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**Annual Report of the Complaints Commissioner for 2002/03**





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## Executive Summary

### Background to the Complaints Scheme

The Financial Services Authority (FSA) is required by the Financial Services and Markets Act 2000 (FSMA) to operate a Complaints Scheme for investigation of complaints against itself. The Scheme came into operation on 3 September 2001. As part of the complaints arrangements there must be a Complaints Commissioner who is independent and able to conduct impartial investigations. On 3 September 2001 Rosemary Radcliffe was appointed as the FSA's first Complaints Commissioner for a period of three years. The Commissioner is required to publish an Annual Report with information on complaints investigated during the year, the Commissioner's findings, and any trends and lessons that the FSA should learn. This Report meets that requirement. It is the Commissioner's second Annual Report, and covers the year from 1 April 2002 to 31 March 2003.

### Overview of the Year

The Commissioner received 140 **new enquiries and complaints**<sup>1</sup> during the year. This represented an increase of 26% when compared, on an annualised basis, with the previous year. More than two thirds of the enquiries and complaints were received in the second half of the year. The number of **enquiries and complaints concluded**, at 123, also increased, by 46% on an annualised basis, with more than two and a half times as many cases being concluded in the second half of the year as in the first half. The number of **enquiries and complaints in progress** at the end of the year, however, stood at 42, compared to 16 at the beginning of the year.

Looking at the **organisation to which the complaint related**, on investigation only 55% of enquiries and complaints received were found to relate to the FSA. More than one third were about financial services firms or about the way in which the Financial Ombudsman Service (FOS) (or a predecessor body) had handled a complaint and were thus the province not of the Commissioner but of FOS or the FOS Independent Assessor. Notwithstanding efforts by all parties to explain the roles of the various organisations involved in handling complaints, including that of the Commissioner, these figures demonstrate that there is still confusion about the arrangements and every opportunity still needs to be taken to explain them.

Turning to the **type of complainant**, by far the greater number of enquiries and complaints received in 2002/03 came from individual members of the public. Only 20% came from organisations, and these tended to be smaller Independent Financial Advisers. There were no enquiries or complaints received from major financial services firms.

Looking at the **source of complaints**, more than half of the enquiries and complaints received in 2002/03 were sent directly to the Commissioner by the individual or organisation concerned, but only 16 of these had been the subject of a Stage 1 investigation by the FSA. A further 28% were referrals by the FSA to the Commissioner of an FSA decision to exclude a complaint from the Scheme or not to investigate it, either in whole or in part<sup>2</sup>.

With regard to the **subject matter of complaints**, nearly one third of complaints about the FSA related to administrative problems or to the FSA's own handling of a complaint made to it. A large proportion (40%) of complaints included an element relating to an aspect of the FSA's supervisory activities. There have been only a small number of complaints regarding authorisation or enforcement matters.

<sup>1</sup> Numbers of enquiries and complaints are based on files opened by the Commissioner. Files are opened in all cases where the Commissioner is in correspondence with or about an actual or potential complaint; they thus include cases that do not ultimately give rise to a complaint under the Scheme.

<sup>2</sup> Under the Scheme, if the FSA decide not to admit a complaint to the Scheme, or not to investigate it, they must inform the Commissioner, who then decides whether or not it falls within the scope of the Scheme and should be investigated.

A small number of **complaints relating to Equitable Life** continued to be received. Each such case has to be considered on its merits, but the Commissioner has taken the view, in cases that may fall within her jurisdiction, that it is likely to be in the interests of the complainant to defer both a final decision on jurisdiction and the undertaking of a Stage 2 investigation until after the reports of the Parliamentary Ombudsman and Lord Penrose are published.

Four Final Reports on **Stage 2 investigations concluded** were completed and issued by the Complaints Commissioner during 2002/03; the Introduction and Summary of each Report was published on the Commissioner's website. The complaints related in general to a variety of administrative failings; Commissioner did not uphold any complaints of a very serious nature, such as gross misconduct.

There were a number of **common themes to the Commissioner's findings** as follows:

- incorrect advice about how to make a complaint and/or failures to comply with the procedures of the Scheme;
- delays in answering letters or failure to answer letters; and
- instances where FSA staff had tried laudably to provide a level of service over and above that required by agreed standards; but which did not achieve the desired effect.

The **Commissioner's general recommendations** may be summarised as follows:

- in all cases where she found that the FSA had made a mistake, or not followed their own procedures, the Commissioner recommended that the FSA should apologise to the complainant;
- the Commissioner recommended in one case that the FSA should consider making a payment as a gesture of goodwill to the complainant; and
- in one case she recommended that the complainant be given the information he had been asking for.

In all these cases the FSA has implemented the Commissioner's recommendations.

More **specific recommendations** were made in the following areas. The FSA has responded by reporting that action has been taken to address many of the matters identified):

- the handling of complaints made to the Chairman;
- customer management systems;
- record-keeping;
- awareness of the Complaints Scheme, understanding of its procedures, and clarity of the explanations given about the Scheme to actual and potential complainants; and
- resourcing of the FSA's complaints-handling function.

The number of formal **Stage 2 investigations in progress** at the end of the year reached 14, compared to only one at the end of the previous year. Five of these commenced only during the last quarter of the year but some have been long-running. The average age of the Stage 2 investigations in progress at the year-end was nearly 16 weeks. Of the nine investigations outstanding for more than 10 weeks, Preliminary Reports had been issued by the year-end in three cases and Final Reports were therefore due shortly after the year-end.

During the year, the Commissioner received an increasing number of **complaints referred by the FSA** that they believed were excluded from the Scheme, or which they had decided not to investigate. In the early days of operation of the Scheme, these were few in number and not controversial, but more recently this pattern has changed. There are now more referrals and, although the Commissioner has continued to be able to agree with the FSA's decision in the majority of cases, in the second half of the year she examined eleven cases where she disagreed with the FSA.

### **Operations, Resource Management, Communications and Performance**

With regard to **operations and resource management**, at the start of the Scheme, it was extremely difficult to predict the volume of enquiries and complaints. The Commissioner decided to operate the Office on the basis of a small core team, supported by additional resources to support investigations on an 'as-needed' basis. The Commissioner agreed a budget with the FSA that assumed a 'base' caseload of routine enquiries and complaints. Major investigations arising during the year were treated as additional special investigations and projects, with separate budgets notified to the FSA in advance. The total cost of the Commissioner's Office in 2002/03 was £552,000, of which £108,000 represented the cost of special investigations and projects.

With regard to **reporting and communications**, in addition to the Stage 2 reports and the Annual Report that the Scheme requires, the Commissioner produces Quarterly Reports for the FSA Board, summaries of which are also published on her website. She attended two FSA Board meetings during the year and has attended meetings of the Practitioner Panel and the Consumer Panel. She has also attended meetings with many bodies concerned with financial services products, their consumers and suppliers, and with the specialist media, to explain the workings of the Scheme and her role within it. In addition, she has provided written evidence to the Treasury Select Committee on Equitable Life, which was published in March 2003.

With regard to **liaison with the FSA**, the Office of the Complaints Commissioner is and must be fully independent of the FSA. The Commissioner and her staff do, however, aim to adopt a co-ordinated approach to complaints with those in the FSA responsible for administering the Scheme, as this is clearly helpful to complainants. The Commissioner is dependent on the FSA providing relevant information and making its staff available for interviews in support of investigations; with few exceptions, this has worked well this year.

Last year the Commissioner set out five **objectives against which her performance could be measured**. In summary, performance against these objectives has been as follows.

1. The statutory responsibility of the Complaints Commissioner to ensure that independence is maintained and that complaints are investigated without favouring the FSA.  
**Achieved in full.**
2. The need for potential complainants to be aware of the Complaints Scheme and how it works and to be able easily to access it when they need it.  
**Some progress, but more to do.**
3. The need for complaints to be dealt with quickly and fairly, and for like cases to be treated alike.  
**Achieved in part, but problems with delays.**

4. The need for highly cost-effective use of resources to support a complaints scheme, the ultimate cost of which is borne by the financial services industry.

**Achieved in part, but more to do.**

5. The need to assist the FSA as well as complainants to reap the benefits of the Complaints Scheme, by helping them to ensure that mistakes, once identified, are rectified and processes and procedures improved in the light of experience.

**Some progress, but more to do.**

## Issues and Priorities for the Future

The following matters constitute, in the Commissioner's view, the key issues and priorities for 2003/04.

- **Managing the workload**

Indicators suggest that volumes in 2003/04 are likely to be at least at the same level as 2002/03.

- **The Scope of the Scheme**

It will continue to be a priority to explain the complaints arrangements and to aid understanding of the respective roles of the various bodies involved; there will also be a continuing need to have adequate numbers of staff available within the FSA who understand the Scheme and the quite complex provisions of the Handbook that govern its scope and operations.

- **Equitable Life**

Lord Penrose's Inquiry into Equitable Life will report during 2003/04 and a number of complaints held over in anticipation of this will fall to be investigated. There is also an issue of how to handle complaints about the actions or inactions of Equitable Life and/or regulators after the period covered by Lord Penrose's Inquiry.

