

**COMPLAINTS AGAINST THE FSA SCHEME**

**INSTRUMENT 2001**

- A. The Financial Services Authority makes the arrangements and the provisions in the Annex to this instrument ("COAF") in the exercise of the powers listed in Schedule 4 to COAF (Powers exercised).
- B. This instrument comes into force at the beginning of the day on 3<sup>rd</sup> September 2001.
- C. This instrument may be cited as the Complaints against the FSA Scheme Instrument 2001.
- D. The Annex to this instrument (including its schedules) may be cited as the Complaints against the FSA Scheme, or COAF.

By order of the Board

19 July 2001

# ANNEX



# Complaints against the FSA

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Transitional provisions

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## Handbook Modules

### Transitional Provisions

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- 1 There are no transitional provisions in COAF. However, COAF 2 (Transitional Complaints Scheme) is itself a separate Transitional Complaints Scheme covering complaints against the FSA or PIA, IMRO or SFA in respect of matters arising before the date that section 19 (the general prohibition) of the Act comes into force.

# Chapter 1

## Complaints against the FSA

## 1.1 Introduction

- 1.1.1** G<sub>/1</sub> (1) Paragraph 7 of Schedule 1 to the *Act* requires the *FSA* to maintain a *complaints scheme* for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of its functions under the *Act* (other than its legislative functions).
- (2) The *FSA* is required to appoint an independent person as *Complaints Commissioner* to be responsible for the conduct of investigations in accordance with the *complaints scheme*.
- 1.1.2** G<sub>/1</sub> The *complaints scheme* provides that there may be two distinct stages for each complaint. In the first stage, the *FSA* itself will investigate any complaint that meets the requirements of the *complaints scheme* (see *COAF* 1.4) and take whatever action to resolve the matter it thinks appropriate. A complaint will normally only proceed to the second stage if the complainant is dissatisfied with the *FSA*'s determination of his complaint or how it has been handled. This second stage consists of investigation of the complaint by the *Complaints Commissioner*, followed, wherever he finds for the complainant, by his recommendation to the *FSA* on the form of redress that is appropriate in the circumstances.
- 1.1.3** G<sub>/1</sub> (1) The *complaints scheme* is made by the *FSA* in accordance with its obligations under paragraphs 7 and 8 of Schedule 1 to the *Act*.
- (2) Where the *Act* requires the *FSA* to make a particular arrangement as part of the *complaints scheme*, this is recognised in the following text by the use of the word 'must'. In contrast, where a provision in the *complaints scheme* states that someone "will" do something, this denotes that the *FSA* is committing itself or the *Complaints Commissioner* to some action which, though not specifically required by the *Act*, is nevertheless viewed as necessary to give effect to the intentions of the *Act*.
- (3) Each provision in the *complaints scheme* is, consistent with the style and format of the Handbook, identified by the letter "G". It nevertheless constitutes a definitive statement of the *complaints scheme* which the *FSA* is required to maintain.
- 1.1.4** G<sub>/1</sub> The *complaints scheme* has effect from 3 September 2001.
- 1.1.5** G<sub>/1</sub> In this *complaints scheme*, "complaint" means any expression of dissatisfaction about the manner in which the *FSA* has carried out its functions under the *Act* other than its legislative functions.
- 1.1.6** G<sub>/1</sub> The transitional provisions in *GEN* do not apply to the *complaints scheme*.
- 1.1.7** G<sub>/1</sub> Further details of the practical operation of the *complaints scheme* are available from the office of the *FSA*'s company secretary, who may be contacted at 25 The

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North Colonnade, Canary Wharf, London E14 5SH, Tel No. 020 7676 9870 or by e-mail at [complaints@fsa.gov.uk](mailto:complaints@fsa.gov.uk).

## 1.2 Application

- 1.2.1** **G**<sub>/1</sub> Anyone directly affected by the way in which the *FSA* has carried out its functions may bring a complaint under the *complaints scheme*, provided the complaint meets the requirements of the *complaints scheme* (see *COAF* 1.4). This includes *firms* and issuers of listed securities and any *customer* or prospective *customer*, whether an individual or a *body corporate*, or *market counterparty*.
- 1.2.2** **G**<sub>/1</sub> The *complaints scheme* applies in relation to complaints made about the way in which the *FSA* has carried out its functions under the *Act*. The *FSA* is also applying the main elements of the *complaints scheme* in respect of complaints against the *FSA* arising in connection with the exercise of its functions under previous legislation and in respect of complaints made against *PIA*, *IMRO* and *SFA*. Those arrangements are set out in the *transitional complaints scheme*.

