

Annex B: Proposed consumer credit rules

The following is an extract from the Financial Services Authority (FSA) Handbook containing the rules that the Financial Ombudsman Service proposes to make following this consultation. They are presented here as an amended and consolidated version of the "Dispute Resolution: Complaints" module of the Handbook ("DISP").

This will enable consultees to see all the relevant rules in full and in their proper context. Also included here are a small number of consequential rule changes that the FSA is likely to propose in respect of the compulsory jurisdiction (in its July 2006 quarterly consultation paper).

In this extract:

- New or amended material is underlined, and deleted material is struck-out.
- Where the change only forms part of the proposed consumer credit rules, to be made by the Financial Ombudsman Service with the approval of the FSA, we have used single underlining (like this) and striking out (~~like this~~).
- Where the change also forms part of the likely rules for compulsory jurisdiction, to be made by the FSA, we have used double underlining (like this) and striking out (~~like this~~).
- **Bold text** preceded by "R" indicates rules.
- Plain text preceded by "G" indicates guidance.
- Words in *italics* are defined in the glossary.*
- *Firms* means FSA-regulated firms, including those with consumer credit licences.
- *Licensees* means businesses with consumer credit licences that are not FSA-regulated firms.

DISP Introduction

Access for retail consumers to mechanisms for dealing with complaints about financial services *firms* is a key part of the regulatory regime. The *Act* gives the *FSA* the power to make rules relating to the handling of complaints by *firms* and provides for the establishment of an independent dispute resolution scheme (the *Financial Ombudsman Service*) to resolve complaints about financial services *firms* quickly and with minimum formality. The body established to administer and operate this scheme (the "scheme operator") is the *Financial Ombudsman Service Limited* ("*FOS Ltd*").

In addition, the Consumer Credit Act 2006 has amended the *Act* giving the *Financial Ombudsman Service* power to make rules for the resolution of certain disputes against holders of standard licences (*licensees*) issued by the Office of Fair Trading under the Consumer Credit Act 1974.

This module of the *FSA Handbook* contains the rules and guidance relating to the handling of complaints by *firms* and *licensees* and to the operation of the *Financial Ombudsman Service*. Responsibility for the rules relating to the *Financial Ombudsman Service* is shared under the

* See <http://fsahandbook.info/FSA/html/handbook/Glossary> for the full version of the current glossary. This consultation paper proposes some changes.

Act between the FSA and the FOS Ltd, with those rules and other requirements written by the FOS Ltd being subject to approval by, or the consent of, the FSA.

Under the Act, the *Financial Ombudsman Service* comprises ~~two~~ three jurisdictions:

(a) The *Compulsory Jurisdiction* covers *firms* which are required to participate in the *Financial Ombudsman Service* in respect of complaints about activities specified by the FSA [and *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*];

(b) The Consumer Credit Jurisdiction covers licensees which are required to participate in the Financial Ombudsman Service in respect of complaints specified by the Financial Ombudsman Service and arising in the course of consumer credit Act activities;

(c) The *Voluntary Jurisdiction* can cover financial services activities not included in the *Compulsory Jurisdiction* or the *Consumer Credit Jurisdiction*. Both *firms* and unauthorised firms can participate in the *Voluntary Jurisdiction* by contractual agreement with the FOS Ltd (in accordance with the *Standard Terms* - see below) and are known as *VJ participants*.

Although the authority to make the rules relating to the *Compulsory Jurisdiction*, the Consumer Credit Jurisdiction and the *Voluntary Jurisdiction* derives from different sections of the Act, the provisions have been co-ordinated to ensure that, wherever possible, they are identical.

Chapter 1: Complaint handling procedures for *firms* and *licensees*

These rules set out the complaint handling procedures which *firms* and *licensees* capable of giving rise to an eligible complaint under the *Compulsory Jurisdiction* or the *Consumer Credit Jurisdiction* (see Chapter 2) must establish. In relation to the Compulsory Jurisdiction, they are made by the FSA under section 138 of the Act and paragraph 13 of Schedule 17 to the Act. In relation to the Consumer Credit Jurisdiction, they are made by the Financial Ombudsman Service under Paragraph 16B of Schedule 17 to the Act subject to approval by the FSA. These rules, with some exceptions, are applied to *VJ participants* by contract via the *Standard Terms* set by the FOS Ltd (Chapter 4).

Chapter 2: Jurisdiction Rules

These rules set out the scope of the *Compulsory Jurisdiction*, the Consumer Credit Jurisdiction and the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*. They specify who can refer a complaint to the *Financial Ombudsman Service* and the time limits for doing so, as well as which activities are covered by the *Compulsory Jurisdiction*, the Consumer Credit Jurisdiction and the *Voluntary Jurisdiction*. The rules also set out the territorial scope of the *Financial Ombudsman Service*. They are relevant to consumers who may wish to refer complaints to the *Financial Ombudsman Service*; to *firms* which are subject to the *Compulsory Jurisdiction*; to *unauthorised persons* who are subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*; to licensees which are subject to the Consumer Credit Jurisdiction; to *VJ participants* and to the *Ombudsman* himself. The rules relating to the scope of the *Compulsory Jurisdiction* are made by the FSA (under section 226 of the Act); the rules relating to the scope of the Consumer Credit Jurisdiction are made by FOS Ltd under section 226A of the Act, with FSA approval; the rules relating to the scope of the *Voluntary Jurisdiction* are made by the FOS Ltd, with FSA approval (under section 227). The rules relating to the time limits for referring a complaint to the *Financial Ombudsman Service* are made by the FSA or FOS Ltd under paragraph 13 or 16B of Schedule 17 to the Act

respectively and are applied to *VJ participants* by contract via the *Standard Terms* set by the *FOS Ltd*.

Chapter 3: Complaint handling procedures of the Financial Ombudsman Service

These rules apply to the *Ombudsman*, to *firms* and to *unauthorised persons* who are subject to the *Compulsory Jurisdiction* in relation to *relevant complaints* and to licensees who are subject to the *Consumer Credit Jurisdiction*. They are also relevant to complainants. They set out how the *FOS Ltd* and, in particular, the *Ombudsman* will handle complaints under the *Financial Ombudsman Service*. For the purposes of the *Compulsory Jurisdiction*, they comprise the scheme rules and the costs rules (made by the *FOS Ltd*, with *FSA* consent or approval, under paragraph 14 of Schedule 17 and section 230 respectively) and rules made by the *FSA* on the kinds of loss or damage that can be compensated, including the maximum amount which can be awarded (s229). For the purposes of the *Consumer Credit Jurisdiction*, they comprise rules made by the *Financial Ombudsman Service* with *FSA* approval under paragraph 16B (1) of Schedule 17 to the *Act*. These procedural rules are applied to *VJ participants* via the *Standard Terms*.

Chapter 4: The Standard Terms

The *Standard Terms* are made, with *FSA* approval, by the *FOS Ltd* under paragraph 18 of Schedule 17 to the *Act* and are the contractual terms by which *VJ participants* participate in the *Voluntary Jurisdiction*.

Appendix 1: Relevant Existing Complaints

The *Ombudsman Transitional Order*, made by HM Treasury under sections 426-428 of the *Act*, extends the scope of the *Financial Ombudsman Service* to enable it to deal with complaints about pre-commencement business where these could have been handled by a former scheme ("*relevant complaints*") and makes special provision for the handling of these complaints.

It distinguishes between:

- (a) *relevant existing complaints* (ie complaints referred to, but not determined by, a *former scheme* (other than the *Personal Insurance Arbitration Service*) before *commencement* (see article 2 of the *Ombudsman Transitional Order*); and
- (b) *relevant new complaints* (ie complaints referred to the *Financial Ombudsman Service* after *commencement* which relate to a pre-commencement act or omission, in respect of which the *firm* was, immediately before *commencement*, subject to a *former scheme*) (see article 3 of the *Ombudsman Transitional Order*).

The Order enables the *FOS Ltd*, with only a few exceptions, to handle *relevant new complaints* in accordance with its new procedures, as set out in *DISP* 1 to 5 and these are covered in the main body of the *DISP* rules. Except as otherwise indicated, the term "complaint" in *DISP* 1 to 4 therefore includes a *relevant new complaint*.

However, the *Ombudsman Transitional Order* makes different provision for the handling of *relevant existing complaints* (i.e. complaints which the *former schemes* have partly completed at *commencement*). These complaints will be passed over to the *Financial Ombudsman Service* by the *former schemes* (except the *Personal Insurance Arbitration Service*) at *commencement* and the *Ombudsman Transitional Order* requires the *FOS Ltd* to complete the handling of these cases. However, it provides that the *Financial Ombudsman Service* must do

this, in a significant number of respects, in accordance with the procedures of the relevant *former scheme*. The arrangements for dealing with these complaints are set out in *DISP* App 1. This describes the ways in which *relevant existing complaints* must be treated differently from other complaints dealt with under the *Financial Ombudsman Service*, but cross refers to the provisions in *DISP* 1 to 5, where appropriate. (*DISP* 1 explains how complaints which are partly completed by *firms* (as distinct from *former schemes*) at *commencement* are to be handled.)

Appendix 2: *FSA's* guidance on handling mortgage endowment complaints

DISP App 2 contains *FSA's* guidance to *firms* on handling mortgage endowment complaint.

DISP 1

1.1 Application and Purpose

Application

- 1.1.1 R **Subject to DISP 1.1.1A R, this chapter applies to every *firm* in respect of activities carried on from an establishment maintained by the *firm* (or its *appointed representative*) in the *United Kingdom*, except:**
- (1) (a) a *firm* that is exempt under DISP 1.1.7 R;
(b) a *UCITS qualifier*;
(c) an *authorised professional firm* in so far as its *non-mainstream regulated activities* are concerned; and
(d) a *credit union*; or
 - (2) in relation to the *Society of Lloyd's*, *members of the Society* and *managing agents*, DISP1 applies subject to DISP1.7 (the *Society of Lloyd's*).
- 1.1.1A R **Where a *firm* has outsourced activities to a *third party processor*, DISP1.1.1R does not apply to the *third party processor* when acting as such, but applies to the *firm* which is taking responsibility for the acts and omissions of the *third party processor* in respect of the outsourced activities.**
- 1.1.1B R **The following rules and guidance in this chapter also apply to every licensee for the purposes of the *Consumer Credit Jurisdiction* as if it were a *firm*:**
- (1) **DISP 1.1.1B R – DISP 1.1.1D R and DISP 1.1.2 G (Application);**
 - (2) **DISP 1.2 (Internal complaint handling procedures: general requirements) in relation to complaints about activities of the licensee specified in DISP 2.6.8A R;**
 - (3) **DISP 1.3 (Internal complaint handling procedures: additional requirements);**
 - (4) **DISP 1.4 (Time limits for dealing with a complaint); and**
 - (5) **DISP 1.6 (Cooperation by firms with the ombudsman).**

- 1.1.1C G DISP 1.5.1 R contains a requirement for *firms* in the *Compulsory Jurisdiction* to make and retain records of complaints subject to DISP 1.4 – DISP 1.6 for a minimum period of three years from the date of its receipt of a complaint. Although this requirement is not applied to *licensees*, they may need to keep records of complaints for sufficient time to enable them to provide the *Ombudsman* with necessary information in the event of a complaint being referred to the *Financial Ombudsman Service*.
- 1.1.1D R **In relation to the *Consumer Credit Jurisdiction* only, *FOS Ltd* may dispense with or modify the application of the rules in this chapter in particular cases where it considers it appropriate to do so and is satisfied that :**
- (1) **compliance by the licensee with the rules, or with the rules as unmodified, would be unduly burdensome or would not achieve the purpose for which the rules were made; and**
- (2) **it would not result in undue risk to the persons whose interests the rules are intended to protect.**
- 1.1.2 G This chapter is also relevant to those who might wish to refer a complaint to the *Financial Ombudsman Service*.
- 1.1.3 G *Firms* are responsible for ensuring their *appointed representatives*' compliance with DISP1.
- 1.1.4 G (1) *VJ participants* are subject to DISP1, except DISP1.1.1R, DISP1.1.5R and DISP1.5 (Record keeping and reporting), by contract under the *standard terms* as if they were *firms* (see DISP4.2.2R). DISP1.2 applies to *VJ participants* only in relation to complaints about activities of the *VJ participant specified* in DISP2.6.9R. DISP1.2 (Internal complaints handling procedures: general requirements) also applies to *VJ participants* elsewhere in the *EEA* under the extended jurisdiction set out in DISP2.7.2R.
- (2) *Rules and guidance* relating to complaints handling by *credit unions* are contained in CRED 17.
- 1.1.5 R **Except as otherwise specified, references to a “complaint” in this chapter include a complaint which is capable of becoming a *relevant new complaint* or a *relevant transitional complaint*.**
- 1.1.6 G A complaint about pre-*commencement* investment business carried on by a *firm* which was regulated in respect of that business by a *recognised professional body* will be handled under the arrangements of that *professional body*, and is outside the scope of *DISP*.
- Exemption**
- 1.1.7 R **A *firm* which does not conduct business with *eligible complainants* and has no reasonable likelihood of doing so is exempt from DISP1.2 DISP1.7, if:**
- (a) **it has notified the *FSA* in writing that those conditions apply; and**

(b) the conditions in fact continue to apply.

The exemption takes effect from the date on which the notice was received by the *FSA*.

In (1), conducting business means carrying on any of the activities to which the rules in DISP2.6 apply with or for *persons* who are *eligible complainants* under DISP2.4.

1.1.8 R [deleted]

1.1.9 G [deleted]

End of exemption

1.1.10 R **A *firm* which is exempt under DISP1.1.7R must notify the *FSA* in writing as soon as reasonably practicable if the conditions in DISP1.1.7R no longer apply.**

1.1.11 G A *firm* to which the conditions in DISP1.1.7R no longer apply is subject to DISP1.2 – DISP1.7.

Purpose

1.1.12 G The purpose of this chapter is to set out the rules relating to the internal handling of complaints by *firms* and *licensees*, including the procedures which they must put in place; the time limits within which they must deal with a complaint; the referral of complaints, the records of a complaint which a *firm* must make and retain; and the requirements on a *firm* to report information about complaints to the *FSA*. This is to ensure that complaints are handled fairly, effectively and promptly, and resolved at the earliest possible opportunity, minimising the number of unresolved complaints which need to be referred to the *Financial Ombudsman Service*. This purpose is consistent with the *FSA*'s consumer protection regulatory objective.

1.2 Internal complaint handling procedures: general requirements

Requirement to have internal complaint handling procedures

1.2.1 R **A *firm*, A, must have in place and operate appropriate and effective internal complaint handling procedures (which must be written down) for:**

- (1) handling any expression of dissatisfaction, whether oral or written, and whether justified or not, from or on behalf of an *eligible complainant* about A's provision of, or failure to provide, a financial service; and**
- (2) referring to another *firm*, B, expressions of dissatisfaction about B's services, if A markets (or has marketed) B's financial services or if A's financial services are marketed by B.**

1.2.1A R **If the expression of dissatisfaction is from, or on behalf of, a *person* who is not an *eligible complainant*, and relates to *insurance mediation activity* carried on by an *insurance intermediary*, then unless the**

insurance intermediary is an insurer, the insurance intermediary must have in place and operate appropriate and effective procedures for registering, and responding to, the expression of dissatisfaction.

