DISPUTE RESOLUTION: COMPLAINTS (SIMPLIFICATION AND MiFID)
INSTRUMENT 2007

Powers exercised by the Financial Ombudsman Service Limited

A. The Financial Ombudsman Service Limited makes:

(1) the rules and guidance in Annexes A and B to this instrument for licensees relating to the Consumer Credit Jurisdiction; and

(2) the standard terms and guidance in Annexes A and B to this instrument for VJ participants relating to the Voluntary Jurisdiction;

in exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

(a) section 226A (Consumer credit jurisdiction);
(b) section 227 (Voluntary Jurisdiction);
(c) paragraph 16B (Consumer credit jurisdiction) of Schedule 17;
(d) paragraph 18 (Terms of reference to the scheme) of Schedule 17;
(e) paragraph 14 (The scheme operator’s rules) of Schedule 17; and
(f) paragraph 8 (Guidance) of Schedule 17.

B. In each case the Financial Services Authority approves the rules and standard terms and guidance to be made by the Financial Ombudsman Service Limited.

Powers exercised by the Financial Services Authority

C. The Financial Services Authority makes the rules and guidance in this instrument for firms relating to the Compulsory Jurisdiction in the exercise of the powers and related provisions in or under:

(1) the following sections of the Act:

(a) section 138 (General rule-making power);
(b) section 156 (General supplementary powers);
(c) section 157(1) (Guidance);
(d) section 226 (Compulsory jurisdiction);
(e) section 234 (Industry funding); and
(f) paragraph 13(4) (Authority’s procedural rules) of Schedule 17;

(2) article 15 (Record-keeping and reporting requirements relating to relevant complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001 (SI 2001/2326); and

D. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

E. This instrument comes into force on 1 November 2007.

Amendments to the Dispute Resolution: Complaints sourcebook

F. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with Annex A to this instrument.

Consequential amendments to the Handbook

G. The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

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Notes

H. In Annex A to this instrument, the "notes" (indicated by "Note:" ) are included for the convenience of readers but do not form part of the legislative text.

Citation

I. This instrument may be cited as the Dispute Resolution: Complaints (Simplification and MiFID) Instrument 2007.

By order of the Board of the Financial Ombudsman Service Limited
7 June 2007

By order of the Board of the Financial Services Authority
28 June 2007
Annex A

Amendments to Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not underlined.

The whole of DISP 1 is deleted and replaced with the following:

1 Treating complainants fairly

1.1 Purpose and application

Purpose

1.1.1 G This chapter contains rules and guidance on how respondents should deal promptly and fairly with complaints in respect of business carried on from establishments in the United Kingdom or by certain branches of firms in the EEA. It is also relevant to those who may wish to make a complaint or refer it to the Financial Ombudsman Service.

Background

1.1.2 G Details of how this chapter applies to each type of respondent are set out below. For this purpose, respondents include:

(1) persons carrying on regulated activities and covered by the Compulsory Jurisdiction (firms);

(2) persons covered by the Consumer Credit Jurisdiction (licensees); and

(3) persons who have opted in to the Voluntary Jurisdiction (VJ participants).

Application to firms

1.1.3 R (1) This chapter applies to a firm in respect of complaints from eligible complainants concerning activities carried on from an establishment maintained by it or its appointed representative in the United Kingdom.

(2) For complaints relating to the MiFID business of a firm, the complaints handling rules and the complaints record rule:

(a) apply to complaints from retail clients and do not apply to complaints from eligible complainants who are not retail clients;
(b) also apply in respect of activities carried on from a branch of a UK firm in another EEA State; and

(c) do not apply in respect of activities carried on from a branch of an EEA firm in the United Kingdom.

1.1.4 R Where a firm has outsourced activities to a third party processor, DISP 1.1.3R does not apply to the third party processor when acting as such, but applies to the firm which is taking responsibility for the acts and omissions of the third party processor in respect of the outsourced activities.

1.1.5 R This chapter does not apply to:

(1) a UCITS qualifier;

(2) a credit union; and

(3) an authorised professional firm in respect of expressions of dissatisfaction about its non-mainstream regulated activities.

1.1.6 G Analogous obligations relevant to credit unions are set out in CRED 17.

1.1.7 R This chapter applies to the Society, members of the Society and managing agents, subject to the Lloyd's complaint rules.

1.1.8 R An insurance intermediary, that is not also an insurer, must have in place and operate appropriate and effective procedures for registering and responding to complaints from a person who is not an eligible complainant.

[Note: article 10 of the Insurance Mediation Directive]

1.1.9 G A complaint about pre-commencement investment business which was regulated by a recognised professional body will be handled under the arrangements of that professional body and is outside the scope of this sourcebook.

1.1.10 R In relation to a firm's obligations under this chapter, references to a complaint also include an expression of dissatisfaction which is capable of becoming a relevant new complaint or a relevant transitional complaint.

FSAVC Review

1.1.11 R Where the subject matter of a 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, the complaints resolution rules, the complaints time limit rules, the complaints record rule and the complaints reporting rules will apply only if the complaint is about the outcome of the review.

Exemptions
1.1.12 R (1) A firm falling within the Compulsory Jurisdiction which does not conduct business with eligible complainants and has no reasonable likelihood of doing so, can, by written notification to the FSA, claim exemption from the rules relating to the funding of the Financial Ombudsman Service, and from the remainder of this chapter.

(2) Notwithstanding (1), the complaints handling rules and complaints record rule will continue to apply in respect of complaints concerning MiFID business.

(3) The exemption takes effect from the date on which the written notice is received by the FSA and will cease to apply when the conditions relating to the exemption no longer apply.

1.1.13 G SUP 15.6 refers to and contains requirements regarding the steps that firms must take to ensure that information provided to the FSA is accurate and complete. Those requirements apply to information submitted to the FSA under this chapter.

