

PS13/7

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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This Policy Statement reports on the main issues arising from Consultation Paper 12/30 (*Complaints against the regulators*) and publishes final rules.

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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

FCA	Financial Conduct Authority
PRA	Prudential Regulation Authority
the Bank	Bank of England
the 2012 Act	the Financial Services Act 2012
FSMA	Financial Services & Markets Act 2000
COAF	Complaints Against the FSA (FSA Handbook Chapter)
the Scheme	the complaints scheme
FSA	the Financial Services Authority
CP12/30	Consultation Paper 12/30 ‘Complaints against the regulators (Bank of England, the Financial Conduct Authority and the Prudential Regulation Authority)’

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

1

Introduction

- 1.1** In November 2012, the Financial Conduct Authority (the FCA), the Prudential Regulation Authority (the PRA) and the Bank of England (the Bank) (together known as ‘the regulators’) published proposals for the new complaints scheme. This Policy Statement provides feedback on the responses we have received and contains the final Complaints Scheme (the Scheme).

Background

- 1.2** Part 6 of the Financial Services Act 2012 (the 2012 Act) requires the regulators to establish, as part of their accountability mechanisms, arrangements for the investigation of complaints against them. Section 86 of the 2012 Act also requires the regulators to consult on these arrangements before finalising and implementing them.
- 1.3** The requirements for a complaints scheme in Part 6 of the 2012 Act closely follow those that govern the current Financial Services Authority (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).
- 1.4** 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 in Part 6 of the 2012 Act mirror those in the Financial Services & Markets Act 2000 (FSMA), the regulators proposed adopting a very similar approach for the new Scheme.

Responses

- 1.5 The consultation period closed on 6 February 2013 and 18 responses were received. Eight of these were from consumers and ten were from firms and industry representatives.
- 1.6 This Policy Statement summarises the comments received and sets out the regulators' responses to them. In doing this the regulators have sought to address the main points of interest. The final Scheme can be found in the Appendix to this Policy Statement.

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Summary of responses to CP12/30

- 2.1** This chapter reports on the responses received to the questions posed in CP12/30, and sets out the views of the regulators on those responses.
- 2.2** Some respondents had overall comments on the proposed arrangements, wider than those sought from the questions posed in CP12/30.
- 2.3** As stated in CP12/30, the new Scheme will no longer be part of the Handbook but instead will be a standalone document published by the regulators. As a part of the Handbook, any changes to the FSA complaints scheme required consultation. A question was raised as to how future changes to the Scheme will be made given its new status. Section 86(10) of Part 6 of the 2012 Act requires that any future proposal to alter or replace the Scheme is consulted on by the regulators.
- 2.4** Some respondents also commented on the cost benefit analysis (CBA), stating that the new supervisory approach by the regulators will lead to more challenge of the regulators and more complaints. It was felt that this higher volume should have been reflected in the CBA. The new arrangements were mainly based on historic experience of operating the FSA complaints scheme, but they have been tested for robustness if volumes increase. The regulators appreciate the need to keep reviewing the position to ensure the Scheme can remain effective in a changing environment.

Responses to individual questions from CP12/30

Scope and coverage of the complaints scheme

- 2.5** The scope of the Scheme, as defined by Part 6 of the 2012 Act, 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 (overseeing recognised clearing houses) and under Part 5 of the Banking Act 2009 (overseeing inter-bank payment systems), other than its legislative functions.

- 2.6 Legislative functions are defined in Section 85(4) to (7) of the 2012 Act for each regulator.
- 2.7 The proposed Scheme states that complaints such as, but not limited to, complaints about the actions, or inactions, of the Financial Ombudsman Service (FOS), the Financial Services Compensation Scheme (FSCS) or the Money Advice Service would be excluded.
- 2.8 CP12/30 also sets out proposals for circumstances where the regulators may not investigate a complaint under the Scheme. This would be where the regulators considered that:
- a) it amounted to no more than dissatisfaction with the regulators' general policies or use of discretion where no misconduct is alleged; or
 - b) the complaint would be more appropriately dealt with in another way.

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

- 2.9 Responses received from consumers focused very much on the proposed exclusion of complaints about the actions, or inactions of the FSCS. Some general comments also suggested that the FSCS does not have in place an effective external appeal system.

