

CP12/30[★]

The Bank of England and Financial Services Authority

Complaints against the regulators

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



BANK OF ENGLAND



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The Financial Services Authority and the Bank of England invite comments on this Consultation Paper. Comments should reach us by 6 February 2013.

Comments may be sent by electronic submission using the form on the FSA's website at: www.fsa.gov.uk/Pages/Library/Policy/CP/2012/cp12-30-response.shtml.

Alternatively, please send comments in writing to:

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The Bank and the FSA may make responses to formal consultation publicly available unless the respondent requests otherwise. A standard confidentiality statement in an e-mail message will not be regarded as a request for non-disclosure. A confidential response may be requested from the Bank and the FSA under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

Copies of this Consultation Paper are available to download from the FSA's website – www.fsa.gov.uk and the Bank of England's website – www.bankofengland.co.uk. Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

Abbreviations used in this paper

COAF	Complaints Against the FSA
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
PRA	Prudential Regulation Authority
the Bank	Bank of England
the Bill	The Financial Services Bill
the Scheme	the proposed complaints scheme

Where applicable, references indicating the masculine gender include the feminine and vice versa.

1

Introduction

- 1.1** The current version of the Financial Services Bill (Part 6¹) (the Bill) requires the Financial Conduct Authority (the FCA), the Prudential Regulation Authority (the PRA) and the Bank of England (the Bank) (together known as ‘the regulators’) to establish, as part of their accountability mechanisms, arrangements for the investigation of complaints against them. Part 6 of the Bill also requires the regulators to consult on these arrangements before finalising and implementing them.
- 1.2** This joint paper from the FCA, PRA and the Bank fulfils the requirement to consult in Part 6 of the Bill. We (the regulators) intend it to explain key aspects of the proposed Complaints Scheme (the Scheme) or to highlight changes to the existing arrangements. Full details of how the proposed Scheme will operate can be found in the appended draft Scheme. The regulators will adopt the new Scheme at the date of legal cutover to the new legislation (‘legal cutover’). This will be supplemented by material on how to complain.
- 1.3** The requirements for a Complaints Scheme in Part 6 of the Bill closely follow those that govern the current FSA arrangements and consist of two elements:
- a) investigation of a complaint by the regulators themselves; and
 - b) investigation of the complaint by an independent person (referred to from this point as the Complaints Commissioner).

Existing arrangements

- 1.4** The Financial Services and Markets Act 2000 (FSMA) requires the FSA to make arrangements for the ‘investigation of complaints arising in connection with the exercise of, or failure to exercise, any of its functions (other than its legislative functions)’.
- 1.5** In operation for over a decade, the FSA complaints scheme has been an effective and efficient way of dealing with complaints. Recognising how closely the requirements set out

¹ This refers to Part 6 of the version of the Bill as amended by the House of Lords in Committee.

in Part 6 of the Bill mirror those in FSMA, we propose adopting a very similar approach for the new Scheme.

Next steps

- 1.6** We are asking for your comments on our proposed Scheme by 6 February 2013. We will then consider your responses and publish a Policy Statement, summarising that feedback and setting out the new Scheme.

2

Scope and coverage of the proposed complaints scheme

- 2.1** Part 6 of the Bill requires the regulators to make arrangements for ‘the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of their relevant functions’. The relevant functions of the FCA and the PRA are their functions other than their legislative functions. The relevant functions of the Bank are its functions under Part 18 of FSMA (recognised clearing houses) or under Part 5 of the Banking Act 2009 (inter-bank payment systems), other than its legislative functions.
- 2.2** Legislative functions – complaints about which are excluded from the proposed Scheme – are defined in Part 6 for each regulator.
- 2.3** Section 3 of the draft Scheme, appended to this paper, provides full details on the coverage of and exclusions from the proposed Scheme.

Q1: Please let us know what you think of the coverage of the proposed Scheme.

