



Complaints Commissioner

Reviewing how the financial services regulators consider complaints

Annual Report
2014/15

ANNUAL REPORT 2014-2015

This is the Annual Report of the Complaints Commissioner to the Financial Conduct Authority, the Prudential Regulation Authority and the Bank of England.

It covers the period from 1st April 2014 to 31st March 2015.

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Introduction by the Commissioner

Purpose of the Complaints Scheme

Although the purpose of the Complaints Scheme – to resolve complaints about the actions or inactions of the financial services regulators – may seem obvious, the Scheme – and in particular my role as the independent Commissioner – serves a wider purpose in the governance and accountability of the regulatory system.

The regulators of financial services have heavy responsibilities, and wield significant powers. They are held to account by Parliament in relation to their policies and the general discharge of their functions; by the courts in relation to the use of their statutory regulatory powers; and by the media in relation to almost anything.

Because financial services regulation is an intelligence- and risk-based activity, the regulators are required to exercise discretion in a multitude of ways every day, ranging from on the one hand grand decisions about whether to intervene systemically in a sector to on the other detailed decisions about whether a particular piece of information about a small firm merits further inquiry. Like all regulators, they are required to strike a balance between the danger of over-regulation (too costly, stifles innovation) and the danger of under-regulation (failure to identify and mitigate serious risks).

This means that the potential for error – and particularly for being judged in error with the benefit of hindsight – is large. Users of financial services, those supplying financial services, and commentators may not understand (or may choose to forget) that the system requires a host of subjective judgements, some of which will inevitably be found to have been mistaken in the light of subsequent events. The regulators may, therefore, be unfairly castigated for failures which they could not reasonably have pre-empted.

But there is an opposing danger. The fear of being found wanting in an unforgiving environment may lead regulators to defensive and even oppressive behaviours. “We were exercising our discretion” and “we followed the procedures” can become excuses for defending the indefensible. Regulators can forget that the powers they exercise may, if exercised improperly or carelessly, have severe effects upon the financial and emotional well-being of users and suppliers of financial services.

It was for that reason that the Complaints Scheme and the Commissioner’s role were established. The Scheme exists not only to put things right for an aggrieved individual, but also to shine a more general light upon any tendencies in the regulators to act carelessly, erroneously, or oppressively.

Against that background, I find that the complaints system is working well, and that the regulators are themselves generally dealing competently and fairly with complaints against them; but in the Themes and Issues section of this report I draw attention to some issues, arising from a few complaints which in my view should have been better handled and in which I have needed to intervene, where continued vigilance is required.

The purpose of this annual report is to enable all those with an interest in financial services and its regulation – including the senior executives and non-executives charged with its oversight, Government and Parliament, the public, the financial services sector, and the media – to see how the system is operating and whether there are lessons to be learned.

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 (the Bank)) 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 Bank it only covers complaints about the regulation of recognised clearing houses and inter-bank payment systems.)¹

The regulators are also required to appoint an independent person (the Complaints Commissioner) 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.

Until 30th April 2014, the Complaints Commissioner was Sir Anthony Holland. Sir Anthony fulfilled the role for nearly ten years, and the Office is grateful to him for his work in ensuring the effectiveness of the system. From 1st May 2014, the Commissioner has been Antony Townsend, whose career includes extensive experience of regulation and complaints handling. Further information about the Commissioner can be found at <http://fsc.gov.uk/profile/>.

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

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Overall Scheme Statistics for 2014-2015

The table below shows the number of enquiries and complaints dealt with by the Commissioner during 2014-15. The number of new and re-opened complaints received was 167 for the year ended 31st March 2015, compared with 144 in the previous year.

Total enquiries and complaints received

Enquiries and complaints during 2014-2015	2014-2015	2013-2014	% change
New enquiries and complaints received	116	100	+ 16%
Re-opened enquiries and complaints	51	44	+ 16%
Deferred complaints ^{Note 1}	1	3	- 67%
Enquiries and complaints concluded	153	146	+ 5%

Note 1 These are complaints where it was decided that an investigation should not be started due to continuing regulatory action or a continuing legal process.