## 1.3 The Complaints Commissioner

### 1.3.1

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- (1) The *FSA* must appoint an individual, subject to the approval of the Treasury, as *Complaints Commissioner* to carry out the functions conferred on him by the *complaints scheme*.
- (2) In appointing the *Complaints Commissioner*, the *FSA* is advised by an appointment panel comprising the Deputy Chairman of the *FSA*, the Chairmen of the Practitioner and Consumer Panels established under sections 9 and 10 of the *Act* and another person who is independent of the *FSA*.

### 1.3.2

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- (1) The *Complaints Commissioner* is appointed for a period of three years and may be dismissed from office only for reason of becoming:
  - (a) incapacitated by physical or mental illness; or
  - (b) otherwise unfit to discharge the functions of his office;and subject in either event to the approval of the Treasury.
- (2) No person who has attained the age of 70 years is eligible to be or to remain a *Complaints Commissioner*.
- (3) The *Complaints Commissioner* must not be an employee of the *FSA* and is required to act independently of, and without favouring, the *FSA*.

### 1.3.3

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The *FSA* will remunerate the *Complaints Commissioner* and will provide him with sufficient resources to equip him with suitable accommodation and staff. No member of the *Complaints Commissioner's* staff may be an employee of, or perform any duties for, the *FSA*.

## 1.4 Coverage and scope of the scheme

### 1.4.1

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- (1) The *complaints scheme* provides a procedure for enquiring into and, if necessary, addressing allegations of misconduct by the *FSA* arising from the way in which it has carried out or failed to carry out its functions. The *complaints scheme* covers complaints about the way in which the *FSA* has acted or omitted to act, including complaints alleging:
  - (a) mistakes and lack of care;
  - (b) unreasonable delay;
  - (c) unprofessional behaviour;
  - (d) bias; and
  - (e) lack of integrity.
- (2) Because the *complaints scheme* is concerned with complaints about the way in which the *FSA* has discharged its functions, it does not cover complaints about the actions of the *Financial Ombudsman Service* or the *Financial Services Compensation Scheme*.
- (3) To be eligible to make a complaint under the *complaints scheme*, a person (see *COAF* 1.2.1G) must be seeking a remedy (which for this purpose may include an apology) in respect of some inconvenience, distress or loss which the person has suffered as a result of being directly affected by the *FSA*'s actions or inaction.

#### Exclusions from the scheme

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### 1.4.2

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Each of the following is excluded from the *complaints scheme*:

- (1) complaints about the *FSA*'s relationship with its employees;
- (2) complaints connected with contractual or commercial disputes involving the *FSA* and not connected to its functions under the *Act*; and
- (3) complaints in relation to the performance of the *FSA*'s legislative functions under the *Act* (including making *rules* and issuing codes and general *guidance*).

**Alternative remedies**

1.4.3

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The *FSA* will not investigate a complaint under the *complaints scheme* which it reasonably considers:

- (1) could have been, or would be, more appropriately dealt with in another way (for example by referring the matter to the *Tribunal* or by the institution of other legal proceedings); or
- (2) amounts to no more than dissatisfaction with the *FSA*'s general policies or with the exercise of discretion where no unreasonable, unprofessional or other misconduct is alleged.

1.4.4

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A complaint which is connected with, or which arises from, any form of continuing action by the *FSA* will not normally be investigated by either the *FSA* or the *Complaints Commissioner* until the complainant has exhausted the procedures and remedies under the *Act* which are relevant to that action. An investigation may be commenced before the completion of those procedures if, in the exceptional circumstances of the case, it would not be reasonable to expect the complainant to await the conclusion of the *FSA*'s action.

**Certain complaints to be in writing**

1.4.5

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- (1) A complaint made orally by a consumer will be investigated by the *FSA*. If the complaint cannot be resolved quickly, the *FSA* will write to the complainant inviting him to confirm its understanding of the complaint.
- (2) Other persons complaining orally will be asked to confirm their complaint in writing (this includes in electronic form), and the *FSA* will not normally investigate a complaint until the complainant has done so.

**Time limits**

1.4.6

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Complaints should be made within 12 months of the date on which the complainant first became aware of the circumstances giving rise to the complaint. Complaints made later than this will be investigated under the *complaints scheme* only if the complainant can show reasonable grounds for the delay.

**Cost**

1.4.7

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The *FSA* will not make any charge to complainants in relation to the *complaints scheme*.

