



Complaints Commissioner

# Reviewing how the financial services regulators consider complaints

**Annual Report**  
2016/17



# Complaints Commissioner

Annual Report and Accounts 2016/17  
(for the year ended 31<sup>st</sup> March 2017)

Presented to Parliament pursuant to section 87 of the Financial Services Act 2012  
(as amended by the Small Business, Enterprise and Employment Act 2015)



## **ANNUAL REPORT 2016/17**

This is the Annual Report of the Complaints Commissioner

It covers the period from 1<sup>st</sup> April 2016 to 31<sup>st</sup> March 2017

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# Introduction by the Commissioner

## Foreword by the Commissioner

This is the second of my annual reports to be laid before Parliament, and the third since I was appointed as Complaints Commissioner, dealing with complaints against the financial services regulators.

As I explained in my earlier reports, I see the purpose of my role, and the Complaints Scheme more generally, as two-fold:

- a) ensuring that people who feel aggrieved about the impact of the regulators' work upon them as individuals have a means of having their complaints resolved promptly and fairly;
- b) using the information from complaints to shine a light upon how the regulators are exercising their wide powers, so that the regulators can improve their performance and so that others – Parliament, the public, and financial services institutions – can properly hold them to account.

In the Themes section of this report, I have drawn attention to some areas where the FCA (which is the subject of almost all the complaints with which I deal) needs to improve its performance. While the large majority of the complaints which I see are dealt with fairly by the FCA, there remains a minority (generally the more complex and sensitive cases, sometimes involving whistle-blowers) in which the FCA's responses to complainants have lacked an openness to acknowledge error fully, and have shown a reluctance to place themselves in the shoes of the complainant or the general public.

I have a particular concern that there is insufficient recognition that small firms, and less informed consumers, may not have the resources to understand complex matters in the way that, say, a large bank has. I was pleased that the FCA invited me to address their senior managers recently on these issues, so that I could share those concerns.

A second issue is delays. In my last annual report published in July 2016, I highlighted the importance of the FCA's Complaints Team having the resources it requires to deal with a rising workload (a concern which I had indicated to the FCA Board earlier in 2016), and stressed the importance of meeting deadlines. Although in the last few months the FCA has strengthened its Complaints Team significantly, and has made some progress in tackling delays, I have to report that in a large number of the cases with which I dealt in 2016/17, I had to comment not only upon the substantive issue which had given rise to the complaint, but also upon the delays in handling the complaint. The FCA agrees that this is unsatisfactory, and I will continue to monitor this issue in 2017/18.

Finally, I had hoped that the regulators would have been able to issue a consultation upon some technical improvements to the Complaints Scheme during 2016/17. This has not yet happened, though I have been assured that work is progressing upon this.

Antony Townsend  
Complaints Commissioner

## Complaints against the Financial Services Regulators

### About the Complaints Scheme

The financial services regulators (the Financial Conduct Authority (FCA), the Prudential Regulation Authority (PRA), and the Bank of England (BoE)) are required by law to run a complaints scheme to investigate complaints about the way in which they undertake (or fail to undertake) their regulatory functions. (The Scheme does not cover the issuing of policy or guidance, nor disciplinary decisions which are appealable to the Courts; and in relation to the BoE it only covers complaints about the regulation of recognised clearing houses and inter-bank payment systems).<sup>1</sup>

The regulators are also required to appoint an independent person (the Complaints Commissioner, described in the Financial Services and Markets Act 2000 as “the investigator”) to be responsible for the conduct of investigations in accordance with the Scheme.

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 they think is appropriate to resolve the matter. If the complainant remains dissatisfied, there is a second stage in which the independent Complaints Commissioner reviews and investigates complaints.

### About the Complaints Commissioner

The independent Complaints Commissioner is appointed by the regulators, subject to the approval of the Treasury. The Commissioner operates independently of the regulators through the Office of the Complaints Commissioner, of which he or she is the sole Director.

Antony Townsend has been the Complaints Commissioner since 1<sup>st</sup> May 2014. His career includes extensive experience of regulation and complaints handling. Further information about the Commissioner can be found at <http://frccommissioner.org.uk/profile/>.