Application to licensees and VJ participants

1.1.14 R This chapter (except the complaints record rule and the complaints reporting rules) applies to licensees for complaints from eligible complainants.

1.1.15 R This chapter (except the complaints record rule and the complaints reporting rules) applies to VJ participants for complaints from eligible complainants as part of the standard terms.

1.1.16 G Although licensees and VJ participants are not required to comply with the complaints record rule, it is in their interest to retain records of complaints so that these can be used to assist the Financial Ombudsman Service should it be necessary.

1.1.17 R In relation to the Consumer Credit Jurisdiction only, FOS Ltd may dispense with, or modify, the application of the rules in this chapter to licensees where it considers it appropriate to do so and is satisfied that:

(1) compliance by the licensee with the rules would be unduly burdensome or would not achieve the purpose for which the rules were made; and

(2) it would not result in undue risk to the persons whose interests the rules were intended to protect.

1.1.18 G This power is intended to deal with exceptional circumstances, for example, where it is not possible for a licensee to meet the specified time limits, and any dispensation or modification is likely to be rare.

Outsourcing of complaint handling
1.1.19 G (1) This chapter does not prevent:

(a) the use by a respondent of a third party administrator to handle or resolve complaints (or both); or

(b) two or more respondents arranging a one-stop shop for handling or resolving complaints (or both) under a service level agreement.

(2) These arrangements do not affect respondents' obligations as set out in DISP or the provisions relating to outsourcing by a firm set out in SYSC 8 and SYSC 13.

1.1.20 G Further guidance on the application of this chapter is set out in the table in DISP 1 Annex 2G.

1.2 Consumer awareness rules

1.2.1 R To aid consumer awareness of the protections offered by the provisions in this chapter, respondents must:

(1) publish appropriate summary details of their internal process for dealing with complaints promptly and fairly;

(2) refer eligible complainants in writing to the availability of these summary details at, or immediately after, the point of sale; and

(3) provide such summary details in writing to eligible complainants:

(a) on request; and

(b) when acknowledging a complaint.

1.2.2 R Where the activity does not involve a sale, the obligation in DISP 1.2.1R(2) shall apply at, or immediately after, the point when contact is first made with an eligible complainant.

1.2.3 G These summary details should cover at least:

(1) how the respondent fulfils its obligation to handle and seek to resolve relevant complaints; and

(2) that, if the complaint is not resolved, the complainant may be entitled to refer it to the Financial Ombudsman Service.

1.2.4 G The summary details may be set out in a leaflet, and their availability may be referred to in contractual documentation.

1.2.5 G Respondents may also display or reproduce the Financial Ombudsman Service logo (under licence) in:
(1) branches and sales offices to which eligible complainants have access; or

(2) marketing literature or correspondence directed at eligible complainants;

provided it is done in a way which is not misleading.

1.3 Complaints handling rules

1.3.1 R Effective and transparent procedures for the reasonable and prompt handling of complaints must be established, implemented and maintained by:

(1) a respondent; and

(2) a branch of a UK firm in another EEA State.

[Note: article 10 of the MiFID implementing Directive]

1.3.2 G These procedures should:

(1) allow complaints to be made by any reasonable means; and

(2) recognise complaints as requiring resolution.

1.3.3 R In respect of complaints that do not relate to MiFID business, a respondent must put in place appropriate management controls and take reasonable steps to ensure that in handling complaints it identifies and remedies any recurring or systemic problems, for example, by:

(1) analysing the causes of individual complaints so as to identify root causes common to types of complaint;

(2) considering whether such root causes may also affect other processes or products, including those not directly complained of; and

(3) correcting, where reasonable to do so, such root causes.

1.3.4 G A firm should use the information it gains from dealing with complaints that relate to MiFID business in accordance with this chapter to inform its compliance with its obligations to monitor the adequacy and effectiveness of its measures and procedures to detect and minimise any risk of compliance failures (SYSC 6.1).

1.3.5 G A firm should have regard to Principle 6 (Customers' interests) when it identifies problems, root causes or compliance failures and consider whether it ought to act on its own initiative with regard to the position of customers who may have suffered detriment from, or been potentially disadvantaged by such factors, but who have not complained.
1.4 Complaints resolution rules

1.4.1 R Once a complaint has been received by a respondent, it must:

(1) investigate the complaint competently, diligently and impartially;

(2) assess fairly, consistently and promptly:

(a) the subject matter of the complaint;

(b) whether the complaint should be upheld;

(c) what remedial action or redress (or both) may be appropriate;

(d) if appropriate, whether it has reasonable grounds to be satisfied that another respondent may be solely or jointly responsible for the matter alleged in the complaint;

taking into account all relevant factors;

(3) offer redress or remedial action when it decides this is appropriate;

(4) explain to the complainant promptly and, in a way that is fair, clear and not misleading, its assessment of the complaint, its decision on it, and any offer of remedial action or redress; and

(5) comply promptly with any offer of remedial action or redress accepted by the complainant.

1.4.2 G Factors that may be relevant in the assessment of a complaint under DISP 1.4.1R(2), include the following:

(1) all the evidence available and the particular circumstances of the complaint;

(2) similarities with other complaints received by the respondent;

(3) relevant guidance published by the FSA, other relevant regulators, the Financial Ombudsman Service or former schemes; and

(4) appropriate analysis of decisions by the Financial Ombudsman Service concerning similar complaints received by the respondent.

1.4.3 G The respondent should aim to resolve complaints at the earliest possible opportunity, minimising the number of unresolved complaints which need to be referred to the Financial Ombudsman Service.
1.4.4 R Where a complaint against a respondent is referred to the Financial Ombudsman Service, the respondent must cooperate fully with the Financial Ombudsman Service and comply promptly with any settlements or awards made by it.

1.4.5 G DISP App 2 contains guidance to respondents on the approach to assessing financial loss and appropriate redress where a respondent upholds a complaint concerning the sale of an endowment policy for the purposes of repaying a mortgage.

