



Complaints Commissioner

Reviewing how the financial services regulators consider complaints

Annual Report
2018/19

Complaints Commissioner

Annual Report and Accounts 2018/2019
(for the year ended 31st March 2019)

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 2018/19

This is the Annual Report of the Complaints Commissioner

It covers the period from 1st April 2018 to 31st March 2019

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Introduction by the Commissioner

Foreword by the Commissioner

This statutory Complaints Scheme was established by Parliament in 2000 as an integral part of the arrangements for the regulation of financial services. The regulators – the Financial Conduct Authority (FCA), the Prudential Regulation Authority (PRA), and the Bank of England (the Bank) – wield substantial powers and are given broad discretion in their use. The Scheme gives individuals – consumers and those regulated by the regulators – a right to complain where they consider that the regulators have acted inappropriately, or failed to act.

The Scheme is an important means of providing redress where the regulators have fallen short, and is particularly important because of the wide-ranging statutory immunity from damages which the regulators enjoy.

I publish almost all of the complaints reports which I prepare, but this Annual Report gives me the opportunity to present to Parliament, and to a wider audience, both an account of the operation of the Scheme, and my opinions on some of the themes which have emerged from the complaints which I have considered during the year. Although the number of complaints which I consider is quite small, there are some themes which can be used as indicators of areas to which the regulators should pay attention.

Almost all the complaints with which I deal relate to the FCA (which is unsurprising, given its responsibility for the regulation of the conduct of business of 58,000 firms). The FCA investigates cases before they reach me, and in the large majority I conclude that the FCA's decisions were correct.

It is the minority which are, inevitably, the focus of attention of this report, since those are the areas in which improvement is needed. The themes which are explored in the following chapters include:

- a. Consumer protection – problems with the accuracy and accessibility of the financial services register;
- b. Consumer protection – concerns about the speed and adequacy of response to information received;
- c. Communication – adequacy of information provided to regulated firms and to individual complainants;
- d. Delays – significant delays in the handling of many complaints, and in proposals to improve the Complaints Scheme and clarify the arrangements for compensation.

The FCA is aware of all these issues. It is clear that it recognises that the register is not currently adequate as a public protection tool (though that is not its only function), and some improvements have already been made, although there remains a way to go. There have been positive responses to some of my recommendations related to communications (see section 5), and I have had encouraging meetings during the year with the FCA's senior managers who recognise the importance of dealing empathetically with complainants. Concerns about empathy and candour, which were a feature of my last report, have decreased though work remains to be done.

It is disappointing that, after last year's progress, significant delays have again built up in the FCA's handling of complaints. In the early part of 2019, my office has been dealing with repeated approaches from complainants who have been frustrated by missed deadlines and lack of information. The FCA has told me about its programme to strengthen the Complaints Team, but this is not the first time that it has allowed its performance to slip significantly. It is also disappointing that yet again proposals to improve the operation of the Complaints Scheme, including clarifying the arrangements for compensatory payments, have been delayed (three years after I first made proposals).

In summary, I would draw the following main conclusions:

- a. The Complaints Scheme is operating adequately, and appears to be accessible to complainants;
- b. The FCA must, as a priority, complete its programme to strengthen its Complaints Team and eliminate the backlog of complaints;
- c. The regulators should complete the long-delayed work on improvements to the Complaints Scheme, including proposals to clarify the position on compensation for complainants, and consult on them;
- d. There are problems with the FCA's communications – centred upon the Financial Services Register, its system for interacting with regulated firms, and its handling of information – which generate complaints and sometimes financial losses. The FCA needs to continue to pursue its programme to improve its systems, and should be more prepared to accept responsibility for the consequences for individuals. The one complaint about the PRA (see Section 4) also concerned communications;
- e. Concerns about significant alleged failures to regulate lead to long delays while enforcement action is considered, sometimes followed by a prolonged inquiry, with complainants having their complaints indefinitely deferred. More thought needs to be given to progressing complaints in parallel with other processes, where possible;
- f. The need to protect confidential information makes it difficult for the FCA to demonstrate the adequacy of its supervisory arrangements. Reviews by me of individual complaints may indicate issues of concern, but inevitably cover only a fraction of the FCA's activities, as do inquiries into high-profile cases. In Chapter 6 I recommend that the FCA publish more material on the quality assurance of supervision;
- g. Although I consider that the regulators operate the Complaints Scheme fairly, the problems which I have identified above are likely to have a disproportionate impact on vulnerable consumers and small businesses.

