

COMPLAINTS SOURCEBOOK INSTRUMENT 2001

- A. The Financial Services Authority makes the rules and gives the guidance in this instrument (“DISP”), except those provisions which are made exclusively by the Financial Ombudsman Service Limited, in the exercise of the powers listed in Schedule 4 to DISP (Powers exercised).
- B. The instrument shall come into force as follows: (1) DISP 1.5.4R – DISP 1.5.7R come into force on 1 April 2002; (2) the remainder of this instrument comes into force at the beginning of the day on which section 19 of the Act (the general prohibition) of the Financial Services and Markets Act 2000 (“the Act”) comes into force.
- C. The provisions of the Act relevant to making rules and listed in Schedule 4 to DISP (Powers exercised) are specified for the purpose of section 153(2) of the Act (Rule-making instruments).
- D. This instrument may be cited as the Complaints Sourcebook Instrument 2001.
- E. This Annex to this instrument (including its Schedules) may be cited as Dispute resolution: the Complaints sourcebook (or DISP).

By order of the Board

15 November 2001

ANNEX



Dispute resolution: Complaints



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(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	<i>DISP</i> 1.2.15G	R	A firm must cease to use letter-headed paper or marketing literature which refers to its membership of a former scheme no later than 30 June 2002.	<i>Commencement</i> to 30.6.02	<i>Commencement</i>
2	<i>DISP</i> 1.5.4R – <i>DISP</i> 1.5.7R	R	A firm must include, in the first report which it submits to the FSA under <i>DISP</i> 1.5.4R in respect of the 1 April 2002 – 30 September 2002 reporting period, the total number of reportable complaints (that is, complaints subject to <i>DISP</i> 1.4 – <i>DISP</i> 1.6) which it has received but not closed by the beginning of that reporting period (including any such complaint which could be referred to the <i>Financial Ombudsman Service</i> as a relevant new complaint under the <i>Ombudsman Transitional Order</i>.	01.4.02 – 31.10.02	01.4.02

(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
3	<i>DISP</i> 1.5.4R – <i>DISP</i> 1.5.7R	G	Transitional provision 2R requires a <i>firm</i> , in addition to complying with the reporting requirements in <i>DISP</i> 1.5.4R, to include in its first report under <i>DISP</i> 1.5.4R the total number of complaints subject to <i>DISP</i> 1.4 – <i>DISP</i> 1.6 which remain open at the beginning of that reporting period (that is, on 1 April 2002). This will enable the <i>FSA</i> to know how many complaints were carried forward into the first reporting period. (A <i>firm</i> is not required to provide a breakdown by category code or generic product type of the complaints carried forward at 1 April 2002, but must do so in respect of complaints received during the 1 April 2002 to 30 September 2002 reporting period and in respect of subsequent reporting periods.)	01.4.02 – 31.10.02	01.4.02
4	<i>DISP</i> App 1	R	<i>Firms are subject to DISP App 1 in relation to relevant existing complaints.</i>	From commencement	Commencement
5	<i>DISP</i> App 1	G	The <i>Ombudsman Transitional Order</i> makes special provision for the handling by <i>FOS Ltd</i> of "relevant existing complaints" (that is, complaints which the former schemes have partly completed at commencement). The arrangements for handling these complaints are set out in <i>DISP</i> App 1. (The handling of complaints which <i>firms</i> have partly completed at commencement is described at <i>DISP</i> 1.4.6R.)	From commencement	Commencement
6	<i>DISP</i> 2, <i>DISP</i> 3, <i>DISP</i> 5 and <i>DISP</i> App 1	R	In <i>DISP</i> 2, <i>DISP</i> 3, <i>DISP</i> 5 and <i>DISP</i> App 1, references to a "firm" or "firms" include unauthorised persons subject to the Compulsory Jurisdiction in accordance with the <i>Ombudsman Transitional Order</i>.	From commencement	Commencement

(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
7	<i>DISP 2, DISP 3, DISP 5 and DISP App 1</i>	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 <i>DISP 1</i> , but references to "firm" in <i>DISP 2, DISP 3, DISP 5 and DISP App 1</i> include <i>unauthorised persons</i> subject to the <i>Compulsory Jurisdiction</i> in relation to <i>relevant complaints</i> , where applicable.	From commencement	Commencement
8	<i>DISP 1, DISP 2, DISP 3, DISP 4, DISP 5 and DISP App 1</i>	R	In relation to <i>relevant complaints</i>, references in <i>DISP 1, DISP 2, DISP 3, DISP 4, DISP 5 and DISP App 1</i> to an "eligible complainant" 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 complaint shall be construed accordingly.	From commencement	Commencement

COMPLAINTS SOURCEBOOK

DISPUTE RESOLUTION: COMPLAINTS

Introduction

Access for retail consumers to mechanisms for dealing with complaints about financial services *firms* is a key part of the regulatory regime. The *Act* gives the *FSA* the power to make rules relating to the handling of complaints by *firms* and provides for the establishment of an independent dispute resolution scheme (the *Financial Ombudsman Service*) to resolve complaints about financial services *firms* quickly and with minimum formality. The body established to administer and operate this scheme (the “scheme operator”) is the Financial Ombudsman Service Limited (“*FOS Ltd*”).

This module of the *FSA Handbook* contains the rules and guidance relating to the handling of complaints by *firms* and to the operation of the *Financial Ombudsman Service*. Responsibility for the rules relating to the *Financial Ombudsman Service* is shared under the *Act* between the *FSA* and the *FOS Ltd*, with those rules and other requirements written by the *FOS Ltd* being subject to approval by, or the consent of, the *FSA*.

Under the *Act*, the *Financial Ombudsman Service* comprises two jurisdictions:

- (a) The *Compulsory Jurisdiction* covers *firms* which are required to participate in the *Financial Ombudsman Service* in respect of complaints about activities specified by the *FSA* [and *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*];
- (b) The *Voluntary Jurisdiction* can cover financial services activities not included in the *Compulsory Jurisdiction*. Both *firms* and *unauthorised firms* can participate in the *Voluntary Jurisdiction* by contractual agreement with the *FOS Ltd* (in accordance with the *Standard Terms* – see below) and are known as *VJ participants*.

Although the authority to make the rules relating to the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction* derives from different sections of the *Act*, the provisions have been co-ordinated to ensure that, wherever possible, they are identical.

Chapter 1: Complaint handling procedures for firms

These rules set out the complaint handling procedures which *firms* capable of giving rise to an eligible complaint under the *Compulsory Jurisdiction* (see Chapter 2) must establish. They are made by the *FSA* under section 138 of the *Act* and paragraph 13 of Schedule 17 to the *Act*. These rules, with some exceptions, are applied to *VJ participants* by contract via the *Standard Terms* set by the *FOS Ltd* (Chapter 4).

Chapter 2: Jurisdiction rules

These rules set out the scope of the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*. They specify who can refer a complaint to the *Financial Ombudsman Service* and the time limits for doing so, as well as which activities are covered by the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction*. The rules also set out the territorial scope of the *Financial Ombudsman Service*. They are relevant to consumers who may wish to refer complaints to the *Financial Ombudsman Service*; to firms which are subject to the *Compulsory Jurisdiction*; to *unauthorised persons* who are subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*; to *VJ participants* and to the *Ombudsman* himself. The rules relating to the scope of the *Compulsory Jurisdiction* are made by the *FSA* (under section 226 of the *Act*); the rules relating to the scope of the *Voluntary Jurisdiction* are made by the *FOS Ltd*, with *FSA* approval (under section 227). The rules relating to the time limits for referring a complaint to the *Financial Ombudsman Service* are made by the *FSA* under paragraph 13 of Schedule 17 to the *Act* and are applied to *VJ participants* by contract via the *Standard Terms* set by the *FOS Ltd*.

Chapter 3: Complaint handling procedures of the Financial Ombudsman Service

These rules apply to the *Ombudsman*, to *firms*, and to *unauthorised persons* who are subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*. They are also relevant to complainants. They set out how the *FOS Ltd* and, in particular, the *Ombudsman* will handle complaints under the *Financial Ombudsman Service*. For the purposes of the *Compulsory Jurisdiction*, they comprise the scheme rules and the costs rules (made by the *FOS Ltd*, with *FSA* consent or approval, under paragraph 14 of Schedule 17 and section 230 respectively) and rules made by the *FSA* on the kinds of loss or damage that can be compensated, including the maximum amount which can be awarded (s229). These procedural rules are applied to *VJ participants* via the *Standard Terms*.

Chapter 4: The Standard Terms

The *Standard Terms* are made, with *FSA* approval, by the *FOS Ltd* under paragraph 18 of Schedule 17 to the *Act* and are the contractual terms by which *VJ participants* participate in the *Voluntary Jurisdiction*.

Appendix 1: Relevant Existing Complaints

The *Ombudsman Transitional Order*, made by HM Treasury under sections 426-428 of the *Act*, extends the scope of the *Financial Ombudsman Service* to enable it to deal with complaints about pre-commencement business where these could have been handled by a former scheme ("*relevant complaints*") and makes special provision for the handling of these complaints.

It distinguishes between:

- (a) *relevant existing complaints* (ie complaints referred to, but not determined by, a former scheme (other than the *Personal Insurance Arbitration Service*) before commencement (see article 2 of the *Ombudsman Transitional Order*); and

- (b) *relevant new complaints* (ie complaints referred to the *Financial Ombudsman Service* after *commencement* which relate to a pre-*commencement* act or omission, in respect of which the *firm* was, immediately before *commencement*, subject to a *former scheme*) (see article 3 of the *Ombudsman Transitional Order*).

The Order enables the *FOS Ltd*, with only a few exceptions, to handle *relevant new complaints* in accordance with its new procedures, as set out in *DISP* 1 to 5 and these are covered in the main body of the *DISP* rules. Except as otherwise indicated, the term "complaint" in *DISP* 1 to 5 therefore includes a *relevant new complaint*.

However, the *Ombudsman Transitional Order* makes different provision for the handling of *relevant existing complaints* (ie complaints which the *former schemes* have partly completed at *commencement*). These complaints will be passed over to the *Financial Ombudsman Service* by the *former schemes* (except the *Personal Insurance Arbitration Service*) at *commencement* and the *Ombudsman Transitional Order* requires the *FOS Ltd* to complete the handling of these cases. However, it provides that the *Financial Ombudsman Service* must do this, in a significant number of respects, in accordance with the procedures of the relevant *former scheme*. The arrangements for dealing with these complaints are set out in *DISP* App 1. This describes the ways in which *relevant existing complaints* must be treated differently from other complaints dealt with under the *Financial Ombudsman Service*, but cross refers to the provisions in *DISP* 1 to 5, where appropriate. (*DISP* 1 explains how complaints which are partly completed by *firms* (as distinct from *former schemes*) at *commencement* are to be handled.)

Appendix 2: FSA's guidance on handling mortgage endowment complaints

DISP App 2 contains FSA's guidance to *firms* on handling mortgage endowment complaints..

Chapter 1

Complaint handling procedures for firms

1.1 Application and Purpose

Application

- 1.1.1** **R** _{/1} This chapter applies to every *firm* in respect of activities carried on from an establishment maintained by the *firm* (or its *appointed representative*) in the *United Kingdom*, except:
- (1) (a) a *firm* that is exempt under *DISP* 1.1.7R;
 - (b) a *UCITS* *qualifier*;
 - (c) an *authorised professional firm* in so far as its *non-mainstream regulated activities* are concerned; and
 - (2) in relation to the *Society of Lloyd's*, *members of the Society* and *managing agents*, *DISP* 1 applies subject to *DISP* 1.7 (the *Society of Lloyd's*).
- 1.1.2** **G** _{/1} This chapter is also relevant to those who might wish to refer a complaint to the *Financial Ombudsman Service*.
- 1.1.3** **G** _{/1} *Firms* are responsible for ensuring their *appointed representatives'* compliance with *DISP* 1.
- 1.1.4** **G** _{/1} *VJ participants* are subject to *DISP* 1, except *DISP* 1.1.5R and *DISP* 1.5 (Record keeping and reporting), by contract under the *standard terms* (see *DISP* 4). *DISP* 1.2 applies to *VJ participants* only in relation to complaints about activities of the *VJ participant* specified in *DISP* 2.6.9R.
- 1.1.5** **R** _{/1} Except as otherwise specified, references to a "complaint" in this chapter include a complaint which is capable of becoming a *relevant new complaint*.
- 1.1.6** **G** _{/1} A complaint about pre-commencement investment business carried on by a *firm* which was regulated in respect of that business by a *recognised professional body* will be handled under the arrangements of that *professional body*, and is outside the scope of *DISP*.

Exemption

1.1.7 **R** ^{/1} A *firm* which does not conduct business with *eligible complainants* and has no reasonable likelihood of doing so is exempt from *DISP* 1.2 – *DISP* 1.7, if it notifies the *FSA* in writing of this fact and that notice remains current, with effect from the date that notice is received by the *FSA*.

1.1.8 **R** ^{/1} A notice under *DISP* 1.1.7R must be given:

- (1) by 28 February 2002, in which case it will remain current until 31 March 2003; or
- (2) before, or as soon as practicable after, the time of the *firm's* *authorisation* by the *FSA*, in which case it will remain current until the end of the *financial year* in which it is given; or
- (3) as soon as practicable after the *firm* ceases to conduct business with *eligible complainants*, in which case it will remain current until the end of the *financial year* in which it is given; or
- (4) in February of each *financial year* (beginning with February 2003), in which case it will remain current until the end of the next *financial year*.

1.1.9 **G** ^{/1} A notice under *DISP* 1.1.7R will be renewable every 12 *months*.

End of exemption

1.1.10 **R** ^{/1} A *firm* which is exempt under *DISP* 1.1.7R must notify the *FSA* if the conditions in *DISP* 1.1.7R no longer apply.

1.1.11 **G** ^{/1} A *firm* to which the conditions in *DISP* 1.1.7R no longer apply is subject to *DISP* 1.2 – *DISP* 1.7.

