

# **Complaints against the PSR**

## **The PSR Complaints Scheme**

1 April 2015

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## 1. About the Complaints Scheme

- 1.1. In the interests of transparency and accountability the PSR has established a scheme for handling Complaints made against it ("the Scheme"). The Scheme covers Complaints made against the PSR in relation to the exercise or failure to exercise any of its functions. Details of the scope of the Scheme are set out in section 3 below.
- 1.2. Under the Scheme, the PSR will appoint a Complaints Commissioner, who will have ultimate responsibility for the adjudication of Complaints about the PSR. The Complaints Commissioner will be appointed as an officer of the PSR. However, under the terms of his appointment, the Commissioner will be independent and free to determine Complaints impartially and however he or she sees fit. He or she will work from separate offices, and where necessary will use the staff of the Office of the Complaints Commissioner.
- 1.3. The Scheme may be amended by the PSR from time to time. Changes to the Scheme will be notified to the Complaints Commissioner at least 20 business days before they come into effect. The PSR will take into account any representations made by the Complaints Commissioner in relation to such changes before making them.
- 1.4. The Scheme provides that there may be two distinct stages for each Complaint. In the first stage the PSR will investigate any Complaint which comes within the scope of the Scheme and take whatever action to resolve the matter that it considers appropriate. If a Complainant is dissatisfied with the PSR's initial determination of its Complaint, then as a second stage, the Complainant can refer their Complaint to the Complaints Commissioner.

## 2. Definitions

- a) 'Complaint' means any expression of dissatisfaction about the manner in which the PSR has carried out, or failed to carry out, its functions
- b) 'Complainant' means anyone who is directly affected by the way in which the PSR has carried out its functions, or anyone acting directly on such a person's behalf, and who is making a Complaint
- c) 'Complaints Commissioner' means the person appointed as the investigator responsible for the conduct of independent, Stage 2 investigations in accordance with the PSR Complaints Scheme, and who is also the person appointed as investigator under section 84 of the Financial Services Act 2012 in relation to the Statutory Complaints Scheme
- d) 'Excluded functions' has the meaning given in section 3.4 below
- e) 'FCA' means the Financial Conduct Authority
- f) 'FSBRA' means the Financial Services (Banking Reform) Act 2013
- g) 'Infrastructure Provider' means infrastructure provider in relation to a regulated payment system as defined in section 42 FSBRA
- h) 'Operator' means operator in relation to a Regulated Payment System as defined in section 42 FSBRA
- i) 'Participants' means participants in Regulated Payment Systems as defined in section 42 FSBRA
- j) 'Payment Service Provider' means a payment service provider in relation to a Regulated Payment System as defined in section 42 FSBRA
- k) 'PSR' means the Payment Systems Regulator
- l) 'PSR Complaints Team' means the members of the PSR Staff who administer and review Complaints at Stage 1 under the Scheme. Investigations will be carried out by senior members of the PSR Staff who have not previously been involved in the matter complained of

- m) 'PSR Staff' means any staff acting on behalf of the PSR and officers (other than the Complaints Commissioner) of the PSR
- n) 'PRA' means the Prudential Regulation Authority
- o) 'Regulated Payment System' means any payment system designated by HM Treasury pursuant to section 43(1) FSBRA
- p) 'Scheme' means the arrangements for handling Complaints made against the PSR
- q) 'Service-user' means any person, business or organisation which uses, or is likely to use, services provided by Regulated Payment Systems
- r) 'Statutory Complaints Scheme' means the scheme established pursuant to section 84 of the Financial Services Act 2012 to deal with complaints against the Bank of England, the FCA and the Prudential Regulation Authority

### **3. Coverage and scope of Scheme**

- 3.1. The Scheme covers Complaints about the way in which the PSR has acted or omitted to act, including Complaints alleging:
- a) mistakes and lack of care;
  - b) unreasonable delay;
  - c) unprofessional behaviour;
  - d) bias; and/or
  - e) lack of integrity.
- 3.2. Complaints can be made by anyone who is directly affected by the way in which the PSR has carried out its functions, or anyone acting directly on such a person's behalf, provided that the Complaint meets the requirements of the Scheme. To be eligible to make a Complaint under the Scheme, a person 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 PSR's actions or inaction.
- 3.3. 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 Scheme only if the Complainant can show reasonable grounds for the delay.

