

# **Complaints against the Regulators**

(The Financial Conduct Authority, the Prudential Regulation Authority and the Bank of England)

## **Consultation Paper**

FCA – CP20/11\*

PRA – CP8/20

July 2020

## How to respond

We are asking for comments on this Consultation Paper (CP) by **Monday 12 October 2020**.

Following correspondence with the Treasury Select Committee we have extended the period for responses which was originally 14 September 2020.

You can send them to us using the form on our website at: [www.fca.org.uk/cp20-11-response-form](http://www.fca.org.uk/cp20-11-response-form)

**Please do not post responses to us at the current time.**

**Email:**

[cp20-11@fca.org.uk](mailto:cp20-11@fca.org.uk)

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# 1 Summary

- 1.1** The Financial Conduct Authority (FCA), the Prudential Regulation Authority (PRA) and the Bank of England (the Bank) (the Regulators) have a joint Complaints Scheme (the Scheme) under the Financial Services Act 2012 (the Act). The Scheme covers the complaints procedures of the Regulators, and also describes the role of the independent Financial Regulators Complaints Commissioner (the Complaints Commissioner). This is a Scheme for handling complaints against the Regulators, rather than complaints against the businesses that we regulate. The current Scheme dates in substance from 2013 (revised in 2016).
- 1.2** This is a joint consultation by the FCA, the PRA and the Bank.

## Why we are consulting

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- 1.3** We are proposing a revised Scheme which is more user friendly, using plain language to make it more accessible.
- 1.4** At the same time, we are proposing a more detailed description of our approach to ex-gratia compensatory payments (i.e. goodwill payments) to help complainants understand what they can and cannot expect from the Scheme.
- 1.5** The Complaints Commissioner has recommended that we consult on improvements to the Scheme and, in particular, clarify our approach on compensatory payments.

## Who may be interested in this consultation

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- 1.6** This consultation may be of interest to anyone who is a potential or actual complainant under the Scheme. This includes regulated businesses and consumers of financial services.
- 1.7** It may also interest consumer advocates and action groups, trade associations and politicians, among others.

## What outcomes we are seeking

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- 1.8** We are seeking the following outcomes:
- To ensure users and potential users of the Scheme are more easily able to understand how it works; and
  - To help users approach the Scheme with realistic expectations of what it can and cannot deliver in terms of remedies, by clearly stating our approach to compensatory payments.

- 1.9** Overall, we expect the revised Scheme to help us work more efficiently by reducing the time spent on explaining the Scheme and dispelling misunderstandings, and increasing the time spent investigating the merits of complaints

## Next steps

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- 1.10** The closing date for your responses to this consultation is **Monday 14 September 2020**. You can answer the questions in the paper using our online response form.
- 1.11** We will take your comments into account as we finalise our proposals. We aim to bring the revised Scheme into force as soon as reasonably practicable. We propose to apply it to new complaints received after the revised Scheme comes into force. We would apply the current Scheme to complaints received before that date.
- 1.12** We regard an 8-week consultation period as appropriate since we believe these revisions improve the Scheme, and that the outcomes for most complainants would be broadly consistent with our current practice.

## 2 The context

- 2.1** The current Scheme describes eligibility criteria for making a complaint, how to make a complaint, how we handle complaints, and what sort of remedies may follow when a complaint is upheld. It also describes the role of the Complaints Commissioner, to whom complainants may refer their complaint if dissatisfied with the response from a Regulator.
- 2.2** The FCA and PRA, in discharging their functions, and the Bank, in its capacity as a monetary authority, are exempt from liability to pay damages under legislation (except where the relevant Regulator has acted in bad faith or in contravention of the Human Rights Act 1998). The purpose of this exemption is so that we can carry out our regulatory functions robustly and effectively, and without distraction from the administrative and financial consequences that might arise from damages claims, which might otherwise influence how we pursue our objectives. While the Scheme allows for compensatory payments to be made, such payments cannot be made in a way which undermines or erodes this exemption under legislation. Compensatory payments under the Scheme are therefore made ex-gratia and are not comparable to payments which might be claimed from us if statutory immunity did not apply.

### The legal context

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- 2.3** The statutory framework for the Scheme is set out in Part 6 of the Act, which requires us to maintain a Scheme for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of our 'relevant functions'. For the FCA and PRA, broadly speaking, relevant functions include our authorisation, supervision and enforcement functions and our operation of the Scheme, and in the case of the FCA only, maintaining the Financial Services Register. For the Bank, the complaint must relate to relevant functions in relation to recognised clearing houses, central securities depositories or inter-bank payment systems.<sup>1</sup> Complaints about the exercise of the Regulators' legislative functions, such as rule-making and guidance/statement-issuing, cannot be investigated under the Scheme as they are excluded from investigation by the Act. So far as reasonably practicable, the Scheme must be designed to investigate complaints quickly.
- 2.4** The Act provides that the Regulators must appoint an independent person to be responsible for the conduct of investigations in accordance with the Scheme (the Complaints Commissioner). The Act also provides that:
- the terms on which the Complaints Commissioner is appointed must be such that the Complaints Commissioner will be free at all times to act independently of the Regulators and that complaints will be investigated without favouring the Regulators;
  - the Scheme must provide for any complaint to be referred to the Complaints Commissioner;

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<sup>1</sup> For information about the Regulators' relevant functions, see section 85 of the Act.

- the Scheme must confer on the Complaints Commissioner the power to recommend, if the Complaints Commissioner thinks it appropriate, that the Regulator makes a compensatory payment to the complainant or remedies the matter complained of; and
- where the Complaints Commissioner has reported that a complaint is well-founded or has criticised a Regulator in a report, the Regulator must inform the Complaints Commissioner and the complainant of the steps which it proposes to take in response.

## 3 Simplifying the Scheme

**3.1** We propose a Scheme which is more user-friendly, using plain language to simplify its wording and make it more accessible.

**3.2** We propose to:

- introduce diagrams to help users navigate the process;
- address users directly (you) and refer to the Regulators directly (we/us); and
- use plain language as fully as possible.

**3.3** The benefits of making the Scheme more accessible include:

- it being less time-consuming for complainants to work out how to use the Scheme;
- more complainants having realistic expectations of what the Scheme can do for them; and
- we and the Complaints Commissioner needing to spend less time explaining the Scheme and dispelling misunderstandings.

**3.4** We also propose to clarify how we handle vexatious complaints, or the behaviour of complainants which is vexatious, abusive or discriminatory. In these cases, we may not investigate, or may stop investigating, a complaint. Where our concerns relate to the behaviour of a complainant, we would only do this after warning them and when we consider this appropriate to safeguard our staff. The current Scheme is silent on this, but our proposal is consistent with our current approach.

**Q1: Do you agree the language in Annex 2 is more accessible than the language of the current Scheme? Will the Scheme as proposed achieve the objectives set out in paragraph 3.3?**

## 4 Ex-gratia compensatory payments

- 4.1** When we uphold a complaint, we will propose an appropriate remedy. Where a complaint is well founded, we will apologise. If possible, we will take action to address the complaint and we will consider whether we can improve our practices, policies or procedures to avoid the same problem recurring in the future.
- 4.2** The current Scheme includes provision for us to offer, if appropriate, a compensatory payment on an ex-gratia basis when we uphold a complaint. We are proposing further information on our approach to compensatory payments.
- 4.3** Where we uphold a complaint, we usually take one or more of the steps set out in paragraph 4.1. We only consider making a compensatory payment under the Scheme if these steps would be insufficient to remedy the complaint.
- 4.4** We see compensatory payments as an acknowledgment of regulatory shortcomings and of the fact that the complainant has suffered distress or inconvenience and/or financial loss. We believe it is appropriate that payments be modest, for the following reasons:
- By law, we are immune from liability in damages unless it is found that we have acted in bad faith or have breached human rights;
  - The Scheme is not designed to consider complex issues of causation, and our determination of any compensatory payment cannot be made in the same way in which a court or tribunal might calculate an award of compensatory damages; and,
  - We are funded by the fees paid by the firms we regulate, and therefore the costs will ultimately fall on the firms and, through them, consumers.
- 4.5** In determining the levels of compensatory payment, we would consider how the cumulative impact of payments may affect the fees we levy on the financial services industry and, indirectly through them, consumers. In some cases, we may decide that the levels of compensatory payments as determined under our proposed Annex A of the Scheme, need to be reduced in light of that impact.
- 4.6** As noted above, this Scheme deals with complaints about us. In relation to complaints about regulated firms, we note that Parliament created the Financial Ombudsman Service (FOS) and the Financial Services Compensation Scheme (FSCS). Broadly speaking, the FOS considers complaints about regulated firms and the FSCS covers claims in connection with most regulated activities against regulated firms which have failed. The Scheme is not intended to insure against losses caused by firms that are not covered (or not covered in full) by the FOS or FSCS for any reason.
- 4.7** We propose to distinguish between payments in relation to distress or inconvenience, and those in relation to financial loss. In each case, the revised Scheme includes guidance to help us decide the appropriate amount.
- 4.8** When considering distress or inconvenience, we would generally only make a compensatory payment when our actions or inactions have contributed significantly to the complainant's distress or inconvenience. We propose that compensatory payments would normally fit into the following bands, although there may be



exceptional circumstances where we conclude that a higher level of compensatory payment for distress or inconvenience would be appropriate.