Purpose

1.1.12 **G** ^{/1} The purpose of this chapter is to set out the rules relating to the internal handling of complaints by *firms*, including the procedures which a *firm* must put in place; the time limits within which a *firm* must deal with a complaint; the records of a complaint which a *firm* must make and retain; and the requirements on a *firm* to report information about complaints to the *FSA*. This is to ensure that complaints are handled fairly, effectively and promptly, and resolved at the earliest possible opportunity, minimising the number of unresolved complaints which need to be referred to the *Financial Ombudsman Service*. This purpose is consistent with the *FSA's* consumer protection regulatory objective.

1.2 Internal complaint handling procedures: general requirements

Requirement to have internal complaint handling procedures

- 1.2.1** **R** /1 A *firm* must have in place and operate appropriate and effective internal complaint handling procedures (which must be written down) for handling any expression of dissatisfaction, whether oral or written, and whether justified or not, from or on behalf of an *eligible complainant* about that *firm's* provision of, or failure to provide, a financial service.
- 1.2.2** **G** /1 An *eligible complainant* is a *person* who would be eligible to refer a complaint to the *Financial Ombudsman Service*, as defined in *DISP* 2.4.
- 1.2.3** **G** /1 *Firms* are not obliged to restrict their internal complaint handling procedures to expressions of dissatisfaction from *eligible complainants*. They may, if they wish, also establish procedures for handling complaints from other customers.
- 1.2.4** **G** /1 The internal complaint handling procedures should provide for:
- (1) receiving complaints;
 - (2) responding to complaints;
 - (3) the appropriate investigation of complaints; and
 - (4) notifying complainants of their right to go the *Financial Ombudsman Service* where relevant.
- 1.2.5** **G** /1 When deciding what constitutes an appropriate complaint handling procedure (see *DISP* 1.2.1R), a *firm* should have regard to:
- (1) the type of business it undertakes;
 - (2) its size and organisational structure;
 - (3) the nature and complexity of the complaints it is likely to receive; and
 - (4) the likely number of complaints it will receive and have to investigate.
- 1.2.6** **G** /1 *DISP* 1.2.1R does not prevent the use of a third party administrator for the purposes of handling complaints.

1.2.7 **G**_{/1} In establishing their internal complaint handling procedures, *firms* may wish to take account of British Standard 8600:1999 “Complaints Management Systems - Guide to Design and Implementation”. This is available on request from the *FSA*.

1.2.8 **G**_{/1} The internal complaint handling procedures should enable complainants to make a complaint by any reasonable means (for example, letter, telephone, e-mail or in person).

Publicising the procedures

1.2.9 **R**_{/1} **A firm must:**

- (1) refer in writing to the availability of its internal complaint handling procedures at, or immediately after, the point of sale;
- (2) publish details of its internal complaint handling procedures, supply a copy on request, and supply a copy automatically to the complainant when it receives a complaint (unless the complaint is resolved by close of business on the next *business day*); and
- (3) display in each of its branches or sales offices to which *eligible complainants* have access a notice indicating that it is covered by the *Financial Ombudsman Service*.

1.2.10 **G**_{/1} The requirements in *DISP* 1.2.9R(1)-(3) relate to the internal complaints procedures required by *DISP* 1.2.1R.

1.2.11 **G**_{/1} In order to comply with *DISP* 1.2.9R(1), a *firm* may include reference to its complaint handling procedures in contractual documentation, for example, (where the *firm* is subject to the requirements in *COB*) in a *terms of business* letter, *key features document* or *client agreement*.

1.2.12 **G**_{/1} Where a complaint is also subject to the more detailed requirements in *DISP* 1.4 - *DISP* 1.6, the *firm* may send out a copy of its complaint handling procedures (as required by *DISP* 1.2.9R (2)) at the same time as the acknowledgement required by *DISP* 1.4.1R.

1.2.13 **G**_{/1} For the purposes of satisfying *DISP* 1.2.9R(2) a *firm* may wish to produce a leaflet which summarises its internal complaint handling procedures.

1.2.14 **G**_{/1} *Firms'* literature and correspondence relating to complaints should be in clear and plain language.

1.2.15 **G**_{/1} A *firm* may also, if it wishes to do so, disclose the fact that it is covered by the *Financial Ombudsman Service* by including the *Financial Ombudsman Service* logo in any marketing literature or correspondence directed at *eligible complainants*, provided that it does so in a way which is not misleading.

Particular matters for which procedures must make provision

1.2.16 **R**_{/1} **A firm's internal complaint handling procedures under *DISP* 1.2.1R must make provision for:**

- (1) complaints to be investigated by an employee of sufficient competence who, where appropriate, was not directly involved in the matter which is the subject of the complaint;
- (2) the *person* charged with responding to complaints to have the authority to settle complaints (including the offering of redress where appropriate) or to have ready access to someone who has the necessary authority; and
- (3) responses to complaints to address adequately the subject matter of the complaint and, where a complaint is upheld, to offer appropriate redress.

Providing compensation

1.2.17 **R** Where a *firm* decides that redress is appropriate, a *firm* must provide a complainant with fair compensation for any acts or omissions for which it was responsible and comply with any offer of redress which the complainant accepts.
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1.2.18 **G** In deciding whether or not to accept a complaint and what would be appropriate redress, *firms* may wish to consider any relevant guidance published by the FSA, the *Financial Ombudsman Service* or by any of the *former schemes*.
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1.2.19 **G** Appropriate redress will not always involve financial redress. It may, for example, simply involve an apology. Where financial redress is deemed appropriate, it may include a reasonable rate of interest.
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1.2.20 **G** *DISP* App 2 contains *guidance* to *firms* on the approach to assessing financial loss and appropriate compensation in circumstances where a *firm* regards a complaint in relation to the sale of an endowment policy (which is sold for the purposes of repaying a mortgage) as justified.
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Using the procedures

1.2.21 **R** A *firm* must take reasonable steps to ensure that all relevant employees (including employees of *appointed representatives*) are aware of the *firm's* internal complaint handling procedures and must endeavour to ensure that they act in accordance with them.
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1.2.22 **R** A *firm* must put in place appropriate management controls and take reasonable steps to ensure that in complying with *DISP* 1.2.1R it handles complaints fairly, consistently and promptly and that it identifies and remedies any recurring or systemic problems, as well as any specific problem identified by a complaint.
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1.3 Internal complaint handling procedures: additional requirements

1.3.1 **G** _{/1} *DISP 1.4-DISP 1.6* contain additional requirements, concerning time limits, record keeping and reporting and cooperation with the *Ombudsman*, for handling complaints, unless *DISP 1.3.3R* applies.

1.3.2 **R** _{/1} *DISP 1.4-DISP 1.6* also apply to any complaints that are capable of becoming *relevant new complaints*, unless *DISP 1.3.3R* applies.

1.3.3 **R** _{/1} *DISP 1.4 – DISP 1.6* do not apply:

- (1) where the *firm* has taken reasonable steps to determine, and has determined, that the complaint:
 - (a) is not made by, or on behalf of, an *eligible complainant*; or
 - (b) does not relate to an activity of that *firm* which comes under the jurisdiction of the *Financial Ombudsman Service*; or
 - (c) does not involve an allegation that the complainant has suffered, or may suffer, financial loss, material distress or material inconvenience; or
- (2) where the complaint has been resolved by close of business on the *business day* following its receipt.

1.3.4 **G** _{/1} Under the *Ombudsman Transitional Order*, a complaint received by a *firm* either before or after *commencement* is capable of becoming a *relevant new complaint*. A *firm* is expected to handle such complaints in accordance with *DISP 1*. However, where a *firm* has already received, but only partly completed the handling of, such a complaint by *commencement*, *DISP 1.4.6R* recognises that this may not always be practicable.

1.3.5 **G** _{/1} Financial loss includes consequential or prospective loss, in addition to actual loss. For example, a complaint may involve an allegation that the complainant may suffer financial loss which has not yet crystallised because of the type of product involved (for example, pensions, endowments etc).

1.4 Time limits for dealing with a complaint

Written acknowledgement within five business days

1.4.1 **R** ^{/1} A *firm* must send a written acknowledgement of a complaint within five *business days* of its receipt, giving the name or job title of the individual handling the complaint for the *firm* (together with details of the *firm*'s internal complaint handling procedures).

1.4.2 **G** ^{/1} A *firm* which is able to provide a *final response* within five *business days* of receipt of a complaint may combine its acknowledgement of the complaint with the *final response*. (For complaints which are subject to the FSAVC review, see *DISP* 1.4.15R to *DISP* 1.4.17G.)

1.4.3 **G** ^{/1} A *firm* should aim to resolve complaints at the earliest possible stage.

Final or holding response within four weeks

1.4.4 **R** ^{/1} A *firm* must, within four weeks of receiving a complaint, (unless *DISP* 1.4.7R or *DISP* 1.4.9R applies) send the complainant either:

- (1) a *final response*; or
- (2) a holding response, which explains why it is not yet in a position to resolve the complaint and indicates when the *firm* will make further contact (which must be within eight weeks of receipt of the complaint).

Final or other response within eight weeks

1.4.5 **R** ^{/1} A *firm* must, by the end of eight weeks after its receipt of a complaint, (unless *DISP* 1.4.7R or *DISP* 1.4.9R applies) send the complainant either:

- (1) a *final response*; or
- (2) a response which:

- (a) explains that the *firm* is still not in a position to make a *final response*, gives reasons for the further delay and indicates when it expects to be able to provide a *final response*; and
- (b) informs the complainant that he may refer the complaint to the *Financial Ombudsman Service* if he is dissatisfied with the delay and encloses a copy of the *Financial Ombudsman Service's* explanatory leaflet.

Complaints being dealt with at commencement

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Where, at *commencement*, a *firm* is still dealing with a complaint that is capable of being referred to the *Financial Ombudsman Service* as a *relevant new complaint*:

- (1) it may continue to try to resolve the complaint in accordance with its *pre-commencement* complaints procedures; but
- (2) it must, within eight weeks of *commencement*, send the complainant a response which satisfies *DISP 1.4.5R*, unless *DISP 1.4.7R* or *DISP 1.4.9R* applies)

Early resolution of complaints

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DISP 1.4.4R to *DISP 1.4.6R* do not apply if the complainant has already indicated in writing acceptance of a response by the *firm*, provided that the response informed the complainant how to pursue his complaint if he remained dissatisfied.

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DISP 1.4.7R recognises that a response by the *firm* will not necessarily be its *final response* but that it may, nonetheless, resolve the complaint.

Firms with two-stage complaints procedures

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Where, within eight weeks of receiving a complaint, the *firm* sends the complainant a written response which:

- (1) offers redress (whether or not it accepts the complaint) or rejects the complaint and gives reasons for doing so;
- (2) informs the complainant how to pursue his complaint with the *firm* if he remains dissatisfied;
- (3) refers to the ultimate availability of the *Financial Ombudsman Service* if he remains dissatisfied with the *firm's* response; and

- (4) indicates that it will regard the complaint as closed if it does not receive a reply within eight weeks;

the *firm* is not obliged to continue to comply with *DISP* 1.4.4R or *DISP* 1.4.5R unless the complainant indicates that he remains dissatisfied, in which case, the obligation to comply with *DISP* 1.4.5R resumes.

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If the complainant takes more than a week to reply to a written response of the kind described in *DISP* 1.4.9R, the additional time in excess of a week will not count for the purposes of the time limits in *DISP* 1.4.4R-*DISP* 1.4.6R.

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- (1) *DISP* 1.4.9R caters for the situation where a *firm's* complaints procedures provide for a complainant who is dissatisfied with the *firm's* response to refer the complaint back to the *firm* again or to the *firm's* head office before a *final response* is issued.
- (2) Such *firms* are subject to the time limits in *DISP* 1.4.4R to *DISP* 1.4.6R in the same way as any other *firm*. However, *DISP* 1.4.9R recognises that some complainants may never respond to a *firm* or may take a long time to do so.
- (3) Provided that the *firm* has sent a letter which complies with the conditions in *DISP* 1.4.9R within eight weeks of receiving the complaint:
- (a) if the complainant does not reply at all, the *firm* is not required to send a *final response*;
 - (b) if the complainant does not reply within eight weeks of the *firm's* letter, *DISP* 1.5.7R(3) enables the *firm* to treat the complaint as a closed complaint for the purposes of the reporting requirement in *DISP* 1.5.4R;
 - (c) if the complainant does reply (within or after eight weeks), the *firm* is required to continue to comply with *DISP* 1.4.5R, and the time limits in *DISP* 1.4.5R therefore resume. But *DISP* 1.4.10R allows the *firm* to discount, for the purposes of the time limits in *DISP* 1.4.4R to *DISP* 1.4.6R, any time in excess of a week taken by the complainant to reply.
- (4) The *FSA* expects that *firms* operating a two-stage complaints procedure will wish to provide complainants with easy access to the second stage of the process (for example, by referring complaints on to the next stage for them if they remain dissatisfied).

The final response

1.4.12

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When a *firm* sends a complainant its *final response*, the *final response* must:

- (1) inform the complainant that he may refer the complaint to the *Financial Ombudsman Service* if he is dissatisfied with the *final response* and that he must do so within six *months*; and

(2) enclose a copy of the *Financial Ombudsman Service's* explanatory leaflet (unless it has already done so under *DISP 1.4.5R(2)(b)*).

1.4.13 **G** /1 Copies of the *Financial Ombudsman Service's* explanatory leaflet may be reproduced under licence or can be obtained from the *Financial Ombudsman Service*.

1.4.14 **G** /1 Under *DISP 1.4.5R* and *DISP 1.4.6R*:

- (1) a complainant can refer his complaint to the *Financial Ombudsman Service* if he receives a *final response* with which he is dissatisfied or the *firm* has had at least eight weeks to resolve the complaint and has failed to do so in that time; the complainant may decide whether to give the *firm* more time before exercising any right he may have to refer a complaint to the *Financial Ombudsman Service*;
- (2) the six *month* time limit within which a complainant must refer a complaint to the *Financial Ombudsman Service* begins at the date when the *final response* is sent by the *firm*.

Complaints subject to the FSAVC review

1.4.15 **R** /1 *DISP 1.4.1R* to *DISP 1.4.14G* and *DISP 1.5.1R* and *DISP 1.5.4R* do not apply where the 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.

