

# Complaints against the Regulators (The Financial Conduct Authority, the Prudential Regulation Authority and the Bank of England)

## The Complaints Scheme

**1 November 2023**

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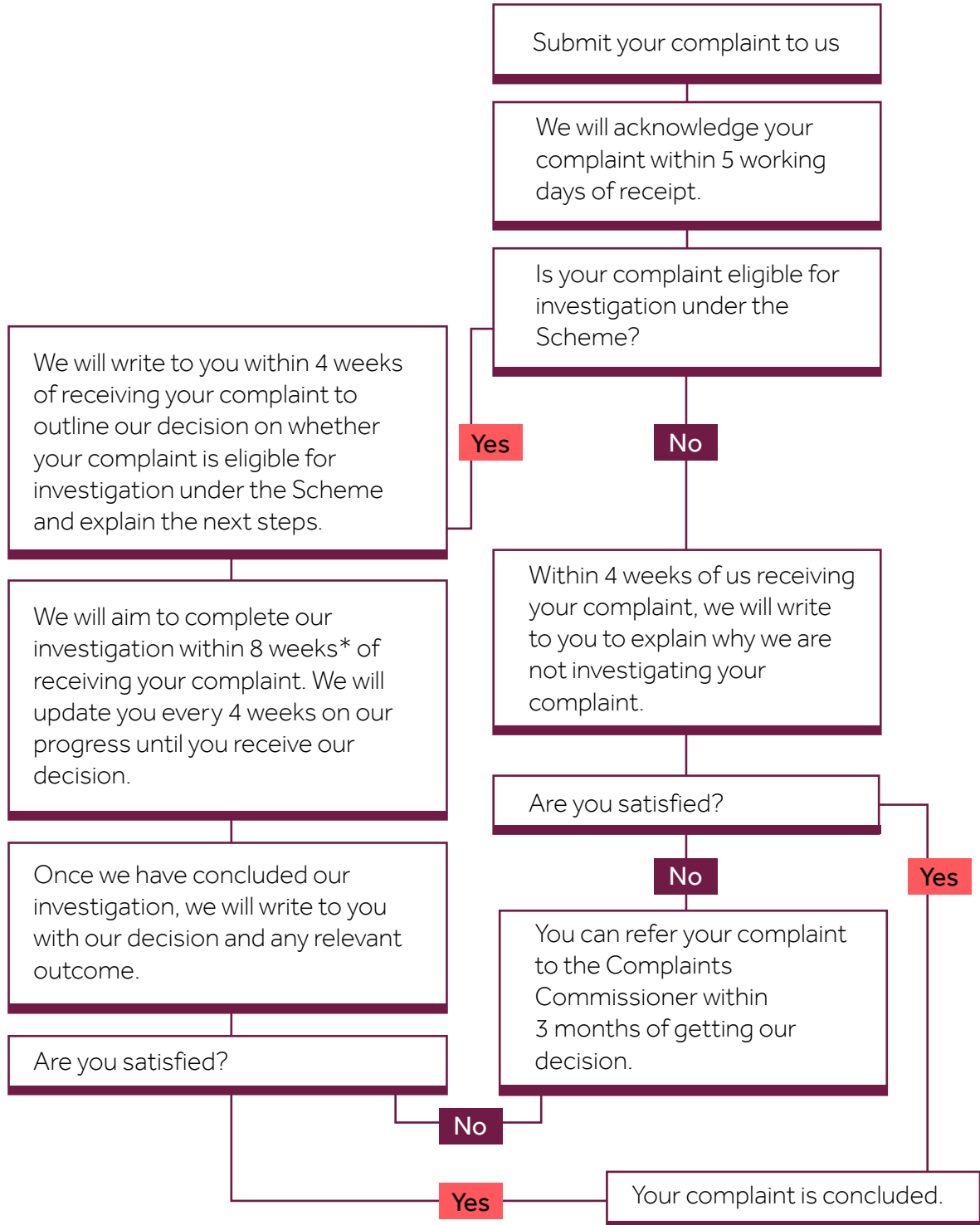
## Chapter 1

