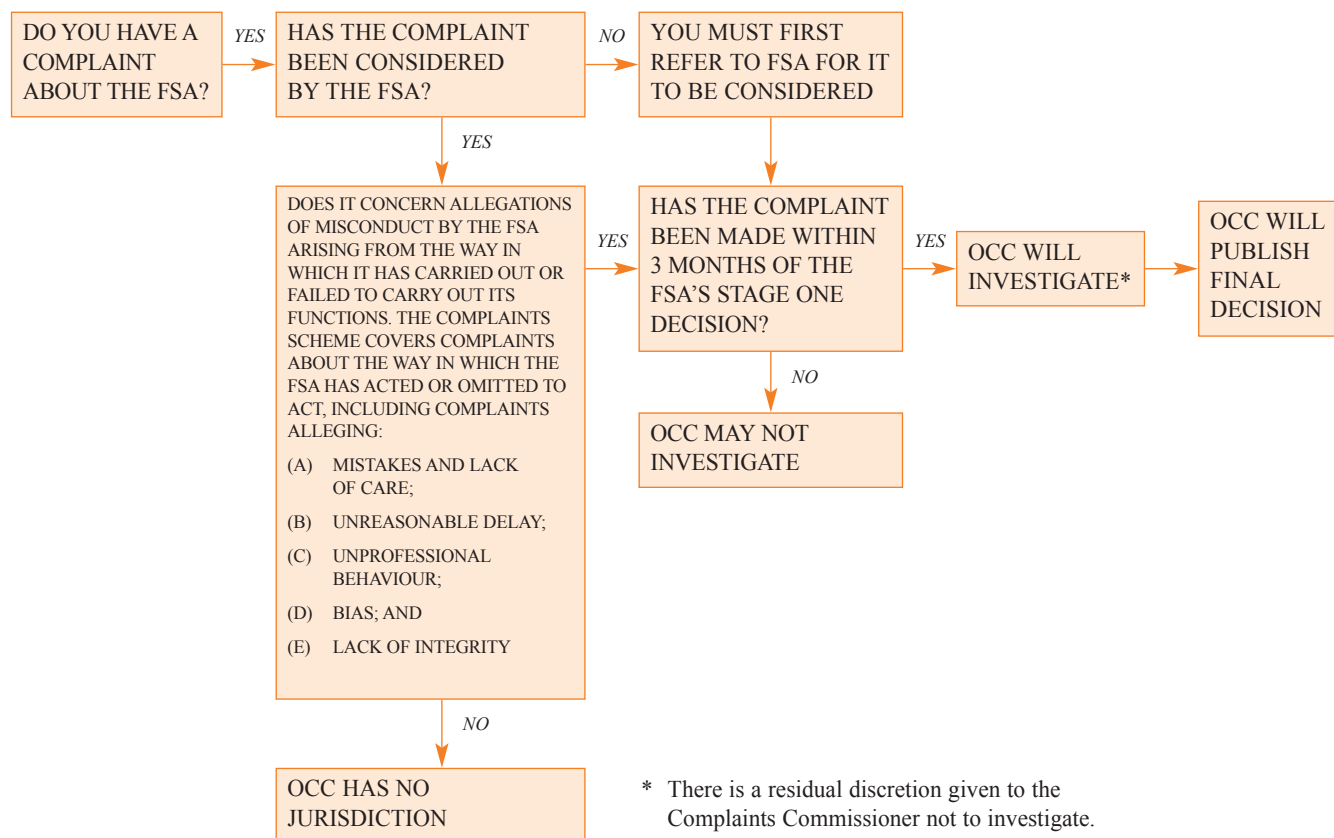




Office of the Complaints Commissioner Annual Report for 2008/09



ANNUAL REPORT for 2008 / 09

This is the Eighth Annual Report of the Office of the Complaints Commissioner.
It covers the period from 1 April 2008 to 31 March 2009.

Matters covered in its content are:

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Sir Anthony Holland

Sir Anthony was appointed as the Financial Services Complaints Commissioner on 3rd September 2004 for a three year term. He was reappointed as the Complaints Commissioner for a further three years on 3rd September 2007. The position of the Complaints Commissioner 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. H.M. Treasury's approval is required under the Act for the appointment or dismissal of the Commissioner.

