

# Dispute resolution: Complaints

## Dispute resolution: Complaints

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# Chapter INTRO

## Introduction

## INTRO 1 Introduction

### INTRO

This part of the *FCA Handbook* sets out how *complaints* are to be dealt with by *respondents* (*firms, payment service providers, electronic money issuers, CBTL firms, designated credit reference agencies, designated finance platforms and VJ participants*) and the *Financial Ombudsman Service*.

It refers to relevant provisions in the *Act* and in transitional provisions made by the Treasury under the *Act*. It includes *rules* made by the *FCA* and rules made (and *standard terms* set) by *FOS Ltd* with the consent or approval of the *FCA*.

### INTRO

The powers to make rules (or set *standard terms*) relating to *firms, payment service providers, electronic money issuers, CBTL firms, designated credit reference agencies, designated finance platforms* and *VJ participants* derive from various legislative provisions; but the rules (and *standard terms*) have been co-ordinated to ensure that they are identical, wherever possible.

### INTRO

#### Chapter 1: Treating complainants fairly

■ DISP 1 contains rules and guidance on how *respondents* should deal with *complaints* promptly and fairly, including *complaints* that could be referred to the *FOS*. Some of these rules also apply to certain *branches* of *firms* elsewhere in the *EEA* and certain *EEA firms* carrying out activities in the *United Kingdom* under the freedom to provide *cross border services*.

### INTRO

#### Chapters 2 - 4: The Financial Ombudsman Service

Chapters 2, 3 and 4 set out how the *Financial Ombudsman Service* (operated by *FOS Ltd*) considers unresolved *complaints*.

Chapter 2 sets out the scope of the *Financial Ombudsman Service's* two jurisdictions:

- the *Compulsory Jurisdiction*; and
- the *Voluntary Jurisdiction*.

The scope of the two jurisdictions is defined by: the type of activity to which the *complaint* relates; the place where the activity took place; the eligibility of the complainant; and the time limits for referring a *complaint* to the *Financial Ombudsman Service*.

Chapter 3 sets out the procedures of the *Financial Ombudsman Service*, including consideration and determination of *complaints* and how the *Financial Ombudsman Service* deals with information received.

Chapter 4 sets out the terms under which *VJ participants* participate in the *Voluntary Jurisdiction*.

**INTRO****Appendix 1: FCA's guidance on handling mortgage-endowment complaints**

This appendix contains the *FCA's guidance to firms* on handling *complaints* relating to mortgage endowments.

**INTRO****INTRO****INTRO****INTRO****Appendix 3: FCA's rules and guidance on handling payment protection insurance complaints**

This appendix sets out the approach which *firms* should use when handling *complaints* relating to the sale of *payment protection contracts*.

**INTRO****Financial Ombudsman Service fees**

The rules on fees charged in respect of the *Financial Ombudsman Service* are in Chapter 5 of the Fees manual.





# Chapter 1

## Treating complainants fairly

## 1.1 Purpose and application

### Purpose

- 1.1.1 **G** This chapter contains *rules* and *guidance* on how *respondents* should deal promptly and fairly with *complaints* in respect of business carried on from establishments in the *United Kingdom*, by certain *branches* of *firms* in the *EEA* or by certain *EEA firms* carrying out activities in the *United Kingdom* under the freedom to provide *cross border services*. It is also relevant to those who may wish to make a *complaint* or refer it to the *Financial Ombudsman Service*.

### Background

- 1.1.2 **G** Details of how this chapter applies to each type of *respondent* are set out below. For this purpose, *respondents* include:
- (1) *persons* carrying on *regulated activities (firms)*, providing *payment services (payment service providers)* providing *electronic money issuance services (electronic money issuers)* carrying on *CBTL business (CBTL firms)*, providing *credit information* under the *Small and Medium Sized Business (Credit Information) Regulations (designated credit reference agencies)*, or providing *specified information* under the *Small and Medium Sized Business (Finance Platforms) Regulations (designated finance platforms)* and which are covered by the *Compulsory Jurisdiction*; and
  - (2) [deleted]
  - (3) *persons* who have opted in to the *Voluntary Jurisdiction (VJ participants)*.

### Application to firms

- 1.1.3 **R**
- (1) Subject to **■** DISP 1.1.5 R, this chapter applies to a *firm* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by it or its *appointed representative* in the *United Kingdom*.
  - (2) For *complaints* relating to the *MiFID business* of a *firm*, the *complaints handling rules* and the *complaints record rule*:
    - (a) apply to *complaints* from *retail clients* and do not apply to *complaints* from *eligible complainants* who are not *retail clients*;
    - (b) also apply in respect of activities carried on from a *branch* of a *UK firm* in another *EEA State*; and

(c) do not apply in respect of activities carried on from a *branch* of an *EEA firm* in the *United Kingdom*.

(3) The *complaints data publication rules* do not apply in respect of activities carried on from a *branch* of an *EEA firm* in the *United Kingdom* or activities carried on by an *EEA firm* in the *United Kingdom* under the freedom to provide *cross border services*.

(4) This chapter, except the *complaints data publication rules*, also applies to an *incoming EEA AIFM* for *complaints* from *eligible complainants* concerning *AIFM management functions* carried on for an *authorised AIF* or a *UK ELTIF* other than a *body corporate* that is not a *collective investment scheme* under the freedom to provide *cross-border services*.

1.1.4 **R** Where a *firm* has outsourced activities to a *third party processor*, **DISP 1.1.3 R** does not apply to the *third party processor* when acting as such, but applies to the *firm* which is taking responsibility for the acts and omissions of the *third party processor* in respect of the outsourced activities.

1.1.5 **R** This chapter does not apply to:

- (1) [deleted]
- (2) [deleted]
- (3) an *authorised professional firm* in respect of expressions of dissatisfaction about its *non-mainstream regulated activities*;
- (4) *complaints* in respect of *auction regulation bidding*;
- (5) a *full-scope UK AIFM*, *small authorised UK AIFM* or an *incoming EEA AIFM*, for *complaints* concerning *AIFM management functions* carried on for an *AIF* that is a *body corporate* unless it is a *collective investment scheme*; and
- (6) a *depository*, for *complaints* concerning activities carried on for an *AIF* that is:
  - (a) a *body corporate* unless it is a *collective investment scheme*; or
  - (b) another type of *AIF* unless it is:
    - (i) an *authorised AIF*; or
    - (ii) an *ELTIF*; or
    - (iii) a *charity AIF*.

1.1.5-A **G** References in **DISP 1.1.5 R** to a *full-scope UK AIFM* and *small authorised UK AIFM* carrying on *AIFM management functions* for an *AIF* that is a *body corporate* that is not a *collective investment scheme* include *firms* that are *internally managed AIFs*.

1.1.5A **R** The *complaints reporting rules* and the *complaints data publication rules* do not apply to a *credit union*.

- 1.1.6 **G** ■ CREDS 9 sets out *rules* for *credit unions* in relation to reporting *complaints*.
- 1.1.6A **G** In relation to a *credit union*, the nature, scale and complexity of the *credit union's* business should be taken into account when deciding the appropriate procedures to put in place for dealing with *complaints*.
- 1.1.7 **R** This chapter applies to the *Society*, *members of the Society* and *managing agents*, subject to the *Lloyd's complaint rules*.
- 1.1.8 **R** An *insurance intermediary*, that is not also an *insurer*, must have in place and operate appropriate and effective procedures for registering and responding to *complaints* from a *person* who is not an *eligible complainant*.  
[Note: article 10 of the *Insurance Mediation Directive*]
- 1.1.9 **G** [deleted]
- 1.1.9A **G** The scope of this sourcebook does not include:
- (1) a *complaint* about *pre-commencement* investment business which was regulated by a *recognised professional body* (those *complaints* will be handled under the arrangements of that professional body); or
  - (2) a *complaint* about the administration of an *occupational pension scheme*, because this is not a *regulated activity* (*firms* should refer complainants to the Pensions Advisory Service rather than to the *Financial Ombudsman Service*).
- 1.1.10 **R** In relation to a *firm's* obligations under this chapter, references to a *complaint* also include an expression of dissatisfaction which is capable of becoming a *relevant new complaint*, a *relevant transitional complaint* or a *relevant new credit-related complaint*.
- Application to payment service providers**.....
- 1.1.10A **R** This chapter (except the *complaints record rule*, the *complaints reporting rules* and the *complaints data publication rules*) applies to *payment service providers* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by it or its *agent* in the *United Kingdom*.
- 1.1.10B **G**
- (1) In this sourcebook, the term *payment service provider* does not include *full credit institutions* (which are covered by this sourcebook as *firms*), but it does include *small electronic money institutions*.
  - (2) Although *payment service providers* are not required to comply with the *complaints record rule*, it is in their interest to retain records of *complaints* so that these can be used to assist the *Financial Ombudsman Service* should this be necessary.

**Application to electronic money issuers**

**1.1.10C** **R** This chapter (except the *complaints record rule*, the *complaints reporting rules*, and the *complaints data publication rules*) applies to *electronic money issuers* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by it or its *agent* in the *United Kingdom*.

**1.1.10D** **G**

- (1) In this sourcebook, the term *electronic money issuer* does not include *credit institutions*, *credit unions* or municipal banks (which will be carrying on a *regulated activity* if they issue *electronic money* and will be covered by this sourcebook as *firms* in those circumstances), but it does include *small electronic money institutions* and *persons* who meet the conditions set out in regulation 75(1) or regulation 76(1) of the *Electronic Money Regulations*.
- (2) Although *electronic money institutions* are not required to comply with the *complaints record rule*, it is in their interest to retain records of *complaints* so that these can be used to assist the *Financial Ombudsman Service* should this be necessary.

**Application to UCITS management companies**

**1.1.10E** **R** For *complaints* related to *collective portfolio management services* of a *UK UCITS management company* for a *UCITS scheme* or an *EEA UCITS scheme*, ■ DISP 1.1.3R (1) applies, except where modified as follows:

- (1) the *consumer awareness rules*, *complaints handling rules* and *complaints record rule* apply in respect of *complaints* from *Unitholders* rather than from *eligible complainants*; and
- (2) the *consumer awareness rules*, the *complaints handling rules* and the *complaints record rule*, as modified in (1), also apply where the services are provided from a *branch* in another *EEA State* (and any reference to *respondent* in the *consumer awareness rules* includes such a *branch*).

**1.1.10F** **R** For *complaints* related to *collective portfolio management services* of an *EEA UCITS management company* for a *UCITS scheme*, ■ DISP 1.1.3R (1) applies, except where modified as follows:

- (1) where the services are provided from a *branch* in the *United Kingdom*, the *consumer awareness rules*, *complaints handling rules* and *complaints record rule* apply in respect of *complaints* from *Unitholders* rather than from *eligible complainants*; and
- (2) this chapter, except the *consumer awareness rules*, *complaints handling rules*, *complaints record rule* and *complaints data publication rules*, also applies to an *EEA UCITS management company* providing services in the *United Kingdom* under the freedom to provide *cross border services*.

**Application to CBTL firms**

**1.1.10G** **R** This chapter (except the *complaints record rule*, the *complaints reporting rules* and the *complaints data publication rules*) applies to *CBTL firms* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained in the *United Kingdom*.

**1.1.10H** **G** (1) In this sourcebook, the term *CBTL firm* does not include a *firm*. A *firm* carrying on *CBTL business* is covered by this sourcebook as a *firm*.

(2) *CBTL firms* are reminded of their obligation to retain information relevant to demonstrating the firm's compliance or non-compliance with the requirements of Schedule 2 to the *MCD Order*.

**Application to designated credit reference agencies**

**1.1.10I** **R** This chapter (except the *complaints record rule*, the *complaints reporting rules* and the *complaints data publication rules*) applies to a *designated credit reference agency* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by it or its *agent* in the *United Kingdom*.

**1.1.10J** **G** Although *designated credit reference agencies* are not required to comply with the *complaints record rule*, they must retain records in accordance with regulation 24 of the *Small and Medium Sized Business (Credit Information) Regulations* and these can be used to assist the *Financial Ombudsman Service* should this be necessary.

**Application to designated finance platforms**

**1.1.10K** **R** This chapter (except the *complaints record rule*, the *complaints reporting rules*, and the *complaints data publication rules*) applies to a *designated finance platform* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by it or its *agent* in the *United Kingdom*.

**1.1.10L** **G** Although *designated finance platforms* are not required to comply with the *complaints record rule*, they must retain records in accordance with regulation 21 of the *Small and Medium Sized Business (Finance Platforms) Regulations* and these can be used to assist the *Financial Ombudsman Service* should this be necessary.

**FSAVC Review**

**1.1.11** **R** Where the subject matter of a *complaint* is subject to a review directly or indirectly under the terms of the policy statement for the review of specific categories of *FSAVC business* issued by the *FSA* on 28 February 2000, the *complaints resolution rules*, the *complaints time limit rules*, the *complaints record rule*, the *complaints reporting rules* and the *complaints data publication rules* will apply only if the *complaint* is about the outcome of the review.

### Consumer redress schemes

- 1.1.11A **R** Where the subject matter of a *complaint* falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, the *complaints resolution rules*, the *complaints time limits rules*, the *complaints record rule* and the *complaints reporting rules* do not apply.

### Exemptions for firms, payment service providers, electronic money issuers, designated credit reference agencies and designated finance platforms

- 1.1.12 **R**
- (1) A *firm*, *payment service provider*, *electronic money issuer*, *designated credit reference agency* or *designated finance platform* falling within the *Compulsory Jurisdiction* which does not conduct business with *eligible complainants* and has no reasonable likelihood of doing so, can, by written notification to the *FCA*, claim exemption from the *rules* relating to the funding of the *Financial Ombudsman Service*, and from the remainder of this chapter.
  - (2) Notwithstanding (1):
    - (a) the *complaints handling rules* and *complaints record rule* will continue to apply in respect of *complaints* concerning *MiFID business*; and
    - (b) the *consumer awareness rules*, the *complaints handling rules* and the *complaints record rule* will continue to apply in respect of *complaints* concerning the provision of *collective portfolio management services*.
  - (3) The exemption takes effect from the date on which the written notice is received by the *FCA* and will cease to apply when the conditions relating to the exemption no longer apply.

- 1.1.13 **G** ■ SUP 15.6 refers to and contains requirements regarding the steps that *firms* must take to ensure that information provided to the *FCA* is accurate and complete. Those requirements apply to information submitted to the *FCA* under this chapter.

### Application to VJ participants

- 1.1.14 **R**
- 1.1.15 **R** This chapter (except the *complaints record rule*, the *complaints reporting rules* and the *complaints data publication rules*) applies to *VJ participants* for *complaints* from *eligible complainants* as part of the *standard terms*.
- 1.1.16 **G** Although *VJ participants* are not required to comply with the *complaints record rule*, it is in their interest to retain records of *complaints* so that these can be used to assist the *Financial Ombudsman Service* should it be necessary.
- 1.1.17 **R**

1.1.18 **G**

**Outsourcing of complaint handling**

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1.1.19 **G**

- (1) This chapter does not prevent:
  - (a) the use by a *respondent* of a third party administrator to handle or resolve *complaints* (or both); or
  - (b) two or more *respondents* arranging a one-stop shop for handling or resolving *complaints* (or both) under a service level agreement.
- (2) These arrangements do not affect *respondents'* obligations as set out in *DISP* or the provisions relating to *outsourcing* by a *firm* set out in ■ SYSC 8 and ■ SYSC 13.

1.1.20 **G**

Further *guidance* on the application of this chapter is set out in the table in ■ DISP 1 Annex 2.



## 1.2 Consumer awareness rules

### Publishing and providing summary details, and information about the Financial Ombudsman Service

#### 1.2.1

**R**

To aid consumer awareness of the protections offered by the provisions in this chapter, *respondents* must:

- (1) publish appropriate information regarding their internal procedures for the reasonable and prompt handling of *complaints*;
- (2) refer *eligible complainants* to the availability of this information:
  - (a) in relation to a *payment service*, in the information on out-of-court complaint and redress procedures required to be provided or made available under regulations 36(2)(e) (Information required prior to the conclusion of a single payment service contract) or 40 (Prior general information for framework contracts) of the *Payment Services Regulations*; or
  - (aa) in relation to *CBTL arrangers*, in the information on registering complaints internally and out-of-court complaint and redress procedures provided under article 7(1)(h) of Schedule 2 to the *MCD Order*; or
  - (b) otherwise, in writing at, or immediately after, the point of sale;
- (3) provide such information in writing and free of charge to *eligible complainants*:
  - (a) on request; and
  - (b) when acknowledging a *complaint*; and
- (4) provide information to *eligible complainants*, in a clear, comprehensible and easily accessible way, about the *Financial Ombudsman Service* including the *Financial Ombudsman Service's* website address:
  - (a) on the *respondent's* website, where one exists; and
  - (b) if applicable, in the general conditions of the *respondent's* contract with the *eligible complainant*.

[**Note:** article 15 of the *UCITS Directive*, article 13(2) of the *ADR Directive* article 14(1) of the *ODR Regulation*, and regulation 19 of the *ADR Regulations*.]

- 1.2.2 **R** Where the activity does not involve a sale, the obligation in ■ DISP 1.2.1R(2)(b):
- (1) shall apply at, or immediately after, the point when contact is first made with an *eligible complainant*; and
  - (2) where the *respondent* is a *not-for-profit debt advice body*:
    - (a) may be met at, or immediately after, the point when contact is first made with an *eligible complainant*, by making an oral reference to the availability of the information if the *respondent* does not communicate with the *eligible complainant* in writing then; and
    - (b) must be met in writing on the first occasion on which the *respondent* communicates with the *eligible complainant* in writing.
- 1.2.2A **G** If an *MCD credit intermediary* has, before or at the point of sale, provided an *eligible complainant* with appropriate information in a *durable medium* about their internal procedures for the reasonable and prompt handling of *complaints* pursuant to another *rule*, the *MCD credit intermediary* need not refer to the availability of that information again under ■ DISP 1.2.1R(2)(b).
- Content of summary details**
- 1.2.3 **G** The summary details concerning internal complaints handling procedures should cover at least:
- (1) how the *respondent* fulfils its obligation to handle and seek to resolve relevant *complaints*; and
  - (2) (where the *complaint* falls within the jurisdiction of the *Financial Ombudsman Service*) that, if the *complaint* is not resolved, the complainant may be entitled to refer it to the *Financial Ombudsman Service*.
- 1.2.4 **G** Those summary details may be set out in a leaflet, and their availability may be referred to in contractual documentation.
- Financial Ombudsman Service logo**
- 1.2.5 **G** *Respondents* may also display or reproduce the *Financial Ombudsman Service* logo (under licence) in:
- (1) branches and sales offices to which *eligible complainants* have access; or
  - (2) marketing literature or correspondence directed at *eligible complainants*;
- provided it is done in a way which is not misleading.
- 1.2.5A **G** ■ DISP 1.2.5 G does not apply to a *branch* of a *UK UCITS management company* in another *EEA State*.

## 1.3 Complaints handling rules

### Complaints handling procedures for respondents

**1.3.1** **R** Effective and transparent procedures for the reasonable and prompt handling of *complaints* must be established, implemented and maintained by:

- (1) a *respondent*; and
- (2) a *branch* of a *UK firm* in another *EEA State*.

[**Note:** article 10 of the *MiFID implementing Directive* and article 6(1) of the *UCITS implementing Directive*]

### Call charges

**1.3.1A** **R** These procedures must ensure that a *complaint* may be made free of charge.  
[**Note:** article 6(3) of the *UCITS implementing Directive*]

**1.3.1AA** **R** Where a *respondent* operates a telephone line for the purpose of enabling an *eligible complainant* to submit a *complaint*, the complainant must not be bound to pay more than the basic rate when contacting the *respondent* by telephone.

**1.3.1AB** **R** For the purposes of **■ DISP 1.3.1AAR** the basic rate is the simple cost of connection and must not provide the *respondent* with a contribution to its costs or revenues.

**1.3.1AC** **R** The following numbers, if used by a *respondent*, would comply with **■ DISP 1.3.1ABR**:

- (1) geographic numbers or numbers which are always set at the same rate, which usually begin with the prefix 01, 02 or 03;
- (2) calls which can be free of charge to call, for example 0800 and 0808 numbers; and
- (3) standard mobile numbers, which usually begin with the prefix 07, provided that the *respondent* ordinarily uses a mobile number to receive telephone calls.

- 1.3.1AD** **R** The following numbers, if used by a *respondent*, would not comply with ■ DISP 1.3.1ABR:
- (1) premium rate numbers that begin with the prefix 09;
  - (2) other revenue sharing numbers in which a portion of the call charge can be used to either provide a service or make a small payment to the *respondent*, such as telephone numbers that begin with the prefix 084 or 0871, 0872 or 0873; and
  - (3) telephone numbers that begin with the prefix 0870, as the cost of making a telephone call on such numbers can be higher than a geographic cost and will vary depending on the *eligible complainant's* telephone tariff.
- Particular procedures for UCITS management companies**.....
- 1.3.1B** **R** A UK UCITS management company must ensure that the procedures it establishes under ■ DISP 1.3.1 R for the reasonable and prompt handling of *complaints* require that:
- (1) there are no restrictions on *Unitholders* exercising their rights in the event that the UCITS is authorised in an EEA State other than the United Kingdom; and
  - (2) *Unitholders* are allowed to file complaints in any of the official languages of the Home State of the UCITS scheme or EEA UCITS scheme or of any EEA State to which a notification has been transmitted by the *competent authority* of the scheme's Home State in accordance with article 93 of the UCITS Directive.
- [Note: article 15 of the UCITS Directive]
- Further requirements for all respondents**.....
- 1.3.2** **G** These procedures should:
- (1) allow *complaints* to be made by any reasonable means; and
  - (2) recognise *complaints* as requiring resolution.
- 1.3.2A** **G** These procedures should, taking into account the nature, scale and complexity of the *respondent's* business, ensure that lessons learned as a result of determinations by the *Ombudsman* are effectively applied in future *complaint* handling, for example by:
- (1) relaying a determination by the *Ombudsman* to the individuals in the *respondent* who handled the *complaint* and using it in their training and development;
  - (2) analysing any patterns in determinations by the *Ombudsman* concerning *complaints* received by the *respondent* and using this in training and development of the individuals dealing with *complaints* in the *respondent*; and
  - (3) analysing guidance produced by the FCA , other relevant regulators and the *Financial Ombudsman Service* and communicating it to the individuals dealing with *complaints* in the *respondent*.

- 1.3.3** **R** In respect of *complaints* that do not relate to *MiFID business*, a *respondent* must put in place appropriate management controls and take reasonable steps to ensure that in handling *complaints* it identifies and remedies any recurring or systemic problems, for example, by:
- (1) analysing the causes of individual *complaints* so as to identify root causes common to types of *complaint*;
  - (2) considering whether such root causes may also affect other processes or products, including those not directly complained of; and
  - (3) correcting, where reasonable to do so, such root causes.
- 1.3.3B** **G** The processes that a *firm* or *CBTL firm* should have in place in order to comply with **■ DISP 1.3.3 R** may include, taking into account the nature, scale and complexity of the *firm's* or *CBTL firm's* business including, in particular, the number of *complaints* the *firm* or *CBTL firm* receives:
- (1) the collection of management information on the causes of *complaints* and the products and services *complaints* relate to, including information about *complaints* that are resolved by the *firm* by close of business on the third *business day* following the day on which it is received;
  - (2) a process to identify the root causes of *complaints* (**■ DISP 1.3.3 R (1)**);
  - (3) a process to prioritise dealing with the root causes of *complaints*;
  - (4) a process to consider whether the root causes identified may affect other processes or products (**■ DISP 1.3.3 R (2)**);
  - (5) a process for deciding whether root causes discovered should be corrected and how this should be done (**■ DISP 1.3.3 R (3)**);
  - (6) regular reporting to the *senior personnel* where information on recurring or systemic problems may be needed for them to play their part in identifying, measuring, managing and controlling risks of regulatory concern; and
  - (7) keeping records of analysis and decisions taken by *senior personnel* in response to management information on the root causes of *complaints*.
- 1.3.4** **G** In respect of *complaints* that relate to *MiFID business*, a *firm* should put in place appropriate management controls and take reasonable steps, in the same way as for *complaints* that do not relate to *MiFID business* (see **■ DISP 1.3.3 R** and **■ DISP 1.3.3B G**), in order to detect and minimise any risk of compliance failures (**■ SYSC 6.1**) and to comply with *Principle 6* (Customers' interests).
- 1.3.5** **G** [deleted]
- 1.3.6** **G** Where a *firm* identifies (from its *complaints* or otherwise) recurring or systemic problems in its provision of, or failure to provide, a financial service,

it should (in accordance with *Principle 6* (Customers' interests) and to the extent that it applies) consider whether it ought to act with regard to the position of *customers* who may have suffered detriment from, or been potentially disadvantaged by, such problems but who have not complained and, if so, take appropriate and proportionate measures to ensure that those *customers* are given appropriate redress or a proper opportunity to obtain it. In particular, the *firm* should:

- (1) ascertain the scope and severity of the consumer detriment that might have arisen; and
- (2) consider whether it is fair and reasonable for the *firm* to undertake proactively a redress or remediation exercise, which may include contacting *customers* who have not complained.

1.3.7

**R**

- (1) A *firm* must appoint an individual at the *firm*, or in the same *group* as the *firm*, to have responsibility for oversight of the *firm's* compliance with ■ DISP 1.
- (2) The individual appointed must be carrying out a *FCA governing function* at the *firm* or in the same *group* as the *firm*.

1.3.8

**G**

*Firms* are not required to notify the name of the individual to the *FCA* or the *Financial Ombudsman Service* but would be expected to do so promptly on request. There is no bar on a *firm* appointing different individuals to have the responsibility at different times where this is to accommodate part-time or flexible working.

## 1.4 Complaints resolution rules

### Investigating, assessing and resolving complaints

#### 1.4.1

**R**

Once a *complaint* has been received by a *respondent*, it must:

- (1) investigate the *complaint* competently, diligently and impartially, obtaining additional information as necessary;
- (2) assess fairly, consistently and promptly:
  - (a) the subject matter of the *complaint*;
  - (b) whether the *complaint* should be upheld;
  - (c) what remedial action or redress (or both) may be appropriate;
  - (d) if appropriate, whether it has reasonable grounds to be satisfied that another *respondent* may be solely or jointly responsible for the matter alleged in the *complaint*;

taking into account all relevant factors;

- (3) offer redress or remedial action when it decides this is appropriate;
- (4) explain to the complainant promptly and, in a way that is fair, clear and not misleading, its assessment of the *complaint*, its decision on it, and any offer of remedial action or redress; and
- (5) comply promptly with any offer of remedial action or redress accepted by the complainant.

#### 1.4.2

**G**

Factors that may be relevant in the assessment of a *complaint* under ■ DISP 1.4.1R (2) include the following:

- (1) all the evidence available and the particular circumstances of the *complaint*;
- (2) similarities with other *complaints* received by the *respondent*;
- (3) relevant *guidance* published by the *FCA*, other relevant regulators, the *Financial Ombudsman Service* or *former schemes*; and
- (4) appropriate analysis of decisions by the *Financial Ombudsman Service* concerning similar *complaints* received by the *respondent* (procedures for which are described in ■ DISP 1.3.2A G).

1.4.3 **G** The *respondent* should aim to resolve *complaints* at the earliest possible opportunity, minimising the number of unresolved *complaints* which need to be referred to the *Financial Ombudsman Service*.

#### Co-operating with the Financial Ombudsman Service

1.4.4 **R** Where a *complaint* against a *respondent* is referred to the *Financial Ombudsman Service*, the *respondent* must cooperate fully with the *Financial Ombudsman Service* and comply promptly with any settlements or awards made by it.

#### Mortgage endowment complaints

1.4.5 **G** ■ DISP App 1 contains *guidance* to *respondents* on the approach to assessing financial loss and appropriate redress where a *respondent* upholds a *complaint* concerning the sale of an endowment policy for the purposes of repaying a *mortgage*.

#### Payment protection insurance complaints

1.4.6 **G** ■ DISP App 3 sets out the approach which *respondents* should use in assessing *complaints* relating to the sale of *payment protection contracts* and determining appropriate redress where a *complaint* is upheld. It also requires *firms* to send a written communication to complainants in certain circumstances (see ■ DISP App 3.11).





## 1.5 Complaints resolved by close of the third business day

1.5.1 **R** The following *rules* do not apply to a *complaint* that is resolved by a *respondent* by close of business on the third *business day* following the day on which it is received:

- (1) the *complaints time limit rules*; and
- (2) the *complaints forwarding rules*.
- (3) [deleted]
- (4) [deleted]
- (5) [deleted]

1.5.2 **G** *Complaints* falling within this section are still subject to the *complaints resolution rules*.

### When a complaint is resolved

1.5.2A **R** A *complaint* is resolved where the complainant has indicated acceptance of a response from the *respondent*, with neither the response nor acceptance having to be in writing.

1.5.3 **G** [deleted]

### Summary resolution communication

1.5.4 **R** Where the *respondent* considers a *complaint* to be resolved under this section, the *respondent* must promptly send the complainant a 'summary resolution communication', being a written communication from the *respondent* which:

- (1) refers to the fact that the complainant has made a *complaint* and informs the complainant that the *respondent* now considers the *complaint* to have been resolved;
- (2) tells the complainant that if he subsequently decides that he is dissatisfied with the resolution of the *complaint* he may be able to refer the *complaint* to the *Financial Ombudsman Service*;

- (3) indicates whether or not the respondent consents to waive the relevant time limits in ■ DISP 2.8.2R or ■ DISP 2.8.7R (Was the complaint referred to the Financial Ombudsman Service in time?) by including the appropriate wording set out in ■ DISP 1 Annex 3R;
- (4) provides the website address of the *Financial Ombudsman Service*; and
- (5) refers to the availability of further information on the website of the *Financial Ombudsman Service*.