# The Complaints Scheme

- 1.1** This document contains the details of the **Scheme** maintained by the **Regulators** to investigate **complaints** made against them.
- 1.2** It sets out how **you** can make a complaint, explains how and when the Regulators will investigate, and the possible outcomes of a complaint.
- 1.3** You may refer **your** complaint to the independent **Complaints Commissioner** at any point in this process. If a complaint is referred to the Complaints Commissioner before the Regulators have had the opportunity to conduct or complete an investigation, the Complaints Commissioner will consider whether to allow the Regulators that opportunity before conducting their own investigation.
- 1.4** If you are dissatisfied with a **decision** made by the Regulators in response to your complaint, you can refer your complaint to the Complaints Commissioner who may choose to investigate.
- 1.5** The Scheme deals with complaints about **us**. There are separate processes for dealing with complaints about firms. **We** require the firms we regulate to have processes in place for resolving disputes with their customers. The **Financial Ombudsman Service** can also consider complaints against firms and, where appropriate, recommend or provide compensation to eligible complainants. Additionally, the **Financial Services Compensation Scheme (FSCS)** can consider claims for compensation in respect of firms where certain eligibility conditions are met. Broadly speaking, the Financial Ombudsman Service deals with complaints about regulated firms from consumers, micro-enterprises, small businesses, and some charities and trusts. The FSCS covers claims from consumers and some eligible small businesses, limited companies, and charities in connection with most regulated activities by regulated firms which have gone out of business.
- 1.6** This Scheme also sets out the process for referring your complaint to the Complaints Commissioner (see [Sections 7 and 8](#)) and explains how and when the Complaints Commissioner may investigate.
- 1.7** For complaints which were made before this Scheme came into force, see Annex A. For complaints about the **Financial Services Authority (FSA)**, see Annex B.
- 1.8** We show a flow chart of **our** complaints process and how we handle a typical complaint on the next page. [Section 7](#) includes a flow chart of how a typical complaint which is referred to the Complaints Commissioner is handled.
- 1.9** In this document, we use 'we', 'our' and 'us' to refer to the Regulators and refer to the **complainant** as 'you' or 'your'. We define any words highlighted in bold for the first time in the glossary in Annex E.

## Overview of the Complaints Process

1.10 This shows how we handle a typical complaint:



\* If your complaint is complex in nature or forms part of a group of complaints about the same issue, it may take us longer than 8 weeks to complete our investigation. If this is the case, we will update you every 4 weeks until you receive our decision.

## Chapter 2

# Eligibility

### When you can make a complaint

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

### What we can investigate under the Scheme

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- 2.5** Only complaints about the **relevant functions** of the Regulators can be investigated under the Scheme.
- 2.6** For the **Financial Conduct Authority (FCA)** and the **Prudential Regulation Authority (PRA)**, broadly speaking, relevant functions include our authorisation, supervisory, and enforcement functions and our operation of this Scheme and, for the FCA only, maintaining the Financial Services Register.
- 2.7** For the **Bank of England (the Bank)**, the complaint must relate to its relevant functions in relation to recognised clearing houses, central securities depositaries, inter-bank payment systems or wholesale cash distribution.
- 2.8** The types of complaint we can investigate under the Scheme include allegations of:
- a.** mistake;
  - b.** lack of care;
  - c.** unreasonable delay;
  - d.** unprofessional behaviour;
  - e.** bias;
  - f.** lack of integrity.

## What we cannot investigate under the Scheme

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

## What we will not investigate under the Scheme

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

## Investigations that may be deferred

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- 2.12** Sometimes we may need to defer the investigation of a complaint. For example, if the complaint relates to any form of continuing action by us or any other formal investigation (for example, criminal inquiries). We may also defer investigation of a complaint if the complaint relates to the subject matter of legal proceedings, whether or not you are involved in those legal proceedings.
- 2.13** We may decide we could start an investigation of your complaint before any continuing action has been concluded. This would happen if we consider it would be unreasonable for you to wait for the ongoing action to end before we investigate your complaint. We must also be satisfied that the ongoing action would not be prejudiced or otherwise affected by us investigating your complaint before this ongoing action has concluded.

