

consultation

amendments to rules

(complaints handling supplementary instrument 2015)

July 2015

index

1. introduction
2. background
3. proposed amendments

annex

A. Draft rules instrument – Complaints Handling Supplementary Instrument 2015

responses

We welcome your feedback on these amendments to our scheme rules and standard terms.

Please send your views and comments – to reach us by 5pm on 20 July 2015 – to

jessica.hocking@financial-ombudsman.org.uk

Or write to:

Jessica Hocking
Policy team – consultation responses
Financial Ombudsman Service
PO Box 69989
London
E14 1PR

We may want to publish the responses we receive to this consultation paper. In the interests of transparency, we encourage non-confidential responses.

If you do send us a confidential response, it would be helpful if you could tell us why you consider the information confidential. We cannot guarantee that confidentiality can always be maintained. We will not regard an automatic confidentiality disclaimer generated by your IT system, of itself, as binding.

We are subject to the Freedom of Information Act 2000, so information provided in response to this consultation may be subject to publication, disclosure or release to other parties.

introduction

This consultation sets out the amendments that we propose to make to our scheme rules, affecting businesses subject to our Compulsory Jurisdiction and Voluntary Jurisdiction, and to our standard terms affecting businesses subject to our Voluntary Jurisdiction in Dispute Resolution: Complaints sourcebook (DISP) and Glossary of the Financial Conduct Authority Handbook. The instrument in Annex A also includes changes which we jointly consulted on with the Financial Conduct Authority in December 2014.

background – consumer redress schemes

The *Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015* amended section 404B of the *Financial Services and Markets Act 2000* (also reflected in changes to DISP 3.6.5A G) to allow businesses and consumers to agree that complaints subject to a consumer redress scheme can be dealt with by the ombudsman, by reference to what is fair and reasonable rather than in accordance with the scheme rules.

Where this is not agreed, the complaint will be dealt with in accordance with the consumer redress scheme and will be a “relevant complaint” within the meaning of section 404B(3) of FSMA. This paper proposes minor consequential amendments to references to ‘consumer redress scheme’ complaints in DISP 3 to reflect this change.

background – complaint handling procedures relating to jurisdiction

Part 2 of DISP dictates the scope of our compulsory jurisdiction. The Financial Conduct Authority has recently made a rule change to DISP 2.8.1R which will come into force on 30 June 2016. The effect of this rule change is that we may be able to consider a complaint where the complainant has received a *summary resolution communication* from the respondent. This paper proposes a minor consequential amendment to our procedural rules relating to jurisdiction to take account of this change in DISP 3.2.2R, to ensure consistency across the rules.

proposed amendments – consumer redress schemes

We propose to make the following changes to DISP 3:

3.6 Determination by the Ombudsman

Fair and reasonable

- 3.6.2 G Section 228 of the *Act* sets the 'fair and reasonable' test for the *Compulsory Jurisdiction* (other than in relation to “relevant complaints” within the meaning of section 404B(3) of the *Act* ~~consumer redress schemes~~) and DISP 3.6.1 R extends it to the *Voluntary Jurisdiction*.

...

3.7 Awards by the Ombudsman

Money awards

3.7.2 R Except in relation to a “relevant complaint” within the meaning of section 404B(3) of the ~~Act complaint the subject matter of which falls to be dealt with (or has properly been dealt with) under a consumer redress scheme~~, a money award may be such amount as the *Ombudsman* considers to be fair compensation for one or more of the following:

- (1) financial loss (including consequential or prospective loss); or
- (2) pain and suffering; or
- (3) damage to reputation; or
- (4) distress or inconvenience;

whether or not a court would award compensation.

3.7.2A G In relation to a “relevant complaint” within the meaning of section 404B(3) of the ~~Act complaint the subject matter of which falls to be dealt with (or has properly been dealt with) under a consumer redress scheme~~, a money award is a payment of such amount as the *Ombudsman* determines that a *respondent* should make (or should have made) to a complainant under the scheme.

...

3.7.4A G The effect of section 404B(5) of the *Act* is that the maximum award which the *Ombudsman* may make also applies in relation to a “relevant complaint” within the meaning of section 404B(3) of the ~~Act complaint the subject matter of which falls to be dealt with (or has properly been dealt with) under a consumer redress scheme~~.

...

3.7.6 G If the *Ombudsman* considers that fair compensation requires payment of a larger amount, he may recommend that the *respondent* pays the complainant the balance. The effect of section 404B(6) of the *Act* is that this is also the case in relation to a “relevant complaint” within the meaning of section 404B(3) of the ~~Act complaint the subject matter of which falls to be dealt with (or has properly been dealt with) under a consumer redress scheme~~.

...