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<sup>1</sup> For more details about what the scheme covers go to <http://frccommissioner.org.uk/complaints-scheme/>

# 2

## Overall Scheme Statistics for 2016/17

The Commissioner received 170 new complaints and enquiries during the year (up 25%). About 15% of these were complaints about financial services providers or other bodies, not the regulators, and in those cases we directed the complainants to other organisations who could help them. The table below shows the breakdown of new enquiries and complaints during 2016/17 according to the organisation they were directed against.

### 2.1

#### Total enquiries and complaints received

Enquiries and complaints received	2016/17	2015/16
FCA	138	82
FSA	2	1
PRA	1	1
Bank of England	1	0
<b>Total new enquiries and complaints against the regulators</b>	<b>142</b>	<b>84</b>
Enquiries and complaints against other organisations, redirected	28	52
<b>Total new complaints and enquiries received</b>	<b>170</b>	<b>136</b>

During this period, the Commissioner concluded 187 enquiries and complaints (including those which were directed at other bodies).

### 2.2

#### Complaints against the regulators dealt with during 2016/17

The Commissioner received 142 new complaints against and enquiries about the regulators, of which 115 were complaints and 27 were enquiries. The Commissioner also dealt with cases which were uncompleted at the end of the previous year, and some cases from previous years which were reopened, making 163 complaints in all. The breakdown is as follows.

Complaints dealt with	2016/17	2015/16
Complaints in progress at start of period	27	19
New complaints received	115	84
Re-opened complaints	21	37
<b>Total number of complaints dealt with</b>	<b>163</b>	<b>140</b>
Complaints in progress at end of period	31	27



# 3

## BoE and PRA statistics from 1<sup>st</sup> April 2016 to 31<sup>st</sup> March 2017

This section of the report deals with complaints against the Bank of England (BoE) (in respect of its oversight of recognised clearing houses and inter-bank payment systems), and against the Prudential Regulation Authority (PRA).

### 3.1 **Bank of England Statistics**

The Commissioner dealt with one complaint against the Bank of England between 1<sup>st</sup> April 2016 and 31<sup>st</sup> March 2017. The complaint was about the statements Mark Carney made before and after the referendum on the UK's membership of the European Union. The Commissioner excluded the complaint from the Scheme, and his report was not published at the request of the complainant.

### 3.2 **Prudential Regulation Authority Statistics**

The Commissioner dealt with two complaints against the PRA during the period 1<sup>st</sup> April 2016 to 31<sup>st</sup> March 2017.

One complaint had started during the previous reporting period, and related to the complainant's dissatisfaction with the PRA's policy not to disclose buffers/capital requirements for individual firms. The Commissioner did not uphold the complaint, and published his report (<http://frccommissioner.org.uk/wp-content/uploads/PRA0008-Final-Decision-27-06-16.pdf>).

The second complaint (which is against both the PRA and FCA) was not concluded during the period, and will be included in next year's statistics.

# 4

## FCA and FSA Statistics from 1<sup>st</sup> April 2016 to 31<sup>st</sup> March 2017

### 4.1

#### Complaints dealt with during the year

The Commissioner dealt with 160 complaints against the FCA, of which two related to the FSA.

**Table 1** Complaints dealt with during the year

Complaints	2016/17	2015/16
Complaint referred to regulator for stage 1 investigation	6	8
Complaint deferred pending completion of stage 1 by regulator	11	18
Complaint considered by the OCC	143	113
<b>Total</b>	<b>160</b>	<b>139</b>

In six instances, complainants approached the Commissioner for an investigation without complaining to the FCA first. The Complaints Scheme sets out that, save exceptionally, enquiries about complaints which have not been through the regulator should be directed back to the regulator. Once the regulator has considered the complaint, a number of complainants re-approach the Commissioner. As none of the six complainants presented exceptional circumstances, they were referred to the FCA for an initial investigation.

In 11 instances, complainants whose complaints were already being considered by the regulators under the Scheme approached the Commissioner to intervene and conduct his own investigation. The primary reason for this was the delay they felt they were experiencing during the course of the FCA investigation. In several cases, the Commissioner had to urge the FCA to conclude its investigation more quickly, and in one case decided to take over the investigation because of lack of progress (although the FCA then completed its investigation). The issue of FCA delays is commented on in the Themes section.

Of the 143 complaints the Commissioner considered, 27 were closed without further investigation, and one was discontinued when the FCA resolved the issue during the course of the Commissioner's investigation.

