



Complaints Commissioner

# Reviewing how the financial services regulators consider complaints

**Annual Report**  
2017/18



# Complaints Commissioner

Annual Report and Accounts 2017/18  
(for the year ended 31<sup>st</sup> March 2018)

Presented to Parliament pursuant to section 87 of the Financial Services Act 2012  
(as amended by the Small Business, Enterprise and Employment Act 2015)



## **ANNUAL REPORT 2017/18**

This is the Annual Report of the Complaints Commissioner

It covers the period from 1<sup>st</sup> April 2017 to 31<sup>st</sup> March 2018

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# Introduction by the Commissioner

## Foreword by the Commissioner

This is the third of my annual reports to be laid before Parliament, and the fourth since I was appointed as Complaints Commissioner, dealing with complaints against the financial regulators – the Financial Conduct Authority (FCA), the Prudential Regulation Authority (PRA) and the Bank of England (BoE).

The purpose of this report is to account to Parliament, and a wide group of stakeholders, on the complaints which I have handled under the statutory Complaints Scheme. The Scheme enables consumers, and regulated firms and individuals, to complain about the ways in which the regulators have exercised, or failed to exercise, their regulatory functions, and to seek redress.

Although the number of complaints which I handle is relatively small, my consideration of those complaints enables me to make more general recommendations and observations about the operations of the regulators. Some of those are described in the Themes Section of this report. Some of the points I wish to highlight are these:

- a) In comparison with last year, when I had to make some serious criticisms of the delays which had developed in the complaints team of the FCA, the position is greatly improved – while there are individual instances of delays, the FCA has cleared its backlog;
- b) There remain problems in the FCA's approach to some complaints. While most of them are handled well, in some of those raising more serious or complex issues there is a tendency to:
  - i) Defensiveness and an unwillingness to admit error;
  - ii) A lack of empathy with complainants, including a failure to consider the cumulative effect of the FCA's actions or inactions upon individuals. It is incumbent on all public organisations, such as the FCA, to ensure they deal with people humanely, as a number of recent news stories have highlighted;
  - iii) A lack of candour when things have gone wrong – too much time is spent in constructing defences for past actions, rather than considering whether things might have been done better, and could be done better in future;
- c) In complex cases, complaints can be held for long periods while other proceedings take precedence. During 2017/18, complaints relating to the problems with the Co-op Bank were a good example of this. Complainants waited for five years after the lodging of complaints while enforcement proceedings took place. The independent inquiry was announced by HM Treasury and that, in turn, enabled some of the complaints to begin to be dealt with under this Scheme. Complainants were understandably frustrated that it took five years to complete the FCA's enforcement procedures, and that clarity about the scope of the independent inquiry (and therefore what could or could not be considered under the Complaints Scheme) was not obtained until this year;

- d) Clarity – in a number of cases, the FCA’s on-line register and authorisation processes have been shown to be impenetrable to both consumers and those who are regulated – the Themes section of this report gives examples;
- e) It is disappointing that I again have to report that the regulators have not yet been able to issue a consultation report on technical improvements to the Scheme, despite their having indicated that they intended to do so last year. Although some progress has been made, it is now three years since I first made suggestions. I am particularly concerned to improve the clarity about the policy on compensation under the Scheme.

Antony Townsend  
Complaints Commissioner

## Complaints against the Financial Services Regulators

### About the Complaints Scheme

The financial services regulators (the Financial Conduct Authority (FCA), the Prudential Regulation Authority (PRA), and the Bank of England (BOE)) are required by law to run a complaints scheme to investigate complaints about the way in which they undertake (or fail to undertake) their regulatory functions. (The Scheme does not cover the issuing of policy or guidance, nor disciplinary decisions which are appealable to the Courts; and in relation to the BOE it only covers complaints about the regulation of recognised clearing houses and inter-bank payment systems.)<sup>1</sup>

The regulators are also required to appoint an independent person (the Complaints Commissioner) to be responsible for the conduct of investigations in accordance with the Scheme.

There may be two distinct stages for each complaint. In the first stage the regulators will investigate any complaint that meets the requirements of the Scheme, and take whatever action they think is appropriate to resolve the matter. If the complainant remains dissatisfied, there is a second stage in which the independent Complaints Commissioner reviews and investigates complaints.

