

our ref
your ref



from Caroline Wayman
chief ombudsman & chief executive

John Griffith-Jones
Chairman's Office
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

write to Financial Ombudsman Service
Exchange Tower
1 Harbour Exchange Square
London
E14 9SR

7 July 2015

Dear John,

I am writing to set out our application to become a certified ADR entity and provide the information below as required by Schedule 2 of the *Alternative Dispute Resolution (Competent Authorities and Information) Regulations 2015* (the Regulations).

- a) the ADR applicant's name, contact details and website address;

Name The Financial Ombudsman Service Limited
Contact details The Financial Ombudsman Service
Exchange Tower
London E14 9SR
Annette.Lovell@financial-ombudsman.org.uk
020 3069 6386

Website address www.financial-ombudsman.org.uk

- b) information on structure and funding of the ADR applicant, including such information as the competent authority may require regarding ADR officials, their remuneration, term of office and by whom they are employed;

- Information about our structure and funding, including information on natural persons in charge of dispute resolution is provided in our latest *Directors' Report and Financial Statements* which is available on our website:
<http://www.financial-ombudsman.org.uk/publications/directors-report-2013-14.pdf>.

Further detail can also be found on the following section of our website:
<http://www.financial-ombudsman.org.uk/about/index.html>,
and in our reasoned statement (attached).

- c) the rules of the alternative dispute resolution procedure to be operated by the ADR applicant;

- Our rules are set out in the *Dispute Resolution: Complaints (DISP)* chapter of the FCA handbook:
<http://fshandbook.info/FS/html/FCA/DISP>

and also in the FEES section of the FCA handbook:

<http://www.fshandbook.info/FS/html/FCA/FEES>)

Changes to those rules to make sure we are consistent with the Regulations come into effect on 9 July 2015 (published in FCA handbook notice 21 of 24 April 2015, which can be found here:

http://media.fshandbook.info/Legislation/2015/FCA_2015_25.pdf)

d) any fees charged by the ADR applicant;

- Our service is free to use for consumers, and we are funded by a levy, paid for by industry and through case fees charged to respondent businesses (DISP/FEES/5).

Information about the fees we charge is provided in our latest *Plan for the Year Ahead* which is available on our website:

<http://www.financial-ombudsman.org.uk/news/updates/plans-and-budget-2015-16.html> (page 43)

e) where the ADR applicant already operates an alternative dispute resolution procedure, the average length of the alternative dispute resolution procedure;

- We provide information on how long it takes to deal with a case here: http://www.financial-ombudsman.org.uk/faq/answers/complaints_a6.html.

We also publish information on how we prioritise cases:

http://www.financial-ombudsman.org.uk/about/allocate_and_prioritise_cases.html

and we publish detailed figures on how long it takes us to resolve cases each year in our annual review (in the section 'how we deal with complaints'), which can be found here:

<http://www.financial-ombudsman.org.uk/publications/annual-reviews.htm>.

This does not reflect the measures set out under paragraph 6 of Schedule 3 of the Regulations (Effectiveness) but rather the overall average time it takes to resolve a dispute from when we first pass it on as a formal case to one of our case handlers. This also encompasses complaints which are outside the scope of the Directive, such as non-contractual disputes, or complaints brought by micro-enterprises, charities or trusts.

We have provided further detail on average length of procedure in relation to paragraph 6 of Schedule 3 of the Regulations measures in the attached reasoned statement.

f) the language in which the ADR applicant is prepared to receive the initial complaint submissions and conduct the alternative dispute resolution procedure;

- We look to help people use our service in whatever language is best for them. Between February 2013 and February 2014 we dealt with people in 53 languages other than English, including 3 African languages, 20 Asian languages, 12 Eastern European languages, 6 Middle Eastern languages and 12 Western European languages. Further information can be found on our website:

<http://www.financial-ombudsman.org.uk/help/languages.html>

g) a statement as to the types of disputes covered by the alternative dispute resolution procedure operated by the ADR applicant;

- The types of disputes we cover are set out at DISP 2.3 (*To which activities does the Compulsory Jurisdiction apply?*) and DISP 2.5 (*To which activities does the Voluntary Jurisdiction apply?*) and further requirements about who can bring disputes to our service can be found in DISP 2.7 (*Is the complainant eligible?*)

We also provide some information on our website:

<http://www.financial-ombudsman.org.uk/about/index.html>

and in our annual review:

<http://www.financial-ombudsman.org.uk/publications/annual-reviews.htm>

- h) the grounds, if any, on which the applicant may refuse to deal with a dispute;
- The grounds on which we may refuse to deal with a dispute with effect from 9 July 2015 are found at DISP 3.3.4A (published in FCA handbook notice 21 of 24 April 2015 which can be found here: http://media.fshandbook.info/Legislation/2015/FCA_2015_25.pdf)
- i) a reasoned statement which sets out how the ADR applicant complies, or proposes to comply, with the requirements set out in Schedule 3.
- Please find attached a reasoned statement that demonstrates how we comply with the specifications set out in Schedule 3 of the Regulations, originally sent to you on 1 May 2015 and subsequently updated to reflect comments from the May Oversight Committee and the Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015 published on 18 June 2015.