## 1.5 Procedure

### The FSA's initial response to complaints

- 1.5.1** G<sub>/1</sub> The *FSA* will acknowledge a complaint within five working days of receipt. It will send each complainant a leaflet explaining how the *complaints scheme* works, including details of his right to refer the complaint to the *Complaints Commissioner* if he is dissatisfied with the way in which the *FSA* has dealt with it (see *COAF* 1.5.5G).

### Stage 1: Investigation of complaints by the FSA

- 1.5.2** G<sub>/1</sub> The *FSA* will arrange for an initial investigation by its own staff of any complaint which satisfies the provisions of *COAF* 1.4.1G to *COAF* 1.4.6G. That investigation will be carried out by a suitably senior member of staff who has not previously been involved in the matter complained of, with a view to resolving the matter to the complainant's satisfaction. The *FSA* will seek to resolve the complaint as quickly as possible.
- 1.5.3** G<sub>/1</sub> The *FSA* will aim to ensure that all investigations are completed within eight weeks. If it has not completed the investigation of a complaint within four weeks, the *FSA* will write to the complainant reporting that fact.
- 1.5.4** G<sub>/1</sub> If the *FSA* concludes that a complaint is well founded, it will tell the complainant what it proposes to do to remedy the matters of complaint.
- 1.5.5** G<sub>/1</sub> Remedying a well founded complaint may include offering the complainant an apology, taking steps to rectify an error or, if appropriate, the offer of a compensatory payment on an ex-gratia basis. If the *FSA* decides to reject a complaint, it will give its reasons for doing so to the complainant.
- 1.5.6** G<sub>/1</sub> Complainants who are dissatisfied with the outcome of an investigation, or who are dissatisfied with the *FSA*'s progress in investigating a complaint, may refer the matter to the *Complaints Commissioner*, who may decide to carry out his own investigation.

### If the FSA does not investigate a complaint, will the Complaints Commissioner do so?

- 1.5.7** G<sub>/1</sub> Within ten working days of receiving a complaint, the *FSA* will notify the *Complaints Commissioner* of each complaint which it decides not to investigate and will inform the complainant that it has done so. The *Complaints*

*Commissioner* will, after considering any representations from the complainant and the FSA, then decide whether the complaint falls within the scope of the *complaints scheme* and, if so, whether to conduct an investigation.

**1.5.8** G<sub>/1</sub> If a complaint is referred or notified to the *Complaints Commissioner* before the FSA has had the opportunity to conduct or complete an investigation, the *Complaints Commissioner* will consider whether it would be desirable to allow the FSA that opportunity before conducting his own investigation.

**1.5.9** G<sub>/1</sub> The *Complaints Commissioner* will not investigate any complaint which is outside the scope of the *complaints scheme*, but the final decision on whether a particular case is so excluded rests with the *Complaints Commissioner*.

### Stage 2: Conduct of investigations by the Complaints Commissioner

**1.5.10** G<sub>/1</sub> The *Complaints Commissioner* may conduct an investigation in whatever manner he thinks appropriate including obtaining, at the FSA's expense, such external resources as may be reasonable. In performing his functions in accordance with the *complaints scheme*, the *Complaints Commissioner* must at all times act independently of the FSA.

**1.5.11** G<sub>/1</sub> The *Complaints Commissioner* may appoint a person to conduct the whole or any part of an investigation on his behalf but subject to his direction. That person must not be an officer or employee of the FSA.

**1.5.12** G<sub>/1</sub> The FSA will afford the *Complaints Commissioner* all reasonable co-operation, including giving access to its staff and information. The FSA may, in affording the *Complaints Commissioner* access to information, have regard to the need to maintain the confidentiality of certain kinds of information. This would include, for example, taking appropriate steps to ensure that the identity of an informant is not disclosed, or maintaining the confidentiality of information given to the FSA under international arrangements. In any case where the FSA decides that it should withhold information, it will inform the Commissioner of the nature of that information and its reasons for withholding it.

**1.5.13** G<sub>/1</sub> The FSA is not, because of any investigation being conducted by the *Complaints Commissioner*, prevented from continuing to take such action, or such further action, as it considers appropriate in relation to any matter which is related to a complaint or a complainant.

**1.5.14** G<sub>/1</sub> The *Complaints Commissioner* will ensure that, before he concludes an investigation and makes a report, any *person* who may be the subject of criticism in it is given notice of, and the opportunity to respond to, that criticism.

