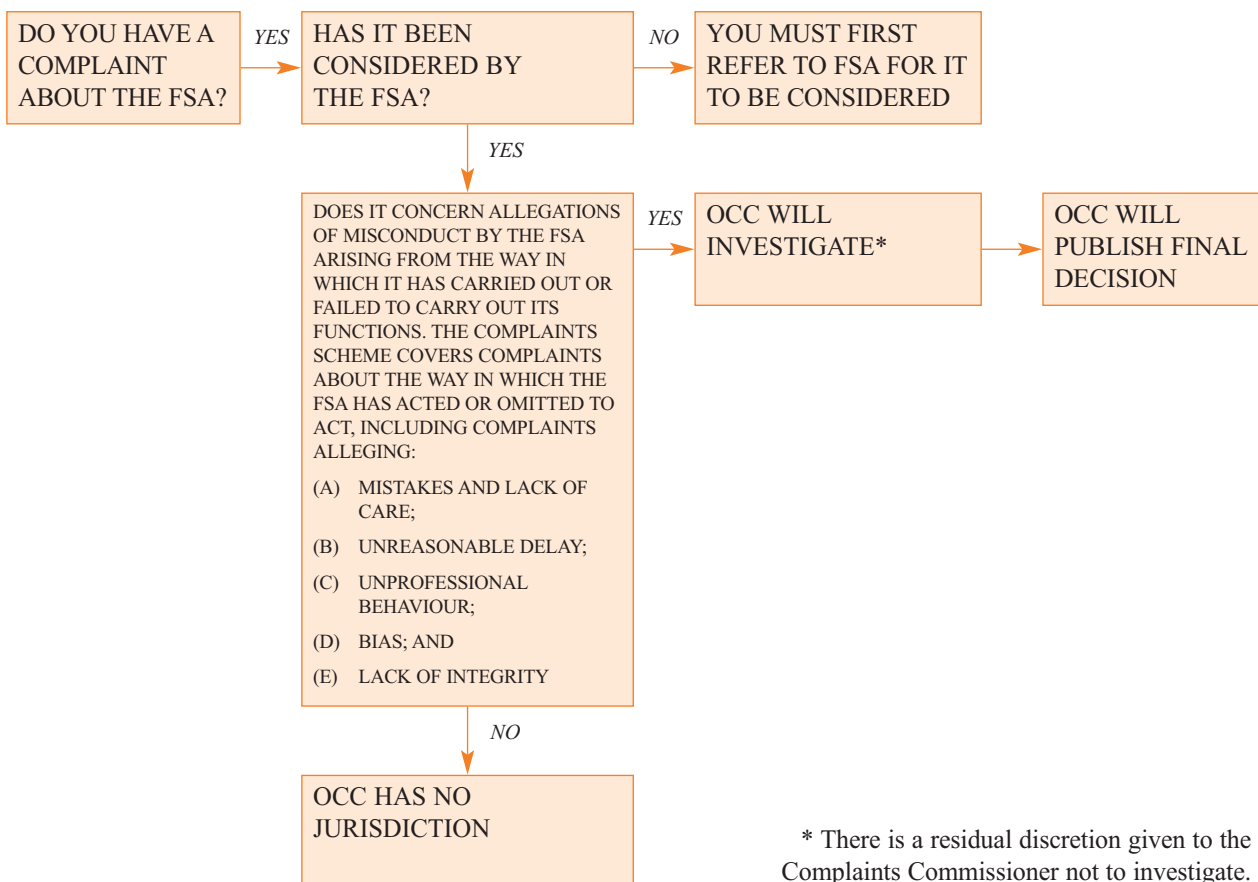


Office of the Complaints Commissioner Annual Report for 2005/06



* There is a residual discretion given to the Complaints Commissioner not to investigate.

ANNUAL REPORT for 2005/06

This is the Fifth Annual Report of the Office of the Complaints Commissioner (OCC).
It covers the period from 1 April 2005 to 31 March 2006.

Matters covered in its content are:

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Sir Anthony Holland

Sir Anthony was appointed as the Complaints Commissioner on 3 September 2004. The position was created by the Financial Services and Markets Act 2000 to provide an independent means by which the regulated community could have an independent adjudication on complaints against the Financial Services Authority.

