

changes to the
dispute resolution: complaints sourcebook

feedback statement

March 2013

ombudsman



overview

The consultation paper (<http://www.financial-ombudsman.org.uk/publications/consultations/DISP-Consultation-feb2013.pdf>) set out the amendments that we propose to make to the Dispute Resolution: complaints sourcebook (“DISP”) of the Financial Services Authority (“FSA”) Handbook following recent legislative changes.

All of the amendments relate to DISP 3: *Complaint Handling Procedures of the Ombudsman*, to reflect and complement the Financial Services and Markets Act as amended by the Financial Services Act.

We invited comments from a wide range of stakeholders on these amendments including at our regular Consumer Liaison Group meeting, which is attended by representatives from some of the main consumer groups. We also invited comments from key trade associations.

summary of responses to our consultation paper

We summarise below the feedback we received from stakeholders on each of the proposed amendments. We also explain how we have decided to proceed in light of this feedback.

accepting ombudsman’s decisions

Stakeholders generally supported our plans. Some concern was raised around how we intend to record the acceptance on our system and there was one suggestion that we should insist on receiving a written acceptance in some cases. Having carefully considered this feedback we remain of the view that the proposals set out within the consultation are appropriate.

The aim of the consultation was to amend our rules to ensure that they remain consistent with the Financial Services and Markets Act as amended. For this reason, we consider it appropriate to remove the requirement for the notification to be “in writing”. We do not consider that it would be appropriate to insist on a written acceptance as this would run contrary to intention of the Financial Services Act.

We do recognise the need for the acceptance to be accurately recorded on our system – and we agree with the feedback received from stakeholders on this issue. For this reason, if a consumer does wish to accept an ombudsman decision by other means then we intend to record it clearly on our system. We also remain committed to writing to both parties in the usual way if a non-written acceptance is received.

late acceptance of ombudsman’s decisions

Stakeholders generally supported our plans and there was broad agreement for the late acceptance rule to include an exceptional circumstances test.

Some stakeholders suggested that the late acceptance rule should include a time limit. There was also some uncertainty around whether all three conditions within DISP 3.6.6(4A) (a) – (c) must be satisfied for the late acceptance rule to apply. Some stakeholders called for guidance on how the late acceptance rule would operate in

practice while others called for an opportunity to provide further submissions if a late acceptance was received.

The intention of the Financial Services Act is to allow consumers to accept an ombudsman decision late in certain circumstances. For this reason we do not consider that prescribing a time limit for consumers to do so to be appropriate. However, all three conditions within DISP 3.6.6(4A) (a) – (c) must be satisfied for the late acceptance rule to apply and the feedback we received suggested there was some uncertainty around this. For this reason we have amended the drafting to make this clearer.

We recognise that some stakeholders have called for guidance on how the late acceptance rule would operate in practice. We envisage that it would include those circumstances where we are satisfied that the consumer did not receive the ombudsman decision, e.g. the consumer was abroad at the time. However, this would depend entirely on the individual circumstances of the case. We will keep the situation under review in terms of whether to publish any further guidance on this issue.

In response to the feedback received from stakeholders we would like to confirm that we do intend to provide businesses with an opportunity to provide further submissions if a late acceptance is received. We will write to the business to let them know if this is the case.

explaining the late acceptance rule to the financial business

Stakeholders generally supported our plans. On the basis of this feedback we intend to proceed on the basis set out within the consultation.

reports of determinations

Some stakeholders called for further clarification on how decisions will be presented, what is considered a reasonable charge for a report and when it may be inappropriate to publish an ombudsman decision.

The purpose of the consultation was to ensure that our rules continue to reflect the Financial Services and Markets Act as amended – rather than set out how the ombudsman service will publish decisions in practice. Therefore, we intend to proceed on the basis set out within the consultation and amend our rules accordingly. We would like to invite stakeholders to read our recent policy statement on publishing ombudsman decisions (<http://www.financial-ombudsman.org.uk/publications/policy-statements/ombudsman-decisions.html>), which sets out in more detail how we intend to publish ombudsman decisions.

the correction of a clerical mistake and procedural irregularity

Stakeholders generally supported our plans. Some called for further guidance on what amounts to a “clerical mistake”.

On the basis of this feedback we intend to proceed as set out within the consultation and amend our rules accordingly. In terms of publishing any guidance on what amounts to a “clerical mistake” we intend to keep the situation under review.

list of respondents

The following organisations responded to our consultation paper. Nationwide Building Society responded to the consultation but asked for its response to be kept confidential for commercial reasons. A further three organisations, who are not listed, also provided responses but requested that these be kept confidential.

- Association of British Insurers
- Barclays Group
- British Bankers' Association
- Co-operative Banking Group
- DAS Legal Expenses Insurance Company Limited
- Financial Services Consumer Panel
- Money Advice Trust
- Royal & Sun Alliance Insurance plc
- Standard Life Group