**4.9** While these bands do not appear in the current Scheme, we believe that the outcomes for most complainants, under the revised Scheme, would be broadly consistent with the FCA's current practice:

- Up to £250 where the complainant has experienced a moderate level of distress or inconvenience;
- £250-£500 where the complainant has experienced a high level of distress or inconvenience; and,
- £500-£1000 where the complainant has experienced a very high level of distress or inconvenience.

**4.10** In cases of financial loss, we would consider making a compensatory payment only where adequate documentary evidence of the loss has been provided, and the following further conditions have been met:

- we are the sole or primary cause of the loss; and
- there has been a clear and significant failure by us.

**4.11** Given the nature and purpose of the Scheme, we would not undertake the kind of detailed analysis of the causes of the loss that a Court would carry out. We also do not interview witnesses or complainants. We would instead carry out a common-sense analysis. For this reason, and because neither regulation nor the Scheme are insurance against failures primarily caused by the actions of others, we expect compensatory payments to be appropriate only where we are clearly the sole or primary cause of the loss. The mere fact that one of us may have been at fault in some way does not mean that the Regulator should be considered to be the sole or primary cause of loss which was the result of the actions of a financial services firm.

**4.12** In deciding the level of any compensatory payment, we will consider a number of relevant factors to help us to decide the appropriate amount, including:

- The seriousness, nature and duration of our failing(s) and its/their consequences for the complainant;
- The amount of the complainant's evidenced and foreseeable financial loss;
- The complainant's individual circumstances, based on information provided to us and/or that is available to us; and
- The extent to which the issue, which has resulted in the complaint, is within our regulatory remit.

**4.13** We would use these factors to decide the actual level of compensatory payment. Any compensatory payment relating to a financial loss will not exceed £10,000, save in exceptional circumstances. Moreover, in most cases we would expect any compensatory payment we make to be lower than this.

**4.14** In determining the impact of our proposals for compensatory payments, we reviewed all complaints concluded by the Commissioner between 1/1/2017 – 31/12/2019, and all complaints concluded by the FCA during the same period where an allegation was upheld or partially upheld. From that sample, most of the payments were for amounts of £250 or less, with the most common payment amount being £50. There were 9 payments in total for amounts greater than of £1,000, with only 3 payments being for

amounts greater than £10,000. Neither the PRA nor the Bank have so far made any compensatory payments under the Scheme, due to the low volume of complaints received.

**4.15** We do not expect this clarification of our approach to compensatory payments to substantially change the proportion of cases in which we make such payments, nor the amounts paid in general. It will, however, improve the transparency of our approach to making compensatory payments, ensure that our decisions on remedies under the Scheme are more predictable, and therefore ensure that the expectations of complainants are realistic.

**Q2:** Do you have any comments on our approach to ex-gratia compensatory payments for distress or inconvenience?

**Q3:** Do you have any comments on our approach to ex-gratia compensatory payments in respect of financial loss?

## 5 Implementation

- 5.1** The proposals set out in this consultation paper are intended to improve the Scheme. We propose, therefore, to implement them as soon as practicable.
- 5.2** We propose that all complaints which are made after the revised Scheme comes into force will be handled by us under the revised Scheme.
- 5.3** For complaints made before the revised Scheme comes into force, we propose that complaints should continue to be handled under the current Scheme. There may be cases where the Complaints Commissioner provides a report to us about a complaint which we had concluded before the new Scheme comes into force. In such circumstances, we propose that we would decide how to respond to the Complaints Commissioner's report, and any of his recommendations, in accordance with the provisions of the current Scheme.

**Q4: Do you agree with our proposals for implementing the new Scheme?**

## 6 Equality impact

**6.1** The Public Sector Equality Duty in Section 149 of the Equality Act 2010 ('EA 2010') requires us to have due regard to the following equality objectives when discharging our respective public functions:

- a.** the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the EA 2010;
- b.** the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- c.** the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

**6.2** This consultation paper sets out proposals for making improvements to the language and presentation of the Scheme, which we believe will provide greater clarity for Scheme users and help to remove any potential barriers to accessibility. Under the proposals we also specifically acknowledge that we will make reasonable adjustments to allow people to access the scheme.

**6.3** Our proposals relating to compensatory payments also state that the individual circumstances of a complainant will be taken into account by a regulator in determining our response to a complaint, including the amount of any such payment. We are seeking, and will take account of, the views of the public on the impact of the proposals in this consultation paper on persons who share protected characteristics.

**Q5: What impact do you think our proposals in this consultation paper will have on persons who share protected characteristics?**

## Annex 1

### List of questions

- Q1:** Do you agree the language in Annex 2 is more accessible than the language of the current Scheme? Will the Scheme as proposed achieve the objectives set out in paragraph 3.3?
- Q2:** Do you have any comments on our approach to ex-gratia compensatory payments for distress or inconvenience?
- Q3:** Do you have any comments on our approach to ex-gratia compensatory payments in respect of financial loss?
- Q4:** Do you agree with our proposals for implementing the new Scheme?
- Q5:** What impact do you think our proposals in this consultation paper will have on persons who share protected characteristics?

# Annex 2

## Draft Complaints Scheme Document

### Complaints against the Regulators

(The Financial Conduct Authority, the Prudential Regulation Authority  
and the Bank of England)

### The Complaints Scheme

[XX] 2020

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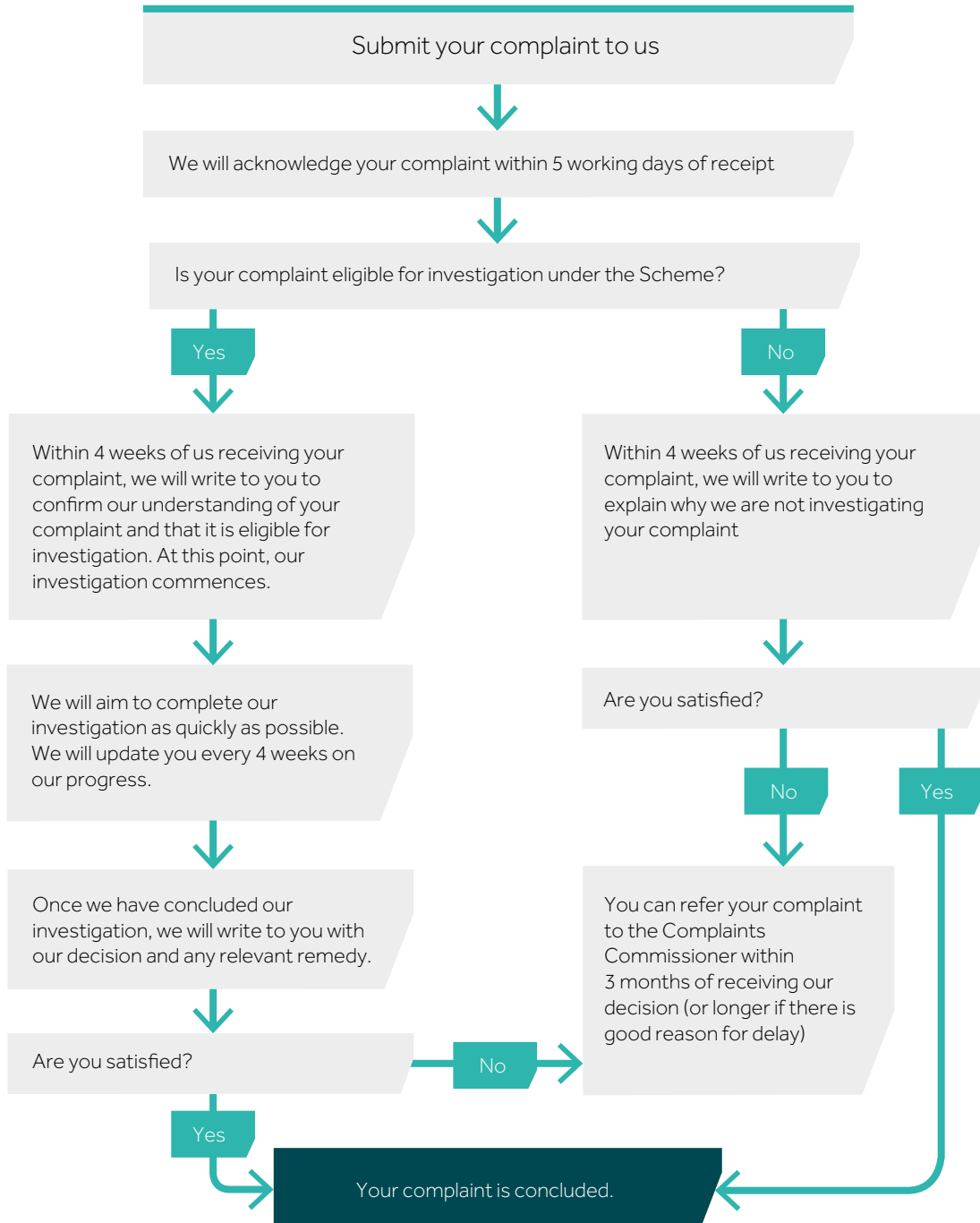
# 1 The Complaints Scheme

