

Chapter 3

Complaint handling procedures of the Financial Ombudsman Service

3.5 Resolution of complaints by the Ombudsman

- 3.5.1 **R** 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.
- 3.5.2 **G** The *Ombudsman* may inform the complainant that it might be appropriate to complain against some other *respondent*.
- 3.5.3 **G** Where two or more *complaints* from one complainant relate to connected circumstances, the *Ombudsman* may investigate them together, but will issue separate provisional assessments and determinations in respect of each *respondent*.
- 3.5.4 **R** If the *Ombudsman* decides that an investigation is necessary, he will then:
- (1) ensure both parties have been given an opportunity of making representations;
 - (2) send both 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 that time limit, proceed to determination.
- Hearings**
- 3.5.5 **R** If the *Ombudsman* considers that the *complaint* can be fairly determined without convening a hearing, he will determine the *complaint*. If not, he will invite the parties to take part in a hearing. A hearing may be held by any means which the *Ombudsman* considers appropriate in the circumstances, including by telephone. No hearing will be held after the *Ombudsman* has determined the *complaint*.
- 3.5.6 **R** A party who wishes to request a hearing must do so in writing, setting out:
- (1) the issues he wishes to raise; and
 - (2) (if appropriate) any reasons why he considers the hearing should be in private;

so that the *Ombudsman* may consider whether:

- (3) the issues are material;
- (4) a hearing should take place; and
- (5) any hearing should be held in public or private.

3.5.7 **G** In deciding whether 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.

Evidence

3.5.8 **R** The *Ombudsman* may give directions as to:

- (1) the issues on which evidence is required;
- (2) the extent to which evidence should be oral or written; and
- (3) the way in which evidence should be presented.

3.5.9 **R** The *Ombudsman* may:

- (1) exclude evidence that would otherwise be admissible in a court or include evidence that would not be admissible in a court;
- (2) accept information in confidence (so that only an edited version, summary or description is disclosed to the other party) where he considers it appropriate;
- (3) reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested; and
- (4) treat the *complaint* as withdrawn and cease to consider the merits if a complainant fails to supply requested information.

3.5.10 **G** Evidence which the *Ombudsman* may accept in confidence includes confidential evidence about third parties and security information.

3.5.11 **G** The *Ombudsman* has the power to require a party to provide evidence. Failure to comply with the request can be dealt with by the court.

3.5.12 **G** The *Ombudsman* may take into account evidence from third parties, including (but not limited to) the *FCA*, other regulators, experts in industry matters and experts in consumer matters.

Procedural time limits

3.5.13 **R** The *Ombudsman* may fix (and extend) time limits for any aspect of the consideration of a *complaint* by the *Financial Ombudsman Service*.

- 3.5.14 **R** If a *respondent* fails to comply with a time limit, the *Ombudsman* may:
- (1) proceed with consideration of the *complaint*; and
 - (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.
- 3.5.15 **R** If a complainant fails to comply with a time limit, the *Ombudsman* may:
- (1) proceed with consideration of the *complaint*; or
 - (2) treat the *complaint* as withdrawn and cease to consider the merits.