### About the Complaints Commissioner

The independent Complaints Commissioner is appointed by the regulators, subject to the approval of the Treasury. The Commissioner operates independently of the regulators through the Office of the Complaints Commissioner, of which he or she is the sole Director. The Commissioner's annual report is laid before Parliament.

Antony Townsend has been the Complaints Commissioner since 1<sup>st</sup> May 2014. His career includes extensive experience of regulation and complaints handling. Further information about the Commissioner can be found at <http://frccommissioner.org.uk/profile/>.

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

# 2

## Overall Scheme Statistics for 2017/18

The Commissioner dealt with 199 complaints during the year, compared to 181 the previous year (a 10% increase).

### 2.1

**Table 1: Total complaints received**

Complaints dealt with	2017/18	2016/17
Complaints in progress at start of period	31	27
New complaints received	137	133
Re-opened complaints	31	21
<b>Total number of complaints</b>	<b>199</b>	<b>181</b>
Complaints closed during the year	179	150
Complaints in progress at end of period	20	31

\*The figures for 2016/17 are different from those published in last year's annual report because of a change in counting rules: we now show the number of complaints rather than the number of complainants.

Two of the complaints in the table above were group complaints: one was about Lloyds Bank Enhanced Credit Notes on behalf of 46 complainants, including 11 who had not first been through the FCA's complaints procedures; and a complaint about the Connaught Fund on behalf of 170 complainants.

About 10% (20) of the 199 new complaints were about financial services providers or other bodies, not the regulators, and in those cases we directed the complainants to other organisations which could help them.

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

# 3

## Bank of England and Prudential Regulation Authority statistics from 1<sup>st</sup> April 2017 to 31<sup>st</sup> March 2018

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

### 3.1

#### **Complaints against the Prudential Regulation Authority**

The Commissioner dealt with two complaints against the PRA between 1<sup>st</sup> April 2017 and 31<sup>st</sup> March 2018.

The first complaint had started during the previous reporting period and was a complaint against both the FCA and PRA. The Commissioner did not uphold the complaint, and did not publish the report at the request of the complainant.

The second complaint which relates to a PRA complaint investigation in 2013 and was exceptionally admitted into the scheme as it was out of time, was not concluded during the period, and will be included in next year's statistics.

### 3.2

#### **Other complaints against the Bank of England**

The Commissioner dealt with one other complaint about the BoE between 1<sup>st</sup> April 2017 and 31<sup>st</sup> March 2018. The complainant was referred to the BoE Complaints Team, who had not had the opportunity to consider it first. The complainant did not approach the Commissioner after this.

# 4

## Financial Conduct Authority Statistics from 1<sup>st</sup> April 2017 to 31<sup>st</sup> March 2018

The Commissioner dealt with 176 complaints against the FCA, one of which related to the work of its predecessor regulator, the FSA.

### 4.1

**Table 2: Complaints dealt with during the year**

	2017/18	2016/17
Complaints at start of period	30	26
New complaints received	115	105
Re-opened complaints	31	21
<b>Total</b>	<b>176</b>	<b>152</b>
Of which		
complaint referred to regulator for initial investigation	6	6
complaint referred back to regulator for further investigation	7	0
complaint deferred pending completion of investigation by regulator	7	11
complaint considered by the Commissioner	156	135

In six instances, complainants approached the Commissioner for an investigation without complaining to the FCA first. The Complaints Scheme sets out that, save exceptionally, complaints which have not been through the regulator should be directed back to the regulator. As none of the six complainants presented exceptional circumstances, they were referred to the FCA for an initial investigation.

In seven instances, the FCA had completed its investigation, but the Commissioner was not satisfied that the investigation was appropriate. The Commissioner agreed to the FCA's request to be allowed to conduct a further investigation.

In another seven instances, complainants whose complaints were already being considered by the regulators asked the Commissioner to intervene and conduct his own investigation. The primary reason for these requests was complaints which had been deferred because of unfinished tribunal proceedings. This is different from last year when such requests were primarily driven by the FCA's complaint handling delays.