#### ***Exclusions to the Scheme***

- 3.4. Excluded from the Scheme are Complaints:
- a) about the PSR's relationship with the PSR Staff;
  - b) connected with contractual or commercial disputes involving the PSR and not connected with the exercise of its functions;

- c) in relation to the performance or non-performance of the following 'excluded' functions, namely:
- determining the general policy and principles by reference to which it performs particular functions, in accordance with section 49(4)(c) FSBRA;
  - issuing general or specific directions to Participants to require specific action or prohibit it, and to set standards under section 54 FSBRA;
  - issuing a generally-imposed or specific requirement that Operators establish rules; change or notify them, or keep the rules unchanged, under section 55 FSBRA;
  - requiring the Operator or any Payment Service Provider with direct access to a Regulated Payment System to enable an applicant to become a Payment Service Provider in relation to that system under section 56 FSBRA;
  - varying agreements between:
    - the Operator of a Regulated Payment System and a Payment Service Provider,
    - a Payment Service Provider with direct access to a Regulated Payment System and another person for the purpose of enabling that other person to become a Payment Service Provider, or
    - concerning fees or charges payable in connection with participation in a Regulated Payment System or the use of services provided by a Regulated Payment Systemunder section 57 FSBRA;
  - requiring disposal of an interest in a Regulated Payment System or Infrastructure Provider under section 58 FSBRA;
  - deciding on the action to take, if any, in response to a complaint by designated representative bodies ('Super-Complaints') under sections 68 and 69 FSBRA;
  - giving general guidance about how the PSR intends to

discharge its functions under section 96 or guidance in relation to Super-Complaints under section 70 FSBRA;

- publishing a statement on the principles to be followed for the imposition of a penalty or its amount as required by section 73(3) FSBRA;
  - considering in accordance with section 62 FSBRA whether to exercise powers under the Competition Act 1998 before exercising power to give a direction under section 54 (except a general direction), power to impose a requirement under section 55 (except a generally-imposed requirement) and powers under sections 56, 57 and 58 FSBRA;
  - exercising the PSR's competition functions under the Enterprise Act 2002 and the Competition Act 1998 under sections 59 and 61 FSBRA respectively;
  - adopting decisions in the exercise of the functions, duties or obligations allocated to the PSR as competent authority under any relevant EU legislation
- d) Complaints about the action, or inactions, of the Financial Ombudsman Service or any other regulator or authority.

### ***Circumstances where the PSR will not investigate***

3.5. The PSR will not investigate a Complaint under the Scheme which it reasonably consider amounts to no more than dissatisfaction with the PSR's general policies or with the exercise of, or failure to exercise, a discretion where no unreasonable, unprofessional or other misconduct is alleged.

### ***Complaints that are more appropriately dealt with in another way***

3.6. The PSR will not investigate a Complaint under the Scheme which it reasonably considers could have been, or would be, more appropriately dealt with in another way (for example the institution of appeal or other legal proceedings).

***Investigations that may be deferred***

- 3.7. A Complaint which is connected with, or which arises from, any form of continuing action by the PSR will not normally be investigated by either the PSR Complaints Team or the Complaints Commissioner until the Complainant has exhausted the procedures and remedies under FSBRA (or under any other relevant legislation) which are relevant to that action. The Complainant does not have to be the subject of continuing action by the PSR for this provision to be engaged. An investigation may start before those procedures are completed if, in the exceptional circumstances of the case, it would not be reasonable to expect the Complainant to await the conclusion of the PSR's action and that action would not be significantly harmed.