- 1.1** This document contains the details of the **Scheme** maintained by the **Regulators** to investigate **complaints** made against them.
- 1.2** It sets out the process for how you can make a complaint, explains how and when the Regulators will investigate, and the possible outcomes of a complaint.
- 1.3** You may refer your complaint to the independent **Complaints Commissioner** at any point in this process. If a complaint is referred to the Complaints Commissioner before we have had the opportunity to conduct or complete an investigation, the Complaints Commissioner will consider whether it would be desirable to allow us that opportunity before conducting their own investigation.
- 1.4** If you are dissatisfied with a **decision** made by the Regulators in response to your complaint, you can refer your complaint to the Complaints Commissioner who may choose to undertake an investigation.
- 1.5** This Scheme also sets out the process for referring your complaint to the Complaints Commissioner (see sections 7 and 8), and explains how and when the Complaints Commissioner may investigate.
- 1.6** For complaints which were made before this Scheme came into force, see Annex B. For complaints about the **FSA**, see Annex D.
- 1.7** A flow chart of our complaints process and how we handle a typical complaint is included on the next page. A flow chart of how a typical complaint which is referred to the Complaints Commissioner is handled is included in Section 7.
- 1.8** In this document, we use "**we**" and "**our**" to refer to the Regulators and refer to the **complainant** as "you" or "your". We define any words highlighted in bold in the glossary in Annex F.



## Overview of the Complaints Process

This shows how we (the Regulators) handle a typical complaint:



## 2 Eligibility

### When you can make a complaint

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- 2.1** You can make a complaint under the Scheme if:
- a.** you have been directly affected by the actions or inactions of the Regulators; and
  - b.** you are seeking a remedy that can be provided under the Scheme in respect of some inconvenience, distress or loss you have suffered.
- For further information on the remedies available under the Scheme, see section 6.
- 2.2** You can nominate someone else to make a complaint on your behalf, if we have written authorisation from you.
- 2.3** You must notify **us** of your complaint within 12 months of the date you first become aware of the issues you are complaining about. We will only investigate complaints made later than this if we consider that there is a good reason for the delay.

### What we can investigate under the Scheme

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- 2.4** Only complaints about the **relevant functions** of the Regulators can be investigated under the Scheme.<sup>1</sup>
- 2.5** For the **FCA** or **PRA**, broadly speaking, relevant functions include our authorisation, supervisory, and enforcement functions and our operation of this Scheme and, in the case of the FCA only, maintaining the Financial Services Register.
- 2.6** For the Bank of England, the complaint must relate to our relevant functions in relation to recognised clearing houses, central securities depositaries or inter-bank payment systems.
- 2.7** Complaints about the exercise of our **legislative functions** – such as rule-making and guidance/statement-issuing – cannot be investigated under the Scheme as they are excluded.
- 2.8** The types of complaint we can investigate under the Scheme, include allegations of:
- a.** mistake;
  - b.** lack of care;
  - c.** unreasonable delay;
  - d.** unprofessional behaviour;
  - e.** bias; or
  - f.** lack of integrity.

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<sup>1</sup> For information about the **Regulators' relevant functions**, see section 85 of the Financial Services Act 2012.

## What we cannot investigate under the Scheme

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- 2.9** We cannot investigate complaints that do not relate to our relevant functions. This includes complaints about:
- a.** our relationship with our employees;
  - b.** contractual or commercial disputes you may have with us that are not connected to how we carry out our relevant functions; or
  - c.** the actions or inactions of the Financial Services Compensation Scheme (FSCS) or the Financial Ombudsman Service (FOS).
- 2.10** Under this Scheme, we also cannot investigate complaints about the firms we regulate. If you have a complaint about a regulated firm, you should complain directly to the firm involved in the first instance. The FOS may be able to help if you are dissatisfied with the response you have received from the firm.

## What we will not investigate under the Scheme

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- 2.11** Even where your complaint is eligible, we will not investigate a complaint under the Scheme if we reasonably consider:
- a.** it amounts to no more than general dissatisfaction with our policies or practices (i.e. no unreasonable, unprofessional or other misconduct is alleged);
  - b.** it would be more appropriately dealt with in another way (for example, by referring the matter to the **Upper Tribunal** or through other legal proceedings);
  - c.** we have already responded adequately to the same or a substantially similar complaint from you on a prior occasion; or
  - d.** your complaint is vexatious.

## Investigations that may be deferred

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- 2.12** Sometimes we may decide there are good reasons to defer the investigation of a complaint. For example, we may defer investigation of a complaint if it relates to any form of continuing action by us or any other formal investigation (for example criminal inquiries). We may also defer investigation of a complaint if it relates to the subject-matter of legal proceedings, whether or not you are involved in those legal proceedings.
- 2.13** We may decide we could start an investigation of your complaint before any continuing action has been concluded. This would happen if we consider it would be unreasonable for you to wait for the ongoing action to end before your complaint is investigated. We must also be satisfied that the ongoing action would not be prejudiced or otherwise impacted by us investigating your complaint before the ongoing action has concluded.
- 2.14** If we do decide to defer the investigation of your complaint, we will keep that decision under review, and contact you at least every 6 months to indicate when we expect to be able to investigate your complaint. If you disagree with our decision to defer your complaint, you can refer your complaint to the Complaints Commissioner.

## 3 Making a complaint

### How to make a complaint

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- 3.1** You can submit your complaint to us using the contact details provided on our websites.
- 3.2** You can make a complaint to any of us and we will ensure the relevant Regulator handles it. Please note each Regulator can only investigate complaints about themselves, not each other.
- 3.3** If you make a complaint to more than one Regulator about the same or related matters, please let us know. This is because when a complaint is made that relates to more than one Regulator, we may decide it would be more appropriate for us to carry out a joint investigation of your complaint instead of each Regulator investigating your complaint separately.
- 3.4** Please also let us know if you require reasonable adjustments to be made to allow you to access the Scheme, or to make your complaint. Examples include, providing documents in larger print and communicating by telephone in addition to writing.

### Acknowledging your complaint

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- 3.5** We will acknowledge your complaint within 5 working days of receiving it. We will provide you with a copy of the Scheme, and explain your right to refer your complaint to the Complaints Commissioner. We will usually do this by providing you with a link to the Scheme on our website. We can send you a hard copy of the Scheme, if requested.

## 4 Initial assessment of your complaint

- 4.1** We will carry out an assessment to determine whether we think your complaint is eligible to be investigated under the Scheme.
- 4.2** We will write to you within 4 weeks of receiving your complaint to outline our decision on the eligibility of your complaint and explain the next steps.
- 4.3** If we decide your complaint is eligible, we will summarise our understanding of your complaint and confirm how we intend to investigate it.
- 4.4** If we decide your complaint is not eligible to be considered under the Scheme, we will let you know and explain why.
- 4.5** If we decide not to investigate your complaint where it is eligible under the Scheme, or decide that we need to defer our investigation, we will explain why.
- 4.6** Where we decide not to investigate your complaint (whether it is eligible or not) or we decide to defer our investigation, we will explain to you how to refer your complaint to the Complaints Commissioner if you are dissatisfied with our decision.

## 5 Investigating your complaint

- 5.1** We will resolve your complaint as quickly as we can. If we are not able to conclude your complaint within 4 weeks of confirming that we can investigate it, we will write to update you. We will set out the progress of our investigation and, if we can, we will tell you how long we expect our investigation to take. We will continue to give you written updates on our progress every 4 weeks until you receive our decision on your complaint.
- 5.2** Your complaint will usually be investigated by a member of our Complaints Team who has not previously been involved in the matters complained about. Sometimes, we may consider it appropriate for your complaint to be dealt with by the business area it relates to, for example, if your complaint is about a minor administrative mistake that could quickly and easily be addressed by them. If your complaint is investigated by the business area and you are unhappy with the response they provide, then you can ask for the Complaints Team to investigate it.
- 5.3** When investigating your complaint, we will consider any information you submit and any relevant information we hold. Sometimes we may need to contact you, or another person, such as another Regulator, to request further information that would help us in investigating your complaint. Our investigations are desk-based and we do not interview witnesses or complainants.
- 5.4** If we request information from you which we need to investigate your complaint, but do not receive a response, we may not be able to progress our investigation. In these circumstances, we may close your complaint.
- 5.5** We, and the Complaints Commissioner, will accept any finding of fact or any decision by a court, tribunal or regulatory body of competent jurisdiction in the UK or elsewhere (which has not been set aside on appeal or otherwise) as conclusive.
- 5.6** If your complaint involves more than one Regulator, we will usually appoint one Regulator as your point of contact. They will co-ordinate a joint investigation and be responsible for all communications with you about your complaint.
- 5.7** We may stop investigating your complaint if we reasonably consider that your behaviour is vexatious, abusive or discriminatory.