**1.5.15** G<sub>/1</sub> In the investigation of a complaint by either the FSA or the *Complaints Commissioner*, any finding of fact of:

- (1) a court of competent jurisdiction (whether in the *United Kingdom* or elsewhere); or
- (2) the *Tribunal*; or
- (3) any other tribunal established by legislative authority (whether in the *United Kingdom* or elsewhere); or

(4) any independent tribunal charged with responsibility for hearing a final appeal from the regulatory decisions of *PIA*, *IMRO* or *SFA*;

which has not been set aside on appeal or otherwise, shall be conclusive evidence of the facts so found, and any decision of that court or tribunal shall be conclusive.

**1.5.16** G<sub>/1</sub> Any findings of fact or decisions of courts or tribunals not covered by *COAF* 1.5.15G will carry such weight as the *FSA* or the *Complaints Commissioner* considers appropriate in the circumstances.

**1.5.17** G<sub>/1</sub> In deciding whether a complaint is well founded and, if so, in deciding what steps he should recommend the *FSA* to take, the *Complaints Commissioner* will have regard to the *FSA*'s statutory objectives and the considerations set out in sections 2(3) or 73(1) of the *Act*.

**1.5.18** G<sub>/1</sub> The *Complaints Commissioner* may, if he thinks it appropriate, recommend that the *FSA* take either or both of the following steps:

- (1) remedy the matters of complaint; or
- (2) make a compensatory payment to the complainant.

#### Reports on investigations

**1.5.19** G<sub>/1</sub> The *Complaints Commissioner* must report to the *FSA* and to the complainant on the results of his investigation, giving reasons for any recommendations he makes.

**1.5.20** G<sub>/1</sub> The *Complaints Commissioner* will ensure that his report, apart from identifying the *FSA*, does not mention the name of any other person or contain particulars which are likely to identify any other person unless:

- (1) in the opinion of the *Complaints Commissioner* the omission of such particulars would be likely to impair the effectiveness of the report; or
- (2) after taking into account the public interest, as well as the interests of the complainant and the interests of other persons, the *Complaints Commissioner* considers it necessary to mention the name of that person or to include in the report those particulars (see also *COAF* 1.5.14G).

**1.5.21** G<sub>/1</sub> The *Complaints Commissioner* may publish his report (or any part of it) if he considers that the report (or any part of it) ought to be brought to the attention of the public.

**1.5.22** G<sub>/1</sub> The *FSA* must, in any case where the *Complaints Commissioner* has reported that a complaint is well founded, or where he has criticised the *FSA* in his report, inform the *Complaints Commissioner* and the complainant of the steps which it proposes to take by way of response.

**1.5.23** G<sub>/1</sub> The *FSA* must, if required by the *Complaints Commissioner* to do so, publish the whole or a specified part of its response.

**1.5.24** G<sub>/1</sub> In deciding how it should respond to a report from the *Complaints Commissioner*, the *FSA* will, as well as having regard to its statutory objectives and the considerations set out in section 2(3) or 73(1) of the *Act*, normally take into account the following:

- (1) the gravity of the misconduct which the *Complaints Commissioner* has identified and its consequences for the complainant;
- (2) the nature of the *FSA*'s relationship with the complainant and the extent to which the complainant has been adversely affected in the course of his direct dealings with the *FSA*;
- (3) whether what has gone wrong is at the operational or administrative level (rather than in relation to matters of policy or where the *FSA*'s actions have necessarily had to reflect a balancing of conflicting interests and complex issues);
- (4) the impact of the cost of compensatory payments on *firms*, issuers of listed securities and, indirectly, consumers.



**1.6 General**

**Confidentiality**

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**1.6.1**

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The *Complaints Commissioner* must observe any statutory restrictions applicable to him relating to the disclosure of confidential information.

**Annual Report**

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**1.6.2**

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The *Complaints Commissioner* will each year submit a report to the *FSA Board*, for publication, on investigations concluded by him during the 12-month period ending 31 March. The report may include information concerning trends in the subject matter of complaints and on the general lessons which he considers the *FSA* should learn.