1.4.16 **R** /1 Where *DISP 1.4.15R* applies, the *firm* must, if the complainant remains dissatisfied on completion of that review, treat that expression of dissatisfaction as a complaint and comply with *DISP 1.4.1R-DISP 1.4.14G*, *DISP 1.5.1R* and *DISP 1.5.4R*.

1.4.17 **G** /1 The effect of *DISP 1.4.15R* is to relieve the *firm* of the obligation to comply with the requirements and time limits for replying to complainants, and the record-keeping and reporting requirements in *DISP 1.5.1R* and *DISP 1.5.4R*, where a complaint is subject to the FSAVC review. However, if a complainant remains dissatisfied with the outcome of the review, *DISP 1.4.16R* requires the *firm* to treat this as a complaint and comply with these requirements just as it would in respect of any other complaint. *Firms* are therefore required to record and report such complaints only where they receive a complaint about the outcome of the review.

1.5 Record keeping and reporting

Making and retaining records of complaints

1.5.1 **R** ^{/1} A *firm* must make and retain records of complaints subject to *DISP* 1.4 – *DISP* 1.6 for a minimum period of three years from the date of its receipt of the complaint.

1.5.2 **G** ^{/1} The records required by *DISP* 1.5.1R are for the purposes of monitoring by the *FSA* and also to ensure that the *firm* is able to cooperate, as necessary, with the *Financial Ombudsman Service*. They should include:

- (1) the name of the complainant;
- (2) the substance of the complaint; and
- (3) any correspondence between the *firm* and the complainant, including details of any redress offered by the *firm*.

1.5.3 **G** ^{/1} *DISP* 4.2.3G covers record keeping by *VJ participants*.

Reporting complaints to the *FSA*

1.5.4 **R** ^{/1} A *firm* must provide the *FSA*, twice a year, with a report containing (for the relevant reporting period) information about:

- (1) the total number of complaints subject to *DISP* 1.4 – *DISP* 1.6 received by the *firm*, broken down according to the categories and in respect of each of the generic product types listed at *DISP* 1 Ann 1R which are relevant to the *firm*; and
- (2) the total number of complaints subject to *DISP* 1.4 - *DISP* 1.6 closed by the *firm*:
 - (a) within four weeks or less of receipt;
 - (b) within four to eight weeks of receipt; and
 - (c) more than eight weeks after receipt; and

(3) the total number of complaints subject to *DISP* 1.4 - *DISP* 1.6 outstanding at the end of the reporting period.

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Where 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.

1.5.6

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For the purposes of *DISP* 1.5.4R:

- (1) the relevant reporting periods are from 1 April to 30 September and from 1 October to 31 March each year; and
- (2) reports are to be submitted to the *FSA* within one *month* of the end of the relevant reporting period.

Reporting: when is a complaint closed?

1.5.7

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For the purpose of *DISP* 1.5.4R(2), a closed complaint is a complaint:

- (1) where the *firm* has sent a *final response*; or
- (2) where the complainant has indicated in writing acceptance of the *firm's* earlier response; or
- (3) where *DISP* 1.4.9R applies, provided that the complainant has not responded to the *firm* within eight weeks of the written response referred to in that *rule*.

1.5.8

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Where a complaint is reported as closed under *DISP* 1.5.7(3) because the complainant has not replied to the *firm* within eight weeks of a written response which meets the requirements in *DISP* 1.4.9R, the *firm* may treat the date of that response as the date when the complaint was closed for the purposes of the reporting requirements in *DISP* 1.5.4(2).

Reporting: complaints subject to the FSAVC review

1.5.9

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Where a complaint is subject to the FSAVC review, the record keeping and reporting requirements in *DISP* 1.5.1R and *DISP* 1.5.4R apply only where the complainant is dissatisfied with the outcome of that review (under *DISP* 1.4.15R and *DISP* 1.4.16R).

Method of submission of reports

1.5.10

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A report under this section must be given or addressed, and delivered, in the way set out in *SUP* 16.3.6R - *SUP* 16.3.16G (General provisions on reporting), except that, instead of the *firm's* usual supervisory contact, the report should be given or addressed to [to be added later].

Notification of contact point for complainants

1.5.11

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For the purpose of inclusion in the public record maintained by the *FSA*, a *firm* must provide the *FSA*, at the time of its *authorisation*, with details of a single contact point within the *firm* for complainants and must notify the *FSA* of any subsequent change.

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The contact point can be by name, job title or department and may include, for example, a helpline telephone number.



1.6 Cooperation by firms with the Ombudsman

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A *firm* must cooperate fully with the *Ombudsman* in the handling of complaints against it.

1.6.2

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Cooperation with the *Ombudsman* includes, but is not limited to, producing requested *documents*, adhering to any specified time limits, attending hearings when requested to do so and complying promptly with any settlements or awards.

1.7 The Society of Lloyd's

- 1.7.1 **R** /1 The *Society* of Lloyd's must establish and maintain appropriate and effective procedures for handling complaints by policyholders against *members* of the *Society*, which comply with *DISP* 1.
- 1.7.2 **R** /1 *Members* of the *Society* of Lloyd's must, in complying with *DISP* 1, ensure that the arrangements which the *member* maintains are compatible with the procedures maintained by the *Society* in accordance with *DISP* 1.7.1R, so that, taken as a whole, the requirements of *DISP* are met.
- 1.7.3 **R** /1 The *Society* of Lloyd's must take reasonable steps to ensure that complaints by policyholders against *members* of the *Society* are dealt with under the procedures in *DISP* 1.7.1R and that *members* comply with the requirements of those procedures.
- 1.7.4 **R** /1 A complaint by a policyholder against a *member* of the *Society* of Lloyd's may not be referred to the *Financial Ombudsman Service* until after the internal procedures in *DISP* 1.7.1R have been completed or until after the end of eight weeks from receipt of the complaint, whichever is the earlier.
- 1.7.5 **R** /1 Notices under *DISP* 1.1.7R must be given to the *FSA* by the *Society* of Lloyd's on behalf of any *member* eligible for an exemption under that *rule*.
- 1.7.6 **R** /1 The *Society* of Lloyd's must notify the *FSA* if the conditions in *DISP* 1.1.7R no longer apply to a *member* who is exempt.
- 1.7.7 **R** /1 The report in *DISP* 1.5.4R must be provided by the *Society* of Lloyd's and must cover all complaints by policyholders against *members* falling with the scope of *DISP* 1.5.4R.
- 1.7.8 **G** /1 Each *member* of the *Society* of Lloyd's is individually subject to the *rules* in *DISP* 1 as a result of the *insurance market direction* given in *LLD* 6.2.1D under section 316 of the *Act* (Direction by Authority).
- 1.7.9 **G** /1 However, the *Society* of Lloyd's 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* of Lloyd's in-house Complaints Department.

This procedure (and any procedure that may replace it) will be subject to the requirements in *DISP* 1.

1.7.10

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Members will individually comply with *DISP* 1 if and only if all complaints by policyholders against *members* are dealt with under the internal procedure established by the *Society* of Lloyd's for handling those complaints, provided that this procedure complies with *DISP*. Accordingly, certain of the obligations under *DISP* 1, for example the obligation to report on complaints received and the obligation to pay fees under *DISP* 5, must be complied with by the *Society* on behalf of *members*. *Managing agents* will not have to make a separate report to the *FSA* on complaints reported under *DISP* 1.7.7R.

1.7.11

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

1.7.12

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Complaints from *members* of the *Society* of Lloyd's regarding the activities of *members' advisers*, which cannot be resolved by the *members' adviser*, cannot be referred to the *Financial Ombudsman Service*. (See *LLD* (the Lloyd's sourcebook), for further information concerning complaints by *members* of the *Society* of Lloyd's.)

DISP 1 Ann 1R

Table

DISP 1 Ann 1R (see DISP 1.5.4R)
Complaint Categories

Firms are required to report the total number of complaints subject to DISP 1.4-1.6 received in respect of each of the generic product types listed, according to the categories below.

Generic Product Type*	
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Category	Total Number of Complaints	
	Private Individual	Small Businesses
Overcharging/incorrect charges		
Delay		
Other administrative errors		
Unsuitable or misleading advice		
Failure to carry out instructions		
Poor customer service		
Misleading advertising/product information		
Disputes over sums/amounts payable		
Switching/Churning (wrong advice to surrender one investment and take out another)		
Breach of customer agreement or contract		
Other		
Other		

*Generic Product Types
Free Standing AVC
Personal Pension
Stakeholder Pension
Mortgage Endowment
Other Endowment
Whole of Life
Permanent Health
Term Assurance
PEP/ISA
Unit Trust/OEIC
Investment Bond
Share/Derivative
Current Account
Deposit and savings accounts
Loan secured on land
Other loans
General insurance - motor
General insurance - property
General insurance - other
Other

Chapter 2

2

Jurisdiction of the Financial Ombudsman Service



2.1 Application and Purpose

Application

- 2.1.1** **R** _{/1} This chapter applies to the *Ombudsman*, to *firms* (except *UCITS qualifiers*) and to *VJ participants*.
- 2.1.2** **G** _{/1} It is also relevant to those who might wish to refer a complaint to the *Financial Ombudsman Service*.
- 2.1.3** **R** _{/1} A reference in this chapter to a "complaint" under the *Compulsory Jurisdiction* includes a *relevant new complaint*.
- 2.1.4** **G** _{/1} References in this chapter to "*firms*" are to be construed, where relevant, as including:

 - (1) in accordance with the *Ombudsman Transitional Order*, *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*; and
 - (2) as a result of section 226 of the *Act*, *unauthorised persons* who were formerly *firms* in respect of complaints about acts or omissions which occurred at the time when they were *authorised*, provided that the *Compulsory Jurisdiction* rules were in force in relation to the activity in question.

Purpose

- 2.1.5** **G** _{/1} The purpose of this chapter is to set out the rules which govern the scope of both the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*. They specify who may refer a complaint to the *Financial Ombudsman Service* and the time limits for doing so. They also set out which activities are covered by the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction* and the territorial scope of the *Financial Ombudsman Service*.



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

Complaints (other than relevant new complaints)

2.2.1

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The following conditions will need to be satisfied before a complaint (other than a *relevant new complaint*) can be dealt with under the *Financial Ombudsman Service*:

- (1) the complainant must be an *eligible complainant* (see *DISP* 2.4);
- (2) the *firm* or *VJ participant* about which the complaint is made must be one which is subject to either the *Compulsory Jurisdiction* or the *Voluntary Jurisdiction*, as appropriate;
- (3) the activity to which the complaint relates must be subject to either the *Compulsory Jurisdiction* or the *Voluntary Jurisdiction*, as appropriate;
- (4) in relation to the *Compulsory Jurisdiction*, the act or omission complained of must have occurred at a time when the *rules* in *DISP* 2 were in force, in relation to the activity being complained about;
- (5) the *firm* or *VJ participant* must have failed to resolve the complaint to the satisfaction of the complainant within eight weeks of receiving it; and
- (6) the *firm* or *VJ participant* about which the complaint is made must:
 - (a) in the case of the *Compulsory Jurisdiction*, have been *authorised* under the *Act* at the time of the act or omission to which the complaint relates; or
 - (b) in the case of the *Voluntary Jurisdiction*, have been a *VJ participant* at the time of the act or omission to which the complaint relates or have agreed to let the *Financial Ombudsman Service* consider such complaints, and must not have withdrawn from being a *VJ participant* at the time when the complaint is referred to the *Financial Ombudsman Service*.

Relevant new complaints

2.2.2

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- (1) Article 3 of the *Ombudsman Transitional Order* provides that (subject to certain modifications) the *Compulsory Jurisdiction* applies to a *relevant new complaint*, provided that:
 - (a) the act or omission is that of a *person* who was, immediately before *commencement*, subject to a *former scheme*;

- (b) the act or omission occurred in the carrying on by that *person* of an activity to which that *former scheme* applied; and
 - (c) the complainant is eligible and wishes to have the complaint dealt with under the new scheme.
- (2) For the purposes of (1)(c), the *Ombudsman Transitional Order* enables the *Ombudsman*, if he considers it appropriate, to treat the complainant as eligible if he would have been entitled to refer an equivalent complaint to the *former scheme* in question immediately before *commencement*.
- (3) The *Ombudsman Transitional Order* enables *relevant new complaints* to be handled, as far as possible, under the *Financial Ombudsman Service* procedures, but provides for the rules of the *former schemes* to apply or be taken into account in certain circumstances.
- (4) The *Ombudsman Transitional Order* makes separate provision for the treatment of *relevant existing complaints*, as described in *DISP* App 1.

Dismissal of complaints without consideration of the merits

2.2.3

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Under *DISP* 3.3.1R(1), the *Ombudsman* may dismiss a complaint without considering its merits if he is satisfied that the complainant has not suffered, or is unlikely to suffer, financial loss, material distress or material inconvenience.



2.3 Time Limits for referral of complaints to the Financial Ombudsman Service

2.3.1

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- (1) The *Ombudsman* cannot consider a complaint (except as described in (2)) if the complainant refers it to the *Financial Ombudsman Service*:
 - (a) less than eight weeks after receipt of the complaint by the *firm* or *VJ participant*, unless the *firm* or *VJ participant* has already sent the complainant its *final response*; or
 - (b) more than six *months* after the date on which the complainant is advised by the *firm* or *VJ participant* in its *final response* that he may refer his complaint to the *Financial Ombudsman Service*; or
 - (c) more than six years after the event complained of or (if later) more than three years from the date on which he became aware (or ought reasonably to have become aware) that he had cause for complaint (but see *DISP 2.3.5R*).
- (2) The *Ombudsman* can consider complaints outside the time limits in (1)(b) or (c) when, in his view, the failure to comply with the time limits was as a result of exceptional circumstances or where he is required to do so by the *Ombudsman Transitional Order* (see *DISP 2.3.2G*).

2.3.2

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In relation to *DISP 2.3.1R* (1)(b) and (c), article 4(2) of the *Ombudsman Transitional Order* requires an *Ombudsman* to extend the time limit in respect of a *relevant new complaint* referred to the *Financial Ombudsman Service* not later than twelve *months* after *commencement*, so the time limit applying to the complaint is the same as that which would have applied under the *former scheme* in question as it had effect immediately before *commencement*.