Interest awards

3.7.8 R Except in relation to a “relevant complaint” within the meaning of section 404B(3) of the ~~Act complaint the subject matter of which falls to be dealt with (or has properly been dealt with) under a consumer redress scheme~~, an interest award may provide for the amount payable under the money award to bear interest at a rate and as from a date specified in the award.

...

Directions

- 3.7.11 R Except in relation to a “relevant complaint” within the meaning of section 404B(3) of the *Act* ~~complaint the subject matter of which falls to be dealt with (or has properly been dealt with) under a consumer redress scheme~~, a direction may require the *respondent* to 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).
- 3.7.11A G In relation to a “relevant complaint” within the meaning of section 404B(3) of the *Act* ~~complaint the subject matter of which falls to be dealt with (or has properly been dealt with) under a consumer redress scheme~~, a direction may require the *respondent* to take such action as the *Ombudsman* determines the *respondent* should take (or should have taken) under the scheme.

...

Annex A contains the draft rules instrument to implement this proposal.

proposed amendments – complaint handling procedures relating to jurisdiction

We propose to make the following changes to DISP 3.2.2R:

- 3.2.2 R Unless the *respondent* has already had eight weeks to consider the *complaint* or issued a *final response or summary resolution communication*, the *Ombudsman* will refer the *complaint* to the *respondent* (except where DISP 2.8.1R(4) applies).

Annex A contains the draft rules instrument to implement this proposal.

COMPLAINTS HANDLING SUPPLEMENTARY INSTRUMENT 2015

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes and amends:
- (i) rules relating to the complaint handling procedures of the Financial Ombudsman Service; and
 - (ii) the standard terms for Voluntary Jurisdiction participants;
- as set out in Annexes A, B and C in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary Jurisdiction);
 - (2) paragraph 8 of Schedule 17 (Information, advice and guidance);
 - (3) paragraph 14 (The scheme’s operator’s rules) of Schedule 17;
 - (4) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
 - (5) paragraph 22 (Consultation) of Schedule 17.
- B. The making (and amendment) of rules and standard terms in Annexes A, B and C by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority.

Commencement

- C. (1) Part 2 of Annex B (DISP) and Parts 4 and 7 of Annex C (DISP) of this instrument come into force on 31 July 2015.
- (2) Part 1 of Annex C (DISP) of this instrument comes into force on 1 October 2015.
- (3) Part 2 of Annex C (DISP) of this instrument come into force on 26 October 2015.
- (4) Annex A (Glossary), Part 1 of Annex B (DISP) and Parts 3, 5 and 6 of Annex C (DISP) of this instrument come into force on 30 June 2016.

Amendments to the FCA Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with Annex B to this instrument.

F. The amendments to the Dispute Resolution: Complaints sourcebook (DISP) made by the Financial Ombudsman Service Limited in relation to the voluntary jurisdiction and set out in Annex C, were made by the Financial Conduct Authority in relation to the compulsory jurisdiction in the Complaints Handling and Call Charges Instrument 2015 (FCA 2015/39).

Citation

G. This instrument may be cited as the Complaints Handling Supplementary Instrument 2015.

By order of the Board of the Financial Ombudsman Service
21 July 2015

Consented to, and approved by, the Board of the Financial Conduct Authority
30 July 2015

Annex A

Amendments to the Glossary of definitions

In this annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

chargeable case any complaint referred to the *Financial Ombudsman Service*, except where:

(a) the *Ombudsman* considers it apparent from the *complaint*, when it is received, and from any *final response*, *summary resolution communication* or *redress determination* which has been issued by the *firm* or *licensee*, that the *complaint* should not proceed because:

(i) ...

...

Annex B

Amendments to the Dispute Resolution: Complaints sourcebook (DISP) made by the Financial Ombudsman Service Limited

In this annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Part 1: comes into force on 30 June 2016

3 Complaint handling procedures of the Financial Ombudsman Service

...

3.2 Jurisdiction

...

3.2.2 R Unless the *respondent* has already had eight weeks to consider the *complaint* or issued a *final response or summary resolution communication*, the *Ombudsman* will refer the *complaint* to the *respondent* (except where *DISP2.8.1R(4)* applies).

...

Part 2: comes into force on 31 July 2015

3.6 Determination by the Ombudsman

Fair and reasonable

...

3.6.2 G Section 228 of the *Act* sets the 'fair and reasonable' test for the *Compulsory Jurisdiction* (other than in relation to a "relevant complaint" within the meaning of section 404B(3) of the *Act consumer redress schemes*) and *DISP3.6.1 R* extends it to the *Voluntary Jurisdiction*.

...

