Imminent Changes to FSA Complaint-Handling Rules

July 29, 2011

The FSA recently published its final rules relating to changes to complaint-handling, and increased the Ombudsman award limit. The main changes relate to the requirement of firms to identify a senior individual responsible for complaint-handling; the requirement to consider root causes of complaints; and the abolition of the two-stage complaint-handling process. These rule changes start to take effect from 1 September and firms therefore need to review processes and procedures over the coming weeks.

What has happened?

The FSA has taken a keen interest in complaint-handling over the last twelve months. In 2010, it undertook a review of complaint-handling in major banks which found poor standards of complaint-handling within most of the banks it assessed. The FSA believes that these weaknesses stemmed from the banks’ culture, which did not focus on delivering fair outcomes for consumers, and a lack of governance arrangements, policies and controls.

Following the FSA’s review, two major banks were referred to the FSA’s Enforcement Division and, following an investigation, both were publicly censured in the first half of this year. Both banks were found to have breached the FSA’s Principles for Businesses 3 and 6 and substantial fines were imposed.

Within days of the most recent Enforcement action, the FSA published its new consumer complaint-handling rules, described as part of a package of measures to drive up standards within the industry.

What are the key points?

The key changes to complaint-handling rules are as follows:

Effective from 1 September 2011
• Firms will be required to nominate a senior individual holding a ‘governing function’ to have responsibility for the complaint-handling function within the firm.

• Firms will be required to consider the root cause analysis of complaints where the firm identifies recurring or systemic problems. The new guidance will also require firms to consider whether action is required in relation to customers who may have suffered detriment but who have not complained and, if so, ensure appropriate redress is given.

• When considering complaints, firms will be required to take into account decisions of the Financial Ombudsman Service and other guidance which the Ombudsman will be asked to publish in relation to its general approach to particular situations.

*Effective from 1 January 2012*

• The Financial Ombudsman award limit will increase from £100,000 to £150,000.

*Effective from 1 July 2012*

• The two-stage complaint-handling process for firms will be abolished in favour of a simplified system which aims to ensure firms resolve complaints fairly and do not dismiss them from the start, requiring persistence from the customer to pursue the complaint.

**How will this affect me?**

The changes are intended to provide consumers with prompt and effective outcomes in relation to complaints which are made to firms. In order to achieve this aim, a greater onus is inevitably intended to be placed on firms with the new complaint-handling rules.

The FSA has staggered the implementation of the new rules summarised above and firms should focus on those which are effective from 1 September. However, it is also important to look ahead to the rules which become effective in 2012 and ensure that sufficient systems and resources are in place to enable a smooth transition to the simplified complaint-handling process.

The FCA under the new regulatory regime - with its increased focus on conduct issues - will undoubtedly continue to focus on complaint-handling when it takes over from the FSA next year. We expect to see firms continuing to be referred to the Enforcement division where standards are still not being met. It is therefore important for firms to ensure sufficient time and resource is spent reviewing its complaint-handling function.
What are the next steps?

If your business has not already done so we recommend that you promptly:

- undertake a review of your complaint-handling procedures;
- identify a suitably senior individual to have responsibility and oversight of complaint-handling for the firm;
- ensure systems are in place which enable your firm to focus on root causes of complaints and to review and/or redress customers who may have suffered detriment but who have not complained; and
- establish a relationship with the Ombudsman to ensure complaints are dealt with in accordance with their decisions.

BLP Perspective

The most pressing requirement is for firms to nominate a senior individual to take responsibility for complaint-handling. Whilst this does not create a controlled function in itself, firms must ensure that the relevant individual is sufficiently senior and holds a governing function. It is important the individual understands the extent of his/her new responsibilities and seeks advice if there is any uncertainty.

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