2.3.3

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For the purposes of *DISP 2.3.1R*(2), an example of an exceptional circumstance might be where the complainant has been or is incapacitated or where the *firm* or *VJ participant* has failed, in its *final response*, to inform the complainant that he may refer his complaint to the *Financial Ombudsman Service* or that he must do so within six *months*.

2.3.4

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Under *DISP 5.6.1R* a *firm* or *VJ participant* is liable to pay a case fee in respect of *chargeable cases*. However, in some circumstances, the *Ombudsman* may conclude that a *firm* or *VJ participant* should have more time to resolve a complaint before a case fee is incurred (for example, where there has been delay in obtaining information from third parties or where the *Ombudsman* considers that the

complainant has not fully cooperated with the *firm* or *VJ participant* in the investigation of the complaint).

Exceptions for reviews of past business

2.3.5

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DISP 2.3.1R(1)(c) does not apply where:

- (1) the time limit has been extended under a scheme for review of past business approved by the Treasury under section 404 of the *Act* (Schemes for reviewing past business); or
- (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.



2.4 Who can refer a complaint to the Financial Ombudsman Service?

2.4.1 **R** /1 A complaint may be dealt with under the *Financial Ombudsman Service* only if it is brought by or on behalf of an *eligible complainant*.

2.4.2 **G** /1 *Eligible complainants* are those falling within one of the classes of *person* specified in *DISP* 2.4.3R; and

- (1) having a customer or potential customer relationship with a *firm* or *VJ participant* (as specified in *DISP* 2.4.7R and *DISP* 2.4.8R); or
- (2) having an indirect relationship with a *firm* or *VJ participant* (as specified in *DISP* 2.4.10R);

or, in relation to *relevant complaints*, those specified in the *Ombudsman Transitional Order* (see *DISP* 2.4.14G and *DISP* 2.4.15G and *DISP* App 1.3.1G).

Classes of person

2.4.3 **R** /1 (1) Subject to (2), a *person* is an *eligible complainant* if he is:

- (a) a private individual; or
- (b) a business, which has a group annual turnover of less than £1million at the time the complainant refers the complaint to the *firm* or *VJ participant*; or
- (c) a charity which has an annual income of less than £1million at the time the complainant refers the complaint to the *firm* or *VJ participant*; or
- (d) a trustee of a trust which has a net asset value of less than £1million at the time the complainant refers the complaint to the *firm* or *VJ participant*;

who satisfies the relevant criteria in *DISP* 2.4.7R – *DISP* 2.4.12R, and is not within (2).

(2) The following are not *eligible complainants*:

- (a) an individual, business, charity or trustee, who was an *intermediate customer* or *market counterparty* in relation to the *firm* in question at the time of the act or omission, and in respect of the activity, which is the subject of the complaint;
- (b) a *firm* or *VJ participant* whose complaint relates in any way to an activity which the *firm* itself has *permission* to carry on or which the *VJ participant* itself conducts, and which is subject to the *Compulsory Jurisdiction* or the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.

2.4.4 **G**_{/1} For the purposes of *DISP* 2, a business includes a *sole trader*, a *company*, an unincorporated body and a *partnership* carrying on any trade or profession.

2.4.5 **G**_{/1} If a *firm* or *VJ participant* is in any 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.

2.4.6 **G**_{/1} For the purposes of *DISP* 2.4.3R(1)(b), a subsidiary of a corporate group (as defined in section 262(1) of the Companies Act 1985) will be eligible only where the corporate group as a whole meets the turnover test.

Eligible complainants: customers

2.4.7 **R**_{/1} A *person* is an *eligible complainant* if:

- (1) he is or has been a customer of a *firm* or *VJ participant*;
- (2) the complaint arises out of matters relevant to his being or having been a customer of the *firm* or *VJ participant*; and
- (3) he falls into one of the classes of *person* in *DISP* 2.4.3R(1).

Eligible complainants: potential customers

2.4.8 **R**_{/1} A *person* is an *eligible complainant* if:

- (1) the complaint arises out of a *firm's* or *VJ participant's* actions or failure to act for the complainant in his capacity as a potential customer of the *firm* or *VJ participant*; and
- (2) he falls into one of the classes of *person* in *DISP* 2.4.3R(1).

2.4.9 **G**_{/1} *DISP* 2.4.8R is intended to enable a potential customer to use the *Financial Ombudsman Service* where the complaint involves an allegation that he has suffered or may suffer financial loss, material distress or material inconvenience as a result of a *firm's* or *VJ participant's* wrongful act or omission (for example, where, as a result of maladministration or illegal discrimination, a service has not been provided). A complaint about the legitimate exercise of a *firm's* or *VJ participant's* commercial

judgment may be dismissed by an *Ombudsman* without consideration of its merits under *DISP* 3.3.1R(11).

Eligible complainants: indirect complaints

2.4.10

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A *person* is an *eligible complainant* if:

- (1) he is not, and has not been, a customer or potential customer of the *firm* or *VJ participant* in relation to the subject matter of the complaint; and
- (2) he has a complaint against the *firm* or *VJ participant* which either:
 - (a) arises out of a relationship which he has with the *firm* or *VJ participant* as described in *DISP* 2.4.11R; or
 - (b) is derived from another *person* and which arises from any of the circumstances described in *DISP* 2.4.12R; and
- (3) he falls into one of the classes of *persons* in *DISP* 2.4.3R(1).

2.4.11

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The relationships with the *firm* or *VJ participant* relevant for *DISP* 2.4.10R(2)(a) are:

- (1) the complainant has given the *firm* or *VJ participant* a guarantee or security for a mortgage or loan; or
- (2) the complainant has relied in the course of his business on a cheque guarantee card issued by the *firm* or *VJ participant*; or
- (3) the complainant is the true owner or the *person* entitled to immediate possession of a cheque, or of the funds it represents, collected by the *firm* or *VJ participant* for someone else's account; or
- (4) the complainant is the recipient of a banker's reference given by the *firm* or *VJ participant*; or
- (5) the complainant is the holder of *units* in a *collective investment scheme* and the *firm* or *VJ participant* is the *operator* or *depository* of the *scheme*.

2.4.12

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The circumstances relevant for *DISP* 2.4.10R(2)(b) are:

- (1) that the complainant is a beneficiary under a trust or estate of which the *firm* or *VJ participant* is trustee or personal representative; or
- (2) that the complainant is a *person* for whose benefit a *contract of insurance* was taken out or was intended to be taken out; or

(3) that the complainant is a *person* on whom the legal right to benefit from a claim under a *contract of insurance* has been devolved by contract, statute or subrogation.

2.4.13

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DISP 2.4.12R(2) and(3) 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.

2.4.14

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In respect of a *relevant new complaint*, where the complainant is not eligible in accordance with DISP 2.4, article 3(3) of the *Ombudsman Transitional Order* provides that the *Ombudsman* may, nonetheless, if he considers it appropriate, treat the complainant as an *eligible complainant* if he or she would have been entitled to refer an equivalent complaint to the *former scheme* in question immediately before *commencement*, provided that the complainant wishes to have the complaint dealt with under the new scheme.

2.4.15

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Article 3(4) of the *Ombudsman Transitional Order* provides that, in the case of a *relevant new complaint*, where the *former scheme* in question is the *Insurance Ombudsman Scheme*, a complainant is not to be treated as an *eligible complainant* unless:

- (1) he is an individual; and
- (2) the complaint does not concern aspects of a policy relating to a business or trade carried on by him.

Representatives of eligible complainants

2.4.16

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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.

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It is immaterial whether the *person* authorised to act on behalf of an *eligible complainant* under DISP 2.4.16R:

- (1) can satisfy any of the criteria applicable to the *person* under DISP 2.4.3R(1); or
- (2) has a claim of his own, or is acting for another *person* against the *firm* or *VJ participant*; or
- (3) is or was a customer or potential customer of the *firm* or *VJ participant*.



2.5 Which firms are subject to the jurisdiction of the Financial Ombudsman Service?

- 2.5.1** G_{/1} All *firms* are subject to the *Compulsory Jurisdiction* of the *Financial Ombudsman Service*. *VJ participants* are subject to the *Voluntary Jurisdiction* and to *DISP 2* to the extent specified in the *standard terms (DISP 4)*.
- 2.5.2** G_{/1} *Firms* may, however, be exempt from the requirements of *DISP 1* (Complaint handling procedures for firms) and *DISP 5 (Financial Ombudsman Service funding rules)*, if they qualify under *DISP 1.1.7R (Exemption)*.
- 2.5.3** G_{/1} *Members* of the *Society of Lloyd’s* are treated as *firms* for the purposes of the *Compulsory Jurisdiction* (including the *rules* in *DISP 1* relating to *firms’* complaints procedures) and are subject to *DISP 1* as a result of the *insurance market direction* given in *LLD 6.2.1D*, under section 316 of the *Act* (Direction by Authority). However, as set out in *DISP 1.7*, *members* will individually comply with *DISP 1* if and only if all complaints by policyholders against *members* are dealt with under the internal procedures established by the *Society of Lloyd’s* for handling those complaints, provided that these procedures themselves comply with *DISP 1*. Accordingly, certain of the obligations under *DISP 1*, for example, the obligation to report on complaints received, must be complied with by the *Society* on behalf of *members*.



2.6 To which activities do the rules apply?

The Compulsory Jurisdiction

2.6.1

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The *Ombudsman* can consider a complaint under the *Compulsory Jurisdiction* only if it relates to an act or omission by a *firm* in the carrying on of one or more of the following activities (unless the provision described in DISP 2.6.3G applies):

- (1) *regulated activities*;
 - (2) lending money secured by a charge on land;
 - (3) lending money (other than *restricted credit*);
 - (4) paying money by a *plastic card* (other than a *store card*);
 - (5) the provision of ancillary banking services (see DISP 2.6.6G);
- or activities ancillary to them (see DISP 2.6.2R).

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The activities in DISP 2.6.1R include any ancillary activities, including advice, provided by the *firm* in connection with those activities.

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Under article 3 of the *Ombudsman Transitional Order*, the *Ombudsman* can also consider a *relevant new complaint* under the *Compulsory Jurisdiction* where it relates to an act or omission of a *firm* which was, immediately before *commencement*, subject to a *former scheme*, provided that:

- (1) the act or omission occurred in the carrying on by that *firm* of an activity to which that *former scheme* applied; and
- (2) the complainant is eligible and wishes to have the complaint dealt with under the new scheme.

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The carrying on of an activity in DISP 2.6.1R includes offering, providing or failing to provide and administering or failing to administer a service in relation to the activities covered by that rule. This includes the manner in which a *firm* has administered its business, provided that the business is an activity subject to the jurisdiction of the *Financial Ombudsman Service*.

- 2.6.5 G /1 Complaints about acts or omissions by a *firm* include complaints about acts or omissions in respect of activities for which the *firm* is responsible (that is the activities of their *appointed representatives*).
- 2.6.6 G /1 For the purposes of *DISP* 2.6.1R(5), ancillary banking services include, for example, the provision and operation of cash machines and safe deposit boxes.
- 2.6.7 R /1 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*.
- 2.6.8 G /1 A complaint about a *non-mainstream regulated activity* conducted by an *authorised professional firm* will be handled by the relevant *professional body*.

The Voluntary Jurisdiction

- 2.6.9 R /1 The *Ombudsman* can consider a complaint under the *Voluntary Jurisdiction* only if it is not covered by the *Compulsory Jurisdiction* and it relates to an act or omission in the carrying on of one or more of the following activities by a *VJ participant*:
 - (1) lending money secured by a charge over land;
 - (2) a financial services activity carried on after *commencement* and which had been covered by a *former scheme* in so far as the *VJ participant* was a member of that *former scheme*, in respect of that activity, immediately before the *commencement day*;

or an activity ancillary to it (see *DISP* 2.6.11R).
- 2.6.10 G /1 *DISP* 2.6.9R(2) enables complaints about *VJ participants* which, immediately before the *commencement day*, were members of one of the *former schemes* replaced by the *Financial Ombudsman Service* to be dealt with under the *Voluntary Jurisdiction*. This is in respect of the financial services activities for which the *VJ participant* was previously covered but excludes complaints which fall into the *Compulsory Jurisdiction* as *relevant complaints*. So the complaints which are covered by *DISP* 2.6.9R(2) are only those which arise out of acts or omissions occurring after the *commencement day*.
- 2.6.11 R /1 The activities in *DISP* 2.6.9R include any ancillary activities, including advice, provided by the *VJ participant* in connection with those activities.
- 2.6.12 R /1 A complaint subject to these rules which is not covered by the *Compulsory Jurisdiction* can be considered by the *Ombudsman* even though it relates to an act or omission that occurred before the *VJ participant* was participating in the *Financial Ombudsman Service*, and whether the act or omission occurred before or after the *commencement day*, either:

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- (1) if the complaint could have been dealt with under a *former scheme*; or
- (2) as a consequence of the agreement of the *VJ participant* in *DISP 4.2.5R*.

The provisions of *DISP 2.6.12R* are made under the power in section 227(13) of the *Act*. The section allows for a complaint relating to an act or omission occurring either before *commencement* or before the *VJ participant* joined the *Voluntary Jurisdiction* (or both) to be dealt with under the *Financial Ombudsman Service* provided the *VJ participant* agrees. The act or omission must, however, be one which could have been dealt with under a *former scheme*. Where complaints in this category are not already covered by the *Compulsory Jurisdiction* as *relevant complaints*, they can, therefore, be included in the *Voluntary Jurisdiction* under *DISP 2.6.12R*.



2.7 The territorial scope of the jurisdiction of the Financial Ombudsman Service

- 2.7.1 **R**_{/1} The territorial scope of the jurisdiction of the *Financial Ombudsman Service* covers complaints about the activities of a *firm*, an *appointed representative* or a *VJ participant* carried on from an establishment in the *United Kingdom*.
- 2.7.2 **G**_{/1} The territorial scope therefore covers *firms* (including *appointed representatives*) or *VJ participants* operating from a permanent place of business in the *United Kingdom*, including *incoming EEA firms* and *incoming Treaty firms* which qualify for *authorisation* under Schedule 3 (*EEA Passport Rights*) or Schedule 4 (*Treaty rights*) to the *Act*.
- 2.7.3 **G**_{/1} Complaints which concern business conducted by branches of *firms* or *VJ participants* outside the *United Kingdom* or by *EEA firms* operating in the *United Kingdom* on a services basis from outside the *United Kingdom* are not subject to the *Compulsory Jurisdiction* or the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.
- 2.7.4 **G**_{/1} A complaint can be dealt with under the *Financial Ombudsman Service* irrespective of whether the complainant lives or is based in the *United Kingdom*.