1.5 Complaints resolved by close of the next business day

1.5.1 R The following rules do not apply to a complaint that is resolved by a respondent by close of business on the business day following its receipt:

(1) the complaints time limit rules;
(2) the complaints forwarding rules;
(3) the complaints reporting rules; and
(4) the complaints record rule, if the complaint does not relate to MiFID business.

1.5.2 G Complaints falling within this section are still subject to the complaint resolution rules.

1.5.3 G For the purposes of this section:

(1) a complaint received on any day other than a business day, or after close of business on a business day, may be treated as received on the next business day; and

(2) a complaint is resolved where the complainant has indicated acceptance of a response from the respondent, with neither the response nor acceptance having to be in writing.

1.6 Complaints time limit rules

Keeping the complainant informed

1.6.1 R On receipt of a complaint, a respondent must:

(1) send the complainant a prompt written acknowledgement providing early reassurance that it has received the complaint and is dealing with it; and
(2) ensure the complainant is kept informed thereafter of the progress of the measures being taken for the complaint's resolution.

Final or other response within eight weeks

1.6.2 R The respondent must, by the end of eight weeks after its receipt of the complaint, send the complainant:

(1) a final response; or

(2) a written response which:

(a) explains why it is not in a position to make a final response and indicates when it expects to be able to provide one;

(b) informs the complainant that he may now refer the complaint to the Financial Ombudsman Service; and

(c) encloses a copy of the Financial Ombudsman Service standard explanatory leaflet.

1.6.3 G Respondents are not obliged to comply with the requirements in DISP 1.6.2R where they are able to rely on any of the following rules:

(1) the complainant's written acceptance rule (DISP 1.6.4R);

(2) the rules for respondents with two-stage complaints procedures (DISP 1.6.5R); or

(3) the complaints forwarding rules (DISP 1.7).

Complainant's written acceptance

1.6.4 R DISP 1.6.2R does not apply if the complainant has already indicated in writing acceptance of a response by the respondent, provided that the response informs the complainant how to pursue his complaint with the respondent if he remains dissatisfied.

Respondents with two-stage complaints procedures

1.6.5 R If, within eight weeks of receiving a complaint, the respondent sends the complainant a written response which:

(1) offers redress or remedial action (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 respondent if he remains dissatisfied;

(3) refers to the ultimate availability of the Financial Ombudsman Service if he remains dissatisfied with the respondent's response; and
(4) indicates it will regard the complaint as closed if it does not receive a reply within eight weeks of the complainant's receipt of the response;

the respondent is not obliged to continue to comply with DISP 1.6.2R unless the complainant indicates that he remains dissatisfied, in which case, the obligation to comply with DISP 1.6.2R resumes.

1.6.6 R If the complainant takes more than a week to reply to a written response of the kind described in DISP 1.6.5R, the additional time in excess of a week will not count for the purposes of the time limits in DISP 1.6.2R or the complaints reporting rules.

Speed and quality of response

1.6.7 G It is expected that within eight weeks of their receipt, almost all complaints to a respondent will have been substantively addressed by it through a final response or response as described in DISP 1.6.4R or DISP 1.6.5R.

1.6.8 G When assessing a respondent's response to a complaint, the FSA may have regard to a number of factors, including, the quality of response, as against the complaints resolution rules, as well as the speed with which it was made.

1.7 Complaints forwarding rules

1.7.1 R A respondent that has reasonable grounds to be satisfied that another respondent may be solely or jointly responsible for the matter alleged in a complaint may forward the complaint, or the relevant part of it, in writing to that other respondent, provided it:

(1) does so promptly;

(2) informs the complainant promptly in a final response of why the complaint has been forwarded by it to the other respondent, and of the other respondent's contact details; and

(3) where jointly responsible for the fault alleged in the complaint, it complies with its own obligations under this chapter in respect of that part of the complaint it has not forwarded.

Dealing with a forwarded complaint

1.7.2 R When a respondent receives a complaint that has been forwarded to it under DISP 1.7.1R, the complaint is treated for the purposes of DISP as if made directly to that respondent, and as if received by it when the forwarded complaint was received.

1.7.3 G On receiving a forwarded complaint, the standard time limits will apply from the date on which the respondent receives the forwarded complaint.
1.8 Complaints time barring rule

1.8.1 R If a respondent receives a complaint which is outside the time limits for referral to the Financial Ombudsman Service (see DISP 2.3) it may reject the complaint without considering the merits, but must explain this to the complainant in a final response in accordance with DISP 1.6.2R and indicate that the Ombudsman may waive the time limits in exceptional circumstances.

1.9 Complaints record rule

1.9.1 R A firm, including, in the case of MiFID business, a branch of a UK firm in another EEA state, must keep a record of each complaint received and the measures taken for its resolution, and retain that record for:

(1) at least five years where the complaint relates to MiFID business; and
(2) three years for all other complaints;

from the date the complaint was received.

[Note: article 10 of the MiFID implementing Directive]

1.10 Complaints reporting rules

1.10.1 R Twice a year a firm must provide the FSA with a complete report concerning complaints received from eligible complainants. The report must be set out in the format in DISP 1 Annex 1R.

1.10.2 R DISP 1 Annex 1R requires (for the relevant reporting period) information about:

(1) the total number of complaints received by the firm, broken down according to the categories and generic product types described in DISP 1 Annex 1R which are relevant to the firm;
(2) the total number of complaints 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;
(3) the total number of complaints:
(a) upheld by the firm in the reporting period;

(b) that the firm knows have been referred to, and accepted by, the Financial Ombudsman Service in the reporting period;

(c) outstanding at the beginning of the reporting period; and

(d) outstanding at the end of the reporting period; and

(4) the total amount of redress paid in respect of complaints during the reporting period.

1.10.3 G For the purpose of DISP 1.10.2R, when completing the return, the firm should take into account the following matters.