Of the 176 complaints the Commissioner considered, 19 complaints were continuing at the end of the period, 83 were closed following a formal investigation, and 13 were closed without formal investigation.

During the year, there were 96 complaints concluded with a substantive response, which were handled as follows:

## 4.2

**Table 3: Concluded complaints by method of disposal**

Concluded complaints	2017/18	2016/17
Initial case decisions issued by the Commissioner		
Complaint excluded <sup>note 1</sup>	7	17
Complaint reviewed without formal investigation <sup>note 2</sup>	6	17
Complaint formally investigated <sup>note 3</sup>	83	45
<b>Total</b>	<b>96</b>	<b>79</b>

**Notes to Table**

**Note 1** Certain complaints cannot be considered under the Complaints Scheme because they relate to “legislative functions”. Generally, this means complaints about the regulators’ rules, the guidance they have issued, and the regulators’ general policies. It also includes complaints which should be dealt with through other formal processes (such as disciplinary cases through the Upper Tribunal).

**Note 2** When considering a complaint, the Commissioner sometimes decides that a review of the regulator’s complaint records is sufficient, and he does not need to undertake a full investigation with further inquiries. (The Commissioner has access to all the regulators’ records.)

**Note 3** The formal investigation process is where the Commissioner undertakes a full investigation into the complaint.

## 4.3

**Table 4: Concluded Complaints according to subject matter**

Concluded complaints	2017/18	2016/17
<b>Failure to regulate, of which</b>	<b>67</b>	<b>39</b>
the FCA has failed to regulate a firm and/or group of firms	36	
the FCA has failed to oversee the Financial Ombudsman Service	12	5
the FCA has failed to regulate 'schemes': RBS GRG, IRHP, card protection scheme, BACS	14	
Fraud: the FCA has failed to deal with fraud in regulated and unregulated firms	5	
<b>Regulated firms or individuals complaining that the FCA has failed to treat them properly, of which</b>	<b>9</b>	
complaints about FCA Enforcement	7	
complaints about FCA Authorisation	2	
<b>The FCA has fined firms unfairly for late returns</b>	<b>11</b>	<b>10</b>
<b>Whistleblowing, of which</b>	<b>5</b>	
disclosure of identity	2	
failure to act on information	2	
inadequate processes	1	
<b>Other</b>	<b>4</b>	<b>30</b>
<b>Total</b>	<b>96</b>	<b>79</b>

In 67 instances complainants alleged that the FCA was failing to regulate the financial services industry properly, and in many cases this hinged on a specific firm as an example. In these cases, most of the complainants had also complained to the Financial Ombudsman Service.

There were 11 concluded complaints from consumer credit firms who seemed to have experienced difficulties in transitioning to a new environment under FCA regulation. This was also the case in the previous year. In these cases, the firms submitted their regulatory returns late and were fined, or had cancelled their authorisation after the cut-off date and had been charged the full annual regulatory fee. In one of the cases, the FCA was prepared to waive the fee on an exceptional basis during the course of the Commissioner's investigations, provided the complainant submitted a medical certificate. However, in the majority of cases the Commissioner concluded that the FCA had acted reasonably, and that the firms had failed to take responsibility for their own omissions.

Complaints about whistleblowing and fraud were notable themes this year.

## 4.4

**Table 5: Commissioner's decisions in concluded cases**

	2017/18	2016/17
FCA's decision fully upheld	87	71
FCA's decision partly upheld	1	6
FCA's decision not upheld	8	2
<b>Total</b>	<b>96</b>	<b>79</b>

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

## 4.5

**Table 6: Remedies recommended by the Commissioner**

Remedies recommended for concluded complaints	2017/18	2016/17
No remedy	67	64
Apology	5	4
Put things right/recommendations for improvement	11	10
Compensation	13	9
<b>Total</b>	<b>96</b>	<b>87</b>

## 4.6

**Table 7: Breakdown of cases where no remedy was recommended**

No remedy recommended	2017/18
Complaint excluded from Scheme	6
Reviewed without formal investigation	6
Investigated, but no remedy appropriate	30
FCA apology and/or offered compensation considered sufficient	8
Suggestions for improvement made but no remedy recommended	17
<b>Total</b>	<b>67</b>

