
STATUTORY INSTRUMENTS

1992 No. 225

The Uncertificated Securities Regulations 1992

PART XIII

INVESTIGATIONS AND COMPLAINTS

Complaints Commissioner

99.—(1) Not later than the time when the Secretary of State gives his consent under regulation 5 and from time to time thereafter as occasion requires (and after consulting the Operator) the Secretary of State shall appoint on such terms as to remuneration and other matters as he thinks fit a person to be known as the Complaints Commissioner and such Assistant Commissioners and other staff to assist the Complaints Commissioner as he thinks necessary for the purpose of investigating complaints under these Regulations.

(2) The Complaints Commissioner, any Assistant Commissioner or any member of his staff may at any time

- (a) be removed from office by notice in writing by the Secretary of State; or
- (b) resign his office by giving such notice to the Secretary of State.

(3) The remuneration of the Complaints Commissioner, any Assistant Commissioner and his staff, and any pension, compensation for loss of office, allowance or gratuity to which he or they may be entitled, or provision for any such benefits, shall be paid by the Operator.

(4) Where the Complaints Commissioner incurs any expense in the performance of his functions, including expenses in the employment of legal, accountancy or other professional services, he shall be entitled to be reimbursed for the costs thereof by the Operator.

Without prejudice to the generality of the foregoing, the Complaints Commissioner may incur reasonable expense in publicising his responsibilities.

(5) The Operator shall provide the Complaints Commissioner with accommodation and other facilities for the performance of his functions.

(6) If any question arises between the Complaints Commissioner and the Operator as to any expenses incurred or proposed to be incurred under this regulation or as to the suitability or sufficiency of the accommodation or other facilities provided or to be provided under this regulation, it shall be referred to and determined by the Secretary of State.

(7) The Secretary of State may delegate either wholly or in part, and subject to such conditions as he thinks fit, to the Complaints Commissioner his functions of appointing staff (other than an Assistant Commissioner), of determining their remuneration and other matters under paragraph (1) and his functions in relation to such staff under paragraph (2).

Functions of the Complaints Commissioner

100.—(1) Subject to the following provisions of this regulation, the Complaints Commissioner shall investigate any complaint made to him in writing by or on behalf of, or the successor in title to, any investor claiming to have suffered in that capacity loss to which paragraph (2) applies in

consequence of a failure on the part of any person to perform his functions under these Regulations (other than any functions within regulation 116(2)).

(2) This paragraph applies to loss which in the opinion of the Complaints Commissioner would on the balance of probabilities be the subject of a successful claim before a civil court, being loss which consists of lost units, new units or lost benefits, or which flows from such loss.

(3) A complaint under paragraph (1) need not identify the person alleged to have caused the loss but must contain sufficient particulars for the Complaints Commissioner to form a view as to whether there is sufficient likelihood that any loss was in consequence of such a failure as is mentioned in paragraph (1) to warrant investigation under this Part.

(4) Before considering a complaint, the Complaints Commissioner may in his discretion require that the person making the complaint refer it to the person who is the subject of it, and that the latter have a specified period in which to respond to the complainant.

(5) The Complaints Commissioner may suspend or terminate his investigation without making a report if litigation is commenced, or is in prospect, whether in the United Kingdom or elsewhere, which, in his opinion, relates to the same or substantially the same matters as he is investigating, and if he does so he shall inform the Secretary of State, the Operator, the complainant and any person against whom allegations have been made, giving his reasons.

(6) The Complaints Commissioner may decline to carry out an investigation or may limit or terminate an investigation he is carrying out, if it appears to him that the complaint, wholly or in part:

- (a) raises issues of fact or law which should more properly be dealt with by a court;
- (b) imputes criminal conduct which he considers it would be inappropriate for him to investigate; or
- (c) is not appropriate for him to investigate bearing in mind the amount of the apparent loss and the resources of the complainant.

If he does so decline, limit or terminate an investigation the Complaints Commissioner shall inform the Secretary of State, the Operator, the complainant, and any other person against whom allegations have been made, giving his reasons. The Complaints Commissioner may exercise his discretion under this paragraph in relation to part only of a complaint.

(7) The Complaints Commissioner may co-ordinate the conduct of his investigation with that of any other relevant regulatory enquiry.

(8) Subject only to regulation 113(1), it shall be the duty of the Operator, any participant within the meaning of regulation 97(4), and any company whose securities are involved (including the agents of such persons and any person acting as an insolvency practitioner in relation to any of them) to co-operate with the Complaints Commissioner and to provide him with such information, access to records and other assistance as he may reasonably require.