### Our decision

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- 5.8** When we have completed our investigation, we will send you a decision letter explaining our conclusions and whether we have upheld your complaint. If we have not upheld your Complaint, we will tell you why not. Whether or not we have upheld your complaint, we will remind you of your right to ask the Complaints Commissioner to review our decision if you are dissatisfied with it.

## 6 Remediating your complaint

**6.1** If we uphold your complaint, we will tell you and propose an appropriate remedy based on the individual features of your complaint.

**6.2** In considering an appropriate remedy, we will take into account:

- The seriousness, nature and duration of our failing(s) and its/their consequences for you.
- The nature of our relationship with you and the extent to which you have been negatively affected in the course of your direct dealings with us.
- The impact of the cost of compensatory payments on the businesses that fund the Regulators through paying our fees and, indirectly through them, consumers.

**6.3** Our aim is to be consistent and fair, to ensure remedies are appropriate and reflect all the circumstances of your complaint. We usually take one or more of the following steps:

- Make an apology: When we consider a complaint is well founded, we apologise.
- Take an action to address the complaint: In some instances, we can take action to address the complaint, such as providing further explanation or guidance, implementing steps to end or reduce a delay, waiving or reimbursing fees that we should not have charged you, or correcting an error or inaccuracy.
- Make improvements: When investigating any complaint, even if it is not upheld, we always consider whether there are changes that we could make to our practices, policies or procedures to improve these or to help avoid the same problem in the future.
- Make an ex-gratia compensatory payment: Our approach to this is set out below and in Annex A.

**6.4** Usually an apology, together with action to address the complaint and/or making improvements, is the most appropriate remedy. It is only if we consider that this is insufficient to remedy your complaint that we will consider making an ex-gratia compensatory payment (i.e. a goodwill payment) to you.

**6.5** Even if we decide that a compensatory payment is appropriate, generally speaking any such payment is likely to be limited to a modest amount. This is because:

- By law, we are immune from liability in damages when carrying out our public functions (such as regulation and supervision) unless it is found that we have acted in bad faith or have breached your human rights.
- The Scheme is not set up to consider complex issues such as causation but to resolve complaints effectively and quickly, wherever possible. Our assessment of compensatory payments cannot be made in the same way that a Court or Tribunal calculates an award of compensatory damages.
- Our approach to compensatory payments under the Scheme must also reflect the fact that, because we are funded by the financial services industry, the costs of the Scheme (including any compensatory payments) will fall upon businesses and indirectly, through them, consumers.

- 6.6** We note that this Scheme deals with complaints about us. In relation to complaints about regulated firms, Parliament created the Financial Ombudsman Service (FOS) and the Financial Services Compensation Scheme (FSCS). Broadly speaking, the FOS considers complaints about regulated firms and the FSCS covers claims in connection with most regulated activities against regulated firms which have failed. The Scheme is not intended to insure against losses caused by firms that are not covered (or not covered in full) by the FOS or FSCS for any reason.



## 7 What to do if you are dissatisfied with our response

### Referring your complaint to the Complaints Commissioner

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- 7.1** If you disagree with any decision we make in relation to your complaint, or are dissatisfied with the progress of our investigation, you can refer your complaint to the Complaints Commissioner.
- 7.2** You will need to refer your complaint to the Complaints Commissioner within 3 months of the date of our decision letter, unless there is good reason for delay.
- 7.3** In our decision letter to you, we will provide you with the contact details for the Complaints Commissioner. These can also be found on our websites and the website of the Complaints Commissioner.

### Investigation by the Complaints Commissioner

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- 7.4** The Complaints Commissioner will investigate your complaint independently of us and may disagree with our decision. The Complaints Commissioner can also recommend that we take action to remedy the matter complained of or that we should make a compensatory payment to you or that we do both.
- 7.5** The Complaints Commissioner will provide you, and us, with a preliminary report, which sets out their conclusions. You, and we, will be given the opportunity to respond to the report. The Complaints Commissioner will take into account any response received and will produce a final report, which will be provided to you and us. The final report will conclude the investigation and the complaint will be closed by both the Complaints Commissioner and us.
- 7.6** During the period between receiving the preliminary report from the Complaints Commissioner and their final report, you and we must keep the report and its conclusions confidential. If this is not adhered to, then the Complaints Commissioner will decide what action to take.
- 7.7** The Complaints Commissioner will usually publish their final report. However, you and we can make representations to the Complaints Commissioner that publication would not be in the public interest or would be unfairly detrimental to the interests of you or us. The Complaints Commissioner will consider these representations and decide whether it would be appropriate to publish the report in full, or in part, in these circumstances. In any case, the final report will identify the relevant Regulator/s but will not mention your name, or the name of any other person or firm, or contain information which is likely to identify any other person or firm unless:

- a. in the opinion of the Complaints Commissioner the omission of such information would be likely to impair the effectiveness of the report; or
- b. after considering the public interest, as well as your interests and the interests of other persons and firms, the Complaints Commissioner considers it necessary to mention the name of that person or firm, or to include such information in the report.

**7.8** In all circumstances, the Complaints Commissioner must observe their legal obligations in respect of disclosing confidential or personal information.

## Our response

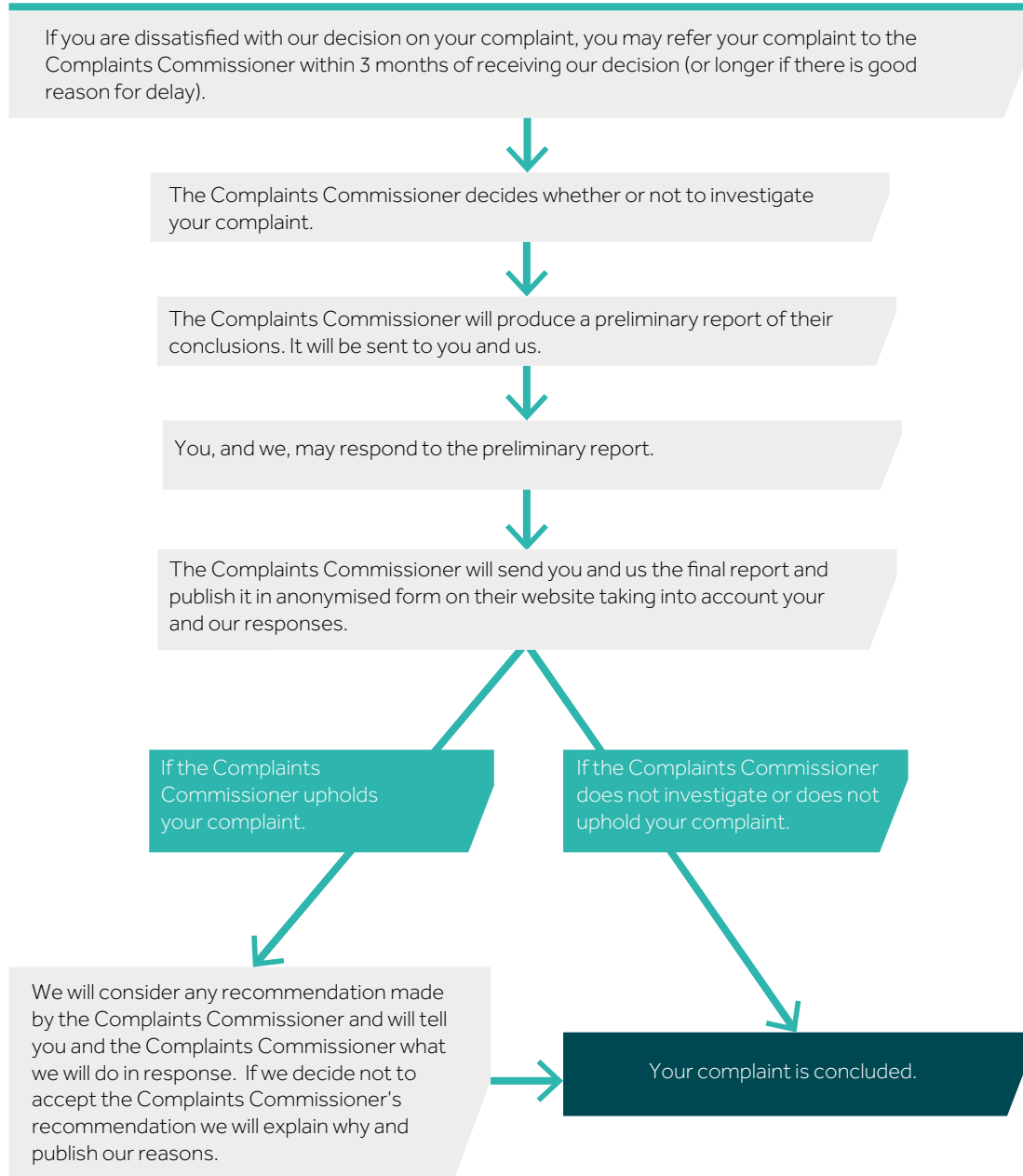
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**7.9** When the Complaints Commissioner publishes the final report, we will publish a response if the Complaints Commissioner asks us to do so, and we may also choose to publish a response ourselves even if the Complaints Commissioner does not ask us to.