## 4. The Complaints Commissioner

- 4.1. The PSR will appoint the individual appointed as investigator under section 84 of the Financial Services Act 2012 in relation to the Statutory Complaints Scheme as the Complaints Commissioner to carry out the functions conferred on him or her by the PSR Complaints Scheme.
- 4.2. The Complaints Commissioner is typically appointed for a period of three years<sup>1</sup>. His or her appointment may only be terminated early where:
- a) he or she has become incapacitated by physical or mental illness
  - b) he or she has become otherwise unfit to discharge the functions of his or her office;
  - c) he or she has ceased to be the person appointed under the Statutory Complaints Scheme; or
  - d) the PSR becomes subject to a statutory requirement to make alternative arrangements for dealing with Complaints.
- 4.3. The Complaints Commissioner will be an officer of the PSR for the sole purpose of acting in that capacity. However, and as set out in paragraph 1.2, he or she is required to act impartially, independently of, and without favouring the PSR.
- 4.4. In circumstances where the Complaints Commissioner is unable to investigate a Complaint, the PSR will ask the President of The Law Society to nominate a solicitor to carry out the functions conferred on the Commissioner by the Scheme.
- 4.5. The Scheme will apply in full to the individual appointed under paragraph 4.4; the Complaints Commissioner will have no involvement in investigating that individual Complaint.

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<sup>1</sup> The PSR and the Complaints Commissioner agree that the initial appointment will be less than this in order to reflect the term of the Complaints Commissioner's appointment under the Statutory Complaints Scheme.

## **5. Procedure**

### ***Telling Complainants how the Scheme works***

- 5.1. In response to each Complaint received, the PSR will send the Complainant information explaining how the Scheme works. This will include details of the arrangements for referring the Complaint to the Complaints Commissioner if they are dissatisfied with the way in which the PSR has dealt with it.

### ***The PSR's initial analysis of Complaints***

- 5.2. On receiving a Complaint, the PSR will determine whether it can be dealt with under the Scheme and whether it can be dealt with by the team that is subject to the Complaint.
- 5.3. Where the PSR does not investigate a Complaint under the Scheme, the PSR will write to the Complainant explaining why this is the case and informing them of the arrangements for asking the Complaints Commissioner to review the decision. The PSR will do this within 20 business days of receiving the Complaint.

### ***Asking for information in writing***

- 5.4. Complainants will be asked to confirm their Complaint in writing. If the PSR requires clarification as to the nature or scope of the Complaint, the remedy sought or any factual information that supports the Complaint, the PSR will invite the Complainant to provide further details.
- 5.5. The PSR may not be able to progress its investigation of a Complaint until it has received the additional information described above.

***Complaints handled by the team which is the subject of the Complaint***

- 5.6. The PSR may ask the team which is the subject of the Complaint to deal with the matter. This may be appropriate in circumstances where a Complaint falls within the scope of the Scheme but is considered to be low impact (for example, it is about a minor administrative mistake) and can be dealt with easily and quickly internally by the local team within the PSR.
- 5.7. For all Complaints dealt with in this way, the PSR will advise the Complainant of the arrangements for referring their Complaint back to the Scheme for Stage 1 investigation if the Complainant believes the Complaint has not been resolved or is otherwise dissatisfied with the way it has been dealt with.
- 5.8. If the Complainant refers their Complaint back to the Scheme for Stage 1 investigation, the PSR will acknowledge this Complaint within five business days of receiving this referral.
- 5.9. The PSR will review the Complaint, at this point, to make sure that it falls within the scope of the Scheme. If the PSR considers that the Complaint is outside the Scheme, it will follow the procedures in paragraph 5.3. Otherwise, it will handle the Complaint in accordance with paragraph 6.2.

## **6. Stage 1: Investigation of Complaints by the PSR**

- 6.1. Where a Complaint is not suitable to be dealt with by the area which is the subject of the Complaint, but appears to come within the Scheme, the PSR will acknowledge it within five business days of receipt.
- 6.2. The PSR Complaints Team will conduct an initial investigation into any Complaint which falls within the scope of the Scheme and is not excluded from the Scheme in accordance with paragraphs 3.4 to 3.7. That investigation will be carried out by a suitably senior member of the PSR Staff who has not previously been involved in the matter complained of, aiming to resolve the matter to the Complainant's satisfaction.
- 6.3. The investigation of Complaints will involve a desk-based review considering any documents supplied by the Complainant, and any relevant documents held by the PSR. The investigation will not involve an interview or meeting with the Complainant.
- 6.4. The PSR will seek to resolve the Complaint as quickly as possible. The PSR will either finish investigating a Complaint within 20 business days, or it will write to the Complainant within this time setting out a reasonable timescale within which it plans to deal with the Complaint. If the PSR has not already confirmed whether the Complaint will be admitted to the Scheme, the PSR will include this information in this communication.
- 6.5. Some Complaints may involve the actions or inactions of the PSR and one or more of the regulators that are party to the Statutory Complaints Scheme. Where this is the case, the PSR will take appropriate steps to co-ordinate with the other regulators as appropriate to ensure the efficient and fair investigation of matters raised.