## 4.2

### Enquiries and complaints concluded during the year – initial decisions

During the course of the year, there were 116 complaints concluded with a substantive response, which were handled as follows:

**Table 2** Concluded complaints – initial decisions

Closed cases	2016/17	2015/16
Initial case decisions issued by the Commissioner		
Case excluded <sup>note 1</sup>		
FCA	17	14
FSA	0	0
Case reviewed without formal investigation <sup>note 2</sup>		
FCA	17	27
FSA	0	0
Case formally investigated <sup>note 3</sup>		
FCA	80	15
FSA	2	4
<b>Total</b>	<b>116</b>	<b>60</b>

**Notes to Table**

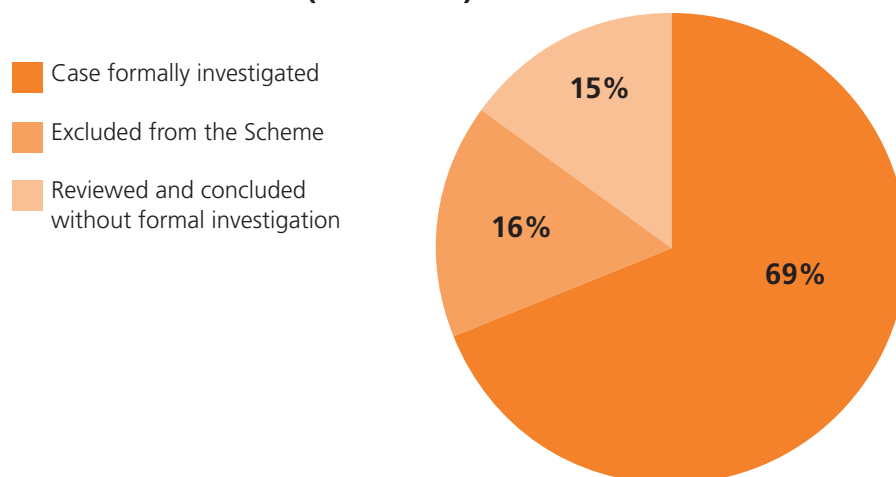
**Note 1** Certain complaints cannot be considered under the Complaints Scheme because they relate to “legislative functions”. Generally this means complaints about the regulators’ rules, the guidance they have issued, and the regulators’ general policies. It also includes complaints which should be dealt with through other formal processes (such as disciplinary cases through the Upper Tribunal).

**Note 2** When considering a complaint, the Commissioner sometimes decides that a review of the regulator’s investigation records is sufficient, and he does not need to undertake a full investigation with further inquiries. (The Commissioner has access to all the regulators’ records.)

**Note 3** The formal investigation process is where the Commissioner undertakes a full investigation into the complaint. Part of the reason for the increase in the number of formal investigations has been a change of practice, with more cases being categorised as “formal investigations” than in the past. The figures include 37 complaints connected with the Connaught Fund. The main decisions on this complaint are published at <http://frccommissioner.org.uk/wp-content/uploads/FCA00114-Patellis-George-Stage-2-Final-Decision-24-11-16.pdf> and <http://frccommissioner.org.uk/wp-content/uploads/FCA00084-Nettleship-Adam-Stage-2-Final-Decision-24-11-16.pdf>

## Chart 1 How complaints were handled

Closed cases 2016/17 (total = 116)



Complaints which were excluded from the Scheme usually related to the performance of the FCA's legislative functions (rules, guidance and policy). Complaints which were not the subject of a formal investigation included cases where the complainant had not been directly affected by the way in which the FCA had carried out its functions as well as instances where the FCA had upheld a complaint at initial investigation, and offered a sufficient remedy (for example an apology), but the complainant had chosen to escalate the complaint to the Commissioner without clearly explaining what alternative outcome was required and where the Commissioner could see no case for augmenting the remedy. Where the FCA has addressed outstanding issues in its investigation in a satisfactory manner, there is no benefit to be gained from a secondary investigation of the same issue.

### 4.3

## Complaints considered under the Scheme according to subject matter

The Commissioner concluded 116 complaints during the year. The table below shows the main themes emerging from the spectrum of complaints.