## 4.7

**Table 8: Type of complainant**

Type of complainant	Excluded	Reviewed without formal investigation	Formally investigated	Total 2017/18	Total 2016/17
Individual Financial Adviser	1	0	3	4	10
Firms	1	1	23	25	19
Consumer	5	5	46	56	50
Solicitor on behalf of firms	0	0	5	5	0
Solicitor on behalf of individuals	0	1	2	3	0
Third party	0	0	3	3	2
<b>Total</b>	<b>7</b>	<b>7</b>	<b>82</b>	<b>96</b>	<b>79</b>

Of the 96 concluded complaints, 62 were made by or on behalf of members of the public. The Commissioner also concluded 30 complaints made by or on behalf of firms, and 4 by IFAs, the majority of which were small businesses. The Scheme continues to be used almost exclusively by individual consumers and by small businesses. It can also be seen that, across all types of complainant, the majority of complaints referred to the Commissioner merit a formal investigation. Complaints from consumers tended to be about alleged failures to regulate effectively; complaints from small businesses and individual advisers tended to be about administrative and fees issues, and about the way in which the FCA was interacting with the firm.

Since almost all the complaints considered by the Commissioner this year related to the FCA – a fact which is not surprising, given the nature of the FCA’s work and the number of people with whom it interacts in comparison with the other regulators – this themes section is concerned with the FCA.

In last year’s report, the Commissioner drew attention to some serious problems with delays in handling complaints, and said he would monitor the situation. He is pleased to report that a concerted effort by the FCA has been effective in dealing with the serious backlog. While there remain some individual cases in which unnecessary delays have occurred, there is no longer a systemic problem. This represents a significant step forward.

There remain, however, some attitudinal problems which, in the Commissioner’s view, the FCA needs to tackle. These can be summarised as defensiveness, lack of candour, and lack of empathy. While the Commissioner sees only a small proportion of the complaints dealt with by the FCA, and an even smaller proportion of the total interactions between the FCA and its stakeholders, the fact that these issues arise in some of the complaints that he receives and – more significantly – have not been resolved by the FCA’s internal complaints process, suggest that more needs to be done to promote an open and empathetic culture. The following case studies illustrate these themes.

**Case study 1 – financial services firm based in Cyprus, delays in taking action, inadequate consumer information**

<http://frccommissioner.org.uk/wp-content/uploads/FCA00389-FR-21-11-17-published.pdf>

FCA response: [http://frccommissioner.org.uk/wp-content/uploads/FCA00389\\_FCA\\_PUBLIC-RESPONSE-14-12-17.pdf](http://frccommissioner.org.uk/wp-content/uploads/FCA00389_FCA_PUBLIC-RESPONSE-14-12-17.pdf)

In this case, a couple had lost their money in an investment which had been recommended by a financial services firm registered and regulated in Cyprus. Under EU law, the FSA was required to recognise the firm, but the principal regulator was based in Cyprus. Because the firm was registered in Cyprus, the consumer protections were less generous than those which would have applied to a UK-registered firm.

The couple considered that the information on the FSA’s website (in 2011) gave them the impression that the firm was regulated by the FSA, leading them to assume that they would enjoy the same protections as with a firm authorised and regulated in the UK. The couple were also concerned about what they saw as delays in the FSA (and subsequently FCA) taking action in response to adverse information.

The situation was complex (see reference to the full report, above), and the Commissioner concluded that the FSA/FCA could not be held responsible for the couple’s losses. However, he was critical about the lack of openness in the FCA’s response to the complaint. In particular:

- a) the FCA took an unnecessarily narrow view of the complaint and did not properly examine the totality of the FSA/FCA’s actions in relation to the firm;

- b) the FCA's decision letter failed to explain that there had been growing concerns about the firm, and extensive interactions between the FSA/FCA and the Cypriot regulator. These included the FCA asking the Cypriot authorities to delay cancelling the firm's permissions;
- c) while the FSA/FCA had undoubtedly made considerable attempts to deal with the problem, the situation – and the risk to investors – had been allowed to persist for far too long;
- d) the FCA's decision letter "gives the impression that it was a largely powerless by-stander in this affair. The record clearly shows otherwise";
- e) the FCA's register, while strictly accurate, is "difficult to navigate, and lacking in readily comprehensible information for consumers".