I trust the information provided here allow you to approve the Financial Ombudsman Service as an approved ADR provider.

Yours sincerely,



Caroline Wayman
chief ombudsman and chief executive

Reasoned statement that the Financial Ombudsman Service complies with the specifications set out in Schedule 3 of the Alternative Dispute Resolution (Competent Authority and Information) Regulations 2015 (the Regulations).

Alternative dispute resolution services offered by the person

1.The person –

- a) **offers alternative dispute resolution services in relation to a domestic dispute or cross-border dispute brought by a consumer against a trader;**

We were first established by the Financial Services Authority to operate the ombudsman scheme provided for by the Financial Services and Markets Act 2000 (FSMA) – see section 225-234, Part 16 of FSMA and Schedule 17 of FSMA:

[http://www.legislation.gov.uk/ukpga/2000/8/section/225;](http://www.legislation.gov.uk/ukpga/2000/8/section/225)

and:

[http://www.legislation.gov.uk/ukpga/2000/8/schedule/17.](http://www.legislation.gov.uk/ukpga/2000/8/schedule/17)

Section 225 (1) of FSMA provides for a ‘scheme under which certain disputes may be resolved quickly and with minimum formality by an independent person’.

The ombudsman service offers both a mandatory (the compulsory jurisdiction – section 226 FSMA) and a voluntary (the voluntary jurisdiction – section 227 FSMA) alternative dispute resolution scheme for certain disputes brought by consumers against financial businesses.

- b) **is not formed for the purpose of dealing only with one particular domestic dispute or cross border dispute;**

We deal with disputes about a range of financial products and services. Further detail on the types of dispute we can look at is set out in DISP 2 of the FCA handbook (DISP rules):

<http://fshandbook.info/FS/html/FCA/DISP/2>

- c) **does not offer alternative dispute resolution services in relation to a domestic or cross-border dispute in circumstances where an ADR official responsible for the dispute is either employed or remunerated directly by a trader who is party to the dispute.**

Our staff are not employed or remunerated directly by a trader who is a party to any given complaint. Information about the employment of our staff can be found here:

<http://www.financial-ombudsman.org.uk/about/careers.html>.

Further information on the employment terms and conditions for our staff is attached in our employee handbook at Annex A (pages 7-20).

Access to the ADR Entity

2.The person –

- a) **maintains an up-to-date website which provides the parties to a domestic dispute or cross-border dispute with information regarding the alternative dispute resolution procedure operated by the person;**

Our website can be accessed here:

<http://www.financial-ombudsman.org.uk/>

It provides consumers and businesses with information on all aspects of our service.

- b) provides the information referred to in sub-paragraph (a) to any party on a durable medium, if a party requests it;**

We provide the information on our website in a durable medium if requested. We explain this here:

<http://www.financial-ombudsman.org.uk/help/accessibility.html>

- c) ensures that its website enables a consumer to file an initial complaint submission and any necessary supporting documents online;**

Our website contains an online form which allows people to submit complaints and supporting documents online. Information on how to complain can be found at the following link:

<http://www.financial-ombudsman.org.uk/consumer/complaints.htm>.

We also have information on the website which explains how people can email complaints and documents to us:

<http://www.financial-ombudsman.org.uk/consumer/complaints.htm>.

- d) permits the consumer to file an initial complaint submission by post, if the consumer so wishes;**

We accept complaints by post and make consumers aware of this here:

<http://www.financial-ombudsman.org.uk/contact/index.html>

and when they call us.

- e) enables the exchange of information between the parties via electronic means or, if a party wishes, by post;**

We deal with parties by email, fax, telephone and post depending on their needs or preference, and on the nature of the information we need to share.

- f) accepts disputes covered by Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes (a).**

The activities we cover are set out at DISP 2.3 (compulsory jurisdiction) and DISP 2.5 (voluntary jurisdiction). These activities can cover both online and offline transactions.

Our jurisdiction is not dependent on the country in which the consumer is based (DISP 2.6.5G).