- 1.2.2 G An *eligible complainant* is a *person* who would be eligible to refer a complaint to the *Financial Ombudsman Service*, as defined in DISP2.4.
- 1.2.3 G *Firms* are not obliged to restrict their internal complaint handling procedures to expressions of dissatisfaction from *eligible complainants*. They may, if they wish, also establish procedures for handling complaints from other customers.
- 1.2.4 G The internal complaint handling procedures should provide for:
- (1) receiving complaints;
 - (2) responding to complaints;
 - (2A) referring complaints to other *firms*;
 - (3) the appropriate investigation of complaints; and
 - (4) notifying complainants of their right to go the *Financial Ombudsman Service* where relevant.
- 1.2.5 G When deciding what constitutes an appropriate complaint handling procedure (see DISP1.2.1R), a *firm* should have regard to:
- (1) the type of business it undertakes;
 - (2) its size and organisational structure;
 - (3) the nature and complexity of the complaints it is likely to receive; and
 - (4) the likely number of complaints it will receive and have to investigate.
- 1.2.6 G
- (1) DISP1.2.1R does not prevent the use of a third party administrator for the purposes of handling complaints.
 - (2) It is acceptable for two or more *firms* to set up arrangements, such as a one-stop shop for complaints handling under a service level agreement, provided that this still secures for complainants an equivalent standard of service and, if appropriate, redress. Any such arrangements should be made clear to an *eligible complainant*.
- 1.2.7 G In establishing their internal complaint handling procedures, *firms* may wish to take account of British Standard 8600: '1999 Complaints Management Systems – Guide to Design and Implementation'. This is available on request from the *FSA*.
- 1.2.8 G The internal complaint handling procedures should enable complainants to make a complaint by any reasonable means (for example, letter, telephone, e-mail or in person).

Publicising the procedures

- 1.2.9 R **A firm must:**
- (1) Refer *eligible complainants* in writing to the availability of its internal complaint handling procedures at, or immediately after, the point of sale;
 - (2) publish details of its internal complaint handling procedures, supply a copy on request to an *eligible complainant*, and supply a copy automatically to the complainant when it receives a complaint from an *eligible complainant* (unless the complaint is resolved by close of business on the next *business day*); and
 - (3) display on each of its branches or sales offices to which *eligible complainants* have access a notice indicating that it is covered by the *Financial Ombudsman Service*.
- 1.2.10 G The requirements in DISP1.2.9R (1)-(3) relate to the internal complaints procedures required by DISP1.2.1R.
- 1.2.11 G In order to comply with DISP1.2.9R(1), a *firm* may include reference to its complaint handling procedures in contractual documentation, for example:
- (1) (where the *firm* is subject to the requirements in *COB*) in a *terms of business letter, key features document* or *client agreement*;
 - (2) (where the *firm* is subject to the requirements in *ICOB*), as part of status disclosure (see *ICOB* 4.2 and *ICOB* 8.3), in a *policy summary* or *policy document*; or
 - (3) (where the *firm* is subject to the requirements in *MCOB*) in an initial disclosure document or *offer document*.
- 1.2.12 G Where a complaint is also subject to the more detailed requirements in DISP1.4 – DISP1.6, the *firm* may send out a copy of its complaint handling procedures (as required by DISP1.2.9R(2)) at the same time as the acknowledgement required by DISP1.4.1R.
- 1.2.13 G For the purposes of satisfying DISP1.2.9R(2) a *firm* may wish to produce a leaflet which summarises its internal complaint handling procedures.
- 1.2.14 G *Firms'* literature and correspondence relating to complaints should be in clear and plain language.
- 1.2.15 G A *firm* may also, if it wishes to do so, disclose the fact that it is covered by the *Financial Ombudsman Service* by including the *Financial Ombudsman Service* logo in any marketing literature or correspondence directed at *eligible complainants*, provided that it does so in a way which is not misleading.
- Particular matters for which procedures must make provision**
- 1.2.16 R **A firm's internal complaint handling procedures under DISP1.2.1 R must make provision for:**

- (1) **complaints to be investigated by an employee of sufficient competence who, where appropriate, was not directly involved in the matter which is the subject of the complaint;**
- (2) **the *person* charged with responding to complaints to have the authority to settle complaints (including the offering of redress where appropriate) or to have ready access to someone who has the necessary authority; and**
- (3) **responses to complaints to address adequately the subject matter of the complaint and, where a complaint is upheld, to offer appropriate redress.**

Providing compensation

- 1.2.17 R **Where a *firm* decides that redress is appropriate, a *firm* must provide a complainant with fair compensation for any acts or omissions for which it was responsible and comply with any offer of redress which the complainant accepts.**
- 1.2.18 G In deciding whether or not to accept a complaint and what would be appropriate redress, *firms* may wish to consider any relevant guidance published by the FSA, the *Financial Ombudsman Service* or by any of the *former schemes*.
- 1.2.19 G Appropriate redress will not always involve financial redress. It may, for example, simply involve an apology. Where financial redress is deemed appropriate, it may include a reasonable rate of interest.
- 1.2.20 G DISPApp 2 contains *guidance* to *firms* on the approach to assessing financial loss and appropriate compensation in circumstances where a *firm* regards a complaint in relation to the sale of an endowment policy (which is sold for the purposes of repaying a mortgage) as justified.

Using the procedures

- 1.2.21 R **A *firm* must take reasonable steps to ensure that all relevant employees (including employees of *appointed representatives*) are aware of the *firm's* internal complaint handling procedures and must endeavour to ensure that they act in accordance with them.**
- 1.2.22 R **A *firm* must put in place appropriate management controls and take reasonable steps to ensure that in complying with DISP1.2.1R it handles complaints fairly, consistently and promptly and that it identifies and remedies any recurring to systemic problems, as well as any specific problem identified by a complainant.**

1.3 Internal complaint handling procedures: additional requirements

- 1.3.1 G DISP1.4 – DISP1.6 contain additional requirements, concerning time limits, record keeping and reporting and cooperation with the *Ombudsman*, for handling complaints, unless DISP1.3.3R applies.
- 1.3.2 R **DISP1.4 – DISP1.6 also apply to any complaints that are capable of becoming *relevant new complaints* or *relevant transitional complaints*, unless DISP1.3.3R applies.**

- 1.3.3 R **DISP1.4 – DISP1.5 do not apply:**
- (1) where a *firm*, has taken reasonable steps to determine, and has determined, that the complaint:
 - (a) is not made by, or on behalf of, an *eligible complainant*;
or
 - (b) does not relate to an activity of that *firm* (or of any other *firm* with whom that *firm* has some connection in marketing financial services) which comes under the jurisdiction of the *Financial Ombudsman Service*; or
 - (c) does not involve an allegation that the complainant has suffered, or may suffer, financial loss, material distress or material inconvenience; or
 - (2) where the complaint has been resolved by close of business on the *business day* follow its receipt.
- 1.3.3A R **In order to comply with DISP1.3.3.R(2), when a complaint is received on any day other than a *business day*, or after close of business on a *business day*, a *firm* can treat the complaint as received on the next *business day*.**
- 1.3.4 G Under the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order*, a complaint received by a *firm*, either before or after *commencement*, relating to an act or omission relating to business which was not a *regulated activity* at the time of the matter complained of is capable of becoming a *relevant new complaint* or a *relevant transitional complaint*. A *firm* is expected to handle such complaints in accordance with DISP1.
- 1.3.5 Financial loss includes consequential or prospective loss, in addition to actual loss. For example, a complaint may involve an allegation that the complainant may suffer financial loss which has not yet crystallised because of the type of product involved (for example, pensions, endowments etc).
- 1.4 Time limits for dealing with a complaint**
- 1.4.1 R **A *firm* must send a written acknowledgement of a complaint to the complainant within five *business days* of its receipt, giving the name or job title of the individual handling the complaint for the *firm* (together with details of the *firm*'s internal complaint handling procedures).**
- 1.4.2 G A *firm* which is able to provide a *final response* within five *business days* of receipt of a complaint may combine its acknowledgement of the complaint with the *final response*. (For complaints which are subject to FSAVC review, see DISP1.4.15R to DISP1.4.17G).
- 1.4.3 G A *firm* should aim to resolve complaints at the earliest possible stage.

Early resolution of complaints

- 1.4.3A R **DISP1.4.4 R to DISP1.4.6 R do not apply if the complainant has already indicated in writing acceptance of a response by the firm, provided that the response informed the complainant how to pursue his complaint if he remained dissatisfied.**
- 1.4.3B G DISP1.4.3AR recognises that the complainant may accept the *firm's* response at any time during the complaint process and that this may resolve the complaint, even when the *firm* has not issued a *final response*. The *firm's* response need not have referred to the *Financial Ombudsman Service*, but should have explained how the complaint would be progressed by the *firm* if the complainant remained dissatisfied.

Final or holding response within four weeks

- 1.4.4 R **A *firm* must, within four weeks of receiving a complaint, (unless DISP1.4.3AR or DISP1.4.9R applies) send the complainant either:**
- (1) **a *final response*; or**
 - (2) **a holding response, which explains why it is not yet in a position to resolve the complaint and indicates when the *firm* will make further contact (which must be within eight weeks of receipt of the complaint).**

Final or other response within eight weeks

- 1.4.5 R **A *firm* must, by the end of eight weeks after its receipt of a complaint, (unless DISP1.4.3AR or DISP1.4.9R applies) send the complainant either:**
- (1) **a *final response*; or**
 - (2) **a response which:**
 - (a) **explains that the *firm* is still not in a position to make a *final response*, gives reasons for the further delay and indicates when it expects to be able to provide a *final response*; and**
 - (b) **informs the complainant that he may refer the complaint to the *Financial Ombudsman Service* if he is dissatisfied with the delay and encloses a copy of the *Financial Ombudsman Service's* explanatory leaflet.**

1.4.6 R [deleted]

1.4.7 R [deleted]

1.4.8 G [deleted]

Firms with two-stage complaints procedures

- 1.4.9 R **Where, within eight weeks of receiving a complaint, the *firm* sends the complainant a written response which:**

- (1) offers redress (whether or not it accepts the complaint) or rejects the complaint and gives reasons for doing so;
- (2) informs the complainant how to pursue his complaint with the *firm* if he remains dissatisfied;
- (3) refers to the ultimate availability of the *Financial Ombudsman Service* if he remains dissatisfied with the *firm's* response; and
- (4) indicates that it will regard the complaint as closed if it does not receive a reply within either weeks;

the *firm* is not obliged to continue to comply with DISP1.4.4 R or DISP1.4.5R unless the complainant indicates that he remains dissatisfied, in which case, the obligation to comply with DISP1.4.5R resumes.

- 1.4.10 R **If the complainant takes more than a week to reply to a written response of the kind described in DISP1.4.9R the additional time in excess of a week will not count for the purposes of time limits in DISP1.4.4R – DISP1.4.6R.**
- 1.4.11 G
- (1) DISP1.4.9R caters for the situation where a *firm's* complaints procedures provide for a complainant who is dissatisfied with the *firm's* response to refer the complaint back to the *firm* again or to the *firm's* head office before a *final response* is issued.
 - (2) Such *firms* are subject to the time limits in DISP1.4.4R to DISP1.4.6R in the same way as any other *firm*. However, DISP1.4.9R recognises that some complainants may never respond to a *firm* or may take a long time to do so.
 - (3) Provided that the *firm* has sent a letter which complies with the conditions in DISP1.4.9R within eight weeks of receiving the complaint:
 - (a) if the complainant does not reply at all, the *firm* is not required to send a *final response*;
 - (b) if the complainant does not reply within eight weeks of the *firm's* letter, DISP1.5.7R(3) enables the *firm* to treat the complaint as a closed complaint for the purposes of the reporting requirement in DISP1.5.4R;
 - (c) if the complainant does reply (within or after eight weeks), the *firm* is required to continue to comply with DISP1.4.54R, and the time limits in DISP1.4.5R therefore resume. But DISP1.4.10R allows the *firm* to discount, for the purposes of the time limits in DISP1.4.4R to DISP1.4.6R, any time in excess of a week taken by the complainant to reply.
 - (4) It is expected that *firms* operating a two-stage complaints procedure will wish to provide complainants with easy access to the second stage of the process (for example, by referring complaints on to the next stage for them if they remain dissatisfied).

The final response

- 1.4.12 R When a *firm* sends a complainant its *final response*, the *final response* must:
- (1) inform the complainant that he may refer the complaint to the *Financial Ombudsman Service* if he is dissatisfied with the *final response* and that he must do so within six *months*; and
 - (2) enclose a copy of the *Financial Ombudsman Service's* explanatory leaflet (unless it has already done so under DISP1.4.5R(2)(b)).
- 1.4.13 G Copies of the *Financial Ombudsman Service's* explanatory leaflet may be reproduced under licence or can be obtained from the *Financial Ombudsman Service*.
- 1.4.14 G Under DISP1.4.5R and DISP1.4.6R:
- (1) a complainant can refer his complaint to the *Financial Ombudsman Service* if he receives a *final response* with which he is dissatisfied or the *firm* has had at least eight weeks to resolve the complaint and has failed to do so in that time; the complainant may decide whether to give the *firm* more time before exercising any right he may have to refer a complaint to the *Financial Ombudsman Service*;
 - (2) the six *month* time limit within which a complainant must refer a complaint to the *Financial Ombudsman Service* begins at the date when the *final response* is sent by the *firm*.

Complaints subject to the FSAVC review

- 1.4.15 R **DISP1.4.1R to DISP1.4.14G and DISP1.5.1R and DISP1.5.4 R do not apply where the complaint is subject to a review directly or indirectly under the terms of the policy statement for the review of specific categories of FSAVC business issued by the FSA on 28 February 2000.**
- 1.4.16 R **Where DISP1.4.15R applies, the *firm* must, if the complainant remains dissatisfied on completion of that review, treat that expression of dissatisfaction as a complaint and comply with DISP1.4.1R, DISP1.4.14G, DISP1.5.1R and DISP1.5.4R.**
- 1.4.17 G The effect of DISP1.4.15R is to relieve the *firm* of the obligation to comply with the requirements and time limits for replying to complainants, and the record-keeping and reporting requirements in DISP1.5.1R and DISP1.5.4R, where a complaint is subject to the FSAVC review. However, if a complainant remains dissatisfied with the outcome of the review, DISP1.4.16R requires the *firm* to treat this as a complaint and comply with these requirements just as it would in respect of any other complaint. *Firms* are therefore required to record and report such complaints only where they receive a complaint about the outcome of the review.

Referring complaints

- 1.4.18 R (1) A *firm* which has reasonable grounds to be satisfied that another *firm* may be solely responsible for the fault alleged in a complaint may refer the complaint to that other *firm*, but if it does so it must:
- (a) refer the complaint promptly and in any event within five *business days* of the date on which it became satisfied that such other *firm* may be responsible for the subject matter of the complaint;
 - (b) make the referral using a *durable medium*; and
 - (c) inform the complainant of the referral by way of a *final response* and include the other *firm*'s contact details.
- (2) A *firm* which has reasonable grounds to be satisfied that another *firm* may be jointly responsible for the fault alleged in a complaint, may refer the complaint to that other *firm* but if it does so it must:
- (a) refer the complaint promptly and in any event with five *business days* of the date on which it became satisfied that such other *firm* may be jointly responsible for the subject matter of the complaint;
 - (b) make the referral on a *durable medium*;
 - (c) at the same time inform the complainant of the referral and include the other *firm*'s contact details; and
 - (d) comply with the obligations in *DISP* as to the investigation of that part of the complaint that is the *firm*'s responsibility and, as soon as possible, inform the complainant of the outcome by a *final response*.