Chapter 3

Complaint handling procedures of the Financial Ombudsman Service

3.1 Application and Purpose

Application

- 3.1.1** **R** This chapter applies to the *Ombudsman* and to *firms*.
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- 3.1.2** **G** It is also relevant to those who might wish to refer a complaint to the *Financial Ombudsman Service*.
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- 3.1.3** **G** *VJ participants* are subject to the rules in this chapter by contract under the *standard terms* (see *DISP* 4).
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- 3.1.4** **R** Except as otherwise specified, references in this chapter to a "complaint" include a *relevant new complaint*.
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- 3.1.5** **G** References in this chapter to "*firms*" are to be construed, where relevant, as including:
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- (1) in accordance with the *Ombudsman Transitional Order*, *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*; and
 - (2) as a result of section 226 of the *Act*, *unauthorised persons* who were formerly *firms* in respect of complaints about acts or omissions which occurred at the time when they were *firms*, provided that the *Compulsory Jurisdiction* rules were in force in relation to the activity in question.
- 3.1.6** **G** The *Ombudsman Transitional Order* provides, with some exceptions (see *DISP* 2.2.2G (scope of *Compulsory Jurisdiction*), *DISP* 2.3.2G (time limits), *DISP* 2.4.14G and *DISP* 2.4.15G (*eligible complainant*) and *DISP* 3.8.2G (determinations), for *relevant new complaints* to be determined in accordance with the requirements of the *Financial Ombudsman Service*.
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Purpose

- 3.1.7** **G** The purpose of this chapter is to set out the way in which the *Financial Ombudsman Service* and, in particular, the *Ombudsman*, will operate to ensure that complaints may be resolved quickly and with minimum formality. It sets out the procedures for the investigation and consideration of complaints, including the circumstances in which a complaint may be terminated without consideration of its merits; the evidence which may be required or admitted; the provisions for fixing and extending time limits for different aspects of the proceedings; the factors which the *Ombudsman* will take into account in determining what is fair and reasonable;
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the types of loss or damage for which the *Ombudsman* can award compensation; the limits on awards and the costs that can be awarded.



3.2 The investigation and consideration of complaints by the Ombudsman

- 3.2.1** **R** /1 On receipt of a complaint (and subsequently if necessary) the *Ombudsman* must have regard to the following matters:
- (1) whether or not the complaint meets the criteria in *DISP 2.2* (Which complaints can be dealt with under the *Financial Ombudsman Service*?);
 - (2) whether or not the complaint is within the time limits in *DISP 2.3* (Time limits for referral of complaints to the *Financial Ombudsman Service*);
 - (3) whether or not the complainant is an *eligible complainant*; and
 - (4) whether or not the complaint is one which should be dismissed without consideration of its merits under *DISP 3.3* (Dismissal of complaints without consideration of the merits).
- 3.2.2** **G** /1 In the case of *relevant new complaints*, the *Ombudsman* will take account of the relevant criteria under the *Ombudsman Transitional Order*, referred to in *DISP 2.2.2G*, and will extend the time limits in *DISP 2.3*, as required under article 4(2) of the *Ombudsman Transitional Order* and described in *DISP 2.3.2G*.
- 3.2.3** **R** /1 Where the *firm* has not had the eight weeks provided for under *DISP 1.4.5R* to consider the complaint, the *Ombudsman* will refer the complaint to the *firm*, unless the *firm* has already issued a *final response*.
- 3.2.4** **R** /1 Where a *firm* fails to send a complainant a *final response* by the end of eight weeks, the *Ombudsman* may consider the complaint.
- 3.2.5** **R** /1 Where the *Ombudsman* considers that the complaint or the complainant may be ineligible under the jurisdiction rules (see *DISP 2* (Jurisdiction of the *Financial Ombudsman Service*)) he must give the complainant an opportunity to make representations before he reaches his decision and he must give reasons to the complainant for that decision and inform the *firm* of his decision.
- 3.2.6** **G** /1 *DISP 3.2.5R* applies without prejudice to a *firm*'s right to raise the issue of eligibility subsequently.

- 3.2.7 **R** /1 Where the *firm* disputes the eligibility of the complaint or the complainant, the *Ombudsman* must give the parties an opportunity to make representations before he reaches his decision and he must give reasons to the parties for that decision.
- 3.2.8 **R** /1 Where the *Ombudsman* considers that the complaint may be one which should be dismissed without consideration of its merits, under *DISP* 3.3 (Dismissal of complaints without consideration of the merits), he must give the complainant an opportunity to make representations before he makes his decision. If he then decides that the complaint should be dismissed, he must give reasons to the complainant for that decision and inform the *firm* of that decision.
- 3.2.9 **R** /1 Where the *Ombudsman* considers that both the complaint and the complainant are eligible and that there is a reasonable prospect of resolving the complaint by mediation, he may attempt to negotiate a settlement between the parties.
- 3.2.10 **G** /1 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.
- 3.2.11 **R** /1 If the *Ombudsman* decides that an investigation is necessary, he will:

 - (1) during the investigation, give both parties an opportunity of making representations;
 - (2) send to the 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 the time limit prescribed in *DISP* 3.2.11R(2), proceed to determination (see *DISP* 3.8 (Determination by the *Ombudsman*)).
- 3.2.12 **R** /1 The parties will be informed of their right to make representations before the *Ombudsman* makes a determination. If he 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 attend a hearing. No hearing will be held after the *Ombudsman* has determined the complaint.
- 3.2.13 **R** /1 A party who wishes to request a hearing must do so in writing, setting out the issues he wishes to raise and (if appropriate) any reasons why he considers the hearing should be in private, so that the *Ombudsman* may consider whether the issues are material, whether a hearing should take place and, if so, whether it should be held in public or private.

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In deciding if 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.



3.3 Dismissal of complaints without consideration of the merits

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The *Ombudsman* may dismiss a complaint without considering its merits if he:

- (1) is satisfied that the complainant has not suffered, or is unlikely to suffer, financial loss, material distress or material inconvenience; or
- (2) considers the complaint to be frivolous or vexatious; or
- (3) considers that the complaint clearly does not have any reasonable prospect of success; or
- (4) is satisfied that the *firm* has already made an offer of compensation which is fair and reasonable in relation to the circumstances alleged by the complainant and which is still open for acceptance; or
- (5) is satisfied that the complaint relates to a transaction which the *firm* in question has reviewed in accordance with the regulatory standards for the review of such transactions prevailing at the time of the review, or in accordance with the terms of a scheme order under section 404 of the *Act* (Schemes for reviewing past business), including, if appropriate, making an offer of redress to the complainant, unless he is of the opinion that the standards or terms of the scheme order did not address the particular circumstances of the case; or
- (6) is satisfied that the matter has previously been considered or excluded under the *Financial Ombudsman Service*, or a *former scheme* (unless material new evidence likely to affect the outcome has subsequently become available); or
- (7) is satisfied that the matter has been dealt with, or is being dealt with, by a comparable independent complaints scheme or dispute resolution process; or
- (8) is satisfied that the subject matter of the complaint has been the subject of court proceedings where there has been a decision on the merits; or

- (9) is satisfied that 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) in order that the matter may be considered under the *Financial Ombudsman Service*; or
- (10) considers that it would be more suitable for the matter to be dealt with by a court, arbitration or another complaints scheme; or
- (11) is satisfied that it is a complaint about the legitimate exercise of a *firm's* commercial judgment; or
- (12) is satisfied that it is a complaint about employment matters from an employee or employees of a *firm*; or
- (13) is satisfied that it is a complaint about investment performance; or
- (14) is satisfied that it is a complaint about a *firm's* decision when exercising a discretion under a will or private trust; or
- (15) is satisfied that it is a complaint about a *firm'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) is satisfied that a complaint which involves or might involve more than one *eligible complainant* 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
- (17) is satisfied that there are other compelling reasons why it is inappropriate for the complaint to be dealt with under the *Financial Ombudsman Service*.

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Under article 5(2)(c) of the *Ombudsman Transitional Order*, the *Ombudsman*, in deciding whether a *relevant complaint* is to be dismissed without consideration of its merits, is to take into account whether an equivalent complaint would have been so dismissed under the *former scheme* in question, as it had effect immediately before *commencement*.

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For the purposes of *DISP* 3.3.1R(4), offers of compensation include ex gratia payments.

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In *DISP* 3.3.1R(5) the transaction could, for example, be a pension transaction which has been reviewed by the *firm* in accordance with the relevant regulatory standards. The *Ombudsman* may decide not to proceed with a complaint about the result of that review unless he considers that the standards or guidance published by the regulator did not address the particular circumstances of the case.

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When deciding if it would be suitable for a complaint to be dealt with outside the *Financial Ombudsman Service* (*DISP* 3.3.1R(10)), the *Ombudsman* may consider whether, in view of a conflict of evidence, a fair resolution of the complaint could be achieved only through examination of the evidence by the courts.

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The *Ombudsman* may decide to proceed with a complaint which would otherwise be dismissed under *DISP* 3.3.1R(13), (14) or (15) if he considers that the complaint involves an allegation of negligence or maladministration.



3.4 Referral of a complaint to another complaints scheme for determination

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The *Ombudsman* may refer a complaint to another complaints scheme where he considers that it would be more suitable for the matter to be determined by that scheme and the complainant consents to the referral.



3.5 Evidence

3.5.1

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The *Ombudsman* may, in relation to the evidence which may be required or admitted when he considers and determines a complaint, give directions as to:

- (1) the issues on which evidence is required;
- (2) the extent to which the evidence required to decide those issues should be oral or written; and
- (3) the way in which the evidence should be presented to the *Ombudsman*.

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The *Ombudsman* may:

- (1) exclude evidence that would otherwise be admissible in a court of law or include evidence that would not be admissible in such a court;
- (2) where he considers it necessary or appropriate, accept information in confidence, so that only an edited version or (where this is not practicable) a summary or description is disclosed to the other party;
- (3) reach a decision on the basis of what has been supplied and take account of the failure by a complainant or a *firm* to provide information that an *Ombudsman* has requested; and
- (4) dismiss a complaint if a complainant fails to supply required information.

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The provisions in *DISP* 3.5.2R(1) follow the provisions of the Civil Justice Rules.

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For the purposes of *DISP* 3.5.2R(2), evidence which the *Ombudsman* may accept in confidence includes confidential evidence about third parties and security information.

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The *Ombudsman* may request a party to a complaint to provide evidence necessary for the determination of the complaint under section 231 of the *Act*. A failure to comply with the request can be dealt with by the court under section 232.



3.6 Time limits

- 3.6.1 **R** ^{/1} The *Ombudsman* may fix time limits and extend fixed time limits for any aspect of the consideration of a complaint by the *Financial Ombudsman Service*.
- 3.6.2 **R** ^{/1} If a *firm* fails to comply with a time limit, the *Ombudsman* may proceed to the next stage of consideration of the complaint and may, if appropriate, make provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.
- 3.6.3 **R** ^{/1} If a complainant fails to comply with a time limit, the *Ombudsman* may either proceed to the next stage or dismiss the complaint.



3.7 Delegation of the Ombudsman's powers

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- (1) Only an *Ombudsman* may determine a complaint or decide the circumstances in which information may be disclosed under *DISP* 3.10.1R (3).
- (2) The *Ombudsman* may designate members of the staff of *FOS Ltd* to exercise any of the other powers of the *Ombudsman* relating to the reference, investigation or consideration of a complaint.
- (3) Where any *person* is so designated, *DISP* 2 - *DISP* 4 apply as if any reference to "the *Ombudsman*" included a reference to that *person*.

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The Chief *Ombudsman* will designate those members of staff of *FOS Ltd* who are to have these powers.

3.8 Determination by the Ombudsman

Opinion as to fairness and reasonableness

- 3.8.1** **R** /1 (1) The *Ombudsman* will determine a complaint by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case.
- (2) In considering what is fair and reasonable in all the circumstances of the case, the *Ombudsman* will take into account the relevant law, regulations, regulators' rules and guidance and standards, relevant codes of practice and, where appropriate, what he considers to have been good industry practice at the relevant time.

- 3.8.2** **G** /1 In determining, in relation to a *relevant new complaint*, what is fair and reasonable in all the circumstances of the case and what amount (if any) constitutes fair compensation, for the purposes of section 229(2)(a) of the *Act* (money awards), the *Ombudsman* is required, under article 7(2) of the *Ombudsman Transitional Order*, to take into account:
- (1) what determination the *former Ombudsman* might have been expected to reach, and
- (2) 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 *commencement*.

The Ombudsman's determination

- 3.8.3** **R** /1 The *Ombudsman's* determination will include the following stages:
- (1) When a complaint has been determined, the *Ombudsman* will give both the complainant and the *firm* a signed written statement of the determination, stating the reasons for it.
- (2) The statement will invite the complainant to notify the *Ombudsman* in writing 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 the time limit set, it is final and binding on both the complainant and the *firm*.
- (4) If the complainant either rejects the determination or does not notify the *Ombudsman* by the specified date that he accepts the determination, the complainant will be treated as having rejected the determination, and the *firm* will not be bound by it.
- (5) The *Ombudsman* must notify the *firm* of the complainant's response (or lack of response).

3.9 Awards by the Ombudsman

Money awards

- 3.9.1** **G**_{/1} As provided for under section 229 of the *Act* (Awards), if a complaint is determined in favour of the complainant, the determination may include:
- (1) a money award against the *firm* of such amount as the *Ombudsman* considers fair compensation for financial loss or for loss or damage of a kind specified in *DISP* 3.9.2R and subject to the maximum limit in *DISP* 3.9.5R; or
 - (2) a direction that the *firm* 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); or
 - (3) both of these.
- 3.9.2** **R**_{/1} Where the *Ombudsman* decides to make a money award, in addition to (or instead of) awarding compensation for financial loss, he may award compensation for the following kinds of loss or damage, whether or not a court would award compensation:
- (1) **pain and suffering; or**
 - (2) **damage to reputation; or**
 - (3) **distress or inconvenience.**
- 3.9.3** **G**_{/1} For the purposes of awards by the *Ombudsman*, financial loss includes consequential or prospective loss.
- 3.9.4** **G**_{/1} In determining, in relation to a *relevant new complaint*, what amount (if any) constitutes fair compensation for the purposes of a money award, the *Ombudsman* is required under article 7(2) of the *Ombudsman Transitional Order* 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 *commencement*.