During his varied career Sir Anthony has served as the Chairman of a Social Security Appeal Tribunal, President of the Law Society (1990-91), Governor of the College of Law (1991-97), on the Council of JUSTICE (British Section of the International Commission of Jurists, 1991), as Chairman of the Executive Board of JUSTICE (1996-99), as a member of the Council of the Howard League for Penal Reform (1992), member of the Criminal Injuries Compensation Appeals Panel (2000-2005) and Chairman of the Northern Ireland Parades Commission (2000-2005). His appointments in the financial services industry include the first instance Chairmanship of the Securities and Futures Authority (1993) and Principal Ombudsman to the Personal Investment Authority Ombudsman Bureau (1997-2000).

In addition to his position as Complaints Commissioner, Sir Anthony is the Chairman of the Standards Board for England (appointed in February 2001), a lay member of the International Governing Council of the Royal Institution of Chartered Surveyors (July 2002), and Chair of the Northern Ireland Legal Services Commission (April 2004).

Overview

Since 1 April 2005, the Commissioner received 126 allegations and complaints. Whilst more than half of these were from consumers rather than financial services firms, there is, however, a marked trend of increase in the number of firms using the Complaints Scheme, compared to last year. Some of the main topics covered were the electronic submission of Retail Mediation Activities Return (RMAR) forms and the issue of refunds of fees in the Financial Services Authority (FSA) Authorisation process for firms.

A number of operational efficiencies effected during the last year have ensured that complaints and enquiries were dealt with promptly and thoroughly. On average, the majority of the complaints were investigated within 20 working days, with only ten cases requiring an extended investigation due to the complexity of their subject matter. External legal advice has not been sought during this period, and there is no backlog of cases needing consideration.

One exception is in relation to a judicial review of a complaint dealt with by the former Commissioner. Leave was not granted for such a review and following a requested oral application by the applicant personally for leave, which was refused, costs for the necessary representation of the Commissioner at that oral application were then awarded in favour of the Commissioner.

The Commissioner continues to attach great importance to communication with individuals and firms with a view to explaining the Scheme and how it works. To this end, he attended numerous meetings with many organisations tied to the financial services industry, as well as the FSA, with the view to publicising the Scheme in a constructive manner.

The Office of the Complaints Commissioner continued to be run on a low budget compared to previous years, with an increasingly efficient use of resources throughout the period.

Background to the Complaints Scheme

The Financial Services Authority 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 of the FSA and able to conduct impartial investigations. The current Complaints Commissioner is Sir Anthony Holland who was appointed on 3 September 2004 for a three year term.

FSMA specifies the overall requirements of the Complaints Scheme; details of the rules are set out in the FSA Handbook (under the section entitled Complaints Against the FSA (COAF)). 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 arising under earlier legislation.

On 1 October 2004 the COAF rules were amended. One of the main effects of this was that the Commissioner will now only look into allegations when requested to do so by the complainant following a stage one decision by the FSA, or if the complainant feels that the FSA is taking too long to investigate a complaint or finally that the FSA has excluded the complaint from the Scheme. This has had an effect on the number of allegations and complaints handled by the OCC.

The information booklet available to all enquirers and potential complainants has been revised. Relevant extracts are reproduced in Appendix A.

Statutory Information

Chairman and Director Sir Anthony Holland

Company Secretary Ivona Poyntz

Statutory accounts have been lodged at Companies House.

Statistics from 1 April 2005 to 31 March 2006

Enquiries and complaints in progress at start of year	33
New enquiries and complaints received during year	115
Cases re-opened from earlier period	11
Enquiries and complaints concluded*	146
Enquiries and complaints in progress at end of year	13

* Includes - *Initial enquiries passed to FSA* 17
 Outside scope 74

The table below is based on issues raised in the Commissioner's reports. Only cases where the FSA has dealt with the complaint are shown in the table and include cases where the Commissioner felt that improvements could be made in the handling of the matter. In many cases the Commissioner may have agreed with the FSA decision but believes that there was still room for improvement. It should be recognised that when reporting cases completed throughout the year it may reflect the actions of the FSA in the past that are not necessarily relevant now. The majority of the complaints received do not appear in the tables since the Commissioner's conclusions were identical to those of the FSA.

The following definitions are a guide to the table that shows the areas that have been brought to the attention of the Commissioner.