Dealing with a referred complaint

- 1.4.19 R When a *firm* receives a complaint referred to it under DISP1.4.18R, the complaint is treated for the purposes of *DISP* as if made directly to that *firm*, and as if received by it when the referral was received.
- 1.4.20 G On receiving a complaint referred by another *firm*, the standard time limits will apply from the date on which the *firm* receives the referral. In particular DISP1.4.1R requires the *firm* to send a written acknowledgement to the complainant within five *business days*. A *firm* should copy this acknowledgement to the *firm* which made the referral.

1.5 Record keeping and reporting

Making and retaining records of complaints

- 1.5.1 R A *firm* must make and retain records of complaints subject to DISP1.4 DISP1.6 for a minimum period of three years from the date of its receipt of the complaint.

- 1.5.2 G The records required by DISP1.5.1R are for the purposes of monitoring by the *FSA* and also to ensure that the *firm* is able to cooperate, as necessary, with the *Financial Ombudsman Service*. They should include:
- (1) the name of the complainant;
 - (2) the substance of the complaint;
 - (3) any correspondence between the *firm* and the complainant, including details of any redress offered by the *firm*; and
 - (4) documentation relating to the referral of a complaint under DISP1.4.18R.

- 1.5.3 G DISP 4.2.3G covers record keeping by *VJ participants*.

Reporting complaints to the FSA

- 1.5.4 R **A *firm* must provide the FSA, twice a year, with a report in the format set out in DISP1 Annex 1R which contains (for the relevant reporting period) information about:**
- (1) **the total number of complaints subject to DISP1.4 to DISP1.6 received by the *firm*, broken down according to the categories and in respect of each of the generic product types described in DISP1 Annex 1R which are relevant to the *firm*;**
 - (2) **the total number of complaints subject to DISP1.4 – DISP1.6 closed by the *firm*:**
 - (a) **within four weeks or less of receipt;**
 - (b) **within four to eight weeks of receipt; and**
 - (c) **more than eight weeks after receipt;**
 - (3) **the total number of complaints subject to DISP1.4 – DISP1.6:**
 - (a) **upheld by the *firm* in the reporting period;**
 - (b) **that the *firm* knows have been referred to, and accepted by, the FOS in the reporting period;**
 - (c) **outstanding at the beginning of the reporting period; and**
 - (d) **outstanding at the end of the reporting period; and**
 - (4) **the total amount of redress paid in respect of complaints subject to DISP1.4 to DISP1.6 during the reporting period.**
- 1.5.5 G For the purpose of DISP1.5.4R, upon completing the return, the *firm* should note that:
- (1) Where a complaint could fall into more than one category, the complaint should be recorded in the category which the *firm* considers to form the main part of the complaint.
 - (2) Where a complaint has been upheld under DISP1.5.4R(3)(a), a *firm* should report any complaints to which it has given a final response which accepts the complaint, and, where appropriate, offers redress, even if the redress offered is disputed by the complainant. Where a complaint is upheld in part, a *firm* should treat the whole complaint as upheld for reporting purposes.

Where a *firm* rejects a complaint, yet chooses to make an ex-gratia payment to the complainant, the complaint should be recorded as 'rejected'.

- (3) Where a *firm* reports on the amount of redress paid under DISP1.5.4R(4), redress should be interpreted to include an amount paid, or cost borne, by the *firm*, where a cash value can be readily identified, and should include:
 - (a) amounts paid for distress and inconvenience;
 - (b) a free transfer out to another provider which transfer would normally be paid for;
 - (c) ex-gratia payments and goodwill gestures;
 - (d) interest on delayed statements;
 - (e) waiver of an excess on an insurance policy; and
 - (f) payments to put the consumer back into the position the consumer should have been in had the act or omission not occurred.
- (4) Where a *firm* reports on the amount of redress paid under DISP1.5.4R(4), such redress should not, however, include repayments or refunds of premiums which had been taken in error (for example where a *firm* had been taking, by direct debit, twice the actual premium amount due under a policy). The refund of the overcharge would not count as redress.

1.5.6 R **For the purposes of DISP1.5.4R:**

- (1) **The relevant reporting periods are:**
 - (a) **the six months immediately following a *firm's* accounting reference date; and**
 - (b) **the six months immediately preceding a *firm's* accounting reference date.**
- (2) **Reports are to be submitted to the FSA within 30 business days of the end of the relevant reporting period.**

Reporting: when is a complaint closed?

1.5.7 R **For the purpose of DISP1.5.4R(2), a closed complaint is a complaint:**

- (1) **where the *firm* has sent a *final response*; or**
- (2) **where the complainant has indicated in writing acceptance of the *firm's* earlier response; or**
- (3) **where DISP1.4.9R applies, provided that the complainant has not responded to the *firm* within eight weeks of the written response referred to in that rule.**

1.5.8 G Where a complaint is reported as closed under DISP1.5.7R(3) because the complainant has not replied to the *firm* within eight weeks of a written response which meets the requirements in DISP1.4.9R, the *firm* may treat the date of that response as the date when the complaint was closed for the purposes of the reporting requirements in DISP1.5.4R(2).

Reporting: complaints subject to the FSAVC review

- 1.5.9 G Where a complaint is subject to the FSAVC review, the record keeping and reporting requirements in DISP1.5.1R and DISP1.5.4R apply only where the complainant is dissatisfied with the outcome of that review (under DISP1.4.15R and DISP1.4.16R).

Method of submission of reports

- 1.5.10 R **A report under this section must be submitted through, and in the electronic format specified in, the *FSA* Complaints Reporting System or the appropriate section of the *FSA* website.**

- 1.5.10A R [deleted]

Failure of electronic submission

- 1.5.10B R **If a *firm* is unable to submit a report in electronic format because of a systems failure of any kind, the *firm* must notify the *FSA*, in writing and without delay, of that systems failure.**

Notification of contact point for complainants

- 1.5.11 R **For the purpose of inclusion in the public record maintained by the *FSA*, a *firm* must:**

- (1) provide the *FSA*, at the time of its *authorisation*, with details of a single contract point within the *firm* for complainants; and**
- (2) notify the *FSA* of any subsequent change in those details when convenient and, at the latest, in the *firm*'s next report under DISP1.5.4R.**

- 1.5.12 G The contact point can be by name, job title or department and may include, for example, a helpline telephone number.

Complete reporting

- 1.5.13 R **A *firm* must submit reports required under this chapter to the *FSA* containing all the information required.**

- 1.5.14 G SUP 1.5.6 refers to and contains requirements regarding the steps that *firms* must take to ensure that information provided to the *FSA* is accurate and complete. Those requirements apply to reports required to be submitted under this chapter.

1.6 Cooperation by firms with the Ombudsman

- 1.6.1 R **A *firm* must cooperate fully with the *Ombudsman* in the handling of complaints against it.**

- 1.6.2 G Cooperation with the *Ombudsman* includes, but is not limited to, producing requested *documents*, adhering to any specified time limits, attending hearings when requested to do so and complying promptly with any settlements or awards.

DISP 2

2.1 Application and Purpose

Application

- 2.1.1 R **This chapter applies to the *Ombudsman*, to *firms* (except *UCITS qualifiers*), to licensees and to *VJ participants*.**
- 2.1.2 G It is also relevant to those who might wish to refer a complaint to the *Financial Ombudsman Service*.
- 2.1.3 R **A reference in this chapter to a “complaint”:**
- (1) **includes part of a complaint; and**
 - (2) **under the *Compulsory Jurisdiction* includes all or part of a *relevant new complaint* and all or part of a *relevant transitional complaint*.**
- 2.1.4 G References in this chapter to “*firms*” are to be construed, where relevant, as including:
- (1) in accordance with the *Ombudsman Transitional Order*, *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*; and
 - (2) as a result of section 226 of the *Act*, *unauthorised persons* who were formerly *firms* in respect of complaints about acts or omissions which occurred at the time when they were *authorised*, provided that the *Compulsory Jurisdiction* rules were in force in relation to the activity in question.
- 2.1.4A G References in this chapter to *licensees* are to be construed, where relevant, as a result of section 226A of the *Act*, as including *persons* who were formerly *licensees* in respect of complaints about acts or omissions which occurred at the time when they were *licensees*, provided the complaint falls within a description specified in the *Consumer Credit Jurisdiction* rules in force at the time of the act or omission.

Purpose

- 2.1.5 G The purpose of this chapter is to set out the rules which govern the scope of the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* and the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*. They specify who may refer a complaint to the *Financial Ombudsman Service* and the time limits for doing so. They also set out which activities are covered by the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* and the *Voluntary Jurisdiction* and the territorial scope of the *Financial Ombudsman Service*.

2.2 Which complaints can be dealt with under the Financial Ombudsman Service?

Complaints (other than relevant new complaints or relevant transitional complaints)

- 2.2.1 G The following conditions will need to be satisfied before a complaint (other than a *relevant new complaint* or *relevant transitional complaint*) can be dealt with under the *Financial Ombudsman Service*.
- (1) the complainant must be an *eligible complainant* (see DISP2.4);
 - (2) the *firm, licensee* or *VJ participant* about which the complaint is made must be one which is subject to the *Compulsory Jurisdiction, the Consumer Credit Jurisdiction* or the *Voluntary Jurisdiction*, as appropriate;
 - (3) the activity to which the complaint relates must be subject to the *Compulsory Jurisdiction, the Consumer Credit Jurisdiction* or the *Voluntary Jurisdiction*, as appropriate;
 - (4) in relation to the *Compulsory Jurisdiction and the Consumer Credit Jurisdiction*, the act or omission complained of must have occurred at a time when the *rules* in DISP2 were in force, in relation to the activity being complained about;
 - (5) the *firm, licensee* or *VJ participant* must have failed to resolve the complaint to the satisfaction of the complainant within eight weeks of receiving it; and
 - (6) the *firm, licensee* or *VJ participant* about which the complaint is made must:
 - (a) in the case of the *Compulsory Jurisdiction*, have been *authorised* under the *Act* at the time of the act or omission to which the complaint relates; or
 - (b) in the case of the *Voluntary Jurisdiction*, have been a *VJ participant* at the time of the act or omission to which the complaint relates or have agreed to let the *Financial Ombudsman Service* consider such complaints, and must not have withdrawn from being a *VJ participant* at the time when the complaint is referred to the *Financial Ombudsman Service*; or
 - (c) in the case of the *Consumer Credit Jurisdiction*, have been a *licensee* at the time of the act or omission to which the complaint relates.

Relevant new complaints

- 2.2.2 G (1) Article 3 of the *Ombudsman Transitional Order* provides that (subject to certain modifications) the *Compulsory Jurisdiction* applies to a *relevant new complaint*, provided that:
- (a) the act or omission is that of a *person* who was, immediately before *commencement*, subject to a *former scheme*;

- (b) the act or omission occurred in the carrying on by that *person* of an activity to which that *former scheme* applied; and
 - (c) the complainant is eligible and wishes to have the complaint dealt with under the new scheme.
- (2) For the purposes of (1)(c), the *Ombudsman Transitional Order* enables the *Ombudsman*, if he considers it appropriate, to treat the complainant as eligible if he would have been entitled to refer an equivalent complaint to the *former scheme* in question immediately before *commencement*.
 - (3) The *Ombudsman Transitional Order* enables *relevant new complaints* to be handled, as far as possible, under the *Financial Ombudsman Service* procedures, but provides for the rules of the *former scheme* to apply or be taken into account in certain circumstances.
 - (4) The *Ombudsman Transitional Order* makes separate provision for the treatment of *relevant existing complaints*, as described in DISPApp 1.

Relevant transitional complaints

- 2.2.2A G
- (1) Article 2 of the *Mortgage and General Insurance Complaints Transitional Order* provides that (subject to certain modifications) the *Compulsory Jurisdiction* applies to a *relevant transitional complaint*, provided that:
 - (a) the act or omission is that of a *person* (“R”) who, at the time of that act or omission, was subject to a *former scheme*;
 - (b) R was an *authorised person* on or after the *relevant commencement date*;
 - (c) the act or omission occurred in the carrying on by R of an activity to which that *former scheme* applied; and
 - (d) the complainant is eligible and wishes to have the complaint dealt with under the new scheme.
 - (2) For the purposes of (1)(d), the *Mortgage and General Insurance Complaints Transitional Order* enables the *Ombudsman*, if he considers it appropriate, to treat the complainant as eligible if he would have been entitled to refer an equivalent complaint to the *former scheme* in question immediately before the *relevant commencement date*.
 - (3) The *Mortgage and General Insurance Transitional Order* enables *relevant transitional complaints* to be handled, so far as possible, under the *Financial Ombudsman Service* procedures, but provides for the *rules* of the former schemes to apply or be taken into account in certain circumstances.

Dismissal of complaints without consideration of the merits

- 2.2.3 G
- Under DISP3.3.1R, the *Ombudsman* may dismiss a complaint without considering its merits if he is satisfied that the complainant has not

suffered, or is unlikely to suffer, financial loss, material distress or material inconvenience.

2.3 Time Limits for referral of complaints to the Financial Ombudsman Service

- 2.3.1 R (1) **The *Ombudsman* cannot consider a complaint (except as described in (2)) if the complainant refers it to the *Financial Ombudsman Service*:**
- (a) **less than eight weeks after receipt of the complaint by the *firm, licensee* or *VJ participant*, unless the *firm, licensee* or *VJ participant* has already sent the complainant its *final response*; or**
 - (b) **more than six *months* after the date on which the *firm, licensee* or *VJ participant* sends the complainant its *final response* advising him that he may refer his complaint to the *Financial Ombudsman Service*; or**
 - (c) **more than six years after the event complained of or (if later) more than three years from the date on which he became aware (or ought reasonably to have become aware) that he had cause for complaint, unless he has referred the complaint to the *firm, licensee* or *VJ participant* or to the *Ombudsman* within that period and has a written acknowledgement or some other record of the complaint having been received (but see DISP 2.3.5R - DISP 2.3.6R).**
- (2) **The *Ombudsman* can consider complaints outside the time limits in (1)(b) or (c) or in DISP 2.3.6R when, in his view, the failure to comply with the time limits was as a result of exceptional circumstances or where he is required to do so by the *Ombudsman Transitional Order* (see DISP 2.3.2G) or where the *firm, licensee* or *VJ participant* has not objected to the *Ombudsman* considering the complaint.**
- 2.3.1A G If the complaint relates to the sale of an endowment *policy* for the purpose of achieving capital repayment of a mortgage, the receipt by the complainant of a letter which states that there is a risk (rather than a high risk) that the policy would not, at maturity, produce a sum large enough to repay the target amount is not, itself, sufficient to cause the three year time period in DISP 2.3.1R(1)(c) to start to run.
- 2.3.2 G In relation to DISP 2.3.1R(1)(b) and (c), article 4(2) of the *Ombudsman Transitional Order* requires an *Ombudsman* to extend the time limit in respect of a *relevant new complaint* referred to the *Financial Ombudsman Service* not later than twelve *months* after *commencement*, so the time limit applying to the complaint is the same as that which would have applied under the *former scheme* in question as it had effect immediately before *commencement*.
- 2.3.3 G For the purposes of DISP 2.3.1R(2), an example of exceptional circumstance might be where the complainant has been or is incapacitated or where the *firm, licensee* or *VJ participant* has failed, in its *final response*, to inform the complainant that he may refer his

complaint to the *Financial Ombudsman Service* or that he must do so within six *months*.