## Chapter 2

2

# Transitional complaints scheme

## 2.1 Introduction

- 2.1.1** G<sub>/1</sub> In accordance with the power conferred by The Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme) Order 2001 (“the Order”), the *FSA* has made arrangements for the investigation of complaints:
- (1) arising in connection with the exercise before the *commencement day* of any functions conferred on the *FSA* by or under any enactment (other than the *Act*), or the failure to exercise any such function before *commencement*; or
  - (2) against *PIA*, *IMRO* or *SFA* in respect of matters arising before the *commencement day*.
- 2.1.2** G<sub>/1</sub> The arrangements made by the *FSA* are set out in the following provisions of this *transitional complaints scheme*.
- 2.1.3** G<sub>/1</sub> The Order requires the *FSA* to ensure that the *transitional complaints scheme* complies with paragraph 7 of Schedule 1 to the *Act* and provides that the *FSA* may apply such provisions of paragraph 8 of Schedule 1 as it considers to be appropriate. The *FSA* has decided to apply most of the provisions of paragraph 8 so that, with suitable modification to take account of the different persons involved, the *transitional complaints scheme* will operate in substantially the same way as the *complaints scheme* which, going forward, provides a scheme for investigating complaints against the *FSA* in respect of its functions under the *Act*. One difference is that the *transitional complaints scheme* does not make provision for compensatory payments to be made to complainants.
- 2.1.4** G<sub>/1</sub> The *FSA* is required to appoint an independent person as *Complaints Commissioner* to be responsible for the conduct of investigations in accordance with the *complaints scheme*, and that person is also responsible for the conduct of investigations under this *transitional complaints scheme*.
- 2.1.5** G<sub>/1</sub>
- (1) Where the *FSA* is required to make a particular arrangement as part of the *transitional complaints scheme*, this is recognised in the following text by use of the word ‘must’. In contrast, where a provision in the *transitional complaints scheme* states that someone “will” do something, this denotes that the *FSA* is committing itself or the *Complaints Commissioner* to some action which, though not specifically required, is nevertheless viewed as necessary to give effect to the intentions of the *Act*.
  - (2) Each provision in the *transitional complaints scheme* is, consistent with the style and format of the Handbook, identified by the letter “G”. It nevertheless constitutes a definitive statement of the *transitional complaints scheme* which the *FSA* is maintaining.
- 2.1.6** G<sub>/1</sub> References in this *transitional complaints scheme* to the *FSA*’s functions are references to its statutory functions (other than its legislative functions) arising in connection with the Financial Services Act 1986 and the Banking Act 1987 and

functions conferred on the *FSA* by or under other enactments (other than the *Act*). References to the functions of *PIA*, *IMRO* or *SFA* are references to their functions arising in connection with the Financial Services Act 1986 (other than their functions of making rules and issuing guidance).

**2.1.7** G<sub>/1</sub> For the purposes of the *transitional complaints scheme*, the *FSA* is responsible for receiving, investigating and responding to complaints made against *PIA*, *IMRO* or *SFA*.

**2.1.8** G<sub>/1</sub> The *transitional complaints scheme* has effect from 3 September 2001 and is concerned with complaints against the *FSA*, *PIA*, *IMRO* and *SFA* made on or after that date and with complaints made before that date but only if they had not, by 3 September, been referred to an independent person for review.

**2.1.9** G<sub>/1</sub> In this *transitional complaints scheme*:

- (1) “complaint” means any expression of dissatisfaction about the manner in which the *FSA* has carried out its statutory functions (other than its legislative functions) and about the manner in which *PIA*, *IMRO* or *SFA* have carried out their functions arising in connection with the Financial Services Act 1986 (other than their functions of making rules and issuing guidance);
- (2) *firm* includes any person who is or was a person authorised under Chapter III of Part I of the Financial Services Act 1986; and
- (3) “Financial Services Tribunal” means the Tribunal established under section 96 of the Financial Services Act 1986.

**2.1.10** G<sub>/1</sub> The transitional provisions in *GEN* do not apply to the *transitional complaints scheme*.

**2.1.11** G<sub>/1</sub> Further details of the practical operation of the *transitional complaints scheme* are available from the office of the *FSA*’s company secretary who may be contacted at 25 The North Colonnade, Canary Wharf, London E14 5SH, Tel No. 020 7676 9870 or by e-mail at [complaints@fsa.gov.uk](mailto:complaints@fsa.gov.uk).



## 2.2 Application

### 2.2.1

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Anyone directly affected by the way in which the *FSA*, *PIA*, *IMRO* or *SFA* has carried out their functions may bring a complaint under the *transitional complaints scheme*, provided the complaint meets the requirements of the *transitional complaints scheme* (see *COAF* 2.3). This includes *firms* and issuers of listed securities and any customer or prospective customer, whether an individual or a body corporate, or market counterparty.