Complaints in progress at start and end of period

There were 20 complaints in progress at the end of the year, compared with 7 at the start.

New complaints

The Commissioner received 116 new complaints during the year (up 16%) and dealt with an additional 51 re-opened complaints. The table below shows the number of new enquiries and complaints received by the Commissioner during 2014-15 according to the regulator they were directed against. The majority of complaints were against the FCA.

Enquiries and complaints received during 2014-2015	2014-15
Bank of England	1
PRA	2
FSA	11
FCA	61
General ^{Note 2}	41
Total	116

Note 2 General complaints are ones which do not fall within the scope of the Complaints Scheme. Further information about these complaints can be found in Section 5 of this Annual Report

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Bank of England and PRA Statistics from 1st April 2014 to 31st March 2015

This section of the report deals with complaints against the Bank of England (in respect of its oversight of the banking clearing houses and payment settlement schemes) and against the Prudential Regulation Authority (which is a subsidiary of the Bank).

Bank of England statistics

The Commissioner received one complaint about the Bank of England during the period 1st April 2014 to 31st March 2015.

The Commissioner was unable to investigate the complaint as it related to the Bank of England's general policy of Quantitative Easing, and it was therefore excluded from the Scheme.

Prudential Regulation Authority statistics

The Commissioner received two complaints about the PRA during the period 1st April 2014 to 31st March 2015. One complaint was against both the PRA and the FCA and was dealt with during the year; the other remains open.

The joint FCA/PRA complaint related to the requirement upon banks to give information to customers about their right to seek redress from the Financial Services Compensation Scheme if a bank fails. The complainant was unhappy with this as he felt it amounted to unwanted advertising. The Commissioner agreed with the PRA's decision to exclude this complaint on the grounds that it related to legislative functions of the PRA.

The Commissioner will report as appropriate on the outcome of the open complaint in his next annual report. It relates to losses the complainant incurred in the sale of corporate bonds issued by a major bank.

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FCA and FSA Statistics from 1st April 2014 to 31st March 2015

Enquiries and complaints received during the year

The table below shows the number of enquiries and complaints about the FCA and FSA received by the Commissioner during 2014-15. (The FCA has inherited responsibility for complaints against the FSA.) There were 111 new and re-opened complaints received in the year ended 31st March 2015.

Table 1 Enquiries and complaints received during 2014-15

FSA/FCA Enquiries and complaints received during 2014-2015	2014-15
New enquiries and complaints received	
FCA	61
FSA	11
Re-opened enquiries and complaints	
FCA	22
FSA	17
Total	111

Enquiries and complaints concluded during the year

The tables below show the enquiries and complaints concluded during the year, and those still in progress.

Table 2 Enquiries and complaints concluded 2014-15

FCA/FSA enquiries and complaints concluded during 2014-2015	2014-15
Enquiries and complaints concluded	
FCA	55
FSA	54
Total	109

Table 3 Complaints in progress at the end of 2014-15

FSA/FCA complaints in progress at end of 2014-2015 year	2014-2015
Enquiries and complaints in progress at end of year	
FCA	18
FSA	1
Total	19

Table 4 Enquiries and complaints concluded according to complaint outcome

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

Closed cases 2014-2015	2014-15
Enquiries ^{Note 3}	73
Case excluded ^{Note 4}	
FCA	11
FSA	4
Cases reviewed and concluded without formal investigation ^{Note 5}	
FCA	9
FSA	4
Stage 2 investigations ^{Note 6}	
FCA	4
FSA	4
Total	109

Notes to Table 4

Note 3 The Complaints Scheme sets out that complainants should generally contact the regulator before approaching the Commissioner: save exceptionally, enquiries about complaints which have not been through the regulator are directed back to the regulator. Once the regulator has considered the complaint, a number of complainants re-approach the Commissioner. However the figures also include enquiries relating to cases which the Commissioner had previously closed.

