



Financial
Ombudsman
Service

consultation amendment to rules

– not for profit debt advice agencies

August 2015

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annex

A. Draft rules instrument – consumer credit (amendment no 2) 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 14 September 2015 – to

fcaliaison@financial-ombudsman.org.uk

Or write to:

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Policy team – consultation responses
Financial Ombudsman Service
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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 standard terms affecting businesses subject to our Voluntary Jurisdiction in Dispute Resolution: Complaints sourcebook (DISP) of the Financial Conduct Authority Handbook.

background

The ombudsman service currently has two jurisdictions –

- the compulsory jurisdiction (C):
 - covers financial businesses regulated by PRA and FCA;
 - covers activities specified in rules made by FCA; and
 - is mainly restricted to services provided in or from the UK.
- the voluntary jurisdiction (V):
 - covers financial businesses that volunteer to join it;
 - covers activities specified in rules made by the ombudsman service with the approval of FCA; and
 - covers services directed at the UK from the European Economic Area, as well as services provided in or from the UK.

The FCA is responsible for making the rules for the CJ and the ombudsman service is responsible for making the rules in the VJ.

In February 2015 the FCA consulted in their CP15/6 on amending DISP 1.2.2R. This proposed that, where the firm's activity does not involve a sale, not-for-profit (NFP) debt advice bodies (as defined in the FCA handbook glossary) can discharge the obligation to signpost customers to the availability of complaints information at the first point of contact orally, if they do not communicate with the customer in writing at that point.

The ombudsman service is responsible for making the rules for the voluntary jurisdiction. As DISP 4.2.3 outlines that DISP 1 applies to VJ participants as part of the standard terms, we consider that we should adopt this change to DISP 1.2.2R for the Voluntary Jurisdiction if the FCA proceed to make this amendment to the DISP rules for the compulsory jurisdiction.

proposed amendments

The FCA Handbook includes rules setting out what firms must do when a customer has a right to refer a complaint to the ombudsman service, including promoting awareness of their right to complain in the first place. These rules currently require firms to refer customers in writing to the availability of information regarding complaints procedures at or immediately after the point of sale or, if there is no point of sale, at or immediately after the point when contact is first made with the customer.

In practice this means that NFP debt advice bodies are required to provide information in writing about the availability of complaints information at the first point of contact when they give debt advice. This creates an additional burden for these firms when providing debt advice in general but in particular when it is provided over the telephone as it would likely involve sending

the information by post. There is a risk that this additional burden could reduce the capacity of the sector to provide debt advice.

FCA proposed in their consultation to amend the DISP rules to state that NFP debt advice bodies may meet their obligation by making an oral reference to the availability of complaints information if they do not communicate with the customer in writing at that point, but must refer to the availability of complaints information on the first occasion they communicate with the customer in writing. The ombudsman service proposes to make the same change in relation to the voluntary jurisdiction if the FCA proceed to make this amendment to the DISP rules for the compulsory jurisdiction.

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

CONSUMER CREDIT (AMENDMENT NO 2) INSTRUMENT 2015

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited fixes and varies the standard terms for Voluntary Jurisdiction participants as set out in Annex D to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 227 (Voluntary jurisdiction);
 - (b) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
 - (c) paragraph 22 (Consultation) of Schedule 17.
- B. The fixing and variation of the standard terms in Annex D by the Financial Ombudsman Service Limited is subject to the approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- C. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Act:
 - (1) section 137A (The FCA’s general rules);
 - (2) section 137R (Financial promotion rules);
 - (3) section 137T (General supplementary powers);
 - (4) section 139A (The FCA’s power to give guidance);
 - (5) section 226 (Compulsory jurisdiction); and
 - (6) paragraph 13 (FCA’s rules) of Schedule 17.
- D. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority approves the standard terms fixed and varied by the Financial Ombudsman Service Limited.

Commencement

- F.
 - (1) Subject to (2), this instrument comes into force on [date 2015].
 - (2) Annex D (DISP) and Part 1 of Annex E (CONC) to this instrument come into force on [date 2015].

Amendments to the FCA Handbook

- G. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Principles for Businesses (PRIN)	Annex A
Threshold Conditions (COND)	Annex B
Supervision manual (SUP)	Annex C
Dispute Resolution: Complaints sourcebook (DISP)	Annex D
Consumer Credit sourcebook (CONC)	Annex E

Amendments to material outside the Handbook

- H. The Perimeter Guidance manual (PERG) is amended in accordance with Annex F to this instrument.

Notes

- I. In Annex E, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- J. This instrument may be cited as the Consumer Credit (Amendment No 2) Instrument 2015.

By order of the Board of the Financial Conduct Authority
[*date*]

By order of the Board of the Financial Ombudsman Service Limited
[*date*]

Annex D

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

Comes into force on [date]

1.2 Consumer awareness rules

...

Publishing and providing summary details

...

1.2.2 R Where the activity does not involve a sale, the obligation in *DISP* 1.2.1R(2)(b) ~~shall apply at, or immediately after, the point when contact is first made with an *eligible complainant*.~~

(1) shall apply at, or immediately after, the point when contact is first made with an *eligible complainant*; and

(2) where the *respondent* is a *not-for-profit debt advice body*.

(a) may be met, at or immediately after, the point when contact is first made with an *eligible complainant*, by making an oral reference to the availability of the information if the *respondent* does not communicate with the *eligible complainant* in writing then; and

(b) must be met in writing on the first occasion on which the *respondent* communicates with the *eligible complainant* in writing.