- 2.14** If we do decide to defer the investigation of your complaint, we will keep that decision under review, and contact you at least every 6 months to indicate when we expect to be able to investigate your complaint. If you disagree with our decision to defer your complaint, or the continuing deferral of your complaint, you can refer your complaint to the Complaints Commissioner.

## Chapter 3

# Making a complaint

## How to make a complaint

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- 3.1** You can submit your complaint to us using the contact details on our websites ([FCA](#), [PRA](#) and the Bank).
- 3.2** You can make a complaint to any of us and we will ensure the relevant Regulator handles it. Please note each Regulator can only investigate complaints about themselves, not each other.
- 3.3** If you make a complaint to more than one Regulator about the same or related matters, please let us know. This is because when a complaint is made that relates to more than one Regulator, we may decide it would be more appropriate for us to carry out a joint investigation of your complaint instead of each Regulator investigating your complaint separately.
- 3.4** Please also let us know if you need any reasonable adjustments to be made to allow you to access the Scheme or to make your complaint. Examples include providing documents in larger print and communicating by telephone as well as in writing. There are further details on the respective Regulators' websites.
- 3.5** The Scheme is designed to be straightforward to use. So we do not consider you need to use a specialist firm to manage or advise on a complaint you make against us. If you instruct a complaint handling firm or professional services firm to manage or advise on your complaint, we will not usually reimburse you for their fees even if your complaint is upheld and a compensatory payment is made.

## Acknowledging your complaint

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



## Chapter 4

# Initial assessment of your complaint

- 4.1** We will assess whether we think your complaint is eligible to be investigated under the Scheme.
- 4.2** We will write to you within 4 weeks of receiving your complaint to outline our decision on whether your complaint is eligible and explain the next steps.
- 4.3** If we decide your complaint is eligible, we will summarise our understanding of your complaint and confirm how we intend to investigate it.
- 4.4** If we decide your complaint is not eligible to be considered under the Scheme, we will also write to you to let you know and explain why.
- 4.5** If we decide not to investigate your complaint where it is eligible under the Scheme, or decide that we need to defer our investigation, we will explain why. See paragraph 2.11 to 2.14 above.
- 4.6** Where we decide not to investigate your complaint (whether it is eligible or not) or we decide to defer our investigation, we will explain to you how to refer your complaint to the Complaints Commissioner if you are dissatisfied with our decision.

## Chapter 5

# Investigating your complaint

- 5.1** We will resolve your complaint as quickly as we can. If we are not able to resolve your complaint within 8 weeks of receiving it, we will write to update you. We will set out the progress of our investigation and, if we can, we will tell you how long we expect our investigation to take. Unless your complaint is deferred, we will continue to give you written updates on our progress every 4 weeks until you receive our decision on your complaint.
- 5.2** Your complaint will usually be investigated by a member of our Complaints Team who has not previously been involved in the matters complained about. Sometimes, we may consider it appropriate for your complaint to be dealt with by the business area to which it relates, for example, if your complaint is about a minor administrative mistake that could quickly and easily be addressed by them. If your complaint is investigated by the business area and you are unhappy with their response, you can ask for the Complaints Team to investigate it.
- 5.3** When investigating your complaint, we will consider any information you submit and any relevant information we hold. Sometimes we may need to contact you, or another person, such as another Regulator, to request further information that would help us in investigating your complaint. Our investigations are desk-based and we do not interview witnesses or complainants.
- 5.4** If we request information from you which we need to investigate your complaint, but do not receive a response, we may not be able to progress our investigation. In these circumstances, we may close your complaint. We will contact you at least twice before closing your complaint. When we close your complaint, we will explain our reasons in writing.
- 5.5** We, and the Complaints Commissioner, will accept any finding of fact or any decision by a Court, Tribunal or regulatory body of competent jurisdiction in the UK or elsewhere (which has not been set aside on appeal or otherwise) as conclusive.
- 5.6** If your complaint involves more than one Regulator, we will usually appoint one Regulator as your point of contact. They will co-ordinate a joint investigation and be responsible for all communications with you about your complaint.
- 5.7** We may stop investigating your complaint if we reasonably consider that your behaviour is vexatious, abusive or discriminatory.