**Table 3** Concluded complaints according to subject matter

Concluded complaints	2016/17	2015/16
Rule making	8	11
Failure to regulate properly	71	18
Failure to supervise FOS	5	–
Failure to disclose regulator action against a firm	1	6
Fees	10	4
Deferral due to continuing tribunal cases	–	3
Other	21	18
<b>Total</b>	<b>116</b>	<b>60</b>

In eight instances, complainants felt affected by rules issued by the FCA which they considered disadvantaged them in some way. These eight different complaints had no discernible common theme and included complaints about the conduct of mortgage business; the capital adequacy rules; rules for investment firms; rules for banks and how they count cash at the till; rules for electronic transfer of funds; requests for the FCA to set the bank interest rate; rules about the banks' lending policies; and how the FCA categorises unregulated collective investment schemes. These complaints were excluded from the Scheme.

In 76 instances complainants alleged that the FCA were failing to regulate the financial services industry properly, and in many cases this hinged on a specific firm as an example. In these cases, the complainants were often pursuing a dual course of action in that they had also complained to the Financial Ombudsman Service (FOS). Of the 76 instances above, 37 related to complaints about the Connaught Fund, which the Commissioner concluded during the year (referred to in the Themes section of this Report), and five related to dissatisfaction with the FOS and the FCA's oversight of the FOS.

There were 10 concluded complaints from consumer credit firms who seemed to have experienced difficulties in transitioning to the FCA's new regulatory environment. In these cases, the firms claimed to have been unaware that they had to submit GABRIEL returns or had attempted to but had not pressed the 'submit button' in order to complete the submission. In three of these cases, the FCA waived the fee on an exceptional basis during the course of the Commissioner's investigations. However, in the majority of cases the Commissioner concluded that the FCA had acted reasonably, and that the firms had failed to take responsibility for their own omissions.

## 4.4 Complaints considered under the Scheme according to the Commissioner's decision

The table below shows the complaints concluded according to the Commissioner's decision.

**Table 4** Concluded complaints according to the Commissioner's decision

Concluded complaints	2016/17	2015/16
Regulator's decision fully upheld	47	37
Regulator's decision upheld, but suggestions for improvement made	61	15
Regulator's decision partly upheld and partly overturned	6	5
Regulator's decision overturned	2	3
<b>Total</b>	<b>116</b>	<b>60</b>

In the 61 cases above where the Commissioner upheld the regulator's decision, but made suggestions for improvement, 37 relate to the Connaught Fund and the suggestions are identical for all 37 cases.

## 4.5

### Complaints considered under the Scheme according to remedy recommended by the Commissioner

The table below shows the complaints concluded according to the remedy recommended.

**Table 5** Concluded complaints according to remedy

Remedies recommended for concluded complaints	2016/17	2015/16
No remedy	46	40
Apology	4	3
Put things right	10	5
Compensation for distress	9	1
Suggestions for further improvements	55	15
<b>Total</b>	<b>124</b>	<b>64</b>

Although the total number of complaints concluded during the year amounted to 116, a number of complaints contained two or more elements of complaint, which the Commissioner considered separately in terms of remedy.

## 4.6

### Type of complainant

The information below shows that enquiries and complaints have predominantly come from individual members of the public during the year, and explains how such complaints were handled by type of complainant.

**Table 6** Type of complainant

Type of complainant	Excluded	Reviewed without formal investigation	Formally investigated	Total 2016/17	Total 2015/16	Percentage of complaints excluded	Percentage of complaints formally investigated
Individual Financial Adviser	3	0	7	10	5	30%	70%
Firms	2	1	16	19	8	11%	84%
Consumer	12	16	57	85	46	15%	65%
Third Party	0	0	2	2	1	0%	100%
<b>Total</b>	<b>17</b>	<b>17</b>	<b>82</b>	<b>116</b>	<b>60</b>	<b>15%</b>	<b>70%</b>

Of the 116 concluded complaints, 84 were submitted by members of the public. The Commissioner also concluded 19 complaints submitted by firms and 10 by IFAs, all of which were small businesses. It can therefore be seen that the Scheme continues to be used almost exclusively by individual consumers and by small businesses. It can also be seen that, across all types of complainant, the majority of complaints referred to the Commissioner merit a formal investigation. Complaints from consumers tended to be about alleged failures to regulate effectively; complaints from small businesses and individual advisers tended to be about administrative and fees issues, and about the way in which the regulator was interacting with the firm. These were the issues the Commissioner encountered in the previous year.

Three sets of themes emerged from the Commissioner's handling of complaints during 2016/17 – first, resources and delays; second, a continuing tendency in the FCA to adopt a defensive position in relation to certain complaints; and third, the FCA's responses to the Commissioner's recommendations.