<i>Record Keeping</i>	This includes lost records and inability to find records.
<i>Unreasonable Delay</i>	Includes cases where, in the Commissioner's opinion, there was still unreasonable delay, despite all mitigating factors having been taken into account.
<i>Other Admin Failures</i>	All other administration delays including inefficient collaboration between FSA departments.
<i>Recognition Delay</i>	Delays in recognising a complaint.
<i>Case Handling</i>	This includes cases where the Commissioner believes that if the initial or early correspondence had been more informative or helpful it would have been likely that the complaint would not have proceeded. Cases where there is a need for improved correspondence have been included.
<i>Unreasonable Complaints</i>	This includes complaints from people who refuse to accept that the law and statutory instruments dictate a decision or decisions not in their favour. It also includes those who continue to complain after a reasonable explanation of the situation has been put to them.

The second table shows cases that were outside the scope of the complaints scheme and have been dealt with by the FSA. Some of these cases have demonstrated the same issues as have been shown in the first table and the Commissioner believes that reporting on these cases provides useful management information for the FSA.

Table 1 - Subject Matter of Allegations Open and Received Since 1 April 2005

	Authorisation	Company Secretariat	Contact Centre	Enforcement	Supervision
Record Keeping	1				
Unreasonable Delay					
Other Admin Failures					
Recognition Delay		1	1		
Case Handling		4	1	6*	
Unreasonable Complaints					

* The 6 cases are interconnected.

Table 2 – Cases Outside Scheme

	Authorisation	Company Secretariat	Contact Centre	Enforcement	Supervision
Record Keeping					
Unreasonable Delay			2		
Other Admin Failures					
Recognition Delay					
Case Handling		1*	1		
Unreasonable Complaints		3	1		

* Excluded element of complaint included in Table 1, same category.

The office dealt with two cases that were open at the beginning of the period where delays were alleged. However, because they were mainly attributable to the Pensions Unit which is no longer active, they have not been included in the tables.

Management, Communications and Operations

Management

The Office of the Complaints Commissioner was set up in 2004 as a company limited by guarantee, with the Commissioner acting as the sole director and member. The establishment at the end of March 2006 was:

The Commissioner
One part time Manager
Two Case Investigators
Two part time Administrators

The OCC management has an efficient methodology for handling allegations and complaints which ensures that most complaints and enquiries are dealt with within 20 days. In order to ensure that the best possible practice is being adhered to, as the market develops, both the methodology and the protocol are subject to constant review and amendment.

Communications

An early priority was to establish a good working relationship with the Company Secretariat of the FSA but to do so without compromising the independence of the OCC. This has been achieved and a new protocol based on current procedure has been agreed, set up, and is currently in operation. There is a high level of co-operation between the FSA Company Secretariat and the OCC, which has resulted in further constructive development of the Scheme. The Company Secretariat of the FSA is continually enhancing the operational efficiency of the Scheme, and this, coupled with its receptiveness to implementing the Commissioner's recommendations may have led to the overall decrease in the number of complaints received at Stage 2.

Operations

The Office of the Complaints Commissioner operates on a lean budget, particularly compared to previous years. Most staff are employed on a part time basis, and outside consultants, legal advisers and the use of increasingly expensive serviced office premises has been curtailed. The net position is that substantial savings have been made. The accounts for the year 2005-6 reflect this.

Case Summaries

During the course of the last year, the Commissioner has dealt with a variety of complaints, some that fell within his jurisdiction and others that were not ones that he could investigate and where the complainant was re-directed to the appropriate organisation.

The following are samples of complaints within the Commissioner's jurisdiction:

