

**Complaints Sourcebook (Financial Ombudsman Service Procedural Rules) Instrument
2005**

Powers Exercised

- A. Financial Ombudsman Service Limited amends the Financial Services Authority's Dispute Resolution: Complaints sourcebook (DISP), in the exercise of the powers in the Financial Services and Markets Act 2000: Schedule 17 paragraph 14 (The scheme operator's rules).

Approval

- B. The amendments have not yet been approved by the Financial Services Authority. They are therefore made subject to the approval of the Financial Services Authority.

Commencement

- C. This instrument comes into force on 1 October 2005 subject to the approval of the Financial Services Authority having been received before that time.

Amendment of the Complaints sourcebook

- D. The Rules and Guidance contained in Chapter 3 of the Dispute Resolution: Complaints sourcebook (Complaint handling procedures of the Financial Ombudsman Service) are amended in accordance with the Annex to this Instrument.

Citation

- E. This instrument may be cited as the Complaints Sourcebook (Financial Ombudsman Service Procedural Rules) Instrument 2005.

By order of the Board of the Financial Ombudsman Service Limited:
8 September 2005

Annex

Amendments to the Dispute Resolution: Complaints sourcebook

In this annex, underlining indicates new text. Where an entirely new section is inserted, the place for insertion is indicated and new text is not underlined.

DISP 3.3 Dismissal of complaints without consideration of the merits

DISP 3.3.1 R The *Ombudsman* may dismiss a complaint without considering its merits if he:

...

(5A) is satisfied that the *firm* in question has reviewed the complaint in accordance with any formal regulatory requirement, standard or guidance published by the *FSA* or other regulator in respect of that type of complaint, including, if appropriate, making an offer of redress to the complainant, unless he is of the opinion that the terms of the requirement, standard or guidance did not address the particular circumstances of the case; or

...

...

After DISP 3.3.1 R insert the following:

DISP 3.3.1A R The *Ombudsman* may dismiss a complaint without considering its merits if:

- (1) before he has made a determination, he has received in writing from the *firm*:
 - (a) a detailed statement of how and why, in the *firm's* opinion, the complaint raises an important or novel point of law with significant consequences; and
 - (b) an undertaking in favour of the complainant that, if the complainant or the *firm* commences court proceedings against the other in respect of the complaint in any court in the *United Kingdom*, within six *months* of the complaint being dismissed, the *firm* will: pay the complainant's reasonable costs and disbursements (to be assessed if not agreed on an indemnity basis) in connection with the proceedings at first instance and any subsequent appeal proceedings brought by the *firm*; and make interim payments on account of such costs if and to the extent that it appears reasonable to do so; and


- (2) the *Ombudsman* considers that the complaint:
 - (a) raises an important or novel point of law, which has important consequences; and
 - (b) would more suitably be dealt with by a court as a test case.

DISP 3.3.1B G Factors the *Ombudsman* may take into account in considering whether to dismiss under *DISP* 3.3.1AR include (but are not limited to):

- (1) whether the point of law is central to the outcome of the dispute;
- (2) how important or novel the point of law is in the context of the dispute;
- (3) the significance of the consequences of the dispute for the business of the *firm* or for its customers;
- (4) the significance of the consequences of the dispute for the business of *firms* in that sector or for their customers;
- (5) the amount at stake in the dispute;
- (6) the remedies that a court could impose;
- (7) any representations made by the *firm* or the complainant; and
- (8) the stage already reached in consideration of the dispute.

...

After DISP 3.5.5 G insert the following:

DISP 3.5.6 G The *Ombudsman* may, where he considers it appropriate, take into account evidence from third parties; including, but not limited to, the *FSA*, other ulators, experts in industry matters and experts in consumer matters.