

# Complaints and redress

## 1. Introduction

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### 1.1. Chapter overview

This chapter covers the main issues in the Redress block of the FCA Handbook. Specifically, it deals with the handling of investor complaints and the actions a firm must take to ensure they are quickly resolved. It also covers the role of the Financial Ombudsman Service (FOS). The FOS can award compensation if it feels an investor has been wronged. Finally, you will learn of the Financial Services Compensation Scheme (FSCS). This scheme was set up to provide compensation to investors in the event of an authorised firm becoming insolvent (and therefore unable to meet any claims against it).

### 1.2. Learning outcomes

On completion of this module you will:

#### Complaints and redress

- 3.6.2 - Explain the FCA rules relating to handling of complaints (DISP 1.3)
- 3.6.6 - Explain the procedure and time limits for the resolution of complaints (DISP 1.4, 1.5 & 1.6)
- 3.6.7 - Apply the rules relating to record keeping and reporting concerning complaints (DISP 1.9 & 1.10)

#### Financial Ombudsman Service (FOS)

- 3.6.3 - Explain the role of the Financial Ombudsman Service (DISP Introduction and DISP 2)
- 3.6.4 - Apply the rules relating to determination by the Financial Ombudsman Service (DISP 3)
- 3.6.5 - Distinguish between compulsory and voluntary jurisdiction (DISP Introduction)

#### Financial Services Compensation Scheme (FSCS)

- 3.6.8 - Explain the purpose of the Financial Services Compensation Scheme (FSCS) (COMP 1.1.7)
- 3.6.9 - Identify the circumstances under which the FSCS will pay compensation (COMP 1.3.3, 3.2.1, 4.2.1 & 4.2.2)
- 3.6.10 - Identify the limits on the compensation payable by the FSCS (COMP 10.2.1, 10.2.2 & 10.2.3)

## 2. Complaints and redress

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### 2.1. Introduction

Investors who suffer losses as a result of another person's inappropriate actions are always entitled to seek redress through the courts.

However, many investors (particularly small investors) may not be in a position to instigate court action. As a result, the Act requires the FCA to ensure that complaints are handled appropriately and that an independent body exists to consider claims.

Note that 'financial loss' can include consequential or prospective loss, in addition to actual loss. For example, financial loss which has not yet crystallised because of the type of product involved (e.g. pensions, endowments, etc.).

### 2.2. Definition of a complaint

A complaint is any expression of dissatisfaction, oral or written, about financial services activities.

If the complaint is based on the firm's non-compliance with rules, this is referred to as a breach. The rules could be FCA rules, the firm's own rules or any other rules from other organisations, such as HMRC. All breaches must be recorded by the firm.

FCA regulated firms must also establish procedures for handling complaints.

### 2.3. Complaints procedures

#### Procedures of the firm

##### Coverage

All firms are required to operate an **appropriate** and **effective** complaints procedure. Internal complaints procedures must be in writing and cover:

- Receiving complaints
- Responding to complaints
- Referring complaints to other firms
- The appropriate investigation of complaints
- Notifying complainants of their right to go to the Financial Ombudsman Service (FOS) where relevant

The management of the firm has a responsibility to ensure **appropriate controls** are in place to ensure that the rules in relation to complaints are complied with and it is possible to identify recurring and systemic problems.

##### Publicity

The procedures must be publicised as follows:

- Drawn to the attention of customers (together with the clients' rights of access to the FOS) at the first point of contact or when documentation is first provided

- Sent to customers on request and to complainants automatically when a complaint is received (unless the complaint is resolved in **one day**). The procedures given to customers must contain the specific name of the person dealing with the complaints

### Implementation

All employees (and appointed representatives) that deal with clients should be made aware of the complaints procedures.

Complaint procedures must make provision for:

- Complaints to be investigated **promptly and fully** by an employee of sufficient competence who was not involved in the matter which is the subject of the complaint
- The person charged with responding to complaints to have the authority to settle complaints, or to have access to someone who has the necessary authority
- Responses to complaints to address the subject matter of the complaint and, where appropriate, offer appropriate redress

Where redress is appropriate, a firm must provide compensation for any acts or omissions for which it was responsible, and comply with any offer of redress which the complainant accepts.

### Timing

A firm must send a written acknowledgement and a copy of the complaints procedure **promptly** from receipt of the complaint, providing the name or job title of the individual handling the complaint for the firm.

A firm has a maximum of **eight weeks** from receipt of a complaint to try to resolve it. By the end of eight weeks, the firm must either send a final response, **or** a response which:

- Explains that the firm is not in a position to make a final response, gives reasons for the further delay and indicates when it expects to be able to provide a final response
- Informs the complainant that he/she may refer the complaint to the FOS if dissatisfied with the delay, and encloses a copy of the Financial Ombudsman Service's explanatory leaflet

When a firm sends a complainant its final response, it must:

- Inform the complainant that he/she may refer the complaint to the FOS if dissatisfied with the final response, and that he/she must do so within six months
- Enclose a copy of the Financial Ombudsman Service's explanatory leaflet

### Records

A firm must retain records of complaints for at least **three years** from the date of receipt of the complaint, unless it is a MiFID business, where records must be kept for five years.

