

Appendix 4: Complaints against the FSA 2012/13

The Financial Services and Markets Act 2000 (FSMA) required the FSA to have arrangements for investigating complaints made against it. Throughout the year covered by this report the process for investigating such complaints continued to operate in accordance with the scheme set out in the FSA Handbook, *Complaints against the FSA* (“COAF”). This report covers the operation of that scheme in 2012/13.

Changes to the Complaints Scheme

The scheme referred to above ceased to have effect on 31 March 2013. On 1 April 2013, as part of the wider changes to the regulatory structure, a new scheme for dealing with complaints against the regulators was introduced. This new scheme covers complaints made against the FCA and is extended to include the PRA and the Bank of England (in relation to certain functions). The new scheme adopts a very similar approach to that of the old scheme and, for this reason, many features of the previous scheme (set out below) are carried forward into the new scheme.

The new scheme was introduced following consultation by the FSA and Bank of England in November 2012. The Policy Statement setting out details of the new scheme was published in March 2013. Details of the current scheme can be found on the FCA’s website:

<http://www.fca.org.uk/your-fca/complaints-scheme>

Under the arrangements made for introducing the FCA, certain transitional provisions were made to ensure that any complaints investigations against the FSA that were still to be concluded at 1 April 2013 automatically fell to be continued by the FCA.

How the scheme operated

In common with the revised scheme introduced on 1 April 2013, the FSA scheme operated in two stages. First, complaints that fell within the scope of the scheme were investigated by the FSA – ‘stage one’. Then, if the complainant remained dissatisfied, the matter could be referred to the Independent Complaints Commissioner (the Commissioner), Sir Anthony Holland – ‘stage two’. The Commissioner has published a separate report on his work, to which a response is made in Appendix 5 of this Annual Report.

Within stage one, complaints were considered under:

- a) the Fast Track scheme, which dealt with complaints against the actions or inactions of the FSA under FSMA that were assessed as ‘low impact’ and could be answered within five working days from when the local area involved in the complaint received it; or
- b) the main scheme, which dealt with complaints against the actions or inactions of the FSA under FSMA; or
- c) the transitional scheme, which dealt with complaints against the actions or inactions of predecessor bodies under previous legislation.

Under these arrangements, at the earliest opportunity all complainants were sent a leaflet about the operation of the scheme, which explained their rights under it. The FSA aimed to investigate complaints against it as quickly as possible and had service standards in place for handling these complaints.

All stage one investigations were conducted by a member of staff not involved in the matter that gave rise to the complaint. If a complaint investigation identified an error or shortfall in procedures or processes then the FSA sought to take appropriate action; this might have involved changing a procedure or reviewing the way the FSA worked. The main scheme allowed the FSA to offer an ex gratia payment as a remedy if appropriate.

The Commissioner’s reports on individual cases which he has investigated under stage two of the scheme are normally published on his website at www.fsc.gov.uk. The FSA’s responses to these reports, where made, can be found at the following web link:

http://www.fsa.gov.uk/pages/library/other_publications/complaints/index.shtml

Following the transition to the FCA, responses to reports, where made, can be found at the following web link:

<http://www.fca.org.uk/about/governance/complaining-about-us/complaints-commissioners-final-reports>

Exclusions from the scheme

In common with the new scheme, the old scheme did not permit the FSA to investigate complaints about certain issues, including:

- a) the FSA’s relationship with its employees;
- b) contractual or commercial disputes involving the FSA and not connected to its functions under the Act;
- c) the performance of FSA’s legislative functions under FSMA or previous legislation; and
- d) the actions, or inactions, of the Financial Ombudsman Service (FOS) or the Financial Services Compensation Scheme (FSCS).

In addition, the FSA was able to defer the investigation of complaints where the matter remained the subject of ongoing action by the FSA or another agency, or to refer the complaint if it would be more appropriately dealt with in another way. The FSA could also decline to investigate a complaint

if the matter amounted to no more than dissatisfaction with general policies or the exercise of discretion, where no misconduct is alleged.