Limits on money awards

- 3.9.5** **R**_{/1} The maximum money award which the *Ombudsman* may make is £100,000.

- 3.9.6 G
/1 If the *Ombudsman* considers that an amount more than the maximum is required as fair compensation, then he may in addition recommend to the *firm* that it pays the balance.
- 3.9.7 G
/1 The *Ombudsman* may specify in his award that reasonable interest must be paid on the award (at the rate and from the date he states).
- 3.9.8 G
/1 For the purposes of calculating the monetary limit referred to in *DISP* 3.9.5R the amount of interest awarded does not form part of the award itself.
- 3.9.9 G
/1 The limit on the maximum money award has no bearing on any direction which an *Ombudsman* may make as part of a determination.

Costs

- 3.9.10 R
/1 **When the *Ombudsman* finds in a complainant’s favour, he may also award an amount which covers some or all of the costs which were reasonably incurred by the complainant in respect of the complaint.**
- 3.9.11 G
/1 It is not anticipated that awards of costs will be common, since in most cases complainants should not need to have professional advisers to bring complaints to the *Financial Ombudsman Service*.
- 3.9.12 R
/1 **The amount payable under the award of costs may, if the *Ombudsman* orders, bear interest at a reasonable rate specified in the order and from a date specified in the order.**
- 3.9.13 G
/1 For the purposes of calculating the monetary limit specified in *DISP* 3.9.5R, an award of costs does not form part of the award itself.

Complying with awards and settlements

- 3.9.14 R
/1 **A *firm* must comply promptly with:**
 - (1) any money award or direction made by the *Ombudsman*; and
 - (2) any settlement which it agrees at an earlier stage of the procedures.
- 3.9.15 R
/1 **The *Ombudsman* must maintain a register of each money award and direction made.**
- 3.9.16 G
/1 A money award registered in accordance with *DISP* 3.9.15R can be recovered or enforced through the courts under paragraph 16 of Schedule 17 to the *Act*.
- 3.9.17 G
/1 A complainant may enforce a direction by injunction or order in accordance with section 229(9) of the *Act* (Awards).



3.10 Dealing with information

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- (1) In dealing with any information received in relation to the consideration or investigation of a complaint, the *Financial Ombudsman Service* must have regard to the parties' rights of privacy.
- (2) Paragraph (1) does not prevent the *Ombudsman* disclosing information (either in full, or where he considers it necessary or appropriate under *DISP* 3.5.2R(2), in the form of an edited version or (where this is not practicable) a summary or description):
 - (a) to the extent that he is required or authorised to do so by law; or
 - (b) to the parties to the complaint; or
 - (c) in his determination; or
 - (d) at a hearing in connection with the complaint.
- (3) So long as he has regard to the parties' rights of privacy, the *Ombudsman* may disclose information to the *FSA* 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.

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Under article 11 of the *Ombudsman Transitional Order*, any information held by any *person* responsible for the operation of a *former scheme* in connection with the operation of a *former scheme* may be disclosed by that *person* (after *commencement*) to *FOS Ltd* or to an *Ombudsman* without contravening any restriction on disclosure of that information (imposed by statute or otherwise) to which that *person* was subject. But *FOS Ltd* or the *Ombudsman* is subject to any restrictions on disclosure (and exceptions) which would have applied to the former holder of that information.

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Article 11 of the *Ombudsman Transitional Order* does not, however, prevent the application of section 31(4A) of the Data Protection Act 1998. This provides for an exemption in respect of subject information provisions to the extent to which the application of those provisions to data would be likely to prejudice the proper discharge of the functions conferred under Part XVI of the *Act* (The *Ombudsman Scheme*).

Chapter 4

Standard terms



4.1 Application and Purpose

Application

4.1.1

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The *standard terms* apply to any *company, partnership*, individual practitioner or other business which has decided to be a participant in the *Voluntary Jurisdiction* (a *VJ participant*). They are fixed by *FOS Ltd* with the approval of the *FSA* in accordance with paragraph 18 of Schedule 17 to the *Act*.

Purpose

4.1.2

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The *standard terms* are the basis on which complaints will be dealt with and determined under the *Voluntary Jurisdiction*. They cover:

- (1) the rules and guidance for handling complaints (see *DISP* 4.2.2R to *DISP* 4.2.6R);
- (2) an indemnity for *FOS Ltd*, any member of its governing body, any member of its staff and any *person* acting as an *Ombudsman*, as permitted by paragraph 18(5) of Schedule 17 to the *Act* (see *DISP* 4.2.7R);
- (3) the *Ombudsman's* powers relating to determinations and awards (see *DISP* 4.2.8R);
- (4) the enforcement of a determination (see *DISP* 4.2.10R); and
- (5) the process for withdrawal by a *VJ participant* from the *Voluntary Jurisdiction* (see *DISP* 4.2.11R).

4.2 The standard terms

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- (1) For the purposes of the *standard terms*, a *company, partnership, individual practitioner or other business*, whether authorised or unauthorised, agreeing to participate in the *Voluntary Jurisdiction* of the *Financial Ombudsman Service* is known as a *VJ participant*.
- (2) In consequence of the agreement by the *VJ participant* to participate in the *Voluntary Jurisdiction*, the *standard terms* fix the basis on which complaints relating to relevant acts or omissions of the *VJ participant* are to be dealt with and determined.
- (3) Where the *standard terms* apply rules relating to the *Compulsory Jurisdiction* for the purposes of the *Voluntary Jurisdiction*, those are to be treated as part of the *standard terms*.
- (4) A *VJ participant* is subject to the *standard terms*, which may be amended or supplemented with the approval of the *FSA*.

Complaint handling procedures

4.2.2

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The rules and guidance contained in *DISP 1* (Complaint handling procedures for firms) will apply to *VJ participants* for the purposes of the *Voluntary Jurisdiction* as if they were *firms*, with the exception of *DISP 1.5* (Record keeping and reporting). *DISP 1.2* (Internal complaint handling procedures: general requirements) applies in relation to complaints about activities of the *VJ participant* specified in *DISP 2.6.9R*.

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DISP 1.5.1R contains a requirement for a *firm* in the *Compulsory Jurisdiction* to make and retain records of complaints subject to *DISP 1.4-DISP 1.6* for a minimum period of three years from the date of its receipt of a complaint. Although this requirement is not applied to *VJ participants*, they may need to keep records of complaints for sufficient time to enable them to provide the *Ombudsman* with necessary information in the event of a complaint being referred to the *Financial Ombudsman Service*. The requirement for reporting complaints to the *FSA* under *DISP 1.5.4R* is also not applied to *VJ participants*.

Jurisdiction of the Financial Ombudsman Service

4.2.4 **R** /1 The rules and guidance contained in *DISP 2* will apply for the purposes of the *Voluntary Jurisdiction*, with the exception of *DISP 2.6.1R - DISP 2.6.8G*.

4.2.5 **R** /1 By agreeing to participate in the *Voluntary Jurisdiction*, a *VJ participant* also agrees to complaints relating to activities covered by *DISP 2.6.9R* being dealt with under *DISP 2.6.12R*.

Complaint handling procedures of the Financial Ombudsman Service

4.2.6 **R** /1 The rules and guidance contained in *DISP 3* will apply to *VJ participants* for the purposes of the *Voluntary Jurisdiction* as if they were *firms* (except where their application to *VJ participants* is specifically excluded or necessarily inapplicable).

Liability

- 4.2.7 **R** /1
- (1) None of the following is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of any functions in connection with the *Voluntary Jurisdiction*:
- (a) *FOS Ltd*;
 - (b) any member of its governing body;
 - (c) any member of its staff;
 - (d) any *person* acting as an *Ombudsman* for the purposes of the *Financial Ombudsman Service*.
- (2) Paragraph (1) does not apply:
- (a) where the act or omission is shown to have been in bad faith; or
 - (b) so as to prevent an award of damages 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.

Determination and awards

4.2.8 **R** /1 If the *Ombudsman* determines a complaint under the *Voluntary Jurisdiction* in favour of the complainant, the determination may include:

- (1) a “money award”, that is, an award against the *VJ participant* of such amount as the *Ombudsman* considers fair compensation for financial loss or for loss or damage of a kind specified in *DISP* 3.9.2R that has been suffered, or may be suffered, by the complainant;
- (2) a direction that the *VJ participant* 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).

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DISP 4.2.8R gives the *Ombudsman* the same powers to make money awards and directions as he has, under section 229 of the *Act* (Awards), in relation to *firms* in the *Compulsory Jurisdiction*.

Enforcement of a determination

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The *Ombudsman's* determination, if accepted by the complainant within the time limit specified by the *Ombudsman*, will be binding on the *VJ participant* and final, and may be enforced in court by the complainant.

Withdrawal from the Voluntary Jurisdiction of the Financial Ombudsman Service

4.2.11

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A *VJ participant* may not withdraw from the *Voluntary Jurisdiction* of the *Financial Ombudsman Service* unless the *VJ participant*:

- (1) has submitted a written plan to *FOS Ltd* setting out its proposals for:
 - (a) notifying its existing customers of its intention to withdraw from the *Voluntary Jurisdiction*; and
 - (b) the handling of complaints against it prior to its withdrawal from the *Voluntary Jurisdiction*; and
- (2) the plan has been approved in writing by *FOS Ltd*; and
- (3) the *VJ participant* has paid the *general levy* for the year in which it withdraws and any other fees payable; and
- (4) *FOS Ltd* has agreed in writing the date on which the *VJ participant* may withdraw from the *Voluntary Jurisdiction* (which date is not to be earlier than six *months* from the date of approval of the plan).

Appendices



Appendix 1

Relevant Existing Complaints

1.1 Application and Purpose

Application

1.1.1 **R** This appendix applies to *firms*, to *FOS Ltd*, to the *Ombudsman* and to those who might wish to refer a complaint to the *Financial Ombudsman Service* in respect of *relevant existing complaints*.
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1.1.2 **G** References in this chapter to “*firms*” are to be construed, where relevant, as including:
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- (1) in accordance with the *Ombudsman Transitional Order*, *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*; and
- (2) as a result of section 226 of the *Act*, *unauthorised persons* who were formerly *firms* in respect of complaints about acts or omissions which occurred at the time when they were *firms*, provided that the *Compulsory Jurisdiction* rules were in force in relation to the activity in question.

Purpose

1.1.3 **R** *DISP 2* to *DISP 5* apply to *firms*, to the *Ombudsman* and to *FOS Ltd* in respect of *relevant existing complaints*, except as stated in this appendix.
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1.1.4 **G** The purpose of this appendix is to describe how *FOS Ltd* must handle *relevant existing complaints* (that is, the partly completed complaints which it inherits from the *former schemes* at *commencement* under the *Ombudsman Transitional Order*). Complaints which *firms* (as opposed to the *former schemes*) have partly completed at *commencement* will be handled as described in *DISP 1* (Complaint handling procedures for firms) (see, in particular, *DISP 1.4.6R*).
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1.1.5 **G** *Relevant existing complaints* will be referred by the *former schemes* to *FOS Ltd* for completion at *commencement*. Article 2 of the *Ombudsman Transitional Order* provides that *FOS Ltd* will complete the handling of these cases, but requires that, in a significant number of respects, it must do this in accordance with the requirements of the relevant *former scheme*.
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- 1.1.6** G_{/1} This appendix describes the ways in which *FOS Ltd* is required to treat these complaints differently from the other complaints which are subject to *DISP* 1 to 5. Apart from these exceptions, the rules in *DISP* 2 to *DISP* 5 and the statutory provisions in sections 225-234 of the *Act* apply as they do to other complaints.

1.2 Eligible complaint

- 1.2.1** G_{/1} (1) Article 2 of the *Ombudsman Transitional Order* requires that, irrespective of whether the conditions set out in section 226(2) of the *Act* are met (see *DISP* 2.2.1G), a complaint which:
- (a) was referred to a *former scheme* (other than the *Personal Insurance Arbitration Service*) at any time before *commencement*, by a *person* who was at that time entitled, under the terms of the *former scheme*, to refer such a complaint (whether described in that scheme as the making of a complaint, the referral of a dispute, the submission of a claim, or otherwise), and
 - (b) has not, before *commencement*, been rejected, withdrawn, settled or determined, by the *former Ombudsman* (whether by a substantive decision, or by closure of the case without a substantive decision);

- 1.2.1** G_{/1} is to be dealt with under the *Financial Ombudsman Service* (and not the *former scheme*).

(2) These complaints are described as *relevant existing complaints*.

- 1.2.2** G_{/1} Article 2 of the *Ombudsman Transitional Order* provides that a complaint is not to be treated as determined before *commencement* if the determination was, at *commencement*, subject to (or capable of being subject to) an appeal, a reference to arbitration or similar procedure.

- 1.2.3** G_{/1} The definition of a *relevant existing complaint* excludes complaints referred to the *Personal Insurance Arbitration Service* before *commencement*, which will be completed by the *Personal Insurance Arbitration Service*, not *FOS Ltd*. It also excludes complaints about pre-*commencement* investment business conducted by *firms* which were formerly authorised by a *recognised professional body*. These will be handled by the relevant *professional body*.

1.3 Eligible complainant

- 1.3.1** G_{/1} Under article 2(1)(a) of the *Ombudsman Transitional Order*, a *person* will be treated under the *Financial Ombudsman Service* as an *eligible complainant* in respect of a *relevant existing complaint*, if he was entitled, under the terms of the

former scheme, to refer such a complaint at the time when the complaint was referred to that scheme.