3.7 Awards by the Ombudsman

Money awards

3.7.2 R Except in relation to a "relevant complaint" within the meaning of section 404B(3) of the *Act complaint* the subject matter of which falls to be dealt

~~with (or has properly been dealt with) under a consumer redress scheme,~~ a money award may be such amount as the *Ombudsman* considers to be fair compensation for one or more of the following:

- (1) financial loss (including consequential or prospective loss); or
- (2) pain and suffering; or
- (3) damage to reputation; or
- (4) distress or inconvenience;

whether or not a court would award compensation.

3.7.2A G In relation to a “relevant complaint” within the meaning of section 404B(3) of the *Act* ~~complaint the subject matter of which falls to be dealt with (or has properly been dealt with) under a consumer redress scheme,~~ a money award is a payment of such amount as the *Ombudsman* determines that a *respondent* should make (or should have made) to a complainant under the scheme.

...

3.7.4A G The effect of section 404B(5) of the *Act* is that the maximum award which the *Ombudsman* may make also applies in relation to a “relevant complaint” within the meaning of section 404B(3) of the *Act* ~~complaint the subject matter of which falls to be dealt with (or has properly been dealt with) under a consumer redress scheme.~~

...

3.7.6 G If the *Ombudsman* considers that fair compensation requires payment of a larger amount, he may recommend that the *respondent* pays the complainant the balance. The effect of section 404B(6) of the *Act* is that this is also the case in relation to a “relevant complaint” within the meaning of section 404B(3) of the *Act* ~~complaint the subject matter of which falls to be dealt with (or has properly been dealt with) under a consumer redress scheme.~~

...

Interest awards

3.7.8 R Except in relation to a “relevant complaint” within the meaning of section 404B(3) of the *Act* ~~complaint the subject matter of which falls to be dealt with (or has properly been dealt with) under a consumer redress scheme,~~ an interest award may provide for the amount payable under the money award to bear interest at a rate and as from a date specified in the award.

...

Directions

3.7.11 R Except in relation to a “relevant complaint” within the meaning of section 404B(3) of the *Act* ~~complaint the subject matter of which falls to be dealt with (or has properly been dealt with) under a consumer redress scheme~~, a direction may require the *respondent* to 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).

3.7.11A G In relation to a “relevant complaint” within the meaning of section 404B(3) of the *Act* ~~complaint the subject matter of which falls to be dealt with (or has properly been dealt with) under a consumer redress scheme~~, a direction may require the *respondent* to take such action as the *Ombudsman* determines the *respondent* should take (or should have taken) under the scheme.

...

Annex C

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

The provisions made in this Annex are made by the Financial Ombudsman Service Limited in relation to the voluntary jurisdiction and were made by the Financial Conduct Authority in relation to the compulsory jurisdiction in the Complaints Handling and Call Charges Instrument 2015 (FCA 2015/39).

In this annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Part 1: comes into force on 1 October 2015

1 Treating complainants fairly

...

1.2 Consumer awareness rules

Publishing and providing summary details, and information about the Financial Ombudsman Service

1.2.1 R To aid consumer awareness of the protections offered by the provisions in this chapter, *respondents* must:

...

[Note: article 15 of the *UCITS Directive*, article 13(2) of the *ADR Directive*, and article 14(1) of the *ODR Regulation*, and regulation 19 of the *ADR Regulations*.]

...

Part 2: comes into force on 26 October 2015

1.3 Complaints handling rules

...

- 1.3.1AA R Where a *respondent* operates a telephone line for the purpose of enabling an *eligible complainant* to submit a *complaint*, the complainant must not be bound to pay more than the basic rate when contacting the *respondent* by telephone.
- 1.3.1AB R For the purposes of *DISP1.3.1AAR* the basic rate is the simple cost of connection and must not provide the *respondent* with a contribution to its costs or revenues.
- 1.3.1AC R The following numbers, if used by a *respondent*, would comply with *DISP1.3.1ABR*:
- (1) geographic numbers or numbers which are always set at the same rate, which usually begin with the prefix 01, 02 or 03;
 - (2) calls which can be free of charge to call, for example 0800 and 0808 numbers; and
 - (3) standard mobile numbers, which usually begin with the prefix 07, provided that the *respondent* ordinarily uses a mobile number to receive telephone calls.
- 1.3.1AD R The following numbers, if used by a *respondent*, would not comply with *DISP1.3.1ABR*:
- (1) premium rate numbers that begin with the prefix 09;
 - (2) other revenue sharing numbers in which a portion of the call charge can be used to either provide a service or make a small payment to the *respondent*, such as telephone numbers that begin with the prefix 084 or 0871, 0872 or 0873; and
 - (3) telephone numbers that begin with the prefix 0870, as the cost of making a telephone call on such numbers can be higher than a geographic cost and will vary depending on the *eligible complainant's* telephone tariff.

...