Our compulsory jurisdiction covers complaints about acts or omissions by businesses carried on from an establishment in the UK – and other areas set out in DISP 2.6.1-2R.

Our voluntary jurisdiction covers complaints about acts or omissions by businesses carried on from an establishment in the United Kingdom and elsewhere in the EEA if certain conditions (in DISP 2.6.4R) are met.

We will accept complaints referred to us by the ODR platform when it goes live in January 2016.

Expertise, Independence and Impartiality

3. The person –

- a) **ensures that an ADR official possesses a general understanding of the law and the necessary knowledge and skills relating to the out-of-court or judicial resolution of consumer disputes, to be able to carry out his or her functions competently;**

Our recruitment processes are designed to identify people who have the skills and experience we require, and details around this can be found here:

<http://www.financial-ombudsman.org.uk/about/careers.html>.

On joining the service, all new case handlers undertake comprehensive induction programmes before they start to consider cases.

This induction programme varies in length, depending on the specific case handler role and area of work. The content covers:

- (i) the aspects of law required for our role (for example, our jurisdiction, the rules we use to manage our processes and make decisions, and DISP rules (DISP 3.6.4R(a));
- (ii) the product-specific knowledge needed to assess cases; and
- (iii) how we work (for example communication with consumers and businesses, how to gather the evidence needed and how to assess evidence to come to an outcome, conflict of interests, working ethically).

The induction also includes a period of mentoring whereby new case handlers are supported by more experienced members of staff and by their managers.

Our probation period for new staff is between one month and six months depending on the role, and case handlers have to demonstrate that they possess the necessary knowledge and skills (including an understanding of the law relevant to their role) to be able to pass that probation period.

Additional support is also available from specialist staff. For example, adjudicators also have regular access to ombudsman expertise whether that be in face-to-face case clinics, during technical training sessions lead by ombudsmen, or by accessing technical notes drafted and approved by ombudsmen which can be found here: <http://www.financial-ombudsman.org.uk/publications/technical.htm>. We also provide professional development for ombudsmen.

Both adjudicators and ombudsman have ready access to specialist legal advice and guidance on jurisdiction from our in-house legal team.

Further information and training is provided through quality assessments, internal communications and our annual appraisal process. The legal team also provide written information on relevant legal updates and run training sessions on the law and legal developments that are relevant to the adjudicator and ombudsman role.

Where an individual no longer demonstrates that they possess the knowledge and skills they require for the role this is managed through a performance improvement plan and ultimately, if insufficient progress is made, through our organisational disciplinary and capability procedure.

- b) **appoints each ADR official for a term of office of sufficient duration to ensure the independence of that person's actions and provides that no ADR official can be relieved of his or her duties without just cause;**

Section 225 (1) of FSMA provides for a 'scheme under which certain disputes may be resolved quickly and with minimum formality by an independent person'.

Our recruitment arrangements are made to enable the organisation to scale up or down according to demand, but typically we appoint:

- o adjudicators on either permanent or three year fixed-term contracts (dependent on the needs of the service);
- o ombudsmen on either permanent or three year fixed-term contracts (dependent on the needs of the service); and
- o fee-paid ombudsmen (who provide their time flexibly and are paid a daily rate, which enables us to cope with fluctuations in demand) contracted on three year agreements with the option to extend if required.

Our Board appoints all of our ombudsmen (the persons with the power to make legally binding final decisions) in accordance with Sections 4 and 5 of Schedule 17 of FSMA – including fee paid ombudsman. Ombudsmen are, by the terms of their appointment, independent.

We also have a contingent workforce, recruited by a third party agency. We train these people to the same level and hold them to the same standards of behaviour as our permanent staff. Typically, contingent case-handling workers are hired on a contract for services for a minimum of 6 months but usually two year fixed-term contracts.

We would not dismiss an adjudicator or ombudsman before conducting a full investigation and completing a formal hearing. The decision to dismiss would only be taken in cases where dismissal is a reasonable outcome based on the specific circumstances. For fee-paid ombudsmen and contingent staff, the nature of the relationship is that they provide a flexible resource to the ombudsman service. Agreements with them may be ended depending on our business need for individuals to continue to work for us.

c) ensures that no ADR official discharges his or her duties in a way that is biased as regards a party to a dispute, or the representative of a party;

Our employee handbook (Annex A, part 11, pages, 100-102) sets out details of our conflict of interest policy which includes our expectation of all of our staff to remain independent and impartial at all times in relation to the role they are responsible for.

d) remunerates an ADR official in a way that is not linked to the outcome of the alternative dispute resolution procedure;

Our staff are paid by yearly salary with no earnings linked to the outcome of the procedure. The salaries of our ombudsman panel are set by reference to the judicial scale.