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, 1991-2001), as Chairman of the Executive Board of JUSTICE (1996-99), member of the Council of the Howard League for Penal Reform (1992-1999), member of the Criminal Injuries Compensation Appeals Panel (2000-2005), Chairman of the Northern Ireland Parades Commission (2000-2005), Chair of the Northern Ireland Legal Services Commission (2004-2007), Chairman of the Standards Board for England (2001-2008), and was a lay member of the International Governing Council of the Royal Institution of Chartered Surveyors (2002-2008). His appointments in the financial services industry include a period as a first instance Chairman of the Securities and Futures Authority (1993-2000) and Principal Ombudsman to the Personal Investment Authority Ombudsman Bureau (1997-2000).

In addition to his position as Complaints Commissioner he is also is a member of the Board of the Pension Protection Fund.

Overview

Since 1 April 2008, the Office of the Complaints Commissioner (OCC) has received 163 allegations and complaints. Individual consumers accounted for 86% of overall complainants compared to 50% of complainants last year, the remainder being made up of, firstly solicitors on behalf of their regulated clients, secondly Members of Parliament and thirdly firms themselves. In the majority of cases individual complainants approach this office with dissatisfaction about the Financial Service Authority (FSA)'s role in regulating or dealing with particular firms in the financial services industry, which in turn have allegedly caused the individuals stress, inconvenience or financial loss. The increase in individual consumer complaints this year is attributable to turbulent market conditions which have prompted a heightened response from consumers.

Background to the Complaints Scheme

The FSA is required by Paragraph 7 of Schedule 1 of 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. The relevant rules are set out in a statutory instrument entitled Complaints against the FSA (COAF) and which are made pursuant to Paragraph 7 of Schedule 1 to FSMA. The Complaints Scheme is essentially reactive (as opposed to proactive) in that the Commissioner's powers derive from receiving a complaint. To be eligible to make a complaint the complainant must be seeking a remedy, which may include an apology in respect of some inconvenience, distress or loss which has been suffered as a result of being directly affected by the FSA's actions or inactions. It should be noted that the FSA under FSMA is immune from liability in damages for any negligent act. That immunity does not apply if bad faith is proven or the FSA acted in a way which is incompatible with a convention right under the Human Rights Act 1998. Appendix A contains more details of the Complaints Scheme. As part of the complaints arrangements there must be a Complaints Commissioner (the Commissioner) who is independent of the FSA and able to conduct impartial investigations.

Statutory Information relative to Office of the Complaints Commissioner, a company limited by guarantee

Chairman and Director Sir Anthony Holland

Company Secretary Iyona Poyntz

Statutory accounts have been lodged at Companies House.

2 Statistics from 1 April 2008 to 31 March 2009

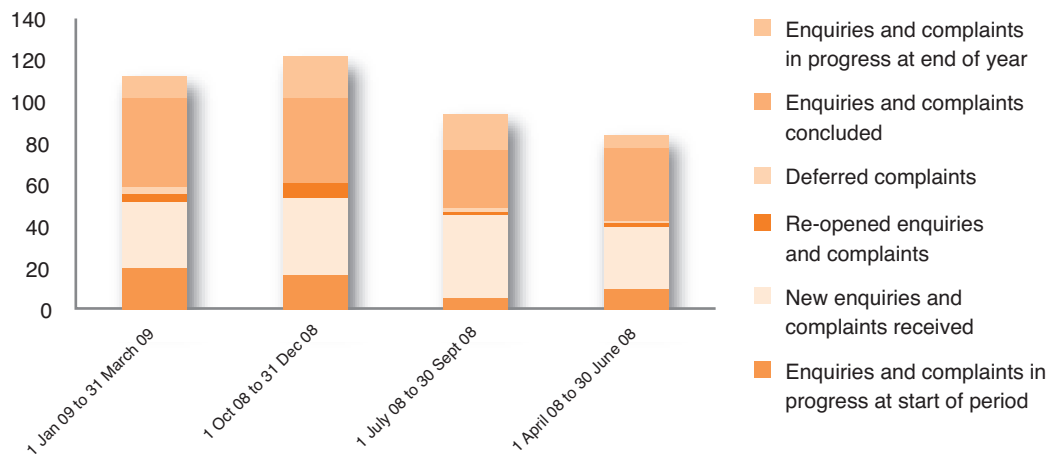
2.1 Enquiries and complaints received during the year

The table below shows the number of enquiries and complaints received by the Commissioner during 2008/09. The volume of new and re-opened complaints received during the year increased to 163 for the year ended 31 March 2009 as compared to 137 in the previous year. This represents an increase of 19% year on year. The volume of complaints received and concluded is evenly spread over the four quarters. Whilst it is recognised that turbulence in the financial markets has intensified in the last few months of 2008 and in the early months of 2009, this does not seem to have skewed the volume of complaints received on a quarterly basis.