## Our decision

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

## Chapter 6

# Addressing your complaint

- 6.1** If we uphold your complaint, we will tell you and identify an appropriate outcome based on the individual features of your complaint.
- 6.2** Our aim is to be consistent and fair, to ensure outcomes are appropriate and reflect all the circumstances of your complaint.
- 6.3** In considering an appropriate outcome, we will take into account:
- how you want us to resolve your complaint;
  - the seriousness, nature and duration of our failing(s) and its/their consequences for you;
  - the nature of our relationship with you and the extent to which you have been negatively affected in the course of your direct dealings with us;
  - whether what happened was the result of an operational or administrative failure by us or a policy decision made by us where we had to balance conflicting interests and complex issues;
  - the impact of the cost of compensatory payments on the businesses that fund us through paying our fees and, indirectly through them, consumers.
- 6.4** We usually take one or more of the following steps:
- make an apology: where we have made a mistake, we apologise;
  - take an action to address the complaint: where necessary, we can take action, such as providing further explanation or guidance, implementing steps to end or reduce a delay, waiving or reimbursing fees that we should not have charged you, or correcting an error or inaccuracy;
  - make improvements: when investigating any complaint, even if it is not upheld, we always consider whether there are changes that we could make to our practices, policies, or procedures to improve these or help avoid the same problem in the future;
  - make a discretionary compensatory payment.
- 6.5** If we decide that a compensatory payment is appropriate (either in recognition of financial loss or not), it will be made on a discretionary basis. Generally speaking, compensatory payments are likely to be modest. This is because:
- by law, we are immune from liability in damages when carrying out our public functions (such as regulation and supervision) unless it is found that we have acted in bad faith or have breached your human rights;
  - the Scheme is not set up to consider complex issues such as causation but to resolve complaints effectively and quickly, wherever possible – our assessment of compensatory payments cannot be made in the same way that a Court or Tribunal calculates an award of compensatory damages;
  - our approach to compensatory payments under the Scheme must also reflect the fact that, because we are funded by the financial services industry, the costs of the

Scheme (including any compensatory payments) will fall on authorised businesses and indirectly, through them, consumers.

- 6.6** In deciding the levels of discretionary compensatory payments (whether in recognition of financial loss or not), we will consider how the cumulative impact of payments may affect the fees we levy on the regulated financial services industry as noted above. In some cases, we may decide that the levels of compensatory payments need to be reduced in light of that impact.
- 6.7** The Scheme is not intended to insure against losses caused by firms that are not covered (or not covered in full) by the Financial Ombudsman Service or FSCS.

## Compensatory payments in recognition of financial loss

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- 6.8** If you are seeking compensation for a financial loss, we will only consider making a compensatory payment in recognition of your financial loss where adequate documentary evidence of the financial loss has been provided, and where both of the following 2 conditions have been met.
- 6.9** The first condition is that there has been a clear and significant failure by us. A failure would be taken to be clear, for example, in a situation where we have failed to take a specific action in line with our policies or procedures. Another example could be where we have specifically committed to do something and failed to carry this out.
- 6.10** If there is doubt about whether we took adequate action – for example, because there were factors which provide a reasonable explanation of why we did not act in line with our policies or procedures – this is unlikely to constitute a clear failure.
- 6.11** A failure would be significant if, for example, there have been repeated errors, with numerous opportunities for us to correct the mistake. A simple administrative error with limited financial impact is unlikely to amount to a significant failure.
- 6.12** The second condition is that we are the sole or primary cause of the loss. The factors that we will consider in assessing this include:
- a.** the role of any other parties and whether they are the primary cause of your loss;
  - b.** any steps you could have taken to reduce the impact from their and our actions or inactions.