Antony Townsend
Complaints Commissioner

Complaints against the Financial Services Regulators

The Financial Regulators Complaints Commissioner was established by Parliament to provide an independent review of complaints against the Financial Conduct Authority, the Prudential Regulation Authority and certain aspects of the Bank of England.

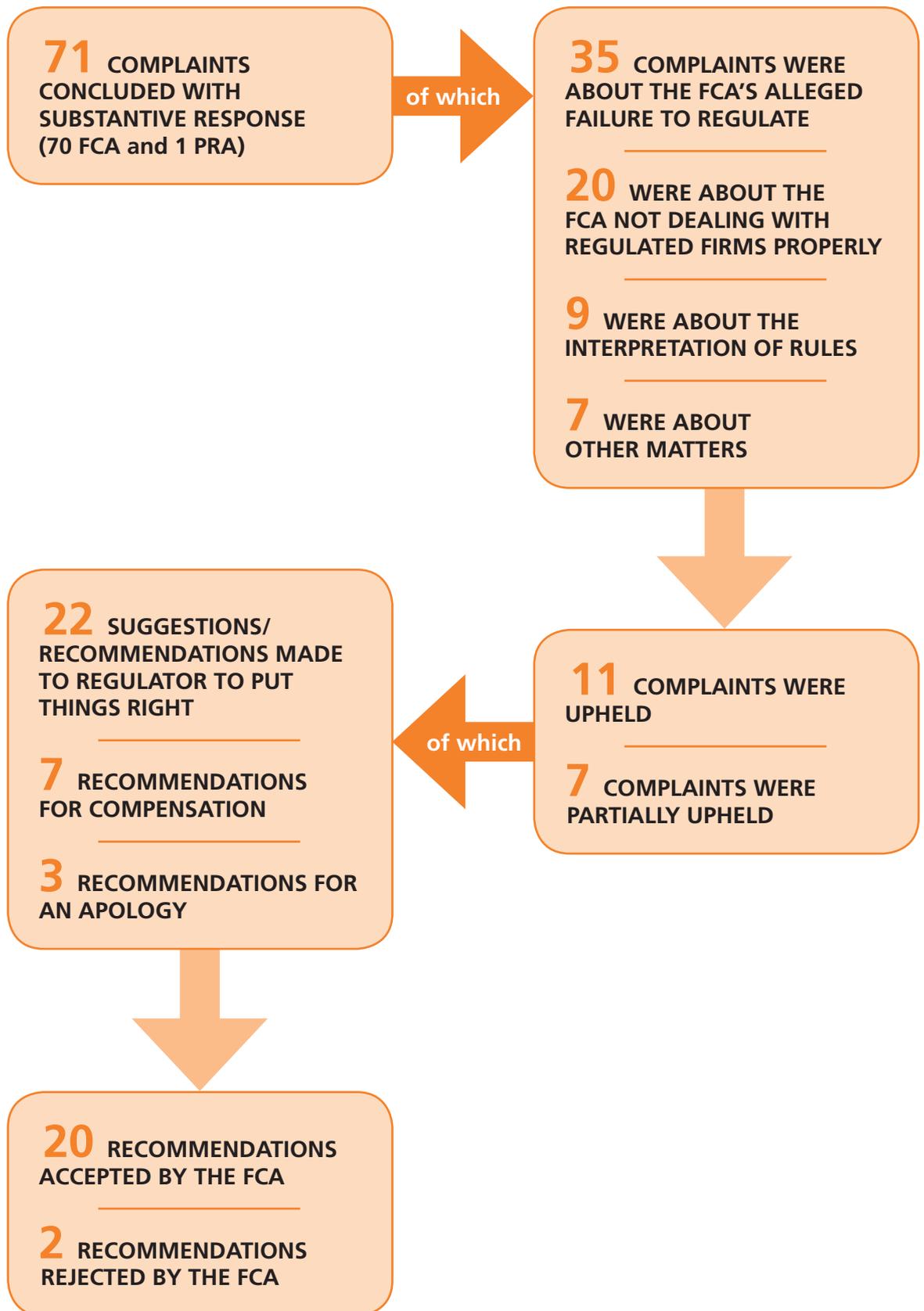
If complainants are not able to resolve their complaint with one of the regulators, the Commissioner considers the complaint and, if he upholds it, can make recommendations. The recommendations the Commissioner can make include issuing an apology, putting things right, or an ex gratia compensation payment.

