

Ombudsman

**changes to the
dispute resolution: complaints
sourcebook**

February 2013



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responses

We welcome your feedback on our consultation on changes to the **dispute resolution: complaints sourcebook**. Please send your views and comments – to reach us by 4 March 2013 – to dafydd.evans@financial-ombudsman.org.uk. Or write to:

Dafydd Evans
Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

We may want to publish the responses we receive. In the interests of transparency, we encourage you to send us a *non-confidential* response.

Because we are subject to the *Freedom of Information Act*, any information you provide in response to this consultation may be subject to publication, disclosure, or release to other parties.

If you think the information you send us is confidential, it would be helpful if you could tell us why – so we can take this into account before deciding whether to release it. We cannot guarantee that confidentiality can always be maintained, and we will not regard an automatic confidentiality disclaimer generated by your IT system, of itself, as binding.

introduction

This consultation sets out the amendments that we propose to make to the Dispute Resolution: complaints sourcebook (“DISP”) of the Financial Services Authority (“FSA”) Handbook following recent legislative changes.

background

The Financial Services Act 2012 received Royal Assent in December 2012 and will come into force on 1 April 2013. The Act will deliver significant changes to the financial services regulatory landscape.

The legal foundations of the ombudsman service are set out in Part XVI and Schedule 17 of the Financial Services and Markets Act 2000. The Financial Services Act includes provisions which amend those parts of the Financial Services and Markets Act – and in particular some of the administrative procedures applying to determinations by the ombudsman.

The purpose of this consultation is to seek feedback on our proposed amendments to DISP 3: *Complaint Handling Procedures of the Ombudsman* to reflect and complement the Financial Services and Markets Act as amended by the Financial Services Act.

All of the amendments relate to DISP 3.6: *Determination by the Ombudsman*. A summary of the changes we intend to make are set out below. The full text of the proposed amendments to DISP 3.6 can be found in Annex A. Extracts from the Financial Services and Markets Act 2000 as amended by the Financial Services Act can be found at Annex B.

It is intended that the amendments will come into force on 1 April 2013 to coincide with the commencement date of the Financial Services Act.

proposed amendments

accepting ombudsman’s decisions

Section 228 of the Financial Services and Markets Act requires the ombudsman to give a written statement of his determination. Currently, the statement must require the complainant to notify the ombudsman “in writing”, before a date specified in the statement, whether he accepts or rejects the determination.

The Financial Services Act amends this section of the Financial Services and Markets Act by removing the requirement for the notification to be “in writing”. We therefore propose to amend the corresponding rule – DISP 3.6.6R(2), by removing the requirement for the complainant to notify the ombudsman in writing, in line with the amendment to the Financial Services and Markets Act.

late acceptance of ombudsman's decisions

Under section 228(6) of the Financial Services and Markets Act, if the complainant doesn't notify us that he accepts or rejects the determination, before the date specified in the ombudsman's written statement of determination, then the complainant is treated as having rejected the determination and neither party is bound by it.

The Financial Services Act amends the Financial Services and Markets Act so that the complainant is not to be treated as having rejected the complaint where:

- (a) *the complainant notifies the ombudsman after the specified date of the complainant's acceptance of the determination;*
- (b) *the complainant has not previously notified the ombudsman of the complainant's rejection of the determination; and*
- (c) *the ombudsman is satisfied that such conditions as may be prescribed by rules made by the scheme operator for the purposes of this section are satisfied.*

We propose to introduce a new rule to reflect this amendment. The rule will apply to ombudsman decisions issued on or after the 1 April 2013.

For the purposes of (c) above, we intend to specify that the complainant is not to be treated as having rejected the determination if, in the ombudsman's opinion, the complainant's failure to comply with the time limit for acceptance was as a result of exceptional circumstances.

In proposing the exceptional circumstances test, we have sought to strike a balance between the continuing statutory requirement for a complainant to accept an ombudsman determination within the specified time for the decision to be binding, and the new provision, which allows for late acceptance in specified circumstances.

We consider such a test would be a proportionate approach, which appropriately balances the requirement for certainty of outcome, whilst recognising that, exceptionally, the complainant's reasons for failing to accept in time mean that they should retain the opportunity to accept the ombudsman's decision.

We particularly welcome feedback on this proposal.

explaining the late acceptance rule to the financial business

Section 228(7) of the Financial Services and Markets Act provides that the ombudsman must let the financial business know whether the complainant has accepted the ombudsman's determination – and DISP reflects this provision.

The Financial Services Act introduces an additional requirement to the Financial Services and Markets Act, requiring the ombudsman service to give the financial business a general description of the late acceptance rule when the complainant is treated as having rejected the determination through a lack of response. We therefore propose to amend the corresponding rule – DISP 3.6.6R, in line with the amendment to the Financial Services and Markets Act.

reports of determinations

The Financial Services Act provides that the ombudsman will publish a report of any determination – and also specifies the circumstances in which a report may not be published. We propose to introduce a new rule to reflect this amendment to the Financial Services and Markets Act.

the correction of a clerical mistake and procedural irregularity

Under schedule 17 of the Financial Services and Markets Act we are required to make rules for the investigation, consideration and determination of complaints by the ombudsman. The Financial Services Act provides that those rules may:

- allow for the correction of a clerical mistake in an ombudsman determination; and
- provide that any irregularity arising from a failure to comply with any provisions of the scheme rules does not in itself render a determination void.

We propose to introduce rules in line with these provisions.

