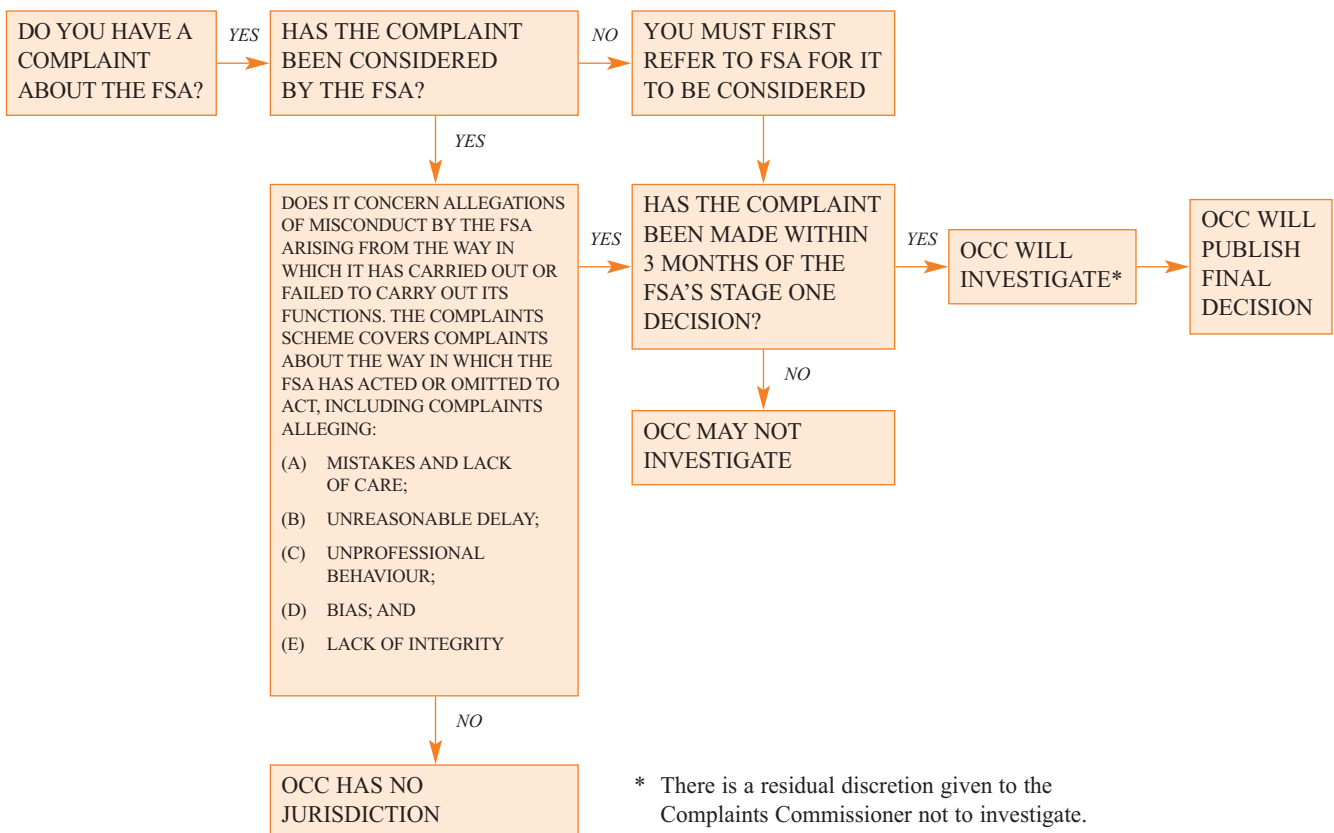


## Office of the Complaints Commissioner Annual Report for 2006/07





Sitting from left to right: Deborah Clarke and Ivona Poyntz  
Standing from left to right: Roderic Glyn-Thomas, Sir Anthony Holland and Andrew Richardson.

