

Financial Services Authority  
Financial Ombudsman Service

# Complaints handling arrangements

Response on CP49  
A joint policy statement

December 2000



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This policy statement reports on the main issues arising from the consultation on 'Complaints handling arrangements' (CP49). It also contains the post-consultative version of the rules and guidance which will apply in respect of the CP49 proposals.

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**It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise.**

# 1 Executive summary

- 1.1 The complaints handling arrangements under the new regulatory regime have been subject to three separate consultations – CP4<sup>1</sup>, which was issued before publication of the Financial Services and Markets Bill; CP33<sup>2</sup> (November 1999) which set out the key policy issues; and CP49<sup>3</sup> (May 2000) which contained draft rules.
- 1.2 This paper provides feedback on Consultation Paper 49 (CP49), which sought views on the draft rules relating to the handling of consumer complaints by firms and the draft rules prescribing the jurisdiction and procedures of the new Ombudsman Scheme (the Financial Ombudsman Service). It also contains the ‘final’ rules.
- 1.3 The power to make rules relating to firms’ internal complaints procedures falls to the Financial Services Authority (FSA). However, the powers to make rules relating to the new ombudsman scheme are shared between the FSA and the Financial Ombudsman Service Limited (the FOS). The FOS is the independent ‘scheme operator’, set up by the FSA to operate the new scheme, as required under the Financial Services and Markets Act 2000 (FISMA). Its rules are subject to FSA approval. Like CP49 (and CP33), this paper is therefore issued jointly by the FSA and the FOS.
- 1.4 The revised rules are set out at Annex A. These rules will come into force when the relevant provisions of FISMA are commenced at N2, which is expected to be during the summer of 2001.

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1 CP4: ‘Consumer Complaints’ (December 1997).

2 CP33: ‘Consumer complaints and the new single ombudsman scheme’ (November 1999).

3 CP49: ‘Complaints Handling Arrangements: Feedback statement on CP33 and draft rules’ (May 2000).

- 1.5 These rules (along with the FOS funding rules) will form the Complaints Sourcebook, which, together with the Compensation Sourcebook, will make up Block 4 of the FSA's Handbook of Rules and Guidance. They cover:

Chapter 1	Complaint handling procedures for firms
Chapter 2	FOS jurisdiction (Compulsory and Voluntary)
Chapter 3	Complaint handling procedures of the FOS
Chapter 4	Standard Terms (for Voluntary Jurisdiction)

The FOS funding rules (which will form Chapter 5 of the Complaints Sourcebook) have recently been published in draft for consultation.<sup>4</sup> Unlike the rules at Annex A, the funding rules will not take effect until April 2002 and will be finalised next year.

## Status of Rules

- 1.6 The rules at Annex A of this paper are now in 'final' form. They have been approved by the Boards of the FSA and the FOS and will be legally 'made' when the FSA and the FOS receive their rule-making powers. A few minor amendments may be necessary at that stage to take account of outstanding issues in other areas – e.g. transitional arrangements to be made by HM Treasury; Handbook definitions which are still being finalised and responses to the FSA's recently published CP70 on 'Mortgage Regulation'<sup>5</sup>, where relevant. However, with the possible exception of the disclosure requirements, on which further consultation may be necessary next year (see below), we do not expect to make any changes which will have a significant impact on the overall requirements on firms.

## Structure of Rules

- 1.7 The FSA and the FOS have liaised closely in developing these rules to produce a single, coherent set of requirements and guidance. The rules as a whole have been subject, at each stage, to joint consultation. Wherever possible, the requirements relating to the Compulsory and Voluntary Jurisdictions of the FOS are identical and a number of the rules are 'common' rules which will be made by both the FSA and the FOS under their respective powers. The rule-making powers of the FSA and the FOS are summarised in the introduction to the Complaints Sourcebook at Annex A. A detailed table setting out the enabling powers for each of the rules will be included in the Handbook.

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4 CP74: 'Funding the Financial Ombudsman Service' (November 2000).

5 CP70: 'Mortgage Regulation: The FSA's high-level approach'. (November 2000).

## Results of Consultation on Draft Rules

- 1.8 We received 103 responses to CP49, mainly from firms/trade associations. Respondents welcomed the modifications which we had made to our earlier proposals and the draft rules were generally well received. No significant new points were raised during the course of the consultation and we have not identified any need for major policy changes. Respondents were generally seeking clarification, reassurance or, in some cases, a greater degree of prescription. We have inserted a substantial amount of further guidance to meet these points and to provide firms with more certainty. We have also taken the opportunity to tighten up the drafting and general structure of the rules. The main changes are summarised below and described in more detail in the rest of this paper. Significant structural changes are also highlighted.

### Main Changes to Draft Rules

- 1.9 **Firms' complaint procedures.** The exemption for firms which do not do business with customers who could be eligible to use the FOS has been clarified. The revised rules also make it clear that firms which do not qualify for exemption are subject to these requirements only to the extent that they do business with such customers.
- 1.10 The scope of the general requirement to have effective internal complaint procedures and of the detailed requirements (including time limits, reporting requirements etc) has also been clarified. The general requirement (in DISP 1.2) applies in respect of all financial services-related complaints from consumers eligible to use the FOS. The additional, detailed requirements in DISP1.3 – 1.7 apply only where these complaints also relate to activities which fall within the jurisdiction of the FOS and involve an allegation that the complainant has suffered, or may suffer, financial loss, material distress or material inconvenience. Complaints resolved within 24 hours are excluded.
- 1.11 **Disclosure Requirements.** Pending final decisions on FSA regulatory status disclosure and also on disclosure requirements relating to the Financial Services Compensation Scheme, we have decided that it is premature to implement a rule requiring firms to include the FOS logo on relevant marketing literature and correspondence. The revised rules require firms to display a notice indicating that they are subject to the FOS in any sales offices/branches to which consumers who could be eligible to use the FOS have access and, as proposed in CP49, they also require firms to send complainants details of the FOS at the appropriate stage. Firms may also, if they wish, include the FOS logo in any marketing literature or correspondence directed at such customers, provided that this is done in a manner which is

not misleading. We will consult on any proposed changes to these rules next year and will ensure that firms have sufficient time to prepare for them.

- 1.12 **Time Limits.** At the request of a substantial number of respondents, the rules now contain a specific time limit (5 days) for acknowledgements.
- 1.13 **Limitation Period.** As envisaged in CP49, the time limits for bringing a complaint to the FOS broadly mirror the law of limitation in respect of bringing actions in court. A new rule has been added to these rules to enable the time limits to be disapplied (as now) in respect of pensions review and FSAVC review complaints and, in future, in respect of any scheme for review of past business authorised by HM Treasury under s.404 of FISMA which specifies that the time limit should be lifted.
- 1.14 **Record-keeping.** The record-keeping requirement for complaints has been reduced to 3 years to align it with the requirements in the Conduct of Business Sourcebook. Firms may, however, keep these records longer if they wish.
- 1.15 **Reporting Requirements.** The requirement on firms to report complaints data to the FSA on a twice-yearly basis remains. However, the transitional rule has been revised so that firms will now be required to report this data for the first time in respect of the first 6 months of the first full year after N2. We have also simplified the reporting categories and, at the request of a number of respondents, have prescribed the generic product types in relation to which reports should be made.
- 1.16 **Compulsory Jurisdiction.** We have reviewed earlier decisions on the scope of the Compulsory Jurisdiction (CJ) in the light of the proposed approach to mortgage regulation. Subject to responses to the FSA's recently published CP70 on 'Mortgage Lending', we propose to keep to our original policy (supported in earlier consultations). This means that mortgage lending would be covered by a combination of the CJ and the Voluntary Jurisdiction (VJ) from N2 and, shortly afterwards, entirely by the CJ. Mortgage advice given by banks and building societies *in their capacity as lenders* would fall within the CJ from N2, since these firms are currently covered for this activity by existing schemes which the FOS will replace. Unauthorised lenders in the VJ would be similarly covered from N2. The rules have, therefore, been amended to make it clear that any 'ancillary activities' (including advice) provided in connection with activities subject to the FOS are also covered.
- 1.17 As previously noted, the FOS proposes to make the VJ available for mortgage advice given by mortgage intermediaries (whether otherwise authorised or not) as soon as practical. In the meantime, mortgage intermediaries would continue, as now, to be covered by the Mortgage Code Arbitration Scheme.

- 1.18 **Small business customers.** The rules now indicate that the turnover test for small business complaints applies at the date when the firm (rather than the FOS) receives a complaint.
- 1.19 **Indirect complainants.** We have decided, in the light of responses, not to extend access to the scheme to holders of shares in an investment trust company where the firm is the manager or investment manager of the investment trust company.
- 1.20 **ECHR.** A significant number of firms sought clarification of how the FOS proposed to ensure that its procedures complied with the European Convention on Human Rights (ECHR). The FOS considers it important to retain the flexibility to adjust its procedures in the light of developing experience of court decisions. However, some additional rules and guidance (in particular, relating to the circumstances in which oral hearings will be available) have been inserted.
- 1.21 **Dismissal of complaints without consideration of the merits.** The FOS has made various clarificatory amendments to this section of the rules.
- 1.22 **Dealing with Information.** This rule is an expansion of DISP 3.16 in CP49. It sets out the circumstances in which the Ombudsman will be able to disclose information.
- 1.23 **The Standard Terms.** These have been slightly expanded to specify more precisely which of the rules relating to the Compulsory Jurisdiction will also apply to firms which choose to participate in the Voluntary Jurisdiction.
- 1.24 The paper provides a summary of the main issues raised by CP49 respondents and a detailed commentary on the changes which the FSA and the FOS have made to the rules.

# 2 Introduction

- 2.1 The FSA and the FOS published a joint consultation paper (CP49), in May this year, which sought views on the draft rules relating to the handling of consumer complaints by firms and the draft rules prescribing the jurisdiction and procedures of the FOS. These rules were drafted in the light of comments received in response to earlier consultation papers. Consultation on CP49 closed on 31 August.
- 2.2 The purpose of this paper (which is also a joint FSA/FOS paper) is to provide the response of the FSA and the FOS to the comments which we received on CP49 and to set out the final rules which we propose to make.

## Responses to CP49

- 2.3 The FSA and the FOS received 103 written responses to CP49 and, again, we are grateful to all who responded. The respondents are listed at Annex B. The majority of responses came from the financial services industry (including all the major trade bodies), but we also received comments from individual consumers, from consumer organisations, from those involved in handling consumer complaints and from other regulatory bodies.

Type of respondent	Number
Banks and building societies	16
Cashplan healthcare providers	1
Consumer organisations	3
Existing Ombudsmen/Dispute resolution schemes	2
Former Ombudsmen/Complaints Commissioner	2
Friendly Societies	1
General insurance companies	8
IMRO member firms	4
Independent financial advisers	5
Life Offices	16
Miscellaneous	4
Non FS Act regulators	3

Type of respondent	Number
Private Individuals	4
Professional firms	1
Recognised professional bodies	2
SFA member firms	5
Trade associations	26
<b>TOTAL</b>	<b>103</b>

- 2.4 Overall, the draft rules were well received. Respondents welcomed the modifications which we had made to our earlier proposals and no major changes of policy appeared necessary at this stage. However, we did receive a significant number of requests for further clarification of the meaning or application of particular rules – and, in a number of cases, respondents suggested that more specific definitions or requirements would be helpful. We have therefore made a number of amendments to the rules (including some restructuring in a few areas) to provide greater clarity and precision. In particular, some sections have been combined or moved to make the rules easier to follow. We have also inserted a substantial amount of additional guidance to explain the intention behind the rules and to remove scope for uncertainty.

## Amendments to Draft Rules and Guidance

- 2.5 The final rules are set out at Annex A. These follow the order of the draft rules in CP49 as follows:

Chapter 1	Complaint handling procedures for firms
Chapter 2	Jurisdiction of the FOS
Chapter 3	Complaint handling procedures of the FOS
Chapter 4	Standard Terms (for Voluntary Jurisdiction)

(As noted above, the rules relating to the funding of the FOS, which will form Chapter 5 of the Complaints Sourcebook, are currently subject to consultation<sup>1</sup> and will be finalised next year.)