- 6.13** Given the nature and purpose of the Scheme, we will not undertake the kind of detailed assessment into the causes of loss that a Court would carry out (as explained in [paragraph 6.5](#)). We will carry out a common-sense analysis to see whether we are the sole or primary cause of your financial loss. If it is not clear that we are the sole or primary cause, this is likely to mean that a compensatory payment in recognition of your financial loss is not appropriate. We consider that it is unlikely that we would be the sole or primary cause of a loss for a matter which is outside our regulatory remit.
- 6.14** If both conditions are met, we will consider a number of relevant factors to help us to decide the appropriate amount of compensatory payment, including:
- the seriousness, nature and duration of our failing(s) and its/their consequences for you;
  - the amount of your evidenced and foreseeable financial loss;
  - your individual circumstances, based on information that you have provided to us and/or is available to us;
  - the extent to which the issue which has resulted in your complaint is within our regulatory remit.
- 6.15** Compensatory payments are unlikely to reflect the full amount of your loss.

## Compensatory payments in recognition of non-financial loss

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- 6.16** We may also make a compensatory payment in circumstances when our actions or inactions have had some other negative impact on you such as contributing to your distress or inconvenience. Usually an apology, together with action to address the complaint and/or make improvements, are the most appropriate outcomes. It is only if we consider that these are insufficient to resolve your complaint that we will consider making a compensatory payment to you.
- 6.17** If we decide that a compensatory payment is justified, we will use the payment levels below to help us to decide the appropriate amount, and to ensure consistency and transparency in our decision making. Where appropriate, a compensatory payment of this nature could be paid in addition to a payment for financial loss.

### Compensatory payment levels

Level	Range	Impact
1	Up to £100	Your complaint may fall into this category if we consider that you have experienced a relatively low level of distress or inconvenience as a result of our actions or inactions. This might typically arise from a one-off incident or occurrence such as a small administrative error, or where the impact on you is of short duration. Avoidable complaint handling delays of up to 10 months will fall into this category.

Level	Range	Impact
2	£101-£500	Your complaint may fall into this category if we consider that you have experienced a moderate level of distress or inconvenience as a result of our actions or inactions. This might typically arise from multiple small incidents, or a single, relatively significant incident, where the impact on you was of moderate duration. Avoidable complaint handling delays over 10 months will fall into this category.
3	£501 - £1,000	Your complaint may fall into this category if we consider that you have experienced a high level of distress or inconvenience as a result of our actions or inactions. This might typically arise from a series of relatively significant failures in our processes, or an unreasonable and prolonged delay on our part, where the impact on you was of a lengthy duration.
4	£1,001 - £2,500	Your complaint may fall into this category if we consider that you have experienced a very high level of distress or inconvenience as a result of our actions or inactions. This might typically arise from a major failure in our processes or an unreasonable, prolonged and continuing delay on our part, where the impact on you was of a very lengthy duration with lasting effects.
5	Over £2,500	Your complaint may fall into this category if there are exceptional circumstances, such as where our failings or the consequences for you are unusually severe.

**6.18** The descriptions of the categories in the table above are intended as guidance only, as your circumstances and the circumstances of each complaint will be different. In deciding which category is appropriate and the actual amount we will offer, we will consider all the information available to us. This will include any information you have given us about your individual circumstances and the impact our actions or inactions may have had on you.

