

Chapter 1

General



1.7 Challenging a consumer redress scheme

Method of challenge

- 1.7.1
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- Any *person* (e.g. firms, consumers or their representatives) may apply to the Upper Tribunal for a review of any *rules* made (see section 404D of the *Act*). The contact details for the Upper Tribunal are as follows:

The Upper Tribunal (Tax and Chancery Chamber)
5th Floor, Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL Tel: 020 7612 9730
Email: uttchmcts.gsi.gov.uk
- 1.7.2
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- The Upper Tribunal is independent of the *FCA*. Its usual role in relation to financial services is to hear references arising from *decision notices* or *supervisory notices* issued by the *FCA*. However, it has also been given a special role in relation to *consumer redress schemes*.
- 1.7.3
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- The judge presiding at *consumer redress scheme* proceedings in the Upper Tribunal will be a judge of the High Court, the Court of Appeal or Court of Session (or such other person as may be agreed by the Lord Chief Justice, the Lord President or the Lord Chief Justice of Northern Ireland; and the Senior President of Tribunals) (see section 404D(12) of the *Act*).

Dealing with consumer redress scheme cases

- 1.7.4
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- The general rule is that, in determining an application, the Upper Tribunal will apply the principles applicable on an application for judicial review (see section 404D(5) of the *Act*). Therefore, the Tribunal will consider issues such as:

(1) whether the *FCA* has acted within its powers;

(2) whether the *FCA* has followed a fair process;

(3) whether the *FCA* has specified kinds of redress that are ‘just’; and

(4) whether the *FCA* has acted irrationally or unreasonably (e.g. is the amount of time in which firms are given to conduct an investigation unreasonable?).

1.7.5 G Nonetheless, in relation to two particular aspects of a *consumer redress scheme*, the Upper Tribunal will be able to conduct a full merits review to consider whether the *FCA*'s interpretation of the law was correct (see section 404D(6) and (7) of the *Act*). These two aspects are:

- (1) any examples that the *FCA* has set out in the scheme *rules* of things done, or omitted to be done, that are to be regarded as constituting a failure to comply with a requirement; and
- (2) any matters to be taken into account, or steps to be taken, that the *FCA* has set out in the scheme *rules* for the purposes of:
 - (a) assessing evidence as to a failure to comply with a requirement; or
 - (b) determining whether such a failure has caused (or may cause) loss or damage to consumers.

1.7.6 G In relation to these two aspects, the *FCA* is restricted to what a court or Tribunal would do. As such, the Upper Tribunal's role will be to check whether the *FCA* came to the correct view.

Procedure in the Upper Tribunal

1.7.7 G The detailed rules that govern the practice and procedure to be followed in the Upper Tribunal are available on the Government's website (<https://www.gov.uk/government/publications/upper-tribunal-procedure-rules>) and are subject to periodic revision.

Possible outcomes of an application to the Upper Tribunal

1.7.8 G The Upper Tribunal may:

- (1) dismiss the application (so that the scheme *rules* will stand); or
- (2) make an order quashing any rules made under section 404 or any provision of those *rules* (see section 404D(2) of the *Act*).

1.7.9 G The Upper Tribunal may also award damages to the applicant (see section 404D(10) of the *Act*).

1.7.10 G It is possible to appeal an Upper Tribunal decision to the Court of Appeal on a point of law.