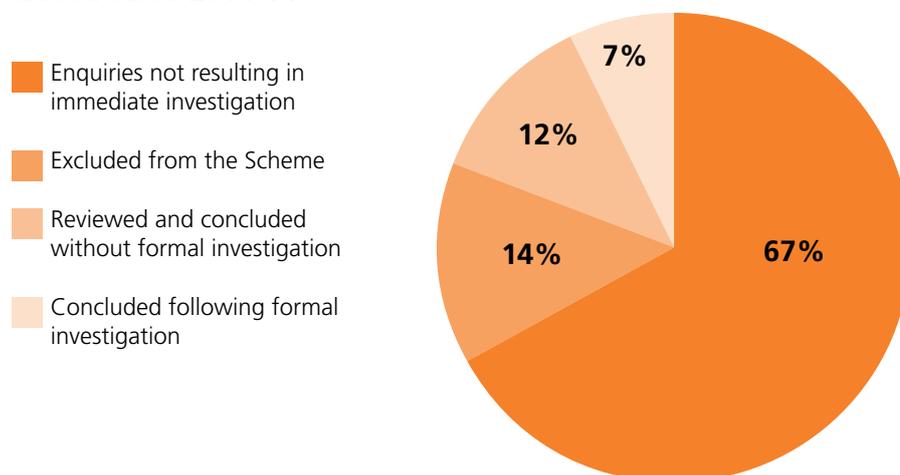
Note 4 Certain complaints cannot be considered under the Complaints Scheme because they relate to "legislative functions". Generally this means complaints about the regulators' rules, the guidance they have issued, and the regulators' general policies. It also includes complaints which should be dealt with through other formal processes (such as disciplinary cases through the Upper Tribunal).

Note 5 When considering a complaint the Commissioner sometimes concludes that a review of the regulator's investigation is sufficient, and he does not need to undertake a full investigation. (The Commissioner has access to all the regulators' records.)

Note 6 The Stage 2 Investigation process is where the Commissioner undertakes a full investigation into the complaint.

Chart 1 2014-15 Complaint Summary

Closed cases 2014-14



Complaints which were excluded from the scheme usually related to the performance of the FCA's and FSA's legislative functions (rules, guidance and policy). Non-investigated complaints 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 Stage 1 investigation, and offered a sufficient remedy (for example an apology), but the complainant had chosen to escalate the complaint to the Commissioner without a clear explanation of the intended outcome. Where the FSA and/or FCA has addressed outstanding issues in its Stage 1 investigation in a satisfactory manner, there is no benefit to be gained from a secondary investigation of the same issue.

Stage 2 investigations during the year

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

Table 5 Stage 2 investigations 2014-15

Stage 2 investigations	2014-15
Carried forward	3
New Stage 2	14
Concluded	8
of which FSA	4
of which FCA	4
Carried forward	9

The Commissioner completed 8 Stage 2 investigations during the period which were split equally between the FCA and the FSA. Details of the outcome of these investigations are shown in Table 6.

Table 6 Stage 2 investigation outcomes 2014-15

Stage 2 investigations Outcome	FSA	FCA
Not Upheld	2	4
Partially Upheld	1	0
Upheld	1	0

A short commentary on the common themes which emerged can be found in the Themes and Issues section of this Annual report.

The Commissioner was critical of certain aspects of the FCA investigation in nine of his reports. Three of these involved inadequate explanation of the conclusions, although the outcome was considered to be correct; four were critical of particular outcomes, one was focused on an inadequately handled investigation and one on failing to address the complaint fully.

The Commissioner generally publishes (in an anonymised form) all of his decision letters on his website, except where the complainant asks him not to. Neither the FSA nor the FCA have asked the Commissioner not to publish a decision. All eight of the Stage 2 investigations which were completed during the period were published on the Commissioner's website.

Type of complainant

The information below shows that enquiries and complaints have predominantly come from individual members of the public during the year.

