

Chapter 3

Complaint handling procedures of the Financial Ombudsman Service

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.