### ***What are the possible outcomes for the Complaint?***

- 6.6. Where it is concluded that a Complaint is well founded, the PSR will tell the Complainant what it proposes to do to remedy the matters complained of. This may include offering the Complainant an

apology, taking steps to rectify an error or, if appropriate, the offer of a goodwill payment.

- 6.7. If the PSR decides not to uphold a Complaint, it will give its reasons to the Complainant in writing, and will inform the Complainant of the arrangements for asking the Complaints Commissioner to review the PSR's decision.
- 6.8. Complainants who are dissatisfied with the outcome of a Stage 1 investigation, or who are dissatisfied with the PSR's progress in investigating a Complaint, may refer the matter to the Complaints Commissioner, who will consider whether to carry out his own Stage 2 investigation.

### ***Time limit for the referral of a matter to the Complaints Commissioner***

- 6.9. When the PSR writes to a Complainant with its final report of its Stage 1 investigation, or explaining that it will not investigate a Complaint under the Scheme, the PSR will inform the Complainant that, if they are dissatisfied, they must refer the PSR's decision to the Complaints Commissioner for Stage 2 review within three months of the date of that letter.
- 6.10. It will be for the Complaints Commissioner to decide whether there is a good reason to consider a matter which has been referred to him or her outside the three month time limit.

### ***When will the Complaints Commissioner investigate a Complaint which the PSR has not investigated?***

- 6.11. When the PSR has told a Complainant in writing that it will not be investigating their Complaint, it will also notify the Complaints Commissioner of this fact. The Complaints Commissioner will not review the PSR's decision unless the Complainant requests this. Where the Complainant does request this, the Complaints Commissioner will decide whether the Complaint falls within the scope of the Scheme and, if so, whether it would be appropriate for the Complaints Commissioner to conduct an investigation.
- 6.12. If a Complaint is referred or notified to the Complaints Commissioner before the PSR has had the opportunity to conduct

or complete a Stage 1 investigation, the Complaints Commissioner will consider whether it would be desirable to allow the PSR the opportunity to do that before conducting his or her own investigation.

- 6.13. Paragraph 6.12 also applies to a Complaint received by the Complaints Commissioner when he or she is conducting a Stage 2 investigation into another Complaint from the same Complainant.
- 6.14. The Complaints Commissioner will not investigate any Complaint which is outside the scope of the Scheme, but the final decision on whether a particular case is so excluded rests with the Complaints Commissioner.
- 6.15. In the investigation of a Complaint by either the PSR or the Complaints Commissioner, any finding of fact of:
- a) a court of competent jurisdiction (whether in the UK or elsewhere);
  - b) any other tribunal established by legislative authority (whether in the United Kingdom or elsewhere);
  - c) any independent tribunal charged with responsibility for hearing a final appeal from the regulatory decisions of the PSR; or
  - d) any arbitration panel to which the Complainant has previously submitted the matter which is the subject of the Complaint;

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 or arbitration panel shall be conclusive.

- 6.16. Any findings of fact or decisions of courts or tribunals or arbitration panels not covered by paragraph 6.15 will carry such weight as the PSR or the Complaints Commissioner considers appropriate in the circumstances.