3

Investigation of complaints by the regulators themselves

- 3.1 The regulators propose to operate the Scheme broadly in line with the way that the FSA complaints scheme currently operates. Additional processes will enable the regulators to investigate complaints where allegations have been made against more than one of them.
- 3.2 The regulators are committed to dealing with all complainants fairly and equally. We will endeavour to meet the varied needs of complainants and to make the proposed Scheme accessible to all who choose to use it. No charge will be made by the regulators or by the Complaints Commissioner to those who use the Scheme.
- 3.3 In line with the requirement in Part 6 of the Bill, the regulators will complete their investigations as quickly as possible. The regulators will deal with a complaint within four weeks or, where this is not possible, they will write to the complainant within this time, setting out a timetable for dealing with the complaint. The regulators are committed to transparency in the arrangements of the proposed Scheme. The regulators will publish data on levels of compliance with their service standards and other information annually. A complainant who is dissatisfied with the outcome of the regulators' investigation, or who considers that the regulators are taking too long without explanation to investigate a complaint, will be entitled to refer the complaint to the Complaints Commissioner.
- 3.4 As is the case under the current complaints scheme (set out in the Complaints Against the FSA section of the FSA Handbook, specifically COAF 1.5.13 (G)), a complaint relating to ongoing regulatory action by the regulators (for example, authorisation, investigation, prosecution or discipline), whether in relation to the complainant or a third party, ought not, in our view, impede the continuation of such action (or, if necessary, the taking of further action).

4

Cooperation between the regulators

- 4.1 As stipulated in Part 6 of the Bill there will be a single complaints scheme operating across the three regulators. However, investigation of complaints will fall to the relevant regulator(s) (information on how we propose to do this is set out in the appended draft Scheme).
- 4.2 The regulators must cooperate with each other to ensure that the proposed Scheme operates as one. This is particularly relevant when they are required to investigate complaints that may incorporate allegations against more than one of the regulators.
- 4.3 To ensure the proposed Scheme is unified, the FCA will process complaints submitted centrally through the published complaints helpline number or email address, even if the complaint is about one of the other regulators. It will be responsible for recording details of the complaint and assigning it to the relevant regulator(s) for action. The FCA will not become involved in the handling of complaints by the other regulators. We will review this process to ensure that it operates efficiently.

Q2: Please tell us what you think about the operational aspects of the proposed Scheme.

5

Transitional arrangements

- 5.1 We propose that the Scheme will only apply to complaints made about the way in which the regulators carry out their functions under the Bill and Part 5 of the Banking Act 2009 (or under other legislation which provides for access to the Scheme).
- 5.2 For complaints that are already underway at legal cutover, as well as complaints that are about the actions of the FSA but are received after implementation of the Bill (both of which will be referred to as ‘Transitional complaints’), we propose the following arrangements:
- a) ‘Transitional complaints’ will be investigated according to the procedures set out in the ‘transitional complaints scheme’ contained in the draft Scheme in Appendix 1 of this paper. This is in most respects the same as the current scheme set out in the FSA Handbook (COAF). The Complaints Commissioner will deal with all complaints referred to him in line with the appropriate arrangements.
 - b) The proposed transitional arrangements will 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.

Previous transitional arrangements

- 5.3 As stated above, we intend to use the FSA’s existing complaints scheme as the new ‘transitional complaints scheme’. This is with the exception of the transitional arrangements contained in that scheme at COAF 2.1 (G) – COAF 2.5.2 (G) inclusive. These sections relate to the arrangements for the investigation of complaints:
- a) arising in connection with the exercise before the commencement day of any functions conferred on the FSA by or under any enactment (other than FSMA), or the failure to exercise any such function before commencement; or

- b) against the Personal Investment Authority, the Investment Management Regulatory Organisation or the Securities and Futures Authority in respect of matters arising before the 'commencement day'.

5.4 'Commencement' and 'commencement day' means 1 December 2001, when the FSA was granted its statutory powers. Recent experience suggests that very few, if any, complaints have been received that fall to be investigated under these arrangements. As the events in question would have taken place well over ten years ago, there would be practical difficulties in the way of now carrying out an effective investigation. Also, remedies available under the current FSA transitional arrangements do not include an ex gratia compensatory payment. In the circumstances, the regulators consider that there is limited, if any, value in maintaining the current transitional arrangements. The current FSA transitional scheme will therefore close when the Bill is implemented. No new complaints related to matters which would fall under paragraph 5.3 a) and b) above will be investigated by the regulators. The proposed 'transitional complaints scheme' appended to this paper will deal only with complaints as outlined in paragraphs 5.1 and 5.2 above.

Q3: Please tell us what you think about the proposed transitional arrangements.