- 2.3.4 G Under FEES 5.5.1R a *firm, licensee* or *VJ participant* is liable to pay a case fee in respect of *chargeable cases*. However, in some circumstances, the *Ombudsman* may conclude that a *firm, licensee* or *VJ participant* should have more time to resolve a complaint before a case fee is incurred (for example, where there has been delay in obtaining information from third parties or where the *Ombudsman* considers that the complainant has not fully cooperated with the *firm, licensee* or *VJ participant* in the investigation of the complaint).

Exceptions for reviews of past business

- 2.3.5 R **DISP2.3.1R(1)(c) does not apply where:**
- (1) **the time limit has been extended under a scheme for review of past business approved by the Treasury under section 404 of the Act (Schemes for reviewing past business); or**
 - (2) **the complaint concerns a contract or policy which is the subject of a review directly or indirectly under:**
 - (a) **the terms of the Statement of Policy on ‘Pension transfers and Opt-outs’ issued by the FSA on 25 October 1994; or**
 - (b) **the terms of the policy statement for the review of specific categories of FSAVC business issued by the FSA on 28 February 2000.**

Exceptions for certain mortgage endowment complaints

- 2.3.6 R
- (1) **If a complaint relates to the sale of an endowment *policy* for the purpose of achieving capital repayment of a mortgage and the complainant receives a letter from a *firm* or a *VJ participant* warning that there is a high risk that the *policy* will not, at maturity, produce a sum large enough to repay the target amount then, subject to (2), (3), (4) and (5):**
 - (a) **time for referring a complaint to the *Financial Ombudsman Service* starts to run from the date the complainant receives the letter; and**
 - (b) **ends three years from that date (“the final date”).**
 - (2) **Paragraph (1)(b) applies only if the complainant also receives within the three year period mentioned in (1)(b) and at least six months before the final date an explanation that the complainant’s time to refer such a complaint would expire at the final date.**
 - (3) **If an explanation is given but is sent outside the period referred to in (2), time for referring a complaint will run until a date specified in such an explanation which must not be less than six months after the date on which the notice is sent.**

- (4) A complainant will be taken to have complied with the time limits in (1) to (3) above if in any case he refers the complaint to the *firm* or *VJ participant* within those limits and has a written acknowledgement or some other record of the complaint having been received.
- (5) Paragraph (1) does not apply if the *Ombudsman* is of the opinion that, in the circumstances of the case, it is appropriate for DISP2.3.1R (1)(c) to apply.

2.4 Who can refer a complaint to the Financial Ombudsman Service?

2.4.1 R A complaint may be dealt with under the *Financial Ombudsman Service* only if it is brought by or on behalf of an *eligible complainant*.

2.4.2 G *Eligible complainants* are those falling within one of the classes of *person* specified in DISP2.4.3R; and

- (1) having a customer or potential customer relationship with a *firm*, *licensee* or *VJ participant* (as specified in DISP2.4.7R and DISP2.4.8R); or
- (2) having an indirect relationship with a *firm*, *licensee* or *VJ participant* (as specified in DISP2.4.10R);

or, in relation to *relevant complaints*, those specified in the *Ombudsman Transitional Order* or the *Mortgage and General Insurance Transitional Order* (see DISP2.4.14G DISP2.4.15G and DISPApp 1.3.1G).

Classes of person

- 2.4.3 R (1) Subject to (2), a *person* is an *eligible complainant* if he is:
- (a) a private individual; or
 - (b) a business, which has a group annual turnover of less than £1 million at the time the complainant refers the complaint to the *firm*, *licensee* or *VJ participant*; or
 - (c) a charity which has an annual income of less than £1 million at the time the complainant refers the complaint to the *firm*, *licensee* or *VJ participant*; or
 - (d) a trustee of a trust which has a net asset value of less than £1 million at the time the complainant refers the complaint to the *firm*, *licensee* or *VJ participant*;

who satisfies the relevant criteria in DISP2.4.7R - DISP2.4.12R, and is not within (2).

- (2) The following are not *eligible complainants*:
- (a) (in the *Compulsory Jurisdiction*), an individual, business, charity or trustee, who was an *intermediate customer* or *market counterparty* in relation to the *firm* in question at the time of the act or omission, and in respect of the activity, which is the subject of the complaint;
 - (aa) (in the *Consumer Credit Jurisdiction*), a *company*, a *partnership* consisting of more than three persons, a *partnership* all of whose members are *companies* or an

unincorporated body which consists entirely of companies;

- (b) **(in the Compulsory Jurisdiction, the Consumer Credit Jurisdiction and the Voluntary Jurisdiction), a firm, licensee or VJ participant whose complaint relates in any way to an activity which the firm itself has permission to carry on or which the licensee or VJ participant itself conducts, and which is subject to the Compulsory Jurisdiction, the Consumer Credit Jurisdiction or the Voluntary Jurisdiction of the Financial Ombudsman Service.**

2.4.4 G For the purposes of DISP2, a business includes a *sole trader*, a *company*, an unincorporated body and a *partnership* carrying on any trade or profession. But, in the Consumer Credit Jurisdiction, eligible complainant excludes a company, a partnership consisting of more than three persons, a partnership all of whose members are companies and an unincorporated body which consists entirely of companies (see DISP 2.4.3 R (2)(aa)).

2.4.5 G If a *firm, licensee or VJ participant* is in any doubt about the eligibility of a business, charity or trust, it should treat the complainant as if it were eligible. If the complaint is referred to the *Financial Ombudsman Service*, the *Ombudsman* will determine eligibility by reference to appropriate evidence, such as audited accounts or VAT returns.

2.4.6 G For the purposes of DISP2.4.3R(1)(b), a subsidiary of a corporate group (as defined in section 262(1) of the Companies Act 1985) will be eligible only where the corporate group as a whole meets the turnover test.

Eligible complainants: customers

- 2.4.7 R **A person is an eligible complainant if:**
- (1) **he is or has been a customer of a *firm, licensee or VJ participant*;**
 - (2) **the complaint arises out of matters relevant to his being or having been a customer of the *firm, licensee or VJ participant*; and**
 - (3) **he falls into one of the classes of *person* in DISP2.4.3R(1).**

Eligible complainants: potential customers

- 2.4.8 R **A person is an eligible complainant if:**
- (1) **the complaint arises out of a *firm's, licensee's or VJ participant's* actions or failure to act for the complainant in his capacity as a potential customer of the *firm, licensee or VJ participant*; and**
 - (2) **he falls into one of the classes of *person* in DISP2.4.3R(1).**

2.4.9 G DISP2.4.8R is intended to enable a potential customer to use the *Financial Ombudsman Service* where the complaint involves an

allegation that he has suffered or may suffer financial loss, material distress or material inconvenience as a result of a *firm's, licensee's* or *VJ participant's* wrongful act or omission (for example, where, as a result of maladministration or illegal discrimination, a service has not been provided). A complaint about the legitimate exercise of a *firm's, licensee's* or *VJ participant's* commercial judgment may be dismissed by an *Ombudsman* without consideration of its merits under DISP3.3.1R(11).

Eligible complainants: indirect complaints

2.4.10 R

A person is an eligible complainant if:

- (1) he is not, and has not been, a customer or potential customer of the *firm, licensee* or *VJ participant* in relation to the subject matter of the complaint; and
- (2) he has a complaint against the *firm, licensee* or *VJ participant* which either:
 - (a) arises out of a relationship which he has with the *firm, licensee* or *VJ participant* as described in DISP2.4.11R or DISP2.4.12R(4); or
 - (b) is derived from another *person* and which arises from any of the circumstances described in DISP2.4.12R; and
- (3) he falls into one of the classes of *persons* in DISP2.4.3R(1).

2.4.11 R

The relationships with the *firm, licensee* or *VJ participant* relevant for DISP2.4.10 R(2)(a) are:

- (1) the complainant has given the *firm, licensee* or *VJ participant* a guarantee or security for a mortgage, ~~or~~ loan, actual or prospective regulated consumer credit agreement or actual or prospective regulated consumer hire agreement, or any linked transaction as defined in the Consumer Credit Act 1974 (as amended); or
- (2) the complainant has relied in the course of his business on a cheque guarantee card issued by the *firm* or *VJ participant*; or
- (3) the complainant is the true owner or the *person* entitled to immediate possession of a cheque or other bill of exchange, or of the funds it represents, collected by the *firm* or *VJ participant* for someone else's account; or
- (4) the complainant is the recipient of a banker's reference given by the *firm* or *VJ participant*; or
- (5) the complainant is the holder of *units* in a *collective investment scheme* and the *firm* or *VJ participant* is the *operator* or *depository* of the *scheme*; or
- (6) the complainant is a *person* about whom information relevant to his financial standing is or was held by the *firm, licensee* or *VJ participant* in carrying on credit information services as defined by section 145(7B) of the Consumer Credit Act 1974 (as amended); or

(7) the complainant is a person from whom the firm, licensee or VJ participant has sought to recover payment under a regulated consumer credit agreement or regulated consumer hire agreement in carrying on debt-collecting as defined by section 145 (7) of the Consumer Credit Act (1974) (as amended).

- 2.4.12 R The circumstances relevant for DISP2.4.10R (2)(b) are:
- (1) that the complainant is a beneficiary under a trust or estate of which the *firm* or *VJ participant* is trustee or personal representative; or
 - (2) that the complainant is a *person* for whose benefit a *contract of insurance* was taken out or was intended to be taken out; or
 - (3) that the complainant is a *person* on whom the legal right to benefit from a claim under a *contract of insurance* has been devolved by contract, statute or subrogation or;
 - (4) that the complainant is the beneficial owner of *units* in a *collective investment scheme*, and the *firm* or *VJ participant* is the *operator* or *depository* of the *scheme*.
- 2.4.12A R In respect of a complaint under the *Voluntary Jurisdiction* relating to National Savings and Investments' business under DISP2.6.9R(9), where the complainant is not otherwise eligible in accordance with DISP2.4, the *Ombudsman* may, nonetheless, if he considers it appropriate, treat the complainant as an *eligible complainant*, if he or she should have been entitled to refer an equivalent complainant to the Adjudicator for National Savings or, as the case may be, the Parliamentary Commissioner for Administration immediately before the *Voluntary Jurisdiction* began to cover National Savings and Investments' business, provided that the complainant wishes to have the complaint dealt with under the *Financial Ombudsman Service*.
- 2.4.13 G DISP2.4.12R(2) and (3) include, for example, employees covered by a group permanent health policy taken out by an employer, which provides in the insurance contract that the policy was taken out for the benefit of the employee. They do not include, for example, complaints about the actions of the insurer of the other driver in a car accident.
- 2.4.14 G In respect of a *relevant new complaint* or a *relevant transitional complaint*, where the complainant is not eligible in accordance with DISP2.4, article 3(3) of the *Ombudsman Transitional Order* and article 2(3) of the *Mortgages and General Insurance Complaints Transitional Order* provides that the *Ombudsman* may, nonetheless, if he considers it appropriate, treat the complainant as an *eligible complainant* if he or she would have been entitled to refer an equivalent complaint to the *former scheme* in question immediately before *commencement*, provided that the complainant wishes to have the complaint dealt with under the new scheme.
- 2.4.15 G Article 3(4) of the *Ombudsman Transitional Order* provides that, in the case of a *relevant new complaint*, where the *former scheme* in question is

the *Insurance Ombudsman Scheme*, a complainant is not to be treated as an *eligible complainant* unless:

- (1) he is an individual; and
- (2) the complainant does not concern aspects of a policy relating to a business or trade carried on by him.

2.5.15A G Article 2(4) of the Mortgages and General Insurance Transitional Order provides that, in the case of a *relevant transitional complaint*, where the *former scheme* in question is the *GISC facility*, a complainant is not to be treated as an *eligible complainant* unless:

- (1) he is an individual; and
- (2) he is acting otherwise than solely for the purposes of his business.

2.4.15B G Article 2(5) of the Mortgages and General Insurance Transitional Order provides that, in the case of a *relevant transitional complaint*, where the *former scheme* in question is the *MCAS scheme*, a complainant is not to be treated as an *eligible complainant* if:

- (1) the complaint does not relate to a breach of the Mortgage Code published by the Council of Mortgage Lenders;
- (2) the complaint concerns physical injury, illness, nervous shock or their consequences; or
- (3) the complainant is claiming a sum of money that exceeds £100,000.

Representatives of eligible complainants

2.4.16 R **A complaint may be brought on behalf of an *eligible complainant*, or a deceased *person* who would have been an *eligible complainant*, by a *person* authorised by the *eligible complainant* or authorised by law.**

2.4.17 R **It is immaterial whether the *person* authorised to act on behalf of an *eligible complainant* under DISP2.4.16R:**

- (1) **can satisfy any of the criteria applicable to the *person* under DISP2.4.3R(1); or**
- (2) **has a claim of his own, or is acting for another *person* against the *firm*, *licensee* or *VJ participant*; or**
- (3) **is or was a customer or potential customer of the *firm*, *licensee* or *VJ participant*.**

2.5 Which firms are subject to the jurisdiction of the Financial Ombudsman Service?

2.5.1 G All *firms* are subject to the *Compulsory Jurisdiction* of the *Financial Ombudsman Service*. *VJ participants* are subject to the *Voluntary Jurisdiction* and to *DISP2* to the extent specified in the *standard terms* (*DISP 4*). *Licensees* are subject to the *Consumer Credit Jurisdiction*.

2.5.2 G *Firms* may, however, be exempt from the requirements of *DISP1* (Complaint handling procedures for firms) FEES 5 (*Financial*

Ombudsman Service funding), if they qualify under DISP1.1.7R (Exemption).

- 2.5.3 G *Members of the Society of Lloyd's* are treated as *firms* for the purposes of the *Compulsory Jurisdiction* (including the *rules* in DISP1 relating to *firms'* complaints procedures) and are subject to DISP1 as a result of the *insurance market direction* given in LLD 6.2.1D, under section 316 of the *Act* (Direction by Authority). However, as set out in DISP1.7, *members* will individually comply with DISP1 if and only if all complaints by policyholders against *members* are dealt with under the internal procedures established by the *Society of Lloyd's* for handling those complaints, provided that these procedures themselves comply with DISP1. Accordingly, certain of the obligations under DISP1, for example, the obligation to report on complaints received, must be complied with by the *Society* on behalf of *members*.

2.6 To which activities do the rules apply?

The Compulsory Jurisdiction

- 2.6.1 R **The *Ombudsman* can consider a complaint under the *Compulsory Jurisdiction* only if it relates to an act or omission by a *firm* in the carrying on of one or more of the following activities (unless the provision described in DISP2.6.3G applies):**
- (1) *regulated activities*;
 - (2) **lending money secured by a charge on land;**
 - (3) **lending money (other than *restricted credit*);**
 - (4) **paying money by a *plastic card* (other than a *store card*);**
 - (5) **the provision of ancillary banking services (see DISP2.6.6G);**
 - (6) *consumer credit activities*.**
- or activities ancillary to them (see DISP2.6.2R).**
- 2.6.2 R **The activities in DISP2.6.1R include any ancillary activities, including advice, provided by the *firm* in connection with those activities.**
- 2.6.3 G Under article 3 of the *Ombudsman Transitional Order*, the *Ombudsman* can also consider a *relevant new complaint* under the *Compulsory Jurisdiction* where it relates to an act or omission of a *firm* which was, immediately before *commencement*, subject to a *former scheme*, provided that:
- (1) the act or omission occurred in the carrying on by that *firm* of an activity to which that *former scheme* applied; and
 - (2) the complainant is eligible and wishes to have the complaint dealt with under the new scheme.
- 2.6.3A G Under article 2 of the *Mortgage and General Insurance Complaints Transitional Order*, the *Ombudsman* can also consider a *relevant transitional complaint* under the *Compulsory Jurisdiction* where it relates

to an act or omission of a *firm* which was, immediately before the *relevant commencement date*, subject to a *former scheme*, provided that

- (1) the act or omission occurred in the carrying on by that *firm* of an activity to which that *former scheme* applied; and
- (2) the complainant is eligible and wishes to have the complaint dealt with under the new scheme.