- 2.6 The following chapters provide a detailed commentary on the changes which we have made to the draft rules proposed in CP49. In particular, they explain where we have made a substantive change to a rule or inserted additional guidance in response to respondents' suggestions. They also indicate where, in some cases, we have decided not to make changes requested by respondents

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<sup>1</sup> CP74: 'Funding the Financial Ombudsman Service' (November 2000).

and explain why we do not believe these to be appropriate or necessary. Significant structural changes are also highlighted.

- 2.7 The changes to the rules and the insertion of additional guidance has significantly altered the numbering of the rules. References in the text are to the new numbering, unless otherwise stated. Where references are to the old CP49 numbering, the text makes this clear. The prefix ‘DISP’ which appears before each rule is an abbreviation for ‘Dispute Resolution: Complaints’, which is the title of the rules in the Complaints Sourcebook. The suffix ‘R’ denotes a rule and ‘G’ a guidance note.

## **Status of Rules**

- 2.8 Subject to paragraph 2.9 below, the rules at Annex A of this paper are now in ‘final’ form. They have been approved by the Boards of the FSA and the FOS and will be legally ‘made’ when the FSA and the FOS receive their rule-making powers.
- 2.9 It is possible that some further minor amendments may be necessary where the rules are dependent on decisions still to be taken in other areas. For example, some changes may be needed to reflect transitional arrangements to be made by H.M.Treasury under s.426 of FISMA to enable the FOS to handle complaints about pre-N2 business. We may also need to take account of responses to the FSA’s recently published consultation paper on the regulation of mortgage lending,<sup>2</sup> and in one or two areas, definitions of terms used elsewhere in the Handbook are still being finalised. However, with the exception of one area (disclosure requirements) where further consultation may be necessary next year, we do not anticipate that there will be a need for any significant further changes, or that these will alter the overall requirements on firms.
- 2.10 The purpose of publishing the ‘final’ rules now is to enable firms to plan, well in advance of N2, any modifications to their existing practices, systems and procedures which may be necessary. Publication of the ‘final’ rules should also enable consumers and their advisers to see in advance how the new, consistent standards for complaints handling will operate across the financial services industry.
- 2.11 These rules (together with the funding rules referred to above) will form the ‘Complaints Sourcebook’, which, in turn, will form part of Block 4 of the FSA Handbook of Rules and Guidance. Block 4 will contain all of the rules and guidance relating to consumer redress (including the Compensation

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2 CP70: ‘Mortgage Regulation: The FSA’s high-level approach’. (November 2000).

Sourcebook, which will contain the rules relating to the new Financial Services Compensation Scheme and is subject to separate consultation).

- 2.12 The rules will not come into force until the relevant provisions of FISMA are commenced at N2 (the date when the FOS will receive its statutory powers). This is expected to be during the summer of 2001.

# 3 Detailed Commentary on Rules (1)

## Chapter 1: Complaint Handling Procedures for Firms

- 3.1 Chapter 1 of the Complaints Sourcebook sets out the rules relating to the handling of complaints by firms (i.e. before they can be referred to the FOS).

### Application/Purpose (DISP 1.1)

- 3.2 In the interests of simplicity, we have removed the reference to Voluntary Jurisdiction participants from DISP 1.1.1R, which now applies to authorised firms (unless exempt) only. As before, however, a guidance note (new DISP 1.1.4G) makes it clear that these rules (with certain exceptions) also apply to Voluntary Jurisdiction participants by contract under the Standard Terms in Chapter 4. A provision relating to the territorial scope of the Scheme has been added (at DISP 1.1.1R) and a new guidance note (DISP 1.1.3G) reminds authorised firms that they will be responsible for ensuring that their appointed representatives comply with these rules. Here (and in the following chapters of the rules) the application and purpose sections have been combined.

### Exemptions (DISP 1.1.5 – DISP1.1.9)

- 3.3 The draft rules in CP49 included an ‘exemption’ rule. This made it clear that an authorised firm will be exempt from the rules in this chapter (and from the funding rules in Chapter 5) if it certifies on an annual basis to the FSA that it does not conduct (and has no likelihood of conducting) activities subject to the Compulsory Jurisdiction of the scheme with consumers who would be eligible to use the FOS. This rule (new DISP 1.1.5R) has been slightly reworded to take account of the fact that ‘eligible complainant’ is now a defined term in the Glossary, but its effect remains the same. We have also added three new rules. DISP 1.1.6R indicates when firms wishing to benefit from this exemption should notify the FSA and DISP.1.1.8R requires firms to notify the FSA immediately if the conditions for exemption cease to apply. DISP 1.1.9R

provides that a firm which no longer qualifies for exemption becomes subject to the requirements in the rest of Chapter 1.

- 3.4 ‘Wholesale’ firms which do business only with market counterparties or intermediate customers (as defined in the Conduct of Business Sourcebook) should therefore be exempt from these rules, provided that they certify this fact to the FSA. However, firms which occasionally do a small amount of business with customers eligible to use the FOS will not be able to benefit from this exemption. We have made some changes to the rules which follow to take account of this.

## **Internal complaint handling procedures: general requirements (1.2)**

- 3.5 The general over-arching requirement on firms to put in place and operate appropriate and effective complaints procedures (at DISP 1.2.1R) has now been refined to clarify its effect.
- 3.6 DISP 1.2.1R now makes it clear that this requirement relates only to complaints received *from customers eligible to use the FOS* (i.e. ‘eligible complainants’). It does not, however, prevent firms from extending their complaint procedures to other customers if they so wish, (as new DISP 1.2.3G makes clear). Unlike the more detailed requirements in DISP1.3 – 1.7, it covers any complaint about a financial services activity (whether subject to the FOS’s jurisdiction or not) irrespective of whether the complaint involves an allegation of financial loss, material distress or material inconvenience.
- 3.7 We have also made one other small amendment to the wording of new DISP 1.2.1. This is because some respondents queried why complaints about the ‘withholding’ of a service had been included within the scope of these rules (and within the jurisdiction of the FOS). Similar concerns were voiced about the inclusion of ‘potential customers’ in new DISP 2.4.8. The purpose of these provisions is to ensure that consumers can complain to the firm and, if necessary, to the FOS where a firm has failed to provide a service as a result of a wrongful act or omission by a firm (e.g. where a service has not been provided as a result of maladministration or illegal discrimination). Where, however, a complaint relates to the legitimate exercise of a firm’s commercial judgement, DISP3.3.1(11) specifically enables the Ombudsman to dismiss the complaint without consideration of its merits.
- 3.8 DISP 1.2.1 therefore now refers to a firm’s ‘provision of, or failure to provide, a financial services activity’. We have also inserted guidance at DISP 2.4.9G in Chapter 2 to clarify the intention of the ‘potential customer’ provision (see below).

- 3.9 The rest of DISP1.2 sets out the minimum requirements with which firms' complaint procedures must comply.

### **Disclosure Requirements (DISP 1.2.8R)**

- 3.10 A significant number of respondents commented on the proposed requirement (previously DISP. 1.3.5) on firms to disclose that they are subject to the FOS and the various circumstances in which this would be required. In particular, several sought further guidance on what was meant by 'official stationery' and 'marketing literature' and some compared these requirements with those relating to the regulatory status disclosure requirements contained in the draft Conduct of Business Sourcebook. This Sourcebook requires firms to disclose their regulatory status in relation to direct offer financial promotions (excluding those relating to deposits, general insurance contracts and non-private customers).
- 3.11 The draft rules in CP49 reflected earlier consultation before the draft Conduct of Business Sourcebook had been published. On further reflection, we have concluded that it would be premature to implement such a requirement at this stage.
- 3.12 The FSA has not yet reached a final view on the regulatory status disclosure requirements which will apply to authorised firms post N2. The current proposals essentially roll forward the existing requirements in the conduct of business area and the FSA will be consulting in due course on its proposals for the longer term. It will also be important to take account of any disclosure requirements relating to the Financial Services Compensation Scheme, when these have been decided. A co-ordinated approach is essential if we are to ensure that the information which firms are required to provide is meaningful to consumers.
- 3.13 Pending final decisions in these areas, we have amended the disclosure requirements (in new DISP 1.2.8R). This rule now simply requires firms:
- to refer to the availability of their internal complaint handling procedures in writing at or immediately after the point of sale;
  - to publish details of their internal complaint handling procedures, supply a copy on request, and supply a copy automatically when they receive a complaint (unless the complaint can be resolved before the close of business on the next working day); and
  - to display in each of their branches or sales offices to which customers who could be eligible to use the FOS have access a notice indicating that the firm is covered by the FOS.

A guidance note (DISP1.2.9G) has been inserted, indicating that in order to comply with DISP1.2.8(1), a firm may include reference to its complaint

handling procedures in contractual documentation – for example, where a firm is subject to the requirements in the Conduct of Business Sourcebook, in a terms of business letter, key features document or customer agreement. (These documents are subject to certain requirements, including provisions relating to how a consumer may complain to the firm.)

- 3.14 The requirement for firms to include the FOS logo in their official stationery and marketing literature (and the related transitional provision) have been dropped pending resolution of the issues referred to above. However, new DISP 1.2.12G indicates that a firm may, if it wishes to do so, disclose the fact that it is covered by the FOS by including the FOS logo in any marketing literature or correspondence directed at customers who could use the FOS, provided that it does so in a way which is not misleading.
- 3.15 We will consult on any proposed changes to these rules next year and will ensure, if necessary, that firms are given sufficient time to adapt to any new requirements.

#### **Other changes to the general requirements**

- 3.16 We have also made some drafting changes to the rest of this section to meet specific points of concern raised by respondents. In particular, we have:
- amended the requirement for firms to arrange for complaints to be reviewed by a member of staff who was not directly involved in the matter which is the subject of the complaint. DISP 1.2.13 R(1) now requires that a complaint be *investigated* by such a person ‘where appropriate’ and, as before, a guidance note indicates that the FSA will take account of the size and nature of a firm in applying DISP 1.2;
  - simplified the rule relating to staff who deal with complaints to require that complaints are investigated by a member of staff ‘of sufficient competence’ (DISP1.2.13 R(1));
  - replaced the guidance indicating that firms should ensure that the person charged with investigating a complaint has the authority to settle complaints (including the offering of redress where appropriate) with a rule which requires that the person charged with responding to complaints must *either* have the authority to do this or have ready access to someone who has (see new DISP 1.2.13R(2));
  - moved the section on ‘Offers of Redress’ (formerly DISP 1.5R) into this section and expanded the accompanying guidance (DISP 1.2.20G) to make it clear that, in deciding whether or not to accept a complaint and the appropriate level of redress, firms may wish to consider any relevant guidance issued by the FSA, the FOS or any of the relevant ‘predecessor schemes’; and

- inserted new guidance to make it clear that (i) redress does not necessarily mean financial redress – it may simply involve an apology and (ii) the overarching requirement at DISP 1.2 does not prevent the use of a third party administrator for the purposes of handling complaints (see DISP 1.2.21G and DISP 1.2.6G).

### **Internal complaint handling procedures: additional requirements (DISP 1.3 – 1.7)**

3.17 The main change which we have made here is a presentational one, aimed at clarifying the fact that the additional requirements in the rest of Chapter 1 (i.e. new DISP 1.3 – 1.7) apply to a sub-set of the complaints covered by the general requirements in the previous section – i.e. to those which involve financial loss, material distress or material inconvenience and which relate to activities covered by the FOS.

3.18 For the avoidance of doubt, the first rule in this section (new DISP 1.3.1R) now states explicitly that the more detailed requirements in the remainder of this chapter do **not** apply where the firm reasonably believes that the complaint:

- is not made by an eligible complainant, or a representative of an eligible complainant, as defined in DISP2.4;
- does not relate to an activity of the firm which comes under the jurisdiction of the FOS; or
- does not involve an allegation that the complainant has suffered, or may suffer, financial loss, material distress or material inconvenience;

Nor do they apply where the complaint has been resolved by close of business on the business day following its receipt.

3.19 The only substantive change since CP49 is the addition of the last point. The draft rules in CP49 recognised that some complaints will be capable of being resolved quickly without the need to invoke the full complaint procedures. They therefore indicated that certain requirements would not apply to complaints which could be resolved ‘on the spot’. A significant number of respondents asked for further clarification of this term and the circumstances in which it would apply. DISP 1.3.1R(2) now makes it clear that complaints which can be resolved ‘by close of business on the next business day’ will not be subject to the more detailed requirements in 1.4 – 1.7.