## 2.3 Coverage and scope of the scheme

### 2.3.1

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<sup>/1</sup>

- (1) The *transitional complaints scheme* provides a procedure for enquiring into and, if necessary, addressing allegations of misconduct by the *FSA*, *PIA*, *IMRO* and *SFA* arising from the way in which they have carried out or failed to carry out their functions. The *transitional complaints scheme* covers complaints about the way in which the *FSA*, *PIA*, *IMRO* or *SFA* have acted or omitted to act, including complaints alleging:
  - (a) mistakes and lack of care;
  - (b) unreasonable delay;
  - (c) unprofessional behaviour;
  - (d) bias; and
  - (e) lack of integrity.
- (2) The *transitional complaints scheme* does not cover complaints about the actions of the Financial Ombudsman Service, the Financial Services Compensation Scheme, the Investors' Compensation Scheme or of any independent complaints investigation body established by *PIA*, *IMRO* or *SFA*.
- (3) The *transitional complaints scheme* does not cover complaints arising in connection with the functions which the *FSA* was authorised to carry out by the Contracting Out (Functions in Relation to Insurance) Order 1998.
- (4) To be eligible to make a complaint under the *transitional complaints scheme*, a person (see *COAF 2.2.1G*) must be seeking a remedy (which for this purpose may include an apology) in respect of some inconvenience, distress or loss which the person has suffered as a result of being directly affected by the actions or inaction of the *FSA*, *PIA*, *IMRO* or *SFA*.

### Exclusions from the scheme

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### 2.3.2

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- Each of the following is excluded from the *transitional complaints scheme*:
- (1) complaints about the relationship of the *FSA*, *PIA*, *IMRO* or *SFA* with its employees;
  - (2) complaints connected with contractual or commercial disputes involving the *FSA*, *PIA*, *IMRO* or *SFA* and not connected to their regulatory functions; and
  - (3) complaints in relation to the performance of the *FSA*'s legislative functions under the Financial Services Act 1986 or the Banking Act 1987, or the

functions of *PIA*, *IMRO* or *SFA* in relation to their functions of making rules or issuing guidance;

- (4) complaints which, before 3 September 2001, have, following an investigation by the executive of the *FSA*, *PIA*, *IMRO* or *SFA*, been referred for further investigation by a person who is independent of the *FSA* or of any such organisation.

**Alternative remedies**

2.3.3

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The *FSA* will not investigate a complaint under the *transitional complaints scheme* which it reasonably considers:

- (1) could have been, or would be, more appropriately dealt with in another way (for example by referring the matter to the Financial Services Tribunal or to the committees, tribunals and appeal bodies or to any successor tribunal of *PIA*, *IMRO* or *SFA* or by the institution of other legal proceedings); or
- (2) amounts to no more than dissatisfaction with the general policies of the *FSA* or of *PIA*, *IMRO* or *SFA* or with the exercise of discretion by any such body where no unreasonable, unprofessional or other misconduct is alleged.

2.3.4

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A complaint which is connected with, or which arises from, any form of continuing action by the *FSA*, *PIA*, *IMRO* or *SFA* will not normally be investigated by either the *FSA* or the *Complaints Commissioner* until the complainant has exhausted the procedures and remedies under the Financial Services Act 1986 or, as appropriate, under the rules of *PIA*, *IMRO* or *SFA* which are relevant to that action. An investigation may be commenced before the completion of those procedures if, in the exceptional circumstances of the case, it would not be reasonable to expect the complainant to await the conclusion of such action.

**Certain complaints to be in writing**

2.3.5

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- (1) A complaint made orally by a consumer will be investigated by the *FSA*. If the complaint cannot be resolved quickly, the *FSA* will write to the complainant inviting him to confirm its understanding of the complaint.
- (2) Other persons complaining orally will be asked to confirm their complaint in writing (this includes in electronic form) and the *FSA* will not normally investigate a complaint until the complainant has done so.

**Time limits**

2.3.6

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Complaints should be made within 12 months of the date on which the complainant first became aware of the circumstances giving rise to the complaint. Complaints made later than this will be investigated under the *transitional complaints scheme* only if the complainant can show reasonable grounds for the delay.

Cost

2.3.7

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The FSA will not make any charge to complainants in relation to the *transitional complaints scheme*.

## 2.4 Procedure

### The FSA's initial response to complaints

- 2.4.1** G<sub>/1</sub> The FSA will acknowledge a complaint within five working days of receipt. It will send each complainant a leaflet explaining how the *transitional complaints scheme* works, including details of his right to refer the complaint to the *Complaints Commissioner* if he is dissatisfied with the way in which the FSA has dealt with it (see COAF 2.4.6G).