The Commissioner recommended that the FCA apologise to the complainants for the misleading impression, review whether there were lessons to be learned about the way in which it works with other regulators, and consider what further steps could be taken to make matters clearer to users of the register.

### **Case study 2: failure to treat correspondents intelligently; obstructive and misleading replies**

<http://frccommissioner.org.uk/wp-content/uploads/FCA00319-FD-07-08-17.pdf>

FCA response: <https://www.fca.org.uk/publication/corporate/response-complaints-commissioner-fca00319.pdf>

This was a very simple complaint. No one suffered significant detriment. It is included because it is symptomatic of an organisational attitude in which the complainant's feelings are not sufficiently considered, and where the FCA's complaints system failed to put a simple thing right.

This case involved an individual who wrote to the FCA with a suggestion about how consumers might more readily be able to gain car insurance quotations over the telephone. He was sent a proper and prompt reply, and told that the suggestion would be passed to the relevant team in the FCA, but that he would not be provided with feedback about what had happened to his suggestion.

The consumer was unhappy about this, and made two further attempts to discover what had happened to his suggestion. The fact of the matter was that the FCA team responsible had concluded (not unreasonably) that the detail of how quotations were organised was a matter for insurers rather than the regulator, and that there was no particular evidence of harm which would justify the FCA's intervention. It would have been very easy to tell the consumer this, but the FCA continued to insist that it would not provide feedback.

The consumer then made a formal complaint, but again the FCA missed the opportunity to put things right. Worse, it claimed that it was unable to tell the complainant what had

happened to his suggestion because of statutory restrictions in the Financial Services and Markets Act 2000. This was simply untrue.

The Commissioner said to the complainant: “You have been left unnecessarily frustrated, and significant quantities of your, the FCA’s, and my office’s time have been wasted on something which could have been resolved by a simple, helpful letter.” He recommended an apology and an ex gratia payment for distress and inconvenience. Because the FCA said it was not prepared to approach the Association of British Insurers, the Commissioner forwarded the consumer’s suggestion to the ABI himself.

### **Case study 3: treatment of whistleblowers; refusal to acknowledge error**

<http://frccommissioner.org.uk/wp-content/uploads/FCA00286-FD-for-publication-160118.pdf>

FCA response: <https://www.fca.org.uk/publication/corporate/response-complaints-commissioner-report-fca00286.pdf>

This complaint arose from a prolonged and complex set of interactions between an individual and the FSA/FCA, involving legal proceedings. However, the particular complaint focused on a single issue – whether in 2013 the FCA had been justified in disclosing the complainant’s name to a bank without his explicit permission.

The Commissioner issued a preliminary decision to the complainant and the FCA, with which the FCA strongly disagreed. There was extensive correspondence between the Commissioner’s office and the FCA (and the complainant), and it was not until December 2017 that the final decision was published.

In the final decision, the Commissioner said:

*The FCA’s decision letter, and some of the subsequent correspondence, did not demonstrate a sufficient emphasis on the importance of considering the confidentiality of potential whistle-blowers (and others supplying information) very carefully before disclosing names. ....I have found some of the FCA’s arguments unconvincing: they have sought to justify the disclosure through inferring reasons when there is no contemporaneous record to confirm it.*

*In respect of the last point, in its recent representations to me the FCA has written:*

*‘We of course recognise, with hindsight and given the history of this matter, that it would have been preferable to obtain explicit confirmation from [the complainant’s representative] that [his] name should be shared with [bank X] by the FCA...*

*‘I should also make clear that, partly informed by this case, we have adopted a new step in our process to ensure that all whistle-blowers are now asked to explicitly state how they wish to be treated, and the protection they require. Their response is recorded as a standalone decision in our case management system and is then used to manage the case going forward. As we have always done, we are still providing information about the different ways in which they may wish to be treated and what that means for the information they provide.’*

*I welcome this statement. My comment to the FCA is that a statement of that kind in response to the original complaint might have helped this matter to be resolved much more quickly.*

The Commissioner made it clear that he was not suggesting that the FCA had deliberately identified a whistleblower without consent; but he was concerned by the amount of effort which the FCA expended upon seeking to justify its actions when, in his view, a simple acknowledgement that it would have been better to check the whistleblower's wishes would have been more effective, and have demonstrated its commitment to the correct treatment of whistleblowers.