3.20 Firms are subject to the time limits, record-keeping and reporting requirements set out in DISP 1.4 – 1.7 in respect of any complaint which is not excluded by virtue of DISP 1.3.1R. Complaints which are subject to

DISP1.4 – 1.7 can be referred to the FOS. They must relate to an activity which falls within the FOS’s jurisdiction and involve an allegation that the complainant has suffered, or may suffer, financial loss, material distress or material inconvenience. Firms are required to notify complainants of their right to refer such complaints to the FOS at the appropriate stage and must co-operate with the Ombudsman and comply with any settlements or awards.

- 3.21 A significant number of respondents sought further clarification of the term ‘material’ in this context. Others raised concerns about the use of the phrase ‘may suffer financial loss, material distress or material inconvenience’. We comment on these below.

### **Material Distress or Inconvenience (DISP 1.3.1R)**

- 3.22 We have given careful thought to whether it is appropriate to define the term ‘material’, but have concluded that this must depend on the circumstances of a particular case. We have also considered whether it would be preferable to drop the reference to ‘material’, but we believe that this would impose an unnecessary additional burden on firms – and also, in turn, on the FOS. In practice, we do not think firms will have difficulty in applying this test. Where the complainant is alleging financial loss, it will be clear that the complaint is caught by these requirements. It is only in cases where a complainant is alleging distress or inconvenience, but no financial loss as such, that a judgement will have to be made as to whether this is material (i.e. significant and relevant) or not.
- 3.23 As noted above, we have, however, amended the rules (DISP 1.3.1R) to make it clear that the detailed requirements in 1.4 – 1.7 do not apply where the firm has taken reasonable steps to determine (amongst other things) whether or not the distress or inconvenience alleged is material. If a firm is in doubt, it should treat the complaint as one which is subject to these rules and, where the complaint is referred to the FOS, the Ombudsman will form a view. Should he decide that there is no material distress or inconvenience, he will have the power (under DISP 3.3.1(1)) to dismiss the case without consideration of its merits. Where it is clear from the outset that the case should be dismissed on these grounds, it would not count as a ‘chargeable case’ for funding purposes under the draft funding rules published recently.

### **‘May suffer.....financial loss’**

- 3.24 The phrase ‘may suffer’ is included to cover complaints where, because of the nature of the product, the alleged loss has not crystallised and is therefore a prospective loss (e.g. complaints about pensions, endowments etc). We have inserted a guidance note after this rule at DISP 1.3.2G to make this clear.

### **Time limits for dealing with a complaint (DISP 1.4)**

- 3.25 A significant number of respondents indicated that they would prefer to have a specific time limit for acknowledging complaints, instead of the general requirement to do so ‘promptly’, proposed in CP49. New DISP 1.4.1R therefore requires firms to acknowledge complaints in writing within no more than 5 days of receipt. As noted above, this rule does not apply to complaints which are resolved by close of business on the day after receipt. We have also inserted a guidance note (DISP 1.4.2G) to make it clear that where a firm is able to provide a final response within five days, it may combine its acknowledgement of the complaint with the final response. DISP1.2.10G also makes it clear that where a complaint is subject to DISP1.4.1R, a firm may send out a copy of its complaint procedures (as required under DISP 1.2.8R(2)) at the same time as its acknowledgement.
- 3.26 We have also tightened up the drafting of the rules and guidance relating to the time limits for handling complaints (DISP 1.4.4R – DISP 1.4.10G) to make clear what is required of firms at each stage. The main change to note here is the fact that the definition of a ‘final response’ (which now appears in the Glossary rather than in the body of the rules) no longer requires firms to mark their communication as a ‘final response’, since a number of respondents expressed concern about this from a presentational perspective. However, the complainant must be informed clearly that the next step, if he remains dissatisfied with that response, is to refer the complaint to the FOS. The new guidance note at DISP 1.4.8G makes it clear that the six-month time-limit for a complainant to refer a complaint to the FOS starts from the time the firm issues its final response.
- 3.27 The rules also now indicate that the leaflet about the FOS which firms are required to send complainants at this stage will be produced by – and available from – the FOS. (The FOS is considering how best to make this easily available to firms and plans, if possible, to enable firms to download the leaflet from the Internet and reproduce it themselves under licence.)
- 3.28 The time limits for referring a complaint to the FOS (formerly DISP1.6) are now part of the Jurisdictional Rules in Chapter 2 (see DISP2.3).

### **Record-keeping and Reporting (DISP 1.5)**

- 3.29 The record-keeping and reporting requirements (formerly DISP 1.7 and 1.8) have now been brought together in one section.
- 3.30 **Record-keeping.** A number of respondents commented that the requirement for firms to maintain records of complaints for a minimum period of six years was particularly burdensome. They also noted that it was different from the record-keeping requirements proposed for the Conduct of Business Sourcebook (although the latter are concerned with keeping records of the

underlying transactions). DISP 1.5.1R has therefore been amended and now requires firms to keep records of complaints for a minimum of three years. (Firms may, of course, keep these records for a longer period if they wish to do so.)

- 3.31 **Reporting complaints to the FSA.** Several respondents (particularly smaller firms) repeated their concerns about the requirement to provide returns on a twice-yearly basis. However, the FSA believes that the requirement of complaints statistics on a regular basis is consistent with its new risk-based regulatory approach, where the balance between monitoring visits and other means of assessing risk (e.g. desk-based reviews) will be different from the current arrangements. As noted in CP49, the complaints data which we propose to require will provide the FSA with valuable regulatory feedback. In particular, it will play an important part in enabling the FSA to assess risks to its regulatory objectives and to focus its supervisory work accordingly. To the extent that this requirement does impose an additional burden on some firms, it should be counterbalanced by less onerous requirements in other areas. We therefore do not propose to reduce the frequency of this reporting requirement, but we have simplified some of the data required.
- 3.32 In particular, we have dropped the requirement for firms to provide statistics on the number of complaints accepted as valid by the firm. We recognise that the concept of ‘validity’ is subjective and potentially problematic – particularly where, for example, firms make *ex gratia* awards. We have therefore replaced this with a more straightforward requirement for firms to provide the total number of complaints outstanding at the end of the reporting period. (The latter figure will not necessarily be a sub-total of the number of complaints received, since some complaints will span the end of a reporting period.)
- 3.33 Respondents also asked us to be more specific about the types of products/ services in respect of which they should provide a breakdown by category. DISP 1.5.4R(1) now makes it clear that firms should provide data broken down according to the categories listed at DISP 1 Annex R, in respect of the *generic* product types now also listed in that Annex. In response to various queries, we have also inserted new guidance at DISP 1.5.5G, which explains that where a complaint could fall into more than one category, the complaint should be recorded against the category which the firm considers to form the main part of the complaint.
- 3.34 In view of the fact that N2 is now expected to be in the summer of 2001, we have also amended the transitional provision relating to the reporting requirements so that firms will now be expected to report this data for the first time in respect of the *first* 6 months of the first complete financial year after N2, and every six months thereafter.

3.35 It was clear that a key issue underlying respondents' comments about this particular requirement was their concern about whether or not the FSA (or the FOS) proposes to publish this information. We indicated in CP49 that this was a matter to which we would be giving further thought in the light of the specific recommendation on this point in the Cruickshank report. We recognise the potential value of this information to consumers, but are conscious that any published data would have to be carefully presented and placed in context to ensure that it was meaningful, fair and not misleading. This will require further thought and will not be done without public consultation.

**The Society of Lloyd's (DISP1.7)**

3.36 We have made clarificatory drafting amendments to DISP1.7.1R and added guidance at DISP 1.7.2G to make it clear that the Society of Lloyd's two-tier internal complaint handling procedure is subject to the overall time limits, record-keeping and reporting requirements provided for in the rules.

# 4 Detailed Commentary on Rules (2)

## Chapter 2: Jurisdiction of the Financial Ombudsman Service

- 4.1 The rules in Chapter 2 of the Complaints Sourcebook set out the scope of the Compulsory and Voluntary Jurisdictions of the FOS. They specify who can refer a complaint to the FOS, which firms and activities are covered by the Compulsory and Voluntary Jurisdictions and the territorial scope of the scheme.
- 4.2 Unlike Chapter 1, most of the jurisdiction rules in Chapter 2 apply directly to Voluntary Jurisdiction participants (rather than by contract under the Standard Terms). The reference to them in DISP 2.1.1 therefore remains and the text makes it clear where a rule applies to an authorised firm, but not a Voluntary Jurisdiction participant, or vice versa.

### Which complaints can be dealt with under the FOS? (DISP 2.2)

- 4.3 This section basically summarises the requirements in FISMA. The Guidance at DISP 2.2.2G indicates that some of the provisions in DISP2.2.1G may be extended by the transitional arrangements to be made in due course by H.M.Treasury under s. 426 of FISMA.
- 4.4 The definition of ‘predecessor scheme’ in the Definitions Table has been expanded to include all of the existing schemes which will be replaced by the FOS.<sup>1</sup> The effect of this amendment is to enable the Ombudsman to consider complaints relating to pre-N2 business conducted by firms in the Voluntary Jurisdiction, provided the firm was a member of a predecessor scheme in

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1 The Office of the Banking Ombudsman, the Office of the Building Societies Ombudsman, the Insurance Ombudsman Bureau; the Personal Insurance Arbitration Service; the PIA Ombudsman Bureau; the Office of the Investment Ombudsman; the SFA Complaints Bureau and Arbitration Service; and the FSA Complaints Unit and Independent Investigator.

respect of that activity at the relevant time or has given its consent, as provided for under s.227 (13) and (14) of FISMA.

### **Time limits for referral of complaints to the Financial Ombudsman Service (DISP 2.3)**

- 4.5 As noted above, the rules relating to the time limits within which complaints can be brought to the FOS (formerly DISP 1.6) have been moved from Chapter 1. They have also been re-worded to bring them into line with the enabling power in FISMA (Schedule 17, paragraph 13(4)). This allows the FSA to specify the time limits within which complaints are not to be entertained, as distinct from when they can be entertained. This is therefore a technical change only.
- 4.6 However, DISP 2.3.2 R is new. This provides that the limits in DISP 2.3.1 R(1)( c) (which broadly mirror those applying to claims which can be brought to court in England and Wales) do not apply in the case of complaints about business which is subject to the Pension Transfers and Opt-outs review or the FSAVC review. Nor will they apply, in future, where the time limit has been extended under a scheme for review of past business authorised by H.M.Treasury under section 404 of FISMA.

### **Who can refer a complaint to the Financial Ombudsman Service? (DISP 2.4)**

- 4.7 The concept of an ‘eligible complainant’ is now a defined term. The Definitions Table cross refers to the criteria set out in DISP 2.4.

#### **Small Business Complaints (DISP 2.4.3 – 2.4.6)**

- 4.8 The rules at DISP 2.4.3R(1) (b) – (d) have been amended to make it clear that the £1 million turnover test for a small business, charity or trust applies at the time the complaint is referred to the firm, not, as previously stated, at the time it is referred to the FOS. Additional guidance (at DISP 2.4.5G) explains that if a firm is in any doubt about the eligibility of a business, charity or trust, it should treat the complainant as if it were eligible and that the FOS will determine eligibility by reference to appropriate evidence – such as audited accounts or VAT returns. (Under the proposed funding rules currently out for consultation, where it is apparent from the complaint as received that it falls outside the FOS’s jurisdiction, the complaint will not be a chargeable case.)
- 4.9 Further guidance has also been included at DISP 2.4.6G to make it clear that a subsidiary of a corporate group (as defined in s. 262(1) of the Companies Act 1985), will be an eligible complainant for FOS purposes only where the corporate group as a whole meets the £1million annual turnover test.

### **Eligible complainants: potential customers (DISP2.4.8R)**

- 4.10 A number of respondents sought clarification about the circumstances in which the scheme would be available to ‘potential customers’ and in what circumstances a complainant ‘may suffer’ financial loss. Similar concerns arose in connection with the rules in Chapter 1.
- 4.11 As noted above, additional guidance (DISP 2.4.9G) has been inserted to explain why the rules enable ‘potential customers’ to use the scheme. The guidance now also cross-refers to DISP 3.3.1R(11) in Chapter 3, which provides that a complaint about the legitimate exercise of a firm’s commercial judgement can be dismissed by an Ombudsman without consideration of its merits.

### **Eligible complainants: indirect complaints (DISP 2.4.10 – 2.4.13)**

- 4.12 In the light of representations received, we have decided not to extend access to the scheme to holders of shares in an investment trust company where the firm is the manager or investment manager of the investment trust company. (We have also tightened up the drafting of DISP 2.4.12R to achieve the policy intentions set out in CP49.)