Our staff may receive a non-contractual organisational bonus, which reflects their contribution to organisational and operational objectives.

Fee-paid ombudsmen are paid a fixed fee for services per day.

e) where it appoints more than one ADR official, ensures that an ADR official, without undue delay, discloses to the person a circumstance that may, or may be seen to –

- i. affect the ADR official's independence or impartiality; or
- ii. give rise to a conflict of interest with a party to the dispute which the ADR official is asked to resolve.

Our employee handbook sets out our policy on conflicts of interest (Annex A, part 11). All our staff are under an obligation to tell us as soon as they become aware of any circumstances that may, or could be seen to, give rise to a conflict of interest on a case they have been asked to work on. In addition, we require our senior managers and ombudsmen to declare their interests when they join the ombudsman service, and annually thereafter.

f) ensures that the obligation to disclose a conflict of interest is a continuing obligation throughout the alternative dispute resolution procedure;

Our policy set out in the employee handbook (Annex A, part 11, pages 100-102) makes it clear that the obligation to disclose a conflict applies at any stage of the complaint handling process.

g) ensures that in circumstances where its ADR officials are employed or remunerated exclusively by a professional organisation or business association, the person has a ring-fenced budget at its disposal which is sufficient to enable it to carry out its functions as an ADR entity

This is not applicable to our model.

h) ensures that where the operating model of its alternative dispute resolution procedure is to have a collegial body of representatives of both professional organisations or business associations, and consumer organisations, its ADR officials comprise an equal number of representatives of consumer interests and trader interests.

This is not applicable to our model.

Conflict of interests procedure

4. The person has in place the following procedure in the event that an ADR official declares or is discovered to have a conflict of interest in relation to a domestic dispute or cross-border dispute –

- a) where possible, the ADR official is replaced by another ADR official to handle the particular dispute**
- b) if the ADR official cannot be replaced by another ADR official –**
 - i) the ADR official must refrain from conducting the alternative dispute resolution procedure; and**
 - ii) the person must where possible, propose to the parties that they submit the dispute to another ADR entity which is competent to deal with it;**
- c) if the dispute cannot be transferred to another ADR entity, the person –**
 - i) must inform the parties of the circumstances of the conflict of interest;**
 - ii) must inform the parties to the dispute that they have the right to object to the conflicted person continuing to handle the dispute; and**
 - iii) can only continue to deal with the dispute if no party to the dispute objects.**

The size of our organisation means that, wherever a case handler declares, or is discovered, to have a conflict of interest in relation to a complaint they will always be replaced by another case handler. Please see our conflict of interest policy, as set out in our Employee Handbook (Annex A, part 11, pages 100-102). As a consequence, (b) and (c) are not relevant to our organisation.

Transparency

5. The person makes the following information publicly available on its website in a clear and easily understandable manner, and provides, on request, this information to any person on a durable medium –

a) **its contact details, including postal address and e-mail address;**

We provide this information here:

<http://www.financial-ombudsman.org.uk/contact/index.html>

b) **a statement that it has been approved as an ADR entity by the relevant competent authority once this approval has been granted;**

We will update our website with this statement if approval is given.

c) **its ADR officials, the method of their appointment and the duration of their appointment;**

We provide information about our adjudicators here:

<http://www.financial-ombudsman.org.uk/about/organisation-chart.htm>.

We provide information about our senior management team and panel of ombudsmen here:

<http://www.financial-ombudsman.org.uk/about/organisation-chart.htm>

and here:

http://www.financial-ombudsman.org.uk/publications/technical_notes/QG-ombudsman-panel.pdf

We provide information about the duration of appointments in section 3 (d) of this reasoned statement.

d) **the name of any network of bodies which facilitates cross-border alternative dispute resolution of which it is a member;**

Information is provided on our website about FIN-NET and processes for dealing with cross-border complaints:

http://www.financial-ombudsman.org.uk/faq/answers/complaints_a11.html

e) **the type of domestic disputes and cross-border disputes which it is competent to deal with, including any financial thresholds which apply;**

We provide information about the type of disputes we deal with here:

http://www.financial-ombudsman.org.uk/faq/answers/complaints_a2.html

and further details about the financial thresholds applicable can be found here:

http://www.financial-ombudsman.org.uk/publications/technical_notes/compensation.html

Our jurisdiction rules are publically available here:

<http://fshandbook.info/FS/html/handbook/DISP/3/2>

f) **the procedural rules of the alternative dispute resolution procedure operated by it and the grounds on which it can refuse to deal with a given dispute in accordance with paragraph 13;**

We provide a link to the rules here:

<http://www.financial-ombudsman.org.uk/about/official-documents.html>.