- **Operational Issues: Improving Efficiency**

The Commissioner believes that, in the light of practical experience to date, it is possible to effect a number of operational improvements to reduce delays and improve overall efficiency. These include improved tracking and monitoring systems and standard-setting where possible.

- **Communications**

The Commissioner regards communications about the Scheme, her role, and her findings as a key part of her responsibilities and she will continue to attach a high priority to attending meetings of representative bodies. She will also work to effect improvements to her website.

- **Working with the FSA**

The Commissioner's working arrangements with the FSA are governed by a Protocol that has worked well to date. But with more than eighteen months experience of the Scheme in practice, it is appropriate to review these arrangements in 2003/04 to ensure they achieve the overall objectives of the Scheme and promote efficiency and effectiveness. The Commissioner believes that it will also be timely to consider a more fundamental review of the Scheme and its operations; this would fit with the wider review of FSMA also scheduled for later in the year. The Commissioner sees the Complaints Scheme as a mechanism through which the FSA can benefit as an organisation. The Scheme's principal function is, of course, to protect individual customers and practitioners but if it is operated in an open and constructive manner it can both fulfil these functions and also benefit the FSA by assisting it to learn and to improve as an organisation. The Commissioner will continue to look for opportunities in the way that she carries out her role to enable the FSA to reap these benefits of the Scheme.

# 1 Introduction

This is the second Annual Report of the Complaints Commissioner, covering the year from 1 April 2002 to 31 March 2003. It contains the following sections:

- **Background to the Complaints Scheme**

This section provides a brief description of the Complaints Scheme and the role of the Commissioner.

- **Overview of the Year**

This section looks first at the volume of enquiries and complaints received during the year and the number of enquiries and complaints concluded and in progress. It goes on to analyse the enquiries and complaints received in more detail, looking at the organisations to which complaints relate; the types of complainant; the source of the complaints; and their subject matter. It then looks at two areas that are of particular importance to the operation of the Scheme and to the work of the Commissioner: Stage 2 investigations; and referrals to the Commissioner by the FSA of complaints the FSA has excluded from the Scheme or declined to investigate. It concludes with some information on Equitable Life-related complaints.

- **Operations, Resource Management, Communications and Performance**

This section looks at the operations of the Commissioner's Office and the resources applied during the year to the discharge of the Commissioner's remit. It also comments on the Commissioner's approach to communications, including reporting; and the working arrangements that exist between the Commissioner's Office and the FSA. It concludes with an assessment of performance against the Commissioner's objectives as set out in her first Annual Report.

- **Issues and Priorities for the Future**

This section comments on issues and priorities for the coming year, 2003/04, in the light of the conclusions drawn in the earlier sections.



## 2 Background to the Complaints Scheme

The Financial Services Authority (FSA) is required by the Financial Services and Markets Act 2000 (FSMA) to operate a Complaints Scheme for investigation of complaints against itself. The Scheme came into operation on 3 September 2001. As part of the complaints arrangements there must be a Complaints Commissioner who is independent and able to conduct impartial investigations. On 3 September 2001 Rosemary Radcliffe was appointed, under the provisions of the Financial Services and Markets Act 2000, as the FSA's first Complaints Commissioner for a period of three years.

FSMA specifies the overall requirements of the Complaints Scheme; details are specified in the FSA Handbook. The Scheme is in two parts: the Main Scheme deals with complaints about the way the FSA has carried out, or failed to carry out, its functions under current legislation; and the Transitional Scheme deals with certain complaints under earlier legislation.

The Complaints Scheme envisages two stages for handling a complaint. First, the FSA determines whether or not, in its view, the complaint falls within the Complaints Scheme and should be investigated; if it does, the FSA will carry out its own investigation (the Stage 1 investigation). If a complainant is dissatisfied with the outcome of the FSA's investigation, or with the progress of the FSA's investigation, the complainant may refer the complaint to the Complaints Commissioner. In addition, if the FSA decides to exclude a complaint from the Complaints Scheme, or not to investigate it, the FSA must inform the Complaints Commissioner, who has the power to review the complaint to decide whether or not it should be investigated. This constitutes the second stage of the investigation process.

The role of the Complaints Commissioner is to conduct her own investigation, known as the Stage 2 investigation, into any complaint that she decides to investigate. She reports to the complainant and to the FSA the results of her investigation and may decide to publish all or part of her report. If the report is critical of the FSA, the Commissioner may require the FSA to publish its response.

In addition to reporting to the complainant and the FSA on the results of her investigations the Commissioner is required, under the terms of the Complaints Scheme, to publish an Annual Report with information on complaints investigated during the year, the Commissioner's findings, and any trends and lessons that the FSA should learn. This Report meets that requirement.

## 3 Overview of the year

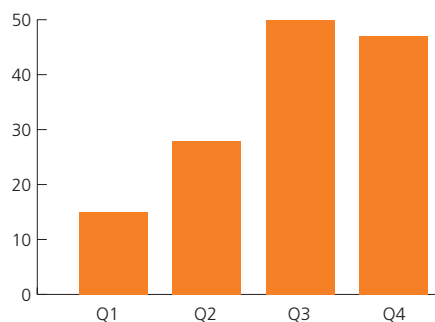
### 3.1 Volume of enquiries and complaints received during the year

Table 1 below shows the number of enquiries and complaints<sup>3</sup> received by the Commissioner during 2002/03. The volume of new enquiries and complaints received during the year increased substantially to 140 for the year ended 31 March 2003, as compared with 65 in the seven-month period to 31 March 2002. On an annualised basis, this represents an increase of 26%. The table shows that more than two thirds of the enquiries and complaints were received in the second half of 2002/03: in the first quarter there were 15, increasing to 28 in the second quarter; in the third quarter there were 50 and in the fourth quarter 47.

**Table 1 Enquiries and Complaints Received**

	2002/03	1 Jan 03 to 31 Mar 03	1 Oct 02 to 31 Dec 02	1 July 02 to 30 Sept 02	1 April 02 to 30 June 02	1 Sept 01 to 31 Mar 02
Enquiries and complaints in progress at start of period	16	44	29	16	16	–
New enquiries and complaints received	140	47	50	28	15	65
File re-opened from earlier period	9	2	3	3	1	–
Enquiries and complaints concluded	(123)	(51)	(38)	(18)	(16)	(49)
Enquiries and complaints in progress at end of period	42	42	44	29	16	16

**New Enquiries and Complaints Received by Quarter, 2002/03**



<sup>3</sup> Numbers of enquiries and complaints are based on files opened by the Commissioner. Files are opened in all cases where the Commissioner is in correspondence with or about an actual or potential complaint; they thus include cases that do not ultimately give rise to a complaint under the Scheme.

### 3.2 Enquiries and complaints concluded during the year

Table 1 shows that the numbers of enquiries and complaints concluded amounted to 123 this year, compared to 49 in the seven months to 31 March 2002. On an annualised basis, this represents an increase of 46%. More than two and a half times as many cases were concluded in the second half of the year as in the first half. This reflects additional resource applied in the latter part of the year to help clear the backlog that built up as volumes increased.

An analysis of enquiries and complaints concluded during the year is given in Table 2 below.

**Table 2 Enquiries and Complaints Concluded**

	2002/03	1 Jan 03 to 31 Mar 03	1 Oct 02 to 31 Dec 02	1 July 02 to 30 Sept 02	1 April 02 to 30 June 02	1 Sept 01 to 31 Mar 02
Enquiries and complaints determined to be outside the scope of the Scheme <sup>4</sup>	75	24	23	16	12	30
Complaints relating to Equitable Life where investigation postponed <sup>5</sup>	8	3	3	1	1	9
Initial enquiries not followed up by complainant	6	4	2	–	–	4
FSA response made and file closed (no further action)	11	5	4	1	1	4
Stage 2 investigation concluded	4	3	–	–	1	–
Complaints not investigated <sup>6</sup>	18	11	6	–	1	2
Investigation not taken up <sup>7</sup>	1	1	–	–	–	–
<b>Total enquiries and complaints concluded</b>	<b>123</b>	<b>51</b>	<b>38</b>	<b>18</b>	<b>16</b>	<b>49</b>

4 Many of the cases found by the Commissioner to be outside the scope of the Scheme were cases falling within the remit of the Financial Ombudsman's complaints arrangements. See section 3.4.1 for further details.

5 The Commissioner has decided to postpone the investigation of certain Equitable Life-related complaints until after Lord Penrose has reported. See section 3.7 for further details.

6 Complaints where the Commissioner has reviewed the FSA's decision not to investigate, or not to admit to the Scheme, and decided to take no further action. See section 3.6 for further details.

7 Complaints where the Commissioner has reviewed the FSA's decision not to investigate or not to admit to the Scheme, and disagreed with the FSA's decision but the complainant has not taken up the offer of an investigation.