### **Representatives of eligible complainants (DISP 2.4.14 – 2.4.15)**

- 4.13 These rules (previously entitled ‘Eligible complainants: agency complaints’) have been simplified, but their effect remains unchanged. They provide for complaints to be brought on behalf of eligible complainants by ‘a person authorised by the eligible complainant or authorised by law’. This is intended to ensure that complaints can be referred to the FOS by, for example, someone acting on behalf of a deceased person, a child or a person who is prevented by incapacity from bringing the complaint himself, provided that they are duly authorised to do so.

## **To which activities do the rules apply? (DISP 2.6)**

### **The Compulsory Jurisdiction (DISP 2.6.1 –2.6.7)**

- 4.14 The draft rules in CP49 provided for the Compulsory Jurisdiction of the FOS to cover regulated activities and certain other unregulated activities which are currently covered by the existing schemes. The intention was that the Compulsory Jurisdiction should cover services currently covered by the existing schemes where these are carried out by authorised firms in order to avoid reducing the protection currently available to consumers. This policy (which gained widespread support from respondents to earlier consultations)

remains unchanged. However, we have made some minor amendments to the wording of the rules in order to ensure that this objective is achieved.

- 4.15 The activities specified in new DISP 2.6.1R are:–
- regulated activities;<sup>2</sup>
  - lending money secured by a charge on land;
  - lending money (other than restricted credit);
  - paying money by a plastic card (other than a store card);
  - the provision of ancillary banking services.
- 4.16 The last bullet represents a change to the wording of the draft rules, which previously referred to ‘the provision of general insurance services by a bank or a building society’. The new wording is designed to ensure that all of a bank’s or building society’s ancillary services continue to be covered. It has been supplemented by a guidance note (DISP2.6.5G), which explains that ‘ancillary banking services’ include, for example, the provision and operation of cash machines, safe deposit boxes etc. We have also added a new rule (DISP 2.6.2R) which indicates that the activities in DISP 2.6.1R include any ancillary activities, including advice, provided by authorised firms in connection with those activities (see below).
- 4.17 Banks, building societies and insurance companies are currently covered by the existing ombudsman schemes for all of their services, and previous consultations have produced strong support for bringing these activities into the Compulsory Jurisdiction from N2 to avoid any reduction in the current level of consumer protection. This would, for example, include any ancillary advice given by a bank or building society as part of the mortgage lending process. The changes are simply intended to achieve that policy. However, we have also taken account of recent developments, which are explained in more detail below.
- 4.18 The Government’s announcement earlier this year that mortgage lending will become a regulated activity means that all mortgage lenders will eventually become subject to the Compulsory Jurisdiction of the FOS. This is not expected to occur until January 2002 (i.e. after N2). However, most mortgage lenders will, from N2, be authorised in respect of other activities (typically as deposit-takers) and are already covered by an existing scheme. We therefore continue to believe that it is appropriate for complaints about their mortgage-lending activities to be covered by the Compulsory Jurisdiction from N2. As noted below, the FOS is likely to open up the Voluntary Jurisdiction to non-authorised mortgage lenders to provide a level playing field for these firms

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<sup>2</sup> The definition of ‘regulated activity’ will be updated in line with the Regulated Activities Order to be made by the Treasury, which is currently subject to consultation.

until such time as they require authorisation and transfer to the Compulsory Jurisdiction.

- 4.19 Mortgage advice, however, will not be a regulated activity. We have, therefore, given further thought to how far this activity should be covered by the FOS's Compulsory or Voluntary Jurisdictions.
- 4.20 In particular, we have considered whether mortgage advice provided by all authorised firms (including mortgage intermediaries, which are authorised for other activities) should be brought into the Compulsory Jurisdiction. However, this would suggest that membership of the FOS's Voluntary Jurisdiction should also be extended to mortgage intermediaries who are not authorised. As noted in previous consultation papers, this is not a realistic option. There are practical constraints in extending FOS scope at N2 to include firms and activities not covered by the existing schemes (such as mortgage intermediaries), which necessitate a measured approach. It is also important to note that, mortgage intermediaries are, in any case, currently covered by the Mortgage Code Arbitration Scheme.
- 4.21 We have also considered whether mortgage advice given by both authorised and unauthorised firms should, instead, be brought into the Voluntary Jurisdiction, starting with mortgage advice given by banks and building societies only. However, we believe that it would be illogical (and confusing for firms and consumers) for complaints about the granting of a mortgage and the incidental advice given by the lender to be split between two jurisdictions in this way. It would also create an unnecessary administrative burden in the short term, since the banks and building societies concerned would have to enter into separate contractual agreements with the FOS simply to maintain their current level of coverage.
- 4.22 Against this background and subject to any responses received to the FSA's CP70 on 'Mortgage Regulation', we believe that it is appropriate to keep to our original policy – i.e. that mortgage advice given by banks and building societies in their capacity as lenders (i.e. ancillary advice) should fall within the Compulsory Jurisdiction of the FOS from N2. The FOS proposes to make the Voluntary Jurisdiction available for mortgage advice given by other lenders from N2 and by intermediaries (whether authorised or not) as soon as practical. In the meantime, intermediaries (whose mortgage advice is not currently covered by existing schemes which the FOS will replace) would continue, as now, to be covered by the Mortgage Code Arbitration Scheme.

### **The Voluntary Jurisdiction (DISP 2.6.8 – 2.6.11)**

- 4.23 The drafting of this rule has been tightened up, but the effect remains the same.
- The wording now makes it clear that a complaint can be considered under the Voluntary Jurisdiction only if it is not covered by the Compulsory Jurisdiction;
  - A financial services activity covered by one of the existing ('predecessor') schemes will continue to be covered from N2 for a firm which was a member of that scheme in respect of that activity immediately before N2; and
  - Mortgage lending (including ancillary advice) by unauthorised mortgage lenders will also be covered from N2 unless, contrary to expectation, the time from N2 to the introduction of mortgage regulation reduces to an insignificant period.
- 4.24 The rules enable the FOS to handle (in the Voluntary Jurisdiction) complaints about business conducted by a firm before N2 and before the firm became a Voluntary Jurisdiction participant, provided the firm was a member of a predecessor scheme in respect of that activity or the firm agrees to allow it to do so. Agreement to allow the FOS to deal with pre-N2 and pre-membership complaints will be a condition of Voluntary Jurisdiction membership (see DISP 2.6.10R and DISP 4.2.5R).

### **The territorial scope of the jurisdiction of the Financial Ombudsman Service (DISP 2.7)**

- 4.25 A number of respondents sought clarification about the territorial scope of the FOS. Additional guidance (at DISP 2.7.2G) now makes it clear that the scheme covers firms operating from a permanent place of business in the UK, including incoming EEA firms and incoming Treaty firms which qualify for automatic authorisation under FISMA – in respect of complaints about activities conducted in or from the UK.

## **Chapter 3: Complaint handling procedures of the Financial Ombudsman Service**

- 4.26 The rules in Chapter 3 of the Complaints Sourcebook indicate how the Financial Ombudsman Service and, in particular, the Ombudsman, will deal with a complaint which has been through the firm's complaint procedures in accordance with the rules in Chapter 1 and is eligible in accordance with the rules in Chapter 2. As with Chapter 1, these rules apply directly to authorised

firms, but will also apply to firms in the Voluntary Jurisdiction by contract under the Standard Terms.

- 4.27 Few major issues were raised about the proposed rules relating to the Financial Ombudsman Service's complaint-handling procedures, so there are not many significant changes in this chapter. The following comments also draw attention to some minor changes or clarify issues where some respondents were unclear what was intended.

### **European Convention on Human Rights**

- 4.28 Section 225 of FISMA provides for the Financial Ombudsman Service to resolve complaints 'quickly and with minimum formality'. Some respondents expressed concern that it will be difficult to do this whilst complying with Article 6(1) of the European Convention on Human Rights, incorporated into UK law by the Human Rights Act 1998. Nevertheless, our objective remains to ensure that the service provided by the FOS is as informal, user-friendly and prompt as possible.
- 4.29 DISP3.2.11R and 3.2.12R touch on this issue and, where hearings are required by law, they will be provided. The parties are entitled to be represented, by lawyers or others, if they wish – but the Ombudsman will ensure fairness and informality. As we have noted in earlier consultation papers, only time will tell how often hearings are requested and by whom.
- 4.30 Other respondents sought greater details of the intended processes. As those processes will not come into effect before the second half of 2001, it would be premature to set them in stone now. The Human Rights Act only came into force in most of the UK on 2 October 2000 (although it came into force earlier in Scotland). Its interpretation will develop in the light of decisions by the courts.
- 4.31 The Financial Ombudsman Service will shape and adjust its procedures in the light of those court decisions, whilst seeking to employ minimum formality as required by section 225 of FISMA. Different processes may be appropriate for different types of cases or stages. The processes will, of course, be explained to the parties at the relevant time.

### **Whether the firm has had a reasonable opportunity to consider the complaint**

- 4.32 Some respondents expressed concern that, as originally drafted, the rules might allow the Financial Ombudsman Service to take on a complaint before the 8-week time limit laid down in Chapter 1 had expired, even if the firm had not had a reasonable opportunity of considering the complaint.
- 4.33 DISP 3.2.2R now makes it clear that if the Financial Ombudsman Service receives a complaint before the 8-week time limit has expired, it will refer the

complaint to the firm unless the firm has already issued a final response. But, if the firm fails to issue a final response by the end of 8 weeks, as required by Chapter 1, DISP 3.2.3R allows the Financial Ombudsman Service to consider the complaint.

- 4.34 Where it appears to the Ombudsman that a complaint may be outside jurisdiction, DISP 3.2.4R requires the Ombudsman to give the complainant an opportunity of making representations. If the Ombudsman does not rule out the complaint at this stage (not having had representations from the firm), this does not prevent the firm raising the issue of eligibility later, as DISP 3.2.5G makes clear.

### **Dismissal of complaints without consideration of the merits (DISP3.3)**

- 4.35 Previously, this was described as ‘early termination’ and the grounds were split into two lists. It has been re-titled to follow the wording of the enabling power in paragraph 14(2)(b) of Schedule 17 to FISMA. The grounds are now combined in a single list in DISP 3.3.1R.
- 4.36 As noted above, DISP 2.3 replaces the previous power to dismiss complaints submitted out of time. This reflects the fact that time limits are dealt with separately in paragraph 13(3) of Schedule 17 to the Act. This provides for the making of a rule that complaints submitted out of time are ‘not to be entertained’ and therefore fall outside the FOS’s jurisdiction.
- 4.37 DISP 3.3.1R(2) deals with complaints which are frivolous or vexatious. The recently published consultation paper dealing with the funding of the Financial Ombudsman Service provides that no case fee will be charged in such cases.
- 4.38 DISP 3.3.1R(4) deals with cases where there is an offer from the firm of compensation that the Ombudsman considers fair and reasonable in relation to the circumstances alleged by the complainant. The wording has been amended slightly, and DISP 3.3.2G makes it clear that this extends also to *ex gratia* offers.
- 4.39 DISP 3.3.1R(5) has been amended to cover not only any existing regulatory review, but also any future scheme order made by H M Treasury under section 404 of FISMA, enabling the FSA to review past business.
- 4.40 DISP 3.3.1R(6) has been amended to make it clear that it relates to a matter which has previously been excluded for want of jurisdiction as well as to a matter which has previously been considered in full.
- 4.41 The savings for (variously) ‘negligence’, ‘maladministration’ and/or ‘unfair treatment’ have been deleted from DISP 3.3.1R (13), (14) and (15) because the power to dismiss is a discretionary power which the Ombudsman *may* exercise. As DISP 3.3.5G makes clear, the Ombudsman does not have to

exercise the power to dismiss in cases where he considers there may be a sustainable allegation of negligence or maladministration.

- 4.42 DISP 3.3.1R (16) is new. Where a complaint involves more than one eligible complainant, the Ombudsman may decline to deal with it where the complaint has been referred without the consent of the other complainant(s) and the Ombudsman considers that it would be inappropriate to deal with the complaint without that consent.