The majority of complainants are individual consumers and small regulated businesses.

The Commissioner is committed to working openly and being accountable. His office is one of very few complaints organisations which publishes nearly all complaint decisions, and it is committed to working in accordance with the principles of good complaints handling set by the Ombudsman Association.

2

The year at a glance



3

Overall Scheme Statistics for 2018/19

The Commissioner dealt with 206 complaints during the year, compared to 199 the previous year (a 3.5% increase).

3.1

Table 1: Total complaints received

| Complaints dealt with | 2018/19 | 2017/18 |
|---|------------|------------|
| Complaints in progress at start of period | 20 | 31 |
| New complaints received | 153 | 137 |
| Re-opened complaints | 33 | 31 |
| Total number of complaints under consideration during the year | 206 | 199 |
| Complaints closed during the year | 176 | 179 |
| Complaints in progress at end of period | 30 | 20 |

About 17% (35) of the 206 complaints were about financial services providers or other bodies, not the regulators, and in those cases we directed the complainants to other organisations which could help them.

The slow upward trend in complaints seen in previous years has continued.

4

Bank of England and Prudential Regulation Authority statistics from 1st April 2018 to 31st March 2019

The Complaints Scheme covers complaints about the Bank of England's oversight of the banking clearing houses and payment settlement schemes, and against the Prudential Regulation Authority (which is part of the Bank).

4.1

Complaints against the Prudential Regulation Authority

The Commissioner dealt with one complaint against the PRA between 1st April 2018 and 31st March 2019.

The complaint had started during the previous reporting period and was about how the PRA handled correspondence with the complainant. The Commissioner's view was that there were shortcomings in the way the PRA had responded to the complainant, but that this had not affected the outcome of the complaint. He recommended that the PRA consider how it could improve its process and write to the complainant accordingly. The PRA accepted his recommendation. The report was published on 17 July 2018 (<http://frccommissioner.org.uk/wp-content/uploads/PRA00011-FR-260618-for-publication.pdf>).

4.2

Other complaints against the Bank of England

The Commissioner dealt with one other complaint about the Bank of England between 1st April 2018 and 31st March 2019. The complainant had first sent in their complaint in 2014 and this was reviewed under the Complaint Scheme but not published. The complainant wished to reopen the same complaint but did not provide new evidence. Both the Bank of England and the Commissioner declined to reopen the complaint.

5

Financial Conduct Authority Statistics from 1st April 2018 to 31st March 2019

The Commissioner dealt with 169 complaints against the FCA, one of which related to the work of its predecessor regulator, the FSA.

5.1

Table 2: Complaints and enquiries dealt with during the year

| Complaints and enquiries dealt with | 2018/19 | 2017/18 |
|---|------------|------------|
| Complaints and enquiries at start of period | 19 | 30 |
| New complaints and enquiries received | 118 | 115 |
| Re-opened enquiries and complaints | 32 | 31 |
| Total enquiries and complaints | 169 | 176 |
| Of which | | |
| complaint referred to regulator for investigation | 17 | 6 |
| complaint referred back to regulator for further investigation | 4 | 7 |
| complaint deferred pending completion of investigation by regulator | 18 | 7 |

In 17 instances, complainants approached the Commissioner for an investigation without complaining to the FCA first. None of the 17 complainants gave exceptional reasons why the FCA should not investigate the complaint first, so they were referred to the FCA.

In four instances, the FCA had completed its investigation, but the Commissioner was not satisfied that the investigation was sufficient. The FCA agreed to conduct a further investigation.

In another 18 instances, complainants whose complaints were already being considered by the regulators asked the Commissioner to intervene and conduct his own investigation. The primary reason for these requests was the FCA's complaint handling delays (see section 6 for further details). This is different from last year when such requests were primarily driven by deferral because of unfinished tribunal proceedings.