### Enquiries and Complaints Concluded by Quarter, 2002/03: Total and number outside the scope of the Scheme

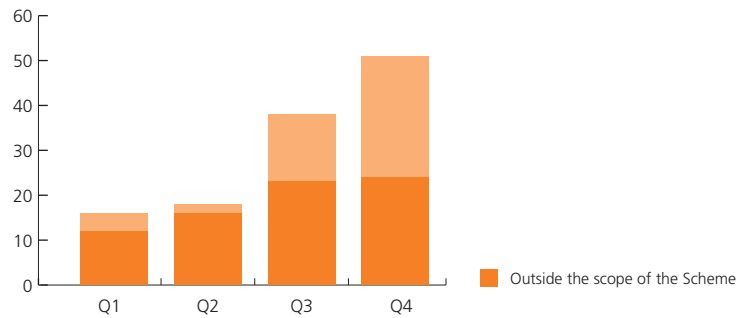


Table 2 shows that 75 of the enquiries and complaints concluded in the year, 60% of the total, were found by the Commissioner to be outside of the scope of the Scheme, almost exactly the same proportion as in the previous seven-month period. This situation has, however, been improving during the year; the Table shows that the proportion of total enquiries and complaints found to be outside the scope of the Scheme has decreased as the year went on. In the second half of the year only 53% of enquiries and complaints concluded were found to be outside scope compared to 79% in the first half of the year.

The Table also shows that a further 18 complaints were referred to the Commissioner because the FSA had decided to exclude them from the Scheme or not to investigate them and the Commissioner, after investigating, agreed with the FSA's decision. Thus, of the 123 enquiries and complaints concluded during the year, no fewer than 93 were, when investigated by the FSA and/or the Commissioner, found to be outside the scope of the Scheme. This issue is returned to below; see section 3.4.1.

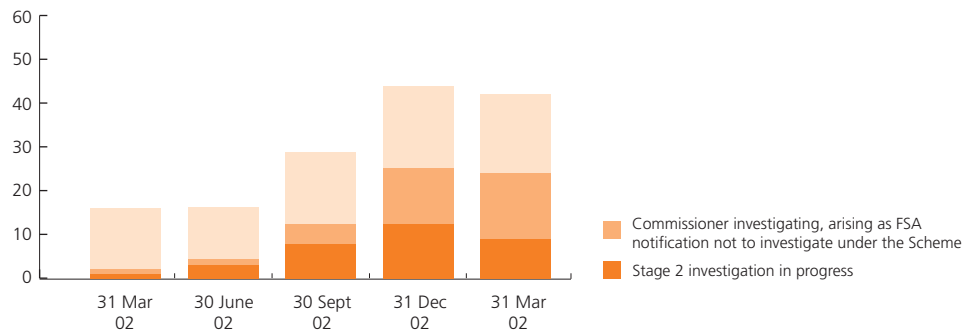
### 3.3 Enquiries and complaints in progress during the year

Notwithstanding that 123 enquiries and complaints were concluded during the year, Table 1 shows that the number still in progress at the end of the year still stood at 42, a level similar to that three months earlier. Only 16 cases were in progress at the beginning of the year.

Table 3 below gives a breakdown of cases in progress at the end of the year, and the quarterly pattern throughout the year. Two main groups of cases accounted disproportionately for the increase in cases in progress: Stage 2 investigations; and cases arising from an FSA decision to exclude a complaint from the Scheme or not to investigate it. Each of these is discussed further below; see sections 3.5 and 3.6.

**Table 3 Enquiries and Complaints in Progress at end of quarter**

	31 Mar 03	31 Dec 02	30 Sept 02	30 June 02	31 Mar 02
<b>Complaints Commissioner Stage 2 investigation in progress</b>	14	12	8	3	1
<i>Of which arising as a result of CC disagreeing with FSA decision not to investigate under the Scheme</i>	4	–	–	–	–
FSA response being considered by complainant	1	–	2	–	2
<b>FSA and/or Commissioner investigating, reviewing files, or providing further information</b>	26	24	19	10	10
<i>Of which arising as FSA notification of decision not to investigate under the Scheme</i>	9	13	4	1	1
Complainant asked to provide further information	1	8	–	8	1
<b>Total enquiries and complaints in progress at end of period</b>	<b>42</b>	<b>44</b>	<b>29</b>	<b>16</b>	<b>16</b>

**Enquiries and Complaints in Progress at end of Quarter: Total, stage 2 investigations and Commissioner investigations arising as FSA notification not to investigate under the scheme.**

### 3.4 Analysis of new enquiries and complaints

#### 3.4.1 Organisation to which complaint relates

Table 4 below gives information about the organisation(s) that were the subject of the enquiries and complaints received during the year. The table shows that only 55% of enquiries and complaints received related to the FSA (although in a number of instances a certain amount of investigation was necessary to establish that this was the case.) The Commissioner's remit only extends to complaints about the FSA and predecessor bodies.

**Table 4 Organisation to which complaint relates**

Organisation to which complaint relates	2002/03 Number	2002/03 %
Financial Services Authority	77	55
Financial Ombudsman Service	14	10
Financial services firm	38	27
Other	11	8
<b>TOTAL</b>	<b>140</b>	<b>100</b>

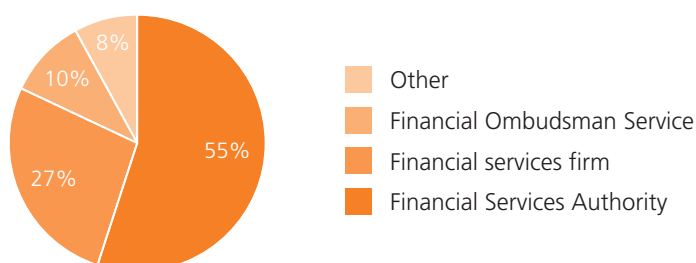


Table 4 also shows that more than one quarter of the enquiries and complaints received proved to be about financial services firms and were thus properly the province of the Financial Ombudsman Service (FOS). This indicates that the problem of misdirection of complaints identified in the first Annual Report is not yet fully solved: more clearly remains to be done to inform potential complainants about the respective roles of FOS, the FOS Independent Assessor, and the Complaints Commissioner.

Additionally, 10% of enquiries and complaints proved to be about the way in which FOS (or a predecessor body) had handled a complaint. This is also a matter for FOS; however, a few complainants feel strongly that the FSA, as regulator, ought to be concerned about the practices

and performance of FOS, albeit that under the current arrangements FOS is clearly operationally independent of the FSA. A number of complainants are unaware that they may be able to take a dispute about FOS's handling of their case to the FOS Independent Assessor when they have exhausted FOS's own arrangements, but that such matters do not fall within the jurisdiction of the Complaints Commissioner.

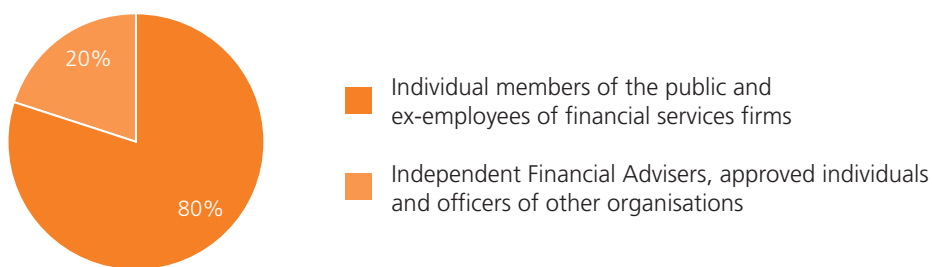
There is also confusion as to the distinct identity of the Complaints Commissioner from that of the FSA, and her independence of the FSA. Work is in hand to help to address this, including better use of both the FSA's and the Commissioner's websites to direct complainants more clearly to where they should go for help. Every opportunity still needs to be taken, however, to explain the complaints arrangements to those who may need to access them.

### 3.4.2 Type of complainant

Enquiries and complaints have come predominantly from individual members of the public rather than from organisations, as shown in Table 5 below. Only 20% of enquiries and complaints received in 2002/03 came from independent financial advisers, approved individuals or officers of other organisations such as credit unions or mutuals. There were no enquiries or complaints from major financial services firms.

**Table 5 Type of complainant**

Complainant	2002/03 Number	2002/03 %
Individual members of the public and ex-employees of financial services firms	89	80
Independent Financial Advisers, approved individuals and officers of other organisations	11	20

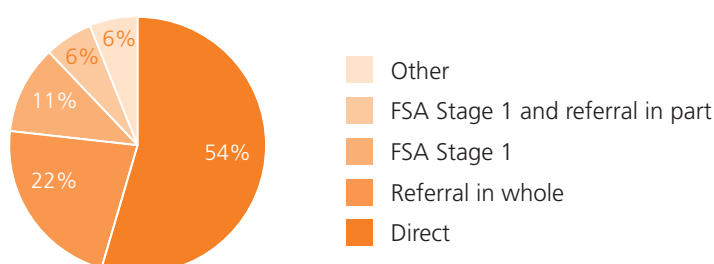


### 3.4.3 Source of complaints

Table 6 below shows the source of enquiries and complaints received in 2002/03. More than half were sent directly to the Commissioner. These include a substantial proportion of the mis-directed complaints that should have been sent to FOS or to the FOS Independent Assessor.

