

**COMPLAINTS SOURCEBOOK (MORTGAGE ENDOWMENT COMPLAINTS)
INSTRUMENT 2004**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions listed in Schedule 4 to the Complaints sourcebook (Powers exercised).
- B. The rule-making powers listed in that Schedule are specified for the purpose of section 153(2) (Rule-making instruments) of the Financial Services and Markets Act 2000.

Commencement

- C. This instrument comes into force on 1 June 2004.

Amendments to the Dispute resolution: Complaints sourcebook

- D. The Dispute resolution: Complaints sourcebook is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Complaints Sourcebook (Mortgage Endowment Complaints) Instrument 2004.

By order of the Board
20 May 2004

Annex

Amendment to the Dispute resolution: Complaints sourcebook

In this Annex, underlining indicates new text. Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not underlined.

After provision No. 7 in this table, insert the following new provisions:

DISP Table: Transitional provisions table

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(1)	(2)	(3)	(4)	(5)	(6)
...	Material provision to which transitional provision applies	R	Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
7A	<i>DISP</i> 2.3.6R	R	Nothing in <i>DISP</i> 2.3.6R affects the position of a complaint which, on 31 May 2004, could not have been considered by the <i>Ombudsman</i> under <i>DISP</i> 2.3.1R(1)(c); or <i>DISP</i> 2.3.6R(1)(b) as it then stood.	From 1 June 2004	Amended with effect from 1 June 2004
7B	<i>DISP</i> 2.3.6R	R	In the case of a complainant falling within <i>DISP</i> 2.3.6R as amended by this instrument, (and whose time for referring a complaint under the <i>rules</i> as they stood before amendment has not expired), time will expire in accordance with the amended <i>rule</i> , save that if the final date would otherwise be before 30 November 2004 an explanation of	From 1 June 2004	Amended with effect from 1 June 2004

			<p>the final date will be in conformity with <i>DISP</i> 2.3.6R(2) provided it stipulates a final date which is not less than two months from the date on which the explanation is likely to be received by the complainant.</p>		
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2.3.1 R (2) The *Ombudsman* can consider complaints outside the time limits in (1)(b) or (c) or in *DISP* 2.3.6R when, in his view, the failure to comply with the time limits was as a result of exceptional circumstances or where he is required to do so by the *Ombudsman Transitional Order* (see *DISP* 2.3.2 G) or where the *firm* has not objected to the *Ombudsman* considering the complaint.

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Exceptions for certain mortgage endowment complaints

- 2.3.6 R (1) If a complaint relates to the sale of an endowment *policy* for the purpose of achieving capital repayment of a mortgage and the complainant ~~would, as a result of this rule DISP 2.3.6, have more time to refer the complaint than under DISP 2.3.1 R(1)(c), the time for referring a complaint to the *Financial Ombudsman Service*:-~~ receives a letter from a *firm* or a *VJ participant* warning that there is a high risk that the *policy* will not, at maturity, produce a sum large enough to repay the target amount then, subject to (2), (3), (4) and (5):
- (a) ~~starts to run from the date the complainant receives a letter from a *firm* or *VJ participant* warning the complainant that there is a high risk that the *policy* will not, at maturity, produce a sum large enough to repay the target amount~~ time for referring a complaint to the *Financial Ombudsman Service* starts to run from the date the complainant receives the letter; and
 - (b) ~~ends six months from the date the complainant receives a second letter from a *firm* or *VJ participant* containing the same warning or other reminder of the need to act~~ ends three years from that date ("the final date").
- (2) Paragraph (1)(b) applies only if the complainant also receives within the three year period mentioned in (1)(b) and at least six months before the final date an explanation that the complainant's time to refer such a complaint would expire at the final date.
- (3) If an explanation is given but is sent outside the period referred to in (2), time for referring a complaint will run until a date specified in such an explanation which must not be less than six months after the date on which the notice is sent.
- (4) A complainant will be taken to have complied with the time limits in (1) to (3) above if in any case he refers the complaint to the *firm* or *VJ participant* within those limits and has a written acknowledgement or some other record of the complaint having been received.
- (5) Paragraph (1) does not apply if: (a) the *Ombudsman* is of the opinion that, in the circumstances of the case, it is appropriate for *DISP* 2.3.1 R(1)(c) to apply without modification; or (b) in respect of any particular complaint, the *firm* can show that the three year period specified in *DISP* 2.3.1 R(1)(c) had started to run before the complainant received any such letter as mentioned in *DISP* 2.3.6R(1)(a) .
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