1.4 Time limits

- 1.4.1** G_{/1} Article 4(2) of the *Ombudsman Transitional Order* requires an *Ombudsman* to extend the time limits set under *DISP* 2.3.1R(1)(b) and (c) in respect of a *relevant existing complaint* where the effect of that extension is that the time limit applying to the complaint is the same as that which would have applied under the *former scheme* in question as it had effect immediately before *commencement*.

1.5 Determination of complaints

- 1.5.1** G_{/1} Article 5(2)(a) provides that *FOS Ltd's* power to specify in its scheme rules the matters to be taken into account in making determinations does not apply to *relevant existing complaints* (see *DISP* 3.8.1R).
- 1.5.2** G_{/1} Article 5(2)(c) requires the *Ombudsman*, in deciding whether a *relevant complaint* (including a *relevant existing complaint*) is to be dismissed without consideration of its merits under the scheme rules, to take into account whether an equivalent complaint would have been so dismissed under the *former scheme* in question, as it had effect immediately before *commencement*.
- 1.5.3** G_{/1} Article 6(1) disapplies, in respect of *relevant existing complaints*, the provisions in the *Act* relating to the criteria for determining complaints in section 228(2) and those relating to awards in section 229 (with the exception of those in section 229(8)(b) and paragraph 16 of Schedule 17 relating to the enforceability of money awards and those in section 229(9) and (10) relating to the enforceability of directions made by the *Ombudsman*). It also disapplies the provisions relating to costs awards in section 230, except to the extent referred to in *DISP* App 1.11.1G.
- 1.5.4** G_{/1} Apart from this, section 228 of the *Act* applies in relation to *relevant existing complaints* as it applies to other complaints which are subject to the *Compulsory Jurisdiction*.

1.6 Criteria for determining complaints

- 1.6.1** G_{/1} Article 6(2) provides that a *relevant existing complaint* is to be determined (so far as practicable) by reference to such criteria as would have applied to the determination

of the complaint by the *former ombudsman* under the *former scheme* in question immediately before *commencement* (provided that where the *former scheme* in question is the *FSA scheme*, the criteria are those which would have applied to the determination of the complaint by an *independent investigator* under that scheme at that time).

- 1.6.2** G_{/1} An exception is, however, made in respect of *relevant existing complaints* about former *IMRO* members inherited from the *Investment Ombudsman* under the *IMRO scheme* in order to reflect the way in which those complaints have been determined in practice under that scheme. The effect of article 6(2) and 6(11) taken together is that, as with all new complaints received after *commencement*, these will be determined according to what is, in the opinion of the *Ombudsman*, fair and reasonable in all the circumstances of the case and will be binding on both parties subject to the complainant's agreement.

1.7 Awards and remedies

- 1.7.1** G_{/1} The remedy that the *Ombudsman* can impose in determining a *relevant existing complaint* is limited by article 6(3) to such remedy as could have been included in a determination (whether described as a determination, award, recommendation or otherwise) made by the *former Ombudsman* under the *former scheme* in question immediately before *commencement*.

1.8 Extent to which awards are binding

- 1.8.1** G_{/1} Under article 6, except in the circumstances set out in *DISP* App 1.8.2G to *DISP* App 1.8.6G, the *Ombudsman* will, in respect of *relevant existing complaints*, provide the *firm* and the complainant with a written statement of his determination (including reasons) in accordance with section 228(3)-(9) of the *Act* (see *DISP* 3.8.3R) and if the complainant notifies the *Ombudsman*, within the time period specified, that he accepts the determination, it is binding on both parties and final.
- 1.8.2** G_{/1} Under article 6(7), where the *former scheme* in question was the *FSA scheme* and the *relevant existing complaint* was, at *commencement*, subject to arbitration in accordance with that scheme, the extent to which the determination of the complaint under the new scheme is binding and final depends on the terms of the arbitration. Where a complaint under the *FSA scheme* was not subject to arbitration at *commencement*, the determination of the case under the new scheme is not binding on the *firm* or the complainant. The requirements in section 228 (4)(c) and (5) to (7) of the *Act* do not apply in relation to the complaint.
- 1.8.3** G_{/1} Under article 6(8), where the *former scheme* in question was the *SFA scheme*:
- (1) if the *relevant existing complaint* has not been submitted to arbitration under that scheme, and would not have been *eligible* to be so submitted under that

scheme as it had effect immediately before *commencement* (disregarding any requirement for certification by the *SFA Complaints Bureau* that the complaint had not been resolved by conciliation), the determination of the complaint under the *Financial Ombudsman Service* is not binding on the *firm* or the complainant;

- (2) if the *relevant existing complaint* has been submitted to arbitration under the *SFA scheme*, or would have been eligible to be so submitted under that scheme as it had effect immediately before *commencement* (disregarding any such requirement), the determination of the complaint under the *Financial Ombudsman Service* is binding on the *firm* and the complainant and final, but if the complaint has been submitted to arbitration, the terms of arbitration are otherwise unaffected;

and the requirements in section 228(4)(c) and (5) to (7) of the *Act* do not apply in relation to the complaint.

1.8.4 G_{/1} Under article 6(9), where the *former scheme* in question was the *Building Societies Ombudsman Scheme* and the *relevant existing complaint* was, at *commencement*, subject to arbitration in accordance with that scheme, the extent to which the determination of the complaint under the *Financial Ombudsman Service* is binding and final depends on the terms of the arbitration (which remain unaffected), and the requirements in section 228(4)(c) and (5) to (7) of the *Act* do not apply in relation to the complaint.

1.8.5 G_{/1} Under article 6(10), where the *former scheme* in question was the *Building Societies Ombudsman Scheme* and the *firm* would have been relieved of its obligation to comply with a determination under that scheme if it had complied with conditions as to the giving of notice of its non-fulfilment of the obligations imposed by the determination, the determination of the complaint under the *Financial Ombudsman Service* is (notwithstanding section 228(5) of the *Act*) not binding on the *firm* if it complies with equivalent conditions. (This preserves the "publicity option" under the *Building Societies Ombudsman Act 1986* in respect of *relevant existing complaints*.)

1.8.6 G_{/1} The effect of article 6(2) and 6(11) taken together is that, where the *former scheme* in question was the *IMRO scheme*, the determination will be binding on both parties subject to the complainant's agreement, unless, before *commencement*, the complaint has been determined by a *former ombudsman* under that scheme and the *former ombudsman* has offered the complainant adjudication (see *DISP App 1.9.1G-1.9.2G*).

1.9 Complaints determined before commencement

1.9.1 G_{/1} Under article 8, where, before *commencement*, a *relevant existing complaint* has been determined by a *former ombudsman* under the *IMRO scheme* and that *former ombudsman* has offered adjudication:

- (1) if the matter is already subject to adjudication at *commencement*, the relevant provisions of the *former scheme* will continue to apply so far as practicable, with references to the *Investment Ombudsman* or "the Ombudsman" being read as references to *FOS Ltd* or an *Ombudsman*, as appropriate; or

- (2) if the matter has not been referred to adjudication before *commencement*, but the complainant accepts adjudication, *FOS Ltd* must appoint an adjudicator to determine the matter, and if the complainant agrees to the appointment of the adjudicator, the *firm* must concur in the reference to adjudication.

1.9.2 G_{/1} The relevant provisions of the *IMRO scheme* will apply, so far as practicable, as they would have applied to adjudication under that scheme, with references to the *Investment Ombudsman* or "the Ombudsman" being read as references to *FOS Ltd* or an *Ombudsman*, as appropriate.

1.9.3 G_{/1} Under article 9, where a *relevant existing complaint* has been determined before *commencement* by a *person* appointed as an arbitrator under the *SFA scheme*:

- (1) if, at *commencement*, that determination is the subject of an appeal, or an application for leave to appeal, under that scheme which has not been determined or withdrawn, the relevant provisions of that scheme will continue to apply to that appeal or application (and any ensuing appeal) so far as practicable;
- (2) if, at *commencement*, an application for leave to appeal against the determination was capable of being entertained under that scheme, the relevant provisions of that scheme will apply, so far as practicable, to the making of any such application for leave and any ensuing appeal, as they would have applied to an application for leave or an appeal before *commencement*.

1.9.4 G_{/1} *FOS Ltd* may appoint such *persons*, on such terms and for such duration, as it thinks fit to hear any appeal or application for leave to appeal made after *commencement* and references in the relevant provisions of the *SFA scheme* to the *SFA* or its Arbitration Secretariat will be read as references to *FOS Ltd*.

1.9.5 G_{/1} Under article 10, where a complaint has been determined before *commencement* under the *Building Societies Ombudsman Scheme*, and, at *commencement*, a case either has been stated with respect to that determination for the opinion of the High Court or Court of Session under section 84(5) to (7) of the Building Societies Act 1986 and no decision has been reached on the case or could be stated under those provisions, those subsections continue to apply as if they provided for the Court to direct that the complaint be dealt with under the *Financial Ombudsman Service* as a *relevant existing complaint*.

1.10 Enforceability of awards

1.10.1 G_{/1} Where the *Ombudsman* makes a determination which includes an award against a *firm* of compensation payable to the complainant, it is enforceable (under article 6(4)) in the same way as a money award made under the *Compulsory Jurisdiction*.

1.10.2 G_{/1} Where the *Ombudsman* makes a determination which includes a requirement for the *firm* to take any steps in relation to the complainant, it is enforceable (under article 6(5)) in the same way as a direction made under the *Compulsory Jurisdiction*.

1.11 Costs

- 1.11.1** G^{/1} Where the *former scheme* in question, as it had effect immediately before *commencement*, included provision for the award of costs, the *Ombudsman* may, under article 6(6), on determining the *relevant existing complaint*, award costs in accordance with that provision (irrespective of whether those costs were incurred, or relate to anything done, before or after *commencement*) and section 230(6) and (7) and paragraph 16 of Schedule 17 to the *Act* apply in relation to the enforcement of such an award of costs in the same way as they apply to awards of costs made under the *Financial Ombudsman Service* procedures.

1.12 Funding and fees

- 1.12.1** G^{/1} Under *DISP 5*, *firms* will be subject to case fees in respect of *relevant complaints*. If *FOS Ltd* deals with a *relevant existing complaint* against a *person* who is not *authorised* by the *FSA*, a special case fee will be charged (see *DISP 5 (Financial Ombudsman Service Funding Rules)*) and this will be recoverable as a debt to *FOS Ltd* in the same way as case fees relating to complaints about *firms*.

1.13 Time limits, record keeping and reporting requirements

- 1.13.1** G^{/1} The time limits, record keeping and reporting requirements in *DISP 1.4* (Time limits for dealing with a complaint) and *DISP 1.5* (Record keeping and reporting) do not apply to *firms* in respect of *relevant existing complaints* since these, by definition, will already have been referred to a *former scheme*.

1.14 Cooperation with the Ombudsman

- 1.14.1** R^{/1} *Firms* must comply with *DISP 1.6 (Cooperation by firms with the Ombudsman)* in respect of *relevant existing complaints*.

Appendix 2

Handling Mortgage Endowment Complaints

2.1 Introduction

2.1.1 G_{/1} 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.

2.1.2 G_{/1} 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.

2.1.3 G_{/1} This appendix only addresses how *firms* should approach the assessment of loss and compensation where negligence on the part of the *firm* is established.

2.1.4 G_{/1} This appendix is relevant both to the obligations arising under the complaints handling *rules* contained in *DISP* 1.2 and to the *FSA's* approach to the supervision of *firms*.

2.1.5 G_{/1} 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*).

2.1.6 G_{/1} 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.

2.1.7 G_{/1} If it is concluded that the complainant would have acted differently, the *firm* should proceed to assess any direct or consequential loss.

2.1.8 G_{/1} 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 *FSA's* expectation is that *firms* will apply the approach and standards set out in this appendix, and where they do not, the *FSA* is likely to require them to demonstrate the adequacy and completeness of their alternative approach.

2.2 The standard approach to redress

2.2.1 G_{/1} 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.

2.2.2 G_{/1} Unless the contrary is demonstrated, it should be assumed that the complainant could have afforded the mortgage on a repayment basis.

2.2.3 G_{/1} 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.

2.2.4 G_{/1} 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.

2.2.5 G_{/1} 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 2.3). 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.

- 2.2.6** G_{/1} 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.
- 2.2.7** G_{/1} 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.
- 2.2.8** G_{/1} 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.
- 2.2.9** G_{/1} 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 2.2.7G, the complainant is of "sufficient means" so that it is reasonable for a *firm* to assume that the "savings" have contributed to those means.
- 2.2.10** G_{/1} 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.
- 2.2.11** G_{/1} 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.
- 2.2.12** G_{/1} 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*.

- 2.2.13** G_{/1} 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 2.2.8G and *DISP* App 2.2.9G.
- 2.2.14** G_{/1} 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.
- 2.2.15** G_{/1} 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.
- 2.2.16** G_{/1} 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 2.3.
- 2.2.17** G_{/1} 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.)
- 2.2.18** G_{/1} Table 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

- 2.2.19** G_{/1} Table Example 1

EXAMPLE 1	
Capital shortfall and higher endowment mortgage outgoings	
<u>Background</u>	
Capital sum of £50,000	
25 year endowment <i>policy</i>	
Duration to date: 5 years	
Endowment <i>premium</i> per month: £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)
<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 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.	
<u>Redress</u>	
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)
Therefore total redress is:	£1,500

2.2.20

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Table Example 2

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EXAMPLE 2	
Capital shortfall partially offset by lower endowment mortgage outgoings	
<u>Background</u>	

EXAMPLE 2	
Capital sum of £50,000	
25 year endowment <i>policy</i>	
Duration to date: 5 years	
Endowment <i>premium</i> per month: £60	
<u>Established facts</u>	
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
<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 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
Cost of converting to repayment mortgage:	(£300)
Net loss:	(£1,400)
Therefore total redress is:	£1,400
Redress if it is unreasonable to take account of gain from lower outgoings	
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)

EXAMPLE 2	
Therefore total redress is:	£2,000
* 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 <i>any</i> of the gain from lower outgoings.	