**Table 6 Source of complaints**

Source	2002/03 Number	2002/03 %
<b>Direct</b> to the Complaints Commissioner	75	54
<b>FSA Stage 1</b> investigation completed prior to being passed to the Complaints Commissioner	16	11
<b>Referral in whole:</b> Referred to the Complaints Commissioner by the FSA for review of FSA decision not to investigate or to exclude from the Complaints Scheme	31	22
<b>FSA Stage 1 and referral in part:</b> FSA Stage 1 investigation of part of the complaint completed, and referred to the Complaints Commissioner for review of FSA decision not to investigate part of the complaint or to exclude part of the complaint from the Scheme.	9	6
Other	9	6
<b>TOTAL</b>	<b>140</b>	<b>100</b>
<i>of which sent via an MP</i>	<b>4</b>	



A further 40 cases, or 28% of enquiries and complaints received by the Commissioner, were referrals to the Commissioner of an FSA decision to exclude a complaint from the Scheme or not to investigate it, either in whole or in part. Only 16 complaints referred to the Commissioner by the complainant had been the subject of a Stage 1 investigation by the FSA. This again contrasts with expectations at the outset that most complaints received by the Commissioner would come via this route.



### 3.4.4 Subject matter of complaints

In the early months of the year there were many enquiries and complaints arising from events and issues that had occurred some years earlier. This was not unexpected as disappointed complainants looked to the new Scheme as a potential new avenue for 'old' complaints. As the year progressed, however, the majority of new enquiries and complaints received by the Commissioner related to more recent issues, although some disappointed complainants are notably tenacious.

There have been a number of enquiries, often by email, relating to suspected frauds or offering intelligence information. The Commissioner advises the respondent as to the correct method of reporting this information. During the year the FSA's website introduced additional guidance on whistleblowing, which has provided a convenient means for the Commissioner to redirect some of these enquiries. There is also an FSA whistleblowing telephone hotline.

Table 7 below analyses the 77 complaints against the FSA received during 2002/03. Complaints redirected to another body are excluded. The Table provides a categorisation of the subject matter

**Table 7 Subject matter of complaints against the FSA**

Aspect of the FSA enquired or complained about	2002/03 Number	2002/03 %
Administration	32	27
Handling of complaint or Complaints Scheme	6	5
Supervisory function	47	40
Authorisation function	5	4
Enforcement function	5	4
Pensions review or FSAVC review	7	6
Equitable Life regulation	7	6
Mortgage endowment regulation	1	1
Fees for industrial and provident societies	3	3
Split cap investments regulation	2	2
Other	2	2
<b>TOTAL</b>	<b>117</b>	<b>100</b>
<i><b>Total number of enquiries or complaints against the FSA</b></i>	<i><b>77</b></i>	

of these complaints against the FSA. A number of them had more than one element, hence the table totals to more than 77. As illustrated in section 3.5.1 below, it is not unusual for complaints to be multi-faceted, often with an initial problem being compounded by allegations of subsequent administrative failures.

The table shows that nearly one third of complaints about the FSA related either in whole or in part to administrative problems or to the FSA's handling of a complaint. Problems reported by complainants have included:

- delays in getting through to the FSA Consumer Helpline;
- delays in answering letters or in providing information;
- letters not answered;
- persistently mis-addressed mailings;
- lost files;
- delays in carrying out investigations;
- failure to recognise a complaint; and
- allegations of inadequate Stage 1 investigations.

A large proportion of complaints, 40% in 2002/03, include an element relating to an aspect of the FSA's supervisory activities. Supervisory activities do, of course, account for a substantial part of the FSA's activities. Examples of problems raised by complainants in this category include:

- the FSA's supervision of Equitable Life, and the markets for mortgage endowments and split cap investments;
- the impact of money-laundering regulations on consumers and businesses;
- the impact of the FSA's regulation on the market for Professional Indemnity Insurance (PII);
- advice given about outstanding pensions reviews, departed firms and the interaction with PII cover;
- complaints about unauthorised products, unauthorised intermediaries, and overseas organisations (these are generally matters beyond the FSA's remit);
- bias in a consultation process; and
- the "unfriendliness" to users of the FSA Handbook and/or allegations of contradictions in the FSA Handbook.

Some complainants have expressed concern about the way in which they were dealt with by the FSA when they provided information about a regulated business or authorised individual. There are constraints on the amount of information that the FSA is able to give to third parties about whether or not they are taking regulatory action. Complainants may feel they have been proactive and that they have placed themselves in a potentially vulnerable position by passing on sensitive information; they find it disappointing and frustrating when they cannot discover whether or not their information is being followed up by the FSA.

Complaints in the enforcement category have been few, but problems reported have included:

- failure to enforce an Ombudsman's award;
- allegation of bias; and
- the issuing of a Board Notice and the award of costs following a Tribunal.

There have been only a small number of complaints regarding authorisation matters but problems reported included:

- complaints about the FSA including dates of birth of authorised persons on the public register;
- withdrawal of a previously-promised concession;
- delay in processing an application and improper pressure on a potential employer; and
- concerns about recording arrangements in circumstances where a person was no longer authorised.

The impact of the substantial increase in fees imposed as a result of the transfer of responsibilities from the Registrar of Friendly Societies to the FSA has also resulted in a number of enquiries and complaints. The Commissioner investigated this issue in some detail and was satisfied that the fee structure was arrived at after due and proper consultation and had been correctly applied in the cases under review. It remains the case, however, that the increase affected adversely relatively small organisations often run by volunteers, such as sports clubs and leisure associations.

A small number of complaints relating to Equitable Life continued to be received in 2002/03. The matter of Equitable Life-related complaints is discussed further below; see section 3.7.

## **3.5 Stage 2 Investigations**

### **3.5.1 Stage 2 Investigations concluded during 2002/03**

Four Final Reports on Stage 2 investigations were completed and issued by the Complaints Commissioner during 2002/03. The Introduction and Summary to each report was published on the Commissioner's website [www.fsc.gov.uk](http://www.fsc.gov.uk), together with the FSA's response. The subject matter of the complaints and the Commissioner's findings and recommendations are summarised in Annex A. It is noteworthy that the Commissioner has not upheld any complaints of a very serious nature, such as gross misconduct.

Each case had its own special features but there were a number of common themes to the findings as follows:

- incorrect advice about how to make a complaint and/or failures to comply with the processes and procedures of the Scheme were an issue in all four cases;
- delays in answering letters or failure to answer letters at all were an issue in three of the cases; and
- there were three instances where FSA staff had tried to provide a level of service over and above that required by the agreed standards; to provide tailored responses; or to intervene with product providers when they were not strictly required to do so; these interventions represented laudable attempts to be helpful to the complainant but they did not necessarily achieve the desired effect.

There are also some common themes to the Commissioner's recommendations, as follows. In all cases where she found that the FSA had made a mistake, or not followed their own procedures, she recommended that the FSA should apologise to the complainant. Additionally, the Commissioner recommended in one case that the FSA should consider making a payment as a gesture of goodwill to the complainant, and in another case she recommended that the complainant be given the information he had been asking for (in this case a definition of terms). In all these cases the FSA has implemented the Commissioner's recommendations.

Other recommendations were made in the following areas.

- **The handling of complaints made to the Chairman:** procedures should be reviewed to ensure that letters passed from the Chairman to officers for reply are acted upon; and that, in cases where more than one officer or part of the FSA are dealing with a complainant's affairs, the officer responding on the part of the Chairman is fully aware of all relevant considerations. The FSA has responded by confirming that they had reviewed their working practices and amended these accordingly.
- **'Customer management':** a system is needed for use by all departments that make direct contact with customers, including the Helpline, the Correspondence Unit and Company Secretariat complaints staff. During 2002/03, the FSA brought its Correspondence Unit and Consumer Helpline under common management within the Consumer Division and improved in certain respects the arrangements for coordinating the handling of telephone and written (e-mail, fax, and letter) communications. The FSA lacks, however, arrangements to enable one part of the FSA dealing with a particular individual to check easily whether another part of the FSA is also in communication with that same individual and, if so, what stage that correspondence has reached. The FSA has responded by initiating a review of Consumer Relationship Management requirements and seeking to introduce a contact tracking and management system.
- **Records:** a record should be kept of any letter, fax or e-mail sent to a customer. The FSA has responded by reporting that the Customer Contact Centre now keeps these records.
- **Awareness of the Complaints Scheme and understanding of the procedures:** Company Secretariat staff with responsibility for the Complaints Scheme should work with the management of the Consumer Division to ensure that all staff dealing directly with enquiries are aware of the procedures for referring complaints to the Company Secretariat; understand the role of the Complaints Commissioner; and are given guidelines as to the point at which a customer's dissatisfaction should be recognised as a complaint and dealt with under the complaints procedures. The FSA has responded by reporting that arrangements for briefing staff and contractors have been improved and that the Company Secretariat now hold regular meetings with the management of the Consumer Contact Centre to ensure effective co-ordination.
- **Company Secretariat:** the FSA should review staffing arrangements and workloads in the area of complaints handling so that complainants have a timely response to their enquiries. The FSA should consider, in conjunction with the Office of the Commissioner, improving the clarity of the wording used when describing the processes and procedures of the Scheme in correspondence so as to avoid confusion in the minds of complainants. The FSA has responded by reviewing staffing and workloads in the area of complaints handling and provided additional resources. They are considering ways of improving the clarity of explanations and have agreed the need to revise the Complaints Scheme booklet.