## Chapter 7

# What to do if you are dissatisfied with our response

### Referring your complaint to the Complaints Commissioner

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

### Investigation by the Complaints Commissioner

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

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

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

### **Our response**

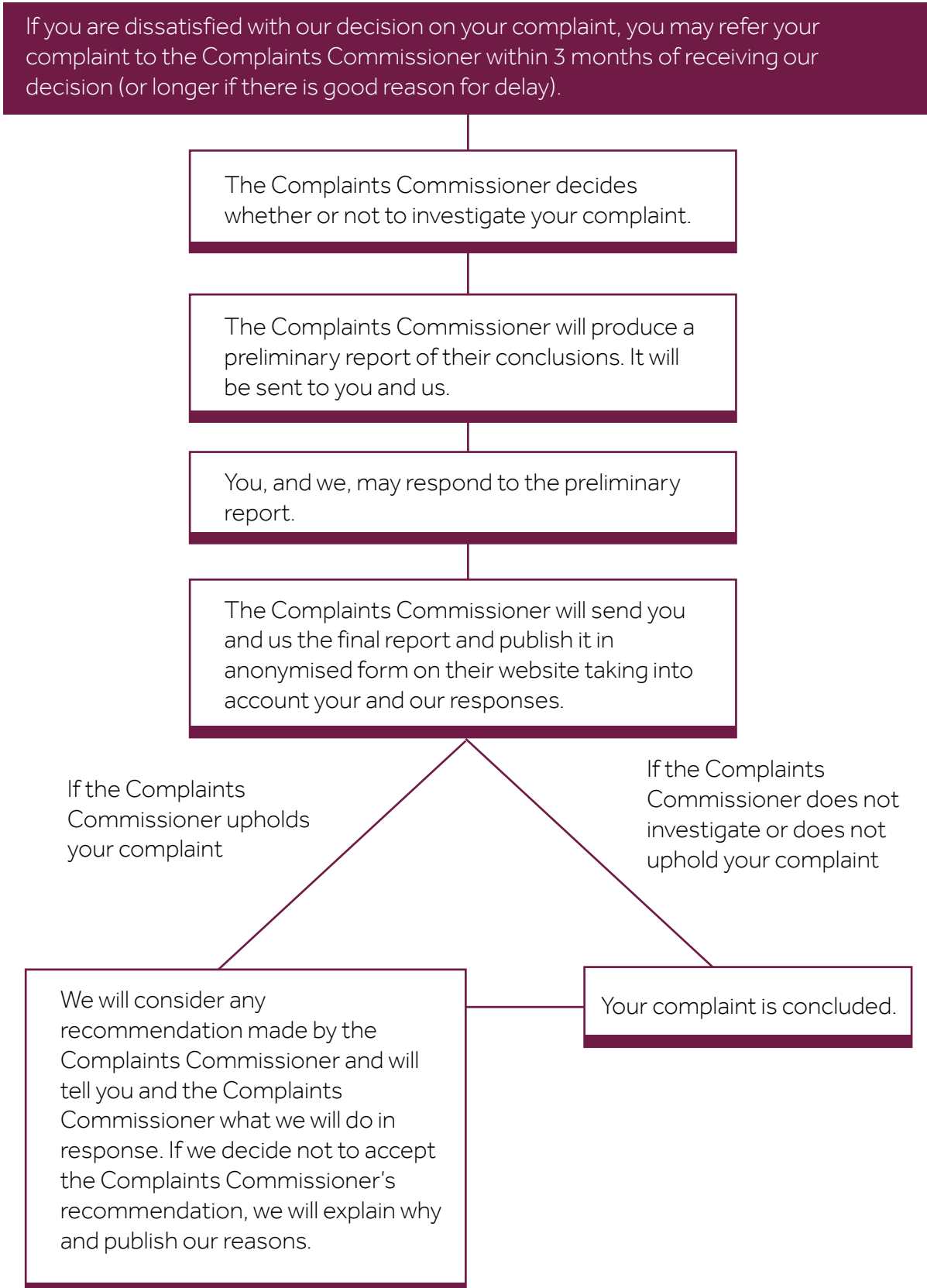
**7.9** When the Complaints Commissioner publishes the final report, we will publish a response if the Complaints Commissioner asks us to do so. We may also choose to publish a response ourselves even if the Complaints Commissioner does not ask us to.