## **7. Stage 2: Conduct of investigations by the Complaints Commissioner**

- 7.1. The Complaints Commissioner must at all times act independently of the PSR; he or she may conduct an investigation in whatever manner he or she thinks appropriate including obtaining, at the PSR's expense, such external resources as may be reasonable. In considering what is appropriate, the Complaints Commissioner will take into account the need to ensure that Complaints are dealt with fairly, quickly and cost effectively.
- 7.2. The PSR will afford the Complaints Commissioner all reasonable cooperation, including giving access to the PSR Staff and information. The PSR may, in affording the Complaints Commissioner access to information, consider 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 PSR pursuant to section 91 or 94 FSBRA or under international arrangements. In any case where the PSR decides that it should withhold information, it will inform the Complaints Commissioner of the nature of that information and its reasons for withholding it.
- 7.3. The PSR 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.
- 7.4. In deciding whether a Complaint is well founded and, if so, in deciding what steps he or she should recommend the PSR takes, the Complaints Commissioner will have regard to matters such as the source of the PSR's funding to make any goodwill payment, as well as the desire for the PSR to be efficient and economic in the use of its resources.
- 7.5. The Complaints Commissioner may, if appropriate, recommend that the PSR remedy the matters complained of, as described in paragraph 6.6. The PSR will then determine how and to what

extent it follows any recommendations made by the Complaints Commissioner.

- 7.6. The Complaints Commissioner will send a preliminary report to the PSR and the Complainant, with a time limit within which they may indicate in writing any disagreement with or comments on the preliminary report.
- 7.7. At the end of this time limit, the Complaints Commissioner will produce a final report after taking into account, at his or her discretion, any disagreements or comments notified to the Complaints Commissioner. The final report will conclude the investigation procedure and the Complaint will then be regarded as closed by the Complaints Commissioner and the PSR.
- 7.8. The Complaints Commissioner's reports will not, apart from identifying the PSR, mention the name of any other person or contain particulars which are likely to identify any other person unless:
  - a) in the opinion of the Complaints Commissioner, the omission of such particulars would be likely to impair the effectiveness of the report; or
  - b) after taking into account the public interest, as well as the interests of the Complainant and the interests of other relevant persons, the Complaints Commissioner considers it necessary to mention the name of that person or to include in the report those particulars.
- 7.9. The Complaints Commissioner expects his or her communications with Complainants and the PSR during the course of an investigation to remain strictly confidential. Where a Complainant breaches this requirement, the Complaints Commissioner may, after having considered all the circumstances including any explanation from the Complainant, decide to bring the investigation to an end without having to report (see paragraph 7.7). Where the PSR breaches this requirement, the Complaints Commissioner will take account of this when concluding the Stage 2 investigation and the breach will be recorded in the Complaints Commissioner's final report.
- 7.10. The Complaints Commissioner may publish his or her report (or any part of it) if he or she considers that the report (or any part of it) ought to be brought to the attention of the public.

- 7.11. The PSR must, in any case where the Complaints Commissioner has reported that a Complaint is well founded, or where he or she has criticised the PSR in his or her report, inform the Complaints Commissioner and the Complainant of the steps which the PSR proposes to take by way of response.
- 7.12. The PSR must, if required by the Complaints Commissioner to do so, publish the whole or a specified part of its response subject to applicable statutory restrictions relating to the disclosure of confidential information.

### ***Responding to the Complaints Commissioner***

- 7.13. In deciding how to respond to a report from the Complaints Commissioner, the PSR will normally take into account:
- a) the gravity of the misconduct which the Complaints Commissioner has identified and its consequences for the Complainant;
  - b) the nature of the PSR's relationship with the Complainant and the extent to which the Complainant has been adversely affected in the course of his, her or its direct dealings with the PSR;
  - c) whether what has gone wrong is at the operational or administrative level;
  - d) the impact of the cost of any goodwill payments which are recommended on the payment systems regulated by the PSR and, indirectly, Service-Users.

### ***Confidentiality***

- 7.14. The Complaints Commissioner must observe any statutory restrictions applicable to him or her relating to the disclosure of confidential information.

**Reports**

7.15. The Complaints Commissioner will each year submit to the PSR, for publication a report on investigations concluded during the 12-month period ending 31 March. The report may include:

- a) information concerning trends in the subject matter of Complaints and on the general lessons which he or she considers the PSR should learn;
- b) information on the PSR's Complaint-handling activities during that year, including such matters as the approach the PSR adopted to handling different types of Complaints, Complaints dealt with at the local level, in Stage 1 and in Stage 2.