Of the 169 complaints the Commissioner considered, 29 complaints were continuing at the end of the period, 36 were enquiries redirected to other organisations, 33 were enquiries about the FCA and 71 complaints were concluded with a substantive response.

5.2

Table 3: Decisions in concluded complaints

| Concluded complaints | 2018/19 | 2017/18 |
|---|-----------|-----------|
| Initial case decisions issued by the Commissioner | | |
| Complaint excluded ^{note 1} | 6 | 7 |
| Complaint reviewed without formal investigation ^{note 2} | 2 | 6 |
| Complaint formally investigated ^{note 3} | 63 | 83 |
| Total | 71 | 96 |

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 complaint 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.

5.3

Table 4: Concluded complaints according to subject matter

| Subject matter of concluded complaints | 2018/19 | 2017/18 |
|--|-----------|-----------|
| Failure to regulate, of which | 35 | 67 |
| the FCA has failed to regulate a firm and/or group of firms | 23 | 36 |
| the FCA has failed to oversee the FOS | 4 | 12 |
| the FCA has failed to regulate 'schemes': RBS GRG, IRHP, card protection scheme, BACS | 3 | 14 |
| fraud: the FCA failed to deal with fraud in regulated and unregulated firms | 5 | 5 |
| Regulated firms or individuals complaining that the FCA has failed to deal with them properly, of which | 10 | 9 |
| complaints about FCA Enforcement | 5 | 7 |
| complaints about FCA Authorisation | 5 | 2 |
| The FCA has fined firms unfairly | 10 | 11 |
| Whistleblowing, of which | 1 | 5 |
| disclosure of identity | | 2 |
| failure to act on information | | 2 |
| inadequate processes or insufficient feedback | 1 | 1 |
| Rules and their interpretation | 6 | |
| Other | 9 | 4 |
| Total | 71 | 96 |

Proportionally, the themes this year are similar to last year, with one notable exception being the decrease of whistleblowing cases and an increase in complainants disputing the FCA's interpretation of rules.

In 35 instances complainants alleged that the FCA was failing to regulate the financial services industry properly, and in many cases this hinged on a specific firm as an example. In these cases, most of the complainants had also complained to the Financial Ombudsman Service.

There were 10 concluded complaints from small firms who were disputing the fines imposed on them. This was also the case in the previous year. In these cases, the firms submitted their regulatory returns late and were fined or had cancelled their authorisation after the cut-off date and had been charged the full annual regulatory fee. The Commissioner recommended that the fee be waived in two cases and the FCA accepted this recommendation. In another case the FCA offered a goodwill gesture on an exceptional basis. 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.

Complaints about interpretation of rules and fraud were notable themes this year.

5.4

Table 5: Commissioner's decisions in cases which were investigated and concluded

| Concluded complaints | 2018/19 | 2017/18 |
|------------------------------------|-----------|-----------|
| Regulator's decision fully upheld | 53 | 87 |
| Regulator's decision partly upheld | 7 | 1 |
| Regulator's decision not upheld | 11 | 8 |
| Total | 71 | 96 |

The Commissioner upheld the large majority of the FCA's decisions. However, in many of these cases, the Commissioner also made suggestions for process improvement (as opposed to formal recommendations, which are used when the Commissioner has upheld a complaint against the regulator).

5.5

Table 6: Remedies recommended by the Commissioner

| Remedies recommended for concluded complaints | 2018/19 | 2017/18 |
|--|-----------|-----------|
| Apology | 3 | 5 |
| Put things right/recommendations for improvement | 10 | 11 |
| Compensation | 7 | 13 |
| Suggestions for further improvements | 11 | 17 |
| Total | 31 | 46 |

Note: in some cases there were multiple remedies.

The Commissioner asked the FCA to offer or increase ex gratia compensation to seven complainants. He recommended ex gratia compensation for two main reasons: issues with delays in the complaints handling and/or poor communication from the FCA – in three cases – and instances where the actions of the FCA contributed to the complainant's loss.

Out of the 31 remedies identified, the FCA did not accept two. One is described as case study 4 in the following chapter. In the other, the Commissioner considered that the FCA had persistently sought to minimise and defend failings by a bank in relation to a redress scheme, but the FCA did not accept the criticism (FCA00269).

