

Chapter 3

Complaint handling procedures of the Financial Ombudsman Service

3.6 Determination by the Ombudsman

Fair and reasonable

- 3.6.1

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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

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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

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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.
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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

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(1) Where the *Ombudsman* is determining what is fair and reasonable in all the circumstances of a *relevant new complaint*, a *relevant transitional complaint*, or a *relevant new claims management complaint*, the *Ombudsman Transitional Order*, the *Mortgage and General Insurance Complaints Transitional Order* and the *Claims Management Order* make provision for the *Ombudsman* 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 order came into effect.

(2) Where the *Ombudsman* is determining what is fair and reasonable in all the circumstances of a *relevant transitional funeral plan complaint*, the *Funeral Plans Order* makes provision for the *Ombudsman* to take
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into account what determination the *Funeral Planning Authority* might have been expected to reach in relation to an equivalent complaint dealt with under the *former scheme*.

Consumer redress schemes

3.6.5A

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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

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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).

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- (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

- (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.