

Chapter 1

General

1.2 Process for making a consumer redress scheme

Consultation

- 1.2.1 **G** The power in section 404 of the *Act* is a *rule-making* power. *Rules* made by the *FCA* under this power will be subject to a formal public consultation, including a cost benefit analysis (CBA). The consultation paper will fully and clearly explain the *rules* of the scheme and set out the sources of evidence upon which the scheme is based. The consultation period will usually be three *months* long. There is, however, an exemption from the *FCA* consultation requirements for cases where the *FCA* considers that the delay would be prejudicial to the interests of consumers. This exemption is unlikely to be applicable in relation to *consumer redress schemes* because the importance of consulting to ensure a scheme is appropriate and workable in practice would be likely to outweigh any prejudice that the delay from the consultation process may bring.
- 1.2.2 **G** The *FCA* must have regard to any representations made to it during the consultation process. The *FCA* will issue a statement following the consultation which will explain how it has taken these into account in formulating the final *rules*. A further cost benefit analysis will be provided if the final *rules* differ significantly from the consultation draft. In addition, an explanation of any differences between the rules consulted on and the final *rules* made will be provided.
- 1.2.3 **G** All *FCA rules* are made by the *FCA* Board. The Treasury appoints the *FCA* Board and a majority of the Board are non-executive members.

Pre-consultation

- 1.2.4 **G** The *FCA* will actively seek to engage in discussions with the industry and consumer groups about the issue. This process will assist in the consideration of all the available options and, if it is ultimately decided that a scheme to address the issue should be pursued, it will ensure the *FCA* has a clear understanding of the matters that will need to be addressed in the formal consultation.
- 1.2.5 **G** This discussion process will allow the particular nature of the issue in relation to which a scheme is proposed to already be visible to key stakeholders. In addition, the issue may have been publicised more widely through comment and action by the *FCA* (e.g. the *FCA* may have published the findings of thematic projects, mystery shopping exercises or enforcement actions).

1.2.6

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The FCA will also consult with the Financial Services Practitioner Panel, the Smaller Businesses Practitioner Panel, the Financial Services Consumer Panel, the *Financial Services Compensation Scheme Limited* and the *Financial Ombudsman Service Limited* before issuing a formal consultation.

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