The FCA accepted the rest of the recommendations, which the Commissioner welcomes, but in some cases there were delays in implementing his suggestions and recommendations (excluding apology and compensation) and in another, internal reviews are continuing which means the FCA has not yet implemented what the Commissioner asked it to do.

5.6

Table 7: Type of complainant

| Type of complainant | Excluded | Reviewed without formal investigation | Formally investigated | Total 2018/19 | Total 2017/18 |
|------------------------------------|----------|---------------------------------------|-----------------------|---------------|---------------|
| Independent Financial Adviser | 1 | 0 | 1 | 2 | 4 |
| Firm | 1 | 1 | 22 | 24 | 25 |
| Consumer | 4 | 0 | 39 | 43 | 56 |
| Solicitor on behalf of firms | 0 | 0 | 0 | 0 | 5 |
| Solicitor on behalf of individuals | 0 | 0 | 0 | 0 | 3 |
| Third party | 0 | 1 | 1 | 2 | 3 |
| Total | 6 | 2 | 63 | 71 | 96 |

Of the 71 concluded complaints, 43 were made by or on behalf of members of the public. The Commissioner also concluded 24 complaints made by or on behalf of firms, and two by IFAs, the majority of which were small businesses. 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 FCA was interacting with the firm.

From the complaints which have been dealt with over the past twelve months, the Commissioner has identified the following key themes:

- a. Problems with the register;
- b. The adequacy of information provided to regulated firms and individual complainants;
- c. Concerns about the speed and adequacy of response to information;
- d. Problems with delays in complaints handling.

The register and IT reporting systems

The financial services register is difficult to understand, and sometimes inaccurate. This has clear implications for **consumer protection**. The poor design of the register system, which the Commissioner has drawn attention to in previous reports, coupled with the complexity and lack of clarity arising from the distinction between regulated firms and regulated products – a problem highlighted by the Commissioner three years ago – mean that consumers sometimes believe that they have more regulatory protections than they really do.

One case stood out as illustrative of the poor state of the register, and its potential effect upon consumers.

Case study 1 (FCA00459)

In 2016 the complainant had purchased bonds from what appeared to be a registered credit union. Before making the investment, she had checked the Financial Services Register (the details matched), and had also checked with the Financial Services Compensation Scheme that there were no recorded defaults against the credit union.

It turned out that the registered credit union had in fact been dissolved in 2012. Its identity had been cloned by fraudsters; the complainant lost £45,000.

The FCA acknowledged that the fact that the credit union had been dissolved had been known to it for four years, and that 'more could have been done by the FCA to have credit union X's entry on the Register updated so it was accurate sooner than it did'. The FCA offered the complainant £150 for distress and inconvenience.

The Commissioner acknowledged that the principal responsibility for the complainant's losses lay with the fraudsters, but he considered that the FCA's offer was wholly inadequate. He said:

consumers are entitled to expect that the register will be kept competently. In this case, it is clear that for four years evidence which should have led the FCA (and its predecessor the FSA) to remove the credit union from its register was not acted upon. This was more than a simple oversight. The record clearly shows that there was an awareness of the situation, but no effective action was taken until your complaint was lodged. Worse, the records which I have studied give me no confidence that the responsible departments understand the seriousness of the FCA's failings.

Adequacy of information

Other factors complicating consumers' understanding of the register are the system of 'passporting' firms within the EU. Firms may appear on the FCA's register on the basis of their principal registration in another EU country. An additional complication is that authorised firms may undertake unregulated activities. The combination of the inherent complexity of

the system, and the impenetrable nature of the FCA's web-based register, can easily lead to confusion. In two cases during the year, the Commissioner drew attention to this: in the first, (FCA00452) the FCA had not explained to a complainant that, although the principal regulator was based in Malta, the FCA would share information with that regulator. In the second, (FCA00534), the Commissioner drew attention to confusion about the FCA's role in dealing with unregulated products and fraud, and urged greater internal and external clarity. The Commissioner was pleased that in January 2019, the FCA issued further guidance on the promotion of unregulated products by regulated firms.

A parallel theme was deficiencies in the system through which the FCA collects its regulatory fees from firms. It had been apparent for some time that, because of the poor design of the way in which the system prompts firms for information, some firms believed that they had submitted their regulatory returns on time when in fact they had not. Partly as a result of recommendations made by the Commissioner, in 2018 the FCA made changes to the system, but unfortunately the changes were poorly designed, and the problem recurred. The Commissioner had to recommend a refund in a further two cases after the FCA had failed to accept adequate responsibility for the problems which firms were facing. The FCA's own Complaints Team took steps to improve the system, and the improvements have now been implemented.

