chief, then it was open to you make representations on this basis to the Tribunal. The judge would then have made a decision on this.*

38. You have made the point – which I do not think that the FCA has ever satisfactorily addressed – that at the time you did not know who was available in the court. I have sympathy with your position. However, I do not propose to take this particular element of the complaint further for the following reasons:

a. As a general principle, questions about what happened in court proceedings should be dealt with through the courts, not through this Scheme. The Complaints Scheme is not a court of law, and the Scheme includes a specific provision that it will not be used for complaints which the regulators or I reasonably consider could have been more appropriately dealt with in another way (for example, through legal proceedings);

b. The Judge made it clear that if you were alleging bad faith, you should pursue the matter through the courts;

c. The Judge (in paragraph 61 of Appendix 2 to the judgment) made it clear that the evidence available to him (also available to me) was inconsistent with the notion that the FSA's investigation had a deliberate intention to mislead in preparing the news release.

39. Finally, in relation to your suggestion that the FCA had failed to implement the recommendations of the Tribunal Judge, I have seen clear evidence that the recommendations were addressed. The fact that further errors, of a similar nature unrelated to news releases, were made following the conclusion of the court proceedings, is not evidence that the recommendations were not addressed. They were. I agree with the FCA's decision on that matter.

(ii) Second phase

40. The second phase started when the proceedings against you and your firm concluded in October 2017. At that point:

a. The issue of the way in which the sanctions against you were shown on the register arose, and

b. The issue of the FCA's decision to chase you for a debt arose, and

c. The complaint matters deferred from 2014 were revived.

41. I start with the issue of the changes to your register entry. The FCA upheld this element of your complaint, and gave the following reasons:

You received a Partial Prohibition from the Upper Tribunal prohibiting you from carrying out any Significant Influence Functions (SIF) as set out in the Final Notice.

From the information available, I have identified the following issues with the process followed when updating the Register in this case:

1. *Enforcement's internal policy document could be clearer on who/which department to contact when the Register needs to be updated – my review found that Enforcement contacted the Authorisations division to update the Register when this isn't part of the process;*
2. *The process does not appear to have a mechanism to check the status of an individual/firm on the Register when the update goes live;*
3. *There does not appear to be a mechanism in the policy to temporarily remove or suspend a status if there is a query over whether the information on the Register is correct;*
4. *The process guide which sets out the status to be applied to an individual subject to a Partial Prohibition wasn't circulated internally in Enforcement, resulting in the wrong status being requested; and*
5. *The internal memo which was prepared explaining the updates which needed to be added to the Register doesn't contain information relating to the status that should appear on it.*

I am satisfied that Enforcement did not follow its own process when requesting Authorisations to update your individual status on the Register.

*I am therefore upholding this part of your complaint, as the Register incorrectly displayed the status of "banned" against your individual entry. The status on your entry was corrected on 10 October 2017 and I can confirm that the status "**BANNED**" has been permanently removed. Please accept our apologies any inconvenience this may have caused to you.*

42. I am satisfied that that explanation was accurate, and I welcome its candour, but it does not really answer your question, which is *why* did the error occur? When you pressed this point after the FCA had issued its decision, you received the following explanation:

*As explained in my decision letter, the reason why the status "**BANNED**" appeared was because Enforcement failed to follow its own processes when*

updating the Financial Services Register (the Register). The information available to me suggests this was a mistake due to a lack of awareness of a particular process guide which explained the status to be added to the Register for a Partial Prohibition. This is set out in point 4 under Part Two in the decision letter.

I note Enforcement's email to you dated 10 October 2017 which states:

> We are looking into this matter with the relevant areas within the FCA. In the interim the "BANNED" wording has been removed from your entry on the Financial Services Register. The Disciplinary section of the register referring to the SIF prohibition that has been imposed will remain as is.

At the time of emailing you, Enforcement was trying to establish whether the status was correct for a Partial Prohibition. It was permanently removed when Enforcement established that the correct status is "Inactive" where an individual receives a Partial Prohibition.