- a) On the first issue, as the Commissioner notes in his Foreword, he alerted the FCA in early 2016 to emerging delays, and in his report in July last year he specifically recommended that the FCA ensure that its Complaints Team had the resources it needed to deal with complaints promptly and thoroughly. While it is clear that the FCA now understands this issue, and has taken significant steps to increase the resources available to the Complaints Team to tackle the backlog, during 2016/17 it was inevitable that the backlog which had built up would take time to work through the system. The Commissioner's Office spent a considerable amount of time dealing with complaints that the FCA was not keeping complainants updated, and was taking far too long to conclude complaints. The unfortunate result was that people who were already feeling aggrieved found that the complaints process aggravated rather than ameliorated that sense of grievance. The Commissioner will monitor this situation carefully to ensure that the measures taken by the FCA prove effective.
- b) The second issue relates to the FCA's tendency to adopt a defensive position, especially in complex cases. It is important to put this into context. Most complaints handled by the FCA never reach the Commissioner, presumably because the complainant is sufficiently satisfied not to ask the Commissioner to review the complaint; and of those that do, in the majority the Commissioner is satisfied that the complaint has been dealt with thoroughly and fairly. But there remains a worrying minority. Put simply, the Commissioner has encountered cases in which the FCA's responses to complaints have shown:
  - i. A lack of curiosity in investigating the underlying issues of the complaint;
  - ii. A tendency to exclude complaints from the Scheme;
  - iii. Long delays while "awkward" issues are examined;
  - iv. A lack of candour in acknowledging error;
  - v. A failure by the regulator to put itself in the shoes of the complainant (particularly where the complainant was a whistle-blower) and the general public.

The following examples, which include web links to the full reports, may help to illustrate these concerns.

**Case study 1 – whistleblowing, improper exclusion, failure to apologise, delay**  
<http://frccommissioner.org.uk/wp-content/uploads/FCA00101-FD-11-05-16.pdf>

This case was a serious one, involving persistent failure to respond to whistleblowing concerns, followed by an inadequate complaints investigation which failed to identify the failures. In summary, the complainant made multiple attempts to supply evidence of possible misconduct in financial services firms: the FSA, and subsequently the FCA, failed either to

analyse the complainant's concerns appropriately, or to seek the further evidence which was offered. The FCA initially, and wrongly, excluded the complaint from the Scheme and then, after the Commissioner's intervention, conducted an inadequate investigation. Furthermore, the explanations which were given to the complainant were not candid about the extent of the failures. This case had the hallmarks of the problems the Commissioner identified in the case of Nicholas Wilson (on which he reported last year, and which eventually led to the payment of compensation by the bank concerned to consumers): insufficient curiosity, insufficient rigour, and insufficient candour.

### **Case study 2 – delays, poor treatment of a whistle-blower**

(<http://frccommissioner.org.uk/wp-content/uploads/FCA00084-Nettleship-Adam-Stage-2-Final-Decision-24-11-16.pdf>, <http://frccommissioner.org.uk/wp-content/uploads/FCA00114-Patellis-George-Stage-2-Final-Decision-24-11-16.pdf>)

These two complaints relate to the collapse of the Connaught Fund, in which a large number of investors lost a considerable amount of money. The identity of the two complainants is public knowledge: Adam Nettleship, acting on behalf of a number of others, and George Patellis, Chief Executive of one of the firms involved in the Connaught matter and the whistle-blower in the case.

When the Commissioner considered these two complaints, the FCA had already conceded that the FSA's response to the emerging crisis with Connaught had been too slow, and it had also offered an apology and a payment to Mr Patellis for the mishandling of him as a whistle-blower.

However, on reviewing the confidential papers to which the Commissioner had access it became apparent that the extent of the FSA's failures was far wider than had been publicly acknowledged, and that the FCA's approach to these two complaints had been badly and unnecessarily drawn out. The Commissioner was particularly concerned that the FSA had failed to pass on evidence of possible fraud to law enforcement agencies for a considerable period, and that there had been an attempt to suggest that it was the whistle-blower's duty to do so, rather than the regulator's.

The Commissioner was pleased with two elements of the FCA's response to his findings. First, it permitted the Commissioner to quote from confidential papers to expose the extent of the regulatory failings in the case; and second, it committed to an independent review of the Connaught matter. This showed a commendable openness to acknowledging error.