- Mr A, on behalf of himself and another five investors, complained that the FSA had not notified investors that company X was operating an unauthorised collective investment scheme which it had required the company to restructure to take the scheme outside of the provisions of the Financial Services Act 1986. Mr A had questioned the actions of the FSA in this instance and had asked why the investors had not been notified in this case whereas in another case involving company Z, also unregulated, in which he had invested, the investors had been notified of the actions of the FSA. Mr A contended that if he had been informed that the original scheme was not regulated, he would have withdrawn his money instead of making a further investment at a later stage. The Commissioner obtained detailed information regarding the way in which the FSA carried out its enquiries involving this type of case and ascertained that it was not usual for the FSA to notify individual investors in similar cases but that notification had been undertaken as far as company Z was concerned because of the particular circumstances surrounding that case. As this case involved an unregulated scheme administered abroad the Commissioner did not uphold the complaint and pointed out that the FSA did not have a duty to intervene. The Commissioner concluded that investors have to take responsibility for their own actions and if they wanted the protection afforded by the FSA, they should not invest in unregulated products, particularly ones that are effectively managed and based overseas.
 - Mr B had invested a sum of money in ordinary shares in a number of Split Capital Investment Trusts (Splits) which then went into liquidation. Mr B complained that the supervision of the firms in question had been inadequate and secondly that the FSA had been wrong to discriminate against ordinary shareholders when it negotiated the compensation for zero split holders. The Commissioner found that neither element of the complaint had been made out. Splits themselves were not a regulated product and were not, therefore, subjected to the same regulatory framework as regulated products. In addition, there had been no obligation on the FSA to negotiate the compensation package in respect of zero splits. It had done so because of the unique set of circumstances in that zeros were sold as less risky than ordinary shares and that a number of retail investors had purchased them. The settlement was intended to achieve compensation for the majority of retail investors and that approach, in the Commissioner's view, was a reasonable and correct approach for the FSA to take and a judgement that the FSA was entitled to make in the particular circumstances.
 - Mr C had complained to the Financial Ombudsman Service (FOS) concerning the sale of a draw down pension contract. FOS had adjudicated in his favour but the IFA who sold the policy had closed the original company and was now authorised in respect of a new company. Mr F had complained to the Commissioner that the FSA had allowed the IFA to become de-authorised before settling outstanding complaints. The Commissioner investigated the complaint and found that FOS had mistakenly provided information to the FSA which was inaccurate and that fact allowed the FSA to de-authorise the IFA. The complaint was therefore re-directed back to FOS, which itself has a complaints procedure.
 - Mr D became aware that FOS believed him to have been a member of the PIA and hence liable to their jurisdiction for awards relating to advice given during his membership of the PIA. The FSA took 15 months to establish for certain that he was a member (from records that it had held throughout). During this time the FSA provided contradictory written confirmations as to his membership. Clearly legacy records have a potential liability linked to them and the Commissioner welcomes a new FSA initiative to improve record keeping.
-

Cases where the Commissioner was able to direct the complainant to the correct organisation:

- Mr E had read an article in the press suggesting that there was a mandatory pension scheme operating within the construction industry. He had written to the Pensions Ombudsman but had not received a reply. The Commissioner was able to inform him that he had no knowledge of any mandatory scheme within the United Kingdom (UK). That the scheme referred to in the press article was based in The Republic of Ireland and that the Pensions Ombudsman to whom he had written was not the Pensions Ombudsman in the UK. The complainant was referred to The Pensions Advisory Service (TPAS) for further information.
- Mr F was a retired tied agent. He contacted the Commissioner because he had received a questionnaire from his former employer concerning the sale of a mortgage endowment policy. The wording in the questionnaire suggested that the former employer would be reporting him to the FSA. Mr F was not in good health and was concerned with the wording used. He was assured that the primary liability in the case of a mortgage endowment sale remained with the former employer but that the employer was entitled to ask him questions in relation to the circumstances at the time of the sale in order to assist the company in deciding how it should respond to the complaint.
- Mr and Mrs G contacted the Commissioner to complain about pension policies sold by a regulated firm. This complaint had been on-going for a number of years and had involved many regulatory organisations and the legal profession. The Commissioner explained that neither the FSA nor the Commissioner could become involved with a complaint concerning a regulated firm and that the correct course of action would be to complain to the firm and then, if still dissatisfied, to the Financial Ombudsman Service (FOS).
- Miss H had complained about a mortgage endowment policy which had been sold to her by a bank in the UK ten years previously. She had then left the UK to live abroad. Her complaint revolved around the fact that because she now lived abroad she had difficulty in trying to establish her identity because of the provisions of the Money Laundering regulations. It was her opinion that the FSA, as regulator of the financial services industry, was responsible for this situation. The Commissioner was able to determine that the money laundering regulations were the responsibility of the Joint Money Laundering Steering Group and not the direct responsibility of the FSA. In addition, there was discretion allowed to individual companies concerning the way in which the regulations were interpreted, and put into practice, to make allowance for individuals who may have difficulty in proving their identity such as students or recent immigrants.