**7.10** Where the Complaints Commissioner's final report upholds your complaint or criticises us, we will tell you and the Complaints Commissioner what we will do in response. In deciding how to respond to a report from the Complaints Commissioner, we will apply our approach to remedies set out in Section 6, taking into account the Complaints Commissioner's recommendations.

**7.11** If we decide not to accept one or more of the Complaints Commissioner's recommendations, we will explain why and publish our reasons.

This shows how a typical complaint which is referred to the Complaints Commissioner is handled, if you are dissatisfied with our decision<sup>2</sup>:



2 Although you can refer your complaint to the Complaints Commissioner at any time.

## 8 Will the Complaints Commissioner investigate a complaint which we have not investigated?

- 8.1** If we do not investigate your complaint we will write to you to let you know and explain the reason why. You can request that the Complaints Commissioner reviews our decision not to investigate. The Complaints Commissioner will decide whether your complaint falls within the scope of the Scheme and, if so, whether they should investigate.
- 8.2** Your request to the Complaints Commissioner should be made within 3 months of receipt of our correspondence informing you of our decision not to investigate all or part of your complaint unless there is good reason for delay.
- 8.3** If you refer your complaint to the Complaints Commissioner before we have had the opportunity to conduct or complete an investigation, the Complaints Commissioner may delay the start of their investigation until we have completed our investigation.
- 8.4** The Complaints Commissioner will not investigate any complaint which they decide is not eligible to be investigated under the Scheme.

## Annex A

# Compensatory payments

1. We may make compensatory payments under the Scheme when our actions or inactions have caused you distress or inconvenience. In addition, we may, in some circumstances, make compensatory payments when you have suffered financial loss as a direct result of our actions or inactions. However, the payments we make are not likely to be equivalent to the financial loss that you might have suffered, for the reasons set out in this document.
2. In determining the levels of compensatory payment, we will consider how the cumulative impact of payments may affect the fees we levy on the financial services industry and, indirectly through them, consumers. In some cases, we may decide that the levels of compensatory payments as determined under this Annex need to be reduced in light of that impact.

### Distress or inconvenience

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3. We will generally only make a compensatory payment when our actions or inactions have contributed significantly to your distress or inconvenience.
4. If your distress or inconvenience is relatively minor, an apology, together with action to address your complaint and/or make improvements, will usually be the appropriate remedy.
5. If we decide a compensatory payment is justified, we will use the bands below to help us to decide the appropriate amount, and to ensure consistency and transparency in our decision making. We will generally make one payment for distress or inconvenience to reflect all aspects of your complaint (or complaints).

### Distress or inconvenience compensation ranges

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Level	Range	Impact
1	Up to £250	Your complaint may fall into this category if you have experienced a moderate level of distress or inconvenience. This might typically arise from multiple small incidents, or a single, relatively significant incident, or an unreasonable delay on the part of the Regulator, where the impact on you was of moderate duration.
2	£250-£500	Your complaint may fall into this category if you have experienced a high level of distress or inconvenience. This might typically arise from a series of relatively significant failures in our processes, or an unreasonable and prolonged delay on our part, where the impact on you was of a lengthy duration.
3	£500-£1,000	Your complaint may fall into this category if you have experienced a very high level of distress or inconvenience. This might typically arise from a major failure in our processes or an unreasonable, prolonged and continuing delay on our part, where the impact on you was of a very lengthy duration.

6. The descriptions of the bands are intended as guidance only, as your circumstances and the circumstances of each complaint will be different. In considering which band is appropriate and the actual amount of compensation within a band that we will pay, we will consider all the information available to us. This will include any information you have given us about your individual circumstances and the impact our actions or inactions may have had on you.
7. There may be exceptional circumstances, such as where our failings or the consequences for you are unusually severe, where we may conclude that a higher level of compensatory payment for distress or inconvenience in excess of the limits above would be appropriate.

## Financial loss

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8. We will only consider making a compensatory payment in recognition that you have experienced a financial loss where adequate documentary evidence of the financial loss has been provided, and where both of the following two further conditions have been met.
9. The first condition is that we are the *sole or primary cause* of the loss. The factors that we will consider in assessing this include:
  - a. the role of any other parties and whether they are the primary cause of your loss; and
  - b. any steps you could have taken to reduce the impact arising from our actions or inaction.
10. Given the nature and purpose of the Scheme, we will not undertake the kind of detailed assessment into the causes of loss that a Court would carry out. We will carry out a common-sense analysis to see whether we are the sole or primary cause of your financial loss. If it is not clear that we are the sole or primary cause, this is likely to mean that a compensatory payment is not appropriate. In addition, if it was not foreseeable that our actions or inactions would have caused your loss, this is likely to mean that a compensatory payment is not appropriate. We consider that it is unlikely that we would be the sole or primary cause of a loss in relation to a matter which is outside our regulatory remit.
11. The second condition is that there has been a clear and significant failure by us.
12. A failure would be deemed to be clear, for example, in a situation where we have failed to take a specific action in line with our policies or procedures. Another example could be where we have specifically committed to do something and failed to carry this out.
13. If there is doubt about whether we took adequate action – for example because there were factors which provide a reasonable explanation of why we did not act in line with our policies or procedures – this is unlikely to constitute a clear failure.
14. A failure would be significant if, for example, there have been repeated errors, with numerous opportunities for us to correct the mistake. A simple administrative error with limited financial impact, is unlikely to amount to a significant failure.

- 15.** If we decide that a compensatory payment for financial loss is justified, we will consider a number of relevant factors to help us to decide the appropriate amount, including:
- The seriousness, nature and duration of our failing(s) and its/their consequences for you;
  - The amount of your evidenced and foreseeable financial loss;
  - Your individual circumstances, based on information that you have provided to us and/or is available to us; and
  - The extent to which the issue which has resulted in your complaint is within our regulatory remit.
- 16.** For the reasons explained in this document, any compensatory payments made by us are likely to be limited to a modest amount. Any compensatory payment relating to a financial loss that you have experienced will not exceed £10,000, save in exceptional circumstances. Moreover, in most cases we would expect any compensatory payment we make to be lower than this.
- 17.** There may however be exceptional circumstances, such as where our failings or the consequences of our failings for you are unusually severe, where we may conclude that a higher level of compensatory payment relating to a financial loss would be appropriate. However, such cases are likely to be rare. In those cases, any compensatory payment we make is unlikely to reflect the full amount of any financial loss that you may have experienced.

### **Instructing a complaint handling or professional services firm**

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- 18.** If you instruct a complaint handling firm or professional services firm to manage or advise on your complaint, we will not usually reimburse you for their fees. This is so even if your complaint is upheld and a compensatory payment is made. This is because the Scheme is designed to be straightforward to use and we do not consider you need to engage a specialist firm to manage or advise on a complaint you make against us. However as set out in paragraph 3.4 of the scheme, please let us know if you need us to make reasonable adjustments, to enable you to make your complaint.

## Annex B

# Transitional arrangements for complaints

1. Complaints made before the [insert date on which the Scheme comes into force] which have not yet been concluded will be concluded in accordance with the **old Scheme** or the **old FSA complaints scheme**, as applicable. This includes deferred complaints that have not been concluded before this date.
2. Where the Complaints Commissioner provides a report to us about a complaint that we concluded under the old Scheme or the old FSA complaints scheme, we will decide how to respond to the Complaints Commissioner's report, and any of his recommendations, in accordance with Part 7 of the old Scheme.