Table 1: Enquiries and Complaints Received during 2008/09

	2008-9	1 Jan 09 to 31 March 09	1 Oct 08 to 31 Dec 08	1 July 08 to 30 Sept 08	1 April 08 to 30 June 08	2007-8
Enquiries and complaints in progress at start of period	10	20	17	6	10	18
New enquiries and complaints received	149	42	37	40	30	130
Re-opened enquiries and complaints	14	4	7	1	2	7
Deferred complaints	6	3	0	2	1	2
Enquiries and complaints concluded	158	54	41	28	35	143
Enquiries and complaints in progress at end of year	9	9	20	17	6	10

Enquiries and complaints received by quarter, 2008/09



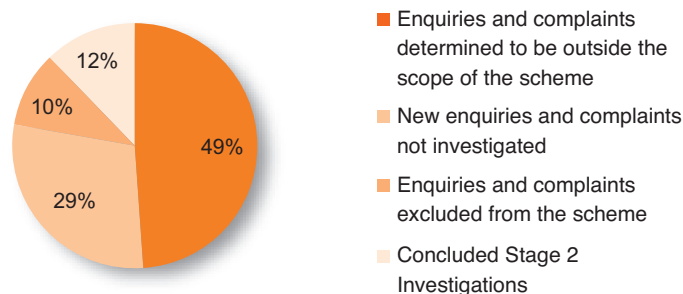
2.2 Enquiries and complaints concluded during the year

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

Table 2: Enquiries and Complaints concluded 2008/09

	2008-9	1 Jan 09 to 31 March 09	1 Oct 08 to 31 Dec 08	1 July 08 to 30 Sept 08	1 April 08 to 30 June 08
Enquiries and complaints determined to be outside the scope of the scheme	79	32	17	13	17
New enquiries and complaints not investigated	45	16	14	8	7
Enquiries and complaints excluded from the scheme	17	3	4	4	6
Concluded Stage 2 Investigations	17	5	4	3	5
Total enquiries and complaints concluded	158	56	39	28	35

2008/9 Complaint Summary



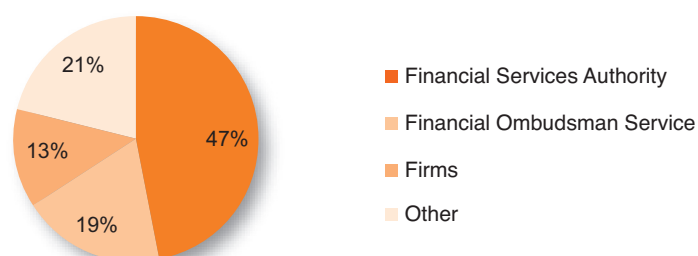
The number of complaints and enquiries concluded during the year amounted to 158. Of these, 79 were enquiries/complaints which related to other organisations, and further information on this is given below. Complaints which were excluded from the scheme related mostly to the performance of the FSA's legislative functions under FSMA. 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. A number of other complaints were also not investigated; the overarching consideration in these instances was that complainants either clearly showed no demonstrable fault on the part of the FSA but were merely expressing dissatisfaction with their financial services providers, or, complainants were already dealing with matters by means of an appeal to the Financial Services Tribunal. Further, the Commissioner would not normally become involved in an investigation of a complaint which could have been, or would have been more appropriately dealt with in another way (e.g. by referring the matter to the Financial Services and Markets tribunal or by other legal proceedings) under COAF 1.4.3. The latter example highlights the fact that the Commissioner's investigations are primarily paper driven and do not involve the ability to compel witnesses to give evidence under oath or to be subjected to adversarial cross examination.

2.3 Organisation to which the complaint relates

The table below gives information about the organisation(s) that were subject of enquiries and complaints during the year.

Table 3: Organisation to which the enquiry or complaint relates 2008/09

Organisation to which enquiry or complaint relates	2008/09	Percentage
Financial Services Authority	37	47%
Financial Ombudsman Service	15	19%
Firms	10	13%
Other	17	22%
Total	79	100%



The majority of new enquiries/complaints were in relation to the FSA. Of these, nearly half were complainants who had approached OCC first without having had a FSA stage one investigation conducted. In these cases, the Commissioner usually directed the complainant back to the FSA for a stage one investigation. Where the complainant is not satisfied with the outcome of that investigation, then an approach can be made to the OCC for a stage two investigation.

Complaints relating to the Financial Ombudsman Service (FOS) or the Financial Services Compensation Scheme (FSCS) usually stem from individual members of the public expressing dissatisfaction with a decision made by these two bodies. The Commissioner however has no jurisdiction over FOS and FSCS and cannot investigate complaints about either body.