However, the FCA balked at one of the Commissioner's recommendations – that they issue a public apology to the whistle-blower, preferably having discussed the terms of the apology with the whistle-blower first. The FCA issued an apology, but did not publish it; and the apology appeared ambiguous in one respect. After some discussions, the FCA clarified that its apology was not qualified, and said that it was content that Mr Patellis should publish it. The Commissioner was disappointed that – having gone a long way to being more open about acknowledging error – the FCA failed to take the final step by publishing an apology and showing a co-operative approach with the whistle-blower. In his view, this was a missed opportunity to make an important gesture in relation to the treatment of whistle-blowers. It resulted in media focus upon the FCA's refusal to make a public apology, rather than upon the positive aspects of the case.



### **Case study 3 – multiple failures to correct register, misleading letter to MP**

(<http://frccommissioner.org.uk/wp-content/uploads/FCA00190-FD-published-16-02-17.pdf>)

This is a case in which weaknesses in the design of the register, coupled with bureaucratic errors and an unsympathetic attitude towards complainants, led the FCA into error. The case dated back to 2005, when a particular set of circumstances made it appear from the register entries of two financial advisers that they had been directors and appointed representatives of a firm which had been publicly censured.

In 2009, when this problem was drawn to the attention of the FSA, it was acknowledged that the entries gave a misleading impression. However, because it was too costly to make the necessary change to the IT system supporting the register, the FSA decided to add explanatory text to correct the misleading impression.

The complainant again raised the matter through his MP in 2012/13, and the then Chief Executive of the FCA gave assurances that a permanent solution to the problem would be considered when the register IT system was next being overhauled.

In 2015, it became apparent that not only had no change been made to the register, but that the explanatory text introduced in 2009 had been removed, returning the situation to that which had existed before 2009. Worse, in a letter on behalf of an FCA Director to the complainant's MP, the FCA claimed that the register entries were correct and "do not merit changing", and that a decision had been made at the time of the latest register IT upgrade not to make the necessary change to the system. It concluded by saying that "The FCA has devoted considerable time and resource to addressing Mr H's concerns to date and we do not have anything further to add".

In his decision letter, the Commissioner said that the letter to the MP should never have been sent. It made statements that there was nothing wrong with the register when the FSA, and then the FCA Chief Executive, had conceded since 2009 that the entries were misleading; it claimed that consideration had been given to changing the IT system when there was no record of any such decision having been made; and its tone was dismissive of the complainant's legitimate concerns.

The FCA's complaints team investigated the matter thoroughly, and offered the complainant £500 as a goodwill payment for what had gone wrong. The Commissioner agreed with their verdict, but recommended that the payment be increased to £1500 in the light of the misleading letter to the MP, and the serial failures of the FCA. The Commissioner's particular concern with this complaint was that it demonstrated that there was an attitude within the FCA in which defending the FCA's position appeared to be more important than putting things right and admitting error.

#### **Case study 4 – register problems, refusal to remedy error**

(<http://frccommissioner.org.uk/wp-content/uploads/FCA00140-FD-10-08-16.pdf>;

FCA response [http://frccommissioner.org.uk/wp-content/uploads/FCA\\_PUBLISHED\\_RESPONSE-07-09-16.pdf](http://frccommissioner.org.uk/wp-content/uploads/FCA_PUBLISHED_RESPONSE-07-09-16.pdf))

This case was illustrative of a problem to which the Commissioner has drawn the FCA's attention on a number of occasions: a failure of the organisation to put itself into the shoes of the complainant, coupled with a defensive attitude.

The key features of this case were that, because of a set of unusual circumstances coupled with the design of the FCA's on-line register, it appeared that an Appointed Representative of a financial services firm was suspended when she was not.

This unfortunate state of affairs was an accident of unforeseen complications, and was not anyone's fault. However, what was the FCA's fault was its obstinate refusal to put things right. It initially clung to the defence that the register was technically correct, that a consumer who made further investigations would be able to establish that the Appointed Representative was not in fact suspended, and that the complaint should therefore be rejected. This showed a disregard for the adviser's situation, and for the public interest in a register which is readily usable by consumers.

It was only at a late stage of the Commissioner's investigation, when it became clear to the FCA that he would be critical of their handling, that they took the step which could have been taken much earlier to change the register entry to remove the misleading reference.