The rules outlining the grounds on which we can refuse to deal with a given dispute with effect from 9 July 2015 can be found in DISP 3.3.4R (FCA handbook notice 21, published 24 April, which can be found here:
http://media.fshandbook.info/Legislation/2015/FCA_2015_25.pdf)

g) the language in which it is prepared to receive initial complaint submission;

We look to help people use our service in whatever language is best for them. Between February 2013 and February 2014 year we worked with people in 53 languages other than English, including 3 African languages, 20 Asian languages, 12 Eastern European languages, 6 Middle Eastern languages and 12 Western European languages.

Further information can be found on our website here:
<http://www.financial-ombudsman.org.uk/help/languages.html>

h) the language in which its alternative dispute resolution procedure can be conducted;

We provide this information here:
<http://www.financial-ombudsman.org.uk/help/languages.html>

i) the principles the person applies, and the main considerations the person takes into account, when seeking to resolve a dispute;

DISP 3.6 sets out the considerations that case handlers will take into account when deciding cases. We refer to these DISP rules on our website here:
<http://www.financial-ombudsman.org.uk/about/official-documents.html>.

Our technical resource articles set out relevant considerations (law and regulations, regulator's rules, guidance and standards, codes of practice and good industry practice) for particular complaint areas where appropriate:
<http://www.financial-ombudsman.org.uk/publications/technical.htm>

We also provide information about our fair and reasonable approach here:
http://www.financial-ombudsman.org.uk/faq/businesses/answers/decide_cases_a7.html

j) the preliminary requirement, if any, that a party to the dispute needs to have met before the alternative dispute resolution procedure can commence;

We provide this information here:
<http://www.financial-ombudsman.org.uk/consumer/complaints.htm>

k) a statement as to whether or not a party to the dispute can withdraw from the alternative dispute resolution procedure once it has commenced;

We provide this information here:
http://www.financial-ombudsman.org.uk/faq/businesses/answers/decide_cases_a1.html;

and also here:
http://www.financial-ombudsman.org.uk/faq/answers/complaints_a3.html

l) the costs, if any, to be borne by any party, including the rules, if any, on costs awarded by the person at the end of the alternative dispute resolution procedure;

Our service is free to consumers at point of use:
<http://www.financial-ombudsman.org.uk/about/index.html>.

We provide information on the cost to be borne by businesses here:
<http://www.financial-ombudsman.org.uk/faq/businesses/funding.html>.

We provide information on costs to be awarded by the body at the end of the procedure here:
http://www.financial-ombudsman.org.uk/publications/technical_notes/distress-and-inconvenience.htm

m) the average length of each alternative dispute resolution procedure handled by the person;

We provide information on how long it takes to deal with a case:
http://www.financial-ombudsman.org.uk/faq/answers/complaints_a6.html.

We also publish information on how we prioritise cases:
http://www.financial-ombudsman.org.uk/about/allocate_and_prioritise_cases.html)

And we publish detailed figures on how long it takes us to resolve cases each year in our annual review (in the section 'how we deal with complaints'), which can be found here:

<http://www.financial-ombudsman.org.uk/publications/annual-reviews.htm>.

This published information reflects the average time it takes to resolve a dispute from when we first pass it on as a formal case to one of our case handlers and includes complaints which are outside the scope of the Directive, such as non-contractual disputes, or complaints brought by micro-enterprises, charities or trusts.

Using the measure set out in paragraph 6 (Effectiveness) of Schedule 3 of the Regulations, for the financial year 2014/15, the average length of procedure for general casework cases was 67 days and for PPI cases was 242 days. As noted above, these figures include cases that are not within the scope of the Directive. Further, cases where we did not receive a firm file are not included in this data because the date on which we decided to consider the complaint without that information was not previously recorded. We have adapted our IT systems and processes to ensure such cases are captured from 9 July 2015, to support reporting against Regulation requirements.

n) the legal effect of the outcome of the dispute resolution process, including whether the outcome is enforceable and the penalties for non-compliance with the outcome, if any;

We provide this information here (DISP 3.7.13G):
www.financial-ombudsman.org.uk/publications/factsheets/how_we_deal_with_your_complaint.pdf

and explain that our decision is binding on the business here:
http://www.financial-ombudsman.org.uk/publications/factsheets/final_decision.pdf

More specific information about the impact of any award over our limits can be found here:

http://www.financial-ombudsman.org.uk/publications/technical_notes/compensation.html

o) a statement as to whether or not alternative dispute resolution procedures operated by it can be conducted as an oral or written means (or both);

We provide this information here (DISP 3.5.5-3.5.7R):
http://www.financial-ombudsman.org.uk/faq/businesses/answers/decide_cases_a3.html

p) the annual activity report required to be prepared under regulation 11(2);

We'll publish an annual activity report within one month of the anniversary of our approval as an ADR Entity.

