

FINANCIAL SERVICES ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Measures to protect consumers

Section 14: Consumer redress schemes

New section 404A: Rules under section 404: supplementary

177. Section 404A sets out matters for which section 404 rules may make provision. This includes requiring firms to provide the FSA with information about their investigation and the matters under investigation, and for the FSA (or a competent person appointed by it) to conduct the investigation and other relevant steps instead of the firm, including determining its liability and the redress the firm should make to consumers. Where the rules provide for a scheme to be conducted by someone other than the firm itself, they must also include provision for warning and decision notices and a right of referral to the Tribunal (*subsection (8)*).
178. *Subsection (2)* limits the FSA's power in *subsection (1)(b)* to define by way of example what amounts to a failure to comply with a requirement to that which a court has found or would find constitutes a failure. *Subsection (3)* similarly limits the FSA's power in *subsection (1)(c)* to set out matters which should be taken into account by firms in assessing evidence or determining causation to those matters which a court has taken, or would take, into account. *Subsection (4)* provides that the FSA may require firms to make such redress as is just in relation to that description of case, having regard (among other things) to the nature and extent of the losses in question. It is not limited to the remedy or relief which would be available in legal proceedings.