The Commissioner considers that the FSA has responded positively to her recommendations. The FSA's responses to the Commissioner's Reports are summarised in the Appendix to this report, and can be found in full on both the Commissioner's and the FSA's websites.

### 3.5.2 Stage 2 investigations in progress

Table 8 shows that the number of formal Stage 2 investigations in progress at the end of the year had reached 14, compared to only one at the end of the previous year. Five of these commenced only during the last quarter of the year, whilst a few have been long-running, as Table 8 below shows.

**Table 8 Age distribution of Stage 2 investigations**

Elapsed time in weeks	Number of Stage 2 investigations
0-9	5
10-19	6
20-29	1
30-39	1
40-49	1
<b>Number of Stage 2 investigations in progress at 31 March 2003</b>	<b>14</b>

The average age of the Stage 2 investigations in progress at the year-end was nearly 16 weeks. Of the nine investigations outstanding for more than 10 weeks, Preliminary Reports had been issued by the year-end in three cases and Final Reports were therefore due shortly after the year-end. (Fifteen working days are normally allowed for comment on a Preliminary Report before the Final Report is issued.)

Two of the cases on which Preliminary Reports had been issued, and two of the remaining cases outstanding for more than 10 weeks, have been subject to delay as a consequence of one part of the FSA raising queries about the scope of the investigations and the conduct of interviews, and delaying making arrangements to provide their input. These four cases have also been complex, requiring policy briefings and formal interviews with a number of FSA staff and former staff as well as with the complainant, together with, in three of them, a detailed examination of voluminous documentation. All this has taken considerable time. There have additionally been some instances of delay resulting from complainants themselves delaying providing input, and from the Company Secretariat having insufficient resources to respond rapidly to requests for information or to arrange interviews. In several cases pressure of work on the Commissioner's Office has been responsible for delay in completing investigations.

### 3.6 Complaints referred to the Commissioner by the FSA

As noted above, certain complaints about the FSA are excluded from the Scheme. Reasons for excluding a complaint from the Scheme are all specified in the FSA Handbook. One such exclusion relates to complaints concerned with the FSA's performance of its legislative functions under FSMA, including making rules and issuing codes and general guidance. The Handbook also specifies that the FSA may not investigate a complaint under the Scheme where it reasonably considers that it could have been more appropriately dealt with in another way (for example, by referring the matter to the Tribunal), or where it reasonably considers that the complaint "amounts to no more than dissatisfaction with the FSA's general policies or with the exercise of discretion where no unreasonable, unprofessional or other misconduct is alleged". When the FSA decides to exclude a complaint from the Scheme, or not to investigate it, it must inform the Commissioner, who must then decide whether the matter falls within the scope of the Scheme and should be investigated by her. If the Commissioner disagrees with the FSA's decision, and decides that the complaint does fall within the scope of the Scheme, she will write to the complainant to ask whether the complainant wishes the Commissioner to undertake a Stage 2 investigation.

During the year, the Commissioner received an increasing number of referrals from the FSA of this type. As shown in Table 9 below, in the first half of the year only nine cases of this type were referred, but in the second half there were 31. This was an unexpected feature of the Commissioner's workload.

**Table 9 Referrals of complaints excluded from the Scheme or not investigated**

	2002/03	Q4	Q3	Q2	Q1
Referral in whole	31	10	15	3	3
Referral in part	9	2	4	2	1
<b>TOTAL</b>	<b>40</b>	<b>12</b>	<b>19</b>	<b>5</b>	<b>4</b>

In many cases referred in this way quite extensive investigation is needed in order to establish whether or not the complaint in question falls within the scope of the Scheme. Such cases may require a full review of the FSA's files and of information provided by the complainant in order for the Commissioner to reach a decision.

Initially such referrals were not only few in number, as Table 9 shows, but they were not controversial. The Commissioner found herself able readily to agree with the FSA's decision in most cases. Although the Commissioner has continued to be able to agree with the FSA's decision in the majority of cases, in the second half of the year she examined eleven cases where she disagreed. (In one of these the complainant decided not to take up the offer of an investigation, in another the complainant will not take up the offer of an investigation if the FSA acts promptly to remedy a long-outstanding problem, and in a third the complainant has not yet decided). Nine referrals were still under consideration at the end of the year.

The Commissioner has disagreed with the FSA for a number of reasons. In some cases the Commissioner found that the FSA had mistakenly excluded the complaint on grounds that do not appear in the FSA Handbook. In some cases where the FSA had decided not to investigate, the Commissioner decided that the complainant was clearly alleging misconduct and that the FSA should have recognised this. In some cases there was, in the Commissioner's view, a misapprehension on the part of the FSA that a complaint need not be admitted to the Scheme when in fact the FSA was actually wishing to argue not that it was outside the scope of the Scheme but that it had not been made out.

There are important consequences of this significant increase in referrals for both the Commissioner and the FSA. For the Commissioner, it has represented a significant increase in workload; as noted above, all such cases require some degree of investigation and some a considerable amount. In four cases a formal Stage 2 investigation has resulted, all of which were still in progress at the year-end.

For the FSA, it raises questions both about the increase in the number of such references and the increase in the proportion that gives rise to a difference of view between the FSA and the Commissioner. The Commissioner has discussed these questions with the FSA; it would appear that part of the increase in the number of references is explained simply by the increase in the volume of complaints being made, but part at least has been due to a lack of experienced resource within the FSA who understand the Scheme and the quite complex provisions in the FSA Handbook that govern exclusions and matters that do not have to be investigated. The FSA have assured the Commissioner that this problem is now being addressed, and it is hoped that the proportion of controversial references will now reduce.

### **3.7 Equitable Life Complaints**

Tables 2 and 7 above showed that some complaints relating to Equitable Life continued to be received during the year. It is noticeable, however, that relatively few Equitable Life-related complaints have been received by the Commissioner since the start of the Scheme in comparison with the flow of such complaints to the FSA itself. The majority of complaints express dissatisfaction with the FSA's supervisory actions or lack of intervention, and the failure of any authority to protect the complainants as consumers. Complaints include allegations of lack of communication, misleading information, inadequate advice, failures to carry out risk assessment, lack of accountability, deficiencies in the arrangements for the Compromise Scheme, possible mis-representation in the Compromise Scheme documentation, together with concerns over the solvency of Equitable Life.

Complaints about Equitable Life-related matters may be wide-ranging or highly specific. They may be focused on the actions of the firm or its regulators, or both, and they may relate to matters that have their origin a number of years ago or are relatively recent. This, in turn, has implications for who has responsibility for investigating them, and for how they are investigated. From the viewpoint of an 'Equitable Life complainant' the result is something of a patchwork of different arrangements, and it is not always clear to complainants where they should be directing their complaint and/or who should be helping them. The Complaints Commissioner's own role is restricted to complaints

about the FSA (or predecessor bodies) in relation to Equitable Life. Complaints about Equitable Life itself are outside the remit of the Commissioner and a number of Equitable Life-related complaints have properly been the province of FOS. It should be noted, however, that the complexity of the arrangements for dealing with complaints (resulting from the historical legacy of the way in which life companies were regulated) can of itself increase consumers' dissatisfaction with their losses and build up frustration with the responses they receive.

In cases that do involve the FSA, the Commissioner has adopted a two-part approach. Cases that focus only on matters of procedure or administration, and which do not raise wider issues concerning its regulation, have been dealt with in the normal way. (One such has been the subject of a Stage 2 investigation this year – see above). In other cases, however, the complaint may have a number of components and raises wider issues. Each such case has to be considered on its merits, but the Commissioner has taken the view, in cases that may fall within her jurisdiction, that it is in the interests of the complainant to defer both a final decision on jurisdiction and the undertaking of a Stage 2 investigation until after the reports of the Parliamentary Ombudsman and Lord Penrose are published. These inquiries are wide-ranging and access to their findings will permit a more detailed and comprehensive Stage 2 investigation to be taken in the light of the facts emerging from them, in the event that the Commissioner determines that such complaints fall within the jurisdiction of the Scheme and that it is appropriate to undertake a Stage 2 investigation. This, in the Commissioner's view, can only be to the complainant's advantage.