Although the FCA accepted the Commissioner's criticisms, and made the amendment, it did not adopt the recommendation that the Appointed Representative be awarded a goodwill payment for loss of earnings (its reasons are given in the link above). The Commissioner might not have made such a recommendation, since the FCA is protected by law from being sued for damages, but in his view this case showed such a bad attitude towards someone with a clearly legitimate complaint that a goodwill payment was justified. The FCA's decision not to follow the recommendation attracted predictable media criticism.

#### **Case study 5 – purporting to impose a requirement, slowness to acknowledge error (report not published).**

A serious issue arose in a case where the complainant asked the Commissioner not to publish his report, but we can identify the key issue here without affecting anonymity.

The FCA issued a letter "requiring" a firm to cease a certain kind of business. In fact, the FCA had no power to make such a requirement, and later "clarified" that there had never been a requirement.

The Commissioner's concern, particularly having read the internal papers, was that there appeared to have been a sloppy attitude to distinguishing recommendations and voluntary undertakings from requirements, and that an attempt had been made to partially justify the error by claiming that the wording "might have been misinterpreted", rather than conceding that it was plain wrong.

The Commissioner wrote that

*“The FCA is a public body. When it makes mistakes, it has a duty to correct the mistakes promptly and fully. In this case, it does not seem to have met those standards. The considerable efforts which have been expended in investigating this complaint have their genesis in the FCA’s careless drafting, and in the failure to recognise the error promptly.”*

- c) The third issue relates to following up the Commissioner’s recommendations. Frequently, a complaint (even if it is not upheld) will draw attention to areas in which processes can be improved. There is emerging evidence of good practice here, for which the FCA should be commended.

In three cases involving the late submission of regulatory returns by firms, the FCA exercised its discretion to waive the fee in exceptional circumstances, and is investigating possible improvements to the system which would assist firms to ensure that their returns are properly submitted.

Following the case referred to in case study 5 (above), the FCA has introduced additional training for staff to ensure that there is clarity about distinguishing regulatory requirements from recommendations and voluntary undertakings. Other initiatives are in hand to improve the register system in the light of the learning from complaints. This demonstrates how the Complaints Scheme can be used to drive improvements.

There were a few cases during the year in which the FCA did not promptly inform complainants about the follow-up to recommendations, and it was necessary for the Commissioner’s Office to prompt the FCA. The FCA has introduced a new system for tracking recommendations.

There were two cases during the year in which the FCA did not adopt the Commissioner’s recommendations in full. These were in relation to case studies 1 and 4 above. Under the Complaints Scheme, the Commissioner can make recommendations, but they are not binding upon the regulators (although the regulators are required to explain why they have decided not to adopt a recommendation).

The regulators are entitled to reject the Commissioner’s recommendations, though they rarely do so. When they do so there will inevitably be criticism that the Commissioner does not have enforcement powers. The two cases referred to above, in which the FCA did not adopt the Commissioner’s recommendations, both involved people who had clearly suffered from FCA (and FSA) mishandling. The FCA’s view was that adopting the Commissioner’s recommendations would have set a precedent: in the Commissioner’s view, setting a precedent is only a problem if the precedent is wrong, and should not inhibit the regulator from doing the right thing. The Commissioner considers that the FCA should think carefully about the message which it is sending in cases such as these.

# 6

## Key Findings

- a. General trends: the upward trend in the number of complaints reaching the Commissioner has continued (reflecting an increase in the number of complaints being dealt with by the FCA). There have been a number of complaints about problems with the register, fees for late returns, delays, and the treatment of whistle-blowers, but the overall composition of complaints is not significantly different from previous years. Sections 2-5 above give further details;
- b. Recommendations in response to trends: the Commissioner repeats the recommendations he made to the FCA in his last Annual Report, particularly with regard to the adequate resourcing of the FCA's Complaints Team, and ensuring that the importance of prompt, fair, and competent complaints handling is understood throughout the organisation;
- c. Review of effectiveness of the procedures: in the Foreword to this Report, and in Section 5, the Commissioner has drawn attention to issues which need addressing. The principal concern is with delay. It is hoped that the measures recently adopted by the FCA will deal with the delays. The Commissioner will continue to monitor and report on this;
- d. Assessing whether the procedures are accessible and fair: the Commissioner has received no complaints about the accessibility of the Complaints Scheme from the FCA Consumer and Practitioner Panels or directly. The Commissioner has seen no evidence of deliberate unfairness. However, the case studies in section 5 above illustrate how some of the problems identified in the complaints and the FCA's complaints handling are likely to have a disproportionate impact upon small firms and individual consumers, who will be more vulnerable to delays and complexities. This makes it particularly important that the FCA is appropriately sensitive to the problems faced by small businesses and consumers who are not sophisticated. It is worth noting, however, that the number of complaints reaching the Commissioner is very small;
- e. Recommendations for improvement: the Commissioner made a number of recommendations for Complaints Scheme improvement to the regulators in 2015. The regulators had hoped to be able consult on some technical changes in 2016, but this has not yet been possible. The Commissioner has been assured that progress is being made.