The regulators' response

The purpose behind consulting on the new complaints scheme was to make arrangements for the three new regulators in accordance with section 84(1) (a) of the 2012 Act, which states that the regulators must 'make arrangements for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of their relevant functions'. As stated in CP12/30, recognising the similarities between the new requirements for a complaints scheme and those set out in FSMA, the intention was to mirror the current FSA complaints arrangements for the most part and not to make significant changes.

To add the FSCS to the new scheme covering the Bank, the FCA and the PRA would require legislative changes.

While FSMA requires that the FCA and PRA take such steps as may be necessary to ensure the FSCS can fulfil its functions, FSMA also requires that the FCA and the PRA appoints the directors of FSCS on terms that ensure they run the FSCS scheme independently of the FCA and the PRA. So the FCA and the PRA would not

intervene in individual claims. If a claimant is unhappy about a decision made by the FSCS, they may complain by following the complaints policy set out on the FSCS's website.

2.10 Respondents commented that the 2012 Act had given the regulators new powers and that this, along with the regulators' new supervisory approaches, creates a need to expand the coverage of the Scheme to take into account situations where:

- a) guidance issued by a regulator is felt to be excessive/disproportionate; or
- b) a regulator(s) has used its powers in a way that the complainant believes to be unreasonable, disproportionate or unfair.

The regulators' response

With regard to point (a) above, the issuing of guidance by the regulators under FSMA is stated in section 85 of the 2012 Act to be a legislative function and therefore is outside the scope of the new Scheme (as is the position under the current FSA Scheme). With regard to point (b) above, such complaints can be investigated under the new Scheme, as they can under the present FSA Scheme.

Changes to the scope of the new Scheme would involve further legislative changes.

The investigation of complaints by the regulators themselves

- 2.11** The regulators proposed that, in line with the current FSA scheme, there would be two distinct stages to the new Scheme. Stage 1 would involve an investigation by the regulators themselves and Stage 2 would be an investigation carried out by the Complaints Commissioner if the complainant is not satisfied with progress on or the result of a Stage 1 investigation. There will be no charge made by the regulators or by the Complaints Commissioner to those who use the Scheme. Conversely, for this reason, reimbursement will not be made of costs incurred if complainants decide to employ someone to complain on their behalf.
- 2.12** The regulators will aim, where possible, to complete an investigation within four weeks of receiving a complaint but, where that is not possible, they will write to complainants and set out a time frame for the investigation. The regulators have also stated a commitment to be transparent and publish data on levels of compliance with service standards and other information annually.
- 2.13** CP12/30 recognised the need for cooperation between the regulators, specifically where complaints contain allegations against more than one regulator, but also to make sure that the Scheme is unified. To ensure that this happens, the regulators also proposed that the FCA would be responsible for processing complaints submitted centrally through the published complaints helpline number or email address, even where the complaint relates to one of the other regulators.

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

- 2.14** Responses on the proposals for operating the Scheme were generally positive, specifically for the centralisation of the complaints process. Respondents requested clarity on the service level arrangements between the regulators for sharing relevant information and for transferring the complaint to the relevant authority.
- 2.15** Comments were received regarding the perceived removal of the fast track process that exists in the current FSA scheme (COAF 1.5.1 D). Respondents felt that the fast track process, which allowed for the handling of a complaint on a local level, was useful in some circumstances. However, by contrast some respondents felt that complaints should always be investigated independently of the department or individuals about which a complaint was made.
- 2.16** Paragraph 6.2 of the draft Scheme, appended to CP12/30, set out that Stage 1 investigations would be carried out by a suitably senior member of staff. Respondents have requested clarity on what the regulators consider to be a suitably senior member of staff as the level of seniority is not defined.

The regulators' response

The regulators are in the process of agreeing appropriate service level arrangements to ensure an efficient and cooperative approach. When an agreement is finalised we intend to publish the document on each of the regulators' websites.

The regulators consider that there is value in some complaints being dealt with at a local level. Although the fast track process does not exist in the new Scheme by name, the option to deal with complaints at a local level does and detail can be found in paragraphs 5.7 to 5.10 of the new Scheme. Although being dealt with at a local level, a complaint will be investigated by a person who is not the subject of the complaint and is suitably senior.

The term 'suitably senior member of staff' is hard to define in terms of a person with a particular job title or level of seniority, as this will be assessed on a case-by-case basis. We will have processes in place to ensure that an appropriate person will carry out the investigation. The arrangements for investigations, along with the management of the overall complaints process, is subject to independent review by the Complaints Commissioner.

