

Annex B

Consumer Credit Rules from 6 April 2007

The rules will be available on the internet from 6 April 2007 in the 'Dispute Resolution: Complaints' (DISP) module of the electronic FSA handbook. The extract below shows how the provisions relating to the CCJ will appear. In this extract:

- [...] indicates omission of text which does not apply to the CCJ
- 'R' indicates a rule.
- 'G' indicates guidance.
- Words in *italics* are defined in the glossary to the FSA handbook.
- '*Firms*' means FSA-regulated firms, including those with consumer credit licences.
- '*Licensees*' means businesses with consumer credit standard licences but which are not FSA-regulated *firms*.
- Clauses amended significantly since the consultation paper are underlined.

The DISP module of the FSA handbook is at <http://fsahandbook.info/FSA/html/handbook/DISP>

The glossary is at <http://fsahandbook.info/FSA/html/handbook/Glossary>

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 *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 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 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*.

[...]

DISP 1

1.1 Application and Purpose

Application

[...]

- 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 1.1.1E G 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. *Licensees 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 or to provide the Office of Fair Trading with any information it may require.*
- 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.
- 1.1.1E G This power is intended to deal with exceptional circumstances, for example, where it is impossible for a *licensee* to meet the specified time limits, and any dispensation or modification is likely to be rare.
- 1.1.2 G This chapter is also relevant to those who might wish to refer a complaint to the *Financial Ombudsman Service*.
- [...]
- 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.
- [...]
- 1.2.2 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 [...]
- 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.

[...]

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 or 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 [...] and cooperation with the *Ombudsman*, for handling 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* following 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*.

[...]

- 1.3.5 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* [...]

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.

[...]

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 eight 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*.

[...]

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.

[...]

1.6 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 [...]
- 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 [...]

- 2.2.1 G The following conditions will need to be satisfied before a 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) [...]
 - (b) [...]
 - (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.

[...]

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 [...].
- (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.

[...]

- 2.3.3 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).

[...]

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) [...]
 - (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, 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 operating a credit reference agency as defined by section 145(8) 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*.

[...]

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*.

[...]

2.6 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.

[...]

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 of 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 which would be *consumer credit activities* if they were carried on 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).

[...]

- 2.6.12 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.

[...]

2.7 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*.
- [...]
- 2.7.4A 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*, 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*.
- [...]
- 3.1.4 R Except as otherwise specified, references in this chapter to a “complaint” include:
- (1) [...]
 - (2) part of a complaint [...]
- 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.

[...]

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).
- [...]
- 3.2.3 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:

- (1) 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.

[...]

3.3.3 G For the purposes of DISP 3.3.1R (4), offers of compensation include ex gratia payments.

[...]

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.

[...]

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.

[...]

Limits on money awards

- 3.9.5 R The maximum money award which 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* [...] (including any interest payable by order of [...] 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.

[...]

DISP 4

[...]

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* [...]

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.

[...]

Purpose

[...]

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*.

[...]

5.2.2A 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 business 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*.

[...]

5.2.3A 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*.

[...]

5.2.7 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*.

[...]

5.5 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.

[...]

5.5.2A 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*.

[...]

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 FEES 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*.

[...]

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*.

[...]

5.7 Payment

[...]

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*.

[...]

5.9 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 FEES 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

[...]

Part 3A: Case fees - *licensees*

Table: Standard case fees and special case fees

Consumer Credit jurisdiction – case fee table		
case fee		
standard case fee	£400	(for the third chargeable complaint and any subsequent chargeable complaint in any financial year)
special case fee	£400	(for the third chargeable complaint and any subsequent chargeable complaint in any financial year)
The definitions of standard case fee and special case fee are in FEES 5.5, replacing DISP 5.6 (case fees), in the <i>FSA Handbook</i> .		
The definition of a <i>chargeable case</i> is in the Glossary to the <i>FSA Handbook</i>		

[...]

GLOSSARY

Term	Definition
chargeable case	any complaint referred to the <i>Financial Ombudsman Service</i> , except where: <ol style="list-style-type: none"> (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: <ol style="list-style-type: none"> i. the complainant is not an <i>eligible complainant</i> in accordance with DISP 2; or ii. the complaint does not fall within the jurisdiction of the <i>Financial Ombudsman Service</i> (as described in DISP 2); or iii. the <i>Ombudsman</i> considers that the complaint should be dismissed without consideration of its merits under DISP 3.3 (Dismissal of

	<p>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>
consumer credit activity	<p><u>any one of the following activities carried on by a licensee or firm:</u></p> <p>(a) <u>providing credit or otherwise being a creditor under a <i>regulated consumer credit agreement</i>.</u></p> <p>(b) <u>the bailment or (in Scotland) the hiring of goods or otherwise being an owner under a <i>regulated consumer hire agreement</i>.</u></p> <p>(c) <u>credit brokerage in so far as it is the effecting of introductions of:</u></p> <p>(i) <u>individuals desiring to obtain credit to persons carrying on a consumer credit business; or</u></p> <p>(ii) <u>individuals desiring to obtain goods on hire to persons carrying on a consumer hire business;</u></p> <p>(d) <u>In so far as they relate to <i>regulated consumer credit agreements</i> or <i>regulated consumer hire agreements</i>:</u></p> <p>(i) <u>debt-adjusting;</u></p> <p>(ii) <u>debt-counselling;</u></p> <p>(iii) <u>debt-collecting; or</u></p> <p>(iv) <u>debt administration;</u></p> <p>(e) <u>the provision of credit information services; or</u></p> <p>(f) <u>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>(g) <u>where the <i>licensee</i> or <i>firm</i> was:</u></p> <p>(i) <u>covered by a standard licence under the Consumer Credit Act 1974 (as amended); or</u></p> <p>(ii) <u>authorised to carry on an activity by virtue of section 34(a) of that Act; and</u></p> <p>(h) <u>the activity was carried on in the course of a business of a type specified in accordance with section 226A(2)(e) of the <i>Act</i>.</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>
Consumer Credit Jurisdiction	<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>
licensee	<p>(1) (in DISP 2 – 4 and FEES 5) a <i>person</i> who is not a <i>firm</i> and is:</p> <p>(a) covered by a standard licence under the Consumer Credit Act 1974 (as amended); or</p> <p>(b) authorised to carry on an activity by virtue of section 34(a) of that Act.</p> <p>(2) (in DISP 1) a person within (1)(a) above.</p> <p>Expressions used in that Act have the same meaning in this definition.</p>

regulated consumer credit agreement	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; and expressions used in that Act have the same meaning in this definition.
regulated consumer hire agreement	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 (a) is not a hire-purchase agreement, and (b) is capable of subsisting for more than three months, and (c) is not an exempt agreement; and expressions used in that Act have the same meaning in this definition.