

Chapter 1

General

1.6 Role of the Financial Ombudsman Service and the Financial Services Compensation Scheme

How the Financial Ombudsman Service will deal with complaints where there is a relevant consumer redress scheme

- 1.6.1** **G** *Complaints about:*
- (1) an act or omission of a firm where the subject matter of the *complaint* falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*; or
 - (2) a determination made by a firm under a *consumer redress scheme*; or
 - (3) a failure by a firm to make a determination under a *consumer redress scheme*;
- will all fall within the compulsory jurisdiction of the *Financial Ombudsman Service* (see section 404B(11) of the *Act*).
- 1.6.2** **G** Whether the *Ombudsman* will, or will not, consider a complaint and, if so, on what basis will depend on the circumstances of the complaint, including in particular on when the complaint is received by the *Financial Ombudsman Service* and also on whether the firm and consumer agree that the *complaint* should not be determined by reference to what, in the opinion of the *Ombudsman*, the determination under the consumer redress scheme should be or should have been (see section 404B(1A) and (2B) of the *Act*).
- ### Complaints received by the Financial Ombudsman Service before a scheme comes into effect
- 1.6.3** **G** A scheme must be established by the *FCA* in accordance with the *FCA's* rule-making processes, including consultation and cost benefit analysis (CBA). Publicity in the run up to formal consultation may lead to a rapid rise in the number of *complaints* to the *Financial Ombudsman Service* about the issue in question. Alternatively, the *Financial Ombudsman Service* may already have received a number of *complaints* about the issue for which a scheme is being developed to address.
- 1.6.4** **G** As these are *complaints* that were referred to the *Financial Ombudsman Service* before the scheme came into effect, the *Ombudsman* would have to determine the *complaint* on the usual fair and reasonable basis under section 228 of the *Act*.

Complaints received by the Financial Ombudsman Service while a consumer redress scheme is in effect

1.6.5 **G** Where the *complaint* is about the subject matter of a scheme or a failure by a firm to make a determination under a scheme (where the firm has not yet dealt with it because the time limit for the firm to deal with cases under the scheme has not expired) under **■ DISP 3** the *Ombudsman* will (unless **■ DISP 2.8.1R(4)** applies) refer the *complaint* back to the firm to be dealt with in accordance with the scheme.

1.6.6 **G** In other cases the *Ombudsman* may have to consider the merits of the *complaint*. However, the *complaint* will be determined by reference to what, in the opinion of the *Ombudsman*, the determination under the *consumer redress scheme* should be or should have been (unless the firm and consumer agree that the *complaint* should not be so determined – see **■ CONRED 1.6.7G**). Examples would be where:

- (1) the firm does not offer redress in the determination, or makes no determination within the time limit for doing so, and the consumer claims that (under the terms of the scheme) the firm should have done so; or
- (2) the scheme provides for different forms of redress depending on the circumstances of the case, but the firm has offered one form of redress and the consumer claims that (under the terms of the scheme) the firm should have offered another form of redress.

1.6.7 **G** Where the firm and the consumer agree that the *complaint* should not be determined by reference to what, in the opinion of the *Ombudsman*, the determination under the *consumer redress scheme* should be or should have been (see section 404B(1A) and (2B) of the *Act*), the *Ombudsman* will determine the *complaint* by reference to what is fair and reasonable in all the circumstances of the case (see **■ DISP 3.6**).

Complaints received by the Financial Ombudsman Service after a consumer redress scheme has ended

1.6.8 **G** If a *complaint* is about:

- (1) a firm’s determination under the scheme (or failure to make a determination in accordance with the scheme); or
- (2) an act or omission the subject matter of which has been dealt with under the scheme;

the *complaint* will be determined by reference to what, in the opinion of the *Ombudsman*, the *redress determination* under the *consumer redress scheme* should have been, rather than by reference to what is ‘fair and reasonable’ (unless the firm and the consumer agree otherwise – see **■ CONRED 1.6.7G**).

1.6.9 **G** The point at which a scheme ends will be set out in the scheme and some schemes may be of indefinite duration. In relation to an ‘opt-in’ scheme, the *FCA* would ensure that the scheme covers how to deal with customers who nevertheless contacted firms after that date.

1.6.10 **G** The *Financial Ombudsman Service* may also receive *complaints* about cases that have been dealt with by a firm under a *consumer redress scheme* when the firm should have dealt with the issue under the normal *complaints* process in *DISP*. In such cases the *Ombudsman* will determine the *complaint* in accordance with its usual ‘fair and reasonable’ jurisdiction and the usual *DISP* rules will apply. *DISP* seeks to clarify this point by referring (in appropriate places) to *complaints* that have properly been dealt with under a *consumer redress scheme*. It is important to note that “properly” here refers to the scope of the scheme (i.e. should the *complaint* have been dealt with under the scheme at all?) rather than the way in which the scheme has been applied in a particular case (i.e. the *complaint* did fall within the scheme but the firm applied the scheme incorrectly).

Non-consideration and dismissal of complaints by the Ombudsman

1.6.11 **G** The relevant *DISP* provisions provide that the *Ombudsman* can usually (unless the firm and the consumer consent) only consider a *complaint* which falls to be dealt with under a *consumer redress scheme* if the firm has already provided a *redress determination* (akin to a *final response*) or failed to do so within the time limits specified in the scheme (see ■ **DISP 2.8.1R**).