Transitional arrangements

- 2.17 The proposals outlined that the transitional complaints scheme would apply to complaints that are underway at legal cutover (1 April 2013) as well as complaints about the actions of the FSA that are received after 1 April 2013. The transitional complaints scheme proposed is much the same as the Scheme, with the exception of some differences to the scope and coverage of the Scheme.
- 2.18 CP12/30 explained that it was not the regulators' intention to carry forward the transitional complaints scheme currently in the FSA's complaints scheme, which applied to complaints about some of the FSA's predecessor organisations or the actions of the FSA before 1 December 2001.

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

- 2.19 Most respondents had no comments on the proposed transitional arrangements, although some commented that they seemed reasonable and suitable. Some consumers focused again on the exclusion of complaints against the FSCS in paragraph 10.1 (d) of the proposed Scheme.

The regulators' response

This point is addressed in the response to question 1 and the regulators do not have any further comments at this stage.

The Complaints Commissioner

- 2.20 The regulators proposed that the current Complaints Commissioner, Sir Anthony Holland, should remain in place from 1 April 2013 until 5 April 2014 and that he should be able to investigate complaints relating to all three regulators.
- 2.21 The regulators suggested that, going forward, in appointing the Complaints Commissioner the FCA would be responsible for the recruitment administration. Following a selection process to be agreed by the regulators, the appointment of a suitable person to carry out the role would be made by the regulators. This appointment would however be subject to approval by HM Treasury.
- 2.22 The proposal stated that the regulators would fix the Complaints Commissioner's terms and remuneration and suggested that, going forward, he would be appointed for a period of three years and may only be dismissed from office for specific reasons, detailed in the Scheme.

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

- 2.23 The responses received on this point were positive. Respondents were particularly pleased that, although the regulators will appoint the Complaints Commissioner, there is a requirement for HM Treasury to approve the appointment. This was felt to be a sensible governance measure.

The Complaints Commissioner's staff and resources

- 2.24 The proposals were that the administration of complaints referred to the Complaints Commissioner would be undertaken by the Office of the Complaints Commissioner, which would be staffed by individuals who do not work for the regulators. CP12/30 also set out that the costs of the Complaints Commissioner and his office, as well as any compensatory payments which the regulators agreed to make, would be met by the regulators. A budget would be agreed by the regulators and the Complaints Commissioner on an annual basis.

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

- 2.25 We received several comments regarding the budget for the Office of the Complaints Commissioner (OCC), specifically, how this is to be set and how it is to be funded. Some respondents felt that the cost of running the complaints arrangements should be apportioned across firms for whom the Scheme is being run. One respondent suggested that, as the complaints arrangements are funded by the industry, the OCC's budget should be consulted on annually. Some suggested that the cost of running the OCC should instead be met by the Government, so that the OCC is not funded by the regulators that they review.
- 2.26 The opinion shared by a few respondents was that budgetary constraints should not limit the fair investigation of legitimate complaints.

The regulators' response

As with the current FSA Scheme, the cost of running the Scheme will ultimately be paid by the industry. Section 87(2)(b)(i) states that the regulators must provide the Complaints Commissioner with the means to conduct a full investigation of complaints. Further, section 87 (2) (c) states that the complaints scheme must provide for the meeting by the regulators of the expenses of the Scheme. Therefore any change to the funding arrangements of the Scheme would require a legislative change.

The current Complaints Commissioner, Sir Anthony Holland, has been entirely happy with the funding arrangements and has not been of the view that the current system affects his independence, impartiality or his ability to investigate complaints effectively.

Reporting on the results of investigations

- 2.27 Part 6 of the 2012 Act requires the Complaints Commissioner to report to the complainant and the regulators on the results of his investigations. The proposals set out that the Commissioner will be able to publish all or any part of any report he makes at the end of his investigation. CP12/30 also set out that in publishing any report that the Commissioner would have regard to applicable statutory restrictions relating to the disclosure of confidential information. Regulations governing the Commissioner's ability to disclose information already exist in the secondary legislation made under section 349 of FSMA.