## 4 Operations, Resource Management, Communications and Performance

### 4.1 Operations and resource management

At the start of the Scheme, it was extremely difficult to predict what the volume of enquiries and complaints might be. Experience under previous arrangements was not necessarily going to be a good guide as the role of the FSA, its organisation and management, and the Complaints Scheme itself were, under the new arrangements, significantly different. The Scheme requires the FSA to provide the Commissioner with the resources necessary to discharge her remit, but it was necessary to make some assumptions about the most appropriate approach to resourcing in these conditions of uncertainty.

As explained in the last Annual Report, once the Office of the Commissioner was set up and the basic processes and procedures put in place, the Commissioner decided to operate the Office on the basis of a small core team, supported by additional resources on an 'as-needed' basis. The Commissioner herself is part-time; at the inception of the Scheme her core team comprised herself, a part-time Personal Assistant and a part-time Administrator. At the start of 2002/03, another part-time member joined the core team to assist with the planning and executing of investigations. During the year the workload has necessitated substantially increased input from all these individuals.

In keeping with this general approach, office accommodation comprises a small serviced office with three workstations; additional meeting rooms are booked only when required.

Additional resources to support investigations are obtained from two sources. The Commissioner has a small panel of experienced investigators who are self-employed and who will assist with particular investigations from time to time; and in certain circumstances resource can also be bought in from the Commissioner's professional advisers. This latter may be necessary when specialist expertise is required and may also be used if there is a need to deploy more resource at short notice. The need for additional resource to support investigations has increased during the year as the workload has increased.

As it was impossible to foresee accurately the volume or complexity of the enquiries and complaints that might be received during the year, the Commissioner agreed a budget with the FSA that assumed a 'base' caseload of routine enquiries and complaints. Major investigations arising during the year were to be treated as additional specific projects, and project budgets notified to the FSA in advance.

A similar approach was adopted in budgeting for professional fees. The Commissioner has a need from time to time for legal advice on jurisdictional issues and the scope of the Scheme, and an allowance for this, together with limited advice on certain specific cases, was built into the budget. More substantial pieces of advice, such as that required this year in relation to Equitable Life, are treated as additional special projects and the FSA informed of the estimated cost. In practice, over the year the requirement for more routine advice has reduced as more experience has been gained, although there has been an unanticipated need for additional advice, in response to issues raised by the FSA on the scope of the Scheme and on certain jurisdictional issues.

In November 2001, when the Complaints Scheme and the post of Complaints Commissioner had been established for only 2 months, the budget was set at £0.325m. This was increased before the start of the financial year, in the light of experience of Scheme operation, to £0.443m, again excluding major investigations.

A breakdown of the cost of the Commissioner's operations in 2002/03 is given in Table 10 below. The figures include the Commissioner's fees and the costs of the core team and part-time investigators as well as the cost of external advice and office accommodation etc. It should be noted that the figures included in the Table do not amount to the total cost of Commissioner's operations as they do not include the costs of certain services provided directly to the Commissioner by the FSA and not invoiced to her. These include IT support, office supplies and IT equipment, systems development, and the printing and distribution of the Annual Report.

**Table 10 Complaints Commissioner's Expenditure: Out-turn for 2002/03**

Description	Out-turn 2002/03 £000s	Budget 2002/03 £000s
Commissioner's fees and staffing costs	245	254
External advisers: legal, PR etc	134	113
Office accommodation etc	65	66
Contingency	–	10
<b>TOTAL BUDGETED COSTS</b>	<b>444</b>	<b>443</b>
Additional cost of special investigations and projects	108	–
<b>TOTAL EXPENDITURE</b>	<b>552</b>	

In any new operation, it takes time and experience to set meaningful service standards to support the operational objectives. To date the Commissioner has operated with robust but straightforward electronic record-keeping and monitoring systems. In the last quarter of the year a database has been under development that will permit a more sophisticated presentation of information and analysis. It is intended that this will come into operation in the first quarter of 2003/04. The new database will remove some inefficiencies in the handling and recording of correspondence and also facilitate tracking of elapsed time to complete various tasks. This will provide a basis for the development of service standards for various elements of the process of complaints handling. The Commissioner also intends to gather more information on time input to individual complaints, initially for all Stage 2 investigations, to obtain better information on costs for different types of complaint. Information on all these aspects will therefore be included in the next Annual Report.

With regard to target setting, because enquiries and complaints vary so widely in their scale and scope, and thus in the resource input required to investigate them, it is difficult to set individual targets in advance. The Commissioner has, however, been experimenting with different approaches to enhance efficiency. For example, in place of an interview programme, she recently piloted the use of a questionnaire to the FSA to support a Stage 2 investigation where much of

the information to be gathered was factual and relatively straightforward. Such approaches will not suit all cases, however, and have the drawback that some of the opportunity for discussing lessons learned with the FSA is lost.

## **4.2 Communications**

### **4.2.1 Reporting and communications**

As noted above, the Commissioner is required to produce reports on her Stage 2 investigations. In 2002/03 there have been four such Final Reports produced; the Introduction and Summary of each Final Report was published on the Commissioner's website.

Additionally, the Commissioner has agreed with the FSA to prepare a Quarterly Report for the FSA Board on her activities and findings and four such reports were prepared for the quarters ended 30 June 2002, 30 September 2002, 31 December 2002 and 31 March 2003. Summaries of these reports were also published on the Commissioner's website.

The Commissioner attended two FSA Board meetings during the year to present her report and answer questions, and in the second half of the year twice met, at their invitation, a group of FSA non-executive directors (NEDCO) to discuss matters relating to the operation of the complaints Scheme. It is envisaged that the meetings with NEDCO will continue at quarterly intervals.

The Commissioner holds progress meetings, usually monthly, with staff of the FSA Company Secretariat, which has responsibility within the FSA for the operations of the Complaints Scheme. A quarterly policy meeting with the FSA Company Secretary was also instigated during the course of the year.

The Commissioner has also attended meetings of the Practitioner Panel and the Consumer Panel during the year, to discuss her work and findings.

In addition, the Complaints Commissioner provided written evidence to the Treasury Select Committee on Equitable Life, which was published in March 2003.

The Commissioner also attaches great importance to communication with bodies and individuals who can help to explain the Scheme and how it works to those who may need to access it. To this end, she has during the year attended meetings with many bodies concerned with financial services products, their consumers and suppliers, and with the specialist media, to explain the workings of the Scheme and her role within it.

### **4.2.2 Liaison with the FSA**

Generally, the Office of the Complaints Commissioner is and must be fully independent of the FSA. It is however helpful from the viewpoint of complainants for the staff of the Complaints Commissioner's Office and those in the FSA responsible for administering the complaints scheme to adopt a co-ordinated approach to complaints.

The Office of the Complaints Commissioner is dependent on the FSA providing relevant information and making its staff available for interviews in support of investigations. This can seem an onerous task for FSA staff, who have to prioritise the Commissioner's enquiries and needs in

addition to their existing responsibilities. Generally, the Commissioner's many requests through the year have received a positive and professional response. Nonetheless, it remains important for all parts of the FSA to recognise the important role of the Commissioner as determined by Parliament, and the need to respond to requests on a timely basis if the risk of further exacerbating the frustration and distress of complainants is to be avoided.

### 4.3 Performance against objectives

In her first Annual Report, the Commissioner set out five objectives against which her performance could be measured. These were as follows.

1. the statutory responsibility of the Complaints Commissioner to ensure that independence is maintained and that complaints are investigated without favouring the FSA (the FSA for its part is obliged to provide the Complaints Commissioner with the resources required to discharge her responsibilities);
2. the need for potential complainants to be aware of the Complaints Scheme and how it works and to be able easily to access it when they need it;
3. the need for complaints to be dealt with quickly and fairly, and for like cases to be treated alike;
4. the need for highly cost-effective use of resources to support a complaints scheme, the ultimate cost of which is borne by the financial services industry; and
5. the need to assist the FSA as well as complainants to reap the benefits of the Complaints Scheme, by helping them to ensure that mistakes, once identified, are rectified and processes and procedures improved in the light of experience

Below are some comments on performance against each objective

#### **Objective 1: Achieved in full**

The Commissioner has from the outset been mindful of the need to maintain, and to be seen to maintain, independence from the FSA. In practical terms, this has necessitated establishing an office outside the FSA premises. The Commissioner, and all the staff who work with her, are fully independent of the FSA. Professional advisers are chosen so as to avoid any conflict of interest. It may be observed that this independence has implications for the operation and the cost of the Commissioner's Office; it is not possible, for example, for staff to be employed by the FSA and seconded to the Commissioner. Nonetheless, it is clear that the Commissioner's independence, which is anyway required by statute, is appreciated by complainants. Complainants have reported enhanced confidence in the Scheme and in the Commissioner's investigations because they are independent, and have confirmed that the fact that the Commissioner operates from a different address from that of the FSA is important to them.

The FSA has, as required by the Scheme, provided the Commissioner with the resources she has required.