[Note: article 13 of the *ADR Directive*]

- 1.5.5 **G** The information regarding the *Financial Ombudsman Service* required to be provided in a *summary resolution communication* should be set out clearly, comprehensibly, in an easily accessible way and prominently, within the text of those responses.
- 1.5.6 **G** In addition to sending a complainant a *summary resolution communication*, a *respondent* may also use other methods to communicate the information referred to in ■ DISP 1.5.4R(1) to (5) where–
- (1) the *respondent* considers that doing so may better meet the complainant's needs; or
  - (2) the complainant and *respondent* have already been using another method to communicate about the *complaint*.
- 1.5.7 **G** An example of ■ DISP 1.5.6G(1) may be where a *respondent* is aware that a complainant is visually impaired. An example of ■ DISP 1.5.6G(2) may be where a *respondent* has been communicating with a complainant about a *complaint* by telephone.

## 1.6 Complaints time limit rules

### Keeping the complainant informed

1.6.1

R

On receipt of a *complaint*, a *respondent* must:

- (1) send the complainant a prompt written acknowledgement providing early reassurance that it has received the *complaint* and is dealing with it; and
- (2) ensure the complainant is kept informed thereafter of the progress of the measures being taken for the *complaint's* resolution.

### Final or other response within eight weeks

1.6.2

R

The *respondent* must, by the end of eight weeks after its receipt of the *complaint*, send the complainant:

- (1) a 'final response', being a written response from the *respondent* which:
  - (a) accepts the *complaint* and, where appropriate, offers redress or remedial action; or
  - (b) offers redress or remedial action without accepting the *complaint*; or
  - (c) rejects the *complaint* and gives reasons for doing so; and which:
    - (d) encloses a copy of the *Financial Ombudsman Service's* standard explanatory leaflet;
    - (da) provides the website address of the *Financial Ombudsman Service*;
    - (e) informs the complainant that if he remains dissatisfied with the *respondent's* response, he may now refer his *complaint* to the *Financial Ombudsman Service*; and
    - (f) indicates whether or not the *respondent* consents to waive the relevant time limits in ■ DISP 2.8.2 R or ■ DISP 2.8.7 R (Was the complaint referred to the Financial Ombudsman Service in time?) by including the appropriate wording set out in ■ DISP 1 Annex 3R; or
- (2) a written response which:
  - (a) explains why it is not in a position to make a *final response* and indicates when it expects to be able to provide one;

- (b) informs the complainant that he may now refer the *complaint* to the *Financial Ombudsman Service*;
- (ba) indicates whether or not the *respondent* consents to waive the relevant time limits in ■ DISP 2.8.2 R or ■ DISP 2.8.7 R (Was the complaint referred to the Financial Ombudsman Service in time?) if it becomes apparent that the complaint has been made or is referred outside those time limits;
- (c) encloses a copy of the *Financial Ombudsman Service* standard explanatory leaflet; and
- (d) provides the website address of the *Financial Ombudsman Service*.

[Note: article 13 of the *ADR Directive*]

1.6.3 G [deleted]

### Complainant's written acceptance

- 1.6.4 R ■ DISP 1.6.2 R does not apply if the complainant has already indicated in writing acceptance of a response by the *respondent*, provided that the response:
- (1) informed the complainant how to pursue his *complaint* with the *respondent* if he remains dissatisfied;
  - (2) referred to the ultimate availability of the *Financial Ombudsman Service* if he remains dissatisfied with the *respondent's* response;
  - (3) enclosed a copy of the *Financial Ombudsman Service* standard explanatory leaflet;
  - (4) provided the website address of the *Financial Ombudsman Service*; and
  - (5) indicated whether or not the *respondent* consents to waive the relevant time limits in ■ DISP 2.8.2 R or ■ DISP 2.8.7 R (Was the complaint referred to the Financial Ombudsman Service in time?) by including the appropriate wording set out in ■ DISP 1 Annex 3 R.

1.6.5 R [deleted]

1.6.6 R [deleted]

1.6.6A G The information regarding the *Financial Ombudsman Service* required to be provided in responses sent under the *complaints time limit rules* (■ DISP 1.6.2 R and ■ DISP 1.6.4 R) should be set out clearly, comprehensibly, in an easily accessible way and prominently within the text of those responses.

[Note: article 13 of the *ADR Directive*]

**Speed and quality of response**.....

- 1.6.7 **G** It is expected that within eight weeks of their receipt, almost all *complaints* to a *respondent* will have been substantively addressed by it through a *final response* or response as described in ■ DISP 1.6.4 R.
  
- 1.6.8 **G** When assessing a *respondent's* response to a *complaint*, the *FCA* may have regard to a number of factors, including, the quality of response, as against the *complaints resolution rules*, as well as the speed with which it was made.

## 1.7 Complaints forwarding rules

### Forwarding a complaint

1.7.1

**R**

A *respondent* that has reasonable grounds to be satisfied that another *respondent* may be solely or jointly responsible for the matter alleged in a *complaint* may forward the *complaint*, or the relevant part of it, in writing to that other *respondent*, provided it:

- (1) does so promptly;
- (2) informs the complainant promptly in a *final response* of why the *complaint* has been forwarded by it to the other *respondent*, and of the other *respondent's* contact details; and
- (3) where jointly responsible for the fault alleged in the *complaint*, it complies with its own obligations under this chapter in respect of that part of the *complaint* it has not forwarded.

### Dealing with a forwarded complaint

1.7.2

**R**

When a *respondent* receives a *complaint* that has been forwarded to it under **■** DISP 1.7.1 R, the *complaint* is treated for the purposes of *DISP* as if made directly to that *respondent*, and as if received by it when the forwarded *complaint* was received.

1.7.3

**G**

On receiving a forwarded *complaint*, the standard time limits will apply from the date on which the *respondent* receives the forwarded *complaint*.



## 1.8 Complaints time barring rule

### 1.8.1

**R**

If a *respondent* receives a *complaint* which is outside the time limits for referral to the *Financial Ombudsman Service* (see ■ DISP 2.8) it may reject the complaint without considering the merits, but must explain this to the complainant in a *final response* in accordance with ■ DISP 1.6.2 R.

1.9 Complaints record rule

1.9.1

R

A firm, including, in the case of *MiFID business* or *collective portfolio management services* for a *UCITS scheme* or an *EEA UCITS scheme*, a branch of a *UK firm* in another *EEA state*, must keep a record of each *complaint* received and the measures taken for its resolution, and retain that record for:

- (1) at least five years where the *complaint* relates to *MiFID business* or *collective portfolio management services* for a *UCITS scheme* or an *EEA UCITS scheme*; and
- (2) three years for all other *complaints*;

from the date the *complaint* was received.

[**Note:** article 10 of the *MiFID implementing Directive* and article 6(2) of the *UCITS implementing Directive*]

1.9.2

G

The records of the measures taken for resolution of *complaints* may be used to assist with the collection of management information pursuant to ■ DISP 1.3.3BG(1) and regular reporting to the *senior personnel* pursuant to ■ DISP 1.3.3BG(6).





## 1.10 Complaints reporting rules

- 1.10.1** **R** (1) Unless (2) applies, twice a year a *firm* must provide the *FCA* with a complete report concerning *complaints* received from *eligible complainants*.
- (2) If a *firm* has *permission* to carry on only *credit-related regulated activities* or *operating an electronic system in relation to lending* and has revenue arising from those activities that is less than or equal to £5,000,000 a year, the *firm* must provide the *FCA* with a complete report concerning *complaints* received from *eligible complainants* once a year.
- (3) The report required by (1) and (2) must be set out in the format in ■ DISP 1 Annex 1R.
- (4) Paragraphs (1) and (2) do not apply to a *firm* with only a *limited permission* unless that *firm* is a *not-for-profit debt advice body* that at any point in the last 12 *months* has held £1 million or more in *client money* or as the case may be, projects that it will hold £1million or more in *client money* in the next 12 *months*.

**1.10.1-A** **G** A *firm* with only a *limited permission* to whom ■ DISP 1.10.1R(1) and (2) do not apply is required to submit information to the *FCA* about the number of *complaints* it has received in relation to *credit-related activities* under the reporting requirements in ■ SUP 16.12 (see, in particular, data item CCR007 in ■ SUP 16.12.29CR). A *firm* with *limited permission* to whom ■ DISP 1.10.1R (1) and (2) do not apply is also subject to the *complaints data publication rules* in ■ DISP 1.10A.

### Forwarded complaints

**1.10.1A** **R** A *firm* must not include in the report a *complaint* that has been forwarded in its entirety to another *respondent* under the *complaints forwarding rules*.

**1.10.1B** **G** Where a *firm* has forwarded to another *respondent* only part of a *complaint* or where two *respondents* may be jointly responsible for a *complaint*, then the *complaint* should be reported by both *firms*.

### Joint reports

**1.10.1C** **R** *Firms* that are part of a *group* may submit a joint report to the *FCA*. The joint report must contain the information required from all *firms* concerned and clearly indicate the *firms* on whose behalf the report is submitted. The

requirement to provide a report, and the responsibility for the report, remains with each *firm* in the *group*.

- 1.10.1D **G** Not all the *firms* in the *group* need to submit the report jointly. *Firms* should only consider submitting a joint report if it is logical to do so, for example, where the *firms* have a common central *complaints* handling team, the same *accounting reference date* and are all subject to the same reporting frequencies and submission deadlines.

### Information requirements

- 1.10.2 **R**
- (1) Where a *firm* receives less than 500 *complaints* in a reporting period, Part A-1 of ■ DISP 1 Annex 1 requires, for the relevant reporting period and in respect of particular categories of products:
    - (a) in Table 1, information about the total number of *complaints* received by the *firm* and the cause of the *complaint*;
    - (b) in Table 2, information about the number of *complaints* that were:
      - (i) closed or upheld within different periods of time; and
      - (ii) the total amount of redress paid by the *firm* in relation to *complaints* upheld and not upheld in the relevant reporting period; and
    - (c) in Table 3, information providing context about the *complaints* received.
  - (2) Where a *firm* receives 500 or more *complaints* in a reporting period, Part A-2 of ■ DISP 1 Annex 1 requires, for the relevant reporting period and in respect of particular categories of products:
    - (a) in Table 4, information about the total number of *complaints* received by the *firm* and the cause of the *complaint*;
    - (b) in Table 5, information about the number of *complaints* that were:
      - (i) closed or upheld within different periods of time; and
      - (ii) the amount of redress paid by the *firm* in relation to *complaints* upheld and not upheld in the relevant reporting period; and
    - (c) in Table 6, information providing context about the *complaints* received.
- 1.10.2-A **R** Part B of ■ DISP 1 Annex 1R requires (for the relevant reporting period) information about:
- (1) the total number of *complaints* received by the *firm*;
  - (2) the total number of *complaints* closed by the *firm*;
  - (3) the total number of *complaints*:
    - (a) upheld by the *firm* in the reporting period; and
    - (b) outstanding at the beginning of the reporting period; and

1.10.2A **R**

- (4) the total amount of redress paid in respect of *complaints* during the reporting period.
- (1) Twice a year a *firm* must provide the *FCA* with a complete report concerning *complaints* received from *eligible complainants* about matters relating to activities carried out by its *employees* when acting as *retail investment advisers*. The report must be set out in the format in ■ DISP 1 Annex 1C R.
- (2) ■ DISP 1 Annex 1C R requires (for the relevant reporting period) information about:
- the total number of *complaints* received by the *firm* about matters relating to activities carried out by its *employees* when acting as *retail investment advisers*;
  - the total number of *complaints* closed by the *firm* about matters relating to activities carried out by its *employees* when acting as *retail investment advisers*;
  - the total number of *complaints* upheld by the *firm* about matters relating to activities carried out by its *employees* when acting as *retail investment advisers*; and
  - the total amount of redress paid in respect of *complaints* upheld during the reporting period about matters relating to activities carried out by its *employees* when acting as *retail investment advisers*.
- (3) For the purposes of ■ DISP 1 Annex 1C R *retail investment adviser* information must be reported by:
- the *employee's* Individual Reference Number (IRN); or
  - in the case of an *employee* of a *relevant authorised person* who is performing an *FCA-specified significant harm function* and has no IRN:
    - the *employee's* National Insurance (NI) number and date of birth; or
    - if the *employee* has no NI number, the *employee's* date of birth, current passport number and nationality.

1.10.3 **G**

For the purposes of ■ DISP 1.10.2R, ■ DISP 1.10.2-AR and ■ DISP 1.10.2AR, when completing the return, the *firm* should take into account the following matters.

- If a *complaint* could fall into more than one category, the *complaint* should be recorded in the category which the *firm* considers to form the main part of the *complaint*.
- Under ■ DISP 1.10.2R(1)(b), ■ DISP 1.10.2R(2)(b) or ■ DISP 1.10.2-AR, a *firm* should report information relating to all *complaints* which are closed and upheld within the relevant reporting period, including those resolved under ■ DISP 1.5 (Complaints resolved by close of the third business day). Where a *complaint* is upheld in part, or where the *firm* does not have enough information to make a decision yet chooses to make a goodwill payment to the complainant, a *firm* should treat the *complaint* as upheld for reporting purposes. However, where a *firm*

rejects a *complaint*, yet chooses to make a goodwill payment to the complainant, the *complaint* should be recorded as 'rejected'.

- (3) If a *firm* reports on the amount of redress paid under ■ DISP 1.10.2R(1)(b)(ii), ■ DISP 1.10.2R(2)(b)(ii), ■ DISP 1.10.2-AR(4) or ■ DISP 1.10.2AR, redress should be interpreted to include an amount paid, or cost borne, by the *firm*, where a cash value can be readily identified, and should include:
- (a) amounts paid for distress and inconvenience;
  - (b) a free transfer out to another provider which transfer would normally be paid for;
  - (c) goodwill payments and goodwill gestures;
  - (d) interest on delayed settlements;
  - (e) waiver of an excess on an insurance policy; and
  - (f) payments to put the consumer back into the position the consumer should have been in had the act or omission not occurred.
- (4) If a *firm* reports on the amount of redress paid under ■ DISP 1.10.2R(1)(b)(ii), ■ DISP 1.10.2R(2)(b)(ii), ■ DISP 1.10.2-AR(4) or ■ DISP 1.10.2AR, the redress should not, however, include repayments or refunds of premiums which had been taken in error (for example where a *firm* had been taking, by direct debit, twice the actual premium amount due under a policy). The refund of the overcharge would not count as redress.

[**Note:** See ■ SUP 10A.14.24R for the ongoing duty to notify *complaints* about matters relating to activities carried out by an *employee* when acting as a *retail investment adviser*.]

- 1.10.4** **R** Unless ■ DISP 1.10.4AR applies, the relevant reporting periods are:
- (1) the six *months* immediately following a *firm's* accounting reference date; and
  - (2) the six *months* immediately preceding a *firm's* accounting reference date.
- 1.10.4A** **R** If a *firm* has permission to carry on only *credit-related regulated activities* or operating an *electronic system in relation to lending* and has revenue arising from those activities that is less than or equal to £5,000,000 a year, the relevant reporting period is the year immediately following the *firm's* accounting reference date.
- 1.10.5** **R** Reports are to be submitted to the *FCA* within 30 *business days* of the end of the relevant reporting periods through, and in the electronic format specified in, the *FCA* Complaints Reporting System or the appropriate section of the *FCA* website.

- 1.10.6** **R** If a *firm* is unable to submit a report in electronic format because of a systems failure of any kind, the *firm* must notify the *FCA* , in writing and without delay, of that systems failure.
- 1.10.6A** **R**
- (1) If a *firm* does not submit a complete report by the date on which it is due, in accordance with **DISP 1.10.5 R**, the *firm* must pay an administrative fee of £250.
  - (2) The administrative fee in (1) does not apply if the *firm* has notified the *FCA* of a systems failure in accordance with **DISP 1.10.6 R**.
- 1.10.7** **R** A closed *complaint* is a *complaint* where:
- (1) the *firm* has sent a *final response*; or
  - (2) the complainant has indicated in writing acceptance of the *firm's* earlier response under **DISP 1.6.4 R**.
- 1.10.8** **G** [deleted]
- Notification of contact point for complainants**.....
- 1.10.9** **R** For the purpose of inclusion in the public record maintained by the *FCA*, a *firm* must:
- (1) provide the *FCA*, at the time of its *authorisation*, with details of a single contact point within the *firm* for complainants; and
  - (2) notify the *FCA* of any subsequent change in those details when convenient and, at the latest, in the *firm's* next report under the *complaints reporting rules*.
- Meaning of revenue**.....
- 1.10.10** **G** In **DISP 1.10**, references to revenue in relation to any *firm* do not include the amount of any repayment of any *credit* provided by that *firm* as *lender*.

## 1.10A Complaints data publication rules

### Obligation to publish summary of complaints data or total number of complaints

#### 1.10A.1 **R**

- (1) Unless (1A) applies to the *firm*, where, in accordance with ■ DISP 1.10.1 R, a *firm* submits a report to the FCA reporting 500 or more *complaints*, it must publish a summary of the *complaints* data contained in that report (the *complaints* data summary).
- (1A) (a) This paragraph applies to a *firm* which:
- (i) has *permission* to carry on only *credit-related regulated activities* or to *operate an electronic system in relation to lending*; and
  - (ii) has revenue arising from those activities that is less than or equal to £5,000,000 a year.
- (b) Where a *firm* to which this paragraph applies submits a report to the FCA in accordance with ■ DISP 1.10.1 R reporting 1000 or more *complaints*, it must publish a summary of the *complaints* data contained in that report (the *complaints* data summary).
- (2) Where, in accordance with ■ DISP 1.10.1C R, a *firm* submits a joint report on behalf of itself and other *firms* within a *group* and that report reports 500 or more *complaints*, it must publish a summary of the *complaints* data contained in the joint report (the *complaints* data summary), unless it is a *firm* to which (1A) applies.
- (3) Where, in accordance with ■ DISP 1.10.1C R, a *firm* to which (1A) applies submits a joint report on behalf of itself and other *firms* within a *group* and that report reports 1000 or more *complaints*, it must publish a summary of the *complaints* data contained in the joint report (the *complaints* data summary).
- (4) Where, in accordance with ■ SUP 16.12.4 R and ■ SUP 16.12.29C R, a *firm* with a *limited permission* submits *data item* CCR007 to the FCA reporting 1000 or more *complaints*, it must publish the total number of *complaints* received.

### Format of publication

#### 1.10A.2 **R**

The *complaints* data summary required by ■ DISP 1.10A.1 R must be published in the format set out in ■ DISP 1 Annex 1B R.

**Time limits for publication**

- 1.10A.3 **R**
- (1) Where the *firm's* relevant reporting period (as defined in ■ DISP 1.10.4 R or ■ DISP 1.10.4A R as the case may be) ends between 1 January and 30 June, the *firm* must publish the *complaints* data summary no later than 31 August of the same year.
  - (2) Where the *firm's* relevant reporting period (as defined in ■ DISP 1.10.4 R or ■ DISP 1.10.4A R as the case may be) ends between 1 July and 31 December, the *firm* must publish the *complaints* data summary no later than 28 February of the following year.
  - (3) Where the *firm* is a *firm* with only a *limited permission* and its *accounting reference date* falls between 1 January and 30 June, the *firm* must publish the total number of *complaints* received no later than 31 August of the same year.
  - (4) Where the *firm* is a *firm* with only a *limited permission* and its *accounting reference date* falls between 1 July and 31 December, the *firm* must publish the total number of *complaints* received no later than 28 February of the following year.

**Confirmation of publication**

- 1.10A.4 **R**
- A *firm* must immediately confirm to the FCA , in an email submitted to [complaintsdatasummary@fca.org.uk](mailto:complaintsdatasummary@fca.org.uk) , that the *complaints* data summary or total number of *complaints* (as appropriate) accurately reflects the report submitted to the FCA , that the summary or total number of *complaints* (as appropriate) has been published and where it has been published.

**Publication on behalf of the firm**

- 1.10A.5 **E**
- A *firm* will be taken to have complied with ■ DISP 1.10A.1R (1), ■ DISP 1.10A.1R (1A) ■ (2) , ■ DISP 1.10A.1R (3) or ■ DISP 1.10A.1R (4) if within the relevant time limit set out in ■ DISP 1.10A.3 R the *firm*:
- (1) ensures that another *person* publishes the *complaints* data summary or total number of *complaints* (as appropriate) on its behalf; and
  - (2) publishes details of where this summary or total number of *complaints* (as appropriate) is published.

**Joint reports: provision of information to third party on request**

- 1.10A.6 **R**
- Any *firm* covered by a joint report, other than the *firm* that submitted the joint report, must provide details of where the *complaints* data summary or total number of *complaints* (as appropriate) is published to any *person* who requests them.

**Mode and content of publication**

- 1.10A.7 **G**
- Firms* may choose how they publish the *complaints* data summary or total number of *complaints* (as appropriate). However, the summary or total number of *complaints* (as appropriate) should be readily available. For this

reason, the *FCA* recommends that *firms* should publish the summary or total number of *complaints* (as appropriate) on their websites.

1.10A.8 **G** [deleted]

### Meaning of revenue

1.10A.9 **G** In **■ DISP 1.10A**, references to revenue in relation to any *firm* do not include the amount of any repayment of any *credit* provided by that *firm* as *lender*.

### Publication of complaints data by the FCA

1.10A.10 **G**

- (1) To improve *consumer* awareness and to help *firms* compare their performance against their peers, the *FCA* publishes:
  - (a) *complaints* data about the financial services industry as a whole; and
  - (b) *firm-level complaints* data for those *firms* that are required to publish a *complaints* data summary or the total number of *complaints* (as appropriate) under **■ DISP 1.10A.1R**.
- (2) The *FCA* also publishes *firm-level* information giving context to the *complaints* data reported to it for those *firms* that are required to publish that information under **■ DISP 1.10A.1R**.

1.10A.11 **G** For *firms* reporting 500 or more *complaints* under **■ DISP 1.10.1R(1)** or 1000 or more *complaints* under **■ DISP 1.10.1R(2)** in the relevant reporting period, the *FCA* will publish the *firm-level complaints* data and information providing context to the *complaints* data reported to it either:

- (1) after the *firm* provides the appropriate consent in the *complaints* data report and confirms that the reported data accurately reflects the data which it will publish under **■ DISP 1.10A.1R**; or
- (2) after the *FCA* receives an email from the *firm* under **■ DISP 1.10A.4R** confirming that the *complaints* data summary accurately reflects the report submitted to the *FCA*, that the summary has been published and where it has been published.

1.10A.12 **G** For *firms* with only a *limited permission* that report *complaints* to the *FCA* under the reporting requirements in **■ SUP 16.12**, the *FCA* will publish the *firm-level complaints* data reported to it after the *FCA* receives an email from the *firm* under **■ DISP 1.10A.4R**. That email should confirm that the total number of *complaints* accurately reflects the report submitted to the *FCA* under **■ SUP 16.12**, that the total number of *complaints* has been published and where the information has been published.





## 1.11 The Society of Lloyd's

### Complaints handling procedures

1.11.1 **R** The *Society* must establish and maintain appropriate and effective procedures for handling *complaints* by *policyholders* against *members* of the *Society* which comply with this chapter.

1.11.2 **R** A *member* of the *Society* must, in complying with this chapter, ensure that the arrangements which the *member* maintains are compatible with the *Lloyd's complaint procedures*, so that, taken as a whole, the requirements of this sourcebook are met.

1.11.2A **R** The *Society* must ensure that the arrangements which the *member* maintains include a requirement which corresponds to ■ DISP 1.2.1 R (4) (Publishing and providing summary details, and information about the Financial Ombudsman Service).

[Note: article 13 of the *ADR Directive* and article 14 of the *ODR Regulation*]

1.11.3 **R** The *Society* must take reasonable steps to ensure that *complaints* by *policyholders* against *members* of the *Society* are dealt with under the *Lloyd's complaint procedures* and that *members* comply with the requirements of those procedures.

### Referral to the Financial Ombudsman Service

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

### Exemptions for members

- 1.11.5 **R**
- (1) A notification claiming exemption under ■ DISP 1.1.12 R from the *complaints reporting rules* and the *rules* relating to the funding of the *Financial Ombudsman Service* must be given to the *FCA* by the *Society* on behalf of any *member* eligible for an exemption.
  - (2) The *Society* must notify the *FCA* if the conditions relating to such an exemption no longer apply to a *member* who is exempt.

**Complaints reporting rule**

- 1.11.6 **R** The report to be sent to the *FCA* under the *complaints reporting rules* must be provided by the *Society* and must cover all *complaints* by *policyholders* against *members* falling within the scope of the *complaints reporting rules*.

**Obligation to publish summary of complaints data**

- 1.11.6A **R** Where, in accordance with **■ DISP 1.11.6 R**, the *Society* submits a report to the *FCA* reporting 500 or more *complaints*, it must publish a summary of the *complaints* data contained in that report (the *complaints* data summary).

**Format of publication**

- 1.11.6B **R** The *Society* must publish the *complaints* data summary in the format set out in the *complaints* publication form in **■ DISP 1 Annex 1B R** omitting details as to the *firms* and brands/trading names covered by the summary.

**Time limits for publication**

- 1.11.6C **R** The deadlines for publication of the *Society's complaints* data summaries are:
- (1) 28 February for the summary of its report relating to the reporting period ending on 31 December of the previous year; and
  - (2) 31 August for the summary of its report relating to the reporting period ending on 30 June of the same year.

**Confirmation of publication**

- 1.11.6D **R** The *Society* must immediately confirm to the *FCA*, in an email submitted to [complaintsdatasummary@fca.org.uk](mailto:complaintsdatasummary@fca.org.uk), that the *complaints* data summary accurately reflects the report submitted to the *FCA*, that the summary has been published and where it has been published.

**Mode and content of publication**

- 1.11.6E **G** The *Society* may choose how it publishes the *complaints* data summary. However, the *complaints* data summary should be readily available. For this reason, the *FCA* recommends that the *Society* publishes the summary on its website. The *Society* may publish further information with the *complaints* data summary to aid understanding.

**Application to members**

- 1.11.7 **G** Each *member* of the *Society* is individually subject to the *rules* in this chapter as a result of the *insurance market direction* given in **■ DISP 2.1.7 D** under section 316 of the *Act* (Direction by a regulator).
- 1.11.8 **G** However, the *Society* operates a two-tier internal complaints handling procedure, currently set out in the "Code for Underwriting agents: UK Personal Lines Claims and Complaints Handling". Under this procedure, *complaints* by *policyholders* against *members* of the *Society* are considered by the *managing agent* and then, if necessary, by the *Society's* in-house

Complaints Department. This procedure (and any procedure that may replace it) will be subject to the requirements in this chapter.

- 1.11.9 **G** *Members will individually comply with this chapter if and only if all complaints by policyholders against members are dealt with under the Lloyd's complaints procedures. Accordingly, certain of the obligations under this chapter, for example the obligation to report on complaints received and the obligation to pay fees under the rules relating to the funding of the Financial Ombudsman Service (■ FEES 5), must be complied with by the Society on behalf of members. Managing agents will not have to make a separate report to the FCA on complaints reported under the complaints reporting rules sent by the Society.*

#### Complaints about the activities of members' advisers

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

- 1.11.11 **G** *Complaints from members of the Society regarding the activities of members' advisers, which cannot be resolved by the members' adviser, cannot be referred to the Financial Ombudsman Service.*

#### Complaints from members or former members

- 1.11.12 **G** *The Financial Ombudsman Service is not able to deal with the complaints listed in ■ DISP 1.11.13 R and separate rules and guidance are therefore required.*

- 1.11.13 **R** *The Society must establish and maintain appropriate and effective arrangements for handling any complaint from a member or a former member about:*
- (1) *regulated activities* carried on by the Society;
  - (2) *the Society's regulatory functions* carried on by the Society, the Council or those to whom the Council delegates authority to carry out such functions;
  - (3) *advice given by an underwriting agent to a person to become, continue or cease to be, a member of a particular syndicate; and*
  - (4) *the management by a managing agent of the underwriting capacity of a syndicate on which the complainant participates or has participated.*

- 1.11.14 **R** *The Society must maintain by byelaw one or more appropriate effective schemes for the resolution of disputes between an individual member or a former member who was an individual member and:*

- (1) his *underwriting agent*; or
- (2) the *Society*.
- 1.11.15 **R** For the purposes of ■ DISP 1.11.13 R "*individual member*" includes a *member* which is a *limited liability partnership* or a *body corporate* whose *members* consist only of, or of the *nominees for*, a single natural person or a group of *connected persons*.
- 1.11.16 **G** The schemes to which ■ DISP 1.11.13 R currently refers are the *Lloyd's Arbitration Scheme* and the *Lloyd's Members' Ombudsman* respectively, but the *Society* may maintain other independent dispute resolution schemes in addition to, or instead of, either of these schemes.
- 1.11.17 **G** The schemes referred to in ■ DISP 1.11.13 R should be operationally independent of the *Society*.
- 1.11.18 **G** An *individual member* or *former member* who was an *individual member* should not have access to the schemes referred to in ■ DISP 1.11.13 R unless the *complaints* arrangements maintained by the *Society* have failed to resolve the *complaint* to his satisfaction within eight weeks of receiving it.
- 1.11.19 **G** The *Society* should give the *FCA* adequate notice of all proposed changes to the *byelaws* relating to the schemes referred to in ■ DISP 1.11.13 R.
- 1.11.20 **G** When considering what is required to ensure the operational independence of the schemes referred to in ■ DISP 1.11.13 R, or proposed changes in such schemes, the *Society* should take account of similar arrangements operated by the *Financial Ombudsman Service*.
- 1.11.21 **R** A contravention of ■ DISP 1.11.13 R or ■ DISP 1.11.14 R does not give rise to a right of action by a *private person* under section 138D of the *Act* (Actions for damages) and each of those *rules* is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action.