Main events during the period

The scheme states that 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.

The FSA concluded 344 complaints, which included 39 Fast Track complaints, comprising 424 allegations. This shows a decrease in the number of complaints received during this year when compared to last (431 complaints received in 2011/12).

The FSA considered 340 allegations from consumers. Most of those investigated related to allegations of a lack of customer care, enforcement investigations and FSA's supervision of specific firms. In addition, there were a number of complaints from consumers concerning both FSA's oversight of the LIBOR matter and the industry review of Interest Rate Hedging Products.

84 allegations were considered from authorised firms or their representatives. Most of those investigated related to regulatory returns and delays in the authorisation process.

In addition, 51 allegations considered during the year were deemed to be not within the scope of the scheme as they related either to the FSA's legislative functions (the making of rules and the issuing of codes, statements, directions and guidance) or to the actions of the FOS and/or the FSCS. Most of the allegations received that fell outside of the scheme were received from consumers. Where possible the FSA aimed to help these complainants by providing them with relevant background information when responding to them.

Complaints considered during the period – Statistics

Table 1	Complaints investigated by FSA excl bank charge waiver (stage one)	
	2012/13	2011/12
In progress at start of period	50	46
Received during the period	324	435
In progress at end of period	30	50
Total complaints resolved during period	344	431

Table 2 – Complaint Allegations	
Allegations investigated	
- Upheld	36
- Partially upheld	32
- Not upheld	175
Total number of allegations investigated	243
Other Allegations	
- Withdrawn	20
- Not investigated	83
- Excluded from the scheme	51
- Deferred	20
- Referred	7

During the period the Complaints Team also received 1,308 items which did not fall within the scheme (an increase from 762 in 2011/12). The majority of these were classified as enquiries which typically came in the form of correspondence from consumers who should have addressed their correspondence to either the FSA's Customer Contact Centre, or to other parts of the FSA, the FOS, or the FSCS. These enquiries were redirected as appropriate.

Lessons learned

The Complaints Scheme was one of the FSA's key accountability mechanisms established under FSMA 2000 and helped FSA to identify processes which were not working effectively. Complaints that were upheld often resulted in recommendations being made, which in turn lead to changes or updates to processes with the ultimate aim of making the FSA easier to deal with.

The majority of complaints that were upheld during the period comprised allegations of a lack of customer care and unreasonable delays.

The following changes and actions were put in place as a result of stage one investigations:

- Safeguards to ensure that, where an authorised firm seeks to cancel its authorisation, the appropriate area has all appropriate documentation so that no relevant information in the FSA's possession is overlooked.
- As a result of the circumstances of one particular case, relevant staff were made aware and reminded of the importance of not seeking to impede a regulated firm's legal representation at any stage in their dealings with them.
- Relevant staff made aware and reminded that, when arranging to meet an authorised firm, the names and roles of those representing the FSA should be appropriately communicated, unless exceptional circumstances render this impracticable.

Ex gratia awards and refunds made as a result of complaint investigations

During the year two ex gratia awards totalling £12,250 were made following stage one investigations in addition to nine refunds or waivers.

Service standards during the period

The standards set out in Table 3 relate to the time taken to respond to and deal with complaints received during the period.

Table 3 – Standard	Target	Performance
Fast Track: To complete the investigation and respond to the complainant and send a leaflet explaining how the Complaints Scheme works and the right to ask for a stage one investigation	97.5% within 5 working days	92.3%
Stage one: To acknowledge a complaint and send a leaflet explaining how the Complaints Scheme works and the right to ask for a stage two investigation	97.5% within 5 working days	92.2%
Stage one: To notify the complainant if the complaint will not be admitted to the Scheme at stage one	97.5% within 4 weeks	97.5%
Complete stage one investigation and write to the complainant with results of the complaint or write to the complainant to set out a reasonable timescale within which the FSA plans to deal with the complaint	97.5% within 4 weeks	99.5%