Table 7 Type of Complainant (against the FSA) 2014-15

FSA case decisions 2014-15 according to type of complainant	Reviewed without formal investigation	Stage 2	Exclusion	Total
Individual Financial Adviser	0	2	2	4
Firms	1	0	0	1
Consumer	4	2	6	12
Third Party	0	0	0	0
Total	5	4	8	17

Table 8 Type of Complainant (against the FCA) 2014-15

FCA case decisions 2014-15 according to type of complainant	Reviewed without formal investigation	Stage 2	Exclusion	Total
Individual Financial Adviser	0	1	0	1
Firms	1	3	0	4
Consumer	7	0	11	18
Third Party	1	0	0	1
Total	9	4	11	24

Enquiries and complaints in progress at the end of the year

A number of complaints were in progress at the end of the year. The following table provides details of the complaints which were in progress.

Table 9 Complaints in progress at the end of 2014-15

Enquiries and complaints in progress at end of year	2014-2015	2013-14
FCA	18	1
FSA	1	6
Total	19	7

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General Complaints Received during the 2014-15 Year

We receive a large number of complaints which are for other bodies. Whilst we cannot investigate these complaints, wherever possible we try to direct the complainant to someone who can.

The following table shows the organisations to which we have directed the complainants we are unable to assist

Table 10 Organisations to which complaints have been redirected

Organisation to which general enquiries relate	2014-15
Financial Ombudsman Service	10
Firms	11
Other	20
Total	41

The regulators' handling of complaints

In the large majority of the 38 cases which the Commissioner considered in the year, he upheld the regulator's findings, and had no significant criticism of the way in which the complaint had been handled. This reflects the fact that, in his experience, the regulators' complaints teams are generally thorough and fair-minded in their approach to complaints. It is worth stating that the regulators receive around 350 complaints under the Scheme each year, of which only around 10% are referred to the Commissioner by the complainant. The regulators' complaints teams can, and do, issue apologies, put things right, and make payments; and in many of those cases, the complainant is sufficiently satisfied to take no further action.

In those cases which are referred to the Commissioner by complainants, around 90% are ones in which the regulators have rejected the complaint, and in the remaining 10% the regulators may have upheld the complaint in whole or in part, but the complainant is dissatisfied either with the finding or with the remedy.

A large number of the 116 inquiries and complaints received during the year clearly did not fall within the Scheme (for example, they were more appropriate for the Financial Ombudsman Service), and were therefore directed elsewhere, with advice to help inquirers resolve their concerns. Of the remaining 75, 38 led to formal decisions by the Commissioner, and in 8 of those cases the Commissioner conducted a formal investigation ("Stage 2 investigation") before reaching his decision.

The Commissioner made 38 formal decisions during the course of the year (one of these was not published until 1st April, and therefore does not appear in the statistics).

The large majority of these cases related in various ways to concerns that the FCA's regulatory regime was insufficiently rigorous, ranging from complaints about the FCA's general policy in relation to loan interest rates through to allegations that the FCA had failed to act sufficiently firmly, or at all, in response to concerns. In none of these cases did the Commissioner overturn the regulator's findings, though the regulator's rationale was checked (sometimes in considerable detail) to ensure that the decisions taken could not be said to be unreasonable.

Another category of cases, which has been a feature of the Scheme in previous years, was complaints about the way in which the FCA has handled administrative applications from regulated firms, including the imposition of fines for late returns and delays in processing. None of these were upheld. The complainants were unable to demonstrate any good reason why they should be exempted from the requirements imposed upon other firms, and the Commissioner's view is that it is reasonable – save where it can be demonstrated that the regulator is at fault, or there are really exceptional personal circumstances – for the regulator to penalise those who fail to co-operate with the system and thereby generate additional costs which would otherwise be borne by other compliant regulated firms.

Cases in which the Commissioner criticised the regulator, but did not overturn the regulator's decision

In six cases, while not overturning the FCA's decision, the Commissioner commented upon aspects of the way that the complaint had been handled. In general, the Commissioner's

concern was that the FCA had not given a sufficiently full explanation of the underlying rationale for the decisions which had been taken.