2.4 Type of complainant

The information below highlights that enquiries and complaints have predominantly come from individual members of the public rather than from organisations during the year.

Table 4: Type of Complainant 2008/09

Type of complainant	1 April 08 to 31 March 09
Individual Members of Public	137
Independent Financial Advisers	4
Solicitors	3
Members of Parliament	1
Firms/Groups	12
Third Parties	1
Total enquiries and complaints concluded	158

2.5 Subject Matter of Complaints

The table below provides information on the subject matter of complaints reviewed by the Commissioner during 2008/09. A further breakdown of common themes emerging across the spectrum of complaints is provided in section 3 below.

Table 5: Subject matter of complaints

Complaint topic	2009/09 Number (7)
Bank Waiver ⁽¹⁾	2
Bank/Building Society Mergers/FSCS Limits ⁽¹⁾	3
Boiler room scams/Ponzi schemes ⁽²⁾	6
Complaint relating to Enforcement action ⁽³⁾	6
Complainant seeking redress – alleged indirect loss ⁽⁴⁾	8
Complainant seeking redress – alleged direct loss ⁽⁵⁾	4
Fees – late returns (annual fees and regulatory returns) and the number of approved persons (includes requests for pro-rata rebates)	11
FSA General Regulation ⁽⁶⁾	31
Icesave ⁽¹⁾	1
Pensions/AVC Review/Equitable Life/Endowments	7
Reattribution/Inherited Estates	5

Notes

1. Bank Waiver and ICESAVE complaints have been included as although only a limited number of complaints were considered under the scheme, the OCC received a large number of enquiries relating to these issues.
2. Investors complaining about the FSA's behaviour in relation to such schemes and scams.
3. Complainant is directly involved with the regulated body (complainant is not an investor).
4. There is an interim party, e.g. an investor invests with a firm and the firm fails, and the investor seeks redress from the FSA for alleged failings in its regulation of the firm.
5. There is no interim party.
6. Complaint is unspecific or general terms, or relates to FSA behaviours which it cannot exclude, or not investigate. Examples include the authorisation and supervision of specific firms and issues relating to unfair contract terms.
7. Includes cases where a stage 1 investigation may or may not have been carried out or where the FSA may have deferred an investigation and the OCC agree with the decision to defer the investigation, or where the Complaints Commissioner has used his discretion not to investigate.

The figures shown in the table above only relate to complaints which were considered under the complaints scheme and do not include cases which were treated as enquiries and referred to other bodies (e.g. a firm, the FSA, the FOS or the FSCS) for consideration. Similarly, the figures shown in the table above relate to topics raised in the complaint. As some complaints relate to more than one topic, they may be included more than once in the table.

3 Themes

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 these were re-directed to the appropriate organisation. A number of recurring themes emerged during the course of the year, which are listed below.

Dissatisfaction with endowment shortfalls

In cases where a provider has not breached contractual or regulatory obligations, but an endowment shortfall has ensued, complainants have sought to challenge this on the grounds of breach of the FSA principle of treating customers fairly, despite having been provided with information that maturity values are not guaranteed. Low maturity values in these circumstances, if based on commercial decisions, will not be subject to an investigation by the Commissioner.

Distinction between FOS, FSA, FSCS and OCC

A number of complainants who are left dissatisfied with a FOS or a FSCS decision approach first the FSA and subsequently the Commissioner with a view to 'overturning' the decision that they are unhappy about. Complainants fail to appreciate that the FSA and OCC are independent of FSCS and FOS, and cannot review decisions taken by these bodies. Under the FSMA, the FSA is charged with the responsibility of regulating the industry. The Act also created a dispute resolution body which could intervene in complaints between consumers and firms regulated by the FSA. This body is called the FOS and it is the FOS, rather than the FSA, who investigate and adjudicate on individual disputes between consumers and regulated firms.

Protecting the consumer

A number of complaints are excluded from the scheme and can best be described as encompassing the distinction between protecting the consumer as an individual and as a generic 'class'. Thus for example complaints about the merger of Derbyshire and the Nationwide Building Society were excluded from the scheme given that when considering a merger request the FSA considers the effect on all customers as a class and not just those individuals who hold accounts in both Societies. Nevertheless the issue arose about the available protection afforded by the FSCS which has a limit of £48,000 which might in the case of an Investor with accounts in both institutions be prejudiced by such a merger. The FSA announced that such protection would continue despite the merger, for a limited period.

