



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



Complaints against the Regulators: The Scheme

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1. About the Complaints Scheme

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

2. Definitions

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

3. Coverage and scope of Scheme

3.1. The Scheme covers complaints about the way in which the regulators have acted or omitted to act, including complaints alleging:

- a) mistakes and lack of care;
- b) unreasonable delay;
- c) unprofessional behaviour;
- d) bias; and
- e) lack of integrity.

3.2. Complaints can be made by anyone who is directly affected by the way in which the regulators have carried out their functions, or anyone acting directly on such a person's behalf, provided that the complaint meets the requirements of the Scheme. To be eligible to make a complaint under the Scheme, a person must be seeking a remedy (which for this purpose may include an apology) in respect of some inconvenience, distress or loss which the person has suffered as a result of being directly affected by the regulators' actions or inaction.

3.3. Complaints should be made within 12 months of the date on which the complainant first became aware of the circumstances giving rise to the complaint. Complaints made later than this will be investigated under the Scheme only if the complainant can show reasonable grounds for the delay.

Exclusions to the Scheme

3.4. Excluded from the Scheme are complaints:

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

Circumstances where the regulators will not investigate

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

Complaints that are more appropriately dealt with in another way

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

Investigations that may be deferred

- 3.7. A complaint which is connected with, or which arises from, any form of continuing action by the regulators will not normally be investigated by either the regulators or the Complaints Commissioner until the complainant has exhausted the procedures and remedies under FSMA (or under other legislation which provides for access to the Scheme) which are relevant to that action. The complainant does not have to be the subject of continuing action by the regulators for this provision to be engaged. An investigation may start before those procedures are completed if, in the exceptional circumstances of the case, it would not be reasonable to expect the complainant to await the conclusion of the regulators' action and that action would not be significantly harmed.

4. The Complaints Commissioner

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

5. Procedure

Telling complainants how the Scheme works

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

The regulators' initial analysis of complaints

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

Asking for information in writing

- 5.4. Firms complaining verbally will be asked to confirm their complaint in a durable medium.
- 5.5. A complaint made verbally by a consumer will be investigated by the relevant regulator(s). However, if the relevant regulator(s) require clarification as to the nature or scope of the complaint, the remedy sought or any factual information that supports the complaint, the relevant regulator(s) will invite the complainant to provide further details in a durable medium.
- 5.6. The relevant regulator(s) may not be able to progress their investigation of a complaint until they have received the information described above.

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

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

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

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

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

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

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

- 6.11. When the relevant regulator(s) have told a complainant in writing that they will not be investigating their complaint, they will also notify the Complaints Commissioner of this fact. The Complaints Commissioner will not review the relevant regulator(s)' decision unless the complainant requests this. Where the complainant does request this, the Complaints Commissioner will decide whether the complaint falls within the scope of the Scheme and, if so, whether it would be appropriate to conduct an investigation.
- 6.12. If a complaint is referred or notified to the Complaints Commissioner before the relevant regulator(s) have had the opportunity to conduct or complete an investigation, the Complaints Commissioner will consider whether it would be desirable to allow the relevant regulator(s) that opportunity before conducting their own investigation.

6.13. Paragraph 6.12 also applies to a complaint received by the Complaints Commissioner when they are conducting a Stage 2 investigation into another complaint from the same complainant.

6.14. The Complaints Commissioner will not investigate any complaint which is outside the scope of the Scheme, but the final decision on whether a particular case is so excluded rests with the Complaints Commissioner.

6.15. In the investigation of a complaint by either the relevant regulator(s) or the Complaints Commissioner, any finding of fact of:

- a) a court of competent jurisdiction (whether in the UK or elsewhere);
- b) the Upper Tribunal; or
- c) any other tribunal established by legislative authority (whether in the United Kingdom or elsewhere);
- d) any independent tribunal charged with responsibility for hearing a final appeal from the regulatory decisions of the regulators;

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

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

7.Stage 2: Conduct of investigations by the Complaints Commissioner

- 7.1. The Complaints Commissioner must at all times act independently of the regulators; they may conduct an investigation in whatever manner they think 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 their behalf but subject to their 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 they 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 their 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 their report (or any part of it) if they consider 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 the Complaints Commissioner has criticised the relevant regulator(s) in their 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 their 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 them relating to the disclosure of confidential information.

Reports

7.16. The Complaints Commissioner will prepare a report on their investigations under the Scheme concluded during the 12-month period ending 31 March (the annual report), publish it and send a copy to each regulator and to HM Treasury.

7.17. Each regulator will respond to any recommendations or criticisms relating to it in the report, publish the response and send a copy of it to the Complaints Commissioner and HM Treasury.

7.18. HM Treasury will lay the annual report and any response to it before Parliament.

7.19. The annual report must in particular include:

- a) information concerning any general trends emerging from the investigations undertaken during the reporting period;
- b) any recommendations which the investigator considers appropriate as to the steps a regulator should take in response to such trends;
- c) a review of the effectiveness during the reporting period of the procedures (both formal and informal) of each regulator for handling and resolving complaints which have been investigated by the investigator during the reporting period;
- d) an assessment of the extent to which those procedures were accessible and fair, including where appropriate an assessment for different categories of complainant; and
- e) any recommendations about how those procedures, or the way in which they are operated, could be improved.

8. About the transitional complaints scheme

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

9. Coverage and scope of the transitional complaints scheme

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

10. Exclusions to the transitional complaints scheme

10.1. Each of the following is excluded from the transitional complaints scheme:

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