

Chapter 2

Arch cru Consumer Redress Scheme

2.5 Consumer redress scheme: case review

Deadline to complete the steps in this section

- 2.5.1

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A *firm*:

(1) in respect of any scheme case where the *firm* has received an opt-in by 22 July 2013, must take the steps set out in this section by 9 December 2013; and

(2) in respect of any scheme case where the *firm* has received an opt-in later than 22 July 2013, must take the steps set out in this section if the *consumer's* failure to comply with that time limit was caused by exceptional circumstances; in such a case, the deadline in (1) is extended according to the length of the delay caused by the *consumer's* failure to comply with the time limit.
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The *guidance* on exceptional circumstances at ■ CONRED 2.6.3 G is relevant to ■ CONRED 2.5.1R (2).
- 2.5.3

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(1) For any scheme case where the *firm* has received an opt-in, but the *firm*, does not consider ■ CONRED 2.5.1R (2) requires it to take the steps set out in this section, and does not intend to do so, the *firm* must send the *consumer* a *redress determination* in the form set out in ■ CONRED 2 Annex 6 R within 14 days of receiving the opt-in.

(2) For any opted-in scheme case, the *firm* must send the *consumer*, within 14 days of receiving the opt-in, a letter in the form set out in ■ CONRED 2 Annex 7 R.

First step: case review of each opted-in scheme case

- 2.5.4

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The first step is to carry out a review (a case review) of each opted-in scheme case, by completing the template at ■ CONRED 2 Annex 12 R, in accordance with the *rules* set out in the instructions at ■ CONRED 2 Annex 13 .
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Non-compliance with any of the *evidential provisions* set out in the instructions at ■ CONRED 2 Annex 13 may be relied upon as tending to show contravention of ■ CONRED 2.5.4 R.
- 2.5.6

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In complying with ■ CONRED 2.5.4 R, *firms* should have regard to the *guidance* set out in the instructions at ■ CONRED 2 Annex 13 .

Second step: cases of insufficient information

2.5.7

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- (1) The second step applies only in respect of an opted-in scheme case where a *firm* has attempted to comply with the first step (■ CONRED 2.5.4 R) but does not have sufficient information to determine all of the following matters:
 - (a) whether it has failed to comply with any of the suitability requirements specified at paragraph 5.1R of ■ CONRED 2 Annex 13 ;
 - (b) if so, whether that failure has caused loss or damage to the *consumer*; and
 - (c) if so, what the redress should be in respect of its failure.
- (2) The second step is to:
 - (a) send the *consumer* a letter in the form set out in ■ CONRED 2 Annex 8 R;
 - (b) if no reply is received by the *firm* within four weeks of a letter in (a) being dispatched, the *firm* must send a letter to the *consumer*, within one further week, in the form set out in ■ CONRED 2 Annex 9 R, and take all reasonable steps to contact the consumer by other means; and
 - (c) if a reply is received from a *consumer* but the information it contains is insufficient to determine all the matters in (1), the *firm* should take all reasonable steps to obtain further information from the *consumer*.

[Note: see also ■ CONRED 2.8.7 R.]

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A *firm* which, having carried out the second step, has acquired sufficient information to determine all of the outstanding matters must then complete the first step (■ CONRED 2.5.4 R).

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Where a *firm* has carried out the second step in relation to an opted-in scheme case (falling within ■ CONRED 2.4.2 R) but still does not have sufficient information to determine all of the outstanding matters, the opted-in scheme case no longer falls within the subject matter of the consumer redress scheme created by this chapter. The *firm* must send the *consumer* a letter in the form set out in ■ CONRED 2 Annex 10 R promptly on completion of the second step.

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Opted-in scheme cases to which the second step (■ CONRED 2.5.7 R) applies are likely to be exceptional, having regard to the record-keeping requirements applicable to *authorised persons* under *FCA rules* (notably SYSC).

Third step: redress determination

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The third step is to send the *consumer* a *redress determination* in the form of the letter set out in ■ CONRED 2 Annex 11 R in respect of each opted-in scheme case.

Taking steps by or on behalf of FCA

- 2.5.12

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The *FCA* may (on giving notice to the *firm*) take any of the steps in ■ CONRED 2.3 to ■ CONRED 2.5, instead of the *firm*, or may appoint one or more competent persons to do so on behalf of the *FCA*, if there is a material failure by the *firm* to take any of the actions required under this chapter, including where the *firm* informs the *FCA* that it is unable or unwilling to take any of those actions because to do so would be in breach of a condition of its professional indemnity insurance. In such a case, the *firm* must:

(1)

not carry out (or, as the case may be, continue) any of the steps to be taken by the *FCA* or competent person, unless so directed by them; and

(2)

render all reasonable assistance to the *FCA* or competent person (but any assistance, the rendering of which would invalidate the *firm*'s professional indemnity insurance, is not reasonable for the purposes of this *rule*).
- 2.5.13

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The *FCA* would expect a *firm* to make reasonable efforts to obtain the consent of its professional indemnity insurer to take the relevant steps, in line with its obligations under *Principle 11* (Relations with regulators).
- 2.5.14

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If, where the *FCA* or a competent person takes any steps under ■ CONRED 2.5.12 R, the *FCA* proposes to make any determination of:

(1)

whether a failure by a *firm* has caused loss to a *consumer*; or

(2)

what the redress should be in respect of the failure;

the *FCA* must give the *firm* a *warning notice* specifying the proposed determination.
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(1)

If the *FCA* decides to make a determination of the matters in ■ CONRED 2.5.14 R, the *FCA* must give the *firm* a *decision notice* specifying the determination.

(2)

If the *FCA* decides to make such a determination, the *firm* may refer the matter to the *Tribunal*.
- 2.5.16

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Part 26 of the *Act* (including the provisions as to final notices) applies in respect of notices given under ■ CONRED 2.5.14 R and ■ CONRED 2.5.15 R.
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Where, under ■ CONRED 2.5.12 R, the *FCA* (or a competent person) communicates with a *customer* (or *consumer*) instead of the *firm*, it will do so in its own name, making clear (in the case of a competent person) its authority from the *FCA* to do so.
- 2.5.18

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Where the *FCA* (or a competent person), instead of the *firm*, carries out the third step in ■ CONRED 2.5.11 R, it will do so no earlier than seven *days* after the issue of a final notice in respect of the *FCA*'s decision to make a

- 2.5.19

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determination of the matters in ■ CONRED 2.5.14 R, and will send the *firm* a copy of the *consumer's* response to the *redress determination*.

A fee is payable by the *firm* (or *person* falling within ■ CONRED 2.1.2R (1)) in any case where the *FCA* exercises its powers under ■ CONRED 2.5.12 R: see the table at ■ FEES 3.2.7 R.
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The completion of the steps in ■ CONRED 2.3 to ■ CONRED 2.5 by, or on behalf of, the *FCA*, as provided in ■ CONRED 2.5.12 R, does not affect the ability of the *Ombudsman* to consider a *complaint*, in particular where the *firm* has not sent a *redress determination* in accordance with the time limits specified under the scheme.