

On 27 June 2003, the Complaints Commissioner issued a final report on complaints GE-L0062 and GE-L0122 to the complainants and the Financial Services Authority. The introduction and summary to the report is published below.

FINAL REPORT ON COMPLAINTS GE-L0062 AND GE-L0122

1 Introduction and Summary

- 1.1 This is the report of an investigation by the Complaints Commissioner of complaint reference number GE-L0062 brought by a first complainant (the "First Complainant") and complaint reference number GE-L0122 brought by a second complainant (the "Second Complainant") against the Financial Services Authority ("FSA") and its predecessor body the Securities & Futures Authority ("SFA"). Both complaints fall to be considered under the Transitional Complaints Scheme.
- 1.2 The First Complainant and the Second Complainant (together the "Complainants") have agreed that the Commissioner may deal with both complaints as one complaint (the "complaint") requiring a single investigation.
- 1.3 In this report, references to the FSA should be taken to include, where appropriate, references also to the SFA and vice versa.
- 1.4 The First Complainant's initial submissions were sent by the First Complainant on 17 July 2002 and were received by the Commissioner on 19 July 2002. Further submissions were sent by the First Complainant on 31 July 2002 and received on 2 August 2002. The Second Complainant's submissions were sent on 28 October 2002 and received by the Commissioner on 31 October 2002.
- 1.5 The complaint has four components:
 - (a) First, there is a complaint concerning the publication by the SFA of a Board Notice (the "Board Notice") concerning the activities of a company registered in the UK and regulated by the SFA ("Company X") in 1995. In January 2000, the First Complainant made representations to the SFA questioning the accuracy and completeness of the Board Notice. He also expressed concern as to the penalties imposed on Company X and its directors by the Board Notice.
 - (b) Second, there is a complaint that after their investigation in 1995 into the conduct of Company X, the SFA failed to take appropriate action against Company X.

- (c) Third, there is a complaint that the SFA and/or the FSA failed to deal properly with further representations made by the First Complainant and the Second Complainant in relation to Company X and others by, for example, failing to interview them and failing to respond in a timely or appropriate way to their correspondence or to the First Complainant's reports.
 - (d) Fourth, there is a complaint that the SFA failed to take appropriate action against a second company registered in the UK and regulated by the SFA ("Company Y") following an SFA investigation in 1995.
- 1.6 The Complaints Commissioner advised the Complainants on 29 November 2002 that it was not within her jurisdiction to consider the first, second and fourth components of the complaint as set out above but that she would investigate the third component under the terms of the Transitional Complaints Scheme.
- 1.7 In relation to the third component of the complaint, the Complaints Commissioner has found as follows:
 - (a) The SFA failed to establish whether an SFA investigation into the representations made by the First Complainant in January 2000 in relation to the Board Notice could prejudice certain SFO proceedings.
 - (b) The SFA failed to respond properly or reasonably to the First Complainant's representations contained in two letters dated 27 June 2000.
 - (c) The SFA failed adequately to resolve the confusion between the SFA and the first Complainant which arose out of a meeting of 17 July 2001 and failed to take the opportunity to resolve the confusion through a second interview with the First Complainant.
 - (d) There was an unacceptable delay by the SFA in responding to the Second Claimant's letter of 26 May 2000.
- 1.8 In the light of these findings, the Complaints Commissioner recommends as follows:
 - (a) The FSA should apologise in writing to the First Complainant for the SFA's failure to properly respond to his two letters of 27 June 2000.
 - (b) The FSA should apologise in writing to the Second Complainant for the SFA's unreasonable delay in responding to his letter of 26 May 2000.
 - (c) Having regard to any protocol with the SFO and also to the usual restrictions on the provision of information to third parties by the FSA regarding regulated firms under the relevant rules and regulations, the FSA should instruct a member of staff with suitable experience and seniority in the relevant department, and who has no previous involvement with this complaint, to review and respond to:

- (i) the First Complainant's letter and report dated 27 June 2000 regarding the Board Notice; and
- (ii) the First Complainant's letter dated 27 June 2000 regarding the alleged improper behaviour of a partner in an SFA regulated firm.

The reply should be made within a reasonable timeframe as notified to the First Complainant by the FSA. A copy of the response should also be sent to the Second Complainant, provided that the FSA consider it to be appropriate to do so in the circumstances and provided also that the First Complainant gives his consent.

- (d) The FSA review its procedures to ensure that suitably-trained members of staff are allocated to deal with the liaison between the FSA and members of public who think they have information relevant to an FSA investigation and that procedures are in place for the prompt reply and follow up to correspondence received from such members of the public.