In one case², the Commissioner was critical of the FCA's decision to rule that the case was excluded from the Scheme, since in his view the complainant was alleging unreasonable behaviour by the FCA. Despite this criticism he concluded, having reviewed the records, that the complaint should not be upheld. In another³, the Commissioner criticised the explanation given by the Authorisations department for its actions, and recommended that the FCA should review its procedures for dealing with applications for cancellation of permissions when there were outstanding complaints against the firm.

Cases in which the Commissioner overturned the regulator's decision

In only 3 cases did the Commissioner overturn the FCA's decisions (in whole or in part).

In the first of these⁴, the complainant alleged that advice being given under a Government-sponsored scheme was not being properly regulated. The FCA initially claimed (twice) that the matter was not within its remit, but then decided (correctly) that it should investigate the matter. However, it rejected the complaint about its handling of the matter on the grounds that it fell outside the Scheme, while offering an explanation which failed to be open about the extent of the FCA's errors. The Commissioner recommended a proper apology and a payment of £100 to reflect the failings.

In the second case⁵, an investor had been given an erroneous assurance by the FSA's Contact Centre that his investment would be safeguarded under the Financial Services Compensation Scheme. The evidence was clear (there was an email confirming the advice), but the FCA had declined to offer full compensation, and argued that it would be wrong to do so. In his report, the Commissioner wrote:

“...the email...clearly indicates to the complainant that the entirety of his investment would be covered in the event of something going wrong. I am not persuaded by the FCA's comments that the “effect of your current course [i.e. the Commissioner's recommendation to provide compensation] would effectively be to make the FCA a guarantor of investments which such investors were themselves aware were inherently risky. We do not believe that was the purpose for which the Scheme was established”. My recommendation is simply designed to provide protection to an investor who received completely incorrect information from the FCA over the level of protection he would receive should anything go wrong with his investment. I agree with the FCA that it should not act as a guarantor of investments which investors should know are inherently risky, but the answer to that is that the FCA should not give erroneous advice about guarantees. The complainant in this case may have been naïve to rely upon the FCA's advice, but having obtained it in writing he was entitled to do so”.

The third case⁶, which related to the supervision and enforcement activity of the former Financial Services Authority, was the most serious. This was a complex matter, relating

2 FSA01617 – <http://fsc.gov.uk/wp-content/uploads/FSA01617-FCA00033-DL-17-11-14.pdf>

3 FCA00015 – <http://fsc.gov.uk/wp-content/uploads/FCA00015-FD-24-11-14-Publish.pdf>

4 FCA00020 – <http://fsc.gov.uk/wp-content/uploads/FCA00020-FD-09-03-15.pdf>

5 FSA01616 – <http://fsc.gov.uk/wp-content/uploads/FSA01616-FD-24-11-14-Publish.pdf>

6 FSA01569 – <http://fsc.gov.uk/wp-content/uploads/1569-FD-24-11-14-Publish.pdf>

to a prolonged period of supervision visits and enforcement action by the FSA. The FCA, which inherited the complaint, concluded that an apology was owed for some delays, but nothing further.

The regulator's view was that it was not possible to conclude, on the balance of probabilities, that the behaviour of the FSA's investigation team fell below an acceptable standard, but the Commissioner rejected this view.

In his report, the Commissioner recommended:

- “1. The regulator should apologise to the complainant for its Supervision Division's failings to provide the complainant/complainant's firm with written confirmation of its concerns within a formal report or 'action plan', together with its failure to send the complainant/complainant's firm a formal 'scoping document' and/or communications to clarify its changing position in a timely manner. Although the events giving rise to this complaint occurred five years ago, the regulator should review its procedures to ensure that effective controls are either already in place or are put in place to ensure that it communicates with the firms it regulates (especially small firms) in an appropriate and timely manner.
2. The regulator should apologise to the complainant for the conduct of the interviews carried out by its Enforcement Division. Although it is accepted that the conduct complained about occurred over five years ago the Commissioner recommends that the regulator should ensure that its staff (especially those from the Enforcement and Supervision Divisions) are reminded that unprofessional conduct (i.e. behaviours, comments or gestures) towards those it regulates (especially those under investigation) are not acceptable.
3. The regulator should make a payment of £1,000 in recognition of the unnecessary distress and anxiety which its handling of this matter has caused. Although the regulator had clear and justifiable grounds for increasing its monitoring of the complainant and ultimately taking action against him, it is clear from my investigation that elements of the regulator's handling of this matter fell below the standard expected of the regulator, with adverse consequences for both the complainant and the public interest. Specifically the recommended payment is in recognition of the regulator's Supervision Division's failings in providing the complainant with clear instructions of what it expected of him before the matter was referred to its Enforcement Division, and in respect of the conduct of the interviews with the complainant.