The Commissioner recognises that the FCA has committed to improving its IT systems, he has seen some steps being taken to improve matters, and he welcomes that. He notes, however, that these problems have been evident for a long period. He also notes that on occasions it has taken his intervention before the FCA has accepted the need to provide significant financial recompense to people who have been particularly badly affected. His comment is that, while a public authority is rightly reluctant to award significant compensation from publicly stewarded funds, the longer the FCA continues to operate systems which are clearly sub-standard, the less defensible that reluctance will be.

Delays

Delays were a theme in complaints considered during the year. These fell into four categories. First were delays in responding to adverse information about regulated firms, the second were delays in the FCA's dealings with regulated firms, the third were delays in considering complaints, and the fourth were complaints which were deferred pending further inquiries.

The first category is a complex one. The FCA considers huge quantities of information every day, and has to make decisions about what to pursue. Many matters may not be priorities, even if the informant understandably feels strongly about them. In other cases, the FCA may take action but be unable, for reasons of confidentiality, to tell the informant what it has done. This inevitably means that many informants will be disappointed by the FCA's apparent lack of action, or sceptical about the effectiveness of the FCA's response. In many cases, the Commissioner has to assure the complainant that the FCA has behaved reasonably, even though he is unable to share the full information with the complainant.

There has, however, been a significant minority of cases in which the Commissioner has detected unjustified delays in the FCA's response to significant information, or a failure to pass information on to the appropriate parts of the organisation. Problems have centred upon the interface between the Consumer Contact Centre (CCC) which triages incoming calls, and the supervision department which decides whether and what action to take. There have been some cases in which informants have repeatedly raised concerns and offered to supply further

information, only to be met with repeated and stock responses. In a few of those cases, the Commissioner's inquiries have revealed that information has not been passed on as it should have been.

Case study 2 (FCA00465)

This case related to a long dispute, involving court proceedings, between a business and a bank. The core of the matter was that the complainant had approached the FCA with some serious allegations against the bank – including misleading a court and procedural problems – and considered that his concerns had not been adequately investigated.

The FCA acknowledged that its original response to the complainant's concerns had been delayed, that the Customer Contact Centre (CCC) had missed an opportunity to ask for some further information, and that some information had not been passed on to the supervision department.

While the FCA's acknowledgment of these problems was welcome, the Commissioner considered that the FCA had not sufficiently confronted the gravity of the allegations: its responses suggested that it had relied upon the general policy of saying that individual disputes between consumers and financial services institutions were a matter for the Financial Ombudsman Service, rather than properly considering whether there might be systemic issues. The FCA agreed to make further inquiries.

Case study 3 (FCA00510)

In this case, the complainant had lost money having invested in a corporate bond. She had ignored the advice of the FCA, which had informed her that the company was not regulated, and that there was the danger of scams.

The Commissioner agreed with the FCA that the Consumer Contact Centre (CCC) had given good advice, and that the FCA could not be held responsible for her losses. However, the FCA's Complaints Team had discovered that the CCC had not passed the information on to the FCA's Unauthorised Business Department, when it clearly should have been – though that had had no effect upon the complainant's position.

The Commissioner has discussed the issue of information flows with the FCA, and is encouraged that it recognises the need to improve the flow, and has taken steps to do so. Because of the time taken for complaints to work through the system, the problems with the passing on of information referred to above largely centre upon 2017. He will monitor the effect of the FCA's steps upon the complaints which he receives.

The second issue is illustrated by the following complaints.

Case study 4 (FCA00431)

This complaint related to a firm which had applied for a consumer credit licence. The original application was submitted in January 2015, and the licence was granted in June 2017 – way outside the statutory time-limit for such applications. For the second half of this period, the firm believed – understandably – that its licence was going to be refused, because the FCA had indicated that it was minded to do so.

