



Financial Services Act 2012

2012 CHAPTER 21

PART 6

INVESTIGATION OF COMPLAINTS AGAINST REGULATORS

84 Arrangements for the investigation of complaints

- (1) The regulators must—
 - (a) make arrangements (“the complaints scheme”) for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of their relevant functions (see section 85), and
 - (b) appoint an independent person (“the investigator”) to be responsible for the conduct of investigations in accordance with the complaints scheme.
- (2) For the purposes of this Part “the regulators” are the FCA, the PRA and the Bank of England, and references to a regulator are to be read accordingly.
- (3) The complaints scheme must be designed so that, as far as reasonably practicable, complaints are investigated quickly.
- (4) The Treasury's approval is required for the appointment or dismissal of the investigator.
- (5) The terms and conditions on which the investigator is appointed must be such as, in the opinion of the regulators, are reasonably designed to secure—
 - (a) that the investigator will be free at all times to act independently of the regulators, and
 - (b) that complaints will be investigated under the complaints scheme without favouring the regulators.

85 Relevant functions in relation to complaints scheme

- (1) This section has effect for the interpretation of the reference in section 84(1)(a) to the relevant functions of the regulators.

Status: This is the original version (as it was originally enacted).

- (2) The relevant functions of the FCA or the PRA are its functions other than its legislative functions.
- (3) The relevant functions of the Bank of England are its functions under Part 18 of FSMA 2000 (recognised clearing houses) or under Part 5 of the Banking Act 2009 (inter-bank payment systems), other than its legislative functions.
- (4) For the purposes of subsection (2), the following are the FCA's legislative functions—
 - (a) making rules under FSMA 2000;
 - (b) issuing codes under section 64 or 119 of FSMA 2000;
 - (c) issuing statements under—
 - (i) section 63C, 64, 69, 88C, 89S, 93, 124, 131J, 138N, 192H, 192N, 210 or 312J of FSMA 2000,
 - (ii) section 345D of FSMA 2000 (whether as a result of section 345(2) or 345A(3) or section 249(1) of that Act), or
 - (iii) section 80 of the Financial Services Act 2012;
 - (d) giving directions under section 316, 318 or 328 of FSMA 2000;
 - (e) issuing general guidance, as defined in section 139B(5) of FSMA 2000.
- (5) For the purposes of subsection (2), the following are the PRA's legislative functions—
 - (a) making rules under FSMA 2000;
 - (b) issuing codes under section 64 of FSMA 2000;
 - (c) issuing statements under—
 - (i) section 63C, 64, 69, 192H, 192N, 210 or 345D of FSMA 2000, or
 - (ii) section 80 of the Financial Services Act 2012;
 - (d) giving directions under section 316 or 318 of FSMA 2000;
 - (e) issuing guidance under section 2I of FSMA 2000.
- (6) For the purposes of subsection (3), the following functions of the Bank of England under Part 18 of FSMA 2000 are legislative functions—
 - (a) making rules;
 - (b) issuing statements—
 - (i) under section 312J, or
 - (ii) by virtue of the application by Schedule 17A of a provision mentioned in subsection (5)(c)(i) of this section.
- (7) For the purposes of subsection (3), the following functions of the Bank of England under Part 5 of the Banking Act 2009 are legislative functions—
 - (a) publishing principles or codes of practice under sections 188 and 189;
 - (b) preparing statements under section 198(3).

86 Consultation in relation to, and publication of, complaints scheme

- (1) Before making the complaints scheme, the regulators must publish a draft of the proposed scheme in the way appearing to them to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about it may be made to any of the regulators within a specified time.

Status: This is the original version (as it was originally enacted).

- (3) Before making the proposed complaints scheme, the regulators must have regard to any representations made to any of them in accordance with subsection (2).
- (4) If the regulators make the proposed complaints scheme, they must publish an account, in general terms, of—
 - (a) the representations made to any of them in accordance with subsection (2), and
 - (b) their response to the representations.
- (5) If the complaints scheme differs from the draft published under subsection (1) in a way which is, in the opinion of the regulators, significant the regulators must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The regulators must publish up-to-date details of the complaints scheme including, in particular, details of—
 - (a) the provision made under section 87(5), and
 - (b) the powers which the investigator has to investigate a complaint.
- (7) Those details must be published in the way appearing to the regulators to be best calculated to bring them to the attention of the public.
- (8) The regulators must notify the Treasury of the publication of details under subsection (6).
- (9) A regulator may charge a reasonable fee for providing a person with a copy of—
 - (a) a draft published under subsection (1), or
 - (b) details published under subsection (6).
- (10) Subsections (1) to (5) and (9)(a) also apply to a proposal to alter or replace the complaints scheme.

87 Investigation of complaints

- (1) A regulator is not obliged to investigate in accordance with the complaints scheme a complaint which it reasonably considers 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).
- (2) The complaints scheme must provide—
 - (a) for reference to the investigator of any complaint which a regulator is investigating,
 - (b) for the investigator—
 - (i) to have the means to conduct a full investigation of the complaint,
 - (ii) to report to the regulator to which the complaint relates and the complainant on the result of the investigator's investigation, and
 - (iii) to be able to publish the investigator's report (or part of it) if the investigator considers that it (or the part) ought to be brought to the attention of the public, and
 - (c) for the meeting by the regulators of the expenses of the scheme.
- (3) If a regulator has decided not to investigate a complaint, it must notify the investigator.

Status: This is the original version (as it was originally enacted).

- (4) If the investigator considers that a complaint of which the investigator has been notified under subsection (3) ought to be investigated, the investigator may proceed as if the complaint had been referred to the investigator under the complaints scheme.
- (5) The complaints scheme must confer on the investigator the power to recommend, if the investigator thinks it appropriate, that the regulator to which a complaint relates takes either or both of the following steps—
 - (a) makes a compensatory payment to the complainant, or
 - (b) remedies the matter complained of.
- (6) The complaints scheme must require the regulator to which a complaint relates, in a case where the investigator—
 - (a) has reported that the complaint is well-founded, or
 - (b) has criticised the regulator in a report,to inform the investigator and the complainant of the steps which it proposes to take in response to the report.
- (7) The investigator may require the regulator to which a complaint relates to publish the whole or a specified part of the response.
- (8) The investigator may appoint a person to conduct the investigation on the investigator's behalf but subject to the investigator's direction.
- (9) An officer or employee of any of the regulators may not be appointed under subsection (8).
- (10) Subsection (2) is not to be taken as preventing a regulator from making arrangements for the initial investigation of a complaint to be conducted by the regulator.

88 Exemption from liability in damages

- (1) Neither the investigator appointed under section 84 nor a person appointed to conduct an investigation on the investigator's behalf under section 87(8) is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of functions in relation to the investigation of a complaint.
- (2) Subsection (1) does not apply—
 - (a) if the act or omission is shown to have been in bad faith, or
 - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.