6

The Complaints Commissioner

- 6.1** Part 6 of the Bill requires the regulators to appoint an independent person to be responsible for the conduct of investigations in line with the Scheme.
- 6.2** We envisage that 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. The approval of HM Treasury is required for the appointment or dismissal of the Complaints Commissioner.
- 6.3** We propose that the current Complaints Commissioner, Sir Anthony Holland, should remain in place from legal cutover until 5 April 2014 and that he will (subject to transitional arrangements) be able to investigate complaints against the regulators. Subsequent recruitment of the Complaints Commissioner will be carried out in line with paragraph 4.2 of the draft Scheme (see Appendix 1) and we propose that the recruitment will be a tenure of three years.
- 6.4** Although the regulators will fix the Complaints Commissioner's terms and remuneration, the Commissioner will not be an employee, member or officer of the regulators and will remain completely independent of them. Further information regarding the appointment and tenure of the Complaints Commissioner is provided in section 4 of the draft Scheme (in Appendix 1).

Q4: Please tell us what you think about the proposed arrangements for the appointment and tenure of the Complaints Commissioner.

The Complaints Commissioner's staff and resources

- 6.5** The administration of complaints referred to the Complaints Commissioner will be undertaken by the Office of the Complaints Commissioner, under the direction of the Complaints Commissioner, and the Office will remain staffed by individuals who do not work for the regulators. It will be for the Commissioner to decide the detail of any arrangements within the Office of the Complaints Commissioner.
- 6.6** The costs of the Complaints Commissioner and the operating expenses of the Office – and any compensatory payments which the regulators agree to make – will be met by the regulators. The regulators are committed to providing the resources necessary to enable the Commissioner to carry out his functions as he sees fit. This could include, in appropriate cases, paying for external resources. The regulators envisage agreeing an annual budget with the Complaints Commissioner. In this context the regulators will have regard to the efficient and economic use of their resources.

Q5: Do you agree with our proposed arrangements for administrative and other support for the Complaints Commissioner?

Reporting on the results of investigations

- 6.7** Part 6 of the Bill requires the Complaints Commissioner to report to the complainant and to the regulators on the results of his investigation. Where he decides that a complaint is well-founded, or where he is critical of the regulators, the regulators will be required to inform the Complaints Commissioner and the complainant of the steps they propose to take in response to the report. In addition, the Complaints Commissioner will be able to publish all or any part of any report he makes at the end of an investigation. He may also require the regulators to publish the whole or a specific part of their response to criticisms made against them in that report.
- 6.8** When publishing any report (or part of a report), the Complaints Commissioner will have regard to applicable statutory restrictions relating to the disclosure of confidential information (as will the regulators in publishing all or any part of their response). Regulations governing the Complaints Commissioner's ability to disclose information already exist in the secondary legislation made under Section 349 of FSMA and the regulators expect these to continue in force following implementation of the Bill. For the Bank's statutory function of overseeing inter-bank payment systems we expect HM Treasury to make similar arrangements under the Banking Act 2009.

Q6: Do you agree with our proposed arrangements for reporting on the results of investigations?

7

Compensatory payments on an *ex gratia* basis by the regulators

- 7.1 Part 6 of the Bill gives the Complaints Commissioner power to recommend that the regulators make a compensatory payment on an *ex gratia* basis (ie given as a gesture of goodwill, rather than because it is owed) to the complainant. The regulators would expect the Complaints Commissioner to indicate in any such case the amount considered appropriate.
- 7.2 In deciding on compensatory payments, the Complaints Commissioner will take into account 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.
- 7.3 It will be for the regulators to decide whether, in any particular case (whether following an investigation by the regulators themselves or by the Complaints Commissioner), to make a compensatory payment on an *ex gratia* basis.

Q7: Please tell us what you think of the proposed approach to making compensatory payments on an *ex gratia* basis to those whose complaints are upheld.

8

Publication of the proposed complaints scheme

- 8.1** Part 6 of the Bill requires the regulators to publish details of the proposed Scheme and to 'have regard to' any representations made within the specified time. Following this consultation, we will finalise and publish details of the Scheme. We will also make available in hard copy and via the regulators' websites a booklet designed to explain the complaints process to actual and potential complainants.
- 8.2** The FSA previously published information on the complaints scheme in the FSA Handbook. The regulators will instead publish the relevant material on their respective websites, and the current Complaints Against the FSA (COAF) Handbook chapter will be deleted and therefore not carried forward by the new regulators. Any references to COAF that are contained within the rest of the Handbook will be amended or deleted as appropriate.