In making this recommendation for payment, I am aware that it might be argued that the complainant brought the matter upon himself by failing to address the inadequacies in the management of his firm. I have taken this into account in setting the level of the recommended payment, but as a matter of principle I consider that the fact that a complainant's failings may have triggered regulatory action must not absolve the regulator from its duty to proceed with its actions promptly and competently, or to provide some recompense when it fails to do so”.

The experience in this case, and from other cases in previous years, informed the paper which the Commissioner submitted to the call for evidence for HM Treasury's review of Enforcement Decision-Making at the Financial Services Regulators. This paper suggested how the operation of the procedures of the FCA and PRA might be monitored and improved in the future.

Confidentiality

A recurrent problem in dealing with complaints under the scheme are the restrictions on disclosure of information to complainants. This is partly statutory – Section 348 of the Financial Services and Markets Act 2000 (as amended) prevents the disclosure of certain kinds of confidential information – and partly a matter of policy – the regulators consider that those they regulate may be less open if they fear that the information they supply to the regulator may be disclosed.

These restrictions and concerns are understandable and substantive ones, but they have the effect of sometimes leaving the complainant with the erroneous impression that their concerns have been swept under the carpet, when in fact the regulator is undertaking further inquiries but is not (yet) in a position to make that public. This is particularly difficult when the complainant is a whistleblower who is already concerned that impropriety is being ignored.

The Commissioner – although he has seen no evidence of concerns being improperly ignored – has in some instances encouraged the regulators to disclose a little more information to complainants, where this can be done safely, and is discussing this issue with the regulators, to see whether more can be done within the statutory restrictions and without undermining the need for trust between the regulators and those they regulate.

Shortly after the new Commissioner's arrival in May 2014, the regulators proposed that – contrary to previous practice – the Commissioner should no longer be permitted to see the regulators' internal legal advice related to complaints, on the grounds that sharing that advice might undermine legal privilege. The Commissioner made representations to the Boards of the FCA and PRA, stating his strong view that openness between the regulator and the Commissioner (who would, of course, respect confidentiality) was critical to the objectives of the scheme. The Commissioner was pleased that the regulators abandoned their proposal.

Other themes and issues

A number of other common themes emerged amongst the concluded FCA Stage 2 investigations.

Use of the Complaints Scheme

In some cases complainants have made complaints to the Commissioner either to delay enforcement action or challenge the outcome of the action. The Complaints Scheme cannot be used to prevent the regulator undertaking enforcement action. In most cases the appropriate forum to challenge the regulator's actions is through the Regulatory Decision Committee (RDC) or the Upper Tribunal.

Concerns about the Retail Distribution and Mortgage Market Reviews

A number of complainants who are unhappy with the introduction of rules relating to the Retail Distribution Review (RDR) and the Mortgage Market Review (MMR) have contacted the Commissioner over the last 12 months.

The Commissioner understands that some consumers will feel that they are being unfairly treated (as a result of having to pay a fee for financial advice or undergoing an enhanced affordability assessment for a mortgage), but these new procedures have been properly introduced by the regulators following consultation, and because they are rules they are not matters which the Commissioner can consider.

The Commissioner is aware that the FCA is intending to conduct post-implementation reviews and recommends that any consumer who is unhappy with the RDR or the MMR requirements should contact the FCA to ensure that their concerns are considered as part of the post-implementation review.