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

- 2.28 The majority of respondents to CP12/30 did not provide comments on this question. From the responses we did receive it appears that there is a consensus that the arrangements are suitable and transparent. However, there were requests for clarity on where the reports are published and the usefulness of publishing them on the OCC's website. One respondent also suggested that the Complaints Commissioner should 'comply with' and not simply 'have regard to' the applicable statutory restrictions to disclosing information.

The regulators' response

The final reports made by the Complaints Commissioner after the conclusion of a Stage 2 investigation, where a complaint has been upheld, will be published both on the OCC's website and on the respective regulators' website and be accessible to anyone who wants to view them. As well as publishing his final report the Complaints Commissioner will also produce an annual report, which will contain general lessons which he considers the regulators should learn as well as information concerning trends in the subject matter of complaints. These arrangements reflect the position under the current FSA scheme.

With regard to the disclosure of confidential information, the Complaints Commissioner is governed by the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001. These regulations state that the Commissioner is permitted to disclose confidential information if it enables or helps him to carry out his functions.

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

2.29 Part 6 of the 2012 Act gives the Complaints Commissioner the power to recommend that the regulators make a compensatory payment. The proposals in CP12/30 outlined that we would propose to continue to do this on an *ex gratia* basis (i.e. given as a gesture of goodwill rather than because of a legal obligation) to the complainant. The regulators stated they would expect the Commissioner, in deciding on compensatory payments, to take into account matters such as the source of the funds to make the payment.

*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.*

2.30 Respondents thought that *ex gratia* payments were a welcome inclusion in the Scheme. However, many respondents commented that the Complaints Commissioner's recommendations appear unenforceable.

2.31 Some respondents felt that the regulators should be more transparent and that guidance on how *ex gratia* payments are calculated would be useful, along with information on where the payments come from. It was suggested that the source of the funding for *ex gratia* payments should be drawn from the funds that the regulators receive from penalties (less enforcement costs), which under the new regime will be retained by HM Treasury. One respondent suggested that the regulators should have professional indemnity insurance to cover any *ex gratia* payments.

The regulators' response

Compensatory payments for a scheme of this kind (which is similar to other public sector ombudsman schemes) are unenforceable (which is the reason why any payments are described as being made on an *ex gratia* basis). It is also the reason why the Complaints Commissioner can only recommend but not instruct the regulators to make a payment. However, we note that the FSA has, to date, never declined to make a payment that has been recommended by the Commissioner.

The *ex gratia* payments that have been offered under the existing FSA scheme have been made infrequently and have not been large. They are calculated on a case-by-case basis and are intended to put a complainant in the position they would have been, had there not been fault on the regulators' part. Factors, which will be taken into account include the nature of the harm suffered by the complainant, whether the complainant or a third party contributed to the harm suffered and the fact that ultimately the cost is covered by the industry. With regard to the suggestion that *ex gratia* payments should come out of the funds

retained by HM Treasury from penalties levied against regulated firms, this is a policy matter for HM Treasury. Their present view, however, is that money raised by British authorities from banks for their misdemeanours and recklessness in financial markets will be used as a force for good and go to people and causes that demonstrate the best of British values.

Annex 1

List of non-confidential respondents

Association for Financial Markets in Europe

RBS Group plc

CHAPS Co Clearing Company

Aviva UK Life

British Bankers' Association

Royal & Sun Alliance Insurance plc

Investment & Life Assurance Group

Building Societies Association

Mr D Rees-Jones

Mr M Vleugels

Ms S Gubbins

Mr B Merifield

Mr R Snuggs

Ms P Wright

B Pashley

Mr P Howard

Ms G Sharpe

Appendix 1

Complaints Scheme

1. **About the Complaints Scheme**

- 1.1 Part 6 of the Financial Services Act 2012 (the 2012 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 Section 85(4) to (7) of the 2012 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) for 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 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 2012 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 that 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 that 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 connected with, or that 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 that gives access to the Scheme) that 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 his office;

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 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 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 the subject of 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 about 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 that 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 that falls within the scope of the Scheme and 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 this communication.

- 6.5 The relevant regulator(s) must take appropriate steps to coordinate 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 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 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 (for example if the relevant regulator(s) have decided to defer the investigation of a complaint as detailed in paragraph 3.7), 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;
 - c) any other tribunal established by legislative authority (whether in the UK 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 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; and
 - 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

- 7.1 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 their activities during that year, including such matters as the approach they adopted to handling different types of complaint and the extent to which they 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 2012 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 comes into 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. 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.

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