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## Complaints return form

Complaints return form

This annex consists only of one or more forms. Forms are to be found through the following address:

*Complaints return form* - DISP 1 Annex 1 R



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## Complaints publication report

This table belongs to ■ DISP 1.10A.2 R - DISP 1 Annex 1B R





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**Illustration of the online reporting requirements, referred to in DISP 1.10.2AR**

This annex belongs to ■ DISP 1.10.2A R -DISP 1 Annex 1C R



Application of DISP 1 to type of respondent / complaint

1. The table below summarises the application of DISP 1. Where the table indicates that a particular section may apply, its application in relation to any particular activity or *complaint* is dependent on the detailed application provisions set out in DISP 1.
2. In some cases the application of DISP 1 to *firms* depends on whether responsibility for the matter is reserved under an *EU* instrument to an *incoming EEA firm's Home State regulator*. Reference should be made to the detailed application provisions set out in DISP 1.

Type of respondent/complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
<i>firm</i> in relation to <i>complaints</i> concerning non-MiFID business (except as specifically provided for below)	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i> (DISP 1.3.4 G does not apply)	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>
<i>firm</i> in relation to <i>complaints</i> concerning MiFID business	Applies for <i>eligible complainants</i>	Applies for <i>retail clients</i> (DISP 1.3.3 R does not apply)	Applies for <i>eligible complainants</i>	Applies for <i>retail clients</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>
<i>UK UCITS management company</i> in relation to <i>complaints</i> concerning <i>collective portfolio management services</i> in respect of a <i>UCITS scheme</i> or an <i>EEA UCITS scheme</i> provided under the freedom to provide <i>cross border services</i>	Applies for <i>Unitholders</i>	Applies for <i>Unitholders</i>	Applies for <i>eligible complainants</i>	Applies for <i>Unitholders</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>

Type of respondent/complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
<i>branch of a UK UCITS management company in another EEA State in relation to complaints concerning collective portfolio management services in respect of an EEA UCITS scheme</i>	Applies for <i>Unitholders</i>	Applies for <i>Unitholders</i>	Does not apply	Applies for <i>Unitholders</i>	Does not apply	Does not apply
<i>branch of a UK firm (other than a UK UCITS management company when providing collective portfolio management services in respect of an EEA UCITS scheme) in another EEA State in relation to complaints concerning non-MiFID business</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>branch of a UK firm in another EEA</i>	Does not apply	Applies for <i>retail clients</i> (DISP 1.3.3 R)	Does not apply	Applies for <i>retail clients</i>	Does not apply	Does not apply

Type of respondent/complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
<i>State in relation to complaints concerning MiFID business</i>		does not apply)				
<i>incoming branch of an EEA firm (other than an EEA UCITS management company when providing collective portfolio management services in respect of an EEA UCITS scheme) in relation to complaints concerning non-MiFID business</i>	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants	Does not apply
<i>incoming branch of an EEA firm in relation to complaints concerning MiFID business</i>	Applies for eligible complainants	Does not apply	Applies for eligible complainants	Does not apply	Applies for eligible complainants	Does not apply
<i>incoming branch of an EEA UCITS management company in relation to complaints concerning collective portfolio management services in respect of a UCITS scheme</i>	Applies for Unitholders	Applies for Unitholders	Applies for eligible complainants	Applies for Unitholders	Applies for eligible complainants	Does not apply
<i>incoming EEA UCITS management company in rela-</i>	Does not apply	Does not apply	Applies for eligible complainants	Does not apply	Applies for eligible complainants	Does not apply

Type of respondent/complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
<p>tion to <i>complaints</i> concerning <i>collective portfolio management services</i> in respect of a <i>UCITS scheme</i> provided under the freedom to provide <i>cross border services</i></p> <p><i>incoming EEA firm</i> providing cross-border services from outside the <i>UK</i></p>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>branch of an overseas firm</i> (in relation to all <i>complaints</i> )	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>
<i>payment service provider</i> in relation to <i>complaints</i> concerning <i>payment services</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply	Does not apply
<i>EEA branch of a UK payment service provider</i> in relation to <i>complaints</i> concerning <i>payment services</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>incoming branch of an EEA authorised payment institution</i> in relation to <i>complaints</i> concerning <i>payment services</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply	Does not apply

Type of respondent/complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
incoming EEA authorised payment institution providing cross border payment services from outside the UK	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
electronic money issuer in relation to complaints concerning issuance of electronic money	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants	Does not apply	Does not apply	Does not apply
EEA branch of an authorised electronic money institution or an EEA branch of any other UK electronic money issuer in relation to complaints concerning issuance of electronic money	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
incoming branch of an EEA authorised electronic money institution in relation to complaints concerning issuance of electronic money	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants	Does not apply	Does not apply	Does not apply
incoming EEA authorised electronic money institution pro-	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply

Type of respondent/complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
<p>providing cross border electronic money issuance services from outside the UK</p> <p>VJ participant</p>	Applies for eligible complainants	Applies for eligible complainants (DISP 1.3.4 G to DISP 1.3.5 G do not apply)	Applies for eligible complainants (DISP 1.6.8 G does not apply)	Does not apply	Does not apply	Does not apply
complaints relating to auction regulation bidding	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
a full-scope UK AIFM, small authorised UK AIF or an incoming EEA AIFM, for complaints concerning AIFM management functions carried on for an AIF that is a body corporate (unless it is a collective investment scheme)	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
a depositary, for complaints concerning activities carried on for an authorised AIF	Applies for eligible complainants	Applies for eligible complainants (DISP 1.3.4G does not apply)	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants
a depositary, for complaints concerning activities carried on for an unauthorised AIF	Applies for eligible complainants	Applies for eligible complainants (DISP 1.3.4G does not apply)	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants



Type of respondent/complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
<i>thorised AIF that is a charity AIF (other than a body corporate that is not a collective investment scheme)</i>						
<i>a depositary, for complaints concerning activities carried on for an unauthorised AIF that is a UK ELTIF (other than a body corporate that is not a collective investment scheme)</i>	Applies for eligible complainants	Applies for eligible complainants (DISP 1.3.4G does not apply)	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants	Applies for eligible complainants
<i>a depositary, for complaints concerning activities carried on for an unauthorised AIF that is not a charity AIF or a UK ELTIF</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>a depositary, for complaints concerning activities carried on for an unauthorised AIF that is a body corporate (other than a collective investment scheme).</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply

Type of respondent/complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
<i>an incoming EEA AIFM, for complaints concerning AIFM management functions carried on for an authorised AIF or a UK EL-TIF under the freedom to provide cross-border services</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i> (DISP 1.3.4G does not apply)	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply
<i>a CBTL firm in relation to complaints concerning CBTL business</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply	Does not apply
<i>designated credit reference agency in relation to complaints about providing credit information</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply	Does not apply
<i>designated finance platform in relation to complaints about providing specified information</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply	Does not apply

Appropriate wording for inclusion in a final response or written acceptance

	The respondent does not consent to waive the six-month time limit in DISP 2.8.2 R (1)
(1)	<p><b>“You have the right to refer your complaint to the Financial Ombudsman Service, free of charge – but you must do so within six months of the date of this letter.</b></p> <p>If you do not refer your complaint in time, the Ombudsman will not have our permission to consider your complaint and so will only be able to do so in very limited circumstances. For example, if the Ombudsman believes that the delay was as a result of exceptional circumstances.”</p>
	The complaint was received outside the time limits in DISP 2.8.2R(2) and the respondent does not consent to waive those time limits or the six-month time limit in DISP 2.8.2 R (1)
(2)	<p><b>“You have the right to refer your complaint to the Financial Ombudsman Service, free of charge.</b></p> <p>The Ombudsman might not be able to consider your complaint if:</p> <ul style="list-style-type: none"> <li>• what you’re complaining about happened more than <b>six years</b> ago, <b>and</b></li> <li>• you’re complaining more than <b>three years</b> after you realised (or should have realised) that there was a problem.</li> </ul> <p>We think that your complaint was made outside of these time limits but this is a matter for the Ombudsman to decide. If the Ombudsman agrees with us, they will not have our permission to consider your complaint and so will only be able to do so in very limited circumstances (see below).</p> <p><b>If you do decide to refer your complaint to the Ombudsman you must do so within six months of the date of this letter.</b></p> <p>If you do not refer your complaint to the Ombudsman within six months of the date of this letter, the Ombudsman will not have our permission to consider your complaint and so will only be able to do so in very limited circumstances.</p> <p>The very limited circumstances referred to above include, where the Ombudsman believes that the delay was as a result of exceptional circumstances.”</p>
	The complaint was received outside the time limits in DISP 2.8.2 R (2) and the respondent does not consent to waive those time limits but does consent to waive the six-month time limit in DISP 2.8.2 R (1)
(3)	<p><b>“You have the right to refer your complaint to the Financial Ombudsman Service, free of charge.</b></p> <p>The Ombudsman might not be able to consider your complaint if:</p> <ul style="list-style-type: none"> <li>• what you’re complaining about happened more than <b>six years</b> ago, <b>and</b></li> <li>• you’re complaining more than <b>three years</b> after you realised (or should have realised) that there was a problem.</li> </ul> <p>We think that your complaint was made outside of these time limits but this is a matter for the Ombudsman to decide. If the Ombudsman agrees with us, they will not have our permission to consider your complaint and so will only be able</p>

	<p>to do so in very limited circumstances. For example, if the Ombudsman believes that the delay was as a result of exceptional circumstances.</p> <p>The time limit for referring complaints to the Ombudsman is usually six months but we will consent to the Ombudsman considering your complaint even if you refer the complaint later than this.”</p>
	The respondent does not consent to waive the time limits in DISP 2.8.7 R relating to mortgage endowment complaints
(4)	<p><b>“You have the right to refer your complaint to the Financial Ombudsman Service, free of charge — but you must do so within six months of the date of this letter.</b></p> <p>The Ombudsman might not be able to consider your complaint if:</p> <ul style="list-style-type: none"> <li>• you received a letter warning you that there was a high risk that your mortgage endowment policy would not produce a sum large enough to repay the target amount at maturity; and</li> <li>• you’re complaining more than <b>three years</b> after you received that letter, and</li> <li>• you’re complaining more than <b>six months</b> after the date on which we sent you a further communication notifying you when the three-year period would expire.</li> </ul> <p>We think that your complaint was made outside of these time limits but this is a matter for the Ombudsman to decide. If the Ombudsman agrees with us, they will not have our permission to consider your complaint and so will only be able to do so in limited circumstances.”</p>
	The respondent consents to waive all applicable time limits
(5)	<p><b>“You have the right to refer your complaint to the Financial Ombudsman Service, free of charge.</b></p> <p>Although there are time limits for referring your complaint to the Ombudsman, we will consent to the Ombudsman considering your complaint even if you refer the complaint outside the time limits.”</p>
	Other circumstances not dealt with above
(6)	Where the <i>respondent</i> proposes to waive the time limits in DISP 2.8.2 R or DISP 2.8.7 R and appropriate wording for the <i>respondent</i> circumstances is not set out in (1) to (5), the <i>respondent</i> must adapt the appropriate wording as necessary.

## Chapter 2

# Jurisdiction of the Financial Ombudsman Service

## 2.1 Purpose, interpretation and application

### Purpose

#### 2.1.1

G

The purpose of this chapter is to set out *rules* and guidance on the scope of the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction*, which are the *Financial Ombudsman Service's* two jurisdictions:

- (1) the *Compulsory Jurisdiction* is not restricted to *regulated activities, payment services, issuance of electronic money, and CBTL business* and covers:
  - (a) certain *complaints* against *firms* (and businesses which were *firms* at the time of the events complained about);
  - (b) *relevant complaints* against former members of *former schemes* under the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order*;
  - (c) *relevant credit-related complaints* against businesses which were, at the time of the events complained about, covered by a standard licence under the Consumer Credit Act 1974, or formerly authorised to carry on an activity by virtue of section 34(A) of that Act, in accordance with article 11 of the *Regulated Activities Amendment Order*;
  - (d) certain *complaints* against *designated credit reference agencies* under the *Small and Medium Sized Business (Credit Information) Regulations*; and
  - (e) certain *complaints* against *designated finance platforms* under the *Small and Medium Sized Business (Finance Platforms) Regulations*;
- (2) [deleted]
- (3) the *Voluntary Jurisdiction* covers certain *complaints* against *VJ participants*, including in relation to events before they joined the *Voluntary Jurisdiction*.

#### 2.1.2

G

*Relevant complaints* covered by the *Compulsory Jurisdiction* comprise:

- (1) *relevant existing complaints* referred to a *former scheme* before *commencement* and inherited by the *Financial Ombudsman Service* under the *Ombudsman Transitional Order*;
- (2) *relevant new complaints* about events before *commencement* but referred to the *Financial Ombudsman Service* after *commencement* under the *Ombudsman Transitional Order*;

- (3) *relevant transitional complaints* referred to the *Financial Ombudsman Service* after the *relevant commencement date* under the *Mortgages and General Insurance Complaints Transitional Order*;
- (4) *relevant existing credit-related complaints* referred to the *Financial Ombudsman Service* before 1 April 2014 which were formerly being dealt with under the *Consumer Credit Jurisdiction* and which are to be dealt with under the *Compulsory Jurisdiction* in accordance with article 11 of the *Regulated Activities Amendment Order*; and
- (5) *relevant new credit-related complaints* about events which took place before 1 April 2014 but referred to the *Financial Ombudsman Service* on or after 1 April 2014 which are to be dealt with under the *Compulsory Jurisdiction* in accordance with article 11 of the *Regulated Activities Amendment Order*.

**2.1.3** G The *Ombudsman Transitional Order* requires the *Financial Ombudsman Service* to complete the handling of *relevant existing complaints*, in a significant number of respects, in accordance with the requirements of the relevant *former scheme* rather than in accordance with the requirements of this chapter.

**Interpretation**  
.....

**2.1.4** G In this chapter, carrying on an activity includes:

- (1) offering, providing or failing to provide a service in relation to an activity;
- (2) administering or failing to administer a service in relation to an activity; and
- (3) the manner in which a *respondent* has administered its business, provided that the business is an activity subject to the *Financial Ombudsman Service's* jurisdiction.

**Purpose**  
.....

**2.1.5** G In this chapter, ancillary banking services include, for example, the provision and operation of cash machines, foreign currency exchange, safe deposit boxes and account aggregation services (services where details of accounts held with different financial service providers can be accessed by a single password).

**Application**  
.....

**2.1.6** R This chapter applies to the *Ombudsman* and to *respondents*.

**2.1.7** D Part XVI of the *Act* (The Ombudsman Scheme), particularly section 226 (Compulsory jurisdiction), applies to *members* of the *Society of Lloyd's* in respect of the *regulated activities* of *effecting or carrying out contracts of insurance* written at Lloyd's.

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

2.2.1 **G** The scope of the *Financial Ombudsman Service's* two jurisdictions depends on:

- (1) the type of activity to which the *complaint* relates (see ■ DISP 2.3, ■ DISP 2.4 and ■ DISP 2.5);
- (2) the place where the activity to which the complaint relates was carried on (see ■ DISP 2.6);
- (3) whether the complainant is eligible (see ■ DISP 2.7); and
- (4) whether the *complaint* was referred to the *Financial Ombudsman Service* in time (see ■ DISP 2.8).

2.2.2 **G** The effect of section 234B of the *Act* is that where a *person* (a "successor") has assumed a liability (including a contingent one) of another *person* who was, or would have been the *respondent* in respect of a *complaint*, the *complaint* may be dealt with by the *Ombudsman* as if the successor were the *respondent*.



## 2.3 To which activities does the Compulsory Jurisdiction apply?

### Activities by firms

2.3.1

**R**

The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:

- (1) *regulated activities* (other than *auction regulation bidding*);
- (1A) *payment services*;
- (1B) [deleted]
- (1C) *CBTL business*;
- (2) [deleted]
- (3) lending *money* secured by a charge on land;
- (4) lending *money* (excluding *restricted credit* where that is not a *credit-related regulated activity*);
- (5) paying *money* by a *plastic card* (excluding a *store card* where that is not a *credit-related regulated activity*);
- (6) providing ancillary banking services;

or any ancillary activities, including advice, carried on by the *firm* in connection with them.

### Activities by firms and unauthorised persons subject to a former scheme

2.3.2

**G**

The *Ombudsman* can also consider under the *Compulsory Jurisdiction*:

- (1) as a result of the *Ombudsman Transitional Order*, a *relevant existing complaint* or a *relevant new complaint* that relates to an act or omission by a *firm* or an *unauthorised person* which was subject to a *former scheme* immediately before *commencement*; or
- (2) as a result of the *Mortgages and General Insurance Complaints Transitional Order*, a *relevant transitional complaint* that relates to an act or omission by a *firm* (or an *unauthorised person* that ceased to be a *firm* after the *relevant commencement date*) which was subject to a *former scheme* at the time of the act or omission;

provided that:

- (3) the act or omission occurred in the carrying on by that *firm* or *unauthorised person* of an activity to which that *former scheme* applied; and
- (4) the complainant is eligible and wishes to have the *complaint* dealt with by the *Ombudsman*.

**Activities by firms and unauthorised persons previously subject to the Consumer Credit Jurisdiction**

2.3.2-A

**G**

In accordance with article 11 of the *Regulated Activities Amendment Order*, the *Ombudsman* can also consider under the *Compulsory Jurisdiction*:

- (1) a *relevant existing credit-related complaint* referred to the *Financial Ombudsman Service* before 1 April 2014 which was formerly being dealt with under the *Consumer Credit Jurisdiction*; and
- (2) a *relevant new credit-related complaint* referred to the *Financial Ombudsman Service* on or after 1 April 2014 which relates to an act or omission which took place before 1 April 2014;

provided that:

- (a) the *complaint* could have been dealt with under the *Consumer Credit Jurisdiction* (disregarding whether the complainant would have been eligible under rules made for the purposes of the *Consumer Credit Jurisdiction* and whether the complaint would have fallen within a description specified in those rules) but for the repeal of section 226A of the *Act*; and
- (b) the complainant is eligible and wishes to have the *complaint* dealt with under the *Financial Ombudsman Service*.

**Activities by payment service providers**

2.3.2A

**R**

The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *payment service provider* in carrying on:

- (1) *payment services*; or
- (2) *credit-related regulated activities*;

or any ancillary activities, including advice, carried on by the *payment service provider* in connection with them.

**Activities by electronic money issuers**

2.3.2B

**R**

The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by an *electronic money issuer* in carrying on:

- (1) issuance of *electronic money*; or
- (2) *credit-related regulated activities*;

or any ancillary activities, including advice, carried on by the *electronic money issuer* in connection with them.

**Activities by CBTL firms**

**2.3.2BA** **R** The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *CBTL firm* in carrying on *CBTL business* or any ancillary activities, including advice, carried on by the *CBTL firm* in connection with its *CBTL business*.

**Consumer redress schemes**

**2.3.2C** **G** As a result of section 404B(11) of the *Act*, the *Ombudsman* can also consider under the *Compulsory Jurisdiction* a *complaint* from a complainant who:

- (1) is not satisfied with a *redress determination* made by a *respondent* under a *consumer redress scheme*; or
- (2) considers that a *respondent* has failed to make a *redress determination* in accordance with a *consumer redress scheme*.

**Activities by designated credit reference agencies**

**2.3.2D** **R** The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *designated credit reference agency* in carrying on:

- (1) the activity of providing *credit information* under the *Small and Medium Sized Business (Credit Information) Regulations*; or
- (2) any ancillary activities, including advice, carried on by the *designated credit reference agency* in connection with the activity in (1).

**Activities by designated finance platforms**

**2.3.2E** **R** The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *designated finance platform* in carrying on:

- (1) the activity of providing *specified information* under the *Small and Medium Sized Business (Finance Platforms) Regulations*; or
- (2) any ancillary activities, including advice, carried on by the *designated finance platform* in connection with the activity in (1).

**General**

**2.3.3** **G** *Complaints* about acts or omissions include those in respect of activities for which the *firm, payment service provider, electronic money issuer, CBTL firm, designated credit reference agency* or *designated finance platform* is responsible (including business of any *appointed representative* or *agent* for which the *firm, payment institution, electronic money institution, designated credit reference agency* or *designated finance platform* has accepted responsibility).

**2.3.4** **R** A *complaint* about an *authorised professional firm* cannot be handled under the *Compulsory Jurisdiction* of the *Financial Ombudsman Service* if it relates solely to a *non-mainstream regulated activity* and can be handled by a *designated professional body*.

**2.3.5** **G** The *Compulsory Jurisdiction* includes *complaints* about the *UK* end of 'one leg' *payment services* transactions, i.e. services provided from *UK* establishments that also involve a payment service provider located outside the *EEA*. The *Compulsory Jurisdiction* also includes *complaints* about *payment services* irrespective of the currency of the transaction.

## 2.5 To which activities does the Voluntary Jurisdiction apply?

### 2.5.1

**R** The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:

- (1) it is not covered by the *Compulsory Jurisdiction*; and
- (2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:
  - (a) an activity carried on after 28 April 1988 which:
    - (i) was not a *regulated activity* at the time of the act or omission, but
    - (ii) was a *regulated activity* when the *VJ participant* joined the *Voluntary Jurisdiction* (or became an *authorised person*, if later);
  - (b) a financial services activity carried on after *commencement* by a *VJ participant* which was covered in respect of that activity by a *former scheme* immediately before the *commencement day*;
  - (c) activities which (at 1 October 2016) would be covered by the *Compulsory Jurisdiction*, if they were carried on from an establishment in the *United Kingdom* (these activities are listed in ■ DISP 2 Annex 1G);
  - (d) [deleted]
  - (e) lending *money* secured by a charge on land;
  - (f) lending *money* (excluding *restricted credit* where that is not a *credit-related regulated activity*);
  - (g) paying *money* by a *plastic card* (excluding a *store card* where that is not a *credit-related regulated activity*);
  - (h) providing ancillary banking services;
  - (i) acting as an intermediary for a loan secured by a charge over land;
  - (j) acting as an intermediary for *general insurance business* or *long-term insurance business*;
  - (k) National Savings and Investments' business;
  - (l) [deleted]
  - (m) [deleted]

or any ancillary activities, including advice, carried on by the *VJ participant* in connection with them.

- 2.5.2** **G** The scope of the *Voluntary Jurisdiction* is wider than that of the *Compulsory Jurisdiction*, and so some activities are referred to in both jurisdictions.
- 2.5.3** **G** ■ DISP 2.5.1R (2)(a) is for those that are subject to the *Compulsory Jurisdiction* for *regulated activities* but are not covered by the *Ombudsman Transitional Order* or the *Mortgage and General Insurance Complaints Transitional Order*. It enables the *Financial Ombudsman Scheme* to cover *complaints* about earlier events relating to those activities before they became *regulated activities*.
- 2.5.4** **G** ■ DISP 2.5.1R (2)(b) is for those that were members of one of the *former schemes* replaced by the *Financial Ombudsman Service* immediately before *commencement*. It enables the *Financial Ombudsman Service* to cover *complaints* that arise out of acts or omissions occurring after *commencement* for any activities which are not covered by the *Compulsory Jurisdiction* but that would have been covered by the relevant *former scheme*.
- 2.5.4A** **G** ■ DISP 2.5.1R (2)(l) includes *complaints* about the *EEA* end of 'one leg' *payment services* transactions, i.e. services provided from *EEA* establishments that are subject to the territorial jurisdiction of the *Voluntary Jurisdiction* (see ■ DISP 2.6.4R (2)) that also involve a payment service provider located outside the *EEA*. It also includes *complaints* about *payment services* irrespective of the currency of the transaction.
- 2.5.5** **R** The *Voluntary Jurisdiction* covers an act or omission that occurred before the *VJ participant* was participating in the *Voluntary Jurisdiction*, and whether the act or omission occurred before or after *commencement*, either:
- (1) if the *complaint* could have been dealt with under a *former scheme*;  
or
  - (2) under the agreement by the *VJ participant* in the *Standard Terms*.

## 2.6 What is the territorial scope of the relevant jurisdiction?

### Compulsory Jurisdiction

2.6.1

**R**

- (1) The *Compulsory Jurisdiction* covers *complaints* about the activities of a *firm* (including its *appointed representatives*), of a *payment service provider* (including *agents* of a *payment institution*), of an *electronic money issuer* (including *agents* of an *electronic money institution*), of a *CBTL firm*, of a *designated credit reference agency* or of a *designated finance platform* carried on from an establishment in the *United Kingdom*.
- (2) The *Compulsory Jurisdiction* also covers *complaints* about:
  - (a) *collective portfolio management* services provided by an *EEA UCITS management company* managing a *UCITS scheme*; and
  - (b) *AIFM management functions* provided by an *incoming EEA AIFM* managing an *authorised AIF* or a *UK ELTIF* other than a *body corporate* that is not a *collective investment scheme*;

from an establishment in another *EEA State* under the freedom to provide *cross-border services*.
- (3) [deleted]
- (4) [deleted]
- (5) [deleted]
- (6) [deleted]

2.6.2

**G**

This:

- (1) includes *incoming EEA firms*, *incoming EEA authorised payment institutions*, *incoming EEA authorised electronic money institutions* and *incoming Treaty firms*; but
- (2) excludes *complaints* about business conducted in the *United Kingdom* on a services basis from an establishment outside the *United Kingdom* other than:
  - (a) *complaints* about *collective portfolio management* services provided by an *EEA UCITS management company* in managing a *UCITS scheme*; and
  - (b) *complaints* about *AIFM management functions* provided by an *incoming EEA AIFM* managing an *authorised AIF* or a *UK ELTIF*

other than a *body corporate* that is not a *collective investment scheme*.

2.6.3

G

**Consumer Credit Jurisdiction**

2.6.4

R

**Voluntary Jurisdiction**

The *Voluntary Jurisdiction* covers only *complaints* about the activities of a *VJ participant* carried on from an establishment:

- (1) in the *United Kingdom*; or
- (2) elsewhere in the *EEA* if the following conditions are met:
  - (a) the activity is directed wholly or partly at the *United Kingdom* (or part of it);
  - (b) contracts governing the activity are (or, in the case of a potential customer, would have been) made under the law of England and Wales, Scotland or Northern Ireland; and
  - (c) the *VJ participant* has notified appropriate regulators in its *Home State* of its intention to participate in the *Voluntary Jurisdiction*.

2.6.5

G

**Location of the complainant**

A *complaint* can be dealt with under the *Financial Ombudsman Service* whether or not the complainant lives or is based in the *United Kingdom*.





## 2.7 Is the complainant eligible?

2.7.1 **R** A *complaint* may only be dealt with under the *Financial Ombudsman Service* if it is brought by or on behalf of an *eligible complainant*.

2.7.2 **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. It is immaterial whether the *person* authorised to act on behalf of an *eligible complainant* is himself an *eligible complainant*.

### Eligible complainants

2.7.3 **R** An *eligible complainant* must be a *person* that is:

- (1) a *consumer*;
- (2) a *micro-enterprise* ;
  - (a) in relation to a *complaint* relating wholly or partly to *payment services*, either at the time of the conclusion of the *payment service* contract or at the time the complainant refers the *complaint* to the *respondent*; or
  - (b) otherwise, at the time the complainant refers the *complaint* to the *respondent*;
- (3) a charity which has an annual income of less than £1 million at the time the complainant refers the *complaint* to the *respondent*;
- (4) a trustee of a trust which has a net asset value of less than £1 million at the time the complainant refers the *complaint* to the *respondent*;  
or
- (5) (in relation to *CBTL business*) a *CBTL consumer*.

2.7.4 **G** In determining whether an enterprise meets the tests for being a *micro-enterprise*, account should be taken of the enterprise's 'partner enterprises' or 'linked enterprises' (as those terms are defined in the *Micro-enterprise Recommendation*). For example, where a parent company holds a majority shareholding in a *complainant*, if the parent company does not meet the tests for being a *micro-enterprise* then neither will the *complainant*. [**Note:** Articles 1 and 3 to 7 of the Annex to the *Micro-enterprise Recommendation*].

