

Section 3

Complaints and compensation

Introduction

Consumers in the UK today are better protected than they have ever been. Legislation, ombudsman bureaux and other arbitration schemes, voluntary codes of practice, compensation schemes, consumerist bodies such as *Which?*: these are all examples of ways in which rights of the consumer are upheld against fraud, malpractice and the pressure of modern marketing. It must always be borne in mind, however, that consumers cannot be protected 100%, and they should take some responsibility for the purchasing decisions that they make. Examples of this from the financial services industry are: the fact that the FSA specifically says that it cannot protect investors from falls in stock market values (although it will attempt to educate consumers about the risks involved); and the fact that the Financial Services Compensation Scheme sets limits on the amounts of compensation it can offer.

One of the FSA's statutory objectives (see Section 1.2) is to 'secure an appropriate level of protection' for consumers of financial services and products. One step towards the achievement of this objective has been the FSA's attempt to make it easier for customers to know how to complain when they feel that they have been badly treated by a financial institution or by an individual working in the industry. Customers who are not satisfied with a firm's response to their complaint can refer the matter to a dedicated independent ombudsman bureau. In some circumstances, customers who have lost money can receive compensation.

Section 3 deals with the practical aspects of these consumer rights, as specified in part U5 of the syllabus, with particular reference to complaints procedures, arbitration schemes (ombudsmen) and compensation arrangements.

3.1 Firms' complaints procedures

The Financial Services and Markets Act 2000, consolidating and enhancing the arrangements under the previous regulatory regime, introduced new rules on complaint-handling arrangements. The rules require firms to deal properly and promptly with consumer complaints. The key requirements for firms' complaints procedures are that firms must:

- ◆ have appropriate and effective complaint-handling procedures;
- ◆ make consumers aware of these procedures – this is normally done through the client agreement or initial disclosure document (see Section 1.7.5.1.2);
- ◆ aim to resolve complaints within eight weeks;
- ◆ notify complainants of their right to approach the Financial Ombudsman Service (see Section 3.2) if they are not satisfied;
- ◆ report to the FSA on their complaint handling, on a regular six-monthly basis.

Complaints may be received orally (in person or by telephone) or in writing. In either case, the complaint should be acknowledged promptly and in writing. Complaints covered by the FSA rules are those that are received from **eligible complainants**, which means:

- ◆ private individuals; or
- ◆ small businesses (ie with an annual turnover of under £1 million); or
- ◆ charities with an annual income of under £1 million; or
- ◆ trustees of a trust with assets of under £1 million.

It is also necessary to distinguish between *soft* and *hard* complaints. Hard complaints are those involving 'an allegation that the complainant has suffered financial loss, material distress or material inconvenience'. Soft complaints are any other complaints and are, for the most part, subject to the same rules as hard complaints – the only differences are that they are not subject to the usual deadlines and they do not have to be reported to the FSA.

All complaints must be promptly and thoroughly investigated by a person of sufficient competence who, wherever possible, was not directly involved in the matter under complaint. The overall aim should be to ensure that any specific problem identified by the complainant is remedied.

The firm's response to the complainant is in the form of a final response letter, which must 'adequately address the subject matter of the complaint'. It must also inform the complainant that if he is not satisfied, he can refer his complaint to the Financial Ombudsman Service within six months of the date of the letter.

The firm should keep the complainant informed of the progress of the complaint. If after eight weeks, a final response still cannot be given, the client must be told that they can refer the matter to the Financial Ombudsman Service if they are dissatisfied about the delay.

Records of hard complaints have to be retained for at least three years.

Six-monthly reports about the progress of hard complaints are required, showing how many were satisfactorily concluded within four weeks, between four and eight weeks, and after more than eight weeks.

3.2 The Financial Ombudsman Service

The FSMA 2000 provides for a mechanism under which 'certain disputes may be resolved quickly and with the minimum of formality by an independent person'. The concept of an ombudsman, as a person or organisation providing an independent facility for the resolution of complaints and disputes relating to public bodies and commercial organisations, has been with us for many years. Indeed, in the past, a number of separate ombudsman bureaux have operated in the financial services marketplace, each of them dealing with problems arising in a particular sector. These included the Banking Ombudsman, the Building Societies Ombudsman and many more relating to insurance, investment, pensions and other areas.

The FSA recognised that such a fragmented system was neither helpful nor efficient, and the framework for an integrated body, the **Financial Ombudsman Service (FOS)**, was established by the FSMA 2000.

The FOS took over from the existing financial services ombudsman schemes in December 2001, with the aim of being a single organisation with a consistent set of rules that would deal with complaints and disputes arising from almost

any aspect of financial services. Note that the rules mentioned here are rules about dealing with complaints – the FOS stresses that it does not make the rules under which firms are authorised, nor can it give advice about financial matters or debt problems.

Although now a single organisation, the FOS does acknowledge that different types of problems may arise from different areas, so it has established three different divisions within the service:

- ◆ the Banking and Loans Division;
- ◆ the Insurance Division;
- ◆ the Investment Division.