### **Evidence (DISP 3.5)**

- 4.43 The provisions about evidence in DISP 3.5 are substantially unchanged, though the wording of DISP 3.5.2R(3) has been clarified. Some respondents misunderstood DISP 3.5.2R(1) and contrasted it with the position that they thought would apply in court. But the wording is, in fact, based on the relevant provision in the Civil Justice Rules which apply in courts in England and Wales. A new guidance note to this effect has been added at DISP3.5.3G.
- 4.44 Some respondent firms were concerned that under DISP 3.5.2R(2) it is the Ombudsman who decides whether or not to accept any evidence in confidence. They were particularly concerned about confidential third-party and security information.
- 4.45 The Ombudsman will take all the competing interests into account. But it is for the Ombudsman, not the firm, to make the final decision – just as it is for the judge in court. As with a court, it will be proper for a party to withhold documents that are the subject of legal professional privilege in relation to the dispute in question. A new guidance note has been added at DISP3.5.4G.

### **Time Limits (DISP3.6)**

- 4.46 DISP 3.6 has been reworded, so that provisions relating to firms now appear in DISP 3.6.2R and provisions relating to complainants now appear in DISP 3.6.3R. DISP 3.6.2R makes it clear that delay by the firm is relevant to compensation only to the extent that it causes material distress or material inconvenience to the complainant. The Financial Ombudsman Service will be publishing service standards and statistics, so that its *own* timeliness can be measured.

### **Determination by Ombudsman (DISP 3.8)**

#### **Opinion as to fairness and reasonableness (DISP 3.8.1)**

- 4.47 DISP 3.8.1R (2) has been amended to make it clear that, though the Ombudsman may take into account what he considers to be good industry practice, this must be on the basis of what the Ombudsman considers to have

been good industry practice at the time of the act or omission giving rise to the complaint.

### **The Ombudsman's Determination (DISP 3.8.2R)**

- 4.48 DISP 3.8.2R(3) has been amended to make it clear that the Ombudsman's determination is binding on both the firm and the complainant if the complainant accepts it within the time limit specified by the Ombudsman. Under DISP 3.8.2R(4) the Ombudsman's determination is not binding on either the firm or the complainant if the complainant rejects it or does not accept it within the time limit specified by the Ombudsman.

### **Awards and limits on awards (DISP 3.9)**

- 4.49 In respect of money awards, some respondents recommended removing the Ombudsman's power to recommend compensation in excess of the binding maximum of £100,000. But this power is contained in section 229(5) of the Act and cannot be removed by the rules. This provision therefore now appears in guidance (DISP 3.9.5G), rather than a rule. DISP 3.9.14R now provides for the Ombudsman to maintain a register of any money awards or directions which he makes to enable complainants to enforce an award in the courts, if necessary.
- 4.50 Some firms asked for clarification concerning awards for 'distress or inconvenience' and 'damage to reputation'. The Financial Ombudsman Service will be publishing separate guidance about its approach to awards for distress and inconvenience in due course. Damage to reputation may arise, for example, where a bank or building society wrongly 'bounces' a customer's cheque.
- 4.51 Some respondents asked how the Ombudsman might exercise the power, under section 229(2)(b) of the Act, to direct a firm to take steps in relation to the complainant. An example is where the firm makes a mistake on a complainant's account. The award might require the firm to reconstruct the account in order to put it in the state it would have been in if the mistake had not been made.
- 4.52 DISP 3.9.9R allows an award in respect of a complainant's costs. It now makes clear that this extends only to costs 'reasonably incurred' and a new guidance note (at DISP 3.9.10G) indicates that the award of such costs is not expected to be common, since, in most cases, complainants should not need to have professional advisers to bring complaints to the FOS.

### **Dealing with Information (DISP3.10)**

- 4.53 DISP3.10 is an expansion of old DISP3.16, which related to the confidentiality of information handled by the FOS. The new rule requires the

FOS, in dealing with any information, to have regard to the parties' rights of privacy. It then goes on to indicate that this does not prevent the disclosure of information in certain specified circumstances. Subject to the need to have regard to the parties' rights of privacy, the Ombudsman may also disclose information to the FSA or any other body exercising regulatory or statutory functions in order to assist that body or the FOS to discharge its functions. DISP 3.7.1R has been modified to provide that only an Ombudsman can determine the circumstances in which such information may be disclosed. This power cannot be delegated.

### **Test cases**

- 4.54 A number of respondents asked why there was no reference in the draft rules to the 'test case' procedure provided for by a few of the current schemes. This procedure allows a firm, in specified circumstances, to remove a complaint from the Ombudsman provided that the firm refers the complaint to court and offers to pay the complainant's costs. It was not thought necessary to perpetuate this provision as it is seldom used. For example, the Banking Ombudsman Scheme's test case procedure has been used only once in 15 years, and the case concerned was settled before the court issued a final judgement. In any event, DISP 3.3.1R(10) gives the Ombudsman power to terminate consideration of a complaint if he considers that it would be more suitable for the matter to be dealt with in court.

## **Chapter 4: Standard Terms**

- 4.55 The Standard Terms provide the basis on which complaints will be dealt with and determined under the Voluntary Jurisdiction of the FOS. They apply to any firm which has decided to become a participant in the Voluntary Jurisdiction and are set by the FOS, with the approval of the FSA.
- 4.56 Very few comments were received from CP49 respondents on the draft Standard Terms. Whilst some drafting amendments have been made to these rules, there are no changes of substance. It is now made clear that the FOS may make membership of the Voluntary Jurisdiction conditional on the firm's agreeing that it extends to pre-N2 acts and omissions.



## Annex A

### COMPLAINTS SOURCEBOOK

#### DISPUTE RESOLUTION: COMPLAINTS

##### 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.

This module of the *FSA Handbook* contains the rules and guidance relating to the handling of complaints by *firms* 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 *scheme operator*, with those rules written by the *scheme operator* being subject to approval by, or the consent of, the *FSA*.

Under the *Act*, the *Financial Ombudsman Service* comprises two 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*;
- (b) The *Voluntary Jurisdiction* can cover financial services activities not included in the *Compulsory Jurisdiction*. Both *firms* and unauthorised *firms* can participate in the *Voluntary Jurisdiction* by contractual agreement with the *scheme operator* (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* 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

These rules set out the complaint handling procedures which *firms* capable of giving rise to an eligible complaint under the *Compulsory Jurisdiction* (see Chapter 2) must establish. They are made by the *FSA* under s138 of the *Act* and paragraph 13 of Schedule 17 to the *Act*. These rules, with some exceptions, are applied to *VJ participants* by contract via the *Standard Terms* set by the *scheme operator* (Chapter 4).

##### Chapter 2: Jurisdiction rules

These rules set out the scope of the *Compulsory 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* 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 *VJ participants* and to the *Ombudsman* himself. The rules relating to the scope of the *Compulsory Jurisdiction* are made by the *FSA* (under s226 of the *Act*); the rules relating to the scope of the *Voluntary Jurisdiction* are made by the *scheme operator*, with *FSA* approval (under s227). The rules relating to the time limits for referring a complaint to the *Financial Ombudsman Service* are made by the *FSA* under paragraph 13 of Schedule 17 to the *Act* and are applied to *VJ participants* by contract via the *Standard Terms* set by the *scheme operator*.

### Chapter 3: Complaint handling procedures of the Financial Ombudsman Service

These rules apply to the *Ombudsman*, to *firms* and are also relevant to complainants. They set out how the *Financial Ombudsman Service* 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 *scheme operator*, with *FSA* consent or approval, under paragraph 14 of Schedule 17 and s230 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). These procedural rules are applied to *VJ participants* via the *Standard Terms*.

### Chapter 4: The Standard Terms

The *Standard Terms* are made, with *FSA* approval, by the *scheme operator* under paragraph 18 of Schedule 17 to the *Act* and are the contractual terms by which *VJ participants* participate in the *Voluntary Jurisdiction*.

# 1. Complaint handling procedures for firms

## 1.1 Application and Purpose

### Application

1.1.1 R This chapter applies to every *firm* in respect of activities carried on from an establishment maintained by the *firm* (or its *appointed representative*) in the *United Kingdom*, except:

(1) a *firm* that is exempt under *DISP* 1.1.5R; or

(2) a *UCITS* *qualifier*.

1.1.2 G It is also relevant to those who might wish to refer a complaint to the *Financial Ombudsman Service*.

1.1.3 G *Firms* are responsible for ensuring their *appointed representatives'* compliance with *DISP* 1.

1.1.4 G *VJ participants* are subject to *DISP* 1, except *DISP* 1.5 (record keeping and reporting), by contract under the *Standard Terms* (see *DISP* 4). *DISP* 1.2 applies only in relation to complaints about activities of the *VJ participant* specified in *DISP* 2.6.8R.

### Exemption

1.1.5 R A *firm* which does not conduct business with *eligible complainants* and has no reasonable likelihood of doing so is exempt from *DISP* 1.2 – *DISP* 1.7 to the extent that it notifies the *FSA* of this fact and that notice remains current.

1.1.6 R A notice under *DISP* 1.1.5R must be given:

(1) within one month of the *commencement* day, in which case it will remain current until the end of the financial year in which it is given; or

(2) at the time of its authorisation by the *FSA*, in which case it will remain current until the end of the financial year in which it is given; or

(3) at the point when it ceases to conduct business with *eligible complainants*, in which case it will remain current until the end of the financial year in which it is given; or

(4) no later than one month before the start of a financial year, in which case it will remain current until the end of the financial year after that in which it is given.

1.1.7 G A notice under *DISP* 1.1.5R will be renewable every 12 months.

## End of exemption

- 1.1.8 R **A firm which is exempt under *DISP* 1.1.5R must notify the FSA if the conditions in *DISP* 1.1.5R no longer apply.**
- 1.1.9 R **A firm to which the conditions in *DISP* 1.1.5R no longer apply will then become subject to *DISP* 1.2 – *DISP* 1.7.**

## Purpose

- 1.1.10 G The purpose of this chapter is to set out the rules relating to the internal handling of complaints by *firms*, including the procedures which a *firm* must put in place; the time limits within which a *firm* must deal with a complaint; 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, thereby 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 statutory objective.

## 1.2 Internal complaint handling procedures: general requirements

- 1.2.1 R **A firm must have in place and operate appropriate and effective internal complaint handling procedures (which must be written down) for handling any expression of dissatisfaction whether oral or written, and whether justified or not, from or on behalf of an *eligible complainant* about that firm's provision of, or failure to provide, a financial services activity.**
- 1.2.2 G *An eligible complainant* is a person who would be eligible to refer a complaint to the *Financial Ombudsman Service* defined in *DISP* 2.4.
- 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;
  - (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 *DISP* 1.2.1R), 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 *DISP* 1.2.1R does not prevent the use of a third party administrator for the purposes of handling complaints.
- 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 R A firm must:**
- (1) refer 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 and supply a copy automatically to the complainant when it receives a complaint (unless the complaint is resolved by close of business on the next business day); and**
  - (3) display in 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*.**
- 1.2.9 G In order to comply with *DISP* 1.2.8 (1), a *firm* may include reference to its complaint handling procedures in contractual documentation, for example, (where the *firm* is subject to the requirements in *COB*) in a terms of business letter, key features document or customer agreement.
- 1.2.10 G Where a complaint is also subject to the more detailed requirements in *DISP* 1.3 - 1.7, the *firm* may send out a copy of its complaint handling procedures (as required under *DISP* 1.2.8R (2)) at the same time as the acknowledgement required under *DISP* 1.4.1R.
- 1.2.11 G For the purposes of satisfying *DISP* 1.2.8R(2) a *firm* may wish to produce a leaflet which summarises its internal complaint handling procedures.
- 1.2.12 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.
- 1.2.13 R A firm's internal complaint handling procedures under *DISP* 1.2.1R 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.**

**1.2.14 R Where a *firm* decides that redress is appropriate, a *firm* should aim to 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.**

**1.2.15 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.**

**1.2.16 R A *firm* must put in place appropriate management controls and take reasonable steps to ensure that in complying with *DISP* 1.2.1R 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 complaint.**

1.2.17 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).

1.2.18 G *Firms'* correspondence and literature relating to complaints should be in clear and plain language.

1.2.19 G The *FSA* will take account of the size and nature of the *firm* in applying *DISP* 1.2.

1.2.20 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 *predecessor schemes*.

1.2.21 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.

### **1.3 Internal complaint handling procedures: additional requirements**

**1.3.1 R *DISP* 1.4 – *DISP* 1.7 do not apply:**

**(1) where the *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* 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.**

1.3.2 G 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, material distress or material inconvenience which has not yet crystallised because of the type of product involved (eg 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 within five days of its receipt, giving the name or job title of the person handling the complaint within 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 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.