- 2.7.5** **G** If a *respondent* is in 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.
- 2.7.6** **R** To be an *eligible complainant* a *person* must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:
- (1) the complainant is (or was) a customer, *payment service user* or electronic money holder of the *respondent*;
  - (2) the complainant is (or was) a potential customer, *payment service user* or electronic money holder of the *respondent*;
  - (3) the complainant is the holder, or the beneficial owner, of *units* in a *collective investment scheme* and the *respondent* is:
    - (a) the *operator* of a *scheme*; or
    - (b) the *depository* of an *authorised fund*; or
    - (c) the *depository* of a *charity AIF*; or
    - (d) the *depository* of an *ELTIF*;
  - (3A) the complainant is the holder, or the beneficial owner, of *units* or *shares* in an *AIF* that is not a *collective investment scheme* where the *respondent* is:
    - (a) the *AIFM* of an *unauthorised AIF* (other than a *body corporate*); or
    - (b) the *AIFM* or *depository* of a *UK ELTIF* (other than a *body corporate*); or
    - (c) the *AIFM* or *depository* of a *charity AIF* (other than a *body corporate*);
  - (4) the complainant is a beneficiary of, or has a beneficial interest in, a *personal pension scheme* or *stakeholder pension scheme*;
  - (5) the complainant is a *person* for whose benefit a *contract of insurance* was taken out or was intended to be taken out with or through the *respondent*;
  - (6) the complainant is a *person* on whom the legal right to benefit from a claim against the *respondent* under a *contract of insurance* has been devolved by contract, assignment, subrogation or legislation (save the European Community (Rights against Insurers) Regulations 2002);
  - (7) the complainant relied in the course of his business on a cheque guarantee card issued by the *respondent*;
  - (8) the complainant is the true owner or the *person* entitled to immediate possession of a cheque or other bill of exchange, or of the funds it represents, collected by the *respondent* for someone else's account;

- (9) the complainant is the recipient of a banker's reference given by the *respondent*;
- (10) the complainant gave the *respondent* a guarantee or security for:
  - (a) a mortgage;
  - (b) a loan;
  - (c) an actual or prospective *regulated credit agreement*;
  - (d) an actual or prospective *regulated consumer hire agreement*; or
  - (e) any linked transaction as defined in the Consumer Credit Act 1974 (as amended);
- (11) the complainant is a *person* about whom information relevant to his financial standing is or was held by the *respondent* in *providing credit references*;
- (11A) the complainant is a *person* about whom information relevant to his financial standing is or was held by the *respondent* in *providing credit information*;
- (11B) the complainant is a *person* about whom *specified information* was provided to a *person* in relation to a *finance application*;
- (12) the complainant is a *person*:
  - (a) from whom the *respondent* has sought to recover payment under *acredit agreement* or *consumer hire agreement* (whether or not the *respondent* is a party to the agreement); or
  - (b) in relation to whom the *respondent* has sought to perform duties, or exercise or enforce rights, on behalf of the creditor or owner, under *acredit agreement* or *consumer hire agreement* in carrying on *debt administration*;
- (13) the complainant is a beneficiary under a trust or estate of which the *respondent* is trustee or personal representative;
- (14) (where the *respondent* is a *dormant account fund operator*) the complainant is (or was) a customer of a *bank* or *building society* which transferred any *balance* from a *dormant account* to the *respondent*;
- (15) the complainant is either a *borrower* or a lender under a *P2P agreement* and the *respondent* is the *operator of an electronic system in relation to lending*.

**2.7.7** G ■ DISP 2.7.6R (5) and ■ DISP 2.7.6R (6) include, 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.

**2.7.8** G In the *Compulsory Jurisdiction*, under the *Ombudsman Transitional Order* and the *Mortgages and General Insurance Complaints Transitional Order*, where a complainant:

- (1) wishes to have a *relevant new complaint* or a *relevant transitional complaint* dealt with by the *Ombudsman*; and
- (2) is not otherwise eligible; but
- (3) would have been entitled to refer an equivalent *complaint* to the *former scheme* in question immediately before the relevant transitional order came into effect;

if the *Ombudsman* considers it appropriate, he may treat the complainant as an *eligible complainant*.

**Exceptions**

2.7.9

**R**

The following are not *eligible complainants*:

- (1) (in all jurisdictions) a *firm*, *payment service provider*, *electronic money issuer*, *CBTL firm*, *designated credit reference agency*, *designated finance platform* or *VJ participant* whose *complaint* relates in any way to an activity which:
  - (a) the *firm* itself has *permission* to carry on; or
  - (ab) the *firm*, *payment service provider*, *electronic money issuer*, *CBTL firm*, *designated credit reference agency* or *designated finance platform* itself is entitled to carry on under the *Payment Services Regulations*, the *Electronic Money Regulations*, the *MCD Order*, the *Small and Medium Sized Business (Credit Information) Regulations* or the *Small and Medium Sized Business (Finance Platforms) Regulations*; or
  - (b) the *VJ participant* itself conducts;

and which is subject to the *Compulsory Jurisdiction* or the *Voluntary Jurisdiction*;

- (2) (in the *Compulsory Jurisdiction*) a complainant, other than a trustee of a *pension scheme* trust, who was:
  - (a) a *professional client*; or
  - (b) an *eligible counterparty*;

in relation to the *firm* and activity in question at the time of the act or omission which is the subject of the *complaint*.
- (3) [deleted]

2.7.9A

**R**

■ DISP 2.7.9 R (1) and ■ DISP 2.7.9 R (2) do not apply to a complainant who is a *consumer* in relation to the activity to which the *complaint* relates.

2.7.10

**G**

In the *Compulsory Jurisdiction*, in relation to *relevant new complaints* under the *Ombudsman Transitional Order* and *relevant transitional complaints* under the *Mortgages and General Insurance Complaints Transitional Order*:

- (1) where the *former scheme* in question is the *Insurance Ombudsman Scheme*, a complainant is not to be treated as an *eligible complainant* unless:

- (a) he is an individual; and
  - (b) the *relevant new complaint* does not concern aspects of a policy relating to a business or trade carried on by him;
- (2) where the *former scheme* in question is the *GISC facility*, a complainant is not to be treated as an *eligible complainant* unless:
- (a) he is an individual; and
  - (b) he is acting otherwise than solely for the purposes of his business; and
- (3) where the *former scheme* in question is the *MCAS scheme*, a complainant is not to be treated as an *eligible complainant* if:
- (a) the *relevant transitional complaint* does not relate to a breach of the Mortgage Code published by the Council of Mortgage Lenders;
  - (b) the *complaint* concerns physical injury, illness, nervous shock or their consequences; or
  - (c) the complainant is claiming a sum of money that exceeds £100,000.

## 2.8 Was the complaint referred to the Financial Ombudsman Service in time?

### General time limits

2.8.1

**R**

The *Ombudsman* can only consider a *complaint* if:

- (1) the *respondent* has already sent the complainant its *final response* or *summary resolution communication*; or
- (2) eight weeks have elapsed since the *respondent* received the *complaint*; or
- (3) in relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*:
  - (a) the *respondent* has already sent the complainant its *redress determination* under the scheme; or
  - (b) the *respondent* has failed to send a *redress determination* in accordance with the time limits specified under the scheme;  
unless:
    - (4) the *respondent* consents and:
      - (a) the *Ombudsman* has informed the complainant that the *respondent* must deal with the *complaint* within eight weeks and that it may resolve the complaint more quickly than the *Ombudsman*; and
      - (b) the complainant nevertheless wishes the *Ombudsman* to deal with the *complaint*.

2.8.2

**R**

The *Ombudsman* cannot consider a *complaint* if the complainant refers it to the *Financial Ombudsman Service*:

- (1) more than six *months* after the date on which the *respondent* sent the complainant its *final response*, *redress determination* or *summary resolution communication*; or
- (2) more than:
  - (a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the *complaint* to the *respondent* or to the *Ombudsman* within that period and has a written acknowledgement or some other record of the *complaint* having been received;

unless:

- (3) in the view of the *Ombudsman*, the failure to comply with the time limits in ■ DISP 2.8.2 R or ■ DISP 2.8.7 R was as a result of exceptional circumstances; or
- (4) the *Ombudsman* is required to do so by the *Ombudsman Transitional Order*; or
- (5) the *respondent* has consented to the *Ombudsman* considering the *complaint* where the time limits in ■ DISP 2.8.2 R or ■ DISP 2.8.7 R have expired (but this does not apply to a “relevant complaint” within the meaning of section 404B(3) of the Act).

**2.8.2A** **R** If a *respondent* consents to the *Ombudsman* considering a *complaint* in accordance with ■ DISP 2.8.2 R (5), the *respondent* may not withdraw consent.

**2.8.3** **G** The six-month time limit is only triggered by a response which is a *final response*, *redress determination* or *summary resolution communication*. The response must tell the complainant about the six-month time limit that the complainant has to refer a *complaint* to the *Financial Ombudsman Service*.

**2.8.4** **G** An example of exceptional circumstances might be where the complainant has been or is incapacitated.

**Pensions review and FSAVC review**

**2.8.5** **R** The six-year and the three-year time limits do not apply where:

- (1) [deleted]
- (2) the *complaint* concerns a contract or policy which is the subject of a review directly or indirectly under:
  - (a) the terms of the Statement of Policy on 'Pension transfers and Opt-outs' issued by the FSA on 25 October 1994; 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.

**Mortgage endowment complaints**

**2.8.6** **G** If a *complaint* relates to the sale of an endowment *policy* for the purpose of achieving capital repayment of a mortgage, the receipt by the complainant of a letter which states that there is a risk (rather than a high risk) that the *policy* would not, at maturity, produce a sum large enough to repay the

target amount is not, itself, sufficient to cause the three year time period in ■ DISP 2.8.2R (2) to start to run.

**2.8.7**

**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 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) time for referring a *complaint* to the *Financial Ombudsman Service* starts to run from the date the complainant receives the letter; and
  - (b) 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 the *Ombudsman* is of the opinion that, in the circumstances of the case, it is appropriate for ■ DISP 2.8.2R (2) to apply.

**Payment protection insurance complaints**

**2.8.8**

**G**

If a *complaint* relates to the sale of a *payment protection contract*, knowledge by the complainant that there was a problem with the sale of the *payment protection contract* generally (for example where there has been a rejection of a claim on the grounds of ineligibility or exclusion, or the complainant has received a customer contact letter explaining that they may have been mis-sold) would not in itself ordinarily be sufficient to establish for the purposes of the three-year time period in ■ DISP 2.8.2R(2) that the complainant had become aware (or ought reasonably to have become aware) that he or she had cause for complaint in respect of a failure to make the disclosure set out at ■ DISP App 3.3A.2E (relating to failure to disclose commission).

**2.8.9**

**R**

- (1) In addition to ■ DISP 2.8.1R and ■ DISP 2.8.2R, unless one or more of the conditions in (2) below is met, the *Ombudsman* cannot consider a *complaint* which:
  - (a) relates to the sale of a *payment protection contract* that took place on or before 29 August 2017; and



(b) expresses dissatisfaction about the sale, or matters related to the sale, including where there is a rejection of claims on the grounds of ineligibility or exclusion (but not matters unrelated to the sale, such as delays in claims handling or administrative matters such as taking the incorrect amount of premium).

(2) The conditions are that:

(a) the complainant referred the *complaint* to the *respondent* or to the *Financial Ombudsman Service* on or before 29 August 2019 and has a written acknowledgement or some other record of the *complaint* having been received; or

(b) in the view of the *Ombudsman*, the failure to comply with the time limit in (2)(a) was as a result of exceptional circumstances; or

(c) the *respondent* has consented to the *Ombudsman* considering the *complaint* where the time limit in (2)(a) has expired (but this does not apply to a "relevant complaint" within the meaning of section 404B(3) of the *Act*); or

(d) the *complaint*:

(i) is made on or after 29 August 2019;

(ii) relates to the sale of a *payment protection contract* that was live as at 29 August 2017;

(iii) is made following a full or partial rejection of a claim on or after 29 August 2017 on the grounds of ineligibility, exclusion or limitation

and this condition applies only to the extent that the *complaint* relates to those grounds of rejection.

**2.8.10**

**G** Where a *complaint* meets the requirements of ■ DISP 2.8.9R(2)(d), those parts of the *complaint* that relate to the grounds of rejection of the claim are not subject to the restriction in ■ DISP 2.8.9R(1) on an *Ombudsman* considering the *complaint*.



## Regulated Activities for the Voluntary Jurisdiction at 1 October 2016

This table belongs to ■ DISP 2.5.1 R

The activities which were covered by the *Compulsory Jurisdiction* (1 October 2016) were:

(1) for *firms*:

- (a) *regulated activities* (other than auction regulated bidding);
- (b) *payment services*;  
[deleted]
- (d) lending *money* secured by a charge on land;
- (e) lending *money* (excluding *restricted credit* where that is not a *credit-related regulated activity*);
- (f) paying *money* by a *plastic card* (excluding a *store card* where that is not a *credit-related regulated activity*);
- (g) providing ancillary banking services;
- (h) [deleted]
- (i) *CBTL business*;

(2) for *payment service providers*:

- (a) *payment services*;
- (b) *credit-related regulated activities*;

or any ancillary activities, including advice, carried on by the *payment service provider* in connection with them.

(3) for *electronic money issuers*:

- (a) issuance of electronic money;
- (b) *credit-related regulated activities*;

or any ancillary activities, including advice, carried on by the *electronic money issuer* in connection with them;

(4) for *CBTL firms*: *CBTL business* or any ancillary activities, including advice, carried on by the *CBTL firm* in connection with it.

(5) for *designated credit reference agencies*:

- (a) providing *credit information* under the *Small and Medium Sized Business (Credit Information) Regulations*; or
- (b) any ancillary activities, including advice, carried on by the *designated credit reference agency* in connection with the activity in (a).

(6) for *designated finance platforms*:

(a) providing *specified information* under the *Small and Medium Sized Business (Finance Platforms) Regulations*; or

(b) any ancillary activities, including advice, carried on by the *designated finance platform* in connection with the activity in paragraph (a).

The activities which (at 1 April 2016) were *regulated activities* were, in accordance with section 22 of the Act (The classes of activity and categories of investment), any of the following activities specified in Part II of the *Regulated Activities Order*:

- (1) *accepting deposits* (article 5);
- (2) *issuing electronic money* (article 9B);
- (3) *effecting contracts of insurance* (article 10(1));
- (4) *carrying out contracts of insurance* (article 10(2));
- (5) *dealing in investments as principal* (article 14);
- (6) *dealing in investments as agent* (article 21);
- (7) *arranging (bringing about) deals in investments* (article 25(1));
- (8) *making arrangements with a view to transactions in investments* (article 25(2));
- (9) *arranging (bringing about) regulated mortgage contracts* (article 25A(1));
- (10) *making arrangements with a view to regulated mortgage contracts* (article 25A(2));
- (11) *arranging (bringing about) a home reversion plan* (article 25B(1));
- (12) *making arrangements with a view to a home reversion plan* (article 25B(2));
- (13) *arranging (bringing about) a home purchase plan* (article 25C(1));
- (14) *making arrangements with a view to a home purchase plan* (article 25C(2));
- (14A) *operating a multilateral trading facility* (article 25D);
- (14B) *arranging (bringing about) a regulated sale and rent back agreement* (article 25E(1));
- (14C) *making arrangements with a view to a regulated sale and rent back agreement* (article 25E(2));
- (14D) *credit broking* (article 36A);
- (14E) *operating an electronic system in relation to lending* (article 36H);
- (15) *managing investments* (article 37);
- (16) *assisting in the administration and performance of a contract of insurance* (article 39A);
- (16A) *debt adjusting* (article 39D(1) and (2));
- (16B) *debt counselling* (article 39E(1) and (2));
- (16C) *debt collecting* (article 39F(1) and (2));
- (16D) *debt administration* (article 39G(1) and (2));
- (17) *safeguarding and administering investments* (article 40);
- (18) *sending dematerialised instructions* (article 45(1));

- (19) *causing dematerialised instructions to be sent* (article 45(2));
  
- (22A) *managing a UCITS* (article 51ZA);
- (22B) *acting as a trustee or depositary of a UCITS* (article 51ZB);
- (22C) *managing an AIF* (article 51ZC);
- (22D) *acting as a trustee or depositary of an AIF* (article 51ZD);
- (22E) *establishing, operating or winding up a collective investment scheme* (article 51ZE);
- (23) *establishing, operating or winding up a stakeholder pension scheme* (article 52(a));
- (24) *providing basic advice on a stakeholder product* (article 52B);
- (25) *establishing, operating or winding up a personal pension scheme* (article 52(b));
- (26) *advising on investments (except P2P agreements)* (article 53(1));
- (26A) *advising on P2P agreements* (article 53(2));
- (27) *advising on regulated mortgage contracts* (article 53A);
- (28) *advising on a home reversion plan* (article 53B);
- (28A) *advising on a home purchase plan* (article 53C);
- (29) *advising on a regulated sale and rent back agreement* (article 53D);
- (29A) *advising on regulated credit agreements for the acquisition of land* (article 53DA)
- (29B) *advising on conversion or transfer of pension benefits* (article 53E);
- (30) *advising on syndicate participation at Lloyd's* (article 56);
- (31) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's* (article 57);
- (32) *arranging deals in contracts of insurance written at Lloyd's* (article 58);
- (32A) *entering into a regulated credit agreement* (article 60B(1));
- (32B) *exercising, or having the right to exercise, rights and duties under a regulated credit agreement* (article 60(B)(2));
- (32C) *entering into a regulated consumer hire agreement* (article 60N(1));
- (32D) *exercising, or having the right to exercise rights and duties under a regulated consumer hire agreement* (article 60N(2));
- (33) *entering into a regulated mortgage contract* (article 61(1));
- (34) *administering a regulated mortgage contract* (article 61(2));

- (35) *entering into a home reversion plan* (article 63B(1));
- (36) *administering a home reversion plan* (article 63B(2));
- (37) *entering into a home purchase plan* (article 63F(1));
- (38) *administering a home purchase plan* (article 63F(2));
- (38A) *entering into a regulated sale and rent back agreement* (article 63J(1));
- (38B) *administering a regulated sale and rent back agreement* (article 63J(2));
- (38C) *meeting of repayment claims* (article 63N(1)(a));
- (38D) *managing dormant account funds (including the investment of such funds)* (article 63N(1)(b));
- (38E) *providing information in relation to a specified benchmark* (article 63O(1)(a));
- (38F) *administering a specified benchmark* (article 63O(1)(b));
- (39) *entering as provider into a funeral plan contract* (article 59);
- (40) *agreeing to carry on a regulated activity* (article 64);
- (40A) *providing credit information services* (article 89A);
- (40B) *providing credit references* (article 89B);

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of (22) , (22A), (22B), (22C), (22D), (22E) and (23), is carried on in relation to property of any kind or, in the case of (40A) or (40B) relates to information about a *person's* financial standing.

## Chapter 3

# Complaint handling procedures of the Financial Ombudsman Service

## 3.1 Purpose, interpretation and application

### Purpose

- 3.1.1 **G** The purpose of this chapter is to set out:
- (1) the procedures of the *Financial Ombudsman Service* for investigating and determining *complaints*;
  - (2) the basis on which the *Ombudsman* makes decisions; and
  - (3) the awards which the *Ombudsman* can make.

### Interpretation

- 3.1.2 **R** In this chapter, 'out of jurisdiction' means outside the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction* in accordance with ■ DISP 2.
- 3.1.3 **R** Where the *respondent* is a *partnership* (or former *partnership*), it is sufficient for the *Ombudsman* to communicate with one partner (or former partner).
- 3.1.4 **G** The *Ombudsman Transitional Order* requires the *Financial Ombudsman Service* to complete the handling of *relevant existing complaints*, in a significant number of respects, in accordance with the requirements of the relevant *former scheme* rather than in accordance with the requirements of this chapter.

### Application

- 3.1.5 **R** This chapter applies to the *Ombudsman* and to *respondents*.





## 3.2 Jurisdiction

- 3.2.1 **R** The *Ombudsman* will have regard to whether a *complaint* is out of jurisdiction.
- 3.2.2 **R** Unless the *respondent* has already had eight weeks to consider the *complaint* or issued a *final response* or *summary resolution communication*, the *Ombudsman* will refer the *complaint* to the *respondent* (except where **■** DISP 2.8.1R(4) applies).
- 3.2.2A **R** If the subject matter of a *complaint* falls to be dealt with by the *respondent* under a *consumer redress scheme*, and the time limits specified under the scheme for doing so have not yet expired, the *Ombudsman* will refer it to the *respondent* to be dealt with under the scheme (except where **■** DISP 2.8.1R(4) applies).
- 3.2.3 **R** Where the *respondent* alleges that the *complaint* is out of jurisdiction, the *Ombudsman* will give both parties an opportunity to make representations before he decides.
- 3.2.4 **R** Where the *Ombudsman* considers that the *complaint* may be out of jurisdiction, he will give the complainant an opportunity to make representations before he decides.
- 3.2.5 **R** Where the *Ombudsman* then decides that the *complaint* is out of jurisdiction, he will give reasons for that decision to the complainant and inform the *respondent*.
- 3.2.6 **R** Where the *Ombudsman* then decides that the *complaint* is not out of jurisdiction, he will inform the complainant and give reasons for that decision to the *respondent*.

### 3.3 Dismissal without consideration of the merits and test cases

3.3.1 **R** Where the *Ombudsman* considers that the *complaint* may be one which should be dismissed without consideration of the merits, he will give the complainant an opportunity to make representations before he decides.

3.3.2 **R** Where the *Ombudsman* then decides that the *complaint* should be dismissed without consideration of the merits, he will give reasons to the complainant for that decision and inform the *respondent*.

3.3.3 **G** Under the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order*, where the *Ombudsman* is dealing with a *relevant complaint*, he must take into account whether an equivalent complaint would have been dismissed without consideration of its merits under the *former scheme* in question, as it had effect immediately before the relevant transitional order came into effect.

#### Grounds for dismissal

3.3.4 **R** The *Ombudsman* may dismiss a *complaint* referred to the *Financial Ombudsman Service* before 9 July 2015 without considering its merits if the *Ombudsman* considers that:

- (1) the complainant has not suffered (or is unlikely to suffer) financial loss, material distress or material inconvenience; or
- (2) the *complaint* is frivolous or vexatious; or
- (3) the *complaint* clearly does not have any reasonable prospect of success; or
- (4) the *respondent* has already made an offer of compensation (or a goodwill payment) which is:
  - (a) fair and reasonable in relation to the circumstances alleged by the complainant; and
  - (b) still open for acceptance; or
- (5) the *respondent* has reviewed the subject matter of the *complaint* in accordance with:
  - (a) the regulatory standards for the review of such transactions prevailing at the time of the review; or

- (b) [deleted]
- (c) any formal regulatory requirement, standard or guidance published by the *FCA* or other regulator in respect of that type of *complaint*;  
  
(including, if appropriate, making an offer of redress to the complainant), unless he considers that they did not address the particular circumstances of the case; or
- (5A) the *respondent* has reviewed the subject matter of the *complaint* and issued a *redress determination* in accordance with the terms of a *consumer redress scheme*; or
- (6) the subject matter of the *complaint* has previously been considered or excluded under the *Financial Ombudsman Service*, or a *former scheme* (unless material new evidence which the *Ombudsman* considers likely to affect the outcome has subsequently become available to the complainant); or
- (7) the subject matter of the *complaint* has been dealt with, or is being dealt with, by a comparable independent complaints scheme or dispute-resolution process; or
- (8) the subject matter of the *complaint* has been the subject of court proceedings where there has been a decision on the merits; or
- (9) 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) so that the matter may be considered by the *Financial Ombudsman Service*; or
- (10) it would be more suitable for the subject matter of the *complaint* to be dealt with by a court, arbitration or another complaints scheme; or
- (11) it is a *complaint* about the legitimate exercise of a *respondent's* commercial judgment; or
- (12) it is a *complaint* about employment matters from an employee or employees of a *respondent*; or
- (13) it is a *complaint* about investment performance; or
- (14) it is a *complaint* about a *respondent's* decision when exercising a discretion under a will or private trust; or
- (15) it is a *complaint* about a *respondent'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) it is a *complaint* which:
  - (a) involves (or might involve) more than one *eligible complainant*;  
and
  - (b) has been referred without the consent of the other complainant or complainants;and the *Ombudsman* considers that it would be inappropriate to deal with the *complaint* without that consent; or

**3.3.4A**

**R**

- (16A) it is a *complaint* about a pure landlord and tenant issue arising out of a *regulated sale and rent back agreement*; or
- (17) there are other compelling reasons why it is inappropriate for the *complaint* to be dealt with under the *Financial Ombudsman Service*.

The *Ombudsman* may dismiss a *complaint* referred to the *Financial Ombudsman Service* on or after 9 July 2015 without considering its merits if the *Ombudsman* considers that:

- (1) the *complaint* is frivolous or vexatious; or
- (2) the subject matter of the *complaint* has been dealt with, or is being dealt with, by a comparable *ADR entity*; or
- (3) the subject matter of the *complaint* has been the subject of court proceedings where there has been a decision on the merits; or
- (4) 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) so that the matter may be considered by the *Financial Ombudsman Service*; or
- (5) dealing with such a type of *complaint* would otherwise seriously impair the effective operation of the *Financial Ombudsman Service*.

**3.3.4B**

**G**

Examples of a type of *complaint* that would otherwise seriously impair the effective operation of the *Financial Ombudsman Service* may include:

- (1) where it would be more suitable for the *complaint* to be dealt with by a court or a comparable *ADR entity*; or
- (2) where the subject matter of the *complaint* has already been dealt with by a comparable dispute resolution scheme; or
- (3) where the subject matter of the *complaint* has previously been considered or excluded under the *Financial Ombudsman Service* (unless material new evidence which the *Ombudsman* considers likely to affect the outcome has subsequently become available to the complainant); or
- (4) it is a *complaint* which:
  - (a) involves (or might involve) more than one *eligible complainant*; and
  - (b) has been referred without the consent of the other *eligible complainant* or complainants,and the *Ombudsman* considers that it would be inappropriate to deal with the *complaint* without that consent.

**3.3.5**

**R**

[deleted]

3.3.6

**G**

[deleted]

## 3.4 Referring a complaint to another complaints scheme or court

3.4.1 **R** The *Ombudsman* may refer a *complaint* to another complaints scheme where:

- (1) he considers that it would be more suitable for the matter to be determined by that scheme; and
- (2) the complainant consents to the referral.

### Test cases

3.4.2 **R** The *Ombudsman* may, with the complainant's consent, cease to consider the merits of a *complaint* so that it may be referred to a court to consider as a test case, if:

- (1) before the *Ombudsman* has made a determination, they have received in writing from the *respondent*:
  - (a) a detailed statement of how and why, in the *respondent's* opinion, the *complaint* raises an important or novel point of law with significant consequences; and
  - (b) an undertaking in favour of the complainant that, if the complainant or the *respondent* commences court proceedings against the other in respect of the *complaint* in any court in the *United Kingdom* within six *months* of the *complaint* being dismissed, the *respondent* will:
    - (i) pay the complainant's reasonable costs and disbursements (to be assessed, if not agreed, on an indemnity basis) in connection with the proceedings at first instance and any subsequent appeal proceedings brought by the *respondent*; and
    - (ii) make interim payments on account of such costs if and to the extent that it appears reasonable to do so; and
- (2) the *Ombudsman* considers that the *complaint*:
  - (a) raises an important or novel point of law, which has important consequences; andwould more suitably be dealt with by a court as a test case.

**3.4.3**

**G** Factors that the *Ombudsman* may take into account in considering whether to cease to consider the merits of a *complaint* so that it may be the subject of a test case in court include (but are not limited to):

- (1) whether the point of law is central to the outcome of the dispute;
- (2) how important or novel the point of law is in the context of the dispute;
- (3) the significance of the consequences of the dispute for the business of the *respondent* (or respondents in that sector) or for its (or their) customers;
- (4) the amount at stake in the dispute;  
the remedies that a court could impose;
- (6) any representations made by the *respondent* or the complainant; and
- (7) the stage already reached in consideration of the dispute.

### 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.



### 3.6 Determination by the Ombudsman

#### Fair and reasonable

- 3.6.1 **R** The *Ombudsman* will determine a *complaint* by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case.
- 3.6.2 **G** Section 228 of the *Act* sets the 'fair and reasonable' test for the *Compulsory Jurisdiction* (other than in relation to a "relevant complaint" within the meaning of section 404B(3) of the *Act*) and **■ DISP 3.6.1 R** extends it to the *Voluntary Jurisdiction*.
- 3.6.3 **G** Where a complainant makes *complaints* against more than one *respondent* in respect of connected circumstances, the *Ombudsman* may determine that the *respondents* must contribute towards the overall award in the proportion that the *Ombudsman* considers appropriate.
- 3.6.4 **R** In considering what is fair and reasonable in all the circumstances of the case, the *Ombudsman* will take into account:
  - (1) relevant:
    - (a) law and regulations;
    - (b) regulators' rules, guidance and standards;
    - (c) codes of practice; and
  - (2) (where appropriate) what he considers to have been good industry practice at the relevant time.
- 3.6.5 **G** Where the *Ombudsman* is determining what is fair and reasonable in all the circumstances of a *relevant new complaint* or a *relevant transitional complaint*, the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order* require him to take into account what determination the *former Ombudsman* might have been expected to reach in relation to an equivalent complaint dealt with under the *former scheme* in question immediately before the relevant transitional order came into effect.

#### Consumer redress schemes

- 3.6.5A **G** As a result of section 404B of the *Act*, if the subject matter of a *complaint* falls to be dealt with (or has properly been dealt with) under a *consumer*

*redress scheme*, the *Ombudsman* will determine the *complaint* by reference to what, in the opinion of the *Ombudsman*, the *redress determination* under the *consumer redress scheme* should be or should have been, unless the complainant and the *respondent* agree that the *complaint* should not be dealt with in accordance with the *consumer redress scheme*.