(1) If 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.

(2) Under DISP 1.10.2R(3)(a), a firm should report any complaint to which it has given a final response which upholds the complaint, even if any redress offered is disputed by the complainant. Where a complaint is upheld in part, a firm should treat the whole complaint as upheld for reporting purposes. However, where a firm rejects a complaint, yet chooses to make a goodwill payment to the complainant, the complaint should be recorded as 'rejected'.

(3) If a firm reports on the amount of redress paid under DISP 1.10.2R(4), redress should be interpreted to include an amount paid, or cost borne, by the firm, where a cash value can be readily identified, and should include:

(a) amounts paid for distress and inconvenience;

(b) a free transfer out to another provider which transfer would normally be paid for;

(c) goodwill payments and goodwill gestures;

(d) interest on delayed settlements;

(e) waiver of an excess on an insurance policy; and

(f) payments to put the consumer back into the position the consumer should have been in had the act or omission not occurred.
(4) If a firm reports on the amount of redress paid under DISP 1.10.2R(4), the redress should not, however, include repayments or refunds of premiums which had been taken in error (for example where a firm had been taking, by direct debit, twice the actual premium amount due under a policy). The refund of the overcharge would not count as redress.

1.10.4 R The relevant reporting periods are:

(1) the six months immediately following a firm's accounting reference date; and

(2) the six months immediately preceding a firm's accounting reference date.

1.10.5 R Reports are to be submitted to the FSA within 30 business days of the end of the relevant reporting periods through, and in the electronic format specified in, the FSA Complaints Reporting System or the appropriate section of the FSA website.

1.10.6 R If a firm is unable to submit a report in electronic format because of a systems failure of any kind, the firm must notify the FSA, in writing and without delay, of that systems failure.

1.10.7 R A closed complaint is a complaint where:

(1) the firm has sent a final response; or

(2) the complainant has indicated in writing acceptance of the firm's earlier response under DISP 1.6.4R; or

(3) for a firm which operates a two-stage complaints procedure, the complainant has not indicated that he remains dissatisfied within eight weeks of the response sent by the firm under DISP 1.6.5R.

1.10.8 G If a complaint is reported as closed under DISP 1.10.2R(2) because the complainant has not replied to the firm within eight weeks of a written response which meets the requirements in DISP 1.6.5R, 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 1.10.2R(2).

Notification of contact point for complainants

1.10.9 R For the purpose of inclusion in the public record maintained by the FSA, a firm must:

(1) provide the FSA, at the time of its authorisation, with details of a single contact point within the firm for complainants; and

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(2) notify the FSA of any subsequent change in those details when convenient and, at the latest, in the firm's next report under the complaints reporting rules.

1.11 The Society of Lloyd's

1.11.1 R The Society must establish and maintain appropriate and effective procedures for handling complaints by policyholders against members of the Society which comply with this chapter.

1.11.2 R A member of the Society must, in complying with this chapter, ensure that the arrangements which the member maintains are compatible with the Lloyd's complaint procedures, so that, taken as a whole, the requirements of this sourcebook are met.

1.11.3 R The Society must take reasonable steps to ensure that complaints by policyholders against members of the Society are dealt with under the Lloyd's complaint procedures and that members comply with the requirements of those procedures.

1.11.4 R A complaint by a policyholder against a member of the Society may not be referred to the Financial Ombudsman Service until after the Lloyd's complaint procedures have been completed or until after the end of eight weeks from receipt of the complaint, whichever is the earlier.

1.11.5 R (1) A notification claiming exemption under DISP 1.1.12R from the complaints reporting rules and the rules relating to the funding of the Financial Ombudsman Service must be given to the FSA by the Society on behalf of any member eligible for an exemption.

(2) The Society must notify the FSA if the conditions relating to such an exemption no longer apply to a member who is exempt.

1.11.6 R The report to be sent to the FSA under the complaints reporting rules must be provided by the Society and must cover all complaints by policyholders against members falling within the scope of the complaints reporting rules.

1.11.7 G Each member of the Society is individually subject to the rules in this chapter as a result of the insurance market direction given in DISP 2.5.4D under section 316 of the Act (Direction by Authority).

1.11.8 G However, the Society 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's in-house Complaints Department. This procedure (and any procedure that may replace it) will be subject to the requirements in this chapter.
1.11.9 G Members will individually comply with this chapter if and only if all complaints by policyholders against members are dealt with under the Lloyd's complaints procedures. Accordingly, certain of the obligations under this chapter, for example the obligation to report on complaints received and the obligation to pay fees under the rules relating to the funding of the Financial Ombudsman Service (FEES 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 the complaints reporting rules sent by the Society.

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

1.11.11 G Complaints from members of the Society regarding the activities of members' advisers, which cannot be resolved by the members' adviser, cannot be referred to the Financial Ombudsman Service.

1.11.12 G The Financial Ombudsman Service is not able to deal with the complaints listed in DISP 1.11.13R and separate rules and guidance are therefore required.

1.11.13 R The Society must establish and maintain appropriate and effective arrangements for handling any complaint from a member or a former member about:

(1) regulated activities carried on by the Society;

(2) the Society's regulatory functions carried on by the Society, the Council or those to whom the Council delegates authority to carry out such functions;

(3) advice given by an underwriting agent to a person to become, continue or cease to be, a member of a particular syndicate; and

(4) the management by a managing agent of the underwriting capacity of a syndicate on which the complainant participates or has participated.

1.11.14 R The Society must maintain by bylaw one or more appropriate effective schemes for the resolution of disputes between an individual member or a former member who was an individual member and:

(1) his underwriting agent; or

(2) the Society.

1.11.15 R For the purposes of DISP 1.11.13R "individual member" includes a member which is a limited liability partnership or a body corporate whose members consist only of, or of the nominees for, a single natural person or a group of connected persons.
1.11.16  G  The schemes to which DISP 1.11.13R currently refers are the Lloyd's Arbitration Scheme and the Lloyd's Members' Ombudsman respectively, but the Society may maintain other independent dispute resolution schemes in addition to, or instead of, either of these schemes.

