

Chapter 3

Complaint handling procedures of the Financial Ombudsman Service

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* and the *Claims Management 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 order came into effect.
- 3.3.3A G Under the *Claims Management Order* the *Ombudsman* may dismiss a *relevant claims management complaint*, if he considers that the complaint would have been dismissed under the rules of the *former scheme* or should be dismissed under the grounds for dismissal in ■ DISP 3.3.4R or ■ DISP 3.3.4AR. Where the *Ombudsman* is dealing with a *relevant new claims management complaint* the rules of the *former scheme* must be read as if they were subject to paragraph 13 of Schedule 3 of the *ADR Regulations*.

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

(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*.

3.3.4A

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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*.

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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.

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