Conclusion

The vast majority of complaints against the regulators are handled well and fairly by the regulators themselves; and the large majority of those referred to the Commissioner show no signs of significant failings.

Some of the issues drawn out in the exceptions cases described above reflect a tendency (common to most organisations, not simply to the financial services regulators) to be over-cautious about admitting error, and to be too ready to exclude matters too early in the process. In particular, there is a danger that complaints may be rejected on the grounds that the regulator was simply exercising its discretion, without sufficiently testing that the exercise of the discretion was within the limits of reasonableness. Because the powers exercised by the regulators are extensive, and the consequences of their misuse potentially serious, it is essential that the Complaints Scheme, and in particular the Commissioner, is able to provide assurance that the regulators' activities are properly scrutinised.

The Commissioner has not seen evidence of widespread problems in the operation of the Complaints Scheme, or indeed the functions which it deals with, but in his view it is essential that the inevitable tendency to organisational defensiveness is constantly guarded against. While preserving his independence, he will continue to work with the regulators on these issues.

Internal review

During the year The Commissioner's Office undertook an internal review to look at its case handling procedures and systems, staffing, and performance in terms of quality and use of resources. The review implemented a number of changes and identified future opportunities which will result in cost savings for the organisation during the next financial year, most significantly due to staff reduction and future relocation. This will lead to cost savings in the order of £100,000 next year, and after the future relocation in 2016, it is foreseen that additional annual savings of around £50,000 will be achieved.

Further effectiveness and efficiency measures were introduced by changing to a paperless office, redesigning the website, and changes to decision letters to make them simpler and clearer for complainants.

PSR

On 1st April 2015 the Payments Systems Regulator (PSR), a new independent economic regulator for the payment systems industry, appointed Antony Townsend as Complaints Commissioner under the PSR Scheme. The PSR is a subsidiary of the FCA, but has its own statutory objectives, Managing Director and board⁷.

In the interests of transparency and accountability the PSR has established a scheme for handling Complaints made against it ("the Scheme"). The Scheme covers complaints made against the PSR in relation to the exercise or failure to exercise any of its functions.

The PSR Scheme operates in a similar way to the main Complaints Scheme operated by the FCA, PRA and Bank of England. The Commissioner will handle complaints about PSR matters through the Office of the Complaints Commissioner.

Remedies

The Complaints Scheme sets out that, where a complaint is upheld, a number of remedies are available including an apology, simply putting something right, and a financial award.

The Commissioner has been developing a policy to indicate how he will consider remedies, including compensation, if he upholds a complaint against the regulators. The creation of this policy is designed to ensure that the Commissioner's approach, particularly in respect of the circumstances in which he may recommend compensation and the limits on such awards, is clear to complainants, the financial services sector, and the regulators. The new policy is available on the OCC website and is shown in Appendix B.

Stakeholders and outreach

Over the year the Commissioner has held meetings to raise the profile of the office and to ensure both the industry and stakeholders are aware of his objectives and what we can do to help. He has met the chairs of a number of the FCA consumer and practitioner panels, and the heads of a number of FCA and PRA departments. He has also held meetings with the Payments Services Regulator (PSR), the Financial Ombudsman Service (including its Independent Assessor), the Financial Services Compensation Scheme, the Local Government Ombudsman, the Parliamentary and Health Services Ombudsman and the Ombudsman Association, of which the OCC is now a member.

⁷ More information about the PSR can be found here <https://www.psr.org.uk/>

APPENDIX A

Expenditure for the year ended 31st March 2015

The Office of the Complaints Commissioner is a company of which the Complaints Commissioner is the sole director. Its expenditure is supplied by the Financial Conduct Authority on behalf of the regulators, and it makes no profit.

The following table shows a breakdown of operating costs for the year compared to the previous period.

Expenditure	2015	2014
Staff costs	£390,868	£382,961
Rent and Rates	£121,180	£109,181
Depreciation	£18,364	£18,863
General expenses and professional fees	£64,666	£54,386
One-off restructuring costs (see below)	£48,712	£0
Total Expenditure	£643,790	£567,405

Expenditure during the year was substantially higher than the previous year, mainly due to the one-off £48,000 of restructuring and staff redundancy costs (see section 7) and £15,299 incurred being premises expenses, pension costs and professional fees relating to the previous year but which were not known at the time of approval of the previous year's statements.