**7.10** Where the Complaints Commissioner's final report upholds your complaint or criticises us, we will tell you and the Complaints Commissioner what we will do in response. In deciding how to respond to a report from the Complaints Commissioner, we will have regard to our general approach to outcomes set out in [Section 6](#), as well as take into account the Complaints Commissioner's recommendations.

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



**7.12** This diagram shows how a typical complaint which is referred to the Complaints Commissioner is handled if you are dissatisfied with our decision (although you can refer your complaint to the Complaints Commissioner at any time):



## Chapter 8

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

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

## Annex A

# Transitional arrangements for complaints

- 1.** Complaints made before the 1 November 2023 which have not yet been concluded will be concluded in line with the **previous Scheme** or the **old FSA complaints scheme**, as applicable. This includes deferred complaints that have not been concluded before this date.
- 2.** Where the Complaints Commissioner provides a report to us about a complaint that we concluded under the previous Scheme or the old FSA complaints scheme, we will decide how to respond to the Complaints Commissioner's report, and any of their recommendations, in line with Section 7 of the previous Scheme.

## Annex B

# Complaints against the Financial Services Authority after 31 October 2023

- 1.** Complaints made about the FSA after 31 October 2023 will be investigated by the FCA in line with the Scheme and this Annex.
- 2.** Where appropriate, the FCA will liaise with the PRA or the Bank during the investigation.
- 3.** You should note that the time limits set out in paragraph 2.4 of the Scheme apply to complaints about the FSA.
- 4.** In applying the Scheme to complaints made about the FSA, references to the FCA's relevant functions should be read as referring to the FSA's former functions under FSMA. For example, the FCA will not investigate complaints about the FSA in relation to the performance of the FSA's legislative functions under **FSMA** (including making rules, issuing codes and general guidance).
- 5.** A complaint against the FSA cannot be made about the Bank's functions under Part 5 and 5A of the Banking Act 2009 (payment systems and wholesale cash distribution) as these were never subject to complaints arrangements which were in place for the FSA.

## Annex C

# The previous Scheme



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY



# Complaints against the Regulators: The Scheme

*Updated March 2016*

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## 1. About the Complaints Scheme

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

## Annex D

# The Complaints Commissioner

1. The Complaints Commissioner is independent of us, and their staff must not be our employees and are required to act independently of, and without favouring, us.
2. The Complaints Commissioner will be appointed by **the Treasury**.
3. In circumstances where the Complaints Commissioner is unable to investigate a complaint, for example, due to a conflict of interest, the Treasury will appoint an alternate to carry out the functions conferred on the Complaints Commissioner by the Scheme.
4. The Scheme will apply in full to the individual appointed under paragraph 3, and the Complaints Commissioner will not be involved in investigating that complaint. Final reports will continue to be published on the Complaints Commissioner's website in line with paragraph 7.7 of the Scheme.
5. The Complaints Commissioner can investigate in whatever manner they think appropriate including obtaining, at our expense, external resources which are reasonable. In considering what is appropriate, the Complaints Commissioner will consider the need to ensure that complaints are dealt with fairly, quickly and cost effectively.
6. 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. We will afford the Complaints Commissioner all reasonable cooperation including giving access to our staff, records, and other information as necessary. We may, in giving the Complaints Commissioner access to information, consider our need to maintain the confidentiality of certain kinds of information. This would include, for example, taking appropriate steps to ensure that the identity of an informant is not disclosed, or maintaining the confidentiality of information given to us. If, exceptionally, we decide that we need to withhold information, we will inform the Complaints Commissioner of the nature of that information and our reasons for withholding it.
8. We will provide information to the Complaints Commissioner on the complaints that we do not investigate.
9. The Complaints Commissioner will prepare an annual report on their investigations under the Scheme concluded during the 12-month period to 31 March.
10. The annual report will include:
  - a. information concerning any general trends emerging from the investigations undertaken during the reporting period;