Part 3: comes into force on 30 June 2016

1.5 Complaints resolved by close of the next third business day

- 1.5.1 R The following *rules* do not apply to a *complaint* that is resolved by a *respondent* by close of business on the third business day following its receipt the day on which it is received:
- (1) the *complaints time limit rules* (except *DISP1.6.1R(1)* (Keeping the complainant informed); and
 - (2) the complaints forwarding *rules*;
 - (3) the *complaints reporting rules*;
 - (4) the *complaints record rule*, if the *complaint* does not relate to *MiFID business or collective portfolio management services for a UCITS scheme or an EEA UCITS scheme*; and
 - (5) the *complaints data publication rules*.

- 1.5.2 G *Complaints* falling within this section are still subject to the *complaint complaints resolution rules*.

When a complaint is resolved

- 1.5.2A R A *complaint* is resolved where the complainant has indicated acceptance of a response from the *respondent*, with neither the response nor acceptance having to be in writing.
- 1.5.3 G For the purposes of this section:
- (1) a *complaint* received on any day other than a *business day*, or after close of business on a *business day*, may be treated as received on the next business day; and
 - (2) a *complaint* is resolved where the complainant has indicated acceptance of a response from the *respondent*, with neither the response nor acceptance having to be in writing [deleted]

Summary resolution communication

- 1.5.4 R Where the *respondent* considers a *complaint* to be resolved under this section, the *respondent* must send the complainant a ‘summary resolution communication’, being a written communication from the *respondent* which:

- (1) refers to the fact that the complainant has made a *complaint* and informs the complainant that the *respondent* now considers the *complaint* to have been resolved;
- (2) tells the complainant that if he subsequently decides that he is dissatisfied with the resolution of the *complaint* he may be able to refer the *complaint* to the *Financial Ombudsman Service*;
- (3) indicates whether or not the *respondent* consents to waive the relevant time limits in *DISP2.8.2R* or *DISP2.8.7R* (Was the *complaint* referred to the *Financial Ombudsman Service* in time?) by including the appropriate wording set out in *DISP1 Annex 3R*;
- (4) provides the website address of the *Financial Ombudsman Service*; and
- (5) refers to the availability of further information on the website of the *Financial Ombudsman Service*.

[**Note:** article 13 of the *ADR Directive*]

- | | |
|--------------|--|
| <u>1.5.5</u> | <u>G</u> The information regarding the <i>Financial Ombudsman Service</i> required to be provided in a <i>summary resolution communication</i> should be set out clearly, comprehensibly, in an easily accessible way and prominently, within the text of those responses. |
| <u>1.5.6</u> | <u>G</u> In addition to sending a complainant a <i>summary resolution communication</i> , a <i>respondent</i> may also use other methods to communicate the information referred to in <i>DISP1.5.4R(1)</i> to (5) where- <ul style="list-style-type: none"> (1) the <i>respondent</i> considers that doing so may better meet the complainant's needs; or (2) the complainant and <i>respondent</i> have already been using another method to communicate about the <i>complaint</i>. |
| <u>1.5.7</u> | <u>G</u> An example of <i>DISP1.5.6G(1)</i> may be where a <i>respondent</i> is aware that a complainant is visually impaired. An example of <i>DISP1.5.6G(2)</i> may be where a <i>respondent</i> has been communicating with a complainant about a <i>complaint</i> by telephone. |

...

Part 4: comes into force on 31 July 2015

2

Jurisdiction of the Financial Ombudsman Service

...

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

...

2.2.2

- G The effect of section 234B of the *Act* is that where a *person* (a “*successor*”) has assumed a liability (including a contingent one) of another *person* who was, or would have been the *respondent* in respect of a *complaint*, the *complaint* may be dealt with by the *Ombudsman* as if the *successor* were the *respondent*.

...

Part 5: comes into force on 30 June 2016

2.8 Was the complaint referred to the Financial Ombudsman Service in time?

2.8.1 R The *Ombudsman* can only consider a *complaint* if:

- (1) the *respondent* has already sent the *complainant* its *final response* or *summary resolution communication*; or

...

2.8.2 R The *Ombudsman* cannot consider a *complaint* if the complainant refers it to the *Financial Ombudsman Service*:

- (1) more than six *months* after the date on which the *respondent* sent the *complainant* its *final response*, or *redress determination* or *summary resolution communication*; or

...

unless:

...

- (5) the *respondent* has consented to the *Ombudsman* considering the *complaint* where the time limits in *DISP2.8.2R* or *DISP2.8.7R* have expired (but this does not apply to a “relevant complaint” within the meaning of section 404B(3) of *FSMA* the Act).

- 2.8.3 G The six-month time limit is only triggered by a response which is a *final response, or redress determination or summary resolution communication*. The response must tell the complainant about the six-month time limit that the complainant has to refer a *complaint* to the *Financial Ombudsman Service*.

...