### The Ombudsman's determination

3.6.6

**R**

When the *Ombudsman* has determined a *complaint*:

- (1) the *Ombudsman* will give both parties a signed written statement of the determination, giving the reasons for it;
- (2) the statement will require the complainant to notify the *Ombudsman*, 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 that time limit, it is final and binding on both parties;
- (4) subject to paragraph (4A), if the complainant does not notify the *Ombudsman* that he accepts the determination within that time limit, the complainant will be treated as having rejected the determination, and neither party will be bound by it;
- (4A) the complainant is not to be treated as having rejected the determination under paragraph (4) if all the following conditions are met:
  - (a) the complainant notifies the *Ombudsman* after the specified date of the complainant's acceptance of the determination;
  - (b) the complainant has not previously notified the *Ombudsman* of the complainant's rejection of the determination;
  - (c) in the view of the *Ombudsman*, the failure to comply with the time limit for acceptance was as a result of exceptional circumstances;
- (5) the *Ombudsman* will notify the *respondent* of the outcome and, if the complainant is treated as having rejected the determination under paragraph (4), the effect of paragraph (4A).

3.6.7

**R**

- (1) An *Ombudsman* may correct any clerical mistake in the written statement of an *Ombudsman's* determination, whether or not the determination has already been accepted or rejected.
- (2) Any failure to comply with any provisions of the procedural rules made by the *FOS Ltd* does not of itself render an *Ombudsman's* determination void.

**Reports of determinations**

3.6.8

**G**

- (1) The *FOS Ltd* will publish a report of any *Ombudsman's* determination, save that if the *Ombudsman* who made the determination informs the *FOS Ltd* that, in the *Ombudsman's* opinion, it is inappropriate to publish a report of that determination (or any part of it), the *FOS Ltd* will not publish a report of that determination (or that part, as appropriate).
- (2) Unless the complainant agrees, a report will not include the name of the complainant, or particulars which (in the opinion of the *FOS Ltd*) are likely to identify the complainant.
- (3) The *FOS Ltd* may charge a reasonable fee for providing a copy of a report.

## 3.7 Awards by the Ombudsman

- 3.7.1** **R** Where a *complaint* is determined in favour of the complainant, the *Ombudsman's* determination may include one or more of the following:
- (1) a money award against the *respondent*; or
  - (2) an interest award against the *respondent*; or
  - (3) a costs award against the *respondent*; or
  - (4) a direction to the *respondent*.

### Money awards

- 3.7.2** **R** Except in relation to a "relevant complaint" within the meaning of section 404B(3) of the *Act*, a money award may be such amount as the *Ombudsman* considers to be fair compensation for one or more of the following:
- (1) financial loss (including consequential or prospective loss); or
  - (2) pain and suffering; or
  - (3) damage to reputation; or
  - (4) distress or inconvenience;
- whether or not a court would award compensation.

- 3.7.2A** **G** In relation to a "relevant complaint" within the meaning of section 404B(3) of the *Act*, a money award is a payment of such amount as the *Ombudsman* determines that a *respondent* should make (or should have made) to a complainant under the scheme.

- 3.7.2B** **G** A money award under **■ DISP 3.7.2A G** may specify the date by which the amount awarded is to be paid.

- 3.7.3** **G** Where the *Ombudsman* is determining what amount (if any) constitutes fair compensation as a money award in relation to a *relevant new complaint* or a *relevant transitional complaint*, the *Ombudsman Transitional Order* and the *Mortgages and General Insurance Complaints Transitional Order* require him to take into account what amount (if any) might have been expected to be

awarded by way of compensation in relation to an equivalent complaint dealt with under the *former scheme* in question immediately before the relevant transitional order came into effect.

**3.7.4** **R** The maximum money award which the *Ombudsman* may make is £150,000.

**3.7.4A** **G** The effect of section 404B(5) of the *Act* is that the maximum award which the *Ombudsman* may make also applies in relation to a “relevant complaint” within the meaning of section 404B(3) of the *Act*.

**3.7.5** **G** For the purpose of calculating the maximum money award, the following are excluded:

- (1) any interest awarded on the amount payable under a money award;
- (2) any costs awarded; and
- (3) any interest awarded on costs.

**3.7.6** **G** If the *Ombudsman* considers that fair compensation requires payment of a larger amount, he may recommend that the *respondent* pays the complainant the balance. The effect of section 404B(6) of the *Act* is that this is also the case in relation to a “relevant complaint” within the meaning of section 404B(3) of the *Act*.

**3.7.7** **R** The *Ombudsman* will maintain a register of each money award.

**Interest awards**

**3.7.8** **R** Except in relation to a “relevant complaint” within the meaning of section 404B(3) of the *Act*, an interest award may provide for the amount payable under the money award to bear interest at a rate and as from a date specified in the award.

**3.7.8A** **G** A money award under **■ DISP 3.7.2A G** may provide for interest to be payable, at a rate specified in the award, on any amount which is not paid by the date specified in the award.

**Costs awards**

**3.7.9** **R** A costs award may:

- (1) be such amount as the Ombudsman considers to be fair, to cover some or all of the costs which were reasonably incurred by the complainant in respect of the complaint; and
- (2) include interest on that amount at a rate and as from a date specified in the award.

**3.7.10** **G** In most cases complainants should not need to have professional advisers to bring *complaints* to the *Financial Ombudsman Service*, so awards of costs are unlikely to be common.

**Directions**

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**3.7.11** **R** Except in relation to a “relevant complaint” within the meaning of section 404B(3) of the *Act*, a direction may require the *respondent* to take such steps in relation to the complainant as the *Ombudsman* considers just and appropriate (whether or not a court could order those steps to be taken).

**3.7.11A** **G** In relation to a “relevant complaint” within the meaning of section 404B(3) of the *Act*, a direction may require the *respondent* to take such action as the *Ombudsman* determines the *respondent* should take (or should have taken) under the scheme.

**Complying with awards and settlements**

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**3.7.12** **R** A *respondent* must comply promptly with:

- (1) any award or direction made by the *Ombudsman*; and
- (2) any settlement which it agrees at an earlier stage of the procedures.

**3.7.13** **G** Under the *Act*, a complainant can enforce through the courts a money award registered by the *Ombudsman* or a direction made by the *Ombudsman*.





## 3.8 Dealing with information

- 3.8.1** **R** In dealing with information received in relation to the consideration of a *complaint*, the *Financial Ombudsman Service* will have regard to the parties' rights of privacy.
- 3.8.2B** **R** This does not prevent the *Ombudsman* disclosing information:
- (1) to the extent that he is required or authorised to do so by law; or
  - (2) to the parties to the *complaint*; or
  - (3) in his determination; or
  - (4) at a hearing in connection with the *complaint*.
- 3.8.3** **R** So long as he has regard to the parties' rights of privacy, the *Ombudsman* may disclose information to the *FCA* 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.

**3.9 Delegation of the Ombudsman's  
powers**

**3.9.1A** **R** The *Ombudsman* may designate members of the staff of *FOS Ltd* to exercise any of the powers of the *Ombudsman* relating to the consideration of a *complaint* apart from the powers to:

- (1) determine a *complaint*; or
- (2) authorise the disclosure of information to the *FCA* or any other body exercising regulatory or statutory functions.

**3.9.2** **G** In ■ DISP 2 to ■ DISP 4 any reference to "the *Ombudsman*" includes a reference to any member of the staff of *FOS Ltd* to whom the exercise of any of the powers of the *Ombudsman* has been delegated.

# Chapter 4

## Standard terms

## 4.1 Purpose and application

### Purpose

- 4.1.1 **G** The purpose of this chapter is to set out how *complaints* against *VJ participants* are dealt with under the *Voluntary Jurisdiction*.

### Application

- 4.1.2 **G** These *standard terms* apply to any business which has agreed to be a *VJ participant*.

## 4.2 Standard terms

**4.2.1** **R** A *VJ participant* is subject to these *standard terms*, which may be amended or supplemented by the *Financial Ombudsman Service* with the approval of the *FCA*.

**4.2.2** **R** By agreeing to participate, a *VJ participant* also agrees that the *Voluntary Jurisdiction* covers an act or omission that occurred before the *VJ participant* was participating in the *Voluntary Jurisdiction*, whether the act or omission occurred before or after *commencement*.

### Application of DISP 1 to DISP 3

**4.2.3** **R** The following rules and guidance apply to *VJ participants* as part of the *standard terms*, except where the context requires otherwise:

- (1) ■ DISP 1 (Treating complainants fairly), except:
  - (a) ■ DISP 1.9 (Complaints record rule);
  - (b) ■ DISP 1.10 (Complaints reporting rules);
  - (ba) ■ DISP 1.10A (Complaints data publication rules); and
  - (c) ■ DISP 1.11 (Lloyd's);
- (2) ■ DISP 2 (Jurisdiction of the Financial Ombudsman Service), except:
  - (a) ■ DISP 2.3 (Compulsory Jurisdiction); and
- (3) ■ DISP 3 (Complaint handling procedures of the Financial Ombudsman Service).

### Determinations and awards

**4.2.4** **R** The *Ombudsman* has the same powers to make determinations and awards under the *Voluntary Jurisdiction* as he has under the *Compulsory Jurisdiction* (see ■ DISP 3.7 (Awards by the Ombudsman)).

**4.2.5** **R** If the complainant accepts the *Ombudsman's* determination within the time limit specified by the *Ombudsman*, the determination will be binding on the *VJ Participant* and may be enforced in court by the complainant.

**4.2.6** **R** The following *rules* in *FEES* apply to *VJ participants* as part of the *standard terms*, but substituting '*VJ participant*' for '*firm*':

- (1) ■ FEES 2.2.1 R (late payment) but substituting '*FOS Ltd*' for 'the *FCA*';
- (2) ■ FEES 2.3.1 R and ■ 2.3.2 R (remission of fees);
- (3) ■ ■ FEES 4.2.6 R (1)(b) (periodic fees);
- (4) ■ FEES 5.3.6 R (general levy) but substituting:
  - (a) '*Voluntary Jurisdiction*' for '*Compulsory Jurisdiction*'; and
  - (b) '*FOS Ltd*' for 'the *FCA*';
- (5) ■ FEES 5.3.8 R (calculation of general levy) but substituting '■ FEES 5 Annex 2R' for '■ FEES 5 Annex 1 R';
- (6) ■ FEES 5.4.1 R (information) but substituting:
  - (a) '*FOS Ltd*' for 'the *FCA*'; and
  - (b) '■ FEES 5 Annex 2R' for '■ FEES 5 Annex 1 R';
- (7) ■ FEES 5.5B (case fees);
- (8) [deleted]
- (9) [deleted]
- (10) ■ FEES 5.7.1 R and ■ 5.7.4R but substituting, in ■ FEES 5.7.1 R, 'the *FOS Ltd*' for ' the *FCA*' and 'annual levy specified in ■ FEES 5 Annex 2R' for '*general levy*';
- (11) ■ FEES 5.8.1 R (joining the Financial Ombudsman Service); and
- (12) ■ FEES 5 Annex 2R and ■ FEES 5 Annex 3R.

### Withdrawal from participation

#### 4.2.7

**R**

A *VJ participant* may not withdraw from the *Voluntary Jurisdiction* unless:

- (1) the *VJ participant* has submitted to *FOS Ltd* a written plan for:
  - (a) notifying its existing customers of its intention to withdraw; and
  - (b) handling *complaints* against it before its withdrawal;
- (2) the *VJ participant* has paid the general levy for the year in which it withdraws and any other fees payable; and
- (3) *FOS Ltd* has approved in writing both the *VJ Participant's* plan and the date of withdrawal (which must be at least six months from the date of the approval of the plan).

### Exemption from liability

4.2.8

**R**

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

- (1) *FOS Ltd*;
- (2) any member of its governing body;
- (3) any member of its staff;
- (4) any person acting as an *Ombudsman* for the purposes of the *Financial Ombudsman Service*;

except where:

- (5) the act or omission is shown to have been in bad faith; or
- (6) it would prevent an award of damages being 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.





# Chapter 5

## Funding Rules



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**[deleted: provisions relating to the funding rules for the Financial Ombudsman Service are set out in FEES 5 (Financial Ombudsman Service Funding)]**



# Appendix 1

## Handling Mortgage Endowment Complaints

### 1.1 Introduction

- App 1.1.1** **G** This appendix sets out the approach and standards which *firms* should use when investigating complaints relating to the sale of endowment *policies* for the purposes of achieving capital repayment of a mortgage. It is not intended to be comprehensive. It is primarily concerned with the assessment of whether the complainant may have suffered financial loss, and if so, how much that loss is, and therefore what amount a *firm* should consider offering by way of fair and appropriate compensation in circumstances where the *firm's* investigation of a complaint reveals:
- (1) the complainant has received negligent *advice on investments*; and
  - (2) if this advice had not been negligent, either:
    - (a) the complainant would be unlikely to have acquired the endowment policy but instead would have taken out the same amount of loan on a repayment basis; or
    - (b) the complainant would have acquired an endowment mortgage for a shorter term.
- App 1.1.2** **G** There will also be cases where a *firm* will conclude after investigation that, notwithstanding its own failure to give compliant and proper advice, the complainant would nevertheless have proceeded with the endowment policy as sold, in which case no compensation will be due.
- App 1.1.3** **G** This appendix only addresses how *firms* should approach the assessment of loss and compensation where negligence on the part of the *firm* is established.
- App 1.1.4** **G** This appendix is relevant both to the obligations arising under the complaints handling *rules* contained in ■ DISP 1 and to the *FCA's* approach to the supervision of *firms*.

- App 1.1.5** **G** This appendix is also relevant to complaints which the *Ombudsman* may investigate under the Compulsory Jurisdiction or *Voluntary Jurisdiction* of the *Financial Ombudsman Service* established under Part XVI of the *Act* (The Ombudsman Scheme).
- App 1.1.6** **G** Before proceeding to assess the extent of a complainant's financial loss, a *firm* will usually have completed the following stages:
- (1) gathering all relevant facts and information;
  - (2) making a fair and objective assessment whether it has failed to comply with a relevant duty owed to the complainant; and
  - (3) assessing whether any failure of duty by it was in the circumstances a material failure in the sense that if it had not occurred the complainant would have been likely to have acted differently.
- App 1.1.7** **G** If it is concluded that the complainant would have acted differently, the *firm* should proceed to assess any direct or consequential loss.
- App 1.1.8** **G** Nothing in this appendix relieves *firms* of the obligation to consider the particular facts and circumstances of each complaint and to consider whether the assessment of loss and compensation should, in the light of those facts and circumstances, be carried out on a different basis. If, however, the facts and circumstances make it appropriate to do so, the *FCA's* expectation is that *firms* will apply the approach and standards set out in this appendix, and where they do not, the *FCA* is likely to require them to demonstrate the adequacy and completeness of their alternative approach.

## 1.2 The standard approach to redress

- App 1.2.1** **G** If there has been a failure to give compliant and proper advice, or some other breach of the duty of care, the basic objective of redress is to put the complainant, so far as is possible, in the position he would have been in if the inappropriate advice had not been given, or the other breach had not occurred. In many cases, although it must be a matter for inquiry and assessment in each individual case, this position is likely to have resulted in the complainant taking a repayment mortgage with accompanying life cover, and this is the assumption which underpins the standard approach to redress.
- App 1.2.2** **G** Unless the contrary is demonstrated, it should be assumed that the complainant could have afforded the mortgage on a repayment basis.

- App 1.2.3** **G** The measure of any financial loss suffered by the complainant will be arrived at by:
- (1) comparing the complainant's current capital position with the position he would have been in had the loan been a standard repayment mortgage as at the date the *firm* decides to regard the complaint as justified; and
  - (2) comparing the cost of the complainant's actual monthly outgoings and those he would have made had his loan been on a standard repayment basis as at the date the *firm* decides to regard the complaint as justified.
- App 1.2.4** **G** In some cases other factors may be included in the overall calculation, for example, if mortgage arrangement fees were waived by agreement on the occasion of the endowment *policy* being taken out.
- App 1.2.5** **G** If, on comparing the complainant's current endowment position with the repayment alternative, the *surrender value* of the endowment *policy* exceeds the amount of the capital which the complainant would have repaid through the repayment method, then, at the point of the assessment, the complainant has suffered no capital loss (but the complainant may suffer some compensatable consequential loss associated with changing the mortgage arrangements to the repayment basis, see ■ DISP App 1.3). Conversely, if the capital which would have been repaid on the repayment basis exceeds the *surrender value*, there is a capital loss represented by the difference between the two amounts.
- App 1.2.6** **G** If the complainant's endowment mortgage outgoings exceed the equivalent cost for the repayment method, the complainant should be compensated for the higher payments in addition to any loss on the *surrender value* and capital repaid comparison. This means, for example, that if the endowment arrangement has been more expensive, this may result in compensatable loss even though the capital repayment against surrender comparison may be favourable to the endowment.
- App 1.2.7** **G** If the total cost of the outgoings for the endowment calculation is less than that for the repayment calculation, the "savings" should be brought into account in assessing any overall loss unless it is unreasonable to do so.
- App 1.2.8** **G** It is unlikely to be reasonable to bring "savings" into account in circumstances where, at the time of the sale of the *policy*:
- (1) the complainant was advised or informed orally or in writing that he would have lower outgoings than would be the case under a repayment mortgage, whether or not the difference was quantified; and
  - (2) the complainant has dissipated those "savings" on the strength of this advice or information.
- App 1.2.9** **G** The circumstances in which it may be appropriate to take some or all of the "savings" into account are those where, subject to ■ DISP App 1.2.7 G, the complainant is of "sufficient means" so that it is reasonable for a *firm* to assume that the "savings" have contributed to those means.

- App 1.2.10** **G** Where it is otherwise reasonable for "savings" to be brought into account, determining whether or not a complainant is of sufficient means and, if so, to what extent the "savings" are to be brought into account, will have to be based on the facts of each individual case. It will be appropriate to require the complainant to provide adequate information to assist the *firm* in this task. Matters to be taken into account in this assessment may include:
- (1) the length of the remaining mortgage term;
  - (2) the complainant's current and prospective resources;
  - (3) the amount of the capital shortfall in proportion to the endowment outgoings balance.
- App 1.2.11** **G** *Firms* may adopt streamlined processes to assist them in individual assessments of "sufficient means", but will have to satisfy themselves that the complainant's position is nevertheless protected. *Firms* will need to ensure that the complainant is given an opportunity to make an informed choice whether to accept the streamlined process, that the process itself is transparent, and that the *firm* is satisfied that the outcome would be fair to complainants.
- App 1.2.12** **G** If a *firm* intends to make a deduction for all or any part of the lower endowment outgoings, the *firm* should explain clearly to the complainant in writing both how the 'sufficient means' test has been satisfied, including details of the information taken into account in reaching the decision, and how the deduction has been arrived at. The letter should further inform the complainant that if he is unhappy with the proposal to make a deduction, either in principle or as to the amount, he should give his reasons to the *firm*.
- App 1.2.13** **G** If a complainant puts forward a case that it would be unreasonable for a deduction to be made, the *firm* should reach a fair and objective determination on the facts of all relevant matters including those set out at ■ DISP App 1.2.8 G and ■ DISP App 1.2.9 G.
- App 1.2.14** **G** In recognition that *firms* may not wish, for practical reasons, to make individual assessments of "sufficient means", *firms* may decide not to seek to bring into account any benefit to the complainant in assessing overall compensation.
- App 1.2.15** **G** It would not be unreasonable if a *firm* providing redress in these circumstances were to frame its offer of redress on the assumption that the complainant will agree to surrender the *policy*. However, *firms* should bear in mind that there may be circumstances where it is appropriate for the complainant to retain the *policy*, for example, where it is being retained as a savings vehicle.
- App 1.2.16** **G** If a complainant becomes aware that he has taken out the endowment *policy* on the basis of unsuitable advice and inadequate information, he should if necessary, after taking appropriate advice, take reasonable steps to limit his loss, and may in any subsequent *claim* be unable to recover for losses which are avoidable. The complainant may have to show that he has not delayed unreasonably since becoming aware of his loss. The reasonable costs and expenses the complainant may have incurred in limiting his loss are to be taken into account in assessing his compensation. These costs and expenses are likely to include the complainant



taking advice on whether he should convert from an endowment to a repayment mortgage and incurring expenses in doing so, see ■ DISP App 1.3.

**App 1.2.17** G The standard approach to redress can be illustrated by the following examples, which show how redress would be calculated in certain hypothetical but typical scenarios. (Because the examples are illustrative, round numbers have been used for 'established facts' in each example. The payments should be taken as being made monthly: *firms* should not approximate by assuming that payments are made annually. If the complainant has benefited from MIRAS, the calculations should allow for the effect of MIRAS both on the endowment mortgage and the repayment comparison.)

**App 1.2.18** G Table of examples of typical redress calculations

Example 1	Capital shortfall and higher endowment outgoings
Example 2	Capital shortfall partially offset by lower endowment mortgage outgoings
Example 3	Capital shortfall more than offset by lower endowment mortgage outgoings
Example 4	Capital surplus more than offset by higher endowment mortgage outgoings
Example 5	Capital surplus partially offset by higher endowment mortgage outgoings
Example 6	Capital surplus and lower endowment mortgage outgoings
Example 7	Low start endowment mortgage

**App 1.2.19** G Example 1

Example 1	
<b>Capital shortfall and higher endowment mortgage outgoings</b>	
<u>Background</u>	
Capital sum of £50,000	
25 year endowment <i>policy</i>	
Duration to date: 5 years	
Endowment <i>premium per month</i> : £75	
<u>Established facts</u>	
Endowment <i>surrender value</i> :	£3,200
Capital repaid under equivalent repayment mortgage:	£4,200
<i>Surrender value</i> less capital repaid:	(£1,000)
Cost of converting from endowment mortgage to repayment mortgage:	(£200)
<u>Total outgoings to date</u>	
Equivalent repayment mortgage (capital + interest + DTA life cover):	£21,950
Endowment mortgage (endowment <i>premium</i> + interest):	£22,250
Difference in outgoings (repayment - endowment):	(£300)

## Example 1

Basis of compensation

In this example, the complainant has suffered loss because the *surrender value* of the endowment is less than the capital repaid and also because of the higher total outgoings to date of the endowment mortgage relative to the repayment mortgage. The two losses and the conversion cost are therefore added together in order to calculate the redress.

Redress

Loss from <i>surrender value</i> less capital repaid:	(£1,000)
Loss from total extra outgoings under endowment mortgage:	(£300)
Cost of converting to repayment mortgage:	(£200)
Total loss:	(£1,500)
<b>Therefore total redress is:</b>	<b>£1,500</b>

App 1.2.20  Example 2

## Example 2

**Capital shortfall partially offset by lower endowment mortgage outgoings**Background

Capital sum of £50,000

25 year endowment *policy*

Duration to date: 5 years

Endowment *premium* per month: £60

Established facts

Endowment <i>surrender value</i> :	£2,500
Capital repaid under equivalent repayment mortgage	£4,200
<i>Surrender value</i> less capital repaid under equivalent repayment mortgage:	(£1,700)
Cost of converting from endowment mortgage to repayment mortgage	(£300)
<u>Total outgoings to date:</u>	
Repayment mortgage (capital + interest + DTA life cover):	£21,950
Endowment mortgage (endowment <i>premium</i> + interest):	£21,350
Difference in outgoings (repayment - endowment):	£600

Basis of Compensation

In this example, the complainant has suffered loss because the *surrender value* of the endowment is less than the capital repaid but has gained from the lower outgoings of the endowment mortgage to date. In calculating the redress the gain may be offset against the loss unless the complainant's particular circumstances are such that it would be unreasonable to take account of the gain.

**Redress if it is not unreasonable to take account of the whole of the gain from lower outgoings**

Loss from <i>surrender value</i> less capital repaid:	(£1,700)
Gain from total lower outgoings under endowment mortgage:	£600

Example 2	
Cost of converting to repayment mortgage:	(£300)
Net loss:	(£1,400)
<b>Therefore total redress is:</b>	<b>£1,400</b>
<b>Redress if it is unreasonable to take account of gain from lower outgoings</b>	
Loss from <i>surrender value</i> less capital repaid:	(£1,700)
Gain from total lower outgoings under endowment mortgage:	Ignored*
Cost of converting to repayment mortgage:	(£300)
Net loss taken into account:	(£2,000)
<b>Therefore total redress is:</b>	<b>£2,000</b>
* In this example, and also in Examples 3, 7, 8 and 9, the complainant's circumstances are assumed to be such as to make it unreasonable to take account of any of the gain from lower outgoings.	

App 1.2.21 **G** Example 3

Example 3	
<b>Capital shortfall more than offset by lower endowment mortgage outgoings</b>	
<u>Background</u>	
Capital sum of £50,000	
25 year endowment <i>policy</i>	
Duration to date: 8 years	
Endowment <i>premium</i> per month: £65	
<u>Established facts</u>	
Endowment <i>surrender value</i> :	£7,300
Capital repaid under equivalent repayment mortgage:	£7,600
<i>Surrender value</i> less capital repaid:	(£300)
Cost of converting from endowment mortgage to repayment mortgage:	(£200)
<u>Total outgoings to date:</u>	
Repayment mortgage (capital + interest + DTA life cover):	£34,510
Endowment mortgage (endowment <i>premium</i> + interest):	£33,990
Difference in outgoings (repayment - endowment):	£520
<u>Basis of Compensation</u>	
In this example, the complainant has suffered loss because the <i>surrender value</i> of the endowment is less than the capital repaid but has gained from the lower total outgoings of the endowment mortgage. In calculating redress the gain may be offset against the loss unless the complainant's particular circumstances are such that it would be unreasonable to take account of the gain.	
<b>Redress if it is not unreasonable to take account of the whole of the gain from lower outgoings</b>	
Loss from <i>surrender value</i> less capital repaid:	(£300)

## Example 3

Gain from total lower outgoings under endowment mortgage:	£520
Cost of converting to repayment mortgage:	(£200)
Net gain:	£20

**Therefore, there has been no loss and no redress is payable.**

**Redress if it is unreasonable to take account of gain from lower outgoings**

Loss from <i>surrender value</i> less capital repaid:	(£300)
Gain from total lower outgoings under endowment mortgage:	Ignored
Cost of converting to repayment mortgage:	(£200)
Net loss taken into account:	(£500)
<b>Therefore total redress is:</b>	<b>£500</b>

App 1.2.22 **G** Example 4

## Example 4

**Capital surplus more than offset by higher endowment mortgage outgoings**Background

Capital sum of £50,000  
 25 year endowment *policy*  
 Duration to date: 8 years  
 Endowment *premium* per month: £75

Established facts

Endowment <i>surrender value</i> :	£7,800
Capital repaid under equivalent repayment mortgage:	£7,600
<i>Surrender value</i> less capital repaid:	£200
Cost of converting from endowment mortgage to repayment mortgage:	(£250)

Total outgoings to date:

Repayment mortgage (capital + interest + DTA life cover):	£34,510
Endowment mortgage (endowment <i>premium</i> + interest):	£34,950
Difference in outgoings (repayment - endowment):	(£440)

Basis of Compensation

In this example, the complainant has suffered loss because of the higher total outgoings to date of the endowment mortgage but has gained because the *surrender value* of the endowment is greater than the capital repaid. Since the sum of the loss and the conversion cost is greater than the gain, the redress is calculated as the difference between the two.

Redress

## Example 4

Gain from <i>surrender value</i> less capital repaid:	£200
Loss from total extra outgoings under endowment mortgage:	(£440)
Cost of converting to repayment mortgage:	(£250)
Net loss:	(£490)
<b>Therefore total redress is:</b>	<b>£490</b>

App 1.2.23 **G** Example 5

## Example 5

**Capital surplus partially offset by higher endowment mortgage outgoings**Background

Capital sum of £50,000

25 year endowment *policy*

Duration to date: 10 years

Endowment *premium per month*: £75

Established facts

Endowment *surrender value*: £11,800

Capital repaid under equivalent repayment mortgage £9,700

*Surrender value* less capital repaid: £2,100

Cost of converting from endowment mortgage to repayment mortgage: (£300)

Total outgoings to date:

Repayment mortgage (capital + interest + DTA life cover): £46,800

Endowment mortgage (endowment *premium* + interest): £47,500

Difference in outgoings (repayment - endowment): (£700)

Basis of Compensation

In this example, the complainant has suffered loss because of the higher total outgoings to date of the endowment mortgage relative to the repayment mortgage. However the sum of this and the conversion cost is less than the complainant's gain from the difference between the *surrender value* of the endowment and the capital repaid. Thus no redress is payable.

Redress

Gain from *surrender value* less capital repaid: £2,100

Loss from total extra outgoings under endowment mortgage: (£700)

Cost of converting to repayment mortgage: (£300)

Net gain: £1,100

**Therefore, there has been no loss and no redress is payable.**

App 1.2.24 **G** Example 6**Example 6****Capital surplus and lower endowment mortgage outgoings**Background

Capital sum of £50,000

25 year endowment *policy*

Duration to date: 10 years

Endowment *premium* per month: £65

Established facts

Endowment *surrender value*: £10,100

Capital repaid under equivalent repayment mortgage: £9,700

*Surrender value* less capital repaid: £400

Cost of converting from endowment mortgage to repayment mortgage: (£200)

Total outgoings to date:

Repayment mortgage (capital + interest + DTA life cover): £46,800

Endowment mortgage (endowment *premium* + interest): £46,300

Difference in outgoings (repayment - endowment): £500

Basis of Compensation

In this example, the complainant has gained both because the *surrender value* of the endowment is greater than the capital repaid and because of the lower total outgoings of the endowment mortgage. These gains are larger than the cost of converting to a repayment mortgage. Thus no further action is necessary.