1.4.4 R **A firm must, within four weeks of receiving a complaint, 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).**

1.4.5 R **By the end of eight weeks after its receipt of a complaint, the firm must 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.**

1.4.6 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 6 months; and**

**(2) enclose a copy of the *Financial Ombudsman Service's* explanatory leaflet (unless it has already done so under *DISP 1.4.5R(2)(b)*).**

1.4.7 G Copies of the *Financial Ombudsman Service's* explanatory leaflet may be reproduced under licence or can be obtained from the *Financial Ombudsman Service*.

1.4.8 G Under *DISP 1.4.5R* and *DISP 1.4.6R*:

(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*; and

(2) the 6 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*.

**1.4.9 R Where a *firm* operates a two-tier internal complaint handling procedure (eg local branch, then head office), it must still comply with *DISP 1.4.1R – DISP 1.4.6R*. However, if a complainant, who is dissatisfied with the branch's response and has been told how to refer his complaint to the next stage (eg head office or central complaint department), takes more than a week to do so, the additional time in excess of a week will not count for the purposes of the eight week period in *DISP 1.4.5R*.**

1.4.10 G The *FSA* expects that *firms* operating a two-tier internal complaint handling procedure will wish to provide customers with easy access to the second stage of the process (for example, by offering to refer complaints on to the next stage for them if they are dissatisfied).

## **1.5 Record Keeping and Reporting**

### **Making and retaining records of complaints**

**1.5.1 R A *firm* must make and retain records of complaints subject to *DISP 1.4 – DISP 1.7* for a minimum period of three years from the date of its receipt of a complaint.**

1.5.2 G The records required by *DISP 1.5.1R* are for the purposes of monitoring by the *FSA* and also to ensure that the *firm* is able to co-operate, as necessary, with the *Financial Ombudsman Service*. These should include:

(1) the name of the complainant;

(2) the substance of the complaint; and

(3) any correspondence between the *firm* and the complainant, including details of any redress offered by the *firm*.

1.5.3 G *DISP 4.2.3G* covers record-keeping by *VJ participants*.

### **Reporting complaints to the FSA**

- 1.5.4 R A firm must provide the FSA, on a twice-yearly basis, with a report containing (for the relevant reporting period) information about:**
- (1) the total number of complaints subject to DISP 1.4 – DISP 1.7 received by the firm, broken down according to the categories and in respect of each of the generic product types listed at DISP 1 Ann R which are relevant to the firm; and**
  - (2) the number of complaints closed by the firm within:**
    - (a) four weeks of receipt; and**
    - (b) eight weeks of receipt; and**
  - (3) the total number of complaints outstanding at the end of the reporting period.**
- 1.5.5 G** Where a complaint could fall into more than one category, the complaint should be recorded against the category which the firm considers to form the main part of the complaint.
- 1.5.6 R For the purposes of DISP 1.5.4R:**
- (1) the relevant reporting periods are from 1 April to 30 September and from 1 October to 31 March each year; and**
  - (2) reports are to be submitted to the FSA within one month of the end of the relevant reporting period.**
- 1.5.7 R For the purpose of DISP 1.5.4R(2), a closed complaint is a complaint where the firm has sent a final response.**
- 1.5.8 G** The address to which reports should be sent is:
- [Relevant Department]  
The FSA  
25 The North Colonnade  
Canary Wharf  
London  
E14 5HS  
e.mail: [ ]
- 1.5.9 R For the purpose of inclusion in the public record maintained by the FSA, a firm must provide the FSA, at the time of its authorisation, with details of a single contact point within the firm for complainants and must notify the FSA of any subsequent change.**
- 1.5.10 G** The contact point can be by name, job title or department(s) and may include, for example, a helpline telephone number.

## **1.6 Co-operation by firms with the Ombudsman**

**1.6.1 R A firm must co-operate fully with the *Ombudsman* in the handling of complaints against it.**

1.6.2 G Co-operation 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.

## **1.7 The Society of Lloyd's**

**1.7.1 R A complaint against a member of the Society of Lloyd's may not be referred to the *Financial Ombudsman Service* until after the internal complaint procedures of the Society of Lloyd's have been completed or after the end of eight weeks from receipt of the complaint by the member, whichever is the earlier.**

1.7.2 G The Society of Lloyd's has a two-tier internal complaint handling procedure involving consideration by the managing agent and then, if necessary, by the Society of Lloyd's in-house Complaints Department. This two-tier process will be subject to the overall time limits, record-keeping and reporting requirements outlined in *DISP* 1.

**1.7.3 R A members' adviser must establish and maintain effective arrangements for handling any complaint from a member of the Society of Lloyd's regarding advice given to the member in connection with the acquiring or disposing of syndicate participation.**

1.7.4 G Complaints from members of the Society of Lloyd's regarding the activities of *members' advisers*, which cannot be resolved by the *members' adviser*, cannot be referred to the *Financial Ombudsman Service*. (See *LLD* (the Lloyd's Sourcebook), for further information concerning complaints about the Society of Lloyd's.)

**DISP 1 Ann R (see DISP 1.5.4R)  
Complaint Categories**

**Firms are required to report the total number of complaints subject to DISP 1.4-1.7 received in respect of each of the generic product types listed, according to the categories below.**

Generic Product Type*	Total Number of Complaints	
	Private Individual	Small Businesses
Overcharging / incorrect charges		
Delay		
Other administrative errors		
Unsuitable or misleading advice		
Failure to carry out instructions		
Poor customer service		
Misleading advertising/product information		
Disputes over sums/amounts payable		
Churning (wrong advice to surrender one investment and take out another)		
Breach of customer agreement or contract		
Other		
<b>Total</b>		

*Generic Product Types
Free Standing AVC
Personal Pension
Stakeholder Pension
Mortgage Endowment
Other Endowment
Whole of Life
Permanent Health
Term Assurance
PEP/ISA
Unit Trust
Share/Derivative
Current Account
Deposit and savings accounts
Loan secured on land
Other Loans
General insurance – motor
General insurance – property
General insurance – other
Other

## 2 Jurisdiction of the Financial Ombudsman Service

### 2.1 Application and Purpose

#### Application

2.1.1 **R** This chapter applies to the *Ombudsman*, to *firms (except UCITS qualifiers)* 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*.

#### Purpose

2.1.3 **G** The purpose of this chapter is to set out the rules which govern the scope of both the *Compulsory 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* 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?

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 *DISP 2.4*);
- (2) the *firm* or *VJ participant* about which the complaint is made must be one which is subject to either the *Compulsory Jurisdiction* or the *Voluntary Jurisdiction*, as appropriate;
- (3) the activity to which the complaint relates must be subject to either the *Compulsory Jurisdiction* or the *Voluntary Jurisdiction*, as appropriate;
- (4) in relation to the *Compulsory Jurisdiction*, the act or omission complained of must have occurred at a time when the rules in *DISP 2* were in force, in relation to the activity being complained about;
- (5) the *firm* 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* or *VJ participant* about which the complaint is made must:
  - (a) in the case of the *Compulsory Jurisdiction*, have been authorised by the *FSA* at the time of the act or omission to which the complaint relates; or
  - (b) in the case of the *Voluntary Jurisdiction*, have been a *VJ participant* or a member of a *predecessor scheme* at the time of the act or omission to which the complaint relates or have agreed to let the *Financial Ombudsman Service* consider such complaints and must not have withdrawn from being a *VJ participant* at the time when the complaint is referred to the *Financial Ombudsman Service*.

2.2.2 G Some of the provisions of *DISP* 2.2.1G may be extended by transitional provisions made by H.M Treasury under section 426 of the *Act*.

2.2.3 G Under *DISP* 3.3.1R(1), 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) Except as described in *DISP* 2.3.1R (2), the *Ombudsman* will not entertain a complaint if the complainant refers it to the *Financial Ombudsman Service*:

(a) less than eight weeks after receipt of the complaint by the *firm* or *VJ participant*, unless the *firm* or *VJ participant* has already sent the complainant its *final response*; or

(b) more than six months after the date on which the complainant is advised by the *firm* or *VJ participant* in its *final response* 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.

(2) The *Ombudsman* can consider complaints outside the time limits in (1)(b) or (c) only when, in his view, the failure to comply with the time limits was as a result of exceptional circumstances.

2.3.2 R *DISP* 2.3.1R(1)(c) does not apply where:

(1) the time limit has been extended under a scheme for review of past business approved by H.M Treasury under section 404 of the *Act* (Schemes for reviewing past business); or

(2) the complaint concerns a contract or policy which is or may be the subject of a review under:

(a) the terms of the Statement of Policy on 'Pension Transfers and Opt-outs' issued by the *FSA* on 25 October 1994 and as subsequently modified by the *PIA* or if relevant by another *SRO*; or

(b) the terms of the policy statement for the review of specific categories of *FSAVC* business issued by the *FSA* on 28 February 2000 and as subsequently modified by the *FSA*, the *PIA* or if relevant by another *SRO*.

2.3.3 G For the purposes of *DISP* 2.3.1R(2), an example of an exceptional circumstance might be where the complainant has been or is incapacitated or where the *firm* 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 6 months.

2.3.4 G Under *DISP* [5.6.1R] a *firm* 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* 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 co-operated with the *firm* 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 *DISP* 2.4.3R; and

- (1) having a customer or potential customer relationship with a *firm* or *VJ participant* (as specified in *DISP* 2.4.7R and *DISP* 2.4.8R); or
- (2) having an indirect relationship with a *firm* or *VJ participant* (as specified in *DISP* 2.4.10R).

Classes of person

2.4.3 R **(1) Subject to (2), an *eligible complainant* is:**

- (a) a private individual; or
- (b) a business, which has a group annual turnover of less than £1million at the time the complainant refers the complaint to the *firm* or *VJ participant*; or
- (c) a charity which has an annual income of less than £1million at the time the complainant refers the complaint to the *firm* or *VJ participant*; or
- (d) a trustee of a trust which has a net asset value of less than £1million at the time the complainant refers the complaint to the *firm* or *VJ participant*;

and who satisfies the relevant criteria in *DISP* 2.4.7R – *DISP* 2.4.12R.

**(2) The following are not *eligible complainants* under (1):**

- (a) an individual, business, charity or trustee properly classified as an *intermediate customer* or *market counterparty* in relation to the *firm* in question at the time the complaint is made to the *firm* and in respect of the activity which is the subject of that complaint; and

**(b) a firm or VJ participant whose complaint relates in any way to an activity which the firm itself is permitted to carry on or which the VJ participant itself conducts, and which is subject to the Compulsory Jurisdiction or the Voluntary Jurisdiction of the Financial Ombudsman Service.**

- 2.4.4 G For the purposes of *DISP* 2, a business includes a *sole trader*, a company, an unincorporated body and a *partnership* carrying out any trade or profession.
- 2.4.5 G If a *firm* 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 *DISP* 2.4.3R(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* or *VJ participant*;**
  - (2) the complaint arises out of matters relevant to his being or having been a customer of the *firm* or *VJ participant*; and**
  - (3) he falls into one of the classes of person in *DISP* 2.4.3R(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* or *VJ participant's* actions or failure to act for the complainant in his capacity as a potential customer of the *firm* or *VJ participant*; and**
  - (2) he falls into one of the classes of person in *DISP* 2.4.3R(1).**

- 2.4.9 G *DISP* 2.4.8R is intended to enable potential customers to use the *Financial Ombudsman Service* where the complaint involves an allegation that they have suffered or may suffer financial loss, material distress or material inconvenience as a result of a *firm's* or *VJ participant's* wrongful act or omission (eg where a service has not been provided as a result of maladministration or illegal discrimination). A complaint about the legitimate exercise of a *firm's* or *VJ participant's* commercial judgement may be dismissed by an *Ombudsman* without consideration of its merits under *DISP* 3.3.1R(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* or *VJ participant* in relation to the subject matter of the complaint; and**

- (2) he has a complaint against the *firm* or *VJ participant* which either:
  - (a) arises out of a relationship which he has with the *firm* or *VJ participant* as described in *DISP 2.4.11R*; or
  - (b) is derived from another person and which arises from any of the circumstances described in *DISP 2.4.12R*; and
- (3) he falls into one of the classes of persons in *DISP 2.4.3R(1)*.