## Annex C

# The appointment and powers of the Complaints Commissioner

1. Under Part 6 of the Financial Services Act 2012, we must appoint an individual, subject to the approval of HM Treasury, as Complaints Commissioner to carry out the functions conferred on them by the Scheme.
2. The Complaints Commissioner is appointed for a period of 3 years, which may be renewed, and may only be dismissed from office if they become:
  - a. incapacitated by physical or mental illness; or
  - b. otherwise unfit to discharge the functions of their office;and subject in either event to the approval of HM Treasury.
3. The Complaints Commissioner is independent of us, and their staff must not be our employees and are required to act independently of, and without favouring, us.
4. We will provide the Complaints Commissioner with sufficient financial and other resources to allow them to fulfil their role under the Scheme properly.
5. In circumstances where the Complaints Commissioner is unable to investigate a complaint, we will ask the President of The Law Society to nominate a solicitor to carry out the functions conferred on the Complaints Commissioner by the Scheme. This appointment is subject to the approval of HM Treasury.
6. The Scheme will apply in full to the individual appointed under paragraph 5, and the Complaints Commissioner will not be involved in investigating that complaint.
7. The Complaints Commissioner can investigate in whatever manner they think appropriate including obtaining, at our expense, external resources which are reasonable. In considering what is appropriate, the Complaints Commissioner will consider the need to ensure that complaints are dealt with fairly, quickly and cost effectively.
8. The Complaints Commissioner may appoint a person to conduct the whole or any part of an investigation on their behalf, but subject to their direction. That person must not be an officer or employee of the Regulators.
9. We will afford the Complaints Commissioner all reasonable cooperation, including giving access to our staff, records and other information as necessary. We may, in giving the Complaints Commissioner access to information, consider our need to maintain the confidentiality of certain kinds of information. This would include, for example, taking appropriate steps to ensure that the identity of an informant is not disclosed, or maintaining the confidentiality of information given to us. If, exceptionally, we decide that we need to withhold information, we will inform the Complaints Commissioner of the nature of that information and our reasons for withholding it.

10. We will provide information to the Complaints Commissioner on the complaints that we do not investigate.
11. The Complaints Commissioner will prepare an annual report on their investigations under the Scheme concluded during the 12 month period to 31 March.

The annual report will include:

- a. information concerning any general trends emerging from the investigations undertaken during the reporting period;
  - b. any recommendations which the Complaints Commissioner considers appropriate as to the steps a Regulator should take in response to such trends;
  - c. a review of the effectiveness during the reporting period of the procedures (both formal and informal) of each Regulator for handling and resolving complaints which have been investigated by the Complaints Commissioner during the reporting period;
  - d. an assessment of the extent to which those procedures were accessible and fair, including where appropriate an assessment for different categories of complainant; and
  - e. any recommendations about how those procedures, or the way in which they are operated, could be improved.
12. The Complaints Commissioner will send a copy of the annual report to each Regulator and to HM Treasury. We may respond to any recommendations or criticisms relating to us in the report. We will publish any response(s) and send a copy of it to the Complaints Commissioner and HM Treasury. HM Treasury will lay the annual report and any response to it before Parliament.

## Annex D

# Complaints against the Financial Services Authority after [insert date]

1. Complaints made about the FSA after [insert date on which the Scheme comes into force] will be investigated by the FCA in accordance with the Scheme and this Annex.
2. Where appropriate, the FCA will liaise with the PRA or the Bank during the investigation.
3. You should note that the time limits that are set out in paragraph 2.3 of the Scheme apply to complaints about the FSA.
4. In applying the Scheme to complaints made about the FSA, references to the FCA's relevant functions should be read as referring to the FSA's former functions under **FSMA**. For example, the FCA will not investigate complaints about the FSA in relation to the performance of the FSA's former **legislative functions** under FSMA (including making rules and issuing codes and general guidance).
5. A complaint against the FSA cannot be made in respect of the Bank's functions under Part 5 of the Banking Act 2009 (payment systems) as these were never subject to complaints arrangements which were in place for the FSA.

# Annex E

## Old Complaints Scheme



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY



# **Complaints against the regulators**

(The Bank of England, the Financial Conduct Authority  
and the Prudential Regulation Authority)

## **The Complaints Scheme**

Updated March 2016

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# **1 About the Complaints Scheme**

- 1.1 Part 6 of the Financial Services Act 2012 (the Act) requires the regulators to maintain a complaints scheme for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of their relevant functions.
- 1.2 The relevant functions of the Financial Conduct Authority (the FCA) and the Prudential Regulation Authority (the PRA) are their functions other than their legislative functions. The relevant functions of the Bank of England (the Bank) are its functions under Part 18 of the Financial Services and Markets Act 2000 (FSMA) (recognised clearing houses) and under Part 5 of the Banking Act 2009 (inter-bank payment systems), other than its legislative functions.
- 1.3 The regulators are also required to appoint an independent person (referred to from this point as the Complaints Commissioner) to be responsible for the conduct of investigations in accordance with the complaints scheme (the Scheme).
- 1.4 The Scheme provides that 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 to resolve the matter they think is appropriate. In the second stage the Complaints Commissioner will investigate complaints that are referred to him following a stage one investigation where the complainant remains dissatisfied.
- 1.5 The Scheme has effect from 1 April 2013.

## **2 Definitions**

2.1 In this Scheme:

- a) ‘complaint’ means any expression of dissatisfaction about the manner in which the regulators have carried out, or failed to carry out, their ‘relevant functions’.
- b) ‘firm’ includes any person who is or was a person authorised under FSMA,, Recognised Clearing Houses and payment systems under the Banking Act 2009;
- c) ‘Upper Tribunal’ means the Upper Tribunal (Tax and Chancery Chamber) established under the Tribunals, Courts and Enforcement Act 2007; and
- d) ‘legislative functions’ of the regulators are defined in Clause 85 (4) to (7) of the Act.



### **3 Coverage and scope of Scheme**

- 3.1 The Scheme covers complaints about the way in which the regulators have acted or omitted to act, including complaints alleging:
- a) mistakes and lack of care;
  - b) unreasonable delay;
  - c) unprofessional behaviour;
  - d) bias; and
  - e) lack of integrity.
- 3.2 Complaints can be made by anyone who is directly affected by the way in which the regulators have carried out their functions, or anyone acting directly on such a person's behalf, provided that the complaint meets the requirements of the Scheme. To be eligible to make a complaint under the Scheme, a person must be seeking a remedy (which for this purpose may include an apology) in respect of some inconvenience, distress or loss which the person has suffered as a result of being directly affected by the regulators' actions or inaction.
- 3.3 Complaints should be made within 12 months of the date on which the complainant first became aware of the circumstances giving rise to the complaint. Complaints made later than this will be investigated under the Scheme only if the complainant can show reasonable grounds for the delay.

#### Exclusions to the Scheme

- 3.4 Excluded from the Scheme are complaints:
- a) about the regulators' relationship with their employees;
  - b) connected with contractual or commercial disputes involving the regulators and not connected with the exercise of to their relevant functions;

- c) in relation to the performance of the regulators' legislative functions as defined in the 2012 Act;
- d) about the actions, or inactions, of the Bank that do not relate to its functions under Part 18 of FSMA as amended by the Act (recognised clearing houses) or under Part 5 of the Banking Act 2009 (inter-bank payment systems); and
- e) complaints about the actions, or inactions, of the Financial Ombudsman Service, the Financial Services Compensation Scheme or the Money Advice Service.

#### Circumstances where the regulators will not investigate

- 3.5 The regulators will not investigate a complaint under the Scheme which they reasonably consider amounts to no more than dissatisfaction with the regulators' general policies or with the exercise of, or failure to exercise, a discretion where no unreasonable, unprofessional or other misconduct is alleged.

#### Complaints that are more appropriately dealt with in another way

- 3.6 The regulators will not investigate a complaint under the Scheme which they reasonably consider could have been, or would be, more appropriately dealt with in another way (for example by referring the matter to the Upper Tribunal or by the institution of other legal proceedings).

#### Investigations that may be deferred

- 3.7 A complaint which is connected with, or which arises from, any form of continuing action by the regulators will not normally be investigated by either the regulators or the Complaints Commissioner until the complainant has exhausted the procedures and remedies under FSMA (or under other legislation which provides for access to the Scheme) which are relevant to that action. The complainant

does not have to be the subject of continuing action by the regulators for this provision to be engaged. An investigation may start before those procedures are completed if, in the exceptional circumstances of the case, it would not be reasonable to expect the complainant to await the conclusion of the regulators' action and that action would not be significantly harmed.

## 4 The Complaints Commissioner

- 4.1 The regulators must appoint an individual, subject to the approval of HM Treasury, as Complaints Commissioner to carry out the functions conferred on him by the Scheme.
- 4.2 In appointing the Complaints Commissioner the FCA will be responsible for the recruitment administration. Following a selection process to be agreed by the three regulators, the appointment of a suitable person to carry out the role of Complaints Commissioner will be made by the FCA, the PRA and the Bank.
- 4.3 The Complaints Commissioner is appointed for a period of three years and may be dismissed from office only for the reason of becoming:
- a) incapacitated by physical or mental illness; or
  - b) otherwise unfit to discharge the functions of their office;
- and subject in either event to the approval of HM Treasury.
- 4.4 The Complaints Commissioner and their staff must not be employees of the regulators and are required to act independently of, and without favouring, the regulators.
- 4.5 The regulators will provide the Complaints Commissioner with sufficient financial and other resources to allow him to fulfil his role under the Scheme properly.
- 4.6 In circumstances where the Complaints Commissioner is unable to investigate a complaint, the regulators will ask the President of The Law Society to nominate a solicitor to carry out the functions conferred on the Commissioner by the Scheme. This appointment is subject to the approval of HM Treasury.
- 4.7 The Scheme will apply in full to the individual appointed under paragraph 4.6; the Complaints Commissioner will have no involvement in investigating that complaint.