#### **Objective 2: Some progress, but more to do**

As reported above, during the year the Commissioner has held a number of meetings with organisations aimed at promoting understanding of the Scheme. She published her first Annual Report on her website, and has also published four Quarterly Reports and the Introduction and

Summary of the Final Reports of four Stage 2 investigations. The first Annual Report was also distributed to a targeted group of Members of Parliament and key officials known to have an interest in financial regulation. The Commissioner gave written evidence to the House of Commons Treasury Committee on Equitable Life complaints arrangements, which was published in March 2003. A short guide to the Scheme is sent to anyone making an enquiry or complaint for the first time, and to anyone with an interest in the complaints arrangements. The Commissioner maintains a regular contact programme with the specialist written and broadcast media. Improvements are in hand to enhance the links between the FSA's website and the Commissioner's website, so as to assist visitors in finding the right place to get help with their problems.

Nevertheless, much remains to be done, as the number of enquiries and complaints adjudged to be outside the scope of the Scheme demonstrates. Confusion remains concerning the roles of the FSA, FOS, the FOS Independent Assessor and Financial Services Compensation Scheme as well as about the role of the Commissioner.

### **Objective 3: Achieved in part, but problems with delays**

The Commissioner is satisfied that all complainants are treated fairly. All correspondence is very carefully considered and reviews are thorough. Stage 2 complainants are all offered the opportunity to submit further evidence and to a face-to-face or telephone meeting with the Commissioner in the course of the investigation. The Scheme provides for both the complainant and the FSA to comment on the Commissioner's report before it is finalised, and all comments are carefully considered. Achieving consistency, so that 'like complaints are treated alike', has not been a problem to date, given that investigations are undertaken by a small number of people who communicate regularly about their findings. The Commissioner herself monitors the progress of all cases, approves all decisions and reviews all outgoing correspondence and Stage 2 reports in detail.

Performance regarding the speed of dealing with complaints has been less satisfactory during the year. All complaints and correspondence have been acknowledged within one day, and simple enquiries and mis-directed complaints are dealt with within a few days but, as the workload had increased through the year, it has not been possible to investigate complaints as quickly as the Commissioner would wish. The Commissioner has increased resources to meet increasing workload but this has not kept pace consistently with the increase in the number and complexity of enquiries and complaints received.

### **Objective 4: Achieved in part, but more to do**

The choice of operating model was driven by the need not to commit resource ahead of clear evidence that it is needed. The core team is part-time and investigations can be supported by bringing in additional people when necessary. Procedures are in place to facilitate this whilst ensuring consistency of approach, and to maximise efficiency by, for example, use of standard wording that can be tailored to individual cases. This overall approach gives flexibility, but may lead to problems when demand is increasing. In these circumstances, it may be necessary to buy in resource to cope with a backlog and this may result in expenditure on professional fees over and above what 'permanent' staff might have cost. To an extent, this has happened in 2002/03 as the workload has built up through the year. More experience with the Scheme should help in this regard, making the estimating of workloads more reliable, as will the improved information and tracking system currently being installed. The latter will also help in the establishment and monitoring of standards and targets.

**Objective 5: Some progress, but more to do**

As noted above, a number of the Commissioner's recommendations put forward as a result of Stage 2 investigations have been implemented and other suggestions made during the course of investigations have also been pursued by the FSA; during the course of interviews, for example, it has been possible to discuss developments that the FSA might themselves have been considering and thus lend weight to their early implementation. Efforts are being made by both the Commissioner and the FSA to engender increased understanding and awareness of the complaints arrangements and the benefits they can bring; the Commissioner has for example supported various FSA initiatives to improve internal understanding of the Complaints Scheme. FSA non-executive directors are considering conducting a review during 2003/04 to examine the impact of the Commissioner's findings and recommendations on FSA practice. Nevertheless, more remains to be done to reap the benefits consistently; it is the achievement of this objective that will ultimately demonstrate value for money from the complaints arrangements.

## 5 Issues and Priorities for the Future

### 5.1 Issues and priorities for the future

The following matters constitute, in the Commissioner's view, the key issues and priorities for 2003/04.

#### 5.1.1 Managing the workload

It continues to be difficult to predict the likely volume of enquiries and complaints looking ahead. One indicator of possible volumes in the first half of the year is the volume of complaints dealt with by the FSA in the second half of 2002/03 as a proportion of these is likely to progress to the Commissioner. The FSA continued to experience increasing volumes over this period. Other factors also suggest that volumes in 2003/04 are likely to be at least at the same level as 2002/03:

- Lord Penrose's Inquiry and the Parliamentary Ombudsman are due to report on Equitable Life in mid-2003;
- difficult market conditions in the financial services industry are likely to result in disappointing product performance from the point of view of investors; this tends to increase the number of complaints as consumers look for avenues to recover their losses;
- there are continuing concerns over mortgage endowments; this issue featured prominently in the new enquiries and complaints in the second half of the 2002/03;
- the FSA's responsibilities are increasing and this may engender complaints as, for example, they prepare to take on supervision of general insurance broking and mortgage advice; and
- increasing awareness of the Complaints Scheme itself may lead to an increase in the number of complaints.

The need to balance, as far as possible, the resources applied to the Scheme with the level of demand will therefore continue to be a major challenge both for the FSA and the Commissioner.

#### 5.1.2 The Scope of the Scheme

Practical experience with the Scheme has revealed some particular issues that have been highlighted above in this report. These include:

- the number of enquiries and complaints coming direct to the Commissioner that are found to be outside the scope of the Scheme; many of these fall within the remit of FOS and/or the FOS Independent Assessor;
- enquiries and complaints at present are coming principally from individual members of the public rather than from the firms regulated by the FSA; this may be a reflection of the fact that the arrangements are new but it is to be expected that, over time, more businesses will avail themselves of the complaints arrangements; and
- Stage 2 investigations, whilst they represent a growing feature of the Commissioner's workload, are taking a rather smaller share of the total resource than was originally envisaged; significant time and effort is also being expended on investigating matters to see whether or not they fall within the scope of the Scheme, in particular where the FSA has declined to admit a complaint to the Scheme, or to investigate it.

It will therefore continue to be a priority for all those involved in complaints handling to take every opportunity explain the complaints arrangements, and in particular to aid understanding of respective roles of the various bodies involved; there will also be a continuing need to have adequate numbers of staff available within the FSA who understand the Scheme and the quite complex provisions of the Handbook that govern its scope and operations.

### **5.1.3 Equitable Life**

In relation to Equitable Life, during 2003/04 Lord Penrose's Inquiry will report and a number of complaints held over in anticipation of this will fall to be investigated and this will generate an additional workload. There is, in addition, an issue relating to complaints about the actions or inactions of Equitable Life and/or regulators after the period covered by Lord Penrose's Inquiry. How these "later complaints" will be handled is an issue that has to date received little attention. There may be complex issues of judgement as to whether or not the complaint involves an allegation of misconduct, and whether the complaint is indeed "later" or has its roots in earlier actions or decisions.

The Commissioner is continuing a dialogue about Equitable Life-related complaints with the FSA, and in particular those complaints that include an allegation of regulatory failure on the part FSA in relation to Equitable Life.

### **5.1.4 Operational Issues: Improving Efficiency**

Although the problems of predicting the workload are likely to remain, the Commissioner believes that, in the light of the practical experience to date in operating the Scheme, it is possible to effect a number of improvements that should reduce delays and improve overall efficiency. These include improved tracking and monitoring systems and standard-setting where possible. Commentary on these issues will therefore be included in the next Annual Report.

### **5.1.5 Communications**

The Commissioner regards communications about the Scheme, her role, and her findings as a key part of her responsibilities and she will continue to attach a high priority to attending meetings of bodies representing consumers and suppliers of financial products and services. She will also work to effect improvements to her website to help communications with those who may need to access the complaints arrangements.

### **5.1.6 Working with the FSA**

Close working arrangements with the FSA are key to the successful operation of the Scheme. These working arrangements are governed by a Protocol that was agreed between the FSA and the Commissioner at the start of the Scheme and has worked well to date. With more than eighteen months experience of the Scheme in practice, however, it is appropriate to review these arrangements to ensure they achieve the overall objectives of the Scheme and promote efficiency and effectiveness. Such a review will take place early in 2003/04.



The Commissioner believes that later in the year it will also be appropriate to consider a more fundamental review of the Scheme and its operations. This would fit with the wider review of FSMA also scheduled for later in the year. The Commissioner would welcome the opportunity to contribute to such a review.

The Commissioner sees the Complaints Scheme as a mechanism through which the FSA can benefit as an organisation. The Scheme's principal function is, of course, to protect individual customers and practitioners and it therefore has a key role to play in the overall accountability arrangements for the FSA. If it is operated in an open and constructive manner, however, the Complaints Scheme can not only fulfil these functions but also benefit the FSA by assisting it to learn and to improve as an organisation. The Commissioner will continue to look for opportunities in the way that she carries out her role to enable the FSA to reap these benefits of the Scheme.

