

Telephone: 020 7066 9346  
Email: [enquiries@fs-cp.org.uk](mailto:enquiries@fs-cp.org.uk)

Financial Conduct Authority  
12 Endeavour Square  
London E20 1JN

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By email: [cp20-11@fca.org.uk](mailto:cp20-11@fca.org.uk)

Dear Sir/Madam

**The Financial Services Consumer Panel (the Panel's) response to CP 20/11: Complaints against the Regulators - The Financial Conduct Authority (FCA), the Prudential Regulation Authority (PRA) and the Bank of England (the Bank)**

A complaints process can play an important role in enhancing regulatory effectiveness, highlighting where regulators can make improvements in how they carry out their functions, compensating consumers where appropriate, and helping to ensure fairer consumer outcomes.

The Panel very much supports making the Complaints Scheme more accessible. Accessibility is key to ensuring a fair and effective complaints process, particularly given that the majority of complainants are individual consumers and small regulated businesses<sup>1</sup> – complainants that are (typically) ill-resourced to navigate complexity. The FCA's own research indicates that a lack of clarity in complaints processes discourages consumers from complaining<sup>2</sup>, indicating that this work should be undertaken as a matter of urgency. Access to the scheme should be in the gift of all, not the privilege of the few.

We are therefore pleased to note that the proposed revisions to the language and format of the Complaint Scheme Document are an improvement to the legalistic terminology and format of the current Scheme Document. The complaints process has also been made clearer, in particular with the use of a flow chart.

However, there are still areas in which the language could be simpler and the terminology more straightforward. Here, we would point the FCA to the research conducted for the Legal Ombudsman,<sup>3</sup> which I commissioned whilst I was Chair there. The research recommends avoiding technical and complex language which can intimidate, confuse and ultimately deter consumers from complaining.

We also note the regulators' objective of managing complainants' expectations in respect of the outcomes of any complaints they bring forward through the Scheme, in particular by better explaining likely compensation. In seeking to manage expectations about what

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<sup>1</sup> Office of the Complaints Commissioner Annual Report 2019/20

<sup>2</sup> FCA Mission: Our Future Approach to Consumers

<sup>3</sup> The Language of Complaints <https://www.legalombudsman.org.uk/wp-content/uploads/2014/09/Language-of-complaints-Report-.pdf>

can and cannot be addressed through the Scheme as well as the likely outcomes, it is key to strike the right balance. Customers should be *informed* about how, when and why to bring forward complaints (and to what ends), but not they should not be *discouraged* from bringing forward complaints.

While the focus of the consultation is on the contents of the Complaints Scheme Document, it is likely that consumers' first point of contact will in fact be the regulators' own webpages. They may rely predominantly on information contained on those pages to inform their decisions about whether to make complaints. The complaints process should therefore also be explained in a straightforward way on the FCA's own website. We point to the Financial Ombudsman Service's (FOS) *How to Complain*<sup>4</sup> webpage as an example; it clearly illustrates the steps that need to be taken and uses straightforward language to explain the process.

We would also like to see the re-designed Scheme take the needs of vulnerable consumers into account, using the FCA's own vulnerability guidance. An indication of the Scheme's success could be measured by data on access, usage, satisfaction and outcome – a measurement which we would strongly encourage.

Yours faithfully

Wanda Goldwag

Chair, Financial Services Consumer Panel

**Q1: Do you agree the language in Annex 2 is more accessible than the language of the current Scheme? Will the Scheme as proposed achieve the objectives set out in paragraph 3.3?**

Overall, both the format and language in the proposed draft Complaints Scheme Document are an improvement on the current Scheme which is overly legalistic.

However, legal and regulatory jargon is still present in the Document. Terms such as "remedy" and "ex gratia compensatory payment" should be replaced with clear, readily understandable English. We refer the FCA to the research conducted by IFF Research for the Legal Ombudsman which recommends that words such as "remedy" can be expressed in a more straightforward manner.