### Stage 1: Investigation of complaints by the FSA

- 2.4.2** G<sub>/1</sub> The FSA will arrange for an initial investigation by its own staff of any complaint which satisfies the provisions of COAF 2.3.1G to COAF 2.3.6G. That investigation will be carried out by a suitably senior member of staff who has not previously been involved in the matter complained of, with a view to resolving the matter to the complainant's satisfaction. The FSA will seek to resolve the complaint as quickly as possible.
- 2.4.3** G<sub>/1</sub> The FSA will aim to ensure that all investigations are completed within eight weeks. If it has not completed the investigation of a complaint within four weeks, the FSA will write to the complainant reporting that fact.
- 2.4.4** G<sub>/1</sub> If the FSA concludes that a complaint is well founded it will tell the complainant what it proposes to do to remedy the matters of complaint.
- 2.4.5** G<sub>/1</sub> Remediating a well-founded complaint may include offering the complainant an apology and taking steps to rectify an error. If the FSA decides to reject a complaint, it will give its reasons for doing so to the complainant.
- 2.4.6** G<sub>/1</sub> Complainants who are dissatisfied with the outcome of an investigation, or who are dissatisfied with the FSA's progress in investigating a complaint, may refer the matter to the *Complaints Commissioner*, who may decide to carry out his own investigation.

### If the FSA does not investigate a complaint, will the Complaints Commissioner do so?

- 2.4.7** G<sub>/1</sub> Within ten working days of receiving a complaint, the FSA will notify the *Complaints Commissioner* of each complaint which it decides not to investigate and will inform the complainant that it has done so. The *Complaints Commissioner* will, after considering any representations from the complainant and

the FSA, then decide whether the complaint falls within the scope of the *transitional complaints scheme* and, if so, whether to conduct an investigation.

**2.4.8** G<sub>/1</sub> If a complaint is referred or notified to the *Complaints Commissioner* before the FSA has had the opportunity to conduct or complete an investigation, the *Complaints Commissioner* will consider whether it would be desirable to allow the FSA that opportunity before conducting his own investigation.

**2.4.9** G<sub>/1</sub> The *Complaints Commissioner* will not investigate any complaint which is outside the scope of the *transitional complaints scheme*, but the final decision on whether a particular case is so excluded rests with the *Complaints Commissioner*.

**Stage 2: Conduct of investigations by the Complaints Commissioner**

**2.4.10** G<sub>/1</sub> The *Complaints Commissioner* may conduct an investigation in whatever manner he thinks appropriate including obtaining, at the FSA's expense, such external resources as may be reasonable. In performing his functions in accordance with the *transitional complaints scheme*, the *Complaints Commissioner* must at all times act independently of the FSA, PIA, IMRO and SFA.

**2.4.11** G<sub>/1</sub> The *Complaints Commissioner* may appoint a person to conduct the whole or any part of an investigation on his behalf but subject to his direction. That person must not be an officer or employee of the FSA, PIA, IMRO or SFA.

**2.4.12** G<sub>/1</sub> The FSA will afford the *Complaints Commissioner* all reasonable co-operation including giving access to its staff and information. The FSA may, in affording the *Complaints Commissioner* access to information, have regard to the need to maintain the confidentiality of certain kinds of information. This would include, for example, taking appropriate steps to ensure that the identity of an informant is not disclosed or maintaining the confidentiality of information given to the FSA under international arrangements. In any case where the FSA decides that it should withhold information it will inform the *Complaints Commissioner* of the nature of that information and its reasons for withholding it.

**2.4.13** G<sub>/1</sub> The FSA, PIA, IMRO and SFA are not, by reason of any investigation being conducted by the *Complaints Commissioner*, prevented from continuing to take such action, or such further action, as they consider appropriate in relation to any matter which is related to a complaint or a complainant.

**2.4.14** G<sub>/1</sub> The *Complaints Commissioner* will ensure that, before he concludes an investigation and makes a report, any person who may be the subject of criticism in it is given notice of, and the opportunity to respond to, that criticism.

**2.4.15** G<sub>/1</sub> Upon PIA, IMRO or SFA ceasing to have any further regulatory functions, the *Complaints Commissioner* may discharge his obligation to give notice of any potential criticism of them by giving such notice to, and inviting representations from, the FSA.