The principal cause of the delay was that the FCA was overwhelmed by applications, and made a conscious decision to 'park' this and other applications because they were

considered to be of low priority. However, the FCA made no attempt to explain this to the firm directly, and rejected the firm's subsequent complaint, while acknowledging that although 'Overall I am content with the FCA's communication...I believe they could have provided you greater clarity following the inactivity in the handling of your case'.

The Commissioner's conclusion was that 'there was unreasonable delay and lack of care amounting to maladministration in the processing of your Consumer Credit Licence application. I have also concluded that the response to your complaint sought to minimise the FCA's failings, and did not properly consider the impact of those delays upon your business.'

The Commissioner's concern in this case was two-fold: first, a regulatory process had been badly handled, with insufficient regard given to the effect upon the business concerned; and second, the FCA's response to the complaint seemed focused upon defending the FCA's position rather than considering whether the complainant had a substantial and legitimate grievance (the original complaints investigation did not probe the facts sufficiently). Although the FCA did not accept the totality of the Commissioner's findings, it did accept shortcomings and drew attention to its Authorisation Department's subsequent published commitment to applicants, which should help to prevent a recurrence. It rejected the Commissioner's recommendation on compensation. The Commissioner was pleased that the FCA agreed to review the information it provided in *Minded to Refuse* cases.

Case study 5 (FCA00396)

This complaint related to the FCA's supervision of a regulated firm which had run into financial difficulties, and where there were concerns about the content of the firm's advertising. In its response to the complaint, which came from a person who had supplied information but was concerned about the adequacy of the FCA's response, the FCA acknowledged that there had been gaps in the supervision of the firm, though this had been an isolated incident which had been rectified.

Although the Commissioner was pleased that the FCA had acknowledged shortcomings, he had a number of concerns. The first was that, on further investigation, it became apparent that the shortcomings had not been an isolated incident but reflected a significant backlog in the area concerned – the FCA's assurance to the complainant had therefore been misleading. The Commissioner also had some concerns about the method by which the priorities of supervision were determined, and the fact that an allegation that a firm had been using FCA authorisation to defraud investors had not been sufficiently probed.

The Commissioner welcomed the fact that the FCA had just published its Approach to Supervision.

This case illustrates a number of difficulties. These include:

- a. The FCA has to make difficult decisions about conflicting priorities;
- b. Some of the FCA's supervisory and enforcement work is inevitably confidential;
- c. This means that individual informants may not receive adequate reassurance that their information has been properly considered;
- d. Individual complaints – such as this one – may be helpful in uncovering shortcomings, but they do not provide an adequate means of assessing the *overall effectiveness* of the

way in which supervisory and enforcement decisions are made. The FCA has undertaken and is undertaking some reviews into significant alleged regulatory failures, but those will focus upon particular – and often historic – problems. The FCA should consider publishing a fuller explanation of the steps which it is taking to control and quality assure the supervision process, and the effectiveness of those steps: this would provide a fuller picture than investigations into individual complaints can do.

The third matter is more straightforward. Having made considerable progress in improving response times last year after a period of poor performance, the FCA's performance went into reverse in 2018/19. From the new year onwards, the Complaints Commissioner was receiving a steady stream of people complaining about missed deadlines and long delays in the FCA's response to complaints. Some of these delays were commented upon in the Commissioner's published decision letters. Towards the end of the 2018/19 year, complainants were not even being given an indication of when they might receive an update. This is in direct contravention of the Complaints Scheme, which requires the regulators to set out a reasonable timescale for completing each complaint.

The Commissioner acknowledges that individual members of the FCA's Complaints Team have been working hard and conscientiously, but the fact is that – not for the first time – the FCA as an organisation has failed to resource its Complaints Team adequately, with the result that complainants – many of who are anxious and/or angry and/or vulnerable – have found that the Scheme has exacerbated their difficulties.

The FCA is not currently meeting the complaints handling requirement for prompt handling which it requires of those it regulates. It has, however, acknowledged these shortcomings, and at the time of writing this report it has recruited additional staff who are being brought in to the team. The Commissioner will continue to monitor the FCA's performance in this area.

Finally, there is the question of complaints which are deferred while other procedures are completed. The current Complaints Scheme gives the regulators a broad discretion to defer complaints while other inquiries are being completed. In the Commissioner's view, this is too broad. While there will be cases in which a complaint cannot be considered because of a serious risk of prejudicing other matters (for example a criminal inquiry), there will be many which can be dealt with before the completion of other matters.