Annex 1

Cost benefit analysis

1. The change we are proposing here is a result of the changes imposed by the current draft of the Financial Services Bill. They are designed as closely as possible to maintain the current approach to complaints handling in the new regulatory system. The benefits of the current system should be maintained as complaints will go through the same process following legal cutover. There may be some duplication of costs as each regulator will need to deal with complaints. However, as the number of complaints is not expected to change significantly, and the number of complaints is the main determinant of costs, we expect minimal incremental costs.

Compatibility statement

Statement of compatibility with the regulators' general duties under the Bill

2. The proposals in this consultation are designed to help the regulators ensure that they deal with complaints in a proportionate and efficient way.

Compatibility with the principles of good regulation

3. These proposals are designed to help the regulators use their resources in the most efficient and economic way.

Why these proposals are the most appropriate

4. These proposals will allow the regulators to adopt a cost-effective, graduated approach to complaints handling, so the resources they use are appropriate to the nature and seriousness of the complaints they receive.

Requirement under the current version of Part 6 of the Financial Services Bill to maintain a complaints scheme

5. The regulators are required under the Bill to make arrangements for the investigation of complaints. Part 6 of the Bill states that:

‘The regulators must:

- a) make arrangements (‘the complaints scheme’) for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of their relevant functions, and
- b) appoint an independent person (‘the investigator’) to be responsible for the conduct of investigations in accordance with the complaints scheme.’

Annex 2

List of questions

- Q1:** Please let us know what you think of the coverage of the proposed Scheme.
- Q2:** Please tell us what you think about the operational aspects of the proposed Scheme.
- Q3:** Please tell us what you think about the proposed transitional arrangements.
- Q4:** Please tell us what you think about the proposed arrangements for the appointment and tenure of the Complaints Commissioner.
- Q5:** Do you agree with our proposed arrangements for administrative and other support for the Complaints Commissioner?
- Q6:** Do you agree with our proposed arrangements for reporting on the results of investigations?
- Q7:** Please tell us what you think of the proposed approach to making compensatory payments on an ex gratia basis to those whose complaints are upheld.

Appendix 1

Draft Complaints Scheme

References to the Financial Services Bill contained within the Scheme will be amended to reflect the relevant sections of the new Financial Services Act when the legislation receives Royal Assent.

1. About the Complaints Scheme

- 1.1** Part 6 of the Financial Services Bill (the Bill) 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) or 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 hereafter 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 the date of legal cutover to the new legislation ('legal cutover').

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 Part 6 of the Bill.

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 relevant 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 to their functions under the Bill;
- c) in relation to the performance of the regulators' legislative functions under the Bill and Part 5 of the Banking Act 2009 (including making rules and issuing codes and general guidance);
- d) about the actions, or inactions, of the Bank that do not relate to its functions under Part 18 of FSMA (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 the Bill (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 the 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;
 - c) and subject in either event to the approval of HM Treasury.
- 4.4 The Complaints Commissioner and his 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 properly fulfil his role under the Scheme.
- 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 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 orally will be asked to confirm their complaint in a durable medium.
- 5.5 A complaint made orally 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 resolve 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 that 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 of 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 his office outside the three months 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 be deferring the investigation of their complaint (circumstances where complaints may be deferred are covered in paragraph 3.7), 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); or
 - b) the Upper Tribunal; or
 - c) any other tribunal established by legislative authority (whether in the United Kingdom or elsewhere); or
 - 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 his discretion, any disagreements or comments notified to him. 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 The Complaints Commissioner will each year submit to the regulators, for publication:
- a) a report on investigations concluded during the 12-month period ending 31 March. The report may include information concerning trends in the subject matter of complaints and on the general lessons which he considers the regulators should learn; and
 - b) information on his activities during that year, including such matters as the approach he adopted to handling different types of complaint and the extent to which he met his service standards for dealing with complaints (the Complaints Commissioner will set these standards).

8. About the transitional complaints scheme

- 8.1 In line with the Bill, 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 legal cutover and is concerned with complaints against the FSA that are 'in train' (ie underway) before legal cutover, or are submitted on or after legal cutover and relate to the actions or inactions of the FSA which occurred before legal cutover.

9. Coverage and scope of the transitional complaints scheme

- 9.1 The transitional complaints scheme provides a procedure for inquiring 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 inactions.

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.

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