There are areas where the information contained in the draft Complaints Scheme Document could also be expressed more simply. It should not be written for lawyers or professional advisors, but rather it should be addressed to complainants, taking both their intent and likely level of understanding into account. For example, in paragraph 6.6 the proposed Scheme says:

*In relation to complaints about regulated firms, Parliament created the Financial Ombudsman Service (FOS) and the Financial Services Compensation Scheme (FSCS). Broadly speaking, the FOS considers complaints about regulated firms and the FSCS covers claims in connection with most regulated activities against regulated firms which have failed. The Scheme is not intended to insure against losses caused by firms that are not covered (or not covered in full) by the FOS or FSCS for any reason.*

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<sup>4</sup> <https://www.financial-ombudsman.org.uk/consumers/how-to-complain>

The IFF Research also cautions about using language that could be off-putting. In relation to compensatory payments we note, for example, that the proposed Scheme may well have that effect where it says in paragraph 6.5 that compensation is likely to be modest and further explains that:

- *By law, we are immune from liability in damages when carrying out our public functions (such as regulation and supervision) unless it is found that we have acted in bad faith or have breached your human rights.*
- *The Scheme is not set up to consider complex issues such as causation but to resolve complaints effectively and quickly, wherever possible. Our assessment of compensatory payments cannot be made in the same way that a Court or Tribunal calculates an award of compensatory damages.*

We encourage the FCA to test the language used with consumers to ensure that messages are well understood and are informative without discouraging consumers from bringing complaints.

**Q2: Do you have any comments on our approach to ex-gratia compensatory payments for distress or inconvenience?**

The Office of the Complaints Commissioner has recommended in both its 2018/19 and 2019/2020 annual reports that the arrangements for compensation be clarified under the Scheme.

We note that the proposed Scheme now states that a compensatory payment would only be made where the FCA's actions or inactions have contributed significantly to distress or inconvenience. There is a particular emphasis on managing expectations that an apology is likely to be the most appropriate remedy and compensatory payments are likely to be modest.

The proposed Scheme now also gives guidance as to how much a complainant can expect for "moderate", "high" and "very high" levels of distress or inconvenience, with an explanation of what types of complaints could fall into these categories. The use of examples, like those set out in the Complaints Commissioner's annual reports and those set out on the Financial Ombudsman Service's website<sup>5</sup>, could further clarify the FCA's policy, if not in the Scheme Document itself then on the FCA's website. In particular this might usefully give some indication as to what has been considered "moderate", "high" and "very high" levels of distress or inconvenience.

The Scheme sets out in paragraph 7.1, that complainants may refer their complaint to the Complaints Commissioner if they disagree with the regulator's decision or are dissatisfied with the progress of the investigations. While the level of compensation may be part of a decision, the Scheme does not refer specifically to dissatisfaction with the level of compensation although the Complaints Commissioner has made recommendations on the level of compensation granted by the FCA. Given that complainants could achieve higher compensation by referring their complaint to the Complaints Commissioner, this should be made explicit in the Scheme Document.

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<sup>5</sup> <https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation>

**Q3: Do you have any comments on our approach to ex-gratia compensatory payments in respect of financial loss?**

Again, the use of examples may be helpful in clarifying the policy for compensation for financial loss, in particular to explain when the FCA would be considered to be the “sole or primary cause”. For example, we note that in the Complaints Commissioner’s 2019/20 Annual Report, the Commissioner highlights a specific case in which he considered that an error in the FCA Register had been a significant contributory factor to a complainant’s losses, whereas the FCA considered that the principal cause was a fraudulent firm.

The Panel would like to take this opportunity to highlight that the Complaints Commissioner has raised concerns about the FCA Register (as has the Panel), noting the marked increase of complaints about the Register in his 2019/20 Annual Report. We hope that both the Authorisations and Complaints teams continue working together to address the issues flagged by the Commissioner about the Register<sup>6</sup> efficiently.

A brief and clear explanation should also be provided about how consumers can bring complaints against firms and access redress, along with signposting to the FOS and the Financial Services Compensation Scheme.

**Q4: Do you agree with our proposals for implementing the new Scheme?**

If it would benefit consumers to have their complaints handled under the new Scheme, then the FCA should apply the new Scheme.

**Q5: What impact do you think our proposals in this consultation paper will have on persons who share protected characteristics?**

The consultation focuses on the Complaints Scheme Document however, some consumers may not access the Scheme Document before making a complaint and therefore consideration also needs to be given to how information will be presented on the regulators’ webpages.

We note that if a complainant chooses to complain through a complaints-handling firm or a professional services firm, that the regulators will not usually reimburse the complainant for fees. This may deter those complainants who need assistance from presenting complaints, and therefore we suggest that paragraph 3.4. provides information on the various ways in which they can be assisted. For example, the FOS’ website contains the following wording: *“If you want us to talk to a member of your family or a friend – or someone else who’s helping you, such as Citizens Advice – we’ll be happy to do that.”*

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<sup>6</sup> <https://frccommissioner.org.uk/wp-content/uploads/OCC-Annual-Report-2019-2020.pdf>