- 2.6.4 G The carrying on of an activity in DISP2.6.1R includes offering, providing or failing to provide and administering or failing to administer a service in relation to the activities covered by that rule. This includes the manner in which a *firm* has administered its business, provided that the business is an activity subject to the jurisdiction of the *Financial Ombudsman Service*.
- 2.6.5 G Complaints about acts or omissions by a *firm* include complaints about acts or omissions in respect of activities for which the *firm* is responsible (including business of any *appointed representative* for which the *firm* has accepted responsibility).
- 2.6.6 G For the purposes of DISP2.6.1R(5), ancillary banking services include, for example, the provision and operation of cash machines and safe deposit boxes and the provision of account aggregation services (that is, services where details from several accounts which may be held by different financial service providers can be accessed by a single password).
- 2.6.7 R **A complaint about an *authorised professional firm* cannot be handled under the *Compulsory Jurisdiction of the Financial Ombudsman Service* if it relates solely to a *non-mainstream regulated activity* and can be handled by a *designed professional body*.**
- 2.6.8 G A complaint about a *non-mainstream regulated activity* conducted by an *authorised professional firm* will be handled by the relevant *professional body*.

The Consumer Credit Jurisdiction

- 2.6.8A R The Ombudsman can consider a complaint under the Consumer Credit Jurisdiction only if it is not covered by the Compulsory Jurisdiction and it relates to an act or omission by a licensee in the carrying on of one or more of the following activities: consumer credit activities; or activities ancillary to them.**
- 2.6.8B R The activities in DISP 2.6.8A R include any ancillary activities, including advice, provided by the licensee in connection with those activities.**
- 2.6.8C G The carrying on of an activity in DISP2.6.8A R includes offering, providing or failing to provide and administering or failing to administer a service in relation to the activities covered by that rule. This includes the manner in which a licensee has administered its business, provided that the business is an activity subject to the jurisdiction of the *Financial Ombudsman Service*.

The Voluntary Jurisdiction

- 2.6.9 R The *Ombudsman* can consider a complaint under the *Voluntary Jurisdiction* only if it is not covered by the *Compulsory Jurisdiction* or the Consumer Credit Jurisdiction and it relates to an act or omission in the carrying on or one or more of the following activities by a *VJ participant*:
- (1) *general insurance business*;
 - (2) *accepting deposits*;
 - (3) *lending money* secured by a charge over land;
 - (4) *lending money* (other than *restricted credit*);
 - (5) *paying money* by a *plastic card* (other than a *store card*);
 - (6) the provision of ancillary banking services;
 - (6A) acting as an intermediary for a loan secured by a charge over land;
 - (6B) acting as an intermediary for *general insurance business* or *long-term insurance business*;
 - (6C) activities equivalent to consumer credit activities carried on otherwise than from an establishment in the United Kingdom;
 - (7) a financial services activity carried on after *commencement* and which had been covered by a *former scheme* in so far as the *VJ participant* was a member of that *former scheme*, in respect of that activity, immediately before the *commencement day*;
 - (8) an activity carried on on or after 29 April 1988 which was a regulated activity when the *VJ participant* joined the *Voluntary Jurisdiction* (or became an authorised person if later) but which was not a *regulated activity* at the time of the act or omission;
 - (9) National Savings and Investments' business;
- or activities ancillary to them (see DISP2.6.11R).
- 2.6.9A G A complaint may be covered by the *Voluntary Jurisdiction* under one or more of the subparagraphs of DISP2.6.9R.
- Acting as a intermediary for a loan secured by a charge over land**
- 2.6.9B G DISP2.6.9R(6A) includes:
- (1) making arrangements for a borrower or potential borrower to enter into, or vary the terms of, a loan secured by a charge over land;
 - (2) making arrangements with a view to a borrower or potential borrower who participates in the arrangements entering into a loan secured over land; and

- (3) advising a borrower or potential borrower on the merits of entering into, or varying the terms of, a loan secured by a charge over land.

Acting as an intermediary for *general insurance business* or *long-term insurance business*

- 2.6.9C G DISP2.6.9R (6B) includes:
- (1) introducing, proposing or carrying out other work preparatory to the conclusion of contracts of *general insurance business* or *long-term insurance business* or reinsurance;
 - (2) concluding such contracts;
 - (3) assisting in the administration and performance of such contracts, in particular in the event of a claim;
 - (4) dealing as an agent, or arranging deals, in such contracts (or rights in them);
 - (5) managing, safeguarding or administering assets consisting of, or including, such contracts (or rights in them); and
 - (6) advising on the merits of buying, selling, subscribing for or underwriting such contracts (or rights in them).
- But customers of reinsurance intermediaries are unlikely to be *eligible complainants*.
- 2.6.10 G DISP2.6.9R(7) enables complaints about *VJ participants* which, immediately before the *commencement day*, were members of one of the *former schemes* replaced by the *Financial Ombudsman Service* to be dealt with under the *Voluntary Jurisdiction*. This is in respect of the financial services activities for which the *VJ participant* was previously covered but excludes complaints which fall into the *Compulsory Jurisdiction* as *relevant complaints*. So the complaints which are covered by DISP2.6.9R(7) are only those which arise out of acts or omissions occurring after the *commencement day*.
- 2.6.10A G DISP2.6.9R(6) includes the activities referred to in DISP2.6.6.G.
- 2.6.10B G DISP2.6.9R(8) enables a *firm* that is subject to the *Compulsory Jurisdiction* for *regulated activities* to become a *VJ participant* in order to cover complaints about earlier events relating to those activities before they became *regulated activities*.
- 2.6.11 R **The activities in DISP 2.6.9R include any ancillary activities, including advice and any ancillary long-term insurance, provided by the *VJ participant* in connection with those activities.**
- 2.6.12 R **A complaint subject to these rules which is not covered by the *Compulsory Jurisdiction* or the *Consumer Credit Jurisdiction* can be considered by the *Ombudsman* even though it relates to an act or omission that occurred before the *VJ participant* was participating in the *Financial Ombudsman Service*, and whether the act or omission occurred before or after the *commencement day*, either:**

- (1) **if the complaint could have been dealt with under a *former scheme*; or**
 - (2) **as a consequence of the agreement of the *VJ participant* in DISP4.2.5R.**
- 2.6.13 G The provisions of DISP2.6.12R are made under the power in sections 227(13) and 227(14) of the *Act*. Those sections allow for a complaint relating to an act or omission occurring either before *commencement* or before the *VJ participant* joined the *Voluntary Jurisdiction* (or both) to be dealt with under the *Financial Ombudsman Service*. Under section 227(13), the act or omission must be one which could have been dealt with under a *former scheme*. Under section 227(14), the *VJ participant* must agree; but that agreement is provided by DISP2.6.12R(2) and DISP4.2.5R. Where complaints in this category are not already covered by the *Compulsory Jurisdiction* as *relevant complaints*, they can, therefore, be included in the *Voluntary Jurisdiction* under DISP2.6.12R.
- 2.7 The territorial scope of the jurisdiction of the Financial Ombudsman Service**
- 2.7.1 R **The territorial scope of the jurisdiction of the *Financial Ombudsman Service* covers complaints about the activities of a *firm*, an *appointed representative*, a *licensee* or a *VJ participant* carried on from an establishment in the *United Kingdom*.**
- 2.7.2 R **The territorial scope of the jurisdiction of the *Voluntary Jurisdiction* of the *Financial Ombudsman Service* also covers complaints about activities specified in DISP2.6.9R(1) to DISP2.6.9R(6) or activities ancillary to them carried on from an establishment elsewhere in the *EEA* if the following conditions are met:**
- (1) **the activity is directed wholly or partly at the *United Kingdom* (or part of it);**
 - (2) **contracts governing the activity are, or (in the case of a potential customer) would have been, made under the law of England and Wales, Scotland or Northern Ireland; and**
 - (3) **the *VJ participant* has notified appropriate regulators in its *Home State* of its intention to participate in the *Voluntary Jurisdiction*.**
- 2.7.3 G DISP2.7.2R(1) covers activities which the *VJ participant* conducts with the intention that some or all of the customers relating to that activity should reside in the *United Kingdom*.
- 2.7.4 G The *Compulsory Jurisdiction*:
- (1) covers *firms* (including *appointed representatives*) operating from an establishment in the *United Kingdom*, including *incoming EEA firms* and *incoming Treaty firms* which qualify for *authorisation* under Schedule 3 (*EEA Passport Rights*) or Schedule 4 (*Treaty Rights*) to the *Act*; but
 - (2) does not cover complaints which concern business conducted by branches of *firms* outside the *United Kingdom* or by *EEA firms* operating in the *United Kingdom* on a services basis from outside the *United Kingdom*.

- 2.7.4A G The *Consumer Credit Jurisdiction* covers *licensees* operating from an establishment in the *United Kingdom*, but does not cover complaints which concern business conducted by branches of *licensees* outside the *United Kingdom*.
- 2.7.5 G The *Voluntary Jurisdiction*:
- (1) covers *VJ participants* operating from an establishment in the *United Kingdom*;
 - (2) also covers complaints that concern business conducted by the *VJ participants* operating elsewhere in the *EEA*, but only in relation to the activities specified in DISP2.6.9R(1) to DISP2.6.9R(6) subject to the conditions in DISP2.7.2R(1) to DISP2.7.2R(3).
- 2.7.6 G A complaint can be dealt with under the *Financial Ombudsman Service* irrespective of whether the complainant lives or is based in the *United Kingdom*.

DISP 3

3.1 Application and Purpose

Application

- 3.1.1 R **This chapter applies to the *Ombudsman*, ~~and~~ to *firms* and to *licensees*.**
- 3.1.2 G It is also relevant to those who might wish to refer a complaint to the *Financial Ombudsman Service*.
- 3.1.3 G *VJ participant* are subject to the rules in this chapter by contract under the *standard terms* (see DISP 4).
- 3.1.4 R **Except as otherwise specified, references in this chapter to a “complaint” include:**
- (1) **a *relevant new complaint*; and**
 - (2) **part of a complaint or a *relevant new complaint* or a *relevant transitional complaint*.**
- 3.1.5 G References in this chapter to “*firms*” are to be construed, where relevant, as including:
- (1) in accordance with the *Ombudsman Transitional Order*, *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*; and
 - (2) as a result of section 226 of the *Act*, *unauthorised persons* who were formerly *firms* in respect of complaints about acts or omissions which occurred at the time when they were *firms*, provided that the *Compulsory Jurisdiction* rules were in force in relation to the activity in question.
- 3.1.5A G References in this chapter to *licensees* are to be construed, where relevant, as a result of section 226A of the *Act*, as including *persons* who

were formerly licensees in respect of complaints about acts or omissions which occurred at the time when they were licensees, provided the complaint falls within a description specified in the *Consumer Credit Jurisdiction* rules in force at the time of the act or omission.

- 3.1.6 G The *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order* provide, with some exceptions (see DISP 2.2.2G and DISP 2.2.2A G (scope of *Compulsory Jurisdiction* and Relevant Transitional complaints), DISP 2.3.2G (time limits), DISP 2.4.14G and DISP 2.4.15G (*eligible complainant*) and DISP 3.8.2G and DISP 3.8.2AG (determinations), for *relevant new complaints* and *relevant transitional complaints* to be determined in accordance with the requirements of the *Financial Ombudsman Service*.

Purpose

- 3.1.7 G The purpose of this chapter is to set out the way in which the *Financial Ombudsman Service* and, in particular, the *Ombudsman*, will operate to ensure that complaints may be resolved quickly and with minimum formality. It sets out the procedures for the investigation and consideration of complaints, including the circumstances in which a complaint may be terminated without consideration of its merits; the evidence which may be required or admitted; the provisions for fixing and extending time limits for different aspects of the proceedings; the factors which the *Ombudsman* will take into account in determining what is fair and reasonable; the types of loss or damage for which the *Ombudsman* can award compensation; the limits on awards and the costs that can be awarded.

3.2 The investigation and consideration of complaints by the Ombudsman

- 3.2.1 R **On receipt of a complaint (and subsequently if necessary) the *Ombudsman* must have regard to the following matters:**
- (1) **whether or not the complaint meets the criteria in ■DISP 2.2 (Which complaints can be dealt with under the *Financial Ombudsman Service*?);**
 - (2) **whether or not the complaint is within the time limits in DISP 2.3 (Time limits for referral of complaints to the *Financial Ombudsman Service*);**
 - (3) **whether or not the complainant is an *eligible complainant*; and**
 - (4) **whether or not the complaint is one which should be dismissed without consideration of its merits under ■DISP 3.3 (Dismissal of complaints without consideration of the merits).**
- 3.2.2 G In the case of *relevant new complaints*, the *Ombudsman* will take account of the relevant criteria under the *Ombudsman Transitional Order*, referred to in DISP 2.2.2G, and will extend the time limits in DISP 2.3, as required under article 4(2) of the *Ombudsman Transitional Order* and described in DISP 2.3.2G.
- 3.2.3 R **Where the *firm or licensee* has not had the eight weeks provided for under DISP 1.4.5R to consider the complaint, the *Ombudsman* will**

refer the complaint to the *firm* or *licensee*, unless the *firm* or *licensee* has already issued a *final response*.

- 3.2.4 R Where a *firm* or *licensee* fails to send a complainant a *final response* by the end of eight weeks, the *Ombudsman* may consider the complaint.
- 3.2.5 R Where the *Ombudsman* considers that the complaint or the complainant may be ineligible under the jurisdiction rules (see DISP 2 (Jurisdiction of the *Financial Ombudsman Service*)) he must give the complainant an opportunity to make representations before he reaches his decision and he must give reasons to the complainant for that decision and inform the *firm* or *licensee* of his decision.
- 3.2.6 G DISP 3.2.5R applies without prejudice to a *firm's* or *licensee's* right to raise the issue of eligibility subsequently.
- 3.2.7 R Where the *firm* or *licensee* disputes the eligibility of the complaint or the complainant, the *Ombudsman* must give the parties an opportunity to make representations before he reaches his decision and he must give reasons to the parties for that decision.
- 3.2.8 R Where the *Ombudsman* considers that the complaint may be one which should be dismissed without consideration of its merits, under DISP 3.3 (Dismissal of complaints without consideration of the merits), he must give the complainant an opportunity to make representations before he makes his decision. If he then decides that the complaint should be dismissed, he must give reasons to the complainant for that decision and inform the *firm* or *licensee* of that decision.
- 3.2.9 R Where the *Ombudsman* considers that both the complaint and the complainant are eligible and that there is a reasonable prospect of resolving the complaint by mediation, he may attempt to negotiate a settlement between the parties.
- 3.2.10 G The *Ombudsman* will attempt to resolve complaints at the earliest possible stage and by whatever means appear to him to be most appropriate, including mediation or investigation.
- 3.2.11 R If the *Ombudsman* decides that an investigation is necessary, he will:
- (1) during the investigation, give both parties an opportunity of making representations;
 - (2) send to the parties a provisional assessment, setting out his reasons and a time limit within which either party must respond; and
 - (3) if either party indicates disagreement with the provisional assessment within the time limit prescribed in DISP 3.2.11R(2), proceed to determination (see DISP 3.8 (Determination by the *Ombudsman*)).
- 3.2.12 R The parties will be informed of their right to make representations before the *Ombudsman* makes a determination. If he considers that

the complaint can be fairly determined without convening a hearing, he will determine the complaint. If not, he will invite the parties to attend a hearing. No hearing will be held after the *Ombudsman* has determined the complaint.