Telephone Recordings

The issue of telephone recordings as primary evidence has recently come to the forefront. The details of each individual complaint vary, but the allegation is made that in all cases the complainant acted upon certain assurances provided over the telephone by the Consumer Contact Centre (CCC) at the FSA. As the retention period for the calls to the CCC is one month, in the absence of a recording of the call, the FSA has not upheld the complaint as there is no prima facie evidence of the allegations. The FSA relies on internal procedures in handling such types of calls during the stage one investigation. Although this may have been appropriate in these cases specifically, this is an area to which the FSA may wish to give more consideration, by, for example, ensuring that sufficient detail of what is said is recorded in written form. The FSA internal Complaints Team have themselves recommended to the CCC that written records of calls are made and we understand this practice has now been adopted.

Firms Authorised by the FSA

Many firms which are regulated by the FSA, and state so in their publications, are in fact also conducting unregulated activities and/or offering unregulated products alongside financial services products which are regulated. Whilst this in itself is permissible in the current regulatory regime, it does however leave consumers confused and in a sense 'unprotected' should the firm unravel. It is only once this happens that consumers find that they are not eligible to receive compensation payments from the FSCS as products they have purchased from the firm in default are unregulated. It may be prudent for the FSA to give this issue consideration with a view to achieving greater clarity for consumers in this area as it is expected to be a problem that will persist.

Abuse of Process

During this year there have come across suggestions made to the IFA industry that there should be an attempt by members to flood the FSA with a multiplicity of complaints in order for members to express their dissatisfaction with the FSA. If the Commissioner encounters such an organised activity he would, in general, be likely to regard it as an abuse of the complaints process and exclude such complaints from the complaints scheme.

Section 348 of FSMA 2000

This section of the Act inhibits the release of information outside the FSA. Thus a whistle blower will provide information which the FSA does act upon but because of section 348 is unable to tell the whistle blower – who by now is the complainant – exactly what it, the FSA, has done with the information it was provided with by the whistle blower. The Commissioner is entitled however to see exactly what the FSA has done and generally the outcome is that the complainant is satisfied, if not happy, if the Commissioner is able to give his personal assurance that the information was treated seriously and has been acted upon.

Deferring the handling of “Industry” complaints

This issue arises when the complainant is being investigated by the FSA, or has been through the Regulatory Decisions Committee process and is appealing to the Financial Services and Markets Tribunal but wishes to complain about some aspect of the FSA's conduct while this has been ongoing. COAF 1.4.4 gives the Commissioner the power to defer dealing with the complaint until the entire process has been completed save in “exceptional circumstances”. In the cases the Commissioner has so far received in this area he has not yet come across a situation where there are sufficient exceptional circumstances. It has to be born in mind that were the Commissioner to do so there would be, in effect, a serious “muddying of the waters” as the Commissioner then commenced his own in depth investigation.

Fees Issue

This issue arises on an annual basis. Many less organised members of the industry frequently miss dates notifying the FSA of changes to their personnel; or alternatively pay their fees late thus incurring a penalty. In each case additional financial obligations arise. The Commissioner then receives a complaint that the FSA is too rigid in not having regard to what are “extenuating circumstances”. Rarely is the Commissioner able to find that that is the case.

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 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. However, 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 also 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, although not in all cases. As the Commissioner provides conclusions to his independent investigation, which must be 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. Complaints made to the Commissioner should be made within 3 months of the FSA decision.

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.

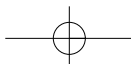
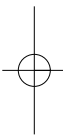
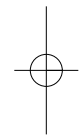
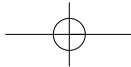
APPENDIX B**Expenditure****Profit and Loss Account
For the year ended 31 March 2009**

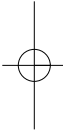
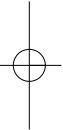
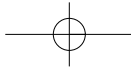
	2009	2008
	£	£
Administrative expenses	(489,372)	(475,781)
Other operating income	487,794	472,702
Operating Loss	(1,578)	(3,079)
Interest receivable	1,578	3,079
		<hr/>
Profit on ordinary activities before taxation	—	—
Tax on profit on ordinary activities	—	—
	<hr/>	<hr/>
Profit on ordinary activities after taxation	—	—
	=====	=====

All amounts relate to continuing operations.

There were no recognised gains and losses for 2009 or 2008, other than those included in the profit and loss account.

The audited accounts for the period ending 31 March 2009 are available from the Registrar of Companies, Companies House, Crown Way, Maindy, Cardiff, CF14 3UZ. The company's auditors are PKF (UK) LLP.





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