Redress

**As there has been no loss, no redress is payable.**

App 1.2.25 **G** Example 7**Example 7****Low start endowment mortgage**Background

Capital sum of £50,000

25 year endowment *policy*

Duration to date: 10 years

Endowment *premium* per month: starting at £35 in first year, increasing by 20% simple on each *policy* anniversary, reaching £70 after five years and then remaining at that level.

Established facts:

Endowment *surrender value*: £8,200

Capital repaid under equivalent repayment mortgage: £9,700

*Surrender value* less capital repaid: (£1,500)

## Example 7

Cost of converting from endowment mortgage to repayment mortgage: (£250)

Total outgoings to date

Repayment mortgage (capital + interest + DTA life cover): £46,800

Endowment mortgage (endowment *premium* + interest): £45,640

Difference in outgoings (repayment minus endowment): £1,160

Of this difference in outgoings, £800 arose in the five year period when the complainant was paying a low endowment *premium*.

Basis of compensation

In this example, the complainant has suffered loss because the *surrender value* of the endowment is less than the capital repaid but has gained from the lower total outgoings of the endowment mortgage. As in Example 3, in calculating redress the whole of the gain should be offset against the loss unless the complainant's particular circumstances are such that it would be unreasonable to do so. However, unlike Example 3, in a low start endowment mortgage the complainant may have chosen to pay a lower than usual *premium* in the early years (this would need to be established on the facts of the case). Where it has been established that the complainant chose to make lower payments, even if it is unreasonable to take account of the whole of the gain from total outgoings, the gain from paying a lower *premium* during the low start period is normally taken into account. In such cases the redress is calculated as the capital loss plus the conversion cost minus the total amount by which repayment mortgage outgoings would have exceeded the actual low start endowment mortgage outgoings during the five year low start period.

**Redress if it is not unreasonable to take account of the whole of the gain from lower outgoings**

Loss from *surrender value* less capital repaid: (£1,500)

Gain from total lower outgoings under endowment mortgage: £1,160

Cost of converting to repayment mortgage: (£250)

Net loss: (£590)

**Therefore total redress is: £590**

**Redress if it is unreasonable to take account of gain from lower outgoings**

Loss from *surrender value* less capital repaid: (£1,500)

Gain from total lower outgoings during low start period of endowment mortgage: £800

Cost of converting to repayment mortgage: (£250)

Net loss taken into account: (£950)

**Therefore total redress is: £950**

**Interest rates****App 1.2.26** **G**

In fixing a repayment comparator, it would be appropriate to have regard to the repayment quotation actually provided at the time of sale. If more than one

repayment quotation was obtained, the comparison should be with the quotation which approximates most closely to the terms of the endowment mortgage actually taken. If a repayment quotation was not provided, or is not now available, it should be assumed that the interest rate for the repayment comparison is the same as that of the mortgage endowment arrangements. *Firms* will then need to replicate interest rate changes throughout the lifetime of the comparator mortgage.

### Life cover

- App 1.2.27** **G** Unless after due inquiry there is clear evidence that the complainant with a mortgage endowment had no foreseeable need for life cover at the time the endowment arrangements were concluded, in the overall comparison between a repayment mortgage and an endowment mortgage the monthly outgoings under the repayment will include the premium for the decreasing term assurance that would have been required. This adjustment for the cost of life cover is only to be made if the *firm* is undertaking a comparison of monthly outgoings. It is not appropriate to deduct the cost of life cover from the capital loss calculation, as this would constitute double counting.
- App 1.2.28** **G** If a deduction is to be attributed to the provision of life cover, the appropriate approach is to assume that the complainant took out the insurance quoted in the alternative repayment quotation provided at the time of the sale. If the quotation is not available, the deduction should be at the rates that would have been quoted at the time.

## 1.3 Remortgaging

- App 1.3.1** **G** As already noted, the basic objective of redress is to put the complainant, so far as is possible, in the position he would have been in if the inappropriate advice or other breach had not occurred: for their part, the complainants should take such reasonable steps as they can to limit loss once they are informed of the position they are in because of the failure of advice at the time of sale.
- App 1.3.2** **G** In practice, it is likely to be appropriate for a complainant whose complaint has been upheld to convert to a repayment mortgage, whether or not there is financial loss to date. It will normally be possible for complainants to do so without incurring unreasonable cost. Conversion will of course mean that the complainant no longer has a *policy*.
- App 1.3.3** **G** *Firms* should therefore in the case of upheld complaints inform complainants that it is likely to be appropriate and necessary for them to convert to a repayment arrangement.
- App 1.3.4** **G** *Firms* should make it clear that they will bear the costs of conversion if the rearrangement is made with the existing lender and to the equivalent repayment



mortgage. If a complainant is not willing to rearrange with the existing lender, then the costs to be paid by the *firm* should normally be limited to those which would have been payable had the rearrangement been made with the existing lender and to the equivalent repayment mortgage. If it is not possible to rearrange with the existing lender, for example, if the lender has a closed book, the *firm* should pay all costs which are not unreasonable in completing the rearrangement with an alternative provider. Such costs might include an administration fee for changing the existing arrangement, redemption penalty, arrangement fee for the new mortgage and the reasonable cost of further advice if necessary.

**App 1.3.5** **G** If the "new" mortgage is, in fact, arranged at a lower interest rate than the existing loan, the benefit to the complainant should usually be disregarded, as it is always open to complainants to change their underlying mortgage arrangements at any time.

**App 1.3.6** **G** If the "new" mortgage is arranged at a higher interest rate than the existing loan, the increased payment should not normally be taken into account in calculating any payment to be made to the complainant.

**App 1.3.7** **G** If the complainant takes the opportunity to increase his loan on the occasion of the remortgage, the expenses which a *firm* pays by way of compensation should be paid by reference to the capital sum due under the "old" loan.

**App 1.3.8** **G** As stated, one aspect of the conversion process is the disposal of the endowment *policy*. The standard approach to assessing loss requires *firms* to calculate loss using the *surrender value*. However, once loss is established on this basis and *firms* move to deal with redress, they may wish to consider whether there is a role for the *policy*'s 'market value' within the traded endowment *policy* (TEP) market.

**App 1.3.9** **G** A *firm* may arrange the sale of the endowment *policy* on the traded endowment market, provided the full implications of such a course of action are explained to the complainant and his express consent is obtained for the firm to arrange the sale. This includes informing the investor that he will continue to be the life assured under the *policy*. The complainant should be informed that such an arrangement may reduce or eliminate the amount of redress actually borne by the *firm*, but not so as to affect the amount of redress he receives.

**App 1.3.10** **G** In the event that a complainant is willing to pursue this option, a *firm* should first have assessed the complainant's loss using the approach set out in this appendix, and the minimum amount the complainant should receive under such a sale arrangement is the sum representing the position the complainant should have been in under this appendix together with the reimbursement of remortgaging costs. In order to ensure the process does not delay the provision of redress, the *firm* must pay this minimum sum immediately the complainant agrees to the sale arrangement. To the extent that the net amount realised by the sale of the *policy* on the traded endowment market exceeds the total redress due to the complainant, this greater sum is to be paid to the complainant on completion of the sale. If the amount realised by the sale of the *policy* on the traded endowment market is less than the total redress due to the complainant, the *firm* will be responsible for the amount of the shortfall.

**App 1.3.11** **G** Example of assessment set out at 1.3.10

The following example illustrates the position:

Surrender value	£10,000	TEP value	£16,000
Loss calculated by standard approach	£5,000		
Remortgaging costs	£300		
Total	<u>£15,300</u>		

Complainant receives £16,000 all ultimately funded from the TEP sale.

Surrender value	£10,000	TEP value	£13,000
Redress calculated by standard approach	£5,000		
Remortgaging costs	£300		
Total	<u>£15,300</u>		

Complainant receives £15,300, £13,000 ultimately funded from the TEP sale and £2,300 ultimately funded from the *firm*.

**1.4** **Policy reconstruction**

**App 1.4.1** **G** This section of this appendix is primarily concerned with circumstances where the term of the mortgage and associated endowment *policy* extend beyond the individual complainant's normal retirement age in circumstances where the *firm* regards a complaint as justified because the arrangement is not affordable in retirement; and this could have, and should have, been foreseen at the time of the advice.

**App 1.4.2** **G** Two sets of circumstances are examined at ■ DISP App 1.4.3 G to ■ DISP App 1.4.13 G. Although these are considered in isolation, *firms* should, as part of their investigation of all of the factors involved in the complaint, consider whether either set of circumstances should be considered in conjunction with those factors examined at ■ DISP App 1.2.

**Case 1**

**App 1.4.3** **G** If on enquiry it is found that no proper assessment of the complainant's post-retirement means had been undertaken at the time of *sale*, but if the likelihood had been that the complainant would have borrowed the same amount over a shorter term (up to retirement) using an endowment *policy* as a repayment vehicle, then an appropriate form of redress would be for the *policy* to be reconstructed with a shorter term.

- App 1.4.4** **G** Redress should in most cases be provided by meeting the cost of rearranging the *policy*, by way of a lump sum payment into the *policy* in respect of the higher rate of *premium* due from its inception. It may be appropriate in individual cases to take account of the lower *premiums* that the complainant will have paid to date. The *guidance* in ■ DISP App 1.2, as to the circumstances in which this will be appropriate, will be relevant here.
- App 1.4.5** **G** If the *policy* extends beyond retirement age and the complainant is already retired, the *policy* should be reconstructed to a maturity date as at the accepted retirement date, with the *policy* proceeds becoming immediately payable. The costs are to be borne by the *firm*, subject to any lower outgoings adjustment.
- App 1.4.6** **G** *Firms* should consider whether the reconstruction would have tax implications for complainants (see ■ DISP App 1.5.8 G and ■ DISP App 1.5.9 G).
- App 1.4.7** **G** The reconstruction process deals with the situation to the date the *policy* is reconstructed. The complainant will generally be responsible for paying the increased *premiums* for the remaining term.
- App 1.4.8** **G** At the time the complainant is advised of the revised *premium*, he should as a matter of good practice be provided with a reprojection based on the prevailing *projection* rates, which will allow him to address any projected shortfall.
- App 1.4.9** **G** If it is not possible for a *firm* to reconstruct a *policy*, then it should offer the investor equivalent redress, for example, by paying a cash lump sum equivalent to the amount that would have been credited to a reconstructed *policy*.

## Case 2

- App 1.4.10** **G** If a loan extending into retirement was on any basis not affordable, whether or not it is reconstructed to the retirement date, *firms* will need to consider whether, if proper advice had been given, the loan would have been taken out at all and, if not, consider what arrangements might now need to be made in order to reduce the amount of the complainant's borrowings.

## Mismatched loans and policy terms

- App 1.4.11** **G** If a complaint is regarded as justified by the *firm* on the basis that the endowment *policy* maturity date extends beyond the mortgage term expiry date and the *firm* is responsible for this situation, the *policy* should be reconstructed so that it matures at the expiry of the mortgage term.
- App 1.4.12** **G** In these circumstances the *guidance* given elsewhere in ■ DISP App 1.4 will apply as appropriate.

## Examples

- App 1.4.13** **G** The following examples illustrate the approach to redress as described in this section.

App 1.4.14 **G** Example 8**Example 8****Term extends beyond retirement age and policy reconstruction**Background

45 year old male non-smoker, having taken out a £50,000 loan in 1998 for a term of 25 years. Unsuitable sale identified on the grounds of affordability and complaint raised on 12th *policy* anniversary.

It has always been the intention of the complainant to retire at State retirement age 65.

Term from date of sale to retirement is 20 years and the maturity date of the mortgage is 5 years after retirement.

Established facts

Established *premium* paid by investor on *policy* of original term (25 years): £81.20

*Premium* that would have been payable on *policy* with term from *sale* to retirement (20 years): £111.20

Actual *policy* value at time complaint assessed: £12,500

Value of an equivalent 20-year *policy* at time complaint assessed: £21,300

Difference in *policy* values at time complaint assessed: £8,800

Difference in outgoings (20 year *policy* - 25 year *policy*): £4,320

Basis of compensation

The *policy* is reconstructed as if it had been set up originally on a term to mature at retirement age, in this example, a term of 20 years. The difference in the current value of the *policy* actually sold to the complainant and the current value of the reconstructed *policy*, as if the *premium* on the reconstructed *policy* had been paid from outset, is calculated. The complainant has gained from lower outgoings (lower *premiums*) of the actual endowment *policy* to date. In calculating the redress, the gain may be offset against the loss unless the complainant's particular circumstances are such that it would be unreasonable to take account of the gain.

**Redress generally if it is not unreasonable to take account of the whole of the gain from lower outgoings**

Loss from current value of reconstructed *policy* less current value of actual *policy*: (£8,800)

Gain from total lower outgoings under actual *policy*: £4,320

Net loss: (£4,480)

**Therefore total redress is:** £4,480

**Redress if it is unreasonable to take account of gain from lower outgoings**

Loss from current value of reconstructed *policy* less current value of actual *policy*: (£8,800)

Gain from total lower outgoings under actual *policy*: Ignored

**Therefore total redress is:** £8,800

Additional Information

If the *policy* is capable of reconstruction, the complainant must now fund the higher *premiums* himself for the remainder of the term of the

## Example 8

shortened *policy* until maturity. In this example the higher *premium* could be £111.20. However the *firm* should provide the complainant with a reprojection letter based on the reconstructed *policy* such that the actual monthly payment required to achieve the target sum could be even higher, say £130. The reprojection letter should set out the range of options facing the complainant to deal with the projected shortfall, if any.

App 1.4.15 **G** Example 9

## Example 9

**Term extends beyond retirement age: example of failure to explain investment risks**Background

45 year old male non-smoker, having taken out a £50,000 loan in 1998 for a term of 25 years. Unsuitable sale identified on the grounds of affordability and complaint raised on 12th anniversary.

It has always been the intention of the complainant to retire at state retirement age 65.

Term from date of sale to retirement is 20 years and the maturity date of the mortgage is five years after retirement.

In addition, an endowment does not meet the complainant's attitude to investment risk and a repayment mortgage would have been taken out if properly advised.

Established facts

*Surrender value* (on the 25 year *policy*) at time complaint assessed: £12,500

Capital repaid under repayment mortgage of term to retirement date (20 years): £21,000

*Surrender value* less capital repaid: (£8,500)

Difference in outgoings (repayment - endowment): £5,400

Cost of converting from endowment mortgage to repayment mortgage: £200

Basis of compensation:

The *surrender value* of the (25 year term) endowment *policy* is compared to the capital that would have been repaid to date under a repayment mortgage arranged to repay the loan at retirement age, in this example, a repayment mortgage for a term of 20 years. The complainant has gained from lower outgoings of the endowment mortgage to date. In calculating the redress, the gain may be offset against the loss unless the complainant's particular circumstances are such that it would be unreasonable to take account of the gain. The conversion costs are also taken into account in calculating the redress.

Redress generally

Loss from *surrender value* less capital repaid: (£8,500)

Gain from total lower outgoings under endowment mortgage: £5,400

Cost of converting to a repayment mortgage: (£200)

Net loss: (£3,300)

**Therefore total redress is:** £3,300

## Example 9

**Redress if it is unreasonable to take account of gain from lower outgoings**

Loss from <i>surrender value</i> less capital repaid:	(£8,500)
Gain from total lower outgoings under endowment mortgage:	Ignored
Cost of converting to a repayment mortgage:	(£8,700)
<b>Therefore total redress is:</b>	<b><u>£8,700</u></b>

## 1.5 Additional considerations

### Introduction

- App 1.5.1** **G** This section addresses issues which may be relevant to the standard redress for unsuitability cases, as well as some post-retirement cases upheld on the grounds of affordability.

### Continuing life cover and other policy benefits

- App 1.5.2** **G** *Firms* will need to consider the importance for many complainants of having life assurance in place to ensure a mortgage is paid off in the event of death.
- App 1.5.3** **G** If a complaint is upheld and the *policy* is to be surrendered as part of the settlement, the *firm* should remind the complainant in writing that the life cover within the endowment will be terminated and that it may therefore be appropriate to take advice about the merits or otherwise of taking out a stand-alone *life policy* in substitution.
- App 1.5.4** **G** If a need for life assurance at inception has been established so that a deduction representing its cost has been made from the redress payable under **■ DISP App 1.2.4 G**, the *firm* should advise the complainant that the *firm* would be responsible for paying any *premium* for an appropriate replacement *policy* which exceeds that used for calculating the deduction or alternatively will, where possible, provide the cover itself at that cost. If it is not possible for the *firm* to provide the cover itself at the original cost, it may choose to discharge that obligation by the payment of an appropriate lump sum. Any such amount should enable the complainant to effect the cover at the original cost, with no additional cost in respect of increased age or deterioration in health. This option may be particularly relevant if the *firm* against which the complaint has been made is an independent intermediary which cannot itself provide the cover, although it may be possible for such a *firm* to arrange for the product provider to offer cover to the complainant at the original *premium* on payment by the independent intermediary of an appropriate lump sum to meet any increased cost.
- App 1.5.5** **G** *Firms* will not be responsible for any increased costs resulting from the complainant choosing another *product provider* or for increased *premiums* charged by another provider chosen by the complainant in respect of the risk now

presented, for example, higher *premiums* charged by the other provider due to deterioration in health, unless the original *product provider* no longer writes new business and is unable to offer revised life cover on a decreasing term assurance basis.

**App 1.5.6** **G** There can be exceptional circumstances where, in order to retain suitable life cover, the endowment *policy* has to be retained and any additional costs will be the responsibility of the *firm* that sold the endowment *policy*.

**App 1.5.7** **G** The same considerations will apply to the establishment of the need for other *policy* benefits including critical illness cover, disability cover and waiver of *premium*.

### Taxation

**App 1.5.8** **G** *Firms* will need to consider the likely taxation implications for complainants if *policies* are surrendered or reconstructed, or any form of underpinning or guarantee is given.

**App 1.5.9** **G** If there is potential tax liability for the complainant, it will be appropriate for *firms* to undertake in writing to the complainant to reimburse any tax payable, or which becomes payable, and make payment on production of appropriate evidence of the liability and payment having been made.

### "Underpinning"

**App 1.5.10** **G** *Firms* proposing to offer arrangements involving some form of minimum underpinning or 'guarantee' should discuss their proposals with the *FCA* and *HM Revenue and Customs* at the earliest possible opportunity (see ■ DISP App 1.5.8 G). The *FCA* will need to be satisfied that these proposals provide complainants with redress which is at least commensurate with the standard approaches contained in this appendix.

### Reference to the guidance in firms' complaints settlement letters

**App 1.5.11** **G** One of the reasons for introducing the *guidance* in this appendix is to seek a reduction in the number of complaints which are referred to the *Financial Ombudsman Service*. If a *firm* writes to the complainant proposing terms for settlement which are in accordance with this appendix, the letter may include a statement that the calculation of loss and redress accords with the *FCA guidance*, but should not imply that this extends to the assessment of whether or not the complaint should be upheld. *Firms* should point out that if the complainant remains dissatisfied, he may refer the complaint to the *Financial Ombudsman Service*.

**App 1.5.12** **G** A statement under ■ DISP App 1.5.11 G should not give the impression that the proposed terms of settlement have been expressly endorsed by either the *FCA* or the *Financial Ombudsman Service*.

## Identification of windfall benefits

- App 1.5.13** **G** Windfall benefits should be determined in accordance with the principle in Needler Financial Services and Taber ('Needler'). The basic legal principle in Needler is that a windfall benefit is not to be taken into account in determining the amount of an investor's recoverable loss. The following paragraphs explain our views as to how *firms* may act in accordance with that principle.
- App 1.5.14** **G** A windfall benefit arises where:
- (1) there has been a demutualisation, distribution or reattribution of the inherited estate, or other extraordinary corporate event in a *long-term insurer*; and
  - (2) the event gave rise to 'relevant benefits', as defined in ■ DISP App 1.5.15 G (below).
- App 1.5.15** **G** 'Relevant benefits' are those benefits that fall outside what is required in order that *policyholders'* reasonable expectations at that point of sale can be fulfilled. (The phrase '*policyholders'* reasonable expectations' has technically been superseded. However, the concept now resides within the obligations imposed upon *firms* by FCA Principle 6 ('...a firm must pay due regard to the interests of its *customers* and treat them fairly....') Additionally, most of these benefits would have been paid prior to *commencement*, when *policyholders'* reasonable expectations would have been a consideration for a *long-term insurer*.)
- App 1.5.16** **G** The issue of free *shares* or cash on a demutualisation, and additional bonuses and *policy* enhancements given by way of incentive to approve a reattribution or distribution of an inherited estate should, unless there is evidence to the contrary, be treated as relevant benefits for the purposes of ■ DISP App 1.5.15 G. Whether additional bonuses and *policy* enhancements on a demutualisation are relevant benefits should be determined by applying the test in ■ DISP App 1.5.15 G to each benefit.
- App 1.5.17** **G** *Firms* should review the terms on which proposals were put to *policyholders* and the reasons given for a corporate event when determining whether a benefit should be treated as a relevant benefit.
- App 1.5.18** **G** *Firms* should not normally bring windfall benefits which are relevant benefits (as defined in ■ DISP App 1.5.14 G) to account when assessing financial loss and redress. Where a windfall benefit is in the form of a *policy* augmentation the benefit should be deducted from the overall value of the *policy* when making this assessment.
- App 1.5.19** **G** A relevant benefit derived from a corporate event may only be brought to account if the *firm* is able to demonstrate, with written records created at the time of the advice, that:
- (1) The *firm* foresaw the prospect of the event and the benefit;
  - (2) The *firm's* advice included a statement recommending the particular *policy* because of the possibility of the benefit in question; and



- (3) The statement was a material factor in the context of the advice and the decision to invest.

**App 1.5.20** **G** If a *firm* considers that it can meet this requirement, the *firm* should by letter explain clearly to the complainant the reasons why it proposes that the benefit should not be treated as a windfall and should be taken into account. The *firm* should provide the complainant with copies of the relevant documents.

**App 1.5.21** **G** The letter should also explain how the proposed value of the benefit has been calculated and should inform the complainant that if he does not accept the proposal to take the benefit into account he may tell the *firm*, with reasons. The letter should also say that, if he remains dissatisfied with the *firm's* response, he may refer the matter to the *Financial Ombudsman Service*.

## 1.6 Valuing Relevant Benefits

**App 1.6.1** **G** If, exceptionally under the *guidance* at ■ DISP App 1.5.13 G to ■ DISP App 1.5.21 G, cash or *shares* derived from a corporate event are to be taken into account when assessing loss and redress, cash should be valued at the amount actually received and *shares* should be valued at their issue price. In both cases there should be no addition for interest.

**App 1.6.2** **G** When valuing windfall augmentation benefits for the purposes of calculating loss and redress the objective is to exclude all changes arising from the windfall event. The amount of redress payable will then be equal to the amount that would have been payable if the windfall event had never occurred.

**App 1.6.3** **G** A *product provider* should ensure that the method it adopts for valuing augmentation benefits is consistent with the statements made in the documentation published about the windfall event. Relevant documentation for the purpose of valuing such benefits will include (but is not limited to):

- (1) Any description of increases in benefits in any circular to *policyholders* (and any other public information relating to the event);
- (2) Any principles of financial management established for the management of the fund after the event;
- (3) statements in any report produced by an *actuary* appointed under ■ SUP 4 (Actuaries) for the event;
- (4) statements in any independent *actuary* report produced for the event; and
- (5) subsequent statements relating to bonus practice, calculation *surrender values*, or both.

- App 1.6.4** **G** The method of valuation adopted should treat the complainant fairly overall.
- App 1.6.5** **G** Where an accurate calculation of the value of an augmentation benefit either cannot be made, or would result in disproportionate expense or delay, *product providers* may adopt a simplified approach or a proxy method for calculating its value.
- App 1.6.6** **G** A simplified approach should treat the complainants fairly overall.
- App 1.6.7** **G** An *actuary*, appointed by a *product provider* under ■ SUP 4 (Actuaries) should certify that the method adopted by the *product provider* for calculating the value of an augmentation benefit is in accordance with the *guidance* in ■ DISP App 1.6.1 G to ■ DISP App 1.6.6 G.

### Implementation

- App 1.6.8** **G** The principles set out above (in ■ DISP App 1.6.1 G to ■ DISP App 1.6.7 G) should be applied directly to mortgage endowment complaints where the capital loss is calculated by comparing the *surrender value* of the endowment *policy* with the capital which would have been repaid using a repayment mortgage.
- App 1.6.9** **G** In most cases where there is a loss, the endowment *policy* will be surrendered and put towards the cost of setting up a suitable repayment mortgage. Where this is the case, that part of the *surrender value* relating to the windfall augmentation should be paid as a cash lump sum to the investor or to the investor's order as part of the redress package. Only that part of the *surrender value* which does not relate to the windfall augmentation should be put towards the cost of setting up a suitable repayment mortgage.
- App 1.6.10** **G** There may be some circumstances in which the *policy* will not be surrendered (see ■ DISP App 1.2.15 G). In these cases, there is no requirement to pay the value of the windfall augmentation as a cash lump sum since the value of the augmentation will become payable when the *policy* matures. However, any fund value used in the calculation of redress payable should exclude the value of the windfall augmentation.
- App 1.6.11** **G** *Firms* are entitled to mitigate losses by making use of the Traded Endowment Policy (TEP) market (see ■ DISP App 1.3.8 G to ■ DISP App 1.3.10 G). This allows *firms* to *sell* policies on the TEP market to meet the costs of redress, rather than using the *surrender value*. Where this method is adopted, *firms* should pay to the investor, as part of the redress package, a cash lump sum representing that proportion of the *policy* realised which would have related to the windfall augmentation.
- App 1.6.12** **G** As this windfall amount should be excluded from the fund value used in the calculation of loss and redress it would also be appropriate for this extra payment to be ignored when assessing whether, "the net amount realised by the sale of the *policy* on the traded endowment market exceeds the total redress due to the complainant..." (■ DISP App 1.3.10 G).

**App 1.6.13** **G** There may be circumstances in which a *policy* needs to be reconstructed (see **DISP App 1.4**). In carrying out the required reconstruction, the windfall augmentation should be ignored in both the existing and the revised *policy*. However, the *policyholder's* revised *policy* should be credited with any windfall augmentation which would have applied if the *policy* had been set up with the revised terms from the original date of advice. This enhancement can be taken into account in assessing a suitable level for future premiums, in line with **DISP App 1.4.8 G**.

**App 1.6.14** **G** **DISP App 1.5.10 G** provides *firms* with the opinion of underpinning benefits. *Firms* should satisfy the *FCA* that their proposals provide complainants with a level of redress that is at least commensurate with the standard approaches and, to ensure consistency, windfall augmentations should be excluded when considering whether an underpin will apply. The *FCA* will take this into account when considering proposals put forward by *firms*.

**App 1.6.15** **G** *Product providers* with windfall benefits in the form of *policy* augmentations should tell:

- (1) their own relevant *customers* (mortgage endowment complainants); and
- (2) other *firms* with such *customers* (and any other interested parties);

that they have excluded windfall augmentation benefits from values used or to be used for loss and redress. *Firms* should provide this information to the *Financial Services Compensation Scheme* when providing them with a value to be used for loss or redress. Should their own relevant *customers*, other *firms* with such *customers* (and any other interested parties) and the *Financial Services Compensation Scheme* request it, the *firm* should provide the value of these benefits and a description of the method used to exclude them.



# Appendix 3

## Handling Payment Protection Insurance complaints

### 3.1 Introduction

#### Application

- App3.1.1 **G** (1) This appendix sets out how:
- (a) a *firm* should handle *complaints* relating to the sale of a *payment protection contract* by the *firm* which express dissatisfaction about the sale, or matters related to the sale, including where there is a rejection of claims on the grounds of ineligibility or exclusion (but not matters unrelated to the sale, such as delays in claims handling); and
  - (b) a *firm* that is a *CCA lender* and which has received such a *complaint* should consider whether there was a failure to disclose commission in relation to the sale of a *payment protection contract* which covers or covered or purported to cover a *credit agreement* (this includes partial coverage).
- (2) It relates to the sale of any *payment protection contract* whenever the sale took place and irrespective of whether it was on an advised or non-advised basis; conducted through any sales channel; in connection with any type of loan or credit product, or none; whether the *insurer* was in the same *group* as the *firm* or not; whether the premium was financed by the credit product or not; and for a regular premium or single premium payment. It applies whether the *policy* is currently in force, was cancelled during the *policy* term or ran its full term.
- (3) It does not require *firms* to assess whether the *firm's* conduct of the sale was in breach of a fiduciary duty where there has been a failure to disclose either the existence of, or the level of, any commission and/or profit share paid. *Complaints* concerning such issues should be dealt with under **DISP 1.4.1R**.
- (4) It requires *firms* to send written communications to complainants in certain circumstances where their previous *complaint* in relation to the sale of a *payment protection contract* did not result in the *firm* offering (or being required to pay) redress on the basis that the complainant would not have

bought the *payment protection contract* that they bought (see ■ DISP App 3.11).

- (5) There are further provisions on the application of this appendix in ■ DISP App 3.10.