The inquiry into the Co-op Bank is a good example of how protracted regulatory enforcement proceedings, followed by a general inquiry, have meant that complaints have been deferred for years. The findings of the Zelmer review, published earlier this year, relate to the supervisory approach between 2008 and 2013. This is unsatisfactory (though no fault of the author), both because of the delays for individual complainants, but also because it is harder to assess the relevance of the findings to a system six years later. Similar issues have arisen in the case of the inquiry into the Connaught Fund, amongst others.

Towards the end of 2018/19, complaints about two high-profile collapses started to be received, and have been deferred by the FCA. The Commissioner has discussed this with the FCA, which has agreed that indefinite deferral is not acceptable. The complaints will therefore be reviewed at least every six months, so that they can be dealt with as soon as possible, rather than waiting for the exhaustion of all other possible procedures, which could take years.

7

Resources and performance

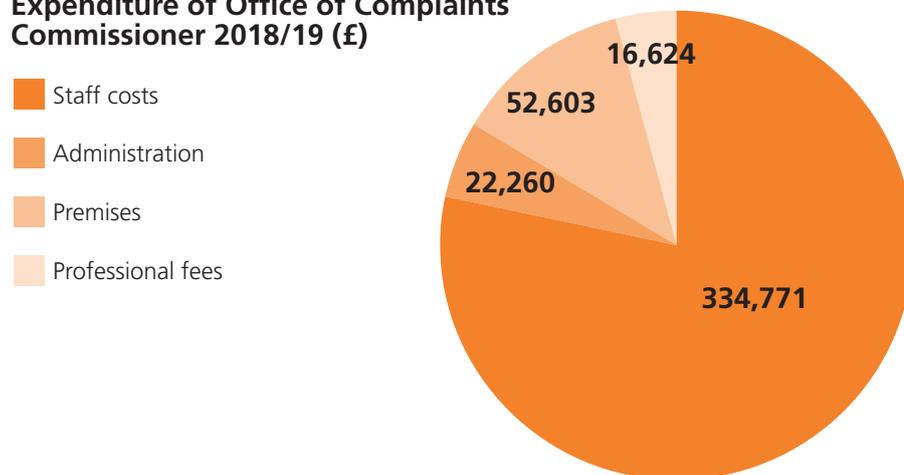
Under the Complaints Scheme, the Commissioner must be provided by the regulators with “sufficient financial and other resources to allow him to fulfil his role under the Scheme properly”.

Although the caseload for the Commissioner has risen 20% since he took up his appointment in May 2014, steps have been taken to ensure that resources are used as efficiently as possible.

Expenditure for the year ending 31st March 2018 was £426,258 compared to £434,296 the previous year.

The breakdown of expenditure by broad category is as follows:

Expenditure of Office of Complaints Commissioner 2018/19 (£)



Expenditure in 2018/19 is projected to be £448,000.

The organisation has undertaken a number of initiatives during the year to improve case handling. This has included staff training on disability discrimination, and the introduction and publication of new quality and service standards, accessibility, behaviour, and service complaints. More details can be found at <http://frccommissioner.org.uk/publications/policies/>

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 inquiries.

Environmental initiatives

1. The Office recycles as much waste as possible.
2. All the records of the Office are held digitally, to reduce the use of paper.

Remuneration

The highest paid employee of the Office was the Complaints Commissioner, whose total remuneration for 2018/19 was £156k (2017-2018 £156k).

APPENDIX

Expenditure

Profit and Loss Account

For the year ended 31st March 2019

| | 2018/19 £ | 2017/18 £ |
|--|--------------|--------------|
| Administrative expenses | (426,259) | (434,296) |
| Other operating income | 426,259 | 434,296 |
| 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 2019 nor 2018, other than those included in the profit and loss account.

Expenditure during the year decreased by 2% compared to the previous year.

The audited accounts for the period ending 31st March 2019 are available from the Registrar of Companies, Companies House, Crown Way, Maindy, Cardiff, CF14 3UZ. The company's auditors are Bishop Fleming.

Office of the Complaints Commissioner

23 Austin Friars
London EC2N 2QP

Telephone: 020 7562 5530

Email: complaints@frccommissioner.org.uk

www.frccommissioner.org.uk