## 5 Procedure

### Telling complainants how the Scheme works

- 5.1 In response to each complaint received, the relevant regulator(s) will send the complainant information, in a durable medium, explaining how the Scheme works. This will include details of their right to refer the complaint to the Complaints Commissioner if they are dissatisfied with the way in which the relevant regulator(s) have dealt with it.

### The regulators' initial analysis of complaints

- 5.2 On receiving a complaint, the relevant regulator(s) will determine whether it can be dealt with under the Scheme and whether it can be dealt with by the area that is subject to the complaint.
- 5.3 Where the relevant regulator(s) do not investigate a complaint under the Scheme, the relevant regulator(s) will write to the complainant explaining why this is the case and informing them of their right to ask the Complaints Commissioner to review the decision. The relevant regulator(s) will do this within four weeks of receiving the complaint.

### Asking for information in writing

- 5.4 Firms complaining verbally will be asked to confirm their complaint in a durable medium.
- 5.5 A complaint made verbally by a consumer will be investigated by the relevant regulator(s). However, if the relevant regulator(s) require clarification as to the nature or scope of the complaint, the remedy sought or any factual information that supports the complaint, the relevant regulator(s) will invite the complainant to provide further details in a durable medium.

- 5.6 The relevant regulator(s) may not be able to progress their investigation of a complaint until they have received the information described above.

Complaints handled by the area which is the subject of the complaint

- 5.7 The relevant regulator(s) may ask the area which is the subject of the complaint to deal with the matter. This may be appropriate in circumstances where a complaint falls within the scope of the Scheme but is considered to be low impact (for example, it is about a minor administrative mistake) and can be dealt with easily and quickly.
- 5.8 For all complaints dealt with in this way, the relevant regulator(s) will advise the complainant of their right to refer their complaint back to the Scheme if they believe the complaint has not been resolved or is otherwise dissatisfied with the way it has been dealt with.
- 5.9 If the complainant refers their complaint back to the Scheme, the relevant regulator(s) will acknowledge this complaint within five business days of receiving this referral.
- 5.10 The relevant regulator(s) will review the complaint, at this point, to make sure that it falls within the scope of the Scheme. If the relevant regulator(s) consider that the complaint is outside the Scheme, they will follow the procedures in paragraph 5.3. Otherwise, they will handle the complaint in accordance with paragraph 6.2.

## **6 Stage 1: Investigation of complaints by the relevant regulator(s)**

- 6.1 Where a complaint is not suitable to be dealt with by the area which is the subject of the complaint, the relevant regulator(s) will acknowledge it within five business days of receipt.
- 6.2 The relevant regulator(s) will conduct an initial investigation into any complaint which falls within the scope of the Scheme and which does not come within the provisions of paragraphs 3.4 to 3.7. That investigation will be carried out by a suitably senior member of staff who has not previously been involved in the matter complained of, aiming to resolving the matter to the complainant's satisfaction.
- 6.3 The investigation of complaints will involve a paper-based review considering any documents supplied by the complainant, and any relevant documents held by the relevant regulator(s). The investigation will not involve an interview with the complainant.
- 6.4 The relevant regulator(s) will seek to resolve the complaint as quickly as possible. The relevant regulator(s) will either finish investigating a complaint within four weeks, or they will write to the complainant within this time setting out a reasonable timescale within which they plan to deal with the complaint. If the relevant regulator(s) have not already confirmed whether the complaint will be admitted to the Scheme, the relevant regulator(s) will include this information in this communication.
- 6.5 The relevant regulator(s) must take appropriate steps to co-ordinate with each other to ensure the efficient and fair investigation of matters raised. Where a complaint involves the actions or inaction of more than one of the regulators a lead person in one regulator will be designated to coordinate the response and take responsibility for communications with the complainant.

### What are the possible outcomes for the complaint?

- 6.6 Where it is concluded that a complaint is well founded, the relevant regulator(s) will tell the complainant what they propose to do to remedy the matters complained of. This may include offering the complainant an apology, taking steps to rectify an error or, if appropriate, the offer of a compensatory payment on an *ex gratia* basis.
- 6.7 If the relevant regulator(s) decide not to uphold a complaint, they will give their reasons to the complainant, and will inform the complainant of their right to ask the Complaints Commissioner to review the relevant regulator(s)' decision.
- 6.8 Complainants who are dissatisfied with the outcome of an investigation, or who are dissatisfied with the relevant regulator(s)' progress in investigating a complaint, may refer the matter to the Complaints Commissioner, who will consider whether to carry out his own investigation.

### Time limit for the referral of a matter to the Complaints Commissioner

- 6.9 When the relevant regulator(s) write to a complainant with their final report of their investigation, or explaining that they will not investigate a complaint under the Scheme, the relevant regulator(s) will inform the complainant that, if they are dissatisfied, they must refer the relevant regulator(s)' decision to the Complaints Commissioner within three months of the date of that letter.
- 6.10 It will be for the Complaints Commissioner to decide whether there is a good reason to consider a matter which has been referred to their office outside the three month time limit.



When will the Complaints Commissioner investigate a complaint which the relevant regulator(s) have not investigated?

- 6.11 When the relevant regulator(s) have told a complainant in writing that they will not be investigating their complaint, they will also notify the Complaints Commissioner of this fact. The Complaints Commissioner will not review the relevant regulator(s)' decision unless the complainant requests this. Where the complainant does request this, the Complaints Commissioner will decide whether the complaint falls within the scope of the Scheme and, if so, whether it would be appropriate to conduct an investigation.
- 6.12 If a complaint is referred or notified to the Complaints Commissioner before the relevant regulator(s) have had the opportunity to conduct or complete an investigation, the Complaints Commissioner will consider whether it would be desirable to allow the relevant regulator(s) that opportunity before conducting his own investigation.
- 6.13 Paragraph 6.12 also applies to a complaint received by the Complaints Commissioner when he is conducting a Stage 2 investigation into another complaint from the same complainant.
- 6.14 The Complaints Commissioner will not investigate any complaint which is outside the scope of the Scheme, but the final decision on whether a particular case is so excluded rests with the Complaints Commissioner.
- 6.15 In the investigation of a complaint by either the relevant regulator(s) or the Complaints Commissioner, any finding of fact of:
- a) a court of competent jurisdiction (whether in the UK or elsewhere);
  - b) the Upper Tribunal; or
  - c) any other tribunal established by legislative authority (whether in the United Kingdom or elsewhere);

- d) any independent tribunal charged with responsibility for hearing a final appeal from the regulatory decisions of the regulators;

which has not been set aside on appeal or otherwise, shall be conclusive evidence of the facts so found, and any decision of that court or tribunal shall be conclusive.

- 6.16 Any findings of fact or decisions of courts or tribunals not covered by paragraph 6.15 will carry such weight as the regulators or the Complaints Commissioner considers appropriate in the circumstances.

## **7 Stage 2: Conduct of investigations by the Complaints Commissioner**

- 7.1 The Complaints Commissioner must at all times act independently of the regulators; he may conduct an investigation in whatever manner he thinks appropriate including obtaining, at the regulators' expense, such external resources as may be reasonable. In considering what is appropriate, the Complaints Commissioner will take into account the need to ensure that complaints are dealt with fairly, quickly and cost effectively.
- 7.2 The Complaints Commissioner may appoint a person to conduct the whole or any part of an investigation on his behalf but subject to his direction. That person must not be an officer or employee of the regulators.
- 7.3 The regulators will afford the Complaints Commissioner all reasonable cooperation, including giving access to their staff and information. The regulators may, in affording the Complaints Commissioner access to information, consider the need to maintain the confidentiality of certain kinds of information. This would include, for example, taking appropriate steps to ensure that the identity of an informant is not disclosed, or maintaining the confidentiality of information given to the relevant regulator(s) under international arrangements. In any case where the relevant regulator(s) decide that they should withhold information, they will inform the Complaints Commissioner of the nature of that information and their reasons for withholding it.
- 7.4 The regulators are not, because of any investigation being conducted by the Complaints Commissioner, prevented from continuing to take such action, or such further action, as they consider appropriate in relation to any matter which is related to a complaint or a complainant.