#### **Case study 4: FCA refusal to investigate a concern about the Interest Rate Hedging Products (IRHP) compensation scheme**

<http://frccommissioner.org.uk/wp-content/uploads/FCA00269-FR-02-01-18.pdf>

FCA response: <https://www.fca.org.uk/publication/corporate/response-complaints-commissioner-report-fca00269.pdf>

This was another case with a complex history, but the crux of the complaint was that a bank had withdrawn a compensation offer on the basis that a 40-day limit had expired. The complainant alleged that the 40-day limit had not been explained to him (contrary to the bank's claims), and that that limit was in any case contrary to the agreement between the FCA and the bank on the terms of the Scheme.

The FCA rejected the complaint on the grounds that in its view the complainant had already exited the compensation scheme (a matter about which there was some legal debate). However, despite prompting, the FCA did not address the question of whether the 40-day limit was contrary to the compensation scheme, and said that in the absence of other complaints it would not consider whether – given that they may have been standard letters – the FCA should check to see whether other applicants had been disadvantaged.

The Commissioner recommended that the FCA make further inquiries, which they agreed to do. He was concerned that the case showed a lack of willingness by the FCA to follow up systemic concerns arising from individual complaints.

#### **Case study 5: justification of information exchange with the Financial Ombudsman Service**

<http://frccommissioner.org.uk/wp-content/uploads/FCA00376-FR-for-publication-260218.pdf>

FCA response: <https://www.fca.org.uk/publication/corporate/response-complaints-commissioner-report-fca00376.pdf>

This was another complex case, the detail of which can be found at the reference above. It involved parallel FCA regulatory proceedings and an Ombudsman case, and legal challenges to both. However, at its heart was the question of the extent to which the FCA should or should not have engaged with the Financial Ombudsman Service (FOS): the FCA's view was that it was proper to have done so, the complainant's view was that it was not.

The FCA, in its response to the Commissioner's preliminary decision, said:

*The burden of proof should be on the complainant to evidence or persuade you that there was improper sharing of information, and in the absence of such evidence, a complaint should not be upheld.*

In the final report, the Commissioner said:

*I have only limited sympathy with the FCA's argument. The FCA is right to say that I found no evidence of improper sharing of information, and that for that reason the complaint cannot be upheld; but it is also the case that I have found no evidence to prove the FCA's argument which they advanced which was that "there was no improper influence of the ombudsman service". To say that the burden of proof is on the complainant ignores the onus on a public authority to demonstrate the propriety of its activities.*

#### **Case study 6: delays in responding to concerns about a firm; misleading response**

<http://frccommissioner.org.uk/wp-content/uploads/FCA00396-for-publication-FR-8-March-2018.pdf>

FCA response: <https://www.fca.org.uk/publication/corporate/response-complaints-commissioner-report-fca00396.pdf>

This case was an example of the difficulties which can arise when a person supplies the FCA with information about concerns about a firm. In such cases, the FCA is inevitably constrained in what it can say to the informant; and the informant may feel that their information has been ignored.

In the particular case, the complainant considered that the FCA had failed to respond adequately to information which she had supplied raising significant concerns about a firm. The response to the complaint was candid about the fact that there had been delays in responding to the information which had been supplied. However, the response went on to say that the delay had been an "isolated incident". When the Commissioner examined the papers, it became clear that, far from an isolated incident, the delay had been symptomatic of wider problems in the department. He also had some concerns that there had been insufficient recognition of the potential consumer detriment which the firm continued to pose.

The case illustrated two points: first, the importance of candour with complainants (especially in areas where the complainant has no means of checking what they have been told). The second is the importance of using complaints to test whether or not a problem has been identified which needs addressing.