The newly streamlined office structure described in section 7, as well as the planned move to new, more cost effective premises in October 2016 is expected to bring continuing operating costs down by over 10% over the next two years.

The audited accounts for the period ending 31st March 2015 are available from the Registrar of Companies, Companies House, Crown Way, Maindy, Cardiff, CF14 3UZ. The company's auditors are Bishop Fleming.

The Commissioner's Approach to Remedies

The note explains to complainants how the Commissioner will consider remedies, including compensation, if he upholds a complaint against the regulators. Remedies means the steps the Commissioner can recommend that the regulators take to put things right for complainants.

1. How the Commissioner will approach remedies

Where the Commissioner finds that a complaint is well founded, he will seek to remedy the matters complained about by making recommendations to the regulator. The Commissioner's key principle is that the remedy should, as far as possible, place the complainant back in the position he or she would have been in but for the error of the regulator.

In doing this, he will

- provide similar remedies for similar cases – to achieve consistency and fairness.
- consider each case on its merits – remedies will be appropriate and proportionate to the scale of the matter complained about.
- give clear reasons.

2. What remedies the Commissioner can consider

Where the Commissioner finds that a complaint is well founded, the Commissioner can recommend that the regulator should put things right in one or more of the following ways:

- *Take steps to put things right to rectify the error*
The Commissioner will always consider what remedial action the regulator can take to put things right, for example reconsidering a decision, or refunding a payment.
- *Make an apology*
The Commissioner will usually recommend that the regulator should apologise for any error.
- *Offer the complainant a compensatory payment⁸.*
The Commissioner will consider recommending that the regulator should reimburse the complainant (in full or in part) for quantifiable financial loss which has directly resulted from the regulator's error (complainants will be asked for documentary evidence of loss). He may also recommend the reimbursement of professional fees, but complainants should not need a professional adviser to bring a complaint to the Commissioner and the Commissioner will not

⁸ Under the rules of the complaints scheme, compensatory payments are *ex gratia*. This means that the regulators do not admit legal liability when they pay them. By law, the regulators cannot be sued for damages unless it can be shown that they have acted in bad faith, or that the complainant's human rights have been breached. These are matters which only a court can decide, and are not dealt with by the Commissioner.

usually recommend reimbursement of any legal costs incurred in bringing the complaint.

The Commissioner will also consider recommending the regulator offer a compensatory payment to the complainant, on a goodwill basis, to acknowledge the impact of its actions where there has been distress or inconvenience caused to the complainant. A remedy payment for distress is usually a modest sum not exceeding £300, although in certain circumstances a higher amount may be justified.⁹

- The Commissioner may also recommend a review of practice, policy or procedure of the regulator. This may include recommendations for improvements or staff training.

The fact that a complaint is well-founded does not mean that a compensatory payment will automatically be recommended. In many cases, the Commissioner will conclude that an apology and/or remedial action will be sufficient.

3. What does the Commissioner take into account before recommending a remedy?

If the Commissioner upholds a complaint, he will consider

- Whether there is there a clear link between the regulator's error and the matter complained about.
- Whether the complainant or another person has done anything which contributed to the problem, including whether the complainant has co-operated with the complaints process.
- Whether what the regulator has done or not done has made the problem worse, or whether it has acted in a way to reduce the problem.
- The impact of the problem on the individual complainant.

4. What the Commissioner cannot do

The Commissioner:

- cannot force the regulator to provide the remedy which he has recommended. The regulators generally accept his recommendations, but if they do not they have to explain why.
- cannot award compensation, punitive damages or costs in the same way as a court or tribunal would do.

⁹ In considering the level of payments, the Commissioner will bear in mind that, because the regulators are funded by the financial services industry, the costs will ultimately fall upon the industry and, through it, consumers.

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