Cases where the Commissioner agreed with the exclusion or exercised his discretion not to investigate:

- Mr I had complained to the FSA about the use of the LAUTRO projection rates. In the complainant's view it had been misleading to use 'no charges included' illustrations and he pointed out that the rules had been changed in 1995 to include charges in future illustrations. The FSA had explained that complaints against LAUTRO did not come within the Complaints Scheme as there was no provision under the Financial Services and Markets Act 2000 to challenge predecessor regulators other than those mentioned in the Transitional Complaints Scheme. However, having excluded the case from the Complaints Scheme, the FSA then went on to provide a full explanation in relation to the LAUTRO projection rates to the complainant. The Commissioner agreed with the exclusion and did not feel that he could add anything to the explanation already provided. He confirmed that any further queries regarding the projections should be addressed to the IFA who had provided the advice.
-

- Mr J had complained to the FSA in relation to a report that he had provided and that had not been acknowledged. The FSA had conducted a Stage 1 investigation and had apologised to the complainant. It was explained that procedures had been put into place to avoid similar mistakes occurring again. The Commissioner exercised his discretion not to conduct a Stage 2 on the basis that there was no further recommendation that he could make apart from endorsing the action that had already been taken.

Issues

During the past year, the Commissioner has been appraised by the FSA of improvements to its Complaints Scheme. The FSA has undertaken a number of initiatives with respect to early complaint identification, reducing the overall time spent per case, and improving communication with complainants taking into regard the different types of complainant with whom it is dealing. Nevertheless, certain areas remain where improvements should be made, and these have been highlighted in the summary tables on page 6.

Compensation

Many complainants believe that the Commissioner presides over a full compensatory scheme similar to the Ombudsman. That is not the case. If the issue of compensation is explained and clarified at outset, experience shows that many complainants may realise that referring their complaint to the Commissioner is not the appropriate avenue for financial recompense.

Finality

Any complaints handling scheme needs to come to a final conclusion which may often be against the wishes of the complainant. This must be beneficial to the efficiency of the Scheme. In addition, it is a benefit to a complainant to know that the end of the line has been reached and that any future action can only take place outside the Complaint Scheme. The Commissioner, therefore, has decided to adopt an approach whereby in the absence of any new evidence, an investigation is closed down after the final report has been issued and the complainant informed that the process has reached finality.

The Complaint Scheme

The Commissioner continues to publicise the Complaints Scheme both in the FSA and in the market place and has been involved in a number of initiatives in order to take this forward. These initiatives included talking to groups of senior individuals representing industry and consumers.

The Future

Last year, under this heading, a number of steps were identified as being necessary. These have now been implemented in that new IT arrangements have been installed, the Commissioner has spoken at numerous meetings to expand upon the scheme itself and internal procedures to produce finality are now in place.

There are necessarily continuing discussions with the FSA secretariat to improve the operation itself so as to ensure that the FSA, the industry and the consumer get the maximum possible benefit from the Commissioner's activities. So far a regular bulletin of developments has not been justified but that issue will be revisited if circumstances indicate that it would be a useful adjunct to the Annual Report.

APPENDIX A**The Complaints Scheme****Extracts from the Office of the Complaints Commissioner Booklet**

Bringing a complaint against the Financial Services Authority

What is the Financial Services Authority?

The FSA is the single statutory regulator for the financial services, general insurance and mortgage industry. Its existence and remit are set out in the Financial Services and Markets Act 2000 (FSMA).

The FSA Complaints Scheme

The scheme was set up in September 2001. It provides the arrangements required under FSMA for the FSA to investigate any complaints in connection with the FSA exercise of, or failure to exercise, its functions under FSMA, other than its legislative functions. The scheme is available on the FSA website (see end of leaflet for website address). The scheme provides an important source of information for the FSA to assess its performance as regulator and provides a system of checks and balances for its stakeholders. The FSA complaints handling arrangements are explained in a separate leaflet 'Bringing a complaint against the Financial Services Authority'.

How a complaint will be treated

A complaint should be referred to the Commissioner where you are dissatisfied with the decision of the FSA investigation into your complaint or where you are not satisfied with the progress made by the FSA in its investigation of your complaint. The Commissioner has complete discretion to decide whether the complaint falls within his jurisdiction, and if so, whether or not he will investigate the complaint. Furthermore if the complaint has not already been put to the FSA, the Commissioner may decide not to investigate until the FSA has had opportunity to investigate the complaint.