Annex A

DISPUTE RESOLUTION: COMPLAINTS (AMENDMENT NO 5) INSTRUMENT 2013

powers exercised by the Financial Ombudsman Service

A. The Financial Ombudsman Service Limited makes this instrument amending:

- (1) the rules relating to complaints handling procedures of the Financial Ombudsman Service; and
- (2) the standard terms for Voluntary Jurisdiction participants;

in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

- (a) section 226A (Consumer credit jurisdiction);
- (b) section 227 (Voluntary jurisdiction);
- (c) paragraph 14 (The scheme operator's rules) of Schedule 17;
- (d) paragraph 16B (Consumer credit jurisdiction: procedure for complaints etc) of Schedule 17; and
- (e) paragraph 18 (Terms of reference to the scheme) of Schedule 17.

B. The making of these rules and standard terms by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Services Authority.

commencement

C. This instrument comes into force on 1 April 2013.

amendments to the handbook

D. The Dispute Resolution: Complaints sourcebook (DISP) is amended by the Board of the Financial Ombudsman Service in accordance with the Annex to this instrument.

citation

E. This instrument may be cited as the Dispute Resolution: Complaints (Amendment No 5) Instrument 2013.

By order of the Board of the Financial Ombudsman Service Limited
xx March 2013

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3.6 Determination by the Ombudsman

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The Ombudsman's determination

3.6.6 R When the ~~Ombudsman~~ *Ombudsman* has determined a *complaint*:

- (1) the *Ombudsman* will give both parties a signed written statement of the determination, giving the reasons for it;
 - (2) the statement will require the complainant to notify the *Ombudsman* in writing, before the date specified in the statement, whether he accepts or rejects the determination;
 - (3) if the complainant notifies the *Ombudsman* that he accepts the determination within that time limit, it is final and binding on both parties;
 - (4) subject to paragraph (4A), if the complainant does not notify the *Ombudsman* that he accepts the determination within that time limit, the complainant will be treated as having rejected the determination, and neither party will be bound by it; and
 - (4A) the complainant is not to be treated as having rejected the determination under paragraph (4) if:
 - (a) the complainant notifies the *Ombudsman* after the specified date of the complainant's acceptance of the determination;
 - (b) the complainant has not previously notified the *Ombudsman* of the complainant's rejection of the determination; and
 - (c) in the view of the *Ombudsman*, the failure to comply with the time limit for acceptance was as a result of exceptional circumstances; and
 - (5) the *Ombudsman* will notify the *respondent* of the outcome and, if the complainant is treated as having rejected the determination under paragraph (4), the effect of paragraph (4A).
- 3.6.7 R (1) An *Ombudsman* may correct any clerical mistake in the written statement of an *Ombudsman's* determination, whether or not the determination has already been accepted or rejected.**

- (2) Any failure to comply with any provisions of the procedural rules made by the FOS Ltd does not of itself render an Ombudsman's determination void.

Reports of determinations

- 3.6.8 G (1) The FOS Ltd will publish a report of any Ombudsman's determination, save that if the Ombudsman who made the determination informs the FOS Ltd that, in the Ombudsman's opinion, it is inappropriate to publish a report of that determination (or any part of it), the FOS Ltd will not publish a report of that determination (or that part, as appropriate).
- (2) Unless the complainant agrees, a report will not include the name of the complainant, or particulars which (in the opinion of the FOS Ltd) are likely to identify the complainant.
- (3) The Financial Ombudsman Service may charge a reasonable fee for providing a copy of a report.

**extracts from FSMA - s228 and s230A as amended by the Financial Services Act 2012
determination under the compulsory jurisdiction**

- 228** (1) This section applies only in relation to the compulsory jurisdiction and to the consumer credit jurisdiction.
- (2) A complaint is to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case.
- (3) When the ombudsman has determined a complaint he must give a written statement of his determination to the respondent and to the complainant.
- (4) The statement must-
- (a) give the ombudsman's reasons for his determination;
 - (b) be signed by him; and
 - (c) require the complainant to notify him ~~in writing~~, before a date specified in the statement, whether he accepts or rejects the determination.
- (5) If the complainant notifies the ombudsman that he accepts the determination, it is binding on the respondent and the complainant and final.
- (6) If, by the specified date, the complainant has not notified the ombudsman of his acceptance or rejection of the determination he is to be treated as having rejected it.
- (6A)** But the complainant is not to be treated as having rejected the determination by virtue of subsection (6) if –
- (a) the complainant notifies the ombudsman after the specified date of the complainant's acceptance of the determination,
 - (b) the complainant has not previously notified the ombudsman of the complainant's rejection of the determination, and
 - (c) the ombudsman is satisfied that such conditions as may be prescribed by rules made by the scheme operator for the purposes of this section are satisfied.
- (7) The ombudsman must notify the respondent of the outcome.
- (7A)** Where a determination is rejected by virtue of subsection (6), the notification under subsection (7) must contain a general description of the effect of subsection (6A).
- (8) A copy of the determination on which appears a certificate signed by an ombudsman is evidence (or in Scotland sufficient evidence) that the determination was made under the scheme.
- (9) Such a certificate purporting to be signed by an ombudsman is to be taken to have been duly signed unless the contrary is shown.

reports of determinations

- 230A** (1) The scheme operator must publish a report of any determination made under this Part.
- (2) But if the ombudsman who makes the determination informs the scheme operator that, in the ombudsman's opinion, it is inappropriate to publish a report of that determination (or any part of it) the scheme operator must not publish a report of that determination (or that part).
- (3) Unless the complainant agrees, a report of a determination published by the scheme operator may not include the name of the complainant, or particulars which, in the opinion of the scheme operator, are likely to identify the complainant.
- (4) The scheme operator may charge a reasonable fee for providing a person with a copy of a report.