3.2.13 R A party who wishes to request a hearing must do so in writing, setting out the issues he wishes to raise and (if appropriate) any reasons why he considers the hearing should be in private, so that the *Ombudsman* may consider whether the issues are material, whether a hearing should take place and, if so, whether it should be held in public or private.

3.2.14 G In deciding if there should be a hearing and, if so, whether it should be in public or private, the *Ombudsman* will have regard to the provisions of the European Convention on Human Rights.

3.3 Dismissal of complaints without consideration of the merits

- 3.3.1 R The *Ombudsman* may dismiss a complaint without considering its merits if he:
- (1) is satisfied that the complainant has not suffered, or is unlikely to suffer, financial loss, material distress or material inconvenience; or
 - (2) considers the complaint to be frivolous or vexatious; or
 - (3) considers that the complaint clearly does not have any reasonable prospect of success; or
 - (4) is satisfied that the *firm or licensee* has already made an offer of compensation which is fair and reasonable in relation to the circumstances alleged by the complainant and which is still open for acceptance; or
 - (5) is satisfied that the complaint relates to a transaction which the *firm or licensee* in question has reviewed in accordance with the regulatory standards for the review of such transactions prevailing at the time of the review, or in accordance with the terms of a scheme order under section 404 of the *Act* (Schemes for reviewing past business), including, if appropriate, making an offer of redress to the complainant, unless he is of the opinion that the standards or terms of the scheme order did not address the particular circumstances of the case; or
 - (5A) is satisfied that the *firm or licensee* in question has reviewed the complaint in accordance with any formal regulatory requirement, standard or guidance published by the *FSA* or other regulator in respect of that type of complaint, including, if appropriate, making an offer of redress to the complainant, unless he is of the opinion that the terms of the requirement, standard or guidance did not address the particular circumstances of the case; or
 - (6) is satisfied that the matter has previously been considered or excluded under the *Financial Ombudsman Service*, or a

- former scheme* (unless material new evidence likely to affect the outcome has subsequently become available); or
- (7) is satisfied that the matter has been dealt with, or is being dealt with, by a comparable independent complaints scheme or dispute resolution process; or
 - (8) is satisfied that the subject matter of the complaint has been the subject of court proceedings where there has been a decision on the merits; or
 - (9) is satisfied that the subject matter of the complaint is the subject of current court proceedings unless proceedings are stayed or sisted (by agreement of all parties, or order of the court) in order that the matter may be considered under the *Financial Ombudsman Service*; or
 - (10) considers that it would be more suitable for the matter to be dealt with by a court, arbitration or another complaints scheme; or
 - (11) is satisfied that it is a complaint about the legitimate exercise of a *firm's* or licensee's commercial judgment; or
 - (12) is satisfied that it is a complaint about employment matters from an employee or employees of a *firm* or licensee; or
 - (13) is satisfied that it is a complaint about investment performance; or
 - (14) is satisfied that it is a complaint about a *firm's* or licensee's decision when exercising a discretion under a will or private trust; or
 - (15) is satisfied that it is a complaint about a *firm's* or licensee's failure to consult beneficiaries before exercising a discretion under a will or private trust, where there is no legal obligation to consult; or
 - (16) is satisfied that a complaint which involves or might involve more than one *eligible complainant* has been referred without the consent of the other complainant or complainants and the *Ombudsman* considers that it would be inappropriate to deal with the complaint without that consent; or
 - (17) is satisfied that there are other compelling reasons why it is inappropriate for the complaint to be dealt with under the *Financial Ombudsman Service*.

3.3.1A R

The *Ombudsman* may dismiss a complaint without considering its merits if:

- (I) before he has made a determination, he has received in writing from the *firm* or licensee:
 - (a) a detailed statement of how and why, in the *firm's* or licensee's opinion, the complaint raises an important or novel point of law with significant consequences; and
 - (b) an undertaking in favour of the complainant that, if the complainant or the *firm* or the licensee commences court proceedings against the other in respect of the

complaint in any court in the *United Kingdom*, within six months of the complaint being dismissed, the *firm or licensee* will: pay the complainant's reasonable costs and disbursements (to be assessed if not agreed on an indemnity basis) in connection with the proceedings at first instance and any subsequent appeal proceedings brought by the *firm or licensee*; and make interim payments on account of such costs if and to the extent that it appears reasonable to do so; and

- (2) **the *Ombudsman* considers that the complaint:**
- (a) **raises an important or novel point of law, which has important consequences; and**
 - (b) **would more suitably be dealt with by a court as a test case.**

- 3.3.1B G Factors the *Ombudsman* may take into account in considering whether to dismiss under DISP 3.3.1A R include (but are not limited to):
- (1) whether the point of law is central to the outcome of the dispute;
 - (2) how important or novel the point of law is in the context of the dispute;
 - (3) the significance of the consequences of the dispute for the business of the *firm or licensee* or for its customers;
 - (4) the significance of the consequences of the dispute for the business of *firms or licensees* in that sector or for their customers;
 - (5) the amount at stake in the dispute;
 - (6) the remedies that a court could impose;
 - (7) any representations made by the *firm, licensee* or the complainant; and
 - (8) the stage already reached in consideration of the dispute.
- 3.3.2 G Under article 5(2)(c) of the *Ombudsman Transitional Order*, the *Ombudsman*, in deciding whether a *relevant complaint* is to be dismissed without consideration of its merits, is to take into account whether an equivalent complaint would have been so dismissed under the *former scheme* in question, as it had effect immediately before *commencement*.
- 3.3.2A G Under article 4(2) of the *Mortgage and General Insurance Complaints Transitional Order*, the *Ombudsman*, in deciding whether a *relevant transitional complaint* is to be dismissed without consideration of its merits, must take into account whether an equivalent complaint would have been so dismissed under the *former scheme* in question, as it had effect immediately before the *relevant commencement date*.
- 3.3.3 G For the purposes of DISP 3.3.1R (4), offers of compensation include ex gratia payments.
- 3.3.4 G In DISP 3.3.1R (5) the transaction could, for example, be a pension transaction which has been reviewed by the *firm* in accordance with the relevant regulatory standards. The *Ombudsman* may decide not to

proceed with a complaint about the result of that review unless he considers that the standards or guidance published by the regulator did not address the particular circumstances of the case.

- 3.3.5 G When deciding if it would be suitable for a complaint to be dealt with outside the *Financial Ombudsman Service* (DISP 3.3.1R (10)), the *Ombudsman* may consider whether, in view of a conflict of evidence, a fair resolution of the complaint could be achieved only through examination of the evidence by the courts.
- 3.3.6 G The *Ombudsman* may decide to proceed with a complaint which would otherwise be dismissed under DISP 3.3.1R (13), DISP 3.3.1R (14) or DISP 3.3.1R (15) if he considers that the complaint involves an allegation of negligence or maladministration.
- 3.4 Referral of a complaint to another complaints scheme for determination**
- 3.4.1 R **The *Ombudsman* may refer a complaint to another complaints scheme where he considers that it would be more suitable for the matter to be determined by that scheme and the complainant consents to the referral.**
- 3.5 Evidence**
- 3.5.1 R **The *Ombudsman* may, in relation to the evidence which may be required or admitted when he considers and determines a complaint, give directions as to:**
- (1) the issues on which evidence is required;**
 - (2) the extent to which the evidence required to decide those issues should be oral or written; and**
 - (3) the way in which the evidence should be presented to the *Ombudsman*.**
- 3.5.2 R **The *Ombudsman* may:**
- (1) exclude evidence that would otherwise be admissible in a court of law or include evidence that would not be admissible in such a court;**
 - (2) where he considers it necessary or appropriate, accept information in confidence, so that only an edited version or (where this is not practicable) a summary or description is disclosed to the other party;**
 - (3) reach a decision on the basis of what has been supplied and take account of the failure by a complainant or a *firm or licensee* to provide information that an *Ombudsman* has requested; and**
 - (4) dismiss a complaint if a complainant fails to supply required information.**
- 3.5.3 G The provisions of DISP 3.5.2R (1) follow the provisions of Civil Justice Rules.

- 3.5.4 G For the purposes of DISP 3.5.2R (2), evidence which the *Ombudsman* may accept in confidence includes confidential evidence about third parties and security information.
- 3.5.5 G The *Ombudsman* may request a party to a complaint to provide evidence necessary for the determination of the complaint under section 231 of the *Act*. A failure to comply with the request can be dealt with by the court under section 232.
- 3.6 Time limits**
- 3.6.1 R **The *Ombudsman* may fix time limits and extend fixed time limits for any aspect of the consideration of a complaint by the *Financial Ombudsman Service*.**
- 3.6.2 R **If a *firm or licensee* fails to comply with a time limit, the *Ombudsman* may proceed to the next stage of consideration of the complaint and may, if appropriate, make provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.**
- 3.6.3 R **If a complainant fails to comply with a time limit, the *Ombudsman* may either proceed to the next stage or dismiss the complaint.**
- 3.7 Delegation of the Ombudsman’s powers**
- 3.7.1 R (1) **Only an *Ombudsman* may determine a complaint or decide the circumstances in which information may be disclosed under DISP 3.10.1R (3).**
- (2) **The *Ombudsman* may designate members of the staff of *FOS Ltd* to exercise any of the other powers of the *Ombudsman* relating to the reference, investigation or consideration of a complaint.**
- (3) **Where any *person* is so designated, DISP 2 – DISP 4 apply as if any reference to “the *Ombudsman*” included a reference to that *person*.**
- 3.7.2 G The Chief *Ombudsman* will designate those members of staff of *FOS Ltd* who are to have these powers.
- 3.8 Determination by the Ombudsman**
- Opinion as to fairness and reasonableness**
- 3.8.1 R (1) **The *Ombudsman* will determine a complaint by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case.**
- (2) **In considering what is fair and reasonable in all the circumstances of the case, the *Ombudsman* will take into account the relevant law, regulations, regulators’ rules and guidance and standards, relevant codes of practice and, where appropriate, what he considers to have been good industry practice at the relevant time.**

- 3.8.2 G In determining, in relation to a *relevant new complaint*, what is fair and reasonable in all the circumstances of the case and what amount (if any) constitutes fair compensation, for the purposes to section 229(2)(a) of the *Act* (money awards), the *Ombudsman* is required, under article 7(2) of the *Ombudsman Transitional Order*, to take into account:
- (1) what determination the *former Ombudsman* might have been expected to reach, and
 - (2) what amount (if any) might have been expected to be awarded by way of compensation;
- in relation to an equivalent complaint dealt with under the *former scheme* in question immediately before *commencement*.

The Ombudsman's determination

- 3.8.3 R **The *Ombudsman's* determination will include the following stages:**
- (1) **When a complaint has been determined, the *Ombudsman* will give both the complainant and the *firm or licensee* a signed written statement of the determination, stating the reasons for it.**
 - (2) **The statement will invite 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 the time limit set, it is final and binding on both the complainant and the *firm or licensee*.**
 - (4) **If the complainant either rejects the determination or does not notify the *Ombudsman* by the specified date that he accepts the determination, the complainant will be treated as having rejected the determination, and the *firm or licensee* will not be bound by it.**
 - (5) **The *Ombudsman* must notify the *firm or licensee* of the complainant's response (or lack of response).**

3.9 Awards by the Ombudsman

Money Awards

- 3.9.1 G As provided for under section 229 of the *Act* (Awards), if a complaint is determined in favour of the complainant, the determination may include:
- (1) a money award against the *firm or licensee* of such amount as the *Ombudsman* considers fair compensation for financial loss or for loss or damage of a kind specified in DISP 3.9.2R and subject to the maximum limit in DISP 3.9.5R; or
 - (2) a direction that the *firm or licensee* take such steps in relation to the complainant as the *Ombudsman* considers just and appropriate (whether or not a court could order those steps to be taken); or
 - (3) both of these.

- 3.9.2 R **Where the *Ombudsman* decides to make a money award, in addition to (or instead of) awarding compensation for financial loss, he may award compensation for the following kinds of loss or damage, whether or not a court would award compensation:**
- (1) **pain and suffering; or**
 - (2) **damage to reputation; or**
 - (3) **distress or inconvenience.**

3.9.3 G For the purposes of awards by the *Ombudsman*, financial loss includes consequential or prospective loss.

3.9.4 G In determining, in relation to a *relevant new complaint*, what amount (if any) constitutes fair compensation for the purposes of a money award, the *Ombudsman* is required under article 7(2) of the *Ombudsman Transitional Order* to take into account what amount (if any) might have been expected to be awarded by way of compensation, in relation to an equivalent complaint dealt with under the *former scheme* in question immediately before *commencement*.

Limits on money awards

3.9.5 R **The maximum money award with the *Ombudsman* may make is £100,000.**

3.9.6 G If the *Ombudsman* considers that an amount more than the maximum is required as fair compensation, then he may in addition recommend to the *firm or licensee* that it pays the balance.

3.9.7 G The *Ombudsman* may specify in his award that reasonable interest must be paid on the award (at the rate and from the date he states).

3.9.8 G For the purposes of calculating the monetary limit referred to in DISP 3.9.5R the amount of interest awarded does not form part of the award itself.

3.9.9 G The limit on the maximum money award has no bearing on any direction which an *Ombudsman* may make as part of a determination.

Costs

3.9.10 R **When the *Ombudsman* finds in a complainant's favour, he may also award an amount which covers some or all of the costs which were reasonably incurred by the complainant in respect of the complaint.**

3.9.11 G It is not anticipated that awards of costs will be common, since in most cases complainants should not need to have professional advisers to bring complaints to the *Financial Ombudsman Service*.

3.9.12 R **The amount payable under the award of costs may, if the *Ombudsman* orders, bear interest at a reasonable rate specified in the order and from a date specified in the order.**

- 3.9.13 G For the purposes of calculating the monetary limit specified in DISP 3.9.5R, an award of costs does not form part of the award itself.
- Complying with awards and settlements**
- 3.9.14 R **A *firm or licensee* must comply promptly with:**
- (1) **any money award or direction made by the *Ombudsman* or any award of money or other award made by an ombudsman appointed under the *PIA Ombudsman scheme* (including any interest payable by order of the *PIA Ombudsman* or the *Ombudsman*); and**
 - (2) **any settlement which it agrees at an earlier stage of the procedures.**
- 3.9.15 R **The *Ombudsman* must maintain a register of each money award and direction made.**
- 3.9.16 G A money award registered in accordance with DISP 3.9.15R can be recovered or enforced through the courts under paragraph 16 of Schedule 17 to the *Act*.
- 3.9.17 G A complainant may enforce a direction by injunction or order in accordance with section 229(9) of the *Act* (Awards).
- 3.10 Dealing with information**
- 3.10.1 R
- (1) **In dealing with any information received in relation to the consideration or investigation of a complaint, the *Financial Ombudsman Service* must have regard to the parties' rights of privacy.**
 - (2) **Paragraph (1) does not prevent the *Ombudsman* disclosing information (either in full, or where he considers it necessary or appropriate under DISP 3.5.2R (2), in the form of an edited version or (where this is not practicable) a summary or description):**
 - (a) **to the extent that he is required or authorised to do so by law; or**
 - (b) **to the parties to the complaint; or**
 - (c) **in his determination; or**
 - (d) **at a hearing in connection with the complaint.**
 - (3) **So long as he has regard to the parties' rights of privacy, the *Ombudsman* may disclose information to the *FSA* or any other body exercising regulatory or statutory functions for the purpose of assisting that body or the *Financial Ombudsman Service* to discharge its functions.**
- 3.10.2 G Under article 11 of the *Ombudsman Transitional Order*, any information held by an *person* responsible for the operation of a *former scheme* in connection with the operation of a *former scheme* may be disclosed by that *person* (after *commencement*) to *FOS Ltd* or to an *Ombudsman* without contravening any restriction on disclosure of that information

(imposed by statute or otherwise) to which that *person* was subject. But *FOS Ltd* or the *Ombudsman* is subject to any restrictions on disclosure (and exceptions) which would have applied to the former holder of that information.