The FOS has not, however, taken over the responsibilities of the Pensions Ombudsman, which deals with complaints about occupational pension schemes (see Section 3.4).

The Financial Ombudsman Service is free to customers and is open to all private individuals and small businesses. It is funded by the firms who are members of the FOS and membership is compulsory for all firms authorised under the FSMA 2000.

Complainants must first complain to the firm itself; the FOS will become involved only when a firm's internal complaints procedures have been exhausted without the customer obtaining satisfaction. Complaints to the FOS must be made within six years of the event that gives rise to the complaint, or within three years of the time when the complainant should have become aware that he had cause for complaint, whichever is the later. The FOS will not usually consider any complaint that is the subject of a court case.

The FOS can make awards of up to £100,000, plus the complainant's reasonable costs, which are binding on the firm but not on the complainant, who is free to pursue the matter further in the courts if he wishes. The award is not intended to punish the firm, but to put the complainant back into the same financial position in which he would have been had the event complained about not taken place.

As of 6 April 2007 the FOS also handles consumer credit complaints about businesses with consumer credit licences.

3.3 The Financial Services Compensation Scheme

Compensation arrangements for customers who have lost money through the insolvency of an authorised firm have been co-ordinated under a single scheme with effect from December 2001. The **Financial Services Compensation Scheme** is made up of a number of sub-schemes relating to different default situations, as follows:

- ◆ *default of an insurance company*: compensation is 100% of the first £2,000 plus 90% of the balance, with no upper limit. If the insurance is compulsory (such as employer's liability cover or some types of motor insurance), the figure is 100% of the whole amount;
- ◆ *loss due to insolvency of a firm carrying out investment business regulated under FSMA 2000*: 100% of the first £30,000, plus 90% of the next £20,000 (ie a maximum of £48,000);
- ◆ *loss of deposited funds due to the default of a bank or building society*: 100% of the first £35,000;
- ◆ *claims against firms involved in mortgage advice and arranging*: 100% of the first £30,000, plus 90% of the next £20,000 (ie a maximum of £48,000);
- ◆ *claims against insurance intermediaries*: the amount that can be claimed will depend on the nature of the circumstances.

Claims cannot be made against the Financial Services Compensation Scheme for other losses, ie losses due to negligence, poor advice or simply due to a fall in stock market values. In some cases, however, the customer may be able to sue for compensation through the civil courts.

3.4 The Pensions Ombudsman

The **Pensions Ombudsman** was created by the Social Security Act 1990 to deal with complaints relating to occupational pension schemes and certain aspects of personal pension schemes. The Secretary of State for Work and Pensions appoints the Ombudsman.

The Pensions Ombudsman can decide about complaints and disputes relating to the running of pension schemes. He does not deal with complaints about the sales and marketing of pension schemes – these are the province of the Financial Ombudsman Service (see Section 3.2) – or with complaints about state pensions.

Complaints are related to cases of *maladministration*, and it must be shown that this has led to injustice (financial loss, distress, delay or inconvenience). Disputes are disagreements about facts or about law.

Complaints and disputes can be made by a wide range of people: individuals, managers, trustees or employers. They are commonly made by:

- ◆ members or ex-members of schemes;
- ◆ spouses of members or ex-members of schemes;
- ◆ widows or dependants of members who have died;
- ◆ solicitors or others representing the interests of such people.

Complaints or disputes should first be addressed to the pension scheme's managers or trustees. If this does not result in agreement, the next point of reference should be to the Office of the Pensions Advisory Service (OPAS), who try to resolve the dispute through conciliation and mediation. OPAS decisions are not legally binding and cases that cannot be agreed are normally then referred to the Pensions Ombudsman.

Complaints and disputes must be communicated to the Ombudsman in writing within three years of the event being complained about. Any time spent trying to resolve the matter using the scheme's internal complaints procedures, or through OPAS, is normally excluded from this time period.

The Ombudsman's decision is binding on all parties and can be enforced in the courts.

Test your knowledge and understanding with these questions

Take a break before using these questions to assess your learning across Section 3. Review the text if necessary.

Answers can be found at the end of this unit.

1. The FSA expects firms to aim to resolve complaints within:
 - (a) Six weeks.
 - (b) Eight weeks.
 - (c) 12 weeks.
2. A customer has received a final response letter in which the firm he has complained to declines to uphold his complaint. What is the time limit for the customer to refer the matter to the Financial Ombudsman Service?
3. A customer has lost £35,000 as a result of the insolvency of an investment firm. How much compensation can she receive from the Financial Services Compensation Scheme?
4. If an investor loses her £50,000 deposit when a building society collapses, how much compensation will she receive from the Financial Services Compensation Scheme?
5. What types of complaints can be dealt with by the Pensions Ombudsman?

Unit 2

Answers

1. (b) Eight weeks.
2. Six months.
3. £34,500.
4. £35,000.
5. Complaints about maladministration of pension schemes. He can also deal with disputes about facts or the interpretation of the law.

Unit 2