### Two-step approach

**App3.1.1A** **E** This appendix provides for a two-step approach to handling *complaints*. *Firms* should apply it as follows:

- (1) a *firm* which is not a *CCA lender* should only consider step 1;
- (2) a *CCA lender* which did not sell the *payment protection contract* should only consider step 2, but does not have to do so if it knows the complainant has already made a *complaint* about a breach or failing in respect of the same contract and the outcome was that the *firm* which considered that *complaint* concluded that the *complainant* would not have bought the *payment protection contract* they bought;
- (3) a *CCA lender* which also sold the *payment protection contract* should:
  - (a) consider step 1 unless-
    - (i) it has already considered step 1, or
    - (ii) after considering ■ DISP App 3.2.2G and ■ DISP App 3.2.3G, it is clear that the true substance of the *complaint* is only about a failure to disclose commission; and
  - (b) consider step 2 in cases where it has not concluded at step 1 that the complainant would not have bought the *payment protection contract* they bought.

**App3.1.1B** **G** In the case of a *complaint* described in ■ DISP 2.8.9R(2)(d), the *firm* need only consider step 1 and only to the extent of the relevant grounds of rejection of the claim.

### Step 1

**App3.1.2** **G** At step 1, the aspects of *complaint* handling dealt with in this appendix are how the *firm* should:

- (1) assess a *complaint* in order to establish whether the *firm's* conduct of the sale failed to comply with the *rules*, or was otherwise in breach of the duty of care or any other requirement of the general law (taking into account relevant materials published by the *FCA*, other relevant regulators, the *Financial Ombudsman Service* and *former schemes*). In this appendix this is referred to as a "breach or failing" by the *firm*;
- (2) determine the way the complainant would have acted if a breach or failing by the *firm* had not occurred; and
- (3) determine appropriate redress (if any) to offer to a complainant.

**App3.1.3** **G** At step 1, where the *firm* determines that there was a breach or failing, the *firm* should consider whether the complainant would have bought the *payment*

*protection contract* in the absence of that breach or failing. This appendix establishes presumptions for the *firm* to apply about how the complainant would have acted if there had instead been no breach or failing by the *firm*. The presumptions are:

- (1) for some breaches or failings (see ■ DISP App 3.6.2 E), the *firm* should presume that the complainant would not have bought the *payment protection contract* they bought; and
- (2) for certain of those breaches or failings (see ■ DISP App 3.7.7 E), where the complainant bought a single premium *payment protection contract*, the *firm* may presume that the complainant would have bought a regular premium *payment protection contract* instead of the *payment protection contract* they bought.

**App3.1.4** **G** There may also be instances where a *firm* concludes after investigation at step 1 that, notwithstanding breaches or failings by the *firm*, the complainant would nevertheless still have proceeded to buy the *payment protection contract* they bought. *CCA lenders* should still go on to consider step 2 in such cases.

## Step 2

**App3.1.4A** **G** At step 2, the aspects of *complaint* handling dealt with in this appendix are how a *CCA lender* should:

- (1) assess a *complaint* to establish whether failure to disclose commission gave rise to an unfair relationship under section 140A of the CCA; and
- (2) determine the appropriate redress (if any) to offer to a complainant.

## Definitions

**App3.1.5** **G** In this appendix:

- (1) (a) at step 1, "historic interest" means the interest the complainant paid to the *firm* because a *payment protection contract* was added to a loan or credit product;
- (b) at step 2, "historic interest" means in relation to any sum, the interest the complainant paid as a result of that sum being included in the loan or credit product;
- (2) "simple interest" means a non-compound rate of 8% per annum;
- (3) "claim" means a claim by a complainant seeking to rely upon the *policy* under the *payment protection contract* that is the subject of the *complaint*;
- (4) "actual profit share" means a reasonable estimate of the profit share that was paid under profit share arrangements and that is notionally attributable to the *payment protection contract*;
- (5) "anticipated profit share" means a reasonable estimate of the profit share which it was reasonably foreseeable at the time of sale would be paid over the relevant period or periods under profit share arrangements, and that would be notionally attributable to the *payment protection contract*;

- (6) “commission” means the part of the total amount paid in relation to a *payment protection contract* that was not due to be passed to and retained by the *insurer*, excluding any sums which may be payable under profit share arrangements;
- (7) “failure to disclose commission” means failure to make the disclosure at ■ DISP App 3.3A.2E;
- (8) “profit share arrangements” means arrangements (including contractual) that *firms* have to potentially receive back some of the total amount paid in relation to a *payment protection contract* which had initially gone to the *insurer*. For example, these arrangements might include amounts paid to cover potential claims on policies, but which remain unspent after a fixed period, for example because actual claims did not exceed certain levels. Other arrangements might take account of variable factors other than claims, including, for example, the value of rebates paid upon early cancellations of *payment protection contracts*;
- (9) “redress period” means, in relation to a regular premium *payment protection contract*, any period when the commission paid plus the amount representing actual profit share in respect of that period exceeded 50% (or such other percentage calculated under ■ DISP App 3.7A.4E) of the total amount paid in relation to the *payment protection contract* in respect of that period;
- (10) “relevant period or periods” means:
- (a) in relation to a single premium *payment protection contract*, the scheduled length of the contract;
  - (b) in relation to a regular premium *payment protection contract*, the period or periods over which commission was known or was reasonably foreseeable at the time of sale; and
- (11) “total amount paid” means the total amount paid by the consumer in relation to a *payment protection contract*, including any Insurance Premium Tax payable.

**App3.1.6** G For the purposes of the definitions of “actual profit share”, “anticipated profit share” and “commission”, where the *firm* has no or incomplete records of the level of commission or profit share arrangements relevant to a particular *payment protection contract*, it should make reasonable efforts to obtain relevant information from third parties. Where no such information can be obtained, the *firm* may make reasonable assumptions based on, for example, commission levels or profit share arrangements in relation to which records are held, and general commercial trends in the industry during the period in question.

## 3.2 The assessment of a complaint

**App3.2-1** G This section applies to both step 1 and step 2.



- App3.2.1** **G** The *firm* should consider, in the light of all the information provided by the complainant and otherwise already held by or available to the *firm*, whether (at step 1) there was a breach or failing by the *firm* or (at step 2) whether there was a failure to disclose commission.
- App3.2.2** **G** The *firm* should seek to establish the true substance of the *complaint*, rather than taking a narrow interpretation of the issues raised, and should not focus solely on the specific expression of the *complaint*. This is likely to require an approach to *complaint* handling that seeks to clarify the nature of the *complaint*.
- App3.2.3** **G** A *firm* may need to contact a complainant directly to understand fully the issues raised, even where the *firm* received the *complaint* from a third party acting on the complainant's behalf. The *firm* should not use this contact to delay the assessment of the *complaint*.
- App3.2.4** **G** Where a *complaint* raises (expressly or otherwise) issues that may relate to the original sale or a subsequently rejected claim then, irrespective of the main focus of the *complaint*, the *firm* should pro-actively consider whether the issues relate to both the sale and the claim, and assess the *complaint* and determine redress accordingly.
- App3.2.5** **G** If, during the assessment of the *complaint*, the *firm* uncovers evidence of a breach or failing, or a failure to disclose commission, that was not raised in the *complaint*, the *firm* should consider those other aspects as if they were part of the *complaint*, at step 1 or 2 as appropriate.
- App3.2.6** **G** The *firm* should take into account any information it already holds about the sale and consider other issues that may be relevant to the sale identified by the *firm* through other means, for example, the root cause analysis described in **DISP App 3.4**.
- App3.2.7** **G** The *firm* should consider all of its sales of *payment protection contracts* to the complainant in respect of re-financed loans that were rolled up into the loan covered by the *payment protection contract* that is the subject of the *complaint*. The *firm* should consider the cumulative financial impact on the complainant of any previous breaches or failings in those sales or, where relevant, any previous failures to disclose commission.

### 3.3 The approach to considering evidence at step 1

- App3.3.-1** **G** This section applies to step 1. However, *CCA lenders* should also consider it at step 2 to the extent that it is relevant to their consideration of unfairness.

- App3.3.1** **G** Where a *complaint* is made, the *firm* should assess the *complaint* fairly, giving appropriate weight and balanced consideration to all available evidence, including what the complainant says and other information about the sale that the *firm* identifies. The *firm* is not expected automatically to assume that there has been a breach or failing.
- App3.3.2** **G** The *firm* should not rely solely on the detail within the wording of a *policy's* terms and conditions to reject what a complainant recalls was said during the sale.
- App3.3.3** **G** The *firm* should recognise that oral evidence may be sufficient evidence and not dismiss evidence from the complainant solely because it is not supported by documentary proof. The *firm* should take account of a complainant's limited ability fully to articulate his *complaint* or to explain his actions or decisions made at the time of the sale.
- App3.3.4** **G** Where the complainant's account of events conflicts with the *firm's* own records or leaves doubt, the *firm* should assess the reliability of the complainant's account fairly and in good faith. The *firm* should make all reasonable efforts (including by contact with the complainant where necessary) to clarify ambiguous issues or conflicts of evidence before making any finding against the complainant.
- App3.3.5** **G** The *firm* should not reject a complainant's account of events solely on the basis that the complainant signed documentation relevant to the purchase of the *policy*.
- App3.3.6** **G** The *firm* should not reject a *complaint* because the complainant failed to exercise the right to cancel the *policy*.
- App3.3.7** **G** The *firm* should not consider that a successful claim by the complainant is, in itself, sufficient evidence that the complainant had a need for the *policy* or had understood its terms or would have bought it regardless of any breach or failing by the *firm*.
- App3.3.8** **G** The *firm* should not draw a negative inference from a complainant not having kept documentation relating to the purchase of the *policy* for any particular period of time.
- App3.3.9** **G** In determining a particular *complaint*, the *firm* should (unless there are reasons not to because of the quality and plausibility of the respective evidence) give more weight to any specific evidence of what happened during the sale (including any relevant documentation and oral testimony) than to general evidence of selling practices at the time (such as training, instructions or sales scripts or relevant audit or compliance reports on those practices).
- App3.3.10** **G** The *firm* should not assume that because it was not authorised to give advice (or because it intended to sell without making a recommendation) it did not in fact give advice in a particular sale. The *firm* should consider the available evidence and assess whether or not it gave advice or made a recommendation (explicitly or implicitly) to the complainant.

**App3.3.11** **G** The *firm* should consider in all situations whether it communicated information to the complainant in a way that was fair, clear and not misleading and with due regard to the complainant's information needs.

**App3.3.12** **G** In considering the information communicated to the complainant and the complainant's information needs, the evidence to which a *firm* should have regard includes:

- (1) the complainant's individual circumstances at the time of the sale (for example, the *firm* should take into account any evidence of limited financial capability or understanding on the part of the complainant);
- (2) the complainant's objectives and intentions at the time of the sale;
- (3) whether, from a reasonable *customer's* perspective, the documentation provided to the complainant was sufficiently clear, concise and presented fairly (for example, was the documentation in plain and intelligible language?);
- (4) in a sale that was primarily conducted orally, whether sufficient information was communicated during the sale discussion for the *customer* to make an informed decision (for example, did the *firm* give an oral explanation of the main characteristics of the *policy* or specifically draw the complainant's attention to that information on a computer screen or in a document and give the complainant time to read and consider it?);
- (5) any evidence about the tone and pace of oral communication (for example, was documentation read out too quickly for the complainant to have understood it?); and
- (6) any extra explanation or information given by the *firm* in response to questions raised (or information disclosed) by the complainant.

**App3.3.13** **G** The *firm* should not reject a *complaint* solely because the complainant had held a *payment protection contract* previously.

### 3.3A The approach to considering evidence at step 2

**App3.3A.1** **E** This section applies to a *CCA lender* at step 2.

#### Assessment of fairness of relationship

**App3.3A.2** **E** Where the *firm* did not disclose to the complainant in advance of a *payment protection contract* being entered into (and is not aware that any other *person* did so at that time):

- (1) the anticipated profit share plus the commission known at the time of the sale; or

- (2) the anticipated profit share plus the commission reasonably foreseeable at the time of the sale; or
- (3) the likely range in which (1) or (2) would fall;

the *firm* should consider whether it can satisfy itself on reasonable grounds that this did not give rise to an unfair relationship under section 140A of the CCA. The *firm's* consideration of unfairness should take into account all relevant matters, including whether the non-disclosure prevented the complainant from making a properly informed judgement about the value of the *payment protection contract*.

**App3.3A.3** **G** ■ DISP App 3.3A.2E reflects section 140B(9) of the CCA which provides (in summary) that, if the debtor alleges that the relationship between the creditor and the debtor is unfair to the debtor, it is for the creditor to prove to the contrary.

### Presumptions

- App3.3A.4** **E**
- (1) The *firm* should presume that failure to disclose commission gave rise to an unfair relationship under section 140A of the CCA if:
    - (a) the anticipated profit share plus the commission known at the time of the sale; or
    - (b) the anticipated profit share plus the commission reasonably foreseeable at the time of the sale;
 was:
    - (c) in relation to a single premium *payment protection contract*, more than 50% of the total amount paid in relation to the *payment protection contract*; or
    - (d) in relation to a regular premium *payment protection contract*, at any time in the relevant period or periods more than 50% of the total amount paid in relation to the *payment protection contract* in respect of the relevant period or periods.
  - (2) The *firm* should presume that failure to disclose commission did not give rise to an unfair relationship under section 140A of the CCA if the test in (1) is not satisfied.

**App3.3A.5** **G** The presumption that failure to disclose commission gave rise to an unfair relationship is rebuttable. Examples of factors which may contribute to its rebuttal include:

- (1) the *CCA lender* did not know and could not reasonably be expected to know or foresee the level of commission and anticipated profit share; or
- (2) the complainant could reasonably be expected to be aware of the level of commission and anticipated profit share (e.g. because they worked in a role in the financial services industry which gave them such awareness); or
- (3) disclosure would have made no difference whatsoever to the complainant's judgement about the value of the *payment protection contract*. This factor is only likely to be relevant in limited circumstances. If the *firm* concludes that disclosure would have at least caused the complainant to question whether the *payment protection contract* represented value for money and whether it was a sensible transaction to enter into (regardless of whether

they may or may not have ultimately gone ahead with the purchase), then the presumption is unlikely to be rebutted due to this factor.

- App3.3A.6** G The presumption that failure to disclose commission did not give rise to an unfair relationship is also rebuttable. An example of a factor which may contribute to its rebuttal includes that the complainant was in particularly difficult financial circumstances at the time of the sale.

### Reasonably foreseeable commission

- App3.3A.7** G For the purposes of the provisions in this section, what is reasonably foreseeable should be determined with regard to all relevant factors, including, where relevant, any agreement specifying rate changes over the first years of the *payment protection contract's* life (as in some regular premium *payment protection contracts*), and the length of time over which the commission will be governed by the agreement between lender and *insurer* that is in place at the time of sale.

## 3.4 Root cause analysis

- App3.4.-1** G This section applies to both step 1 and step 2, as appropriate.

- App3.4.1** G ■ DISP 1.3.3 R requires the *firm* to put in place appropriate management controls and take reasonable steps to ensure that in handling *complaints* it identifies and remedies any recurring or systemic problems. If a *firm* receives *complaints* about its sales of *payment protection contracts* it should analyse the root causes of those *complaints* including, but not limited to, the consideration of:

- (1) the concerns raised by complainants (both at the time of the sale and subsequently);
- (2) the reasons for both rejected claims and *complaints*;
- (3) the *firm's* stated sales practice(s) at the relevant time(s);
- (4) evidence available to the *firm* about the actual sales practice(s) at the relevant time(s) (this might include recollections of staff and complainants, compliance records, and other material produced at the time about specific transactions, for example call recordings and incentives given to *advisers*);
- (5) relevant regulatory findings; and
- (6) relevant decisions by the *Financial Ombudsman Service*.

- App3.4.2** G Where consideration of the root causes of *complaints* suggests recurring or systemic problems in the *firm's* sales practices for *payment protection contracts*, the *firm* should, in assessing an individual *complaint*, consider whether the problems were likely to have contributed (at step 1) to a breach or failing or (at

step 2) to a failure to disclose commission in the individual case, even if those problems were not referred to specifically by the complainant.

**App3.4.3** **G** Where a *firm* identifies (from its *complaints* or otherwise) recurring or systemic problems in its sales practices for a particular type of *payment protection contract*, either for its sales in general or for those from a particular location or sales channel, it should (in accordance with *Principle 6* (Customers' interests) and to the extent that it applies), consider whether it ought to act with regard to the position of *customers* who may have suffered detriment from, or been potentially disadvantaged by such problems but who have not complained and, if so, take appropriate and proportionate measures to ensure that those *customers* are given appropriate redress or a proper opportunity to obtain it. In particular, the *firm* should:

- (1) ascertain the scope and severity of the consumer detriment that might have arisen; and
- (2) consider whether it is fair and reasonable for the *firm* to undertake proactively a redress or remediation exercise, which may include contacting *customers* who have not complained.

### 3.5 Re-assessing rejected claims at step 1

**App3.5.-1** **E** This section applies to step 1.

**App3.5.1** **E** Where a *complaint* is about the sale of a *policy*, the *firm* should, as part of its investigation of the *complaint*, determine whether any claim on that *policy* was rejected, and if so, whether the complainant may have reasonably expected that the claim would have been paid.

**App3.5.2** **G** For example, the complainant may have reasonably expected that the claim would have been paid where the *firm* failed to disclose appropriately an exclusion or limitation later relied on by the *insurer* to reject the claim and it should have been clear to the *firm* that that exclusion or limitation was relevant to the complainant.

### 3.6 Determining the effect of a breach or failing at step 1

**App3.6.-1** **E** This section applies to step 1.

**App3.6.1** **E** Where the *firm* determines that there was a breach or failing, the *firm* should consider whether the complainant would have bought the *payment protection contract* in the absence of that breach or failing.

**App3.6.2** **E** In the absence of evidence to the contrary, the *firm* should presume that the complainant would not have bought the *payment protection contract* he bought if the sale was substantially flawed, for example where the *firm*:

- (1) pressured the complainant into purchasing the *payment protection contract*; or
- (2) did not disclose to the complainant, in good time before the sale was concluded, and in a way that was fair, clear and not misleading, that the *policy* was optional; or
- (3) made the sale without the complainant's explicit agreement to purchase the *policy*; or
- (4) did not disclose to the complainant, in good time before the sale was concluded, and in a way that was fair, clear and not misleading, the significant exclusions and limitations, i.e. those that would tend to affect the decisions of *customers* generally to buy the *policy*; or
- (5) did not, for an advised sale (including where the *firm* gave advice in a non-advised sales process) take reasonable care to ensure that the *policy* was suitable for the complainant's demands and needs taking into account all relevant factors, including level of cover, cost, and relevant exclusions, excesses, limitations and conditions; or
- (6) did not take reasonable steps to ensure the complainant only bought a *policy* for which he was eligible to claim benefits; or
- (7) found, while arranging the *policy*, that parts of the cover did not apply but did not disclose this to the *customer*, in good time before the sale was concluded, and in a way that was fair, clear and not misleading; or
- (8) did not disclose to the complainant, in good time before the sale was concluded, and in a way that was fair, clear and not misleading, the total (not just monthly) cost of the *policy* separately from any other prices (or the basis for calculating it so that the complainant could verify it); or
- (9) recommended a single premium *payment protection contract* without taking reasonable steps, where the *policy* did not have a pro-rata refund, to establish whether there was a prospect that the complainant would repay or refinance the loan before the end of the term; or
- (10) provided misleading or inaccurate information about the *policy* to the complainant; or
- (11) sold the complainant a *policy* where the total cost of the *policy* (including any interest paid on the premium) would exceed the benefits payable under the *policy* (other than benefits payable under life cover); or
- (12) in a sale of a single premium *payment protection contract*, failed to disclose to the complainant, in good time before the sale was concluded, and in a way that was fair, clear and not misleading:

- (a) that the premium would be added to the amount provided under the credit agreement, that interest would be payable on the premium and the amount of that interest; or
- (b) (if applicable) that the term of the cover was shorter than the term of the credit agreement and the consequences of that mismatch; or
- (c) (if applicable) that the complainant would not receive a pro-rata refund if the complainant were to repay or refinance the loan or otherwise cancel the single premium *policy* after the cooling-off period.

**App3.6.3** [E] Relevant evidence might include the complainant's demands, needs and intentions at the time of the sale and any other relevant evidence, including any testimony by the complainant about his reasons at the time of the sale for purchasing the *payment protection contract*.

### 3.7 Approach to redress at step 1

**App3.7.-1** [E] This section applies to step 1.

#### General approach to redress: all contract types

**App3.7.1** [E] Where the *firm* concludes in accordance with ■ DISP App 3.6 that the complainant would still have bought the *payment protection contract* he bought, no redress will be due to the complainant in respect of the identified breach or failing, subject to ■ DISP App 3.7.6 E.

**App3.7.2** [E] Where the *firm* concludes that the complainant would not have bought the *payment protection contract* he bought, and the *firm* is not using the alternative approach to redress (set out in ■ DISP App 3.7.7 E to ■ 3.7.15 E) or other appropriate redress (see ■ DISP App 3.8), the *firm* should, as far as practicable, put the complainant in the position he would have been if he had not bought any *payment protection contract*.

**App3.7.3** [E] In such cases the *firm* should pay to the complainant a sum equal to the total amount paid by the complainant in respect of the *payment protection contract* including historic interest where relevant (plus simple interest on that amount). If the complainant has received any rebate, for example if the *customer* cancelled a single premium *payment protection contract* before it ran full term and received a refund, the *firm* may deduct the value of this rebate from the amount otherwise payable to the complainant.

**App3.7.4** [E] Additionally, where a single premium was added to a loan:

- (1) for live *policies*:
  - (a) subject to ■ DISP App 3.7.5 E, where there remains an outstanding loan balance, the *firm* should, where possible, arrange for the loan to be



restructured (without charge to the complainant but using any applicable cancellation value) with the effect of:

- (i) removing amounts relating to the *payment protection contract* (including any interest and charges); and
  - (ii) ensuring the number and amounts of any future repayments (including any interest and charges) are the same as would have applied if the complainant had taken the loan without the *payment protection contract*; or
- (b) where the *firm* is not able to arrange for the loan to be restructured (e.g. because the loan is provided by a separate *firm*), it should pay the complainant an amount equal to the difference between the actual loan balance and what the loan balance would have been if the *payment protection contract* (including any interest and charges) had not been added, deducting the current cancellation value. The *firm* should offer to pay any charges incurred if the complainant uses this amount to reduce his loan balance; and
- (2) for cancelled *policies*, the *firm* should pay the complainant the difference between the actual loan balance at the point of cancellation and what the loan balance would have been if no premium had been added (plus simple interest) minus any applicable cancellation value.

**App3.7.5** **E** Where a claim was previously paid on the *policy*, the *firm* may deduct this from redress paid in accordance with **■ DISP App 3.7.3 E**. If the claim is higher than the amount to be paid under **■ DISP App 3.7.3 E** then the *firm* may also deduct the excess from the amount to be paid under **■ DISP App 3.7.4 E**.

**App3.7.6** **E** Where the *firm* concludes that the complainant may have reasonably expected that a rejected claim would have been paid (see **■ DISP App 3.5**) then:

- (1) if the value of the claim exceeds the amount of the redress otherwise payable to the complainant for a breach or failing identified in accordance with this appendix, the *firm* should pay to the complainant only the value of the claim (and simple interest on it as appropriate); and
- (2) if the value of the claim is less than the amount of the redress otherwise payable to the complainant for a breach or failing identified in accordance with this appendix, the *firm* should pay to the complainant the value of that redress.

#### Alternative approach to redress: single premium policies

**App3.7.7** **E** Where the only breach or failing was within **■ DISP App 3.6.2 E (9)** and/or **■ DISP App 3.6.2 E (12)**, and in the absence of evidence to the contrary, the *firm* may presume that instead of buying the single premium *payment protection contract* he bought, the complainant would have bought a regular premium *payment protection contract*.

**App3.7.8** **E** If a *firm* chooses to make this presumption, then it should do so fairly and for all relevant complainants in a relevant category of sale. It should not, for example, only use the approach for those complainants it views as being a lower underwriting risk or those complainants who have cancelled their *policies*.

- App3.7.9** [E] Where the *firm* presumes that the complainant would have purchased a regular premium *payment protection contract*, the *firm* should offer redress that puts the complainant in the position he would have been if he had bought an alternative regular premium *payment protection contract*.
- App3.7.10** [E] The *firm* should pay to the complainant a sum equal to the amount in ■ DISP App 3.7.3 E less the amount the complainant would have paid for the alternative regular premium *payment protection contract*.
- App3.7.11** [E] The *firm* should consider whether it is appropriate to deduct the value of any paid claims from the redress.
- App3.7.12** [E] Additionally, where a single premium was added to a loan, ■ DISP App 3.7.4 E applies except that in respect of ■ DISP App 3.7.4 E (1)(a) the cancellation value should only be used if the complainant expressly wishes to cancel the *policy*.
- App3.7.13** [E] The *firm* should, for the purposes of redressing the *complaint*, use the value of £9 per £100 of benefits payable as the monthly price of the alternative regular premium *payment protection contract*. For example, if the monthly repayment amount in relation to the loan only is to be £200, the price of the alternative regular premium *payment protection contract* will be £18.
- App3.7.14** [E] Where the *firm* presumes that the complainant would have purchased a regular premium *payment protection contract* and if the complainant expressly wishes it, the existing cover should continue until the end of the existing *policy* term. The complainant should pay the price of the alternative regular premium *payment protection contract* (at ■ DISP App 3.7.13 E) and should be able to cancel at any time. This pricing does not apply where ■ DISP App 3.7.4 E (1)(b) applies.
- App3.7.15** [E] So that the complainant can make the decision on the continuation of cover from an informed position, the *firm* should:
- (1) offer to provide details of the existing *payment protection contract*;
  - (2) inform the complainant that he may be able to find similar cover more cheaply from another provider in the event that he chooses to cancel the *policy* and take an alternative but remind the complainant that if his circumstances (for example, his health or employment prospects) have changed since the original sale, he may not be eligible for cover under any new *policy* he buys;
  - (3) make the complainant aware of the changes to the cancellation arrangements if cover continues;
  - (4) explain how the future premium will be collected and the cost of the future cover; and
  - (5) refer the complainant to [www.moneyadviceservice.org.uk](http://www.moneyadviceservice.org.uk) as a source of information about a range of alternative *payment protection contracts*.

**Interaction with step 2**

- App3.7.16** **E** Where the *firm* is aware that another *firm* has previously paid redress at step 2, the *firm* may deduct this from the redress due under step 1.

**3.7A Approach to redress at step 2**

- App3.7A.1** **E** This section applies to a *CCA lender* at step 2.

**Duty to remedy unfairness**

- App3.7A.2** **E** Where the *firm* concludes in accordance with ■ DISP App 3.3A that the non-disclosure has given rise to an unfair relationship under section 140A of the CCA, the *firm* should remedy the unfairness.

**Redress for single premium payment protection contracts**

- App3.7A.3** **E** In relation to a single premium *payment protection contract*, the *firm* should pay to the complainant a sum equal to:

- (1) the commission actually paid; plus
- (2) an amount representing actual profit share; minus
- (3) 50% of the total amount paid (or other percentage as in ■ DISP App 3.7A.4E).

The *firm* should also pay historic interest in relation to that sum, where relevant. It should also pay simple interest on the whole amount.

**Redress for regular premium payment protection contracts**

- App3.7A.3A** **E** In relation to a regular premium *payment protection contract*, the *firm* should pay to the complainant in respect of each redress period a sum equal to:

- (1) an amount appropriately representing the commission paid in respect of that period; plus
- (2) an amount appropriately representing profit share in respect of that period; minus
- (3) 50% of the amount appropriately representing the total amount paid in respect of that period (or other percentage as in ■ DISP App 3.7A.4E).

A *firm* should pay the aggregate of those sums and also pay historic interest in relation to each of those sums, where relevant. It should also pay simple interest, where relevant.

**Where the presumption against unfairness has been rebutted**

- App3.7A.4** **E** In cases where the presumption that failure to disclose commission did not give rise to an unfair relationship (in ■ DISP App 3.3A.4E(2)) has been rebutted and the *firm* has concluded that the non-disclosure gave rise to an unfair relationship under section 140A of the CCA, the *firm* should consider what level of commission plus anticipated profit share would not have given rise to unfairness in that case, and use that amount (expressed as a percentage) at ■ DISP App 3.7A.3E(3) or ■ DISP App 3.7A.3AE(3) as appropriate.

**Where the complainant has received a rebate**

- App3.7A.5** **E** If the complainant has received any rebate, the *firm* may calculate the amount of the rebate that represents commission and actual profit share sums paid up to the point of the rebate that were more than 50% (or such other percentage determined under ■ DISP App 3.7A.4E) of the total amount paid in relation to the *payment protection contract* and deduct this from the amount of redress otherwise payable to the complainant.

**Where a single premium was added to a loan**

- App3.7A.6** **E** Additionally, where a single premium policy was added to a loan:
- (1) for live *policies*, where there remains an outstanding loan balance, the *firm* should, where possible, arrange for the loan to be restructured (without charge to the complainant but using any applicable cancellation value) with the effect of ensuring the number and amounts of any future repayments (including any interest and charges) are the same as would have applied if the commission plus anticipated profit share was 50% (or such other percentage determined under ■ DISP App 3.7A.4E) of the total amount paid in relation to the *payment protection contract*; or
  - (2) for cancelled *policies*, the *firm* should pay the complainant the difference between the actual loan balance at the point of cancellation and what the loan balance would have been if a sum equal to that payable under ■ DISP App 3.7A.3E (before historic or simple interest) had not been added (plus simple interest) minus any applicable cancellation rebate value.