- 3.10.3 G Article 11 of the *Ombudsman Transitional Order* do not, however, prevent the application of section 31(4A) of the Data Protection Act 1998. This provides for an exemption in respect of subject information provisions to the extent to which the application of those provisions to data would be likely to prejudice the proper discharge of the functions conferred under Part XVI of the *Act* (The Ombudsman Scheme).

DISP 4

[DISP 4 relates only to the voluntary jurisdiction]

FEES 5

5.1 Application and Purpose

Application

- 5.1.1 R **This chapter applies to:**
- (1) **every firm which is subject to the *Compulsory Jurisdiction* and (apart from FEES 5.3, 5.4 and 5.8) every licensee which is subject to the *Consumer Credit Jurisdiction* of the *Financial Ombudsman Service*; and**
 - (2) **every other person who is subject to the *Compulsory Jurisdiction* in relation to relevant complaints.**
- 5.1.2 G The relevant provisions of FEES 5 are applied to *VJ participants* by the *standard terms* (see DISP 4).
- 5.1.3 G References in this chapter to “*firms*” are to be construed, where relevant, as including:
- (1) in accordance with the *Ombudsman Transitional Order*, *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant complaints* (see Transitional Provisions 6 and 7 of *DISP*); and
 - (2) as a result of section 226 of the *Act*, *unauthorised persons* who were formerly *firms* in respect of complaints about acts or omissions which occurred at the time when they were *firms*, provided that the *Compulsory Jurisdiction* rules were in force in relation to the activity in question.
- 5.1.3A G References in this chapter to *licensees* are to be construed, where relevant, as a result of section 226A of the *Act*, as including *persons who were formerly licensees in respect of complaints about acts or omissions which occurred at the time when they were licensees, provided the complaint falls within a description specified in the Consumer Credit Jurisdiction rules in force at the time of the act or omission.*

Exemption

- 5.1.4 R A *firm* which is exempt under DISP1.1.7R is also exempt from FEES 5.1 to FEES 5.7.
- 5.1.5 R A *firm* which ceases to be exempt under FEES 5.1.4R is to be treated, for the purposes of its contribution to the *general levy*, as a *firm* to which FEES 5.8 applies.
- 5.1.6 R A *firm* which becomes except under FEES 5.1.4R during the course of a *financial year* is to be treated for the purposes of its contribution to the *general levy*, as a *firm* to which FEES 5.9 applies.

Purpose

- 5.1.7 G The purpose of this chapter is to set out the requirements on *firms* to pay annual fees (through a *general levy* and *supplementary levy* invoiced and collected by the *FSA* on behalf of *FOS Ltd*) and case fees (invoiced and collected directly by *FOS Ltd*) in order to fund the operation of the *Financial Ombudsman Service*. This chapter also contains a requirement on *firms* to pay a *supplementary levy* towards the costs of establishing the *Financial Ombudsman Service*. It also provides for *unauthorised persons* to pay case fees to *FOS Ltd* in respect of any *relevant complaints* which it handles.
- 5.1.8 G This chapter also explains the way that the *Consumer Credit Jurisdiction* will be funded by a combination of contributions collected by the Office of Fair Trading which are paid to *FOS Ltd* and case fees invoiced and collected directly by *FOS Ltd* from *licensees*.

5.2 Introduction

- 5.2.1 G Paragraph 9 of Schedule 17 to the *Act* (The Ombudsman Scheme) requires *FOS Ltd* to adopt an *annual budget* which has been approved by the *FSA*. The *annual budget* must distinguish between the costs of operating the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* and the *Voluntary Jurisdiction*.
- 5.2.2 G Section 234 of the *Act* (Industry Funding) enables the *FSA* to require the payment to it or to *FOS Ltd*, by *firms* or any class of *firm*, of specified amounts (or amounts calculated in a specified way) to cover the costs of:
- (1) the *Financial Ombudsman Service*; and
 - (2) its operation in relation to the *Compulsory Jurisdiction*.
- 5.2.2A G Section 234A (1) of the *Act* (Funding by consumer credit licensees etc.) enables *FOS Ltd* from time to time and with the approval of the *FSA* to determine a sum which is to be raised by way of contributions under that section to cover the costs of:
- (1) the establishment of the *Financial Ombudsman Service* so far as it relates to the *Consumer Credit Jurisdiction*;
 - (2) its operation in relation to the *Consumer Credit Jurisdiction*; and

- (3) a component to cover the costs of collection of the contributions to that sum (“collection costs”).

- 5.2.2B G FOS Ltd must notify the Office of Fair Trading of every determination made under section 234A(1) and the Office of Fair Trading must give a general notice of every determination so notified. The Office of Fair Trading may by general notice impose requirements on
- (1) licensees under standard licences which cover to any extent the carrying on of a type of specified in an order made under section 226A(2)(e) of the Act; or
- (2) persons who make applications for:
- (a) standard licences covering to any extent business of such a type; or
- (b) the renewal of standard licences on terms covering to any extent the carrying on of a business of such a type;
- to pay contributions to the Office of Fair Trading for the purpose of raising sums determined by FOS Ltd in accordance with the provisions of section 234A (6) and (7) of the Act.
- 5.2.3 G Paragraph 15 of Schedule 17 to the *Act* enables *FOS Ltd* to require *firms* subject to the *Compulsory Jurisdiction* and any other respondents to a complaint to pay specified fees to it in respect of complaints closed by the *Financial Ombudsman Service*.
- 5.2.3A G Paragraph 16C of Schedule 17 to the *Act* enables *FOS Ltd* to require *licensees* subject to the *Consumer Credit Jurisdiction* and any other respondents to a complaint to pay specified fees to it in respect of complaints closed by the *Financial Ombudsman Service*.
- 5.2.4 G The *Ombudsman Transitional Order* provides for *unauthorised persons* to be charged fees in respect of any *relevant complaints* against them which the *Financial Ombudsman Service* handles.
- 5.2.5 G Paragraph 18 of Schedule 17 to the *Act* enables *FOS Ltd* to require *VJ participants* to pay to it such amounts at such times as it specifies in the *standard terms*.
- 5.2.6 G The relevant provisions of the rules in FEES 5 and FEES 2 will be applied to *VJ participants* through the *standard terms* made by *FOS Ltd* under paragraph 18 of Schedule 17 to the *Act* (see DISP4).
- 5.2.7 G This chapter sets out the framework for the funding arrangements of the *Financial Ombudsman Service*, including the method by which fees will be calculated. Details of the actual fees payable will vary from year to year, depending on the *annual budget* of the *Financial Ombudsman Service*. These details will be set out in an annex to this chapter (FEES 5 Annex I). A new annex will be prepared and consulted on for each *financial year*.

5.3 The general levy

- 5.3.1 G Each *financial year*, the *FSA* and *FOS Ltd* will consult on the amount of the annual budget of the *Financial Ombudsman Service* which is to be raised by the *general levy*.
- 5.3.2 G For the purposes of the *general levy*, a *firm* will fall into one or more of the *industry blocks* set out in FEES 5 Annex I depending on the business activities which it conducts.
- 5.3.3 G The *FSA* will determine, following consultation, the amount to be raised from each *industry block*. This will be based on the budgeted costs and numbers of *Financial Ombudsman Service* staff required to deal with the volume of complaints which the *Financial Ombudsman Service* expects to receive about the *firms* in each *industry block*. Modified arrangements have been made for certain types of small *firms* (see FEES 5.5.3R to FEES 5.5.5G).
- 5.3.4 G Part 2 of FEES 5 Annex I sets out the fee tariffs for each *industry block*.
- 5.3.5 G The *FSA* will specify a *minimum levy* for *firms* in each *industry block*.
- 5.3.6 R **A *firm* must pay to the *FSA* a *general levy* towards the costs of operating the *Compulsory Jurisdiction* of the *Financial Ombudsman Service*.**
- 5.3.7 G Under the *standard terms*, *VJ participants* will be required to pay to *FOS Ltd* an amount calculated on a similar basis towards the costs of operating the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*. *FOS Ltd* will be responsible for invoicing and collecting this amount.
- 5.3.8 R **A *firm's general levy* is calculated as follows:**
(1) identify each of the tariff bases set out in Part 2 of FEES 5 Annex I which apply to the *relevant business* of the *firm* for the relevant year;
(2) for each of those tariff bases, calculate the sum payable in relation to the *relevant business* for the *firm* for that year;
(3) add together the amounts calculated under (2).
- 5.3.9 R **For the purpose of FEES 5.3.6R and FEES 5.3.8R, a *member* of the *Society* of Lloyd's or a *managing agent* at Lloyd's will not in that capacity be treated as a *firm*. But the *Society* of Lloyd's will pay a *general levy* in respect of Lloyd's *insurance business* conducted with *eligible complainants*.**
- 5.3.10 R **For the purpose of FEES 5.3, references to *relevant business* for a *firm* which falls in *industry block* 16 or 17 and which so elects under Part 2 of FEES 5 Annex 1, are references to the *firm's* total amount of annual income reported in accordance with Part 2 of FEES 4.**

5.4 Information requirement

- 5.4.1 R **(1) A *firm* must provide the *FSA* by the end of February each year (or, if the *firm* has become subject to the *Financial***

Ombudsman Service part way through the *financial year*, by the date requested by the *FSA*) with a statement of the total amount of *relevant business* (measured in accordance with the appropriate tariff base(s)) which it conducted, as at or in the year to 31 December of the previous year as appropriate, in relation to the tariff base for each of the relevant *industry blocks* set out in part 2 of FEES 5 Annex I.

- (2) Paragraph (1) does not apply if the *firm* pays a *general levy* on a flat fee basis only.
- (3) If a *firm* cannot provide a statement of the total amount of *relevant business* as required by FEES 5.4.1R, it must provide the best estimate of the amount of *relevant business* that it conducted.
- (4) For the purpose of FEES 5.4.1R, references to *relevant business* for a *firm* which falls in *industry block* 16 or 17 and which so elects under part 2 of FEES 5 Annex I, are references to the *firm's* total amount of annual income reported in accordance with Part 2 of FEES 4 Annex 1R.
- (5) If a *firm* does not submit a complete statement by the date on which it is due in accordance with this *rule* and any prescribed submission procedures:
 - (a) the *firm* must pay an administrative fee of £250 (but not if it is already subject to an administrative fee under FEES 4 Annex 2R, Part 1 or FEES 6.5.16R for the same *financial year*); and
 - (b) the *general levy* and any supplemental levy will be calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10 (or, if a *firm* has become subject to the *Financial Ombudsman Service* part way through the *financial year*, on the basis of the information provided to *FSA* for the purposes of FEES 4.4.2R) or on any other reasonable basis, making such adjustments as seem appropriate in subsequent levies once the true figures are known.

- 5.4.2 G Failure to submit a statement in accordance with the *rules* in this chapter may also lead to the imposition of a financial penalty and other disciplinary sanctions (see ENF 13.5).
- 5.4.3 G SUP 16.3 (General provisions on reporting) contains further *rules* on the method of submission of reports under FEES 5.4.1R.
- 5.4.4 G A *firm* should not provide a statement of *relevant business* if it deals only with *eligible complainants* who are not private individuals. *Relevant business* is defined in the *Glossary* as business done with private individuals only. So FEES 5.4.1R does not apply in relation to business done with other types of *eligible complainant* described in DISP2.4.3R(1)(b), -(d); the funding of *FOS Ltd* in relation to that business is by special case fee only (see FEES 5.5.6R).

5.5 Case fees

Standard case fee

- 5.5.1 R ***A firm or licensee must pay to FOS Ltd the standard case fee specified in part 3 of FEES 5 Annex I in respect of each chargeable case relating to that firm or licensee which is closed by the Financial Ombudsman Service, unless a special case fee is payable or has been paid in respect of that case under FEES 5.5.6R to FEES 5.5.12R.***
- 5.5.2 G For the purposes of the *Compulsory Jurisdiction*, the standard case fee, which will be subject to consultation each year, will be calculated by dividing the *annual budget* for the *Compulsory Jurisdiction*, less the amount to be raised by the *general levy*, by the estimated number of *chargeable cases* which the *Financial Ombudsman Service* expects to close in the relevant *financial year*.
- 5.5.2A G For the purposes of the *Consumer Credit Jurisdiction*, the standard case fee, which will be subject to consultation each year, will be calculated by dividing the *annual budget* for the *Consumer Credit Jurisdiction*, less the amount to be raised by the sum determined by *FOS Ltd* under section 234A of the *Act*, by the estimated number of *chargeable cases* which the *Financial Ombudsman Service* expects to close in the relevant *financial year*.
- 5.5.3 R ***A credit union which is subject to the minimum levy in an industry block is not required to pay a standard case fee in respect of chargeable cases relating to that industry block.***
- 5.5.4 R ***Any firm falling to either industry block 13 or industry block 15 in part 2 of FEES 5 Annex I is not required to pay the standard case fee in respect of chargeable cases relating to those industry blocks.***
- 5.5.5 G The *firms* in *industry blocks* 13 and 15 are cash plan health providers and small *friendly societies*. These arrangements have been made in respect of these *firms* to take account of the fact that the amount at issue is likely to be small relative to the case fee. Instead, the full unit cost of handling complaints against these *firms* will be recovered through the *general levy* in accordance with the relevant tariff-base and no case fee will be payable. Similar arrangements have been made under FEES 5.5.3R in respect of small *credit unions*.

Special case fees: complaints from small businesses

- 5.5.6 R ***A firm must pay to FOS Ltd a special case fee, as specified in part 3 of FEES 5 Annex I in respect of each chargeable case relating to that firm closed by the Financial Ombudsman Service which was referred to the Financial Ombudsman Service by eligible complainants who fall within DISP2.4.3R(1)(b), (c) or (d).***

Special case fees: firms which cease to be authorised and persons which cease to be licensees

- 5.5.7 R ***A firm which ceases to be authorised must pay to FOS Ltd a special case fee, as specified in part 3 of FEES 5 Annex I, in respect of each chargeable case relating to that firm closed by the Financial***

Ombudsman Service which concerned an act or omission occurring when the *firm* was *authorised* and where the complaint was made after its *authorisation* ceased.

5.5.7A R DISP 5.5.7R applies to *persons* which cease to be *licensees* in the same way as it applies to *firms* which cease to be *authorised*.