These records should include:

- The name of the complainant
- The substance of the complaint
- Any correspondence between the firm and the complainant

- Detail of any redress offered

### Reporting complaints to the FCA

The firm must also provide the FCA with twice yearly reports on:

- The total number of complaints
- Complaints closed within four weeks of receipt
- Complaints closed within eight weeks of receipt
- Complaints closed more than eight weeks after receipt
- Complaints outstanding at the end of the reporting period

The reports must be sent even if no complaints were received (i.e. a **nil return**).

A complaint is 'closed' where:

- The firm has sent a final response
- The complainant has accepted in writing the firm's earlier response
- The complainant has not responded to the firm within eight weeks of the firm's written final response

## 2.4. The Financial Ombudsman Service (FOS)

### Introduction

The FCA has established a system for the consideration of complaints against firms by clients who feel aggrieved and entitled to seek redress.

The system involves consideration of the complaint by the firm itself and, if the client is not satisfied, independent investigation of the complaint.

Investigation involves both a mediation stage and a possible subsequent determination stage by the FOS.

The FOS can make awards for a range of reasons including financial loss, pain and suffering, damage to reputation and distress or inconvenience.

Complaints against authorised firms relating to regulated activities fall under the 'Compulsory Jurisdiction' of the FOS.

Unauthorised firms can also submit to the 'Voluntary Jurisdiction' of the FOS by entering into a contract with the FOS as a voluntary participant. This might cover activities outside the definition of designated investment business, such as general insurance, deposit taking and credit/debit card transactions.

### Timing

If a complaint has not been settled to the satisfaction of the customer within **eight weeks** of receipt by the firm, the complainant must be informed that he/she has the right to complain to the FOS.

The firm must also provide the complainant with an explanatory leaflet about the FOS and advise him/her that any referral should take place within **six months**.

## Dismissal of complaints

A complaint can be dismissed by the FOS if it considers that:

- The complainant has not suffered financial loss, material inconvenience or material distress
- The complaint is frivolous or vexatious
- The firm has already offered reasonable compensation

## Investigation

When the FOS investigates a complaint the firm must cooperate with the FOS.

When there is a reasonable possibility of resolution by mediation, the FOS will endeavour to achieve settlement by this route. If mediation is not an option, the FOS will investigate the complaint.

During an investigation, both parties can make representations.

After a provisional assessment is made, if one of the parties objects to the provisional assessment, the FOS will present a written statement of determination.

Only if the complainant accepts the determination is it binding on the firm.

If the complainant rejects the FOS's decision, they can pursue the matter further through the courts.

## Compensation

The FOS can make financial awards to complainants. The **maximum award** is £150,000 and reasonable costs (although awards of costs are not common).

If the FOS feels that an amount in excess of the maximum is appropriate it can invite the firm to pay the balance.

## 2.5. The Financial Services Compensation Scheme (FSCS)

### Introduction

The Financial Services Compensation Scheme (FSCS) was established to provide compensation where authorised persons and appointed representatives are unable to satisfy claims against them.

### Key elements of a claim

To succeed, a **claimant** must have a **protected claim** against a **relevant person**, and make that claim within the **relevant time limits**.

Note that a claim can only be made once a firm is in liquidation. If the firm still exists the customer must explore all other avenues of redress.

### Eligible claimants

The following are eligible claimants:

- Private individuals (including experts) - can claim in respect of all losses. Note this does not cover customers connected to the firm (e.g. directors).

- A body corporate, unincorporated association or mutual association with an annual turnover of less than £1m.
- A partnership with a turnover of less than £1.4m.
- Clients that do not fall under these categories may claim in respect of long-term insurance (e.g. life) and compulsory insurance (e.g. employers' liability).

Authorised firms can never be eligible claimants unless they are a small business (e.g. sole trader) and the claim arises out of regulated activity that they do not have experience of.

### Protected claims

Protected claims are claims made in respect of:

- Designated investment business
- Deposits
- Insurance

The activity subject to a claim must be carried out in the UK or in an EEA state by a firm passporting its services there.

### Relevant persons

The following are relevant persons:

- An authorised firm
- An appointed representative of the above

(An EEA firm passported into the UK is **not** a relevant person. Customers losing money from the activities of such a firm would have to seek compensation through the firm's home state regulator).

### Relevant time limits

Six years from when the claim arose.

### Scheme limits

- Deposits - a maximum of £85,000
- Investments - a maximum of £50,000
- Compulsory insurance - 100% of valid claims and unexpired premiums
- All other insurance - at least 90% of the value attributable to the policy

### Funding

The FSCS is funded by **authorised firms**.

For the scheme as a whole, the **total payout** for compensation in any one year is **unlimited**.

## 3. Complaints and redress: summary

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### 3.1. Key concepts

#### Complaints and redress

- 3.6.2 - The FCA rules relating to handling of complaints (DISP 1.3)
- 3.6.6 - The procedure and time limits for the resolution of complaints (DISP 1.4, 1.5 & 1.6)
- 3.6.7 - The rules relating to record keeping and reporting concerning complaints (DISP 1.9 & 1.10)

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- 3.6.4 - The rules relating to determination by the Financial Ombudsman Service (DISP 3)
- 3.6.5 - Compulsory and voluntary jurisdiction (DISP Introduction)

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- 3.6.9 - The circumstances under which the FSCS will pay compensation (COMP 1.3.3, 3.2.1, 4.2.1 & 4.2.2)
- 3.6.10 - The limits on the compensation payable by the FSCS (COMP 10.2.1, 10.2.2 & 10.2.3)

**Now you have finished this chapter you should attempt the chapter questions.**