- b.** any recommendations which the Complaints Commissioner considers appropriate as to the steps a Regulator should take in response to such trends;
  - c.** a review of the effectiveness during the reporting period of the procedures (both formal and informal) of each Regulator for handling and resolving complaints which have been investigated by the Complaints Commissioner during the reporting period;
  - d.** an assessment of the extent to which those procedures were accessible and fair, including where appropriate an assessment for different categories of complainant;
  - e.** any recommendations about how those procedures, or the way in which they are operated, could be improved;
  - f.** such other matters as the Treasury may from time to time direct.
- 11.** The Complaints Commissioner will send a copy of the annual report to each Regulator and to the Treasury. We will respond to any recommendations or criticisms relating to us in the annual report, and include a summary of cases in which we did not follow any recommendations by the Complaints Commissioner or in final reports during the reporting period, together with a summary of the reasons for not following those recommendations. We will publish any responses and send a copy of them to the Complaints Commissioner and the Treasury. The Treasury will lay the annual report and responses to it before Parliament.

## Annex E

# Glossary

Abbreviation	Description
<b>'the Bank'</b>	The Bank of England.
<b>'complaint(s)'</b>	Any expression of dissatisfaction about the way one or more of the Regulators or the FSA has carried out, or failed to carry out, its relevant functions.
<b>'Complaints Commissioner'</b>	The independent person appointed by the Treasury to be responsible for the conduct of investigations in line with the Scheme.
<b>'complainant'</b>	The person or firm making the complaint.
<b>'decision'</b>	<p>The decision reached by a Regulator when assessing one of the following:</p> <ul style="list-style-type: none"> <li><b>a.</b> whether to investigate your complaint under the Scheme</li> <li><b>b.</b> whether your complaint is upheld following our investigation into it</li> <li><b>c.</b> the appropriate outcome for your complaint</li> <li><b>d.</b> whether your complaint is deferred for investigation to a later date.</li> </ul>
<b>'deferred complaint'</b>	When the Regulators decide to defer an investigation of a complaint because of circumstances set out in paragraphs 2.12 to 2.14 of the Scheme.
<b>'FCA'</b>	The Financial Conduct Authority.
<b>'FSA'</b>	The Financial Services Authority which was the predecessor body of the FCA and the PRA.
<b>'FSCS'</b>	The Financial Services Compensation Scheme.
<b>'FSMA'</b>	The Financial Services and Markets Act 2000 as amended by subsequent legislation.
<b>'legislative functions'</b>	The functions of the Regulators, including rule-making and issuing general guidance, which are set out at Section 85(4) to (7) of the Financial Services Act 2012 as amended by subsequent legislation.
<b>'old FSA complaints scheme'</b>	The arrangements set out in Section 8 of the previous Scheme for dealing with complaints about the FSA.

Abbreviation	Description
<b>'previous Scheme'</b>	The Scheme in force before 1 November 2023 and which is set out in Annex C.
<b>'PRA'</b>	The Prudential Regulation Authority.
<b>'relevant functions'</b>	The functions of the Regulators which are set out at Section 85(3) of the Financial Services Act 2012 as amended by subsequent legislation, which do not include the Regulators' legislative functions.  For the relevant functions of the FSA, see Annex B.
<b>'Regulator(s)'</b>	Any of the FCA, the PRA or the Bank, collectively referred to as the 'Regulators'.
<b>'Scheme'</b>	This document as maintained by the Regulators to investigate complaints against them as required under Part 6 of the Financial Services Act 2012 as amended by subsequent legislation.
<b>'Upper Tribunal'</b>	The independent tribunal set up under the Tribunals, Courts and Enforcement Act 2007 for challenges to certain decisions made by the Regulators.
<b>'the Treasury'</b>	His Majesty's Treasury, the government's economic and finance ministry.
<b>'vexatious'</b>	A vexatious complaint is one that is pursued, regardless of its merits, to harass, annoy or subdue somebody; that is unreasonable, without foundation, frivolous, repetitive, burdensome, or unwarranted.
<b>'we', 'our' or 'us'</b>	The relevant Regulator or the Regulators collectively, but not the Complaints Commissioner.
<b>'you' or 'your'</b>	The person or firm making a complaint.

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