## ANNUAL REPORT for 2006/07

This is the Sixth Annual Report of the Office of the Complaints Commissioner.  
It covers the period from 1 April 2006 to 31 March 2007.

Matters covered in its content are:

	Page
Sir Anthony Holland – Biography	2
Overview	3
Statistics	5
Management, Communications and Operations	6
Themes	7
Issues	10
APPENDIX A Extracts from the OCC Booklet	11
APPENDIX B Expenditure	14

## **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 a first instance Chairman 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 2006, the Complaints Commissioner (the Commissioner) received 108 allegations and complaints. 57 of these were from consumers, the rest represent allegations and complaints from financial services firms, Members of Parliament on behalf of constituents and solicitors on behalf of clients. There continues to be a marked trend of increase in the number of firms using the Complaints Scheme, compared to previous years. Some of the main topics covered continued to be, as in the previous year, 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.

Complaints were investigated promptly and thoroughly during the year. On average, the majority of the complaints were investigated within 20 working days, with only a small number of 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.

The Commissioner continues to attach great importance to communication with individuals, and firms with a view to publicising the Scheme in a constructive manner. In the past year he has attended numerous meetings and discussion forums involving senior industry figures in order to explain the nature of his role.

The Office of the Complaints Commissioner (OCC) continued to be run on a low budget during the past year, with continued cost savings effected through efficient use of resources.

### *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 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, 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 2006 to 31 March 2007

Enquiries and complaints in progress at start of year	13
New enquiries and complaints received during year	93
Cases re-opened from earlier period	15
Enquiries and complaints concluded*	103
Enquiries and complaints in progress at end of year	18

\* Includes – Initial enquiries passed to FSA 16

The total number of complaints received is slightly lower than the previous year. A number of factors may play a role in the decrease, however, it is noticeable that the FSA, through continually developing the Complaints Scheme, is able to address the concerns of complainants in such a way during its stage one investigation, that fewer complainants now, compared to last year, request the Commissioner for a stage two investigation.

The comments below are based on issues raised in the Commissioner's reports. Only cases where the FSA has dealt with the complaint are shown and include cases where the Commissioner felt that improvements could be made in the handling of the matter. In these 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 below since the Commissioner's conclusions were in line with those of the FSA.

The Commissioner also deals with a number of cases which do not reach a stage two investigation, due to the evolving process of the complaints Scheme, whereby the FSA can be asked to re-examine a stage one decision

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

*Record Keeping* This includes lost records and inability to find records.

*Other Admin Failures* All other administration delays including inefficient collaboration between FSA departments.

*Case Handling* 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.

The Commissioner has identified two cases during the year where record keeping, case handling and other administrative failures were an issue.

## 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 2007 was:

The Commissioner  
One part time Manager  
One Senior Case Investigator  
One Case Investigator  
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 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 developing the operational aspects of the Scheme, and this, coupled with its receptiveness to implementing the Commissioner's recommendations has led to the overall decrease in the number of complaints received at Stage 2.

### *Operations*

The OCC finished the financial year below budget, as further savings were made. There has been no use of outside consultants and advisers during the year.

---

## 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 where the complainant was re-directed to the appropriate organisation. A number of recurring themes emerged during the course of the year, listed below.

### Reporting Issues

#### *1) Cancellation of Authorisation of a Firm after 31st March deadline*

There have been a number of complaints to the Commissioner's office concerning firms having to pay annual fees due to their cancellation notice not being received by the FSA until after the deadline (31st March). Many of these complainants provide no reasoning for why they believed that they should not pay the fee other than to say it was 'unfair'. Further many complainants admitted that the appropriate form missed the FSA cancellation deadline, in some cases by months.