2.2.21

G Table Example 3

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EXAMPLE 3	
Capital shortfall more than offset by lower endowment mortgage outgoings	
<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 surrender value 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.	
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:	(£300)
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	

EXAMPLE 3	
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)
Therefore total redress is:	£500

2.2.22

G Table Example 4

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EXAMPLE 4	
Capital surplus more than offset by higher endowment mortgage outgoings	
<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: £75	
<u>Established facts</u>	
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)
<u>Total outgoings to date</u>	
Repayment mortgage (capital + interest + DTA life cover):	£34,510
Endowment mortgage (endowment <i>premium</i> + interest):	£34,950
Difference in outgoings (repayment – endowment):	(£440)
<u>Basis of compensation</u>	
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 <i>surrender value</i> 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.	
<u>Redress</u>	
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)

EXAMPLE 4	
Net loss:	(£490)
Therefore total redress is:	£490

2.2.23

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Table Example 5

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EXAMPLE 5	
Capital surplus partially offset by higher endowment mortgage outgoings	
<u>Background</u>	
Capital sum of £50,000	
25 year endowment <i>policy</i>	
Duration to date: 10 years	
Endowment <i>premium</i> per month: £75	
<u>Established facts</u>	
Endowment <i>surrender value</i> :	£11,800
Capital repaid under equivalent repayment mortgage:	£9,700
<i>Surrender value</i> less capital repaid:	£2,100
Cost of converting from endowment mortgage to repayment mortgage:	(£300)
<u>Total outgoings to date</u>	
Repayment mortgage (capital + interest + DTA life cover):	£46,800
Endowment mortgage (endowment <i>premium</i> + interest):	£47,500
Difference in outgoings (repayment – endowment):	(£700)
<u>Basis of compensation</u>	
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 <i>surrender value</i> of the endowment and the capital repaid. Thus no redress is payable.	
<u>Redress</u>	
Gain from <i>surrender value</i> 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.	

2.2.24

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Table Example 6

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Example 6	
Capital surplus and lower endowment mortgage outgoings	
<u>Background</u>	
Capital sum of £50,000	
25 year endowment <i>policy</i>	
Duration to date: 10 years	
Endowment <i>premium per month</i> : £65	
<u>Established facts</u>	
Endowment <i>surrender value</i> :	£10,100
Capital repaid under equivalent repayment mortgage:	£9,700
<i>Surrender value</i> less capital repaid:	£400
Cost of converting from endowment mortgage to repayment mortgage:	(£200)
<u>Total outgoings to date</u>	
Repayment mortgage (capital + interest + DTA life cover):	£46,800
Endowment mortgage (endowment <i>premium</i> + interest):	£46,300
Difference in outgoings (repayment – endowment):	£500
<u>Basis of compensation</u>	
In this example, the complainant has gained both because the <i>surrender value</i> 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.	
<u>Redress</u>	
As there has been no loss, no redress is payable.	

2.2.25

G Table Example 7

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Example 7	
Low start endowment mortgage	
<u>Background</u>	
Capital sum of £50,000	
25 year endowment <i>policy</i>	
Duration to date: 10 years	
Endowment <i>premium per month</i> : starting at £35 in first year, increasing by 20% simple on each <i>policy</i> anniversary, reaching £70 after five years and then remaining at that level.	
<u>Established facts:</u>	
Endowment <i>surrender value</i> :	£8,200
Capital repaid under equivalent repayment mortgage::	£9,700

Example 7	
<i>Surrender value</i> less capital repaid:	(£1,500)
Cost of converting from endowment mortgage to repayment mortgage:	(£250)
<u>Total outgoings to date</u>	
Repayment mortgage (capital + interest + DTA life cover):	£46,800
Endowment mortgage (endowment <i>premium</i> + 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 <i>premium</i> .	
<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. 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 <i>premium</i> 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 <i>premium</i> 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 <i>surrender value</i> 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 <i>surrender value</i> 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

- 2.2.26** G_{/1} 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

- 2.2.27** G_{/1} 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.
- 2.2.28** G_{/1} 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.

2.3 Remortgaging

- 2.3.1** G_{/1} 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.
- 2.3.2** G_{/1} 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*.
- 2.3.3** G_{/1} *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.
- 2.3.4** G_{/1} *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.

- 2.3.5** G_{/1} 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.
- 2.3.6** G_{/1} 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.
- 2.3.7** G_{/1} 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.
- 2.3.8** G_{/1} 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.
- 2.3.9** G_{/1} 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.
- 2.3.10** G_{/1} 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.
- 2.3.11** G_{/1} Table Example of assessment set out at 2.3.10

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 <i>firm</i> .			

2.4 Policy reconstruction

2.4.1 G_{/1} 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.

2.4.2 G_{/1} Two sets of circumstances are examined at *DISP* App 2.4.3G to *DISP* App 2.4.13G. 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 2.2G.

Case 1

2.4.3 G_{/1} 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.

2.4.4 G_{/1} 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 2.2, as to the circumstances in which this will be appropriate, will be relevant here.

- 2.4.5** G_{/1} 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.
- 2.4.6** G_{/1} *Firms* should consider whether the reconstruction would have tax implications for complainants (see *DISP* App 2.5.8G and *DISP* App 2.5.9G).
- 2.4.7** G_{/1} 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.
- 2.4.8** G_{/1} 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.
- 2.4.9** G_{/1} 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

- 2.4.10** G_{/1} 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

- 2.4.11** G_{/1} 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.
- 2.4.12** G_{/1} In these circumstances the *guidance* given elsewhere in *DISP* App 2.4 will apply as appropriate.

Examples

- 2.4.13** G_{/1} The following examples illustrate the approach to redress as described in this section.
- 2.4.14** G_{/1} Table 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 <i>premium</i> paid by investor on <i>policy</i> of original term (25 years):	£81.20
<i>Premium</i> that would have been payable on <i>policy</i> with term from <i>sale</i> to retirement (20 years):	£111.20
Actual <i>policy</i> value at time complaint assessed:	£12,500
Value of an equivalent 20-year <i>policy</i> at time complaint assessed:	£21,300
Difference in <i>policy</i> values at time complaint assessed:	£8,800
Difference in outgoings (20 year <i>policy</i> – 25 year <i>policy</i>):	£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 <i>policy</i> less current value of actual <i>policy</i> :	(£8,800)
Gain from total lower outgoings under actual <i>policy</i> :	£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 <i>policy</i> less current value of actual <i>policy</i> :	(£8,800)
Gain from total lower outgoings under actual <i>policy</i> :	<i>Ignored</i>
Therefore total redress is:	<u>£8,800</u>
<u>Additional Information</u>	
<p>If the <i>policy</i> is capable of reconstruction, the complainant must now fund the higher <i>premiums</i> himself for the remainder of the term of the shortened <i>policy</i> until maturity. In this example the higher <i>premium</i> could be £111.20. However the <i>firm</i> should provide the complainant with a reprojection letter based on the reconstructed <i>policy</i> 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.</p>	

2.4.15

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Table Example 9

EXAMPLE 9	
Term extends beyond retirement age: example of failure to explain investment risks	
<u>Background</u>	

EXAMPLE 9	
<p>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.</p>	
<p>It has always been the intention of the complainant to retire at state retirement age 65.</p>	
<p>Term from date of sale to retirement is 20 years and the maturity date of the mortgage is five years after retirement.</p>	
<p>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.</p>	
<p><u>Established facts</u></p>	
<i>Surrender value</i> (on the 25 year <i>policy</i>) at time complaint assessed:	£12,500
Capital repaid under repayment mortgage of term to retirement date (20 years):	£21,000
<i>Surrender value</i> less capital repaid:	(£8,500)
Difference in outgoings (repayment – endowment):	£5,400
Cost of converting from endowment mortgage to repayment mortgage:	£200
<p><u>Basis of compensation:</u></p> <p>The <i>surrender value</i> of the (25 year term) endowment <i>policy</i> 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.</p>	
<p><u>Redress generally</u></p>	
Loss from <i>surrender value</i> less capital repaid:	(£8,500)

EXAMPLE 9	
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:	<u>£3,300</u>
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:	<i>Ignored</i>
Cost of converting to a repayment mortgage:	(£8,700)
Therefore total redress is:	<u>£8,700</u>

2.5 Additional considerations

Introduction

- 2.5.1 G_{/1} This section addresses two 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

- 2.5.2 G_{/1} *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.
- 2.5.3 G_{/1} 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.
- 2.5.4 G_{/1} 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 2.2.4G, 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.

- 2.5.5** G_{/1} *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.
- 2.5.6** G_{/1} 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*.
- 2.5.7** G_{/1} 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

- 2.5.8** G_{/1} *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.
- 2.5.9** G_{/1} 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"

- 2.5.10** G_{/1} *Firms* proposing to offer arrangements involving some form of minimum underpinning or "guarantee" should discuss their proposals with the *FSA* and the Inland Revenue at the earliest possible opportunity (see *DISP* App 2.5.8G). The *FSA* 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

- 2.5.11** G_{/1} 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 *FSA 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*.

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A statement under *DISP* App 2.5.11G should not give the impression that the proposed terms of settlement have been expressly endorsed by either the *FSA* or the *Financial Ombudsman Service*.

Schedules



Handbook Modules

Schedule1 Record keeping requirements

1 Table

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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.

2 Table

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>DISP</i> 1.5.1R	Complaints subject to <i>DISP</i> 1.4– <i>DISP</i> 1.6.	Not specified, but see <i>DISP</i> 1.5.2G	On receipt	3 years

Handbook Modules

Schedule2 Notification requirements

1 Table

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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.

2 Table

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>DISP</i> 1.1.7R	<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	If the <i>firm</i> wishes to take advantage of the exemption in <i>DISP</i> 1.1.7R an annual renewal is required. See <i>DISP</i> 1.1.8R for timing of notice	N/A
<i>DISP</i> 1.1.10R	End of exemption	Confirmation that the conditions in <i>DISP</i> 1.1.7R no longer apply	Conditions in <i>DISP</i> 1.1.7R no longer apply	Not specified
<i>DISP</i> 1.5.4R	Complaints report	Details	– 30 September – 31 March each year	One month
<i>DISP</i> 1.5.11R	Single contact point	Details	At the time of authorisation or on subsequent change	Not specified
<i>DISP</i> 1.7.5R	<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

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>DISP 1.7.6R</i>	End of exemption for <i>member</i> of Lloyd's	Confirmation by the <i>Society</i> of Lloyd's that the condition in <i>DISP 1.1.7R</i> no longer apply to a specified <i>member</i> of Lloyd's	Conditions in <i>DISP 1.1.7R</i> no longer apply	Not specified
<i>DISP 1.7.7R</i>	Complaints report by <i>Society</i> of Lloyd's	Details	– 30 September – 31 March each year	One <i>month</i>

Handbook Modules

Schedule3 Fees and other required payment

- 1 The table of fees and other required payments will be inserted in DISP at a later date.

Handbook Modules

Schedule4 Powers Exercised

1 Table

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- 1 The following powers and related provisions in the *Act* and in the *Ombudsman Transitional Order* have been exercised by the *FSA* to make the *rules* in *DISP*:
 - (1) Section 138 (General *rule*-making power)
 - (2) Section 156 (General supplementary powers)
 - (3) Section 226 (*Compulsory Jurisdiction*)
 - (4) Section 229 (Awards)
 - (5) Schedule 17 paragraph 13 (*FSA's* procedural *rules*)
 - (6) Article 15 (Record-keeping and reporting requirements relating to *relevant complaints*) of the *Ombudsman Transitional Order*.

- 2 The following power in the *Act* has been exercised by the *FSA* to give the *guidance* in *DISP*:
 - (1) Section 157(1) (*Guidance*)

- 3 The following powers and related provisions in the *Act* have been exercised by the *FOS Ltd* to make the *rules* in *DISP*:
 - (1) Section 227 (*Voluntary Jurisdiction*)
 - (2) Section 230 (Costs)
 - (3) Schedule 17 paragraph 8 (*Guidance*)
 - (4) Schedule 17 paragraph 14 (The scheme's *rules*)
 - (5) Schedule 17 paragraph 15 (*Fees*)
 - (6) Schedule 17 paragraph 18 (Terms of reference to the scheme)

2 Table

4	The powers to make <i>rules</i> relating to the new <i>ombudsman</i> scheme are shared between the <i>FSA</i> and the <i>Financial Ombudsman Service (FOS Ltd)</i> . <i>FOS Ltd</i> 's rules are subject to <i>FSA</i> consent or approval. The rules made exclusively by <i>FOS Ltd</i> are:
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3 Table

DISP 2	2.6.9R 2.6.11R
DISP 3	3.2.5R 3.2.7R 3.2.8R 3.2.9R 3.2.11R 3.2.12R 3.2.13R 3.3.1R 3.4.1R 3.5.1R 3.5.2R 3.6.1R 3.6.2R 3.6.3R 3.7.1R 3.8.1R(2) 3.8.3R 3.9.10R 3.9.12R 3.9.15R 3.10.1R
DISP 4	All rules

Handbook Modules

Schedule 5

Actions for damages for contravention under section 150 of the Act

1 Table

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1	The table below sets out the rules in <i>DISP</i> contravention of which by an <i>authorised person</i> may be actionable under section 150 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 <i>private person</i> ?", the rule may be actionable by a " <i>private person</i> " under section 150 (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 <i>FSA</i> has removed the right of action under section 150(2) of the <i>Act</i> . If so, a reference to the rule in which it is removed is also give.
3	The column headed "For other person?" indicates whether the rule 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 rule may be actionable is given.

2 Table

Chapter/ Appendix	Section/ Annex	Paragraph	Right of action under s150			
			For Private Person?	Removed?	For Other Person?	
1 Complaints handling ar- rangements for <i>firms</i>	--	--	Yes	---	---	---
2 Jurisdiction rules	--	--	Yes	-	-	---

3	Complaints handling procedures of the <i>Financial Ombudsman Service</i>	--	--	Yes	---		---	
4	The <i>standard terms</i>	--	--	N/A	---			
5	Funding	--	--	Yes	---			

Handbook Modules

Schedule6 Rules that can be waived

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- 1 No rules in DISP may be waived, other than DISP 1.5.4R, and DISP 1.4.1R to DISP 1.4.16R.

Handbook Modules

Dispute resolutions: Complaints sourcebook

Derivations

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1. There is no table of derivations for this sourcebook.

Handbook Modules

Dispute resolutions: Complaints sourcebook

Destinations

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1. There is no table of destinations for this sourcebook.