1.11.17  G  The schemes referred to in DISP 1.11.13R should be operationally independent of the Society.

1.11.18  G  An individual member or former member who was an individual member should not have access to the schemes referred to in DISP 1.11.13R unless the complaints arrangements maintained by the Society have failed to resolve the complaint to his satisfaction within eight weeks of receiving it.

1.11.19  G  The Society should give the FSA adequate notice of all proposed changes to the byelaws relating to the schemes referred to in DISP 1.11.13R.

1.11.20  G  When considering what is required to ensure the operational independence of the schemes referred to in DISP 1.11.13R, or proposed changes in such schemes, the Society should take account of similar arrangements operated by the Financial Ombudsman Service.

1.11.21  R  A contravention of DISP 1.11.13R or DISP 1.11.14R does not give rise to a right of action by a private person under section 150 of the Act (Actions for damages) and each of those rules is specified under section 150(2) of the Act as a provision giving rise to no such right of action.

...  

DISP 1 Annex 1R

COMPLAINTS RETURN  

Illustration of the reporting requirements regarding complaints, referred to in DISP 1.10.1R and 1.10.2R

NIL RETURN DECLARATION

A Nil Return may only be declared where:

a)  no complaints were received during the reporting period,

AND

b)  no complaints were outstanding at the beginning of the period.

We wish to declare a Nil Return  

[Yes / No]
RETURN DETAILS REQUIRED

Include Private Individual Complaints
(click if applicable)

Include Small Business Complaints
(click if applicable)

### Private Individual Complaints

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<td>Other</td>
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</tr>
</tbody>
</table>
COMPLAINTS CLOSED DURING REPORTING PERIOD

Number of complaints closed within 4 weeks

Number of complaints closed between 4 and 8 weeks

Number of complaints closed after more than 8 weeks

COMPLAINTS OUTSTANDING

Number of complaints outstanding as at reporting period start date

Number of complaints outstanding as at reporting period end date

COMPLAINTS MANAGEMENT

Number of complaints upheld by the firm in the period

Total amount of redress paid to consumers in the period

Number of complaints referred to, and accepted by, the FOS in the period
NOTES ON THE COMPLETION OF THIS RETURN

Complaints Helptext

This is the return referred to in DISP 1.10.1R and only complaints subject to DISP 1.6 – DISP 1.10 should be included in this return.

Nil returns

If no complaints of any kind have been received during the reporting period and no complaints were outstanding at the beginning of the period, the firm may submit a NIL RETURN by clicking on the relevant box.

Complaints contact details

Details of a contact point for complaints must be provided in accordance with DISP 1.10.9R for inclusion in the public record. This must include at least a name, or a job title, or a department name, but need not include all three. This information was previously supplied as part of the complaints return but now no longer forms part of the return. This information will be captured by the Firm's Online System. Please check that the details of your complaints contact are correct in the Firm's Online System and update if necessary.

Private individual complaint returns

This section relates to records of complaints subject to DISP 1.6 – DISP 1.10, received from private individuals. Firms should report all complaints received during the reporting period, even where the complaint has not been, or is unlikely to be upheld by the firm. If a firm has received private individual complaints then it should click on the box marked "include private individual complaints".

Firms should report complaints received in the single category that best reflects the main cause of dissatisfaction (whether financial loss, material distress or material inconvenience) as described by the complainant.

DISP 2.4.3R provides further definition of an eligible complainant.

Firms should enter the total number of private individual complaints in the box marked "Grand Total Number of Complaints made by private individuals".

Select the type of product from the drop down list. You will need to create a new line for each produce according to the category of complaint. Enter the number of complaints for each product according to the category of the complaint. Zeroes must be entered where no complaints have been received under that category of complaint.

Enter a total for each product type on the right hand side of each row and for each category of complaint at the bottom of each column. Then complete the total number of complaints made by private individuals box in the "total" box in the bottom right hand corner of the table. Check that this total is the same as the "Grand total number of complaints made by private individuals" entered at the start of section.
Small business complaint returns

This section relates to records of complaints subject to DISP 1.6 – DISP 1.10 received from eligible complainants as defined in DISP 2.4.3R other than private individuals. This section should include complaints from:

- Small business customers (with an annual turnover of less than £1 million a year);
- Charities (with an annual income of less than £1 million); and
- Trustees of a trust (with net assets of less than £1 million).

Firms should report all complaints received during the reporting period, even where the complaint has not been, or is unlikely to be upheld by the firm. If a firm has received small business complaints then they should click on the box marked "include small business complaints".

Firms should report complaints received in the single category that best reflects the main cause of dissatisfaction (whether financial loss, material distress or material inconvenience) as described by the complainant.

Firms should enter the total number of small business complaints in the box marked "Grand Total Number of Complaints made by small businesses".

Select the type of product from the drop down list. You will need to create a new line for each different product you wish to report for. Enter the number of complaints for each product according to the category of complaint. Zeroes must be entered where no complaints have been received under that category of complaint.

Enter a total for each product type on the right hand side of each row and for each category of complaint at the bottom of each column. Then complete the total number of complaints made by small businesses box in the "total" box in bottom right hand corner of the table. Check that this total is the same as the "Grand total number of complaints made by small businesses" entered at the start of section.

Complaints closed during the reporting period

Indicate the number of complaints subject to DISP 1.6 – DISP 1.10 closed during the reporting period within the timescales shown. See DISP 1.10.7R for the rules governing when a-complaint is considered to be closed.

Complaints outstanding

Give the number of complaints subject to DISP 1.6 - DISP 1.10 outstanding at the start of the reporting period and the end of the reporting period.

