

The note explains to complainants how the Commissioner will consider **remedies**, including compensation, if she upholds a complaint against the regulators.

Remedies means the steps the Commissioner can recommend that the regulators take to put things right for complainants.

1. How the Commissioner will approach remedies

Where the Commissioner finds that a complaint is well founded, she will seek to remedy the matters complained about by making recommendations to the regulator. The Commissioner's key principle is that the remedy should, as far as possible, place the complainant back in the position he or she would have been in but for the error of the regulator.

In doing this, she will

- provide similar remedies for similar cases – to achieve consistency and fairness.
- consider each case on its merits – remedies will be appropriate and proportionate to the scale of the matter complained about.
- give clear reasons.

2. What remedies the Commissioner can consider

Where the Commissioner finds that a complaint is well founded, the Commissioner can recommend that the regulator should put things right in one or more of the following ways:

- *Take steps to put things right to rectify the error*

The Commissioner will always consider what **remedial action** the regulator can take to put things right, for example reconsidering a decision, or refunding a payment.

- *Make an apology*

The Commissioner will usually recommend that the regulator should **apologise** for any error.

- *Offer the complainant a compensatory payment¹.*

The Commissioner will consider recommending that the regulator should reimburse the complainant (in full or in part) for **quantifiable financial loss**

¹ Under the rules of the complaints scheme, compensatory payments are *ex gratia*. This means that the regulators do not admit legal liability when they pay them. By law, the regulators cannot be sued for damages unless it can be shown that they have acted in bad faith, or that the complainant's human rights have been breached. These are matters which only a court can decide, and are not dealt with by the Commissioner.

which has directly resulted from the regulator's error (complainants will be asked for documentary evidence of loss). She may also recommend the reimbursement of professional fees, but complainants should not need a professional adviser to bring a complaint to the Commissioner and the Commissioner will not usually recommend reimbursement of any legal costs incurred in bringing the complaint.

The Commissioner will also consider recommending the regulator offer a compensatory payment to the complainant, on a goodwill basis, to acknowledge the impact of its actions where there has been distress or inconvenience caused to the complainant. A remedy payment for distress is usually a modest sum not exceeding £300, although in certain circumstances a higher amount may be justified.²

- The Commissioner may also recommend a **review of practice, policy or procedure** of the regulator. This may include recommendations for improvements or staff training.

The fact that a complaint is well-founded does not mean that a compensatory payment will automatically be recommended. In many cases, the Commissioner will conclude that an apology and/or remedial action will be sufficient.

3. **What does the Commissioner take into account before recommending a remedy?**

If the Commissioner upholds a complaint, she will consider

- Whether there is there a **clear link between the regulator's error and the matter complained about.**
- Whether the complainant or another person has **done anything which contributed to the problem, including whether the complainant has co-operated with the complaints process.**
- Whether what the regulator has **done or not done has made the problem worse, or whether it has acted in a way to reduce the problem.**
- The impact of the problem on the individual complainant.

4. **What the Commissioner cannot do**

The Commissioner:

² In considering the level of payments, the Commissioner will bear in mind that, because the regulators are funded by the financial services industry, the costs will ultimately fall upon the industry and, through it, consumers.

- cannot force the regulator to provide the remedy which he has recommended. The regulators generally accept his recommendations, but if they do not they have to explain why.
- cannot award compensation, punitive damages or costs in the same way as a court or tribunal would do.

November 2020