43. I have looked carefully at the FCA's internal documents, and the sequence of events seems to have been as follows:

a. On 4 October 2017 the Enforcement Legal Group sent a note to Enforcement Operations (who were responsible for register updates) explaining to them the changes that needed to be made to your and your firm's register entries the following day. This note seems to have been accurate;

b. On the same date, the Enforcement Legal Group sent an email to a colleague in Enforcement stating that the 'headnotes' for the final notice should read *Unfair treatment of customers, conflicts of interest, and lack of fitness/propriety*;

c. On the same date, in another email, 'conflicts of interest' was amended to 'complaints-handling';

d. On 5 October, email exchanges suggest that there was a degree of confusion between the Legal Group and Enforcement Operations. One email stated that your entry should be marked as 'withdrawn; banned'. There was then a further email exchange noting the fact that the entry needed amending because there

was only a partial prohibition, but there was not an explicit request for the word 'banned' to be removed. An email at 1243, after that exchange, stated explicitly that *Clive Rosier is now showing as Banned.* Although this should have alerted people to the error, it apparently did not because those who received the email were ignorant of the policy describing how partial prohibitions should be described on the register;

e. The confusion continued on 6 October. An email asked for amendments to be made to your entry:

> *With regard toClive Rosier's register entry under 'Disciplinary and regulatory action,' the action is 'partial prohibition' not 'variation or cancellation of permission.'*
>
> *I understand that we no longer place 'banned' headings on individual entries. Instead Clive Rosier should be marked as 'inactive.'*
>
> *I understand that reference to the decision notices being 'subject to determination by the Tribunal' will be removed from both entries.*

f. On 7 October (a Saturday), you queried the use of 'banned' on your entry;

g. On 9 October, exchanges show that some people still believed that the use of the word 'banned' was correct. However, at 7 pm a message was sent asking for the word to be removed, and the Register was amended at 9.39 am on Tuesday morning.

44. Having studied the exchanges, I have found nothing which suggests that the use of the word 'banned' was malicious; but it is clear that the handling was shambolic in that there was no proper understanding of policy, and that opportunities to correct the mistake earlier were missed.

45. This series of errors bears an uncomfortable similarity to the mistakes made by the FSA in 2013. Some of the Judge's remarks about the lack of control of the news release process apply equally to the failures of the registration amendment process. You were entitled to believe that, the FSA having made a hash of it at the Tribunal stage, the FCA might get things right at the end of the proceedings. Unfortunately, the FCA did not.

46. There is a particular point on which, following my preliminary report, you have made representations, and which I need to address. You have forcefully made the point that you believe that the word 'banned' appeared against your name in red and in block capitals – and that you were therefore uniquely and unfairly treated. Unfortunately, neither you, nor the FCA, has an image of how your register entry actually appeared to users at the time. The FCA does not contest that the word 'banned' should not have appeared, but say it believes that it must have appeared in red but not block capitals like it appeared in other entries, since staff do not know of any means by which the standard presentation of the word (which was automatically generated) could have been manually overridden.

47. You consider that the FCA had previously effectively conceded that the word 'banned' had appeared in block capitals. I have looked at this carefully, and pressed the FCA on the point. The problem is that in the FCA's correspondence on this issue has been inconsistent in the way in which it has presented this word. As an example, I have drawn the FCA's attention to an email of 10 October 2017 to you which said 'I write further to your email of 7 October 2017 in which you queried the use of the phrase "BANNED" that appears in red capitals on the Financial Services Register……..'

48. The FCA's explanation for this – and indeed for the issue more generally – is that in its correspondence with you the FCA was quoting your complaint. That explanation is supported by the fact that, at the time that the 10 October email was sent, the word 'banned' had already been removed from the register, so the statement – using the word 'appears' – cannot have been intended as a confirmation of the actual position. Unfortunately, and understandably, you have been assuming that the FCA have accepted that the word appeared in block capitals, whereas the FCA's investigation has focussed upon the reason why the word appeared, rather than its precise format.

49. I recognise that you believe that 'banned' appeared in block capitals, but in the light of the FCA's explanation of the system and in the absence of hard evidence to the contrary, I cannot conclude that block capitals were used. That does not, of course, excuse the erroneous use of the word.

50. I turn now to the issue of the FCA's collection of the debt. I do not need to go into the detail of those proceedings, and in any event the proceedings themselves fall outside the Complaints Scheme. The point at issue is how the FCA handled the communications surrounding those proceedings.

51. The problem seems to have arisen because two FCA departments were dealing with related matters. In October and November 2017, at the same time as your main complaint was being dealt with by the Complaints Team, you were corresponding with the FCA's Finance Team about the collection of the debt. In essence, you were arguing that the fine imposed against you would be offset against the compensation which you believed that you were owed, and that the two matters – payment of the fine and the compensation – should be dealt with together.

52. It appears that the FCA failed to resolve this issue, but continued to pursue the debt. Nine months later, you added the failure to deal with this to your complaint, but the FCA Complaints Team rejected this on the grounds that it amounted to a complaint about the FCA's general financial policies and practices, and therefore should be excluded from the Scheme; and that in any event the matter had been concluded because you had paid a fine and the proceedings had been abandoned.