**2.4.11 R** The relationships with the *firm* or *VJ participant* relevant for *DISP 2.4.10R(2)(a)* are:

- (1) the complainant has given the *firm* or *VJ participant* a guarantee or security for a mortgage or loan; 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 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 or shares in unit trusts or other collective investment schemes and the *firm* or *VJ participant* is the manager, operator, trustee or depository.

**2.4.12 R** The circumstances relevant for *DISP 2.4.10R(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 an insurance policy 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.

**2.4.13 G** *DISP 2.4.12R(3)* includes, for example, employees covered by a group permanent health policy taken out by an employer, which provides in the insurance contract that the policy was taken out for the benefit of the employee.

Representatives of eligible complainants

2.4.14 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.

2.4.15 R It is immaterial whether the person authorised to act on behalf of an *eligible complainant* under *DISP 2.4.14R*:

(1) can satisfy any of the criteria applicable to the person under *DISP 2.4.3R(1)*; or

(2) has a claim of his own, or is acting for another person against the *firm* or *VJ participant*; or

(3) is or was a customer or potential customer of the *firm* 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 *DISP 2* to the extent specified in the *Standard Terms (DISP 4)*.

2.5.2 G *Firms* may, however, be exempt from the requirements of *DISP 1* and *DISP 5*, if they qualify under *DISP 1.1.5R*.

2.5.3 G Under *LLD 6.2.1D*, members of the Society of Lloyd's are treated as *firms* for the purposes of the *Compulsory 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:

(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.

2.6.2 R The activities in *DISP 2.6.1R* include any ancillary activities, including advice, provided by the *firm* in connection with those activities.

- 2.6.3 G The carrying on of an activity in *DISP* 2.6.1R 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 *firm* has administered its business, provided that the business is an activity subject to the jurisdiction of the *Financial Ombudsman Service*.
- 2.6.4 G Complaints about acts or omissions by a *firm* include complaints about acts or omissions in respect of activities for which the *firm* is responsible (ie the activities of their *appointed representatives*).
- 2.6.5 G For the purposes of *DISP* 2.6.1R(5), ancillary banking services include, for example, the provision and operation of cash machines, safe deposit boxes etc.
- 2.6.6 R **A complaint about a *firm* which is a member of a *designated professional body* and which relates solely to an *otherwise exempt regulated activity* cannot be handled under the *Compulsory Jurisdiction of the Financial Ombudsman Service*.**
- 2.6.7 G A complaint about an *otherwise exempt regulated activity* conducted by a *firm* which is a member of a *designated professional body* will be handled by the relevant professional body.

The Voluntary Jurisdiction

- 2.6.8 R **The *Ombudsman* can consider a complaint under the *Voluntary Jurisdiction* only if it is not covered by the *Compulsory 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) lending money secured by a charge over land;
  - (2) a financial services activity covered by a *predecessor scheme* in so far as the *VJ participant* was a member of that *predecessor scheme*, in respect of that activity, immediately before the *commencement day*.
- 2.6.9 R The activities in *DISP* 2.6.8R include any ancillary activities, including advice, provided by the *VJ participant* in connection with those activities.
- 2.6.10 R **The *Ombudsman* can consider a complaint under the *Voluntary Jurisdiction* and subject to these rules 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 *predecessor scheme*; or
  - (2) as a consequence of the agreement of the *VJ participant* in *DISP* 4.2.5R.

2.6.11 G *DISP 2.6.8R(2)* enables complaints about *VJ participants* which, immediately before the *commencement* day, were members of one of the *predecessor schemes* replaced by the *Financial Ombudsman Service* to be dealt with under the *Voluntary Jurisdiction* in respect of the financial services activities for which the *VJ participant* was previously covered.

## 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 a *firm's* or *VJ participant's* activities conducted in or from the *United Kingdom*.

2.7.2 G The territorial scope therefore covers *firms* or *VJ participants* operating from a permanent place of business in the *United Kingdom*, including *incoming EEA firms* and *incoming Treaty firms* which qualify for automatic authorisation under Schedule 3 (EEA Passport Rights) or Schedule 4 (Treaty Rights) to the *Act*.

2.7.3 G Complaints which concern business conducted by branches of *firms* or *VJ participants* outside the *United Kingdom* are not subject to the *Compulsory Jurisdiction* or the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.

2.7.4 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*.

### **3 Complaint handling procedures of the Financial Ombudsman Service**

#### **3.1 Application and Purpose**

##### **Application**

**3.1.1 R This chapter applies to the *Ombudsman* and to *firms*.**

3.1.2 G It is also relevant to those who might wish to refer a complaint to the *Financial Ombudsman Service*.

3.1.3 G *VJ participants* are subject to the rules in this chapter by contract under the *Standard Terms* (see *DISP 4*).

##### **Purpose**

3.1.4 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*;**
- (2) whether or not the complaint is within the time limits in *DISP 2.3*;**
- (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*.**

**3.2.2 R Where the *firm* 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*, unless the *firm* has already issued a *final response*.**

**3.2.3 R Where a *firm* fails to send a complainant a *final response* by the end of eight weeks, the *Ombudsman* may consider the complaint.**

- 3.2.4 R** Where the *Ombudsman* considers that the complaint or the complainant may be ineligible under the jurisdiction rules (see *DISP 2*) 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* of his decision.
- 3.2.5 G *DISP 3.2.4R* applies without prejudice to a *firm's* right to raise the issue of eligibility subsequently.
- 3.2.6 R** Where the *firm* 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.
- 3.2.7 R** Where the *Ombudsman* considers that the complaint may be one which should be dismissed without consideration of its merits, under *DISP 3.3*, 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* of that decision.
- 3.2.8 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.
- 3.2.9 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.
- 3.2.10 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 3.2.10R(2)*, proceed to determination (see *DISP 3.8*).

#### Hearings

- 3.2.11 R** At an appropriate stage before making a final determination under *DISP 3.8*, and in any other circumstances where the *Ombudsman* considers it appropriate, the *Ombudsman* will tell the parties when and how they may request a hearing.

**3.2.12 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.

3.2.13 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* 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* 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
- (6) is satisfied that the matter has previously been considered or excluded under the *Financial Ombudsman Service*, or a *predecessor 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* commercial judgement; or
- (12) is satisfied that it is a complaint about employment matters from an employee or employees of a *firm*; 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* decision when exercising a discretion under a will or private trust; or
- (15) is satisfied that it is a complaint about a *firm'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(s) 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*.

- 3.3.2 G For the purposes of *DISP* 3.3.1R(4), offers of compensation include ex gratia payments.
- 3.3.3 G In *DISP* 3.3.1R(5) the transaction could, for example, be a pension transaction which has been reviewed by the *firm* in accordance with the relevant regulatory standards. The *Ombudsman* may decide not to proceed with a complaint about the result of that review unless he considers that the standards or guidance published by the regulator did not address the particular circumstances of the case.
- 3.3.4 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.

- 3.3.5 G The *Ombudsman* may decide to proceed with a complaint which would otherwise be dismissed under *DISP* 3.3.1R(13), (14) or (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* 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 in *DISP* 3.5.2R(1) follow the provisions of the 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.

### **3.6 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* 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 the *Financial Ombudsman Service* 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, these rules 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 the *Financial Ombudsman Service* 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

- 3.8.2 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* 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*.
- (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* will not be bound by it.
- (5) The *Ombudsman* must notify the *firm* 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* 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* 3.9.4R; or
  - (2) a direction that the *firm* 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

- 3.9.4 R The maximum money award which the *Ombudsman* may make is £100,000.**
- 3.9.5 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* that it pays the balance.
- 3.9.6 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).
- 3.9.7 G For the purposes of calculating the monetary limit referred to in *DISP* 3.9.4R the amount of interest awarded does not form part of the award itself.
- 3.9.8 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**

- 3.9.9 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.**
- 3.9.10 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*.
- 3.9.11 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.**
- 3.9.12 G For the purposes of calculating the monetary limit specified in *DISP* 3.9.4R, an award of costs does not form part of the award itself.

### **Complying with awards/settlements**

- 3.9.13 R A *firm* must comply promptly with:**
- (1) any money award or direction made by the *Ombudsman*; and**
  - (2) any settlement which it agrees at an earlier stage of the procedures.**
- 3.9.14 R The *Ombudsman* must maintain a register of each money award and direction made.**
- 3.9.15 G A money award registered in accordance with *DISP* 3.9.14R can be recovered or enforced through the courts under paragraph 16 of Schedule 17 to the *Act*.
- 3.9.16 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)** *DISP 3.10.1R(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.

## 4 Standard Terms

### 4.1 Application and Purpose

#### Application

- 4.1.1 G The *Standard Terms* apply to any company, *partnership*, individual practitioner or other business which has decided to be a participant in the *Voluntary Jurisdiction* (a *VJ participant*). They are fixed by the *scheme operator* with the approval of the *FSA* in accordance with paragraph 18 of Schedule 17 to the *Act*.

#### Purpose

- 4.1.2 G The *Standard Terms* are the basis on which complaints will be dealt with and determined under the *Voluntary Jurisdiction*. They cover:
- (1) the rules and guidance for handling complaints (see *DISP* 4.2.2R to *DISP* 4.2.6R);
  - (2) an indemnity for the *scheme operator*, any member of its governing body, any member of its staff and any person acting as an *Ombudsman*, as permitted by paragraph 18(5) of Schedule 17 to the *Act* (see *DISP* 4.2.7R);
  - (3) the *Ombudsman's* powers relating to determinations and awards (see *DISP* 4.2.8R);
  - (4) the enforcement of a determination (see *DISP* 4.2.10R);
  - (5) the funding of the *Voluntary Jurisdiction* (see *DISP* 4.2.11R); and
  - (6) the process for withdrawal by a *VJ participant* from the *Voluntary Jurisdiction* (see *DISP* 4.2.12R).

### 4.2 The Standard Terms

- 4.2.1 R (1) **For the purposes of the *Standard Terms*, a company, *partnership*, individual practitioner or other business, whether authorised or unauthorised, agreeing to participate in the *Voluntary Jurisdiction* of the *Financial Ombudsman Service* is known as a *VJ participant*.**
- (2) **In consequence of the agreement by the *VJ participant* to participate in the *Voluntary Jurisdiction*, the *Standard Terms* fix the basis on which complaints relating to relevant acts or omissions of the *VJ participant* are to be dealt with and determined.**
- (3) **Where the *Standard Terms* apply rules relating to the *Compulsory Jurisdiction* for the purposes of the *Voluntary Jurisdiction*, those are to be treated as part of the *Standard Terms*.**

## Complaint handling procedures

**4.2.2 R** The rules and guidance contained in *DISP 1* will apply to *VJ participants* for the purposes of the *Voluntary Jurisdiction* as if they were *firms*, with the exception of *DISP 1.5*. *DISP 1.2* shall only apply in relation to complaints about activities of the *VJ participant* specified in *DISP 2.6.8R*.

**4.2.3 G** *DISP 1.5.1R* contains a requirement for a *firm* in the *Compulsory Jurisdiction* to make and retain records of complaints subject to *DISP 1.4-1.7* for a minimum period of 3 years from the date of its receipt of a complaint. Although this requirement is not applied to *VJ participants*, they 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*.

## Jurisdiction of the Financial Ombudsman Service

**4.2.4 R** The rules and guidance contained in *DISP 2* will apply for the purposes of the *Voluntary Jurisdiction*, with the exception of *DISP 2.6.1R - DISP 2.6.7G* inclusive.

**4.2.5 R** By agreeing to participate in the *Voluntary Jurisdiction*, a *VJ participant* also agrees to complaints relating to activities covered by *DISP 2.6.8R* being dealt with under *DISP 2.6.10R*.

## Complaint handling procedures of the Financial Ombudsman Service

**4.2.6 R** The rules and guidance contained in *DISP 3* will apply to *VJ participants* for the purposes of the *Voluntary Jurisdiction* as if they were *firms* (except where their application to *VJ participants* is specifically excluded or necessarily inapplicable).

## Liability

**4.2.7 R** (1) None of the following is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of any functions in connection with the *Voluntary Jurisdiction*:

(a) the *scheme operator*;

(b) any member of its governing body;

(c) any member of its staff;

(d) any person acting as an *Ombudsman* for the purposes of the *Financial Ombudsman Service*.