Our Annual Reports can be found at the following link:

<http://www.financial-ombudsman.org.uk/publications/annual-reviews.htm>.

It should be noted that these also encompass complaints which are outside the scope of the Directive, such as non-contractual disputes, or complaints brought by micro-enterprises, charities or trusts.

All of the information mentioned in this section is available on a durable medium on request.

Effectiveness

6.The person –

a) ensures that its alternative dispute resolution procedure is available and easily accessible to both parties irrespective of where they are located including by electronic means and non-electronic means;

We can deal with parties by email, fax, telephone and post, a list of contact points can be found here:

<http://www.financial-ombudsman.org.uk/contact/index.html>

b) ensures that –

i) the parties to a dispute are not obliged to obtain independent advice or be represented or assisted by a third party although they may choose to do so;

ii) the alternative dispute resolution is available free of charge or at a nominal fee for consumers.

We deal with parties directly and with third party representatives where parties ask us to (DISP 2.7.2), and state this on our website:

http://www.financial-ombudsman.org.uk/fag/answers/complaints_a1.html

Our service is free to consumers at:

<http://www.financial-ombudsman.org.uk/about/index.html>

c) notifies the parties to a dispute as soon as it has received the complete complaint file, unless the person has already notified the parties that it refuses to deal with the dispute in accordance with paragraph 15;

This is built into our casework process with effect from 9 July 2015.

d) notifies the parties of the outcome of the alternative dispute resolution procedure within a period of 90 days from the date on which the person issues the notice under paragraph (c) except that, in the case of a highly complex dispute, the person may extend this period but must inform parties of this extension and the expected length of time that it will need to conclude the alternative dispute resolution procedure.

In the financial year 2014/15, we provided the parties with an outcome within 90 days of receiving the complaint file in 81% of general casework disputes and 30% of PPI disputes. It should be noted these figures include cases that are not within the scope of the Directive (for example micro-enterprises, charities and trusts), jurisdiction views and those disputes which may be considered highly complex and therefore

handled over a longer period of time. Further, cases where we did not receive a firm file are not included in this data because the date on which we decided to consider the complaint without that information was not previously recorded. We have adapted our IT systems and processes to ensure such cases are captured from 9 July 2015, to support reporting against Regulation requirements.

Based on our current forecasting assumptions, we expect to be in a position to meet the standard across the full range of products, including PPI disputes, by July 2017 - however we are aware that external events may have a significant impact on our ability to do so and we will keep our performance under close review.

Fairness

7.The person –

- a) **ensures that during the alternative dispute resolution procedure the parties may, within a reasonable period of time, express their points of view;**

Parties are asked for their comments as part of the initial file submission. Parties are generally given 14 days to respond with comments to initial assessments, which may be extended in appropriate circumstances (DISP 3.5.4R).

- b) **provides a party to a dispute within a reasonable period of time, upon request, with the arguments, evidence, documents and facts put forward by the other party to the dispute, including a statement made, or opinion given, by an expert;**

Our case handlers deal with such requests and will share all the relevant materials with the parties. Occasionally there might be information we can't share – for example personal information about someone else, or commercial information about a business. We explain this in the fact sheet we send to consumers when they first refer their complaint to us: *'can I see the information about my case'*:

<http://www.financial-ombudsman.org.uk/publications/factsheets/how-we-deal-with-your-complaint.pdf>.

Our case handlers then set out the basis of the outcome they reached (DISP 3.5.4) explaining what evidence, documents and facts they have relied on. Consumers also have information rights under the Data Protection Act – further information is available here:

<http://www.financial-ombudsman.org.uk/about/data-protection.html>

- c) **ensures that the parties may, within a reasonable period of time, comment on the information and documents provided under paragraph (b);**

Either party can make a request for information and documents under paragraph (b) at any time. We set reasonable deadlines for both parties to provide their evidence and arguments on the dispute throughout our case handling process (see for example DISP 3.5.4R).

