

Chapter 2

Jurisdiction of the Financial Ombudsman Service

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

General time limits

2.8.1



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) in relation to a *complaint* that is not an *EMD complaint* or a *PSD complaint*, eight weeks have elapsed since the *respondent* received the *complaint*; or

in relation to a complaint that is an *EMD complaint* or a *PSD complaint*:

- (a) 15 *business days* have elapsed since the *respondent* received the *complaint* and the complainant has not received a holding response as described in ■ DISP 1.6.2A R(2)(a); or
 - (b) where the complainant has received a holding response, 35 *business days* 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 (or for *EMD complaints* and *PSD complaints* 15 *business days* or, in exceptional circumstances, 35 *business days*) 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*.

- 2.8.1A** **R** Where a *respondent* has chosen to treat a *complaint* in its entirety in accordance with **■ DISP 1.6.2AR**, notwithstanding that parts of it fall outside **■ DISP 1.6.2AR**, **■ DISP 2.8** will apply as if the whole complaint were an *EMD complaint* or a *PSD 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

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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

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- (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

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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

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- (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

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Where a *complaint* meets the requirements of ■ DISP 2.8.9(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 2.8.9(1) on an *Ombudsman* considering the *complaint*.