The position is that the firm has agreed to the rules and guidance laid down in the FSA handbook in signing its original application for authorisation. The onus is subsequently on the firm to know and abide by the FSA rules and guidance, and in these cases, submit the cancellation form before the deadline. All firms who wish to cancel their Part IV permissions (authorisation) to carry on regulated activities must formally apply to the FSA using the appropriate form. To avoid incurring fees for 2008/09 for example the deadline for submission of the appropriate form will be 31st March 2008. This is applied consistently to all FSA regulated firms.

It is of little consequence whether a firm has been carrying out the regulated activity or not during this time. The onus is upon the firm and it must bear the responsibility for its own failings. Many of these disputes have taken many months as well as taking up many hours of work for all the parties concerned. Such disputes should be accelerated into the complaints process at the earliest opportunity to reduce the time taken. Unless a firm can demonstrate evidence which shows that the FSA received the appropriate form correctly filled in prior to the deadline, or other substantive reasoning for not paying the appropriate fee, it is unlikely that the Commissioner will consider making a recommendation to the FSA to alter its position.

#### *2) Numbers of Approved Persons*

Similarly many firms have not ensured that the number of Approved Persons within their firm is correctly listed with the FSA by the deadline of 31 December each year. Commonly this is when an Approved Person stops being an employee of a firm and the firm does not inform the FSA in line with the rules. Its fee is then calculated based upon the number of Approved Persons listed with the FSA and the firm then complains that it is paying a higher fee than it should. The onus is on the firm to ensure that it informs the FSA quickly that the number of Approved Persons changes. If it does not do this the firm may be in breach of the relevant rule. Complaints when the firm has broken FSA rules, and have not interacted with the FSA as the rules set out, are unlikely to be looked upon favourably.

---

### *3) Late Fees*

Firms who submit reports late are normally charged a late or administration fee. If they complain they should provide substantive reasons and evidence to support why they did not submit the report on time. Evidence of informing the FSA of the reasons why a firm could not report on time prior to the deadline may assist its case for the fee to be waived.

### *4) FSA Reporting On-Line*

Some firms have similarly complained about having to make returns 'online'. The FSA has consulted at length on this process prior to its beginning. There are clear benefits to all parties for reporting to be done in this way if only to minimise expense. Similarly to the cancellation process the requirement for online reporting is clear in the rule handbook which regulated firms have agreed to follow whilst authorised. The onus again is clearly on the firm.

### *5) Conclusions*

It is of concern that so many firms appear not to have appreciated the rules by which they are bound. It is important to appreciate that the onus is on the firm to comply with these rules. The FSA is not obliged to explain continually or to notify firms of such rules. Some firms have tried to use the lack of FSA notification to mitigate their position. Such a position does not deviate from the fact that the onus is on the firm to comply with the rules set out by the FSA. Clearly to do this firms should ensure that they are familiar with the rules and aware of their importance.

## **RDC and Tribunal**

In cases where enforcement action has been initiated against a firm by the FSA some firms have decided not to take every opportunity to put their case during the process. This has occasionally involved taking a defensive standpoint and not making submissions to the FSA or the Regulatory Decisions Committee (RDC) and electing instead to go to the Tribunal. Firms should be aware that if they do not take every opportunity to put their case to the FSA and then the RDC, then any costs claim made later may take this into account. Further, not making pertinent evidence available, which would be likely to alter the FSA position, is not regarded by the Commissioner as a sensible course of action. Firms should be open and clear with the FSA and make their submissions to the FSA, backed up with evidence if possible, at every possible stage of the process. This provides opportunity to clarify any misconceptions on the part of either party. Further, by doing this the firm ensures that if it eventually proves successful then it cannot be criticised for its conduct during the dispute.

## **Complainants requesting the complaints Commissioner to interfere with Enforcement Action**

If a firm brings a complaint to the Commissioner's office with a request that the FSA alters or halts Enforcement action it should provide some exceptional rationale, with supporting evidence, substantiating its case. Even then the Commissioner is only likely to make such a recommendation in exceptional circumstances. A firm's submissions to the Commissioner's office should include why it believes its case to be exceptional. Clearly what makes a case exceptional will be decided on a case by case basis. It should be noted that such a recommendation is not binding upon the FSA and the FSA would be a liberty to ignore such a recommendation.