**Where a regular premium policy is live**

- App3.7A.7** **E** Additionally, for a regular premium *payment protection contract*, where the *policy* is live the *firm* should disclose the current level of known or reasonably foreseeable commission and currently anticipated profit share and give the complainant the choice of continuing with the *policy* without change or cancelling the *policy* without penalty.
- App3.7A.8** **E** For the purposes of ■ DISP App 3.7A.7E, currently anticipated profit share should be read as requiring a projection forwards from the date of disclosure rather than from the date of the original sale.
- App3.7A.9** **G** The disclosure in ■ DISP App 3.7A.7E may:

- (1) be in the form of a range so long as it is sufficiently narrow to be clear and informative: and

- (2) specify the current level of commission and currently anticipated profit share separately.

### Where a claim was previously paid

- App3.7A.10 **E** Where a claim was previously paid on the *policy*, the *firm* should not deduct this from the redress paid.

## 3.8 Other appropriate redress at steps 1 and 2

### Step 1

- App3.8.1 **E** The remedies in ■ DISP App 3.7 are not exhaustive.
- App3.8.2 **E** When applying a remedy other than those set out in ■ DISP App 3.7, the *firm* should satisfy itself that the remedy is appropriate to the matter complained of and is appropriate and fair in the individual circumstances.

### Step 2

- App3.8.3 **E** The remedies in ■ DISP App 3.7A are not exhaustive.
- App3.8.3 **E** A *firm* should depart from the remedies set out in ■ DISP App 3.7A if there are factors in a particular *complaint* which require a different amount or form of redress in order to remedy the unfairness found.

## 3.9 Other matters concerning redress at steps 1 and 2

- App3.9.1 **G** Where the complainant's loan or credit card is in arrears the *firm* may, if it has the contractual right to do so, make a payment to reduce the associated loan or credit card balance, if the complainant accepts the *firm's* offer of redress. The *firm* should act fairly and reasonably in deciding whether to make such a payment.
- App3.9.2 **G** In assessing redress, the *firm* should consider whether there are any other further losses that flow from its breach or failing or from its failure to disclose commission (as applicable), that were reasonably foreseeable as a consequence of the *firm's* breach or failing or of its failure to disclose commission, for example, where the *payment protection contract's* cost or rejected claims contributed to affordability issues for the associated loan or credit which led to arrears charges, default interest, penal interest rates or other penalties levied by the lender.

**App3.9.3** **G** Where, for single premium *policies*, there were previous breaches or failings or previous failures to disclose commission (see ■ DISP App 3.2.7 G) the redress to the complainant should address the cumulative financial impact.

**App3.9.4** **G** The *firm* should make any offer of redress to the complainant in a fair and balanced way. In particular, the *firm* should explain clearly to the complainant the basis for the redress offered including how any compensation is calculated and, where relevant, the rescheduling of the loan, and the consequences of accepting the offer of redress.

### 3.10 Application: evidential provisions and guidance

#### Step 1

**App3.10.1** **E** The *evidential provisions* in this appendix for step 1 apply in relation to *complaints* about sales that took place on or after 14 January 2005.

**App3.10.2** **G** The *guidance* in this appendix for step 1 applies in relation to *complaints* about sales whenever the sale took place. For *complaints* about sales that took place prior to 14 January 2005, a *firm* should take account of the *evidential provisions* in this appendix for step 1 as if they were *guidance*.

#### Step 2

**App3.10.2A** **E** The *evidential provisions* and *guidance* for step 2 apply in relation to *complaints* received by *CCA lenders* about sales where the *payment protection contract* covers or covered or purported to cover (this includes partial coverage) a *credit agreement*.

#### Effect of contravention of evidential provisions

**App3.10.3** **E** Contravention of an *evidential provision* in this appendix may be relied upon as tending to establish contravention of ■ DISP 1.4.1 R.

### 3.11 Obligation to write letters to certain rejected complainants

**App3.11.1** **R** This section applies where:

- (1) a complainant has made a *complaint* to a *firm* in relation to its sale of a *payment protection contract* which covered or purported to cover a *credit agreement* (this includes partial coverage);

- (2) the *complaint* was rejected by the *firm* before 29 August 2017 in that the *firm* did not offer the complainant the redress they would have been offered had the *firm* concluded that the complainant would not have bought the *payment protection contract* they bought; and
- (3) any referral of the *complaint* to the *Financial Ombudsman Service* has been concluded and did not result in the *firm* offering (or being required to pay) the complainant redress on the basis that the complainant would not have bought the *payment protection contract* they bought.

**App3.11.2** **R** The *firm* (or, where applicable, a successor) must as soon as reasonably practicable, and no later than 29 November 2017, send a written communication to the complainant which:

- (1) informs the complainant that, despite having already made a *complaint* in relation to the sale of a *payment protection contract*, they can make a further *complaint* against the *CCA lender* in relation to a failure to disclose commission;
- (2) makes clear the identity of the *CCA lender*, where this is known to the seller or can be identified by them following reasonable steps;
- (3) informs the complainant of the 29 August 2019 time limit;
- (4) refers to the availability of relevant further information on the *FCA's* website (whose address should be provided) or by contacting the *FCA's* PPI contact centre (whose telephone number should be provided); and
- (5) where the *firm* is also the *CCA lender*, informs the complainant of its arrangements for handling further *complaints* about a failure to disclose commission.

**App3.11.3** **R** The obligation to send a written communication does not apply where, in relation to the relevant *payment protection contract* the *firm*, or where appropriate the *Financial Ombudsman Service*, has previously considered, or indicated to the complainant in writing that it will consider, a *complaint* on the basis of a failure to disclose profit share and/or commission.





## Dispute resolution: Complaints

### DISP TP 1 Transitional provisions

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	DISP 1.2.15 G	R	Expired		
1A	DISP 1	R	A <i>complaint</i> received by a <i>respondent</i> on or before 31 October 2007 should be handled, resolved, recorded and reported in accordance with the requirements of <i>DISP</i> as they stood at the date the <i>complaint</i> was received.	From 1 November 2007	1 November 2007
1B	DISP 2.7.9 R		In relation to a <i>complaint</i> concerning an act or omission before 1 November 2007, in DISP 2.7.9R (2) substitute "an <i>intermediate customer or market counterparty</i> " for "(a) a <i>professional client</i> or (b) <i>eligible counterparty</i> ".	From 1 November 2007	1 November 2007
2	DISP 1.5.4 R - DISP 1.5.7 R	R	Expired		
3	DISP 1.5.4 R - DISP 1.5.7 R	G	Expired		
6	DISP 2, DISP 3 and FEES 5	R	In DISP 2, DISP 3 and FEES 5 references to a " <i>firm</i> " or " <i>firms</i> " include <i>unauthorised persons</i> subject to the <i>Compulsory Jurisdiction</i> in relation to <i>relevant complaints</i> in accordance with the <i>Ombudsman Transitional Order</i> .	From commencement	Commencement
7	DISP 2, DISP 3 and FEES 5	G	Under the <i>Ombudsman Transitional Order</i> , a <i>relevant complaint</i> is subject to the <i>Compulsory Jurisdiction</i> whether or not it is about a <i>firm</i> or an <i>unauthorised person</i> . <i>Unauthorised persons</i> are not subject to DISP 1, but references to " <i>firm</i> " in DISP 2, DISP 3 and FEES 5 include <i>unauthorised persons</i> subject to the <i>Compulsory Jurisdiction</i> in relation to <i>relevant complaints</i> , where applicable.	From commencement	Commencement
7A	DISP 2.8.7 R	R	Nothing in DISP 2.8.7 R affects the position of a <i>complaint</i> which, on 31 May 2004, could not have been considered by the <i>Ombudsman</i> under DISP 2.8.2 R (2); or DISP 2.8.7R (1)(b) as it then stood (as DISP 2.3.6 R (1)(b)).	From 1 June 2004	Amended with effect from 1 June 2004

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
7B	DISP 2.8.7 R	R	In the case of a complainant falling within DISP 2.8.7 R, (and whose time for referring a <i>complaint</i> under the <i>rules</i> as they stood before 1 June 2004 has not expired), time will expire in accordance with DISP 2.8.7 R save that if the final date would otherwise be before 30 November 2004 an explanation of the final date will be in conformity with DISP 2.8.7R (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.	From 1 June 2004	Amended with effect from 1 June 2004
8	DISP 1 DISP 2 DISP 3 DISP 4 and FEES 5	R	In relation to <i>relevant complaints</i> , references in DISP 1, DISP 2, DISP 3, DISP 4 and FEES 5 to an " <i>eligible complainant</i> " include a person who is to be treated as an <i>eligible complainant</i> in accordance with the <i>Ombudsman Transitional Order</i> and references to a <i>complaint</i> shall be construed accordingly.	From commencement	Commencement
9	DISP 5.5.1 R	R	Expired		
10	DISP 1.10.1 R and DISP 1.10.2 R	R	Expired		
11	DISP 1.10.1 R and DISP 1.10.2 R	R	Expired		
12	DISP 1.10.1 R and DISP 1.10.2 R	R	Expired		
13	DISP 1	R	Deleted		
14		G	Expired		
15	FEES 5.4.1 R	R	Expired		
16	FEES 5.4.1 R	G	Expired		
17	DISP 1.3.12R - DISP 1.3.17R	R	Deleted		
18	DISP 1.10.1 R and DISP 1.10.2 R, DISP 1.10.4 R	R	Expired		

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
	and DISP 1 Annex 1				
19	DISP 1.10.1C R and DISP 1.10.1D G	R	Expired		
20	DISP 1.6.4 R	R	Expired		
21	DISP 2.7.3 R	R	<p>A <i>person</i> is also an <i>eligible complainant</i> if:</p> <p>(a) it is a business with a group annual turnover of less than £1 million at the time it refers the <i>complaint</i> to the <i>respondent</i>;</p> <p>(b) the <i>complaint</i> relates to a contract or <i>policy</i> entered into by or for the benefit of the complainant before 1 November 2009; and</p> <p>(c) if the <i>complaint</i> had been made immediately before 1 November 2009 the <i>respondent</i> was subject to, or participated in, the <i>Ombudsman's</i> jurisdiction in respect of the activity to which the <i>complaint</i> relates.</p>	From 1 November 2009	1 November 2009
22	DISP 2.7.3 R	G	Transitional provision 21R applies together with the other eligibility <i>rules</i> in DISP 2.7. So, for example, a <i>person</i> who is an <i>eligible complainant</i> under the transitional provision, will not be an <i>eligible complainant</i> if the <i>complaint</i> does not arise from matters relevant to one of the relationships set out in DISP 2.7.6 R.	From 1 November 2009	1 November 2009
23	DISP 1.10A.1 R	R	[deleted]		
24	DISP 1.10A.1 R	R	[deleted]		
25	DISP 1.11.6A R	R	[deleted]		
26	DISP 2.8.2 R	R	[deleted]		
27	DISP 1.10.5 R	R	[deleted]		
27A	Amendments to DISP made in the Consumer Redress Schemes Instru-		The amendments do not apply in relation to any <i>consumer redress scheme</i> imposed before the instrument came into force on a particular <i>firm</i> , or on a particular <i>payment service provider</i> or <i>electronic money issuer</i> , as envisaged by section 404F(7) of the Act.	From 1 August 2011 indefinitely	1 August 2011

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
	ment 2011				
28	DISP 3.7.4 R	R	For a <i>complaint</i> referred to the <i>Financial Ombudsman Service</i> before 1 January 2012 the maximum money award which the <i>Ombudsman</i> may make is £100,000.	From 1 January 2012	1 January 2012
28A	The amendments to DISP 2.7.6R (12) effected by the Dispute Resolution: Complaints (Amendment No 4) Instrument 2011	R	The amendments referred to in column (2) do not affect who is an <i>eligible complainant</i> for the purpose of DISP 2.7.6 R (12)(a) in respect of complaints that relate to acts or omissions that occurred before 1 January 2012.	From 1 January 2012	1 January 2012
29	DISP 1.10.2 R and DISP 1 Annex 1	R	Where a <i>firm</i> reports information on any <i>complaints</i> closed under a two-stage procedure before 1 July 2012, the <i>rules</i> and <i>guidance</i> in DISP 1.6.6 R, DISP 1.10.3G (2), DISP 1.10.7R (3), and DISP 1.10.8 G and DISP 1 Annex 1 apply as they stood on 30 June 2012.	1 July 2012 to 31 December 2012	1 August 2009
30	DISP 1.10.2A R	R	Where a <i>firm</i> , which has a reporting period ending on or before 30 June 2013 submits its report to the <i>FCA</i> in accordance with the <i>complaints reporting rule</i> at DISP 1.10.2A R the number of <i>complaints</i> must be calculated for the period from the 31 December 2012 to the end of the <i>firm's</i> relevant reporting period.	31 December 2012 to 30 June 2013.	31 December 2012
31	DISP 1.10.6A R	R	(1) A <i>firm</i> is not liable to pay the administrative fee in DISP 1.10.6A R in respect of a failure to submit a report in accordance with DISP 1.10.5 R for a relevant reporting period ending before 1 March 2012. (2) Relevant reporting period in (1) has the meaning in DISP 1.10.4 R.	From 1 March 2012	1 March 2012
32	The changes to DISP 1.10 and DISP 1.10A	R	The changes referred to in column (2) to DISP 1.10 and DISP 1.10A do not apply until 1 October 2014.	1 April 2014 to 1 October 2014	1 April 2014

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
	set out in Annex K of the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014				
33	The changes to DISP 1.10 and DISP 1.10A set out in Annex K of the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014	G	<p><i>Firms</i> are reminded that CONC 12.1.4 R provides that DISP 1.10 and DISP 1.10A (a) do not apply to a <i>person</i> with only an <i>interim permission</i>; and (b) apply to a <i>firm</i> with an <i>interim permission</i> that is treated as a variation of <i>permission</i> with respect to <i>credit-related regulated activity</i> or <i>operating an electronic system in relation to lending</i> as if the changes to DISP 1.10 and DISP 1.10A effected by the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014 had not been made.</p> <p>The effect of TP 32 and CONC 12.1.4 R is that:</p> <p>(1) for a <i>firm</i> with only an <i>interim permission</i>:</p> <p>(a) the reporting frequencies, submission deadlines and time limits for publication for the returns and complaints data summaries in DISP 1.10 and DISP 1.10A are calculated by reference to the <i>firm's</i> next <i>accounting reference date</i> that follows 1 October 2014 or, if later, the date on which the <i>firm's</i> application for <i>permission</i> to carry on <i>credit-related regulated activity</i> or <i>operating an electronic system in relation to lending</i> is granted;</p> <p>(b) the first complaints return in the form in DISP 1 Annex 1 should cover <i>complaints</i> received in the period:</p> <p>(i) starting on either 1 October 2014 or, if later, on the date on which the <i>firm's</i> application for <i>permission</i> to carry on <i>credit-related regulated activity</i> or <i>operating an electronic system in relation to lending</i> is granted; and</p>	1 April 2014 to the date on which <i>interim permission</i> ceases to have effect	1 April 2014

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<p>(ii) ending on either the <i>accounting reference date</i> or (if the frequency is twice a year and the start of the period under (i) is more than six months before the <i>accounting reference date</i>) the date that falls six months before the <i>firm's accounting reference date</i>.</p> <p>(2) For a <i>firm</i> with an <i>interim permission</i> that is treated as a variation of <i>permission</i>, where the relevant reporting period includes a period after the date on which the <i>firm's</i> application for a variation of <i>permission</i> to add <i>credit-related regulated activity</i> or <i>operating an electronic system in relation to lending</i> is granted (or, if that date is before 1 October 2014, where the relevant reporting period includes a period after 1 October 2014):</p> <p>(a) the complaints return form should be submitted in the form in DISP 1 Annex 1 as amended by Annex K of the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014; and</p> <p>(b) items 35 to 46 of the form should cover <i>complaints</i> received from 1 October 2014 or, if later, from the date on which the <i>firm's</i> application for <i>permission</i> to carry on <i>credit-related regulated activity</i> or <i>operating an electronic system in relation to lending</i> is granted.</p>		
34	DISP 1.10 and DISP 1.10A	R	DISP 1.10 and DISP 1.10A do not apply to a <i>firm</i> with <i>permission</i> to carry on only one or more <i>credit-related regulated activities</i> or <i>operating an electronic system in relation to lending</i> (and no other <i>regulated activity</i> ) until 1 October 2014.	1 April 2014 to 1 October 2014	1 April 2014
35	DISP 2.3.1 R, DISP 2.3.2A R and DISP 2.3.2B R	R	(1) Except where indicated otherwise, expressions used in this <i>rule</i> have the same meaning as they had in the Consumer Credit Act 1974 on 31 March 2014, before the amendments made to that Act by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013, the Financial Services Act 2012 (Consumer Credit) Order 2013, the Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions) Order 2014, the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014, the Consumer Credit Act 1974 (Green Deal) (Amendment) Order 2014, and the Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions) (No. 2) Order 2014 came into force.	Indefinitely from 1 April 2014	1 April 2014

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<p>(2) In DISP 2.3.1 R, DISP 2.3.2A R and DISP 2.3.2B R, references to an act or omission by a <i>firm</i>, <i>payment service provider</i> or <i>electronic money issuer</i> in carrying on <i>regulated activities</i> or <i>credit-related regulated activities</i> include an act or omission which took place before 1 April 2014 in carrying on any one of the following activities:</p> <p>(a) providing credit or otherwise being a creditor under a regulated consumer credit agreement;</p> <p>(b) the bailment or (in Scotland) the hiring of goods or otherwise being an owner under a regulated consumer hire agreement;</p> <p>(c) credit brokerage in so far as it was the effecting of introductions of:</p> <p>(i) individuals desiring to obtain credit to persons carrying on a consumer credit business; or</p> <p>(ii) individuals desiring to obtain goods on hire to persons carrying on a consumer hire business;</p> <p>(d) in so far as they related to regulated consumer credit agreements or regulated consumer hire agreements:</p> <p>(i) debt-adjusting;</p> <p>(ii) debt-counselling;</p> <p>(iii) debt-collecting; or</p> <p>(iv) debt administration;</p> <p>(e) the provision of credit information services; or</p> <p>(f) the operation of a credit reference agency;</p> <p>where at the time of the act or omission complained of:</p> <p>(g) the <i>firm</i>, <i>payment service provider</i> or <i>electronic money issuer</i> was:</p> <p>(i) covered by a standard licence under the Consumer Credit Act 1974; or</p> <p>(ii) authorised to carry on an activity by virtue of section 34A of that Act; or</p>		

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<p>(iii) in accordance with regulation 26(2) of the <i>Payment Services Regulations</i> or regulation 31 of the <i>Electronic Money Regulations</i> was not required to hold a licence for consumer credit business under section 21 of the Consumer Credit Act 1974; and</p> <p>(h) the activity was carried on in the course of a business of a type which was specified in accordance with section 226A(2)(e) of the Act (now repealed).</p>		
36	DISP 2.3.1 R	R	In DISP 2.3.1 R (4), in relation to an act or omission by a <i>firm</i> in lending <i>money</i> that took place before 1 April 2014, the reference to "(excluding <i>restricted credit</i> where that is not a <i>credit-related regulated activity</i> )" is to be read as a reference to "(excluding <i>restricted credit</i> where that is not an activity described in TP 35(2))".	Indefinitely from 1 April 2014	1 April 2014
37	DISP 2.3.1 R	R	In DISP 2.3.1 R (5), in relation to an act or omission by a <i>firm</i> in paying <i>money</i> by a <i>plastic card</i> that took place before 1 April 2014, the reference to "(excluding a <i>store card</i> where that is not a <i>credit-related regulated activity</i> )" is to be read as a reference to "(excluding a <i>store card</i> where that is not an activity described in TP 35(2))".	Indefinitely from 1 April 2014	1 April 2014
38	DISP 1	R	In respect of a <i>complaint</i> received by a <i>respondent</i> on or before 8 July 2015 the <i>respondent</i> must handle, resolve, record and report the <i>complaint</i> in accordance with the <i>rules</i> as they stood at the date on which the <i>complaint</i> was received by the <i>respondent</i> .	From 9 July 2015	From 9 July 2015.
39	DISP 1.5, DISP 1.10 and DISP 1.10A, DISP 1 Annex 1R, DISP 1 Annex 1BR	R	<p>(1) In respect of reporting periods starting on or before 29 June 2016, the <i>rules</i> and <i>guidance</i> in column (2) continue to apply to a <i>firm</i> as they stood at the beginning of the relevant reporting period for the purposes of reporting information about <i>complaints</i> under DISP 1.10 and DISP 1 Annex 1R, and publishing <i>complaints</i> data under DISP 1.10A and DISP 1 Annex 1BR.</p> <p>(2) For reporting periods commencing on or after 30 June 2016, the <i>rules</i> and <i>guidance</i> in column (2) apply as they stood on 30 June 2016.</p>	From 30 June 2016	From 30 June 2016
40	DISP 1.5, DISP 1.10 and DISP 1.10A, DISP 1	G	The effect of TP 39(1) is that a <i>firm</i> with a reporting period which starts on or before 29 June 2016 should continue to use the <i>rules</i> , <i>guidance</i> , reporting forms and publication forms as they were at the start of the relevant reporting period and is not	From 30 June 2016	From 30 June 2016



(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
	Annex 1R, DISP 1 Annex 1BR		required to report or publish information about <i>complaints</i> resolved under DISP 1.5 by close of the <i>business day</i> following its receipt in such a reporting period. However, subject to that, from 30 June 2016 a <i>firm</i> must comply with the <i>rules</i> in DISP 1.5 when dealing with <i>complaints</i> , so a <i>firm</i> would need to send a <i>summary resolution communication</i> under DISP 1.5.4R in relation to any <i>complaint</i> considered to be resolved by close of the third <i>business day</i> following the day on which it is received.		

1	R	This TP applies in relation to a <i>person</i> who falls within regulation 122(1) (Transitional provisions: requirement to be authorised as a payment institution) or regulation 123(1) (Transitional provisions: requirement to be registered as a small payment institution) of the <i>Payment Services Regulations</i> (a "transitioning payment institution").
2	R	This TP applies from 1 November 2009 until 30 April 2011.
3	R	DISP 1 (Treating complainants fairly) applies in relation to a transitioning payment institution as if the transitioning payment institution were a <i>payment institution</i> .
4	R	<p>The <i>Ombudsman</i> can consider a <i>complaint</i> that relates to an act or omission by a transitioning payment institution under the <i>Compulsory Jurisdiction</i> if:</p> <ul style="list-style-type: none"> <li>(1) it could consider that <i>complaint</i> under the <i>Compulsory Jurisdiction</i> if it related to a <i>payment institution</i>; and</li> <li>(2) (where the transitioning payment institution is a <i>licensee</i>) the complaint relates to an act or omission in providing <i>payment services</i>.</li> </ul>
5	G	<p>The effect of this transitional provision is to:</p> <ul style="list-style-type: none"> <li>(1) apply to transitioning payment institutions as though they were <i>payment institutions</i> the complaints-handling requirements in DISP 1.1 to DISP 1.8; and</li> <li>(2) to bring them within the scope of the <i>Compulsory Jurisdiction</i> to the same extent as <i>payment institutions</i>.</li> </ul>
6	G	<i>Complaints</i> relating to <i>payment services</i> , <i>consumer credit activities</i> or a combination of both can be considered under the <i>Compulsory Jurisdiction</i> . However, transitioning payment institutions that are <i>licensees</i> will remain subject to the <i>Consumer Credit Jurisdiction</i> for <i>complaints</i> that relate only to <i>consumer credit activities</i> .
7	R	The rules and guidance in FEES 5.5.1R, 5.5.6 R, FEES 5.5.7 R, 5.5.15 R, 5.7.2 R, 5.9.1 R and 5.9.2 G shall apply to transitioning payment institutions and <i>persons</i> that cease to be transitioning institutions in the same way as they apply to <i>firms</i> and <i>firms</i> that cease to be authorised.



## Dispute resolution: Complaints

### Schedule 1 Record keeping requirements

#### Sch 1.1 G

The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record keeping requirements.

It is not a complete statement of those requirements and should not be relied on as if it were.

#### Sch 1.2 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
DISP 1.9.1 R	<i>Complaints</i> subject to DISP 1.3 - DISP 1.8.	Each <i>complaint</i> received and the measures taken for its resolution	On receipt	5 years for <i>complaints</i> relating to <i>MiFID business or collective portfolio management services</i> and 3 years for all other <i>complaints</i>



## Dispute resolution: Complaints

### Schedule 2 Notification requirements

#### Sch 2.1 G

The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant requirements for notification and reporting.

It is not a complete statement of those requirements and should not be relied on as if it were.

#### Sch 2.1 G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
DISP 1.1.12 R	<i>Firm</i> qualifies for exemption	Confirmation that a <i>firm</i> does not do business with <i>eligible complainants</i> and has no reasonable likelihood of doing so	Conditions in DISP 1.1.12 R apply	N/A
DISP 1.10.1 R (1)	Complaints report	Details	- 6 months preceding the <i>accounting reference date</i> - <i>accounting reference date</i>	30 <i>business days</i>
DISP 1.10.1 R (2)	Complaints report	Details	A year immediately following the <i>firm's accounting reference date</i>	30 <i>business days</i>
DISP 1.10.9R	Single contact point	Details	At the time of authorisation or on subsequent change	Not specified
DISP 1.10A.4 R	Publication of <i>complaints data summary/ total number of complaints</i> (as appropriate)	Email confirmation of publication, containing also a statement that the data summary or total number of <i>complaints</i> (as appropriate) accurately reflects the report submitted to the FCA and stating where the summary/ total number of <i>com-</i>	Upon publication of <i>complaints data summary/ total number of complaints</i> (as appropriate)	Immediately

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		<i>plaints</i> has been published		
DISP 1.11.5 R (1)	<i>Member</i> of Lloyd's qualifies for exemption	Confirmation by the <i>Society</i> of Lloyd's that a specified <i>member</i> of Lloyd's does not do business with <i>eligible complainants</i> and has no reasonable likelihood of doing so	[As above]	N/A
DISP 1.11.5 R (2)	End of exemption for <i>member</i> of Lloyd's	Confirmation by the <i>Society</i> of Lloyd's that the condition in DISP 1.1.12R no longer apply to a specified <i>member</i> of Lloyd's	Conditions in DISP 1.1.12R no longer apply	Not specified
DISP 1.11.6 R	Complaints report by <i>Society</i> of Lloyd's	Details	- 30 September - 31 March each year	One <i>month</i>
DISP 1.11.6D R	Publication of <i>complaints</i> data summary	Email confirmation of publication, containing also a statement that the data summary accurately reflects the report submitted to the <i>FCA</i> and stating where the summary has been published	Upon publication of <i>complaints</i> data summary	Im- mediately

## Dispute resolution: Complaints

### Schedule 3 Fees and other required payment

#### Sch 3.1 G

There are no requirements for fees or other payments in *DISP*.

#### Sch 3.2 G [deleted]





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## Dispute resolution: Complaints

### Schedule 4 Powers Exercised

**Sch 4.1 G**  
[deleted]

**Sch 4.2 G**  
[deleted]

**Sch 4.3 G**  
[deleted]

**Sch 4.4 G**  
[deleted]

**Sch 4.5 G**  
[deleted]

[**Note:** certain rules in *FEES* are made exclusively by the *FOS Ltd*. A list of those rules is set out in ■ GEN Sch 4.12 G.]



## Dispute resolution: Complaints

### Schedule 5 Actions for damages for contravention under section 150 of the Act

#### Sch 5.1 G

1	The table below sets out the <i>rules</i> in <i>DISP</i> contravention of which by an <i>authorised person</i> may be actionable under section 138D of the <i>Act</i> (Actions for damages) by a <i>person</i> who suffers loss as a result of the contravention.
2	If a "Yes" appears in the column headed "For private person?", the <i>rule</i> may be actionable by a " <i>private person</i> " under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001 No 2256)). A "Yes" in the column headed "Removed" indicates that the FCA has removed the right of action under section 138D(3) of the <i>Act</i> . If so, a reference to the <i>rule</i> in which it is removed is also given.
3	The column headed "For other person?" indicates whether the <i>rule</i> may be actionable by a <i>person</i> other than a <i>private person</i> (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of <i>person</i> by whom the <i>rule</i> may be actionable is given.

#### Sch 5.2 G

Chapter/ Appendix	Section/ Annex	Paragraph	Right of Action under s138D		
			For private person?	Removed?	For other person?
1 Complaints handling arrangements for <i>firms</i>	All rules apart from DISP 1.11.13 R and DISP 1.11.14 R	-	Yes	-	-
1	7	14 and 15	No	Yes - DISP 1.11.21 R	No
2 Jurisdiction rules	-	-	Yes	-	-
3 Complaints handling procedures of the <i>Financial Ombudsman Service</i>	-	-	Yes	-	-
4 The <i>standard terms</i>	-	-	N/A	-	-



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## Dispute resolution: Complaints

### Schedule 6 Rules that can be waived

#### Sch 6.1 G

As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives or European Regulations, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives or Regulations.