Under the Complaints Scheme, the Commissioner must be provided by the regulators with “sufficient financial and other resources to allow him to fulfil his role under the Scheme properly”.

Although the caseload for the Commissioner has been rising since he took up his appointment in May 2014, steps have been taken to ensure that resources are used as efficiently as possible. In particular:

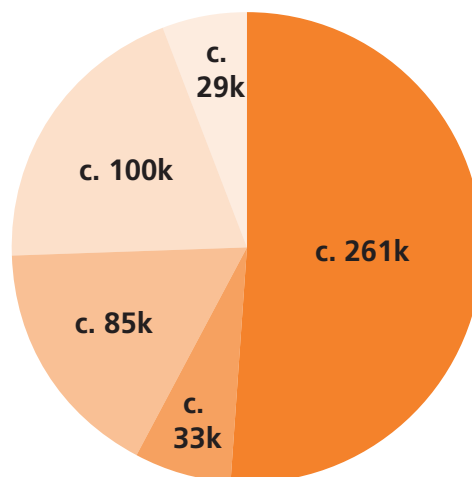
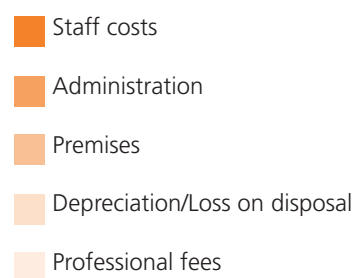
- a. The administrative support for the office was streamlined in 2016 (in addition to the Commissioner, there is one senior office manager who also undertakes some investigation work, and two part-time investigators);
- b. The investigators who support the Commissioner are engaged on a more flexible basis to help tailor the resource to the demand;
- c. The Commissioner’s Office relocated in autumn 2016 to smaller and more flexible premises to reduce costs.

The Office of the Complaints Commissioner acknowledges complaints within three working days (in practice, usually within 48 hours), and informs the complainant within four weeks how long the complaint is likely to take. The Office aims to complete complaints within eight weeks, although this depends upon the complexity and the need for further enquiries.

Expenditure for the year ending 31<sup>st</sup> March 2017 was £506,920, the lowest since 2011 and 29% lower than in 2015/16. Expenditure in 2017/18 is projected to be under £450,000.

The breakdown of expenditure by broad category is as follows:

#### Expenditure of Office of Complaints Commissioner 2016/17 (£)



**Environmental initiatives**

1. The Office recycles as much waste as possible through First Mile Easy Recycling.
2. Most of the records of the Office are now held digitally, to reduce the use of paper.
3. Movement sensitive lighting is used to reduce energy use.

**Remuneration**

The highest paid employee of the Office was the Complaints Commissioner, whose total remuneration for 2016/17 was £156k (2015/16 £156k).

# APPENDIX

## Expenditure

### Profit and Loss Account

For the year ended 31<sup>st</sup> March 2017

	2016/17 £	2015/16 £
Administrative expenses	(506,920)	(521,991)
Other operating income	506,920	521,991
<b>Operating Loss</b>	–	–
Interest receivable	–	–
<b>Profit on ordinary activities before taxation</b>	–	–
Tax on profit on ordinary activities	–	–
<b>Profit on ordinary activities after taxation</b>	–	–

All amounts relate to continuing operations.

There were no recognised gains and losses for 2017 nor 2016, other than those included in the profit and loss account.

The audited accounts for the period ending 31<sup>st</sup> March 2017 are available from the Registrar of Companies, Companies House, Crown Way, Maindy, Cardiff, CF14 3UZ. The company's auditors are Bishop Fleming.

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