---

## **Decision Making by the FSA**

Firms often believe that the FSA will work to a time table it sets rather than the FSA's normal service standards. Unfortunately, this is not necessarily the case. When a firm applies to the FSA to vary its permissions, or for a change of controllers it must remember that the FSA, as a regulator, cannot necessarily work to the timetable provided by a regulated firm, even if urgency is of the essence. This is particularly true where the FSA holds genuine concerns relating to the request. The FSA, as the regulator, must always address these concerns wherever they arise irrespective of whether they might have been considered at an earlier time.

## **S348 Financial Services and Markets Act 2000**

Complainants fail to appreciate that in circumstances where they have contacted the FSA in a whistleblowing exercise, any action or investigation the FSA undertakes as a result of this cannot be communicated to the complainant. This is due to the confidentiality provision in FSMA restricting the dissemination of information to a third party. Whilst complainants may feel disappointed that they are not made aware of the FSA actions, the FSA nevertheless does undertake internal investigations thoroughly.

---

## 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 enhancing the operation of the Scheme.

### *Compensation*

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

### *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.

### *COAF*

The Complaints Scheme rules were republished in October 2006 with some amendments. The main amendments are in relation to the issue of finality and the age restriction of the Commissioner following recent discriminatory legislation. In order to comply with new legislation the age restriction in relation to the appointment of the Complaints Commissioner has been removed. In addition, a time bar has been introduced in order for the complainant to bring the complaint to the Commissioner within 3 months after the completion of the Stage 1 investigation. The purpose is to enable cases to be dealt with while the issues are fresh in the minds both of the FSA as well as the complainant. The aim is also to introduce finality as early as possible into the resolution of the complaint. It will also emphasise the message that the Commissioner's decision is final. Any complaints handling scheme needs to come to a final conclusion as swiftly as possible and this may often be against the wishes of the complainant. Nevertheless final resolution must be beneficial to the efficiency of any complaints scheme. Finally, 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.

### *Confidentiality*

When corresponding with the Commissioner's office, prior to receiving its Final Decision, all the parties involved in the complaint (the complainant, the FSA and the Commissioner's office) must realise that all correspondence will remain confidential and will not be communicated to other parties except for the purpose of taking legal advice. In these circumstances the legal adviser is also under a similar obligation of confidentiality. The reason for this is that during an ongoing investigation any one of the parties involved in the case may still have to provide additional evidence which may change the outcome. The Commissioner's view on a case plainly can and does change up until the time of his Final Decision. It is unsatisfactory from any viewpoint for any ongoing views to be communicated to a third party or published in the media prior to the issue of the Final Decision otherwise it could be detrimental to the integrity of the investigatory process. It is the Commissioner's intention to make amendments to the terms of COAF to emphasise the confidentiality requirements and the implications of breaching these.

---

**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.

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 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. 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.

---

**APPENDIX A****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.

**Contact details**

Office of the Complaints Commissioner  
8th Floor City Tower  
40 Basinghall Street  
London EC2V 5DE

Email: [complaintscommissioner@fsc.gov.uk](mailto:complaintscommissioner@fsc.gov.uk);  
Telephone: 020 7562 5530

Website: [www.fsc.gov.uk](http://www.fsc.gov.uk)

---

**APPENDIX B****Expenditure**

<b>Description</b>	<b>Expenditure 2006/7</b>	<b>Expenditure 2005/6</b>
Staffing Costs	323,800	290,073
Professional Fees	2,450	34,724
Accommodation and office costs	88,088	115,639
Dilapidations and depreciation	8,432	5,497
<b>TOTAL</b>	<b>422,770</b>	<b>445,933</b>

The audited accounts of the company for the period ending 31 March 2007 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.

---