Uphold rates and redress

The firm must indicate the total number of complaints upheld in the customer's favour. The firm must also state the total amount of redress paid to its customers within the reporting period (this includes payments made to customers that have had their complaints rejected or partially upheld as well as complaints that have been fully upheld). See DISP 1.10.3G.
FOS

The *firm* must state how many of its *complaints* (private and small business) it knows to have been referred to the Financial Ombudsman Service within the reporting period.

...

The following is inserted after *DISP 1 Annex 1R*. This text is new and is not underlined.

**DISP 1 Annex 2G**

1. The table below summarises the application of *DISP 1*. Where the table indicates that a particular section may apply, its application in relation to any particular activity or *complaint* is dependent on the detailed application provisions set out in *DISP 1*.

2. In some cases the application of *DISP 1* to *firms* depends on whether responsibility for the matter is reserved under a European Community instrument to an *incoming EEA firm's Home State regulator*. Reference should be made to the detailed application provisions set out in *DISP 1*.

<table>
<thead>
<tr>
<th>Type of respondent</th>
<th>DISP 1.2 Consumer awareness rules</th>
<th>DISP 1.3 Complaints handling rules</th>
<th>DISP 1.4 - 1.8 Complaints resolution rules etc.</th>
<th>DISP 1.9 Complaints record rule</th>
<th>DISP 1.10 Complaints reporting rules</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>firm</em> in relation to complaints concerning non-MIFID business</td>
<td>Applies for eligible complainants</td>
<td>Applies for eligible complainants</td>
<td>Applies for eligible complainants</td>
<td>Applies for eligible complainants</td>
<td>Applies for eligible complainants</td>
</tr>
<tr>
<td>(DISP 1.3.4G does not apply)</td>
<td></td>
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</tr>
<tr>
<td><em>firm</em> in relation to complaints concerning MiFID business</td>
<td>Applies for eligible complainants</td>
<td>Applies for retail clients</td>
<td>Applies for eligible complainants</td>
<td>Applies for retail clients</td>
<td>Applies for eligible complainants</td>
</tr>
<tr>
<td>Branch of a UK firm in another EEA State in relation to complaints concerning non-MiFID business</td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
</tr>
<tr>
<td>Branch of a UK firm in another EEA State in relation to complaints concerning MiFID business</td>
<td>Does not apply</td>
<td>Applies for retail clients</td>
<td>Does not apply</td>
<td>Applies for retail clients</td>
<td>Does not apply</td>
</tr>
<tr>
<td>Incoming branch of an EEA firm in relation to complaints concerning non-MiFID business</td>
<td>Applies for eligible complainants</td>
<td>Applies for eligible complainants</td>
<td>Applies for eligible complainants</td>
<td>Applies for eligible complainants</td>
<td>Applies for eligible complainants</td>
</tr>
<tr>
<td>Incoming branch of an EEA firm in relation to complaints concerning MiFID business</td>
<td>Applies for eligible complainants</td>
<td>Does not apply</td>
<td>Applies for eligible complainants</td>
<td>Does not apply</td>
<td>Applies for eligible complainants</td>
</tr>
<tr>
<td>Incoming EEA firm providing cross-border services from outside the UK</td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
</tr>
<tr>
<td>Branch of an overseas firm (in relation to all complaints)</td>
<td>Applies for eligible complainants</td>
<td>Applies for eligible complainants</td>
<td>Applies for eligible complainants</td>
<td>Applies for eligible complainants</td>
<td>Applies for eligible complainants</td>
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</tr>
<tr>
<td>Licensee</td>
<td>Applies for eligible complaints</td>
<td>Applies for eligible complaints</td>
<td>Applies for eligible complaints</td>
<td>Does not apply</td>
<td>Does not apply</td>
</tr>
<tr>
<td>VJ participant</td>
<td>Applies for eligible complaints</td>
<td>Applies for eligible complaints</td>
<td>Applies for eligible complaints</td>
<td>Does not apply</td>
<td>Does not apply</td>
</tr>
</tbody>
</table>

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

...

Classes of person

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

...

(2) The following are not eligible complainants:

(a) (in the Compulsory Jurisdiction), an individual, business, charity, or trustee (of a trust which is not a pension scheme trust falling under (1)(d) above), who was an intermediate customer, a professional client, a market counterparty, eligible 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 complaint;

(aa) ...

25
(b) (in the Compulsory Jurisdiction, the Consumer Credit Jurisdiction and the Voluntary Jurisdiction), a firm, licensee or VJ participant whose complaint relates in any way to an activity which the firm itself has permission to carry on or which the licensee or VJ participant itself conducts, and which is subject to the Compulsory Jurisdiction, the Consumer Credit Jurisdiction or the Voluntary Jurisdiction of the Financial Ombudsman Service.

...  

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

Firms and VJ participants

...

2.5.2 G Firms may, however, be exempt from the requirements of DISP 1 (Complaint handling procedures for firms Treating complainants fairly) and FEES 5 (Financial Ombudsman Service funding), if they qualify under DISP 1.1.7RR 1.1.12R (Exemption).

...

3.2 The investigation and consideration of complaints by the Ombudsman

...

3.2.3 R Where the firm or licensee has not had eight weeks from receipt of the complaint provided for under DISP 1.4.5R in which to consider the complaint it, the Ombudsman will refer the complaint to the firm or licensee, unless the firm or licensee has already issued a final response.

...

4.2 The standard terms

...

Complaint handling procedures
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 1.1 R* (Application) and *DISP 1.5* (Record keeping and reporting). *DISP 1.2* (Internal complaint handling procedures: general requirements) applies in relation to complaints above activities of the *VJ participant* specified in *DISP 2.6.9 R*. By agreeing to participate in the Voluntary Jurisdiction, a *VJ participant* agrees to handle complaints in accordance with the provisions of *DISP 1* which apply to *VJ participants*.