### **Case study 7: mishandled authorisation application; reluctance to accept detriment to complainant**

<http://frccommissioner.org.uk/wp-content/uploads/FCA000390-published-FR-13-11-2017.pdf>

In this case, there had been a series of delays and errors in the handling of an application for credit authorisation. The FCA's complaints response was commendably open in accepting the errors which had been made, and offering an apology; but in the Commissioner's view, the FCA's decision to reject the firm's request for some compensation to reflect the additional costs which it had incurred was not defensible. It was clear that the application had been badly mishandled, and he recommended that the firm submit evidence to the FCA on the basis of which it could consider making an *ex gratia* payment. He also would have expected the FCA to explain what action it was taking to prevent a recurrence of the errors. The FCA accepted the Commissioner's recommendations.

### **Case study 8: oversight of the Financial Ombudsman Service (FOS)**

<http://frccommissioner.org.uk/wp-content/uploads/FCA00283-FD-1704061.pdf>

This case was one of several which had its origins in dissatisfaction with decisions of the FOS, but where the complaint had turned into a complaint about the FCA's oversight of the Service. The Complaints Scheme does not include complaints about the FOS, but it does encompass the FCA's functions of oversight.

In this particular case, the complainant considered that the FOS's failings in his complaint had been so acute that the FCA was required to intervene. The FCA disagreed.

The Commissioner upheld the FCA's decision, but commented on the difficulties of dealing with cases of this kind. The FCA's duties in respect of the FOS are intrinsically difficult, since the FCA – in addition to appointing the FOS Board – is required both to ensure that the FOS is “capable” of exercising its functions, and to respect the FOS's independence. The Commissioner recommended that it would be helpful if the FCA published more information about its relationship with the FOS, and how it monitors the FOS's performance.

### **Case study 9: poor information about registered status**

<http://frccommissioner.org.uk/wp-content/uploads/FCA00161-FD-04-July-2017-Published.pdf>

This was a highly unusual case. The complainant was unable to claim on an insurance policy on her late husband's life because the financial adviser who had arranged the policy had failed to forward certain documents to the insurers. Furthermore, the financial adviser did not have the correct permissions to do the business so the complainant did not have recourse to the FOS or the Financial Services Compensation Scheme. The insurance company claimed that the information they had received from the regulator at the time, the FSA, had failed to identify that the financial adviser's authorisation had been withdrawn.

The Commissioner's investigation was hampered by the absence of records at both the FCA and the insurance company, but it finally became apparent that the “Register Extract Service” which the FSA (and subsequently the FCA) issued for a fee did not record cases in

which the regulator had required a firm to cease regulated activities or the firm undertook not to do regulated activities of its own volition. The insurance company should not have been relying upon that service, though that in turn called into question its usefulness.

The case had a happy outcome, in that the insurance company agreed to make the complainant an *ex gratia* payment for the full sum which would have been due had the insurance policy been taken out properly, and the FCA agreed to change its extracts service to ensure that in future it included vital information of this kind.

### **Conclusion**

The Commissioner continues to urge the FCA to:

- a) Promote a culture in which consumers, regulated individuals and firms, and all those interacting with the FCA are dealt with sympathetically;
- b) Ensure that those considering complaints provide robust internal challenge within the organisation, rather than simply seeking to defend what has happened;
- c) Ensure that responses to complaints are scrupulously honest and candid;
- d) See complaints as opportunities to put things right and improve, not as cases to be defended.