1.6.12 **G** *DISP* sets out the circumstances in which the *Ombudsman* may dismiss a *complaint*. There are no express rules which allow the *Ombudsman* to dismiss a *complaint* which falls to be dealt with (or has been dealt with) under a *consumer redress scheme* (see ■ **DISP 3.3.4AR**). Whether a *complaint* which falls to be dealt with (or has been dealt with) under a *consumer redress scheme* should be dismissed is a matter for the *Ombudsman* to decide.

Case fees

1.6.13 **G** The definition of *chargeable case* contains an exception which provides that a case fee may not be charged where the *Ombudsman* considers it apparent from the *complaint* when it is received, and from any *redress determination* issued by the firm, that the firm has reviewed the subject matter of the *complaint* and issued a *redress determination* in accordance with the terms of the *consumer redress scheme*. However, this exception does not apply where the complainant and the firm agree that the *complaint* should not be dealt with by the *Ombudsman* in accordance with the *consumer redress scheme*.

1.6.14 **G** If it is not apparent to the *Ombudsman* from the *complaint* when it is received, and from any *redress determination* issued by the firm, that the firm has reviewed the subject matter of the *complaint* and issued a *redress determination* in accordance with the terms of the *consumer redress scheme*, a case fee will be chargeable. It will therefore be in firms’ interests to ensure that a *redress determination* clearly sets out the outcome of their investigation under the scheme as well as the basis for it.

Time limits

1.6.15 **G** Similar time limits will apply to *complaints* to the *Financial Ombudsman Service* about the outcome of a firm’s investigation under a scheme as

currently apply to other complaints referred to the *Financial Ombudsman Service*.

- 1.6.16 **G** Consumers will have six months from the date on which the firm sent them a *redress determination* to complain to the *Financial Ombudsman Service*. If a firm has failed to provide a *redress determination* (e.g. because it omitted to deal with a particular consumer’s case under the scheme), consumers will have the longer of six years from the event complained of and three years from the date on which the consumer became aware (or ought reasonably to have become aware) that they had cause for complaint, to complain to the *Financial Ombudsman Service* (in accordance with the existing standard time limits in ■ DISP 2.8). A firm cannot consent to the *Ombudsman* considering the complaint outside these standard time limits where the complaint is a “relevant complaint” within the meaning of section 404B(3) of the *Act*. However, the *Ombudsman* can consider complaints outside of these standard time limits where, in the view of the *Ombudsman*, the consumer’s failure to comply with the time limits was as a result of exceptional circumstances.

Awards

- 1.6.17 **G** Where a *consumer redress scheme* is in place, money awards and directions will reflect what, in the opinion of the *Ombudsman*, the outcome of the firm’s investigation should be (or should have been) under the *consumer redress scheme* (see section 404B(5) and (8) of the *Act*). This applies unless the firm and the consumer agree that the *complaint* should not be determined in this way (see section 404B(1A), (2B) and (3) of the *Act*).
- 1.6.18 **G** The money award may specify the date by which the amount awarded is to be paid and may provide for interest to be payable, at a rate specified in the award, on any amount not paid by that date (see section 404B(7) of the *Act*).
- 1.6.19 **G** The cap on the maximum money award the *Ombudsman* can make will also apply in relation to *consumer redress schemes* (see section 404B(5) of the *Act*). Even so, when making *scheme rules*, the *FCA* may decide to specify a different monetary limit in relation to *complaints* falling within the scope of the scheme (see section 229(7) of the *Act*). Such a *rule* would normally be subject to consultation before the scheme takes effect (see ■ CONRED 1.2.1G). As is usual practice, the *Ombudsman* will be able to recommend that the firm pay a larger amount than the cap (but this will not be binding on firms in any way). This does not mean that the *Ombudsman* can recommend a larger amount than should be paid under the scheme.

Firm-by-firm past business reviews that have already been agreed by a firm before a consumer redress scheme is made

- 1.6.20 **G** If a firm had fairly reached a voluntary settlement with its consumers on a full and final settlement basis, the *Financial Ombudsman Service* would not usually look to re-open this.

Waivers of the scheme rules for particular firms

- 1.6.21 **G** If a firm is granted a *waiver* of the *scheme rules* as a whole, the *consumer redress scheme* will not apply to that firm. Consequently, any *complaints*

about the firm that are referred to the *Financial Ombudsman Service* will be dealt with in accordance with the *Ombudsman's* usual approach of determining what is, in their view, fair and reasonable in all the circumstances of the case.

Failures by firms that span the period before and after an activity became regulated by the FCA

1.6.22 **G** In this situation, the *Act* would require the *Financial Ombudsman Service* to decide *complaints* within the scope of a scheme by applying the scheme (unless the relevant firm and consumer otherwise agreed – see section 404B of the *Act*) and *complaints* outside the scope of a scheme on the basis of its usual approach (see section 228 of the *Act*). However, as explained in ■ CONRED 1.4.5G, it would be possible for the Treasury by order to widen the type of financial services that *consumer redress schemes* can cover in order to encompass the pre-regulation activities (see section 404G of the *Act*).

The FSCS

1.6.23 **G** The *FSCS* will consider claims that fall within the scope of a *consumer redress scheme* in accordance with the scheme (see ■ COMP 12.4.22R). However, the *FSCS* has discretion to depart from the terms of the scheme where it considers it essential in order to provide the claimant with fair compensation. An example might be the *FSCS* paying compensation in cash rather than augmenting a consumer's current pension plan (as the *FSCS* is not in a position to advise the consumer to set up a new, or amend an existing, pension plan in the way that a firm may be able to).

1.6.24 **G** The *FSCS's* limits on the amount of compensation it can pay in the event of a claim will apply.