### TP1

**Transitional provisions**

<table>
<thead>
<tr>
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<td>...</td>
<td></td>
<td>(5)</td>
<td></td>
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<tr>
<td>1A</td>
<td><em>DISP 1</em></td>
<td>R</td>
<td>A complaint received by a firm respondent on or before 31 October 2007 should be handled, resolved, recorded and reported in accordance with the requirements of <em>DISP</em> as they stood at the date the complaint was received.</td>
<td>From 1 November 2007</td>
<td>1 November 2007</td>
</tr>
<tr>
<td>1B</td>
<td><em>DISP 2.4.3</em></td>
<td>R</td>
<td>In relation to a complaint concerning an act or omission before 1 November 2007, in <em>DISP 2.4.3 R</em> (1)(a) substitute &quot;an intermediate customer or market counterparty&quot; for &quot;a professional client or eligible counterparty&quot;.</td>
<td>From 1 November 2007</td>
<td>1 November 2007</td>
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<tr>
<td>10</td>
<td><em>DISP 1.5.4 R</em> <em>1.10.1 R</em> and <em>DISP 1.10.2 R</em></td>
<td>R</td>
<td><em>DISP 1.5.4 R</em> <em>1.10.1 R</em> and <em>DISP 1.10.2 R</em> does not apply to a firm with permission to carry on only insurance mediation activity, mortgage mediation activity, or ...</td>
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<tr>
<td>11</td>
<td><strong>DISP 1.5.4R 1.10.1R and DISP 1.10.2R</strong></td>
<td>R</td>
<td>Where a firm is required under <strong>DISP 1.5.4R 1.10.1R and DISP 1.10.2R</strong> to submit information using a report in the format set out in <strong>DISP 1 Ann 1R</strong> on a half-yearly basis, this must be read as a reference to providing the first and second report in accordance with transitional provision 12R.</td>
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<tr>
<td>12</td>
<td><strong>DISP 1.5.4R 1.10.1R and DISP 1.10.2R</strong></td>
<td>R</td>
<td>...</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td><strong>DISP 1</strong></td>
<td>R</td>
<td>Where, at the relevant commencement date, a firm is still dealing with a complaint that is capable of being referred to the Financial Ombudsman Service as a relevant transitional complaint:</td>
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<td></td>
<td></td>
<td></td>
<td>31 October 2004 (for a complaint to which the MCAS Scheme applied immediately before that date)</td>
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<td></td>
<td></td>
<td></td>
<td>31 October 2004</td>
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<tr>
<td></td>
<td>(1)</td>
<td></td>
<td>it may continue to try to resolve the complaint in accordance with the complaints procedures that applied previously; but</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td>14 January 2005 (for a complaint to which the GISC Facility applied immediately before that date)</td>
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<tr>
<td></td>
<td>(2)</td>
<td></td>
<td>it must, within eight weeks of the relevant commencement date, send the complainant a response which satisfies <strong>DISP 1.4.5R 1.6.3R</strong>, unless <strong>DISP 1.5.1.4.3A R</strong> or <strong>DISP 1.4.9 R 1.6.4R or 1.6.5R</strong> applies.</td>
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</tr>
</tbody>
</table>
| 17 | **DISP 1.4.18R 1.3.12R**  
- **DISP 1.4.20G 1.3.17R** | **R** | A *firm* must apply *DISP* as it applied before amendment by the Depolarisation Instrument to complaints received before 14 January 2005.  
… | From 14 January 2005 | 14 January 2005 |
| 18 | **DISP 1.5.4R 1.10.1R and DISP 1.10.2R, DISP 1.5.6R 1.10.4R and DISP 1 Annex 1R** | **R (1)** | Solely in respect of information regarding any *reversion activity* or *home purchase activity* required to be reported in *DISP 1.10.1R* and *DISP 1.10.2R* 1.5.4R, a *firm* is not required to include such information in respect of relevant reporting periods (as set out in *DISP 1.10.4R* 1.5.6R) ending before 1 October 2007; | … | … |
Schedule 1 (Record keeping requirements) is amended as follows:

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Subject of record</th>
<th>Contents of record</th>
<th>When record must be made</th>
<th>Retention period</th>
</tr>
</thead>
<tbody>
<tr>
<td>DISP 1.9.1R</td>
<td>Complaints subject to DISP 1.3 – DISP 1.8 (other than DISP 1.5)</td>
<td>Each complaint received and the measures taken for its resolution</td>
<td>On receipt</td>
<td>5 years for complaints relating to MiFID business and 3 years for all other complaints</td>
</tr>
</tbody>
</table>

Schedule 2 (Notification requirements) is amended as follows:

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Matter to be notified</th>
<th>Contents of notification</th>
<th>Trigger event</th>
<th>Time allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>DISP 1.1.10R</td>
<td>End of exemption</td>
<td>Confirmation that the conditions in DISP 1.1.7R no longer apply</td>
<td>Conditions in DISP 1.1.7R no longer apply</td>
<td>As soon as reasonably practicable.</td>
</tr>
<tr>
<td>DISP 1.5.4R</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>1.10.1R</td>
<td>...</td>
<td>...</td>
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<td>...</td>
</tr>
<tr>
<td>DISP 1.5.11R</td>
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<tr>
<td>1.10.8R</td>
<td>...</td>
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<td>...</td>
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<tr>
<td>DISP 1.7.5R</td>
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<td>...</td>
</tr>
<tr>
<td>1.11.5R(1)</td>
<td>...</td>
<td>...</td>
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<td>...</td>
</tr>
<tr>
<td>DISP 1.7.6R</td>
<td>...</td>
<td>...</td>
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<td>...</td>
</tr>
<tr>
<td>1.11.5R(2)</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>DISP 1.7.7R</td>
<td>...</td>
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<td>...</td>
<td>...</td>
</tr>
<tr>
<td>1.11.6R</td>
<td>...</td>
<td>...</td>
<td>...</td>
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</tbody>
</table>
Schedule 4 (Powers Exercised) is amended as follows:

**Sch 4.1 G**

1. The following powers and related provisions in the Act, in the Mortgages and General Insurance Complaints Transitional Order and in the Ombudsman Transitional Order have been exercised by the FSA to make the rules in DISP:

   ...  