- d) **informs the parties that they are not obliged to retain a legal advisor, but that they may seek independent advice or be represented or assisted by a third party at any stage of the alternative dispute resolution procedure;**

We provide this information on our initial complaint form here:

http://www.financial-ombudsman.org.uk/consumer/form/complaint_form.doc

and it is available on our website here:

http://www.financial-ombudsman.org.uk/faq/answers/complaints_a1.html

- e) **notifies the parties of the outcome of the alternative dispute resolution procedure on a durable medium and gives the parties a statement of the grounds on which the outcome is based.**

We provide both parties with a copy of the outcome of the dispute resolution procedure by post or email as appropriate. These set out the grounds on which the outcome is based (DISP 3.5.4R).

8. Subject to paragraphs 9 and 10, in relation to an alternative dispute resolution procedure which aims at resolving a dispute by proposing a solution, the person ensures that the parties –

- a) **have the possibility of withdrawing from the alternative dispute resolution procedure at any stage if they are dissatisfied with the performance or operation of the alternative dispute resolution procedure;**
- b) **before the alternative dispute resolution procedure commences, are informed of their right to withdraw from the alternative dispute resolution procedure at any stage;**

For (a) and (b) consumers may withdraw at any time. We provide some information to consumers here:

http://www.financial-ombudsman.org.uk/faq/answers/complaints_a3.html.

We are also currently revising our consumer leaflet and a new version, in line with this requirement, will be in circulation and in use by 9 July 2015.

- c) **are informed, before agreeing to or following the proposed solution –**
- i. **that they have the choice as to whether or not to agree to, or follow, the proposed solution;**
- ii. **that their participation in the alternative dispute resolution procedure does not preclude the possibility of them seeking redress through court proceedings;**
- iii. **that the proposed solution may be different from an outcome determined by a court applying legal rules.**

For (i) (ii) and (iii) our case handlers talk to customers throughout their complaint and regularly explain our process to them. We are currently looking at the written information we provide to consumers to see if we can make any of this clearer - any changes we make will be in place by 9 July 2015.

For (iii) we explain this on our website here:

http://www.financial-ombudsman.org.uk/faq/businesses/answers/handle_cases_a3.html.

Some information is also provided in the fact sheet we send to consumers when they first refer their complaint to us:

www.financial-ombudsman.org.uk/publications/factsheets/how_we_deal_with_your_complaint.pdf

- iv. **of the legal effect of agreeing to, or following such a proposed solution;**

We explain this in our 'how we deal with your complaint' consumer fact sheet which can be found here:

www.financial-ombudsman.org.uk/publications/factsheets/how_we_deal_with_your_complaint.pdf

We also explain this in a factsheet which accompanies an ombudsman decision which is also available on our website:

http://www.financial-ombudsman.org.uk/publications/factsheets/final_decision.pdf
(DISP 3.7.13G)

- d) **before expressing their consent to a proposed solution or amicable agreement, are allowed a reasonable period of time to reflect.**

Parties are given a reasonable period of time to consider a proposed solution. Parties have an opportunity to make representations (on the complaint and on the outcome) within a reasonable time – usually 14 days. These time limits are provided for in DISP 3.5.4R.

9. Paragraphs 8(a) and 8(b) do not apply to the person in respect of a party who is –

- a) a trader; and
- b) **obliged, under an enactment, rules of a trade association, or term of a contract, to accept the solution proposed by the person if the consumer accepts the solution.**

10. Paragraph 8 does not apply to the person in respect of a party who is –

- a) a trader; and
- b) **obliged, under an enactment, rules of a trade association, or term of a contract, to accept the solution proposed by the person if the consumer accepts the solution.**

Legality

11. In relation to an alternative dispute resolution procedure which aims at resolving a dispute by imposing a solution on the consumer, the person ensures that –

- a) in a situation where there is no conflict of laws, the solution imposed by the person does not result in the consumer being deprived of the protection afforded to the consumer by the provisions that cannot be derogated from by agreement by virtue of any enactment;
- b) in a situation involving a conflict of laws –
 - i) here the law applicable to the sales contract or service contract is determined in accordance with Article 6(1) and (2) of Regulation (EC) No 593/2008 on the law applicable to contractual obligations (a) the solution imposed by the person does not result in the consumer being deprived of the protection afforded to the consumer by the provisions that cannot be derogated from by virtue of the law of the Member State in which the consumer is habitually resident’;
 - ii) where the law applicable to the sales contract or service contract is determined in accordance with Article 5(1) to (3) of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations (a) the solution imposed by the person does not result in the consumer being deprived of the protection afforded to the consumer by the provisions that cannot be derogated from by virtue of the mandatory rules of the law of the Member State in which the consumer is habitually resident

12. For the purposes of paragraph 11 “habitual residence” shall be determined in accordance with Regulation (EC) No 593/2008 (b).