53. While the FCA had a narrow point, in my view this response was not good enough. It appears from the papers that there was no record that your correspondence with Finance had been satisfactorily concluded, and in those circumstances, it seems to me that the FCA ought to have considered whether or not your interactions with the Finance Team had been satisfactory. Whether or not you were right in claiming that the proceedings should have been stayed is beside the point: in my view, you should have had a response to your complaint about whether or not your correspondence had been properly dealt with. The records suggest that it had not been.

54. Finally, there is the issue of the way in which your complaint was handled overall. It will be apparent from the chronology of events set out above that it took from October 2017 until February 2019 to issue a decision letter. In fairness to the FCA, the complaint was a complex one, and a good deal of time was

spent in disputes about the definition of the complaint, with you – in understandable frustration – supplying additional information and comments at frequent intervals. Nonetheless, the extent of the delays was indefensible. Deadlines were missed, and far too much time was spent on amendments to the definition of the complaint, excluding elements of the complaint at different stages, rather than tackling its substance.

55. The delays had one additional consequence. Because the FCA decided to deal with all the issues together in one decision letter – in principle a good idea – you were left with the impression that the removal of the word 'banned' from your register entry was only an interim decision. In fact, the FCA had decided early on that the inclusion of the word had been in error; but you were not informed of this until you received the badly delayed decision letter. Since the word had been removed from the register, the delay in informing you had no practical effect upon your register entry, but clearly aggravated your concerns.

56. Yours is far from the only complaint which has suffered from delays in the FCA. This is a matter which I have discussed with the FCA on several occasions, and it has now increased the resources of its Complaints Team, which should help to reduce the risk of these kinds of unacceptable delays.

57. The FCA's decision letter partially upheld your complaint, and acknowledged some weaknesses in its handling. You were offered £250 to reflect the distress and inconvenience caused by the FCA's shortcomings, plus £175 for the delay in handling your complaint.

58. Following that letter, you corresponded with the FCA about your claim for compensation, which you said amounted to £400,000 in terms of a claim under the Scheme. In a letter dated 2 May 2019, the FCA said – in essence – that claims of this magnitude involving complex calculations about what might have happened in different circumstances were not suited to a complaints scheme, and should go to court. In an email to me, dated 12 May 2019, you have argued against the FCA's statements, contending – amongst other things – that there are no limits on what compensation can be imposed under the Scheme, and that the FCA is trying to avoid responsibility for making an adequate compensatory payment. In your response to my preliminary report you say that the FCA has

failed to offer *appropriate/any compensation as suggested by the Upper Tribunal and as is required by the Act.*

59. My understanding of the position is as follows. The FCA's letter seems to me to be an accurate statement of the legal position. Parliament has given the FCA protection from claims for damages in most circumstances, and the Complaints Scheme cannot be used to undermine this.

60. On the other hand, Parliament has established a Scheme under which payments can be made – so while the statutory protection from claims for damages must not be undermined, some degree of compensatory payments is clearly permissible. Exactly how one interprets this compromise is a difficult matter, which I have drawn to the FCA's attention on several occasions.

61. In my assessment, the claim you have made for £400,000 is, in effect, a claim for damages, and would need to be pursued through a court, and would probably necessitate a forensic examination of the question of bad faith. That is a matter for a court to determine – though in my view the documents I have studied demonstrate serial incompetence but not evidence of bad faith. (The FCA, in its representations on my preliminary report, has stated that it considers that my use of the phrase 'serial incompetence' is 'inaccurate'. I find this rather surprising.)

62. In your representations on my preliminary report, you have said that *the Upper Tribunal did direct that if I could show inappropriate/negligent/incompetent behaviour on the part of the Authority then I should be compensated*. What the Judge actually said was *I was also mindful of the fact that the usual channel for consideration of complaints as to the conduct of the Authority is through the Authority's separate complaints team and the independent Complaints Commissioner, who has power to recommend ex gratia payments if he finds a complaint to be justified*. The Judge did not direct any, or any particular, compensation.

63. However, I consider that the FCA's offer of £425 is seriously inadequate, given the magnitude and persistence of the failings described above. Those failings include the serious matters to which the Judge drew attention in 2014 (those were failings of the FSA but under the Complaints Scheme the FCA inherits

liability for them), the FCA's mismanagement of the changes to your register entry in 2017 (which compounded the FSA's earlier failings), and then the serious delays and confusion in the handling of your complaint.

My decision

64. I **recommend that, in place of the initial offer, the FCA offers you a compensatory payment of £1,500 for the substantive failures (i.e. an increase of £1,250 on the original offer), and a further £250 for the shortcomings in the handling of your complaint (i.e. an increase of £75 on the original offer).** I am pleased to say that the FCA has accepted this recommendation.

Antony Townsend
Complaints Commissioner
11 July 2019