## **5.2 Conclusion**

Finally, the FSA's Company Secretariat has the responsibility within the FSA for the administration of the complaints arrangements and provides the FSA's point of liaison with the Commissioner. The Commissioner would like to thank, in particular, the staff of the Company Secretariat for their help and co-operation; she would also like to thank all the other members of staff of the FSA who have given and are giving their time to assist her with her investigations.

**Rosemary Radcliffe**  
**Complaints Commissioner**

**April 2003**

## Appendix A – Stage 2 Investigations completed in 2002/03

Four Final Reports on Stage 2 investigations were completed and issued by the Complaints Commissioner during 2002/03. The subject matter of the complaints, the Commissioner's findings and the FSA's responses are summarised below. The full text of the Introduction and Summary of Final Reports are published on the Commissioner's website [www.fsc.gov.uk](http://www.fsc.gov.uk), together with the FSA's responses.

**Complaint A** concerned the FSA's handling of an application to resign from membership of the PIA. The complainant alleged unreasonable delay in processing the application to resign and claimed that he had incurred unnecessary costs as a result. He also complained that letters of complaint had not been answered. The complainant withheld an amount from his membership fees in part compensation of the unnecessary costs, and because of this his application to resign could not be finalised.

The Commissioner found that the complainant's application to resign was dealt with in accordance with policy and the delays were due principally to the need, under that policy, to complete the various stages of the FSAVC Review before the application could be approved. But the policy, and in particular certain of its implications for the complainant, were not, in some important respects, communicated to him in a clear and timely way. With regard to the membership fees due, the policy was that these had to be paid before a resignation could be approved but, again, the complainant's queries about the policy and its applicability to him were not dealt with in a clear and timely way. Complaints to the Chairman were not responded to in a consistent and timely way, and one letter was left unanswered. The explanation advanced in one letter sent to him for the delays experienced in processing his application to resign was wrong in one material respect, in that it asserted that the delays were due in part to the complainant's own inaction.

The FSA accepted the Commissioner's findings and apologised to the complainant. The FSA confirmed that any future application that the complainant wishes to make for authorisation within a regulated firm will be dealt with in accordance with its established procedures and without prejudice. The FSA also confirmed that it had reviewed its working practices in the light of the findings and amended these accordingly. The FSA made an ex gratia payment of £350 to the complainant.

**Complaint B** concerned the FSA's handling of two requests by an investor with Provident National Bank. The complainant enquired about the Bank's financial stability and, shortly afterwards, he asked for the FSA's assistance in withdrawing his funds. The complainant alleged that his original enquiry concerning financial stability was not answered, and that he had not received assistance in withdrawing his funds. He further complained about the handling of his faxes and telephone calls to the FSA, and how his complaint had been handled.

The Commissioner found that the FSA had attempted to provide a tailored response to the complainant's enquiry about the bank's financial stability, over and above the standard information available to all enquirers. Their letter, however, although drafted, appeared not to have been sent. Unusually, FSA supervisors had raised with senior bank management the problem in withdrawing

funds, and it transpired that the problem was of the complainant's own making in that he had not signed his withdrawal form. The FSA had not told the complainant about their action, and there was no requirement that they should. The Commissioner found that there was some confusion in the handling of communications but the response was reasonably prompt. The complainant had been given incorrect advice about how to make a complaint, but the formal complaint, once made, was properly handled.

The FSA apologised to the complainant for the wrong advice given to him on how to make a complaint and for not handling his oral complaint in accordance with the Complaints Scheme. The FSA report that they have put in hand steps that they believe will reduce the risk of errors in the future. In particular they are seeking to introduce a contact tracking and management system, and have initiated a review of Consumer Relationship Management requirements. The Customer Contact Centre now keeps copies of all correspondence and records telephone calls. Briefing of staff and contractors about the Complaints Scheme has been improved. Company Secretariat hold regular meetings with Consumer Contact Centre management to ensure effective co-ordination.

**Complaint C** concerned the FSA's handling of an enquiry about the procedures and methodology adopted by Equitable Life in calculating transfer values. The complaint had several elements. The complainant complained that the FSA failed to provide him with the information he wanted, and about the way in which his request for details of the methodology was handled and the advice he received. He was dissatisfied with the FSA's failure to assist him in his dealings with Equitable Life and with his complaint about Equitable Life. He also complained that he was given incorrect advice about how to make a complaint against the FSA.

The Commissioner found that it appeared that FOS had incorrectly advised the complainant that the FSA would be able to provide the methodological information. The FSA provided standard information about the calculation of transfer values, sufficient to provide a planning assumption, but not to calculate actual values exactly. That was the responsibility of Equitable Life. The Commissioner found that the FSA's general approach to handling Equitable Life enquiries, and its particular application in the case of the complainant, were reasonable. The complainant felt that he had been given the impression that the FSA would provide him with the information, yet in a written reply was told they could not. The Commissioner found that there was no intention to mislead, but that the reply might have been more prompt. The complainant was given the wrong address for the Commissioner by the FSA, and was left with the impression that she was located at the FSA's offices. In any case, the complaint should have been referred to the FSA Company Secretariat. (The Complaints Commissioner's jurisdiction did not extend to investigating the advice given to the complainant by FOS or the service he received from the Compliance Officer of Equitable Life when contact with him had been facilitated by the FSA.)

The FSA accepted the Commissioner's recommendations. The steps taken in response are as in Complaint B above.

**Complaint D** had several components. First, it concerned the selling of a Free Standing Additional Voluntary Contribution (FSAVC). The complainant questioned the suitability of the plan for his needs and was concerned that he could not take his FSAVC pension prior to his employers' pension as he had been led to believe. Second, having complained to the product provider and, subsequently to FOS, he raised the matter with the FSA, complaining that he had not received satisfactory responses from the product provider or from FOS; in doing so, he questioned the effectiveness of the FSA's regulation of the product provider and, specifically, regulation in relation

to rules governing complaints procedures and the Review of FSAVCs. Third, having made his complaint to the FSA, he complained that it was not handled in accordance with the Complaints Scheme procedures and standards. Last, he questioned the meaning of terminology used in his dealings with the product provider, with FOS and with the FSA, and complained that he had not had a satisfactory reply from the FSA in this regard.

The Commissioner found that she was not empowered to consider the first component of his complaint, which was a matter for the product provider and FOS. In relation to the second component of his complaint she found that the allegation of inadequate regulation did fall within the scope of the Complaints Scheme, but that the regulation had not, in her view, been inadequate in this case. In relation to the regulation of the product provider, the provider followed the rules laid down by the PIA and properly advised the complainant that he could take his complaint to the PIA Ombudsman Bureau. In relation to the way in which the FSA oversaw the implementation of the FSAVC Review, the Commissioner found that the FSA did put in place an overarching regime for the Review that was, in general, timely, cost-effective, fair and well-managed, and open and transparent. Further, when advised by the complainant of the delays he was experiencing in obtaining a response from the product provider, the FSA responded promptly, with the consequence that the provider did then address the complainant's case. The Commissioner found, however, that the Review might have recognised explicitly that consumers who had already asked about taking their benefits, as the complainant had done, represented, potentially, a priority group alongside those who had actually taken their benefits. The Commissioner observed that, additionally, there were very considerable delays in completing the Review in this case, but that these were primarily down to the product provider. She was aware that the complainant remained dissatisfied with the offer made by the provider but found that this was not a matter for her but rather for FOS and, perhaps, the FOS Independent Assessor.)

In relation to the third component of the complaint, the Commissioner found that the FSA did not comply with its own published procedures and standards in relation to the Complaints Scheme. It was 57 working days before the complainant was notified by the FSA that his complaint would not be considered under the Scheme. At that point, further explanations were sent to the complainant, apparently in part because of a misapprehension that the Scheme rules required this. This was done in an attempt to be helpful to the complainant but the effect was to confuse the complainant as to whether or not his complaint was being handled under Stage 1 of the Scheme and, if not, how was it being handled and what response the FSA had actually made, or was making, to his complaint.

In relation to the final component of the complaint, the Commissioner considers that clear meanings of the words queried by the complainant in the context of his complaint should, so far as is possible, have been given to him.

The Commissioner recommended that the FSA should consider carefully in future reviews the consequences of different options for the definition of priority cases, and pointed out that, in her view, in the case of the FSAVC review this might have led to including as priority cases policy-holders who had made an application to take their benefits. The FSA responded that in formulating the policy for the FSAVC review they had considered the consequences of different options for the definition of priority cases, and that in their view asking firms to identify cases such as the complainant's was not a reasonable proposition; firms would not necessarily have a log of policy-holders who had applied to take their benefits.

In relation to the Commissioner's other recommendations, the FSA reported that they had apologised to the complainant for failure to comply with Stage 1 procedures and standards. Staffing arrangements had been reviewed and additional resources provided. They would be in touch with the Commissioner to consider improvements to the clarity of wording describing the processes and procedures of the Scheme, and had agreed to revise their explanatory booklet. They replied to the complainant on the meaning of the words he had queried.

Further copies of this report can be obtained from

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