**2.4.16** G<sub>/1</sub> In the investigation of a complaint by either the FSA or the *Complaints Commissioner*, any finding of fact of:

- (1) a court of competent jurisdiction (whether in the *United Kingdom* or elsewhere); or
- (2) the Financial Services Tribunal; or

(3) any other tribunal established by legislative authority (whether in the *United Kingdom* or elsewhere); or

(4) any independent tribunal charged with responsibility for hearing a final appeal from the regulatory decisions of *PIA*, *IMRO* or *SFA*;

which has not been set aside on appeal or otherwise, shall be conclusive evidence of the facts so found and any decision of that court or tribunal shall be conclusive.

**2.4.17** G<sub>/1</sub> Any findings of fact or decisions of courts or tribunals not covered by *COAF* 2.4.16G will carry such weight as the *FSA* or the *Complaints Commissioner* considers appropriate in the circumstances.

**Reports on investigations**

**2.4.18** G<sub>/1</sub> The *Complaints Commissioner* must report to the *FSA* and to the complainant on the results of his investigation, giving reasons for any recommendations he makes.

**2.4.19** G<sub>/1</sub> The *Complaints Commissioner* will ensure that his report, apart from identifying the *FSA*, *PIA*, *IMRO* or *SFA*, does not mention the name of any other person or contain particulars which are likely to identify any other person unless:

- (1) in the opinion of the *Complaints Commissioner* the omission of such particulars would be likely to impair the effectiveness of the report; or
- (2) after taking into account the public interest, as well as the interests of the complainant, and the interests of other persons, the *Complaints Commissioner* considers it necessary to mention the name of that person or to include in the report those particulars (see also *COAF* 2.4.14G).

**2.4.20** G<sub>/1</sub> The *Complaints Commissioner* may publish his report (or any part of it) if he considers that the report (or any part of it) ought to be brought to the attention of the public.

**2.4.21** G<sub>/1</sub> The *Complaints Commissioner* may, if he thinks it appropriate, recommend that the *FSA* remedy the matters of complaint, but any such remedy shall not include a recommendation that a compensatory payment be made.

**2.4.22** G<sub>/1</sub> The *FSA* must, in any case where the *Complaints Commissioner* has reported that a complaint is well founded or where he has criticised the *FSA*, *PIA*, *IMRO* or *SFA* in his report, inform the *Complaints Commissioner* and the complainant of the steps which it proposes to take by way of response.

**2.4.23** G<sub>/1</sub> The *FSA* must, if required by the *Complaints Commissioner* to do so, publish the whole or a specified part of its response.



2.5 General

**Confidentiality**

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2.5.1

**G**  
/1

The *Complaints Commissioner* must observe any statutory restrictions applicable to him relating to the disclosure of confidential information.

**Annual Report**

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2.5.2

**G**  
/1

The *Complaints Commissioner* will each year submit a report to the *FSA Board*, for publication, on investigations concluded by him during the 12-month period ending 31 March. The report may include information concerning trends in the subject matter of complaints and on the general lessons which he considers the *FSA* should learn.

## Handbook Modules

### Schedule1 Record keeping requirements

#### G

- 1 There are no record keeping requirements in COAF.

## Handbook Modules

### Schedule2 Notification requirements

#### G

- 1 There are no notification requirements in COAF.

## Handbook Modules

### Schedule3 Fees and other required payments

#### G

- 1 There are no requirements for fees or other payments in COAF.

## Handbook Modules

### Schedule4 Powers exercised

#### G

- 1 The following powers and related provisions in the Act, the Financial Services and Markets Act 2000 (Commencement No.4 and Transitional Provisions) Order 2001 (SI 2001/2364) (the "Commencement No.4 Order") and the Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001 (SI2001/2326) (the "Transitional Provisions Order") have been exercised by the FSA to make the Complaints against the FSA Scheme:
  - (1) Paragraphs 7 and 8 (Arrangements for the investigations of complaints) of Schedule 1 to the Act;
  - (2) Article 2(2) of the Commencement No.4 Order; and
  - (3) Article 18 (Transitional complaints against the Authority) of the Transitional Provisions Order.

## Handbook Modules

### Schedule5 Rights of action for damages

#### G

- 1 There are no rules in COAF.

## Handbook Modules

### Schedule6 Rules that can be waived

#### G

- 1 There are no rules in COAF.

## **Complaints against the FSA Scheme**

### **Derivations**

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There is no table of derivations for *COAF*.

## **Complaints against the FSA Scheme**

### **Destinations**

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There is no table of destinations for *COAF*.