(2) Paragraph (1) does not apply:

(a) where the act or omission is shown to have been in bad faith; or

- (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

#### Determination and awards

- 4.2.8 R If the *Ombudsman* determines a complaint under the *Voluntary Jurisdiction* in favour of the complainant, the determination may include:
- (1) a “money award”, that is an award against the *VJ participant* 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* that has been suffered, or may be suffered, by the complainant;
  - (2) a direction that the *VJ participant* 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).
- 4.2.9 G *DISP 4.2.8R* gives the *Ombudsman* the same powers to make money awards and directions as he has, under section 229 of the *Act* (Awards), in relation to *firms* in the *Compulsory Jurisdiction*.

#### Enforcement of a determination

- 4.2.10 R The *Ombudsman’s* determination, if accepted by the complainant within the time limit specified by the *Ombudsman*, will be binding on the *VJ participant* and final, and may be enforced in court by the complainant.

#### Funding

- 4.2.11 R [Funding Rules and guidance, including a requirement to provide information similar to that required under *DISP 5.5.1R*, based upon the Funding Rules which will appear in *DISP 5*, will be applied here as part of the agreement by *VJ participants* to be subject to the *Voluntary Jurisdiction*.]

#### Withdrawal from the Voluntary Jurisdiction of the Financial Ombudsman Service

- 4.2.12 R A *VJ participant* may not withdraw from the *Voluntary Jurisdiction* of the *Financial Ombudsman Service* unless the *VJ participant*:
- (1) has submitted a written plan to the *scheme operator* setting out its proposals for:

- (a) notifying its existing customers of its intention to withdraw from the *Voluntary Jurisdiction*; and
  - (b) the handling of complaints against it prior to its withdrawal from the *Voluntary Jurisdiction*; and
- (2) the plan has been approved in writing by the *scheme operator*; and
- (3) the *scheme operator* has agreed in writing the date on which the *VJ participant* may withdraw from the *Voluntary Jurisdiction* (which date is not to be earlier than six months from the date of approval of the plan).

## **Transitional Rule Provisions**

*DISP 1.5.4R – DISP 1.5.7R*

*DISP 1.5.4R – DISP 1.5.7R* do not apply until 1 April 2002.

## DEFINITIONS

The preceding provisions make use of various terms, identified by *italics* which have the meanings set out below. (Note: only the key definitions which are of immediate relevance to these provisions have been included here. And we have not repeated here those definitions which are well understood within the financial services industry. All defined terms will, however, be set out in the complete Handbook Glossary.)

<b>Definition title</b>	<b>Definition wording</b>
<i>Act</i>	the Financial Services and Markets Act 2000;
<i>commencement</i>	the beginning of the day on which section 19 of the <i>Act</i> (the general prohibition) comes into force.
<i>Compulsory Jurisdiction</i>	the jurisdiction of the <i>Financial Ombudsman Service</i> to which <i>firms</i> are compulsorily subject;
<i>DISP</i>	the <i>FSA</i> 's rules on dispute resolution by <i>firms</i> and the rules relating to the ombudsman scheme which form the Complaints Sourcebook in the part of the <i>Handbook</i> entitled "Redress";
<i>eligible complainant</i>	a person eligible to have a complaint considered under the <i>Financial Ombudsman Service</i> , as defined in <i>DISP</i> 2.4;
<i>final response</i>	the response from the <i>firm</i> which either accepts the complaint, and where appropriate, offers redress, or offers redress without accepting the complaint, or rejects the complaint and gives reasons for doing so, and contains information about the right to refer the complaint to the <i>Financial Ombudsman Service</i> ;
<i>Financial Ombudsman Service</i>	the scheme which the <i>Act</i> requires to be set up for the resolution of disputes;
<i>FSA</i> ,	the Financial Services Authority;
<i>intermediate customer</i>	[definition to be finalised within Conduct of Business Sourcebook];
<i>market counterparty</i>	[definition to be finalised within Conduct of Business Sourcebook];
<i>members' adviser</i>	a <i>firm</i> that is not an underwriting agent but is permitted by the <i>FSA</i> to advise a member of the Society of Lloyd's to become, continue or cease to be, a member

	of a particular syndicate;
<i>Ombudsman</i>	a person appointed to the panel of persons maintained by the <i>scheme operator</i> to determine complaints, including the Chief Ombudsman;
<i>PIA</i>	the Personal Investment Authority Limited;
<i>plastic card</i>	a card, or a token with an equivalent function, which a customer can use to pay for goods and services, to obtain cash or both, such as a credit card, charge card, debit card, cash card or electronic purse;
<i>predecessor scheme</i>	any of the following:  The Office of the Banking Ombudsman The Office of the Building Societies Ombudsman The Insurance Ombudsman Bureau The Office of the Investment Ombudsman The Personal Investment Authority Ombudsman Bureau The Personal Insurance Arbitration Service The Securities and Futures Authority Complaints Bureau and Arbitration Service The FSA Complaints Unit and Independent Investigator;
<i>private customer</i>	[definition to be finalised within Conduct of Business Sourcebook];
<i>regulated activity</i>	any of the following activities specified in Part II of the Regulated Activities Order which is carried on by way of business: (a) accepting deposits (article 5); (b) effecting a contract of insurance (article 9(1)); (c) carrying out a contract of insurance (article 9(2)); (d) dealing in investments as principal (article 12); (e) dealing in investments as agent (article 19); (f) managing investments (article 33); (g) making arrangements for deals in investments (article 22(2)); (h) safeguarding and administering investments (article 36); (i) sending dematerialised instructions (article 42); (j) establishing, operating or winding up a collective investment scheme (article 48(1)); for the purposes of the permission regime; this is sub-divided into: (i) establishing, operating or winding up a regulated collective investment scheme;

- (ii) establishing, operating or winding up an unregulated collective investment scheme;
- (k) acting as trustee of an authorised unit trust scheme (article 48(2));
- (l) acting as the depositary or sole director of an open-ended investment company (article 48(3));
- (m) advising on investments (article 49); for the purposes of the permission regime, this is sub-divided into:
  - (i) advising on investments (except on pension transfer and pension opt outs);
  - (ii) advice on pension transfers and opt outs;
- (n) advice on syndicate participation at Lloyd's (article 52);
- (o) Lloyd's managing agents (article 53);
- (p) arranging deals in contracts of insurance written at Lloyd's (article 54);
- (q) entering as provider into a funeral plan contract (article 55).
- (r) agreeing to carry on the above activities, other than (a),(b),(l),(m) or (n) (article 59).

*restricted credit*

a loan where, as a result of an existing arrangement between a supplier and a *firm*, the application by the customer to the *firm* is submitted through the supplier and the terms of the loan require that it be paid to the supplier for goods or services supplied to the customer; but not lending money secured by a charge over land or lending or paying money by *plastic card* (other than a *store card*);

*scheme operator*

The Financial Ombudsman Service Limited;

*standard terms*

the contractual terms made under paragraph 18 of Schedule 17 to the *Act* under which *VJ participants* participate in the *Voluntary Jurisdiction*;

*store card*

a card restricted to paying for goods or services from a particular supplier or group of suppliers and where the price of the goods or services is paid directly to the supplier or group of suppliers by the customer or the *firm*, but a *plastic card* used to pay for goods or services through a network such as Visa or Mastercard is not a *store card*;

*United Kingdom*

England and Wales, Scotland, Northern Ireland, but not the Channel Islands or the Isle of Man;

*Voluntary Jurisdiction*

the jurisdiction of the *Financial Ombudsman Service* in

which persons (whether authorised or not) participate under contract;

*VJ participant*

a person subject to the *Voluntary Jurisdiction* by contract.

# List of Respondents to CP49

Abbey National Group  
American Financial Services Association  
AMP UK Financial Services Group (Covers the group: Pearl Assurance Plc,  
NPI & London Live)  
Association of British Credit Unions Ltd (ABCUL)  
Association of British Insurers  
Association of Friendly Societies  
Association of Independent Financial Advisers  
Association of Investment Trust Companies  
Association of Policy Market Makers  
Association of Private Client Investment Managers and Stockbrokers  
Association of Solicitor Investment Managers (ASIM)  
Association of Unit Trusts and Investment Funds  
AXA Insurance  
AXA Sunlife Services Plc  
Banking Code Standards Board  
Barclays Bank Plc  
Beckett Financial Services Ltd  
Bradford & Bingley Building Society  
Brewin Dolphin Securities Ltd  
Bristol & West Plc  
Britannia Building Society  
British Bankers Association  
Building Societies Association  
BUPA Ltd  
CGNU Plc  
CLAIMS  
Co-operative Bank Financial Advisers Ltd  
Co-operative Bank Plc  
Co-operative Insurance Society Ltd  
Commonwealth Bank of Australia

Compliance Institute  
Consumer Arbitration Panel of the SFA  
Council of Mortgage Lenders  
Council on Tribunals  
Cripps Harries Hall  
Deposit and Trustee Association  
Ecclesiastical Insurance Group  
Equitable Life Assurance Society  
Euler Trade Indemnity  
Eurolife Assurance Company Ltd  
First Active  
First-e the Internet Bank  
FOS Firms User Group  
Friends' Provident Life Office  
Fund Managers Association  
Futures & Options Association  
Guernsey Financial Services Commission  
Halifax Plc  
Handsworth Breakthrough CU Ltd  
HFC Bank  
HSBC Holdings Plc  
ILAG  
Institute of Chartered Accountants in England and Wales  
Insurance Ombudsman Bureau (Board and Council of)  
Johnston, Mr C M  
Kauders Portfolio Management  
Kensington Mortgage Company  
Killik & Co Stockbrokers  
Law Society  
Law Society of Scotland  
Legal & General Assurance Society  
Liverpool Victoria Friendly Society Ltd  
Lloyd's Motor Underwriters Association  
Lloyds  
Lloyds TSB Bank Plc  
Lloyds TSB Insurance  
London Investment Banking Association  
London Society of Chartered Accountants  
Marks & Spencer Financial Services  
Marsh Financial Services Ltd  
McLaughlin, Mr Robert  
Merrill Lynch Investment Managers  
Misys IFA Services Plc  
National Mutual

Nationwide Building Society  
NCL Investments Ltd  
Northern Rock Plc  
Office of Fair Trading  
Permanent Insurance Company Ltd  
Perpetual Plc  
Portman Building Society  
ProShare (UK) Ltd  
Provincial Hospital Services Association  
Prudential Assurance Company Ltd  
Quilter & Co Ltd  
Robert Fleming Group of Companies  
Royal & Sun Alliance  
Royal Bank of Scotland  
Schroder Unit Trusts Ltd  
Scottish Widows Plc  
Seagood, Mr Robert  
Securities Institute  
Shurman, Mr Laurence  
Skandia Life  
Society of Pension Consultants  
Standard Life  
Sun Life Financial of Canada  
Swiss Life  
Towry Law Plc  
Wheeler, Mr David A  
Wholesale Markets Brokers Association  
Yardley, Sir David  
Zurich Financial Services (UKISA) Ltd

# Glossary

<b>CJ</b>	Compulsory Jurisdiction
<b>CML</b>	Council of Mortgage Lenders
<b>DISP</b>	Dispute Resolution: Complaints (title of Complaints Sourcebook rules)
<b>ECHR</b>	European Convention on Human Rights
<b>EEA</b>	European Economic Area
<b>FISMA</b>	Financial Services and Markets Act 2000
<b>FOS</b>	Financial Ombudsman Service Limited
<b>FSA</b>	Financial Services Authority
<b>IFA</b>	Independent Financial Adviser
<b>IOB</b>	Insurance Ombudsman Bureau
<b>MOU</b>	Memorandum of Understanding
<b>N2</b>	The date when the Financial Services Authority will acquire its powers under the Financial Services and Markets Act.
<b>OBO</b>	Office of the Banking Ombudsman
<b>OBSO</b>	Office of the Building Societies Ombudsman
<b>OIO</b>	Office of the Investment Ombudsman
<b>PIA</b>	Personal Investment Authority
<b>PIAOB</b>	Personal Investment Authority Ombudsman Bureau
<b>PIAS</b>	Personal Insurance Arbitration Service
<b>RAO</b>	Regulated Activities Order
<b>RPB</b>	Recognised Professional Body
<b>SFA</b>	Securities and Futures Authority
<b>SFACB</b>	Securities and Futures Authority Complaints Bureau
<b>SRO</b>	Self Regulating Organisation
<b>VJ</b>	Voluntary Jurisdiction

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