# 6

## Key Findings

- a) General trends: the upward trend in the number of complaints reaching the Commissioner has continued (reflecting an increase in the number of complaints being dealt with by the FCA).
- b) There have been a number of complaints about problems with the register, fees for late returns, the treatment of whistleblowers, failure to respond to adverse information about firms, and the FCA's oversight of the Financial Ombudsman Service, but the overall composition of complaints is not significantly different from previous years. Sections 2-5 above give further details;
- c) Recommendations in response to trends: the Commissioner repeats the recommendations he made to the FCA in his last Annual Report, particularly the need for prompt, empathetic responses, scrupulous candour, and the importance of the complaints team providing effective internal challenge;
- d) Review of effectiveness of the procedures: the Commissioner is pleased with the FCA's success in eliminating its complaints backlog. However, he urges all the regulators to consult on the long-delayed proposals for improvements to the Scheme;
- e) Assessing whether the procedures are accessible and fair: the Commissioner has received no complaints about the accessibility of the Complaints Scheme from the FCA Consumer and Practitioner Panels or directly. The Commissioner has seen no evidence of deliberate unfairness. However, the case studies in section 5 above illustrate how some of the problems identified in the complaints and the FCA's complaints handling are likely to have a disproportionate impact upon small firms and individual consumers, who will be more vulnerable. This makes it particularly important that the FCA is appropriately sensitive to the problems faced by small businesses and consumers who are not sophisticated. It is worth noting, however, that the number of complaints reaching the Commissioner is very small.

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

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

The Office of the Complaints Commissioner acknowledges complaints within three working days (in practice, usually within 48 hours), and informs the complainant within four weeks how long the complaint is likely to take. The Office aims to complete complaints within eight weeks, although this depends upon the complexity and the need for further inquiries.

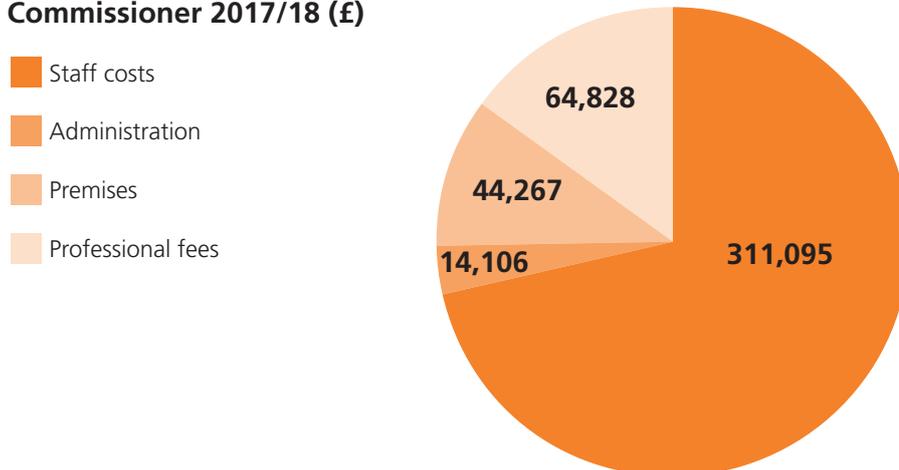
Expenditure for the year ending 31<sup>st</sup> March 2018 was £434,296, the lowest since 2007 and 17% lower than in 2016/17, despite significant resources and money spent on four Data Protection Act requests which necessitated bringing in outside contractors and diverted one of the office investigators to the project for around two months.

The Office offered two complainants £50 each for an administrative error.

Expenditure in 2018/19 is projected to be £435,000

The breakdown of expenditure by broad category is as follows:

#### Expenditure of Office of Complaints Commissioner 2017/18 (£)



**Environmental initiatives**

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

**Remuneration**

The highest paid employee of the Office was the Complaints Commissioner, whose total remuneration for 2017/18 was £156k (2016/17 £156k).

# APPENDIX

## Expenditure

### Profit and Loss Account

For the year ended 31<sup>st</sup> March 2018

	2017/18 £	2016/17 £
Administrative expenses	(434,296)	(506,920)
Other operating income	434,296	506,920
<b>Operating Loss</b>	–	–
Interest receivable	–	–
<b>Profit on ordinary activities before taxation</b>	–	–
Tax on profit on ordinary activities	–	–
<b>Profit on ordinary activities after taxation</b>	–	–

All amounts relate to continuing operations.

There were no recognised gains and losses for 2017-2018 nor for the previous year other than those included in the profit and loss account.

Expenditure during the year decreased substantially (17%) compared to the previous period.

The audited accounts for the period ending 31<sup>st</sup> March 2018 are available from the Registrar of Companies, Companies House, Crown Way, Maindy, Cardiff, CF14 3UZ. The company's auditors are Bishop Fleming.



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