(9) The Complaints Commissioner shall afford any person against whom allegations are made in the complaint, and any other person whom he is disposed to conclude may have been at fault, an opportunity to comment on the allegations or, as the case may be, the conclusion he is disposed to reach.

(10) The Complaints Commissioner shall carry out his investigation as expeditiously as possible and on completion of his investigation shall make a report which he shall send to the complainant, any person whose conduct is referred to adversely in the report, any person against whom any allegations have been made, the Operator and the Secretary of State.

(11) The report produced under paragraph (10) shall state whether, in the opinion of the Complaints Commissioner, the complainant (or any person on whose behalf the complaint was made) has suffered loss within paragraphs (1) and (2) in consequence of such a failure as is mentioned in paragraph (1), and, if so, to such extent as he is able to do so, state what in his opinion was the nature and amount of the loss and the identity of any person whose act or omission caused

or contributed to the loss and may also, having regard to any election made under regulation 104, include a recommendation as to what in his view would be the appropriate remedy (if any).

(12) In forming an opinion on the identity of persons responsible for loss, in accordance with paragraph (11), the Complaints Commissioner may regard as relevant any failure to co-operate in accordance with paragraph (8).

(13) If the Complaints Commissioner is unavailable, and at other times with the approval of the Secretary of State, the function of making a report may be performed by an Assistant Commissioner, and any other function may be performed by an Assistant Commissioner, or with the authority of the Complaints Commissioner or an Assistant Commissioner by any member of the Complaints Commissioner's staff.

Reports on complaints to be evidence

101. Section 101(5) of the 1986 Act shall apply to a report by the Complaints Commissioner under regulation 100 as it applies to a report mentioned in that section.

Periodic reports

102.—(1) The Complaints Commissioner shall prepare a report on his activities not less often than once a year and submit it to the Secretary of State and the Operator and shall publish it.

(2) In a report under this regulation, the Complaints Commissioner may express views as to any matter relevant to the system which appears to him appropriate in the light of his activities.

Reference to the tribunal

103.—(1) Any person aggrieved by any finding of the Complaints Commissioner may, within 28 days of receiving a copy of the report require the Operator to refer the matter to the tribunal established under Chapter IX of Part I of the 1986 Act.

The body responsible for administering the scheme to be established under regulation 103 may, if it is not satisfied with a report of the Complaints Commissioner on a matter in respect of which a claim for compensation has been made, also require the Operator to refer the matter to the tribunal.

(2) Where a case is referred to the tribunal, the tribunal shall investigate the case and determine whether any person has suffered loss such as is mentioned in regulation 100(1) and (2), and, if so, the amount recoverable under paragraph (5) and (so far as possible) the person or persons who caused or contributed to the loss.

(3) The tribunal shall not determine an amount recoverable under paragraph (5) which exceeds an amount equal, in the case of a person who has made an election under regulation 104, to the value of any lost units, lost benefits and new units lost before the date of the election, together with interest thereon from that date and, in any other case, to the value, at the date of the tribunal's determination, of all relevant lost units, lost benefits and new units.

(4) The determination of the tribunal shall be contained in a report made to the Secretary of State in accordance with Chapter IX of Part I of the 1986 Act and the tribunal shall send a copy of the report to any person who it has found to have suffered loss or to have been responsible for the loss as well as to the person (if different) at whose request the case was referred to it.

(5) Where the tribunal determines that the Operator or any participant in the system was responsible for any loss, the amount determined by the tribunal shall be recoverable as a debt due from that person by the person who has suffered the loss.

(6) Schedule 6 to the 1986 Act shall apply to the tribunal and its proceedings under this regulation as it applies for the purposes of that Act.

Elections with respect to compensation and amounts recoverable

104.—(1) Any person making a complaint may make an election that any compensation payable to him and any amount recoverable by him in respect of lost units, lost benefits or new units with respect to which he has made an election should be by reference to the value, at the date of the election, of:

- (a) the relevant lost units being units lost before the date of the election and the relevant lost benefits being benefits which should have been received before that date; and
- (b) the relevant new units, after taking account of any consideration that the claimant would have had to give for the new units, being units to which the claimant was or would have been entitled before the date of the election,

together with interest thereon as from the date of the election.

(2) An election may be made at any time before the payment of compensation; but an election made after a determination by the tribunal under regulation 103 shall not have effect except for the purpose of calculating the amount of compensation which may be paid under the scheme established under regulation 105 and determining the extent of any right of recovery which the body administering the scheme has in respect of such a payment.

(3) An election shall be made in writing to the Complaints Commissioner and once made shall be irrevocable.