Special case fees: relevant complaints against persons who were subject to a former scheme

5.5.8 R **An *unauthorised person* who is subject to the *Compulsory Jurisdiction* in relation to a *relevant complaint* must pay to *FOS Ltd* a special case fee as specified in part 3 of FEES 5 Annex I in respect of each *chargeable case* relating to that *unauthorised person* closed by the *Financial Ombudsman Service*.**

5.5.9 G Under the *Ombudsman Transitional Order*, *FOS Ltd* can handle complaints about *members* of a *former scheme* which that scheme could have handled before *commencement*, even if the *unauthorised person* concerned does not become *authorised* by the *FSA* after that date. Where *FOS Ltd* handles such complaints, the *unauthorised person* concerned will be required to pay a special case fee.

Special case fees for 2001/02

5.5.10 R **A *firm* which was a *member* of *PIA* before *commencement* must pay to *FOS Ltd* a special case fee, as specified in FEES 5 Annex I, in respect of each *chargeable case* relating to that *firm* received by the *Financial Ombudsman Service* after *commencement* and before 31 March 2002.**

5.5.11 R **FEES 5.5.10R does not apply in relation to a *chargeable case* which relates to a complaint which proceeded or would have proceeded under a *former scheme* other than the *PIAOB* scheme.**

5.5.12 R **A *firm* which was not a *member* of a *former scheme* before the *commencement day* must pay to *FOS Ltd* a special case fee, as specified in FEES 5 Annex I, in respect of each *chargeable case* which relates to business conducted by the *firm* after the *commencement day* and which is closed by the *Financial Ombudsman Service* before 31 March 2002.**

5.5.13 G The relevant provisions of FEES 5.5 will be applied to *VJ participants* through the *standard terms*.

5.5.14 G A *firm* which was, before *commencement*, a *member* of *PIA* and a *former scheme* other than the *PIAOB* scheme will not, on account of the exclusion in FEES 5.5.11R, be required to pay the special case fee specified by FEES 5.5.10R in respect of all *chargeable cases* relating to it but only those which arise in respect of investment business matters which would have been eligible under the *PIAOB* scheme.

Case fee exemption

- 5.5.15 R **Notwithstanding the above, a *firm or licensee* will only be liable for, and *FOS* will only invoice for, the standard case fee or, as the case may be, the special case fee, in respect of the third and subsequent chargeable cases in any financial year.**
- 5.5.16 G A case fee exemption provision was first applied in the financial year 1 April 2004 to 31 March 2005. For this financial year only each authorised firm was invoiced for a standard case fee for only the third and subsequent chargeable case received by the *Financial Ombudsman Service*, subject to the annual levy having been invoiced and paid within the *Financial Ombudsman Service's* normal credit terms. For the financial year commencing 1 April 2005 and for subsequent financial years the case fee exemption provision contained in FEES 5.5.15R applies. This provision is not retrospectively applicable to financial years prior to 1 April 2005.

5.6 The supplementary levy

- 5.6.1 G For the purposes of calculating the *supplementary levy*, the *FSA* will apportion the *establishment costs* between the *industry blocks* in the same proportions as the operating costs for the purposes of the *general levy*. The *supplementary levy* will therefore be raised from *firms* on the same basis and at the same time as the *general levy* (see part 2 of FEES 5 Annex I).
- 5.6.2 G The *establishment costs* will be recovered via the *supplementary levy* over the first three full *financial years* of the *Financial Ombudsman Service's* operation.
- 5.6.3 G The amount of *establishment costs* to be raised each year through the *supplementary levy* will be specified in part 2 of FEES 5 Annex I.
- 5.6.4 G The *supplementary levy* will be identified separately from the *general levy* for the purposes of invoicing *firms* and *VJ participants*.
- 5.6.5 R **A firm must pay to the *FSA* a *supplementary levy* towards the costs of establishing the *Financial Ombudsman Service*.**
- 5.6.6 R **A firm's *supplementary levy* is a sum payable in accordance with the fee tariffs set out in part 2 of FEES 5 Annex I and will be calculated by following the steps set out in FEES 5.3.8R.**
- 5.6.7 G Under the *standard terms*, *VJ participants* will also be required to pay an amount calculated on a similar basis towards the costs of establishing the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.

5.7 Payment

- 5.7.1 R **A firm must pay annually to the *FSA* the *general levy* and any *supplementary levy* to which it is subject, on or before the later of 1 April and 30 calendar days after the date when the invoice is issued by the *FSA*.**

- 5.7.2 R ***A firm or licensee must pay to FOS Ltd any standard case fee or special case fee which it is liable to pay under FEES 5.5.1R, FEES 5.5.6R, FEES 5.5.7R, FEES 5.5.8R, FEES 5.5.10R, or FEES 5.5.12R, as appropriate, in respect of chargeable cases for which it is invoiced by FOS Ltd within 30 calendar days of the date when the invoice is issued by FOS Ltd.***
- 5.7.3 R ***A firm or unauthorised person who is subject to the Compulsory Jurisdiction in relation to a relevant complaint must pay any standard case fee or special case fee within 30 calendar days of the date when the invoice is issued by FOS Ltd.***
- 5.7.4 R ***A firm liable to pay fees under FEES 5.7.1R must do so using one of the methods set out in FEES 4.2.4R save that no additional amount or discount is applicable.***
- 5.8 Joining the Financial Ombudsman Service**
- 5.8.1 R ***A firm which becomes subject to the Financial Ombudsman Service part way through a financial year must pay a rateable proportion of the general levy and the supplementary levy as indicated in Table FEES 4.2.6R, as if that table applied to the quarter in which a firm becomes subject to the Financial Ombudsman Service.***
- 5.9 Leaving the Financial Ombudsman Service**
- 5.9.1 R ***Where a firm ceases to be authorised part way through a financial year:***
- (1) ***it will remain liable to pay standard case fees in respect of chargeable cases against it closed by the Financial Ombudsman Service for the remainder of that financial year; and***
- (2) ***it must pay the special case fee specified under FEES 5.5.7R in respect of any other chargeable cases against it closed by the Financial Ombudsman Service.***
- 5.9.1A R ***DISP 5.9.1R applies to persons ceasing to be licensees part way through a financial year in the same way as it applies to firms which cease to be authorised.***
- 5.9.2 G ***Firms which cease to be authorised and therefore subject to the Compulsory Jurisdiction part way through the year will not receive a refund of their general levy (or supplementary levy) except in exceptional circumstances. Firms will continue to be liable for any case fees relating to chargeable cases closed by the Financial Ombudsman Service after they cease to be authorised. Firms will be charged the standard case fee where the complaint was closed by the Financial Ombudsman Service before the end of the year in which their authorisation ceased. The special case fee will apply to any complaint closed after the end of that year since the firm will no longer be contributing to the general levy.***
- 5.9.3 G ***Licensees will also continue to be liable for any case fees relating to chargeable cases closed by the Financial Ombudsman Service after they***

cease to be licensees. Licensees will be charged the standard case fee where the complaint was closed by the Financial Ombudsman Service before the end of the year in which they ceased to be licensees. The special case fee will apply to any complaint closed after the end of that year since the licensee will no longer be contributing to any sum determined under section 234A of the Act.

FEES 5 ANNEX 1

Introduction: annual budget	
1.	The <i>annual budget</i> for 2006/07 approved by the <i>FSA</i> is £59.2 m.
Part 1: General levy and supplementary levy	
2.	The total amount expected to be raised through the <i>general levy</i> in 2006/07 will be £15.8 m.
Part 2: Fee tariffs for general levy and supplementary levy	
3.	No <i>establishment costs</i> will be raised in 2006/07 by the <i>supplementary levy</i> .

Industry block	Tariff base	General levy payable by firm
1-Deposit acceptors, <i>mortgage lenders</i> and <i>administrators</i> (excluding <i>firms</i> in block 14)	Number of accounts relevant to the activities in DISP 2.6.1 R	£0.0059 per relevant account, subject to a minimum levy of £100
2-Insurers – general (excluding <i>firms</i> in blocks 13 & 15)	Relevant annual gross premium income	£0.055 per £1,000 of relevant annual gross premium income, subject to a minimum levy of £100
3-The <i>Society</i> (of Lloyd's)	Not applicable	£28,000 to be allocated by the <i>Society</i>
4-Insurers – life (excluding <i>firms</i> in block 15)	Relevant adjusted annual gross premium income	£0.124 per £1,000 of relevant adjusted annual gross premium income, subject to a minimum levy of £100
5-Fund managers (including those holding <i>client money/assets</i> and not holding <i>client money/assets</i>)	Relevant funds under management	£0.0007 per £1,000 of relevant funds under management, subject to a minimum levy of £100
6- <i>Operators, trustees</i> and <i>depositories</i> of <i>collective investment schemes</i>	Flat fee	Levy of £75
7-Dealers as principal	Flat fee	Levy of £50

Industry block	Tariff base	General levy payable by firm
8-Advisory <i>arrangers</i> , dealers or brokers holding and controlling <i>client money</i> and/or assets	Number of relevant <i>approved persons</i> (<i>controlled functions</i> 21, 22, 24, 25, 26)	£160 per relevant <i>approved person</i> (<i>controlled functions</i> 21, 22, 24, 25, 26), subject to a minimum levy of £160
9-Advisory <i>arrangers</i> , dealers or brokers not holding and controlling <i>client money</i> and/or assets	Number of relevant <i>approved persons</i> (<i>controlled functions</i> 21, 22, 24, 25, 26)	£45 per relevant <i>approved person</i> (<i>controlled functions</i> 21, 22, 24, 25, 26), subject to a minimum levy of £50
10-Corporate finance advisers	Flat fee	Levy of £50
11-	N/A for 2006/07	
12-	N/A for 2006/07	
13-Cash plan health providers	Flat fee	Levy of £50
14- <i>Credit unions</i>	Flat fee	Levy of £50
15- <i>Friendly societies</i> whose tax-exempt business represents 95% or more of their total relevant business	Flat fee	Levy of £50
16 - Mortgage lenders, advisers and <i>arrangers</i> (excluding <i>firms</i> in blocks 13, 14 & 15)	Flat fee	Levy of £50
17 - General insurance mediation (excluding <i>firms</i> in blocks 13, 14 & 15)	Flat fee	Levy of £50

Part 3: Case fees

Table: Standard case fees and special case fees

Compulsory and Consumer Credit jurisdiction - case fee table		
case fee		
standard case fee	£360	(for the third chargeable complaint and any subsequent chargeable complaint in any financial year)
special case fee	£475	(for the third chargeable complaint and any subsequent chargeable complaint in any financial year)

Compulsory and Consumer Credit jurisdiction - case fee table

The definitions of standard case fee and special case fee are in [FEES 5.5](#), replacing DISP 5.6 (case fees), in the *FSA Handbook*.

The definition of a *chargeable case* is in the Glossary to the *FSA Handbook*

Part 4: VJ participants

Table: Fee tariffs and case fees for VJ participants

Voluntary jurisdiction - general levy tariff and case fee table					
industry block and business activity		tariff basis	tariff rate	minimum levy	case fee*
1V	deposit acceptors, <i>mortgage lenders</i> and <i>administrators</i> , including debit/charge card issuers	number of relevant accounts	£0.0042	£100	£360
2V	<i>firms</i> undertaking insurance activities subject only to prudential regulation	per £1,000 of relevant annual gross premium income	£0.052	£100	£360
3V	<i>firms</i> undertaking insurance activities subject to prudential and conduct of business regulation	Per £1,000 of relevant adjusted annual gross premium income	£0.12	£100	£360
6V	Intermediaries	n/a	n/a	£50	£360
8V	National Savings	n/a	n/a	£10,000	£360
9V	Persons undertaking consumer credit act activities	n/a	n/a		
<p>note on case fees As for the compulsory jurisdiction, <i>firms</i> will only be charged for the third and subsequent chargeable case in any financial year.</p>					

	HANDBOOK GLOSSARY
TERM	DEFINITION
chargeable case	<p>any complaint referred to the <i>Financial Ombudsman Service</i>, except where:</p> <p>(a) the <i>Ombudsman</i> considers it apparent from the complaint, when it is received, and from any <i>final response</i> which has been issued by the <i>firm</i> or <i>licensee</i>, that the complaint should not proceed because:</p>

	<p>i. the complainant is not an <i>eligible complainant</i> in accordance with DISP 2; or</p> <p>ii. the complaint does not fall within the jurisdiction of the <i>Financial Ombudsman Service</i> (as described in DISP 2); or</p> <p>iii. the <i>Ombudsman</i> considers that the complaint should be dismissed without consideration of its merits under DISP 3.3 (Dismissal of complaints without consideration of the merits); or</p> <p>(b) the <i>Ombudsman</i> considers, at any stage, that the complaint should be dismissed under DISP 3.3.1R(2) on the grounds that it is frivolous or vexatious.</p>
<u>consumer credit activity</u>	<p><u>(in accordance with section 226A of the Act)</u></p> <p><u>any one of the following activities carried on by a licensee or firm:</u></p> <p><u>(i) providing credit or being a creditor under a regulated consumer credit agreement;</u></p> <p><u>(ii) the bailment or (in Scotland) the hiring of goods or being an owner under a regulated consumer hire agreement;</u></p> <p><u>(iii) credit brokerage;</u></p> <p><u>(iv) debt-adjusting;</u></p> <p><u>(v) debt-counselling;</u></p> <p><u>(vi) debt-collecting;</u></p> <p><u>(vii) debt administration;</u></p> <p><u>(viii) the provision of credit information services; or</u></p> <p><u>(ix) the operation of a credit reference agency;</u></p> <p><u>where at the time of the act or omission complained of:</u></p> <p><u>(a) the licensee or firm was:</u></p> <p><u>(i) covered by a standard licence under the Consumer Credit Act 1974 (as amended); or</u></p> <p><u>(ii) authorised to carry on an activity by virtue of section 34(a) of that Act; and</u></p> <p><u>(b) the activity was carried on in the course of a business of a type specified in accordance with section 226A(2)(e) of the Act;</u></p> <p><u>and expressions used in the Consumer Credit Act 1974 (as amended) have the same meaning in this definition as they have in that Act.</u></p>
<u>Consumer Credit Jurisdiction</u>	<p>the jurisdiction of the <i>Financial Ombudsman Service</i> resulting from section 226A of the <i>Act</i> which applies to <i>licensees</i>.</p>
<u>licensee</u>	<p>(1) (in DISP 2 – 4 and FEES 5) a <i>person</i> who is not a <i>firm</i>:</p> <p>(a) covered by a standard licence under the Consumer Credit Act 1974 (as amended); or</p>

	<p>(b) <u>authorised to carry on an activity by virtue of section 34(a) of that Act.</u></p> <p>(2) (in DISP 1) a person within (1)(a) above.</p> <p><u>Expressions used in that Act have the same meaning in this definition.</u></p>
<u>regulated consumer credit agreement</u>	<p><u>in accordance with section 8 of the Consumer Credit Act 1974 (as amended) an agreement between an individual "the debtor" and any other person "the creditor" by which the creditor provides the debtor with credit of any amount and which is not an exempt agreement for the purposes of that Act.</u></p> <p><u>Expressions used in that Act have the same meaning in this definition.</u></p>
<u>regulated consumer hire agreement</u>	<p><u>in accordance with section 15 of the Consumer Credit Act 1974 (as amended) an agreement made by a person with an individual "the hirer" for the bailment or (in Scotland) the hiring of goods to the hirer, being an agreement which</u></p> <p><u>(a) is not a hire-purchase agreement, and</u></p> <p><u>(b) is capable of subsisting for more than three months, and</u></p> <p><u>(c) is not an exempt agreement.</u></p> <p><u>Expressions used in that Act have the same meaning in this definition.</u></p>