If, on the conclusion of the Commissioner's investigation, he decides that the complaint is well founded, recommendations may be made to the FSA and the complainant about how things might be put right. If the Commissioner does not uphold your complaint he will explain the reasons to you.

The Complaints Commissioner provides an independent review of complaints against the FSA and consequently aims to provide finality to the process. On occasion complainants views differ from the Commissioner substantially and they persist with contacting the Commissioner after the issuance of his decision.

The Commissioner is also accountable for the budgeting of his office and thus must ensure that this is spent wisely and achieves value for complainants and the wider public. Consequently there are occasions where the Commissioner has to use the discretion available to him not to investigate a complaint further. Where this happens a letter will be issued to the complainant explaining the Commissioner's stance. If the Commissioner's office is minded not to respond to any further contact from the complainant this will be explained within the letter.

APPENDIX A

Complaints the Commissioner can deal with

The Commissioner can deal with any complaint about the way in which the FSA has carried out, or failed to carry out, its role. This includes complaints about mistakes or lack of care, unreasonable delay, unprofessional behaviour, bias or lack of integrity by the FSA and its staff. The Commissioner will investigate your complaint with a view to completing it within 20 working days. If the investigation is going to take longer than that he will write to inform you and keep you updated.

The Commissioner draws his conclusions from the evidence available to him and provides them to both the FSA and the complainant for any further submissions that either party wish to make. Once such submissions have been reviewed a final decision is published. As the Commissioner provides conclusions to his independent investigation, based upon the evidence available to him, unsubstantiated allegations are unlikely to be successful.

Complaints the Commissioner cannot deal with

The Commissioner does not investigate complaints about firms. Complaints about firms should be directed to the firm in question. If dissatisfied with the decision or complaint to the firm is not possible, the complaint should be directed to the Financial Ombudsman Service (FOS).

The Commissioner does not investigate complaints about firms who no longer exist or cannot meet their liabilities. Such complaints should be directed to the Financial Services Compensation Scheme (FSCS).

The Commissioner cannot investigate complaints about the legislative functions of the FSA under FSMA. This includes the making of rules, issuing codes and general guidance.

If you have a general enquiry about the financial services industry this should be addressed to the Consumer Contact Centre at the FSA.

Is there a time limit for making a complaint?

Yes. Your complaint should be made to the FSA within 12 months of your becoming first aware of the circumstances giving rise to your complaint. If the complaint is made later than this you will need to demonstrate reasonable grounds for the delay.

How can I make a complaint?

Firms must make their complaint in writing to the FSA (email, fax or letter) and in turn the Commissioner. Individuals can make their complaint in any format, however, a written complaint is preferred (email, fax or letter). If you are in any doubt as to whether you have a complaint, approach the Commissioner via the contact details provided.

Does it cost anything?

Making a complaint to the FSA and the Commissioner does not incur any charge. However if you take specialist or legal advice you must meet these costs yourself, even if your complaint is successful.

APPENDIX A**How can I contact the Complaints Commissioner?**

You may write directly to the Complaints Commissioner at the following address:

- Office of the Complaints Commissioner
8th Floor City Tower
40 Basinghall Street
London EC2V 5DE
 - By emailing the Complaints Commissioner's Office at complaintscommissioner@fsc.gov.uk;
 - By telephoning the Complaints Commissioner's Office on 020 7562 5530; or
 - By visiting the Complaints Commissioner's website at www.fsc.gov.uk
-

APPENDIX B**Expenditure**

Description	Expenditure 2005/6	Expenditure 2004/5
Staffing Costs	290,073	395,000
Professional Fees	34,724	267,000
Accommodation and office costs	115,639	81,000
Dilapidations and depreciation	5,497	3,000
TOTAL	445,933	746,000

The above information for the year 2004/2005 is proforma information and has not been audited. The Office of the Complaints Commissioner was incorporated as a company limited by guarantee on 6 July 2004 and commenced trading on 3 September 2004. The audited accounts of the company (for the period 3 September 2004 to 31 March 2005) and for the period ending 31 March 2006 have been separately prepared and have been delivered to, and are available from, the Registrar of Companies, Companies House, Crown Way, Maindy, Cardiff, CF14 3UZ.