   (8A) Schedule 17 paragraph 13(4)  

   ...  

   (10) Article 9 (Record-keeping and reporting requirements relating to relevant transitional complaints) of the Mortgages and General Insurance Complaints Transitional Order  

   ...  

3. The following powers and related provisions in the Act have been exercised by FOS Ltd to make the rules in DISP:

   (1A) Section 226A (Consumer Credit Jurisdiction)  

   ...  

   (5A) Schedule 17 paragraph 16B (Consumer Credit Jurisdiction)  

   ...  

**Sch 4.2 G**

| Table: | The powers to make rules relating to the new ombudsman scheme are shared between the FSA and the Financial Ombudsman Service (FOS Ltd). FOS Ltd's rules are subject to FSA consent or approval. The rules made exclusively by FOS Ltd are: |
| DISP 1 | 1.1.1BR |
|        | 1.1.1DR |

Schedule 5 (Actions for damages for contravention under section 150 of the Act) is amended as follows:

**Sch 5.2 G**

<table>
<thead>
<tr>
<th>Chapter /Appendix</th>
<th>Section /Annex</th>
<th>Paragraph</th>
<th>For private person?</th>
<th>Removed?</th>
<th>For other person?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Complaints handling arrangements</td>
<td>All rules apart from DISP</td>
<td>-</td>
<td>Yes</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>for firms</td>
<td>1.7.14R 1.11.13R and DISP 1.11.14R 1.7.15R</td>
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<tr>
<td>1</td>
<td>7</td>
<td>14 and 15</td>
<td>No</td>
<td>Yes - DISP 1.11.21R 1.7.22R</td>
<td>No</td>
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<td>...</td>
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</tbody>
</table>

Schedule 6 (Rules that can be waived) is amended as follows:

Sch 6.1  G  No rules in DISP may be waived, other than DISP 1.5.4R 1.10.1R, and DISP 1.4.1R 1.6. to DISP 1.4.16R 1.8.
Annex B

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text.

**complaint**

(1) (in COAF) any expression of dissatisfaction about the manner in which the FSA has carried out its statutory functions other than its legislative functions.

(2) (in DISP, except DISP 1.1 and the complaints handling rules and the complaints record rule in relation to MiFID business) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service, which:

(a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and

(b) relates to an activity of that respondent, or of any other respondent with whom that respondent has some connection in marketing or providing financial services or products, which comes under the jurisdiction of the Financial Ombudsman Service.

(2) (only in relation to MiFID business in DISP 1.1, the complaints handling rules and the complaints record rules) (in DISP 1.1 and the complaints handling rules and the complaints record rule only in relation to MiFID business) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service, where such complaint involves an allegation that the complainant has suffered, or may suffer, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.

**complaints handling rules** DISP 1.23.

**complaints record rule** DISP 1.59.

**complaints reporting rules** DISP 1.10.

**complaints resolution rules** DISP 1.4.
complaints time barring rule

complaints time limits rules

consumer awareness rules

final response (1) (in CRED) a written response from the firm which:

... (in DISP) a written response from a respondent which:

(a) accepts the complaint and, where appropriate, offers redress or remedial action; or

(b) offers redress or remedial action without accepting the complaint; or

(c) rejects the complaint and gives reasons for doing so;

and which:

(d) encloses a copy of the Financial Ombudsman Service's standard explanatory leaflet; and

(e) informs the complainant that if he remains dissatisfied with the respondent's response, he may now refer his complaint to the Financial Ombudsman Service and must do so within six months.

Lloyd's complaint procedures the procedures established and maintained by the Society under DISP 1.11.1R.

Lloyd's complaint rules

respondent (in DISP) a firm, licensee or VJ participant covered by the Compulsory Jurisdiction, Consumer Credit Jurisdiction or Voluntary Jurisdiction.
Annex C

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In this Annex, underlining indicates new text and striking through indicates deleted text.

6.4 Mortgages: content of the offer document

...  

6.4.14 G DISP 1.2.1R requires a firm to deal promptly and fairly with complaints, have in place a complaints handling policy for handling complaints about its services, and also for including referring to another firm complaints complaints about that other firm's services.
Annex D

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

12.4 What must a firm do when it appoints an appointed representative or an EEA tied agent?

...

12.4.5E G (1) ...

(2) Under DISP 1.2.91R, a firm must among other things, supply a copy of its summary details of its internal process for dealing promptly and fairly with complaints. When it receives a complaint, it should ensure that the "lead-principal" is clearly identified in the procedures.

...
Annex E

Amendments to the Credit Unions sourcebook (CRED)

In this Annex, underlining indicates new text and striking through indicates deleted text.

17.1 Application and Purpose

... 

17.1.2 G This chapter replaces DISP 1 (Complaints Handling Procedures for firms Treating complainants fairly), which does not apply to credit unions (DISP 1.1.45R(2)).
Annex F

Amendments to the Professional Firms sourcebook (PROF)

In this Annex, underlining indicates new text and striking through indicates deleted text.

5.3 Reference to other sourcebooks and manuals

...

Dispute resolution: Complaints sourcebook

5.3.6 G DISP 1.1.45R(43)(c) provides that DISP 1 (Complaints Handling Procedures for firms: Treating complainants fairly) does not apply to an authorised professional firm in so far as its non-mainstream regulated activities are concerned. DISP 2.6.7R further provides that a complaint about an authorised professional firm cannot be handled under the Compulsory Jurisdiction of the Financial Ombudsman Service if it relates solely to non-mainstream regulated activity and can be handled by a designated professional body. This is because such a complaint will be handled by the relevant professional body.