

amendments to rules (complaints handling supplementary instrument 2015)

July 2015



feedback statement

The consultation paper *amendments to rules (complaints handling supplementary instrument 2015)* proposed changes 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.

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* (“FSMA”) (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 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.

The consultation paper proposed minor consequential amendments to references to “consumer redress scheme” complaints in DISP 3 to reflect this change.

complaint handling procedures relating to jurisdiction

The Financial Conduct Authority 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.

The consultation paper proposed a minor consequential amendment to our procedural rules to take account of this change in DISP 3.2.2.R, to ensure consistency across the rules.

We consulted on these proposed changes via our website, inviting comments to reach us by 20 July 2015. We did not receive any comments on the proposed changes during the consultation period, although we did respond to queries from a number of businesses and trade associations to confirm the limited scope of the consultation.

We made some minor editorial changes to our draft instrument, following feedback from the FCA, so the instrument which was passed by our Board differs slightly from the version included in the consultation paper. We made the following amendments:

1. The name of the Instrument has been changed to *Complaints Handling (Financial Ombudsman Service) Instrument Act 2015*;
2. Part of the annexes have been reordered chronologically and merged in order to improve clarity – without affecting their substance; and
3. The cover sheet has been amended to reflect the above changes with no impact on the legislative effect of the Instrument.

Our Board passed the Instrument on 21 July 2015 and it is attached below. This instrument also includes those rule changes which were for the ombudsman service to make following our joint consultation with the Financial Conduct Authority in December 2014. The wider feedback statement on this consultation was published by the FCA on 7 July 2015 and is available [here](#).

The FCA Board consented to and approved these rule changes on 30 July 2015.

COMPLAINTS HANDLING (FINANCIAL OMBUDSMAN SERVICE) INSTRUMENT 2015

powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes and amends:
- (i) the 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 to this instrument, 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 1 of Annex B (DISP) and Part 1 of Annex C (DISP) of this instrument come into force on 31 July 2015.
 - (2) Part 2 of Annex C (DISP) of this instrument comes into force on 1 October 2015.
 - (3) Part 3 of Annex C (DISP) of this instrument comes into force on 26 October 2015.
 - (4) Annex A (Glossary), Part 2 of Annex B (DISP) and Part 4 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 Annexes B and C to this instrument.

notes

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

citation

- G. This instrument may be cited as the Complaints Handling (Financial Ombudsman Service) 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.

Comes into force on 30 June 2016

- 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)

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

Part 1: Comes into force on 31 July 2015

3.6 Determination by the Ombudsman

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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 ~~consumer redress schemes~~ a “relevant complaint” within the meaning of section 404B(3) of the *Act*) and *DISP* 3.6.1R extends it to the *Voluntary Jurisdiction*.

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3.7 Awards by the Ombudsman

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Money awards

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

...

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 ~~*complaint*~~ the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme* “relevant complaint” within the meaning of section 404B(3) of the *Act*.

...

Interest awards

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

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Directions

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

Part 2: Comes into force on 30 June 2016

3 Complaint handling procedures of the Financial Ombudsman Service

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3.2 Jurisdiction

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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 C

Further amendments to the Dispute Resolution: Complaints sourcebook (DISP)

[*Editor's Note:* The provisions in this Annex which are now made by the Financial Ombudsman Service Limited in relation to the voluntary jurisdiction were previously 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.

Part 1: Comes into force on 31 July 2015

2 Jurisdiction of the Financial Ombudsman Service

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

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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 2: Comes into force on 1 October 2015

1 Treating complainants fairly

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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 3: Comes into force on 26 October 2015

1.3 Complaints handling rules

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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 *DISP* 1.3.1AAR 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 *DISP* 1.3.1ABR:

- (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 *DISP* 1.3.1ABR:

- (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.

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Part 4: 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 *DISP* 1.6.1R(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 *DISP*2.8.2R or *DISP*2.8.7R (Was the complaint referred to the Financial Ombudsman Service in time?) by including the appropriate wording set out in *DISP*1 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*]

- 1.5.5 G The information regarding the *Financial Ombudsman Service* required to be provided in a *summary resolution communication* should be set out clearly, comprehensibly, in an easily accessible way and prominently, within the text of those responses.

- 1.5.6 G In addition to sending a complainant a *summary resolution communication*, a *respondent* may also use other methods to communicate the information referred to in *DISP*1.5.4R(1) to (5) where:

- (1) the *respondent* considers that doing so may better meet the complainant’s needs; or
- (2) the complainant and *respondent* have already been using another

method to communicate about the *complaint*.

- 1.5.7 G An example of DISP1.5.6G(1) may be where a *respondent* is aware that a complainant is visually impaired. An example of DISP1.5.6G(2) may be where a *respondent* has been communicating with a complainant about a *complaint* by telephone.

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2 Jurisdiction of the Financial Ombudsman Service

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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 DISP 2.8.7R 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*.