- 7.5 In deciding whether a complaint is well founded and, if so, in deciding what steps he should recommend the regulators to take, the Complaints Commissioner will have regard to matters such as the source of the funds to make the payment as well as the desire for the regulators to be efficient and economic in the use of their resources.
- 7.6 The Complaints Commissioner may, if appropriate, recommend that the regulators remedy the matters complained of, as described in paragraph 6.6.
- 7.7 The Complaints Commissioner will send a preliminary report to the relevant regulator(s) and the complainant, with a time limit within which they may indicate in writing any disagreement with or comments on the preliminary report.
- 7.8 At the end of this time limit, the Complaints Commissioner will produce a final report after taking into account, at their discretion, any disagreements or comments notified to them. The final report will conclude the investigation procedure and the complaint will then be regarded as closed by the Complaints Commissioner and the regulators.
- 7.9 The Complaints Commissioner's reports will not, apart from identifying the relevant regulator(s), mention the name of any other person or contain particulars which are likely to identify any other person unless:
- a) in the opinion of the Complaints Commissioner the omission of such particulars would be likely to impair the effectiveness of the report; or
  - b) after taking into account the public interest, as well as the interests of the complainant and the interests of other persons, the Complaints Commissioner considers it necessary to mention the name of that person or to include in the report those particulars.
- 7.10 The Complaints Commissioner expects his communications with complainants and the relevant regulator(s) during the course of an investigation to remain strictly confidential. Where a complainant breaches this

requirement the Complaints Commissioner may, after having considered all the circumstances including any explanation from the complainant, decide to bring the investigation to an end without having to report (see paragraph 7.8). Where the relevant regulator(s) breach this requirement, the Complaints Commissioner will take account of this when concluding and the breach will be recorded in the Complaints Commissioner's final report.

- 7.11 The Complaints Commissioner may publish his report (or any part of it) if he considers that the report (or any part of it) ought to be brought to the attention of the public.
- 7.12 The relevant regulator(s) must, in any case where the Complaints Commissioner has reported that a complaint is well founded, or where he has criticised the relevant regulator(s) in his report, inform the Complaints Commissioner and the complainant of the steps which they propose to take by way of response.
- 7.13 The relevant regulator(s) must, if required by the Complaints Commissioner to do so, publish the whole or a specified part of their response subject to applicable statutory restrictions relating to the disclosure of confidential information.

#### Responding to the Complaints Commissioner

- 7.14 In deciding how to respond to a report from the Complaints Commissioner, the relevant regulator(s) will normally take into account:
- a) the gravity of the misconduct which the Complaints Commissioner has identified and its consequences for the complainant;
  - b) the nature of the relevant regulator(s)' relationship with the complainant and the extent to which the complainant has been adversely affected in the course of his direct dealings with the relevant regulator(s);
  - c) whether what has gone wrong is at the operational or administrative level;

- d) the impact of the cost of compensatory payments on firms, issuers of listed securities and, indirectly, consumers.

### Confidentiality

- 7.15 The Complaints Commissioner must observe any statutory restrictions applicable to him relating to the disclosure of confidential information.

### Reports

7.16

- a) The Complaints Commissioner will prepare a report on their investigations under the Scheme concluded during the 12-month period ending 31 March (the annual report), publish it and send a copy to each regulator and to HM Treasury.
- b) Each regulator will respond to any recommendations or criticisms relating to it in the report, publish the response and send a copy of it to the Complaints Commissioner and HM Treasury.
- c) HM Treasury will lay the annual report and any response to it before Parliament.

7.17 The annual report must in particular include:

- a) information concerning any general trends emerging from the investigations undertaken during the reporting period;
- b) any recommendations which the investigator considers appropriate as to the steps a regulator should take in response to such trends;
- c) a review of the effectiveness during the reporting period of the procedures (both formal and informal) of each regulator for handling and resolving complaints which have been investigated by the investigator during the reporting period;

- d) an assessment of the extent to which those procedures were accessible and fair, including where appropriate an assessment for different categories of complainant; and
- e) any recommendations about how those procedures, or the way in which they are operated, could be improved.

## **8 About the transitional complaints scheme**

- 8.1 In line with the Act, the regulators have made arrangements for investigating complaints against their predecessor organisation, the FSA. The arrangements made by the regulators are the same as the main scheme (outlined above) subject to the following differences. There is a different scope and coverage for the transitional complaints scheme which is outlined below and complaints can no longer be dealt with by the area which is the subject of the complaint.
- 8.2 Complaints that fall under the transitional complaints scheme will be investigated by the FCA. Where appropriate, the FCA will liaise with the PRA or the Bank during the investigation.
- 8.3 The transitional complaints scheme has effect from 1 April 2013 and is concerned with complaints against the FSA that are ‘in train’ (i.e. underway) before 1 April 2013, or are submitted on or after 1 April 2013 and relate to the actions or inaction of the FSA which occurred before 1 April 2013.



## **9 Coverage and scope of the transitional complaints scheme**

- 9.1 The transitional complaints scheme provides a procedure for enquiring into and, if necessary, addressing allegations of misconduct by the FSA arising from the way in which it has carried out or failed to carry out its functions under FSMA. The transitional complaints scheme covers complaints about the way in which the FSA has acted or omitted to act, including complaints alleging:
- a) mistakes and lack of care;
  - b) unreasonable delay;
  - c) unprofessional behaviour;
  - d) bias; and
  - e) lack of integrity.
- 9.2 To be eligible to make a complaint under the transitional complaints scheme, a person must be seeking a remedy (which for this purpose may include an apology) in respect of some inconvenience, distress or loss which the person has suffered as a result of being directly affected by the regulators' actions or inaction.
- 9.3 The transitional complaints scheme does not apply to the Bank's functions under Part 5 of the Banking Act 2009 (overseeing inter-bank payment systems) as this was not previously subject to these complaints arrangements.

## **10 Exclusions to the transitional complaints scheme**

- 10.1 Each of the following is excluded from the transitional complaints scheme:
- a) complaints about the FSA's relationship with its employees;
  - b) complaints connected with contractual or commercial disputes involving the FSA and not connected to its functions under FSMA;
  - c) complaints in relation to the performance of the FSA's legislative functions under FSMA (including making rules and issuing codes and general guidance); and
  - d) complaints about the actions, or inactions, of the Financial Ombudsman Service, the Financial Services Compensation Scheme or the Money Advice Service.

## Annex F Glossary

<b>complaint</b>	Any expression of dissatisfaction about the way one or more of the <b>Regulators</b> or the <b>FSA</b> has carried out, or failed to carry out, its <b>relevant functions</b> .
<b>Complaints Commissioner</b>	The independent person appointed by the <b>Regulators</b> and approved by HM Treasury to be responsible for the conduct of investigations in line with the <b>Scheme</b> .
<b>complainant</b>	The person making the <b>complaint</b> .
<b>decision</b>	The decision reached by a <b>Regulator</b> when assessing one of the following: <ul style="list-style-type: none"> <li>a. whether to investigate your <b>complaint</b> under the <b>Scheme</b>;</li> <li>b. whether your <b>complaint</b> is upheld following our investigation into it;</li> <li>c. the appropriate remedy for your <b>complaint</b>; or</li> <li>d. whether to defer investigation of your <b>complaint</b> to a later date.</li> </ul>
<b>FCA</b>	The Financial Conduct Authority.
<b>FSA</b>	The Financial Services Authority which was the predecessor body of the <b>FCA</b> and the <b>PRA</b> .
<b>FSMA</b>	The Financial Services and Markets Act 2000 as amended by subsequent legislation.
<b>legislative functions</b>	The functions of the <b>Regulators</b> , including rule-making and guidance/ statement-issuing, which are set out at Section 85(4) to (7) of the Financial Services Act 2012.
<b>old FSA complaints scheme</b>	The arrangements set out in Part 8 of the <b>old Scheme</b> for dealing with complaints about the <b>FSA</b> .
<b>old Scheme</b>	The Scheme in force before [insert date the Scheme comes into force] and which is set out in Annex E
<b>PRA</b>	The Prudential Regulation Authority.
<b>relevant functions</b>	The functions of the <b>Regulators</b> which are set out at Section 85 of the Financial Services Act 2012, which do not include the <b>Regulators'</b> <b>legislative functions</b> .
<b>Regulator</b>	Any of the Financial Conduct Authority ( <b>FCA</b> ), the Prudential Regulation Authority ( <b>PRA</b> ) or the Bank of England, collectively referred to as the ' <b>Regulators</b> '.
<b>Scheme</b>	This document as maintained by the <b>Regulators</b> to investigate <b>complaints</b> against them.

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<b>Upper Tribunal</b>	The independent tribunal set up under the Tribunals, Courts and Enforcement Act 2007 for challenges to certain <b>decisions</b> made by the <b>Regulators</b> .
<b>"we", "our" or "us"</b>	The relevant <b>Regulator</b> or the <b>Regulators</b> collectively, but not the <b>Complaints Commissioner</b> .

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The response will be assessed to inform our work as a regulator and central bank, both in the public interest and in the exercise of our official authority. We may use your details to contact you to clarify any aspects of your response.

The consultation paper will explain if responses will be shared with other organisations (for example, the Financial Conduct Authority). If this is the case, the other organisation will also review the responses and may also contact you to clarify aspects of your response. We will retain all responses for the period that is relevant to supporting ongoing regulatory policy developments and reviews. However, all personal data will be redacted from the responses within five years of receipt. To find out more about how we deal with your personal data, your rights or to get in touch please visit [bankofengland.co.uk/legal/privacy](http://bankofengland.co.uk/legal/privacy).

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