Paragraphs 11 and 12 do not apply to our scheme as we do not impose a solution on the consumer – the consumer remains free to decide whether or not to accept the suggested settlement.

Grounds to refuse to deal with a dispute

13. The person may only refuse to deal with a domestic dispute or a cross-border dispute for which it is competent to deal on one of the following grounds –

- a) prior to submitting the complaint to the person, the consumer has not attempted to contact the trader concerned in order to discuss the consumer's complaint and sought, as a first step, to resolve the matter directly with the trader;**
- b) the dispute is frivolous or vexatious;**
- c) the dispute is being, or has been previously, considered by another ADR Entity or by a court;**
- d) the value of the claim falls below or above the monetary thresholds set by the person;**
- e) the consumer has not submitted the complaint to the person within the time period specified by the person, which shall not be less than the prescribed period.**
- f) dealing with such a type of dispute would seriously impair the effective operation of the person.**

13A. 1) Subject to sub-paragraph (2), the “prescribed period” is 12 months from the date on which the trader informs the consumer that the trader is unable to resolve the consumer's complaint (the “notice date”).

2) Where the notice date occurred prior to the date on which the relevant competent authority approved the person as an ADR entity, under regulation 9(4), the “prescribed period” is the time period for submission of complaints as set out in the rules operated by that person on the notice date.

Our rules are set out here:

<http://www.financial-ombudsman.org.uk/about/official-documents.html>

The grounds on which we can dismiss a complaint referred to us from 9 July 2015 are set out in DISP 3.3.4AR (FCA handbook notice 21, published 24 April 2015 which can be found here:

http://media.fshandbook.info/Legislation/2015/FCA_2015_25.pdf).

14. The person ensures that its policy regarding when it will refuse to deal with a dispute, including in relation to the level of any monetary threshold it sets, does not significantly impair the consumers' access to its alternative dispute resolution procedures.

We do not believe the rules set out at DISP 3.3.4AR impair consumers' access to our service. This was subject to public consultation - the response to is set out in FCA handbook notice 21, published 24 April 2015 which can be found here:

http://media.fshandbook.info/Legislation/2015/FCA_2015_25.pdf

We have no minimum monetary threshold:

<http://www.financial-ombudsman.org.uk/about/index.html>

Our award limit is set at £150,000 (DISP 3.7.4R), although we are able to recommend (but not require) the respondent businesses pay redress above this limit:

http://www.financial-ombudsman.org.uk/publications/technical_notes/compensation.html

14A. The decision in paragraph 13 can be made at any time prior to the expiry of three

weeks of the date upon which the person received the final submissions of the parties, but it cannot be made after the person has notified the parties under paragraph 6(c) that it has received the complete complaint file.

Under our current rules (DISP 3.3.2R), where we decide to dismiss ('refuse to deal with') a complaint, we inform both parties of this decision and provide a reasoned explanation of the grounds for not considering the merits of the complaint. The rules setting out the circumstances in which we may decide to dismiss a dispute will change with effect from 9 July 2015, so we do not have the relevant data now. We are currently updating our casework processes so that we can start to both embed this new requirement and record the relevant data from 9 July 2015 onwards. We envisage being able to meet these requirements of the Directive, where possible, by the end of the year for non-PPI disputes, and across the full range of products, including PPI disputes, by July 2017. We will keep our performance here under close review.

There may, though, be exceptional circumstances outside of our control that render the timescale unrealisable. An example might be where the respondent decides to initiate court proceedings about the same issue after the three week period has expired, but the complainant wishes us to continue with the case nonetheless. If the respondent does not agree to stay those proceedings so that the ombudsman can consider the complaint, it may be appropriate for us to dismiss the case, and any such dismissal will be outside of the three week window.

15. Where a person refuses to deal with a dispute, the person must as soon as reasonably practicable provide a reasoned explanation of the grounds for not considering the dispute.

Under our current rules (DISP 3.3.2R), where we decide to dismiss ('refuse to deal with') a complaint, we inform both parties of this decision and provide a reasoned explanation of the grounds for not considering the merits of the complaint. We do this as soon as reasonably practicable.

16. Where following the expiry of the period referred to in paragraph 14A, it appears to the person that one of the parties has sought to mislead the person as regards the existence or non-existence of one of the grounds for it to refuse to deal with a dispute, the person may immediately refuse to deal further with the dispute.

DISP does not specifically address this situation. But, it may be open to us to decline to deal with a complaint in these circumstances under one of the dismissal grounds applying to the complaint.