

DISPUTE RESOLUTION: COMPLAINTS (SIMPLIFICATION (NO 2) AND OTHER AMENDMENTS) INSTRUMENT 2008

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) section 229 (Awards);
- (d) section 230 (Costs);
- (e) paragraph 8 (Guidance) of Schedule 1;
- (f) paragraph 14 (The scheme operator's rules) of Schedule 17;
- (g) paragraph 16B (Consumer credit jurisdiction) of Schedule 17; and
- (h) paragraph 18 (Terms of reference to the scheme) of Schedule 17.

B. The making of these rules and standard terms by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Services Authority.

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 229 (Awards);
 - (f) paragraph 13 (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);

- (3) article 9 (Record-keeping and reporting requirements relating to relevant transitional complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (SI 2004/454); and
 - (4) the other powers referred to in Schedule 4 of the General Provisions.
- D. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.
- E. The Financial Services Authority consents to and approves the rules and standard terms made by the Financial Ombudsman Service Limited.

Commencement

- F. Part 2 of Annex B to this instrument comes into force on 6 July 2008. The remainder of this Instrument comes into force on 6 April 2008.

Amendments to the Dispute Resolution: the Complaints sourcebook

- G. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with Annex B to this instrument.

Other amendments to the Handbook

- H. 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).

Glossary of definitions	Annex A
Fees manual	Annex C
Credit Unions sourcebook	Annex D
Professional Firms sourcebook	Annex E

Citation

- I. This instrument may be cited as the Dispute Resolution: Complaints (Simplification (No 2) and other Amendments) Instrument 2008.

By order of the Board of the Financial Ombudsman Service Limited

5 March 2008

By order of the Board of the Financial Services Authority

27 March 2008

Annex A

Amendments to the Glossary of definitions

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

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chargeable case any ~~complaint~~ complaint referred to the *Financial Ombudsman Service*, except where:

- (a) the *Ombudsman* considers it apparent from the ~~complaint~~ complaint, when it is received, and from any *final response* which has been issued by the *firm* or *licensee*, that the ~~complaint~~ complaint should not proceed because:
 - (i) the complainant is not an *eligible complainant* in accordance with *DISP* 2; or
 - (ii) the ~~complaint~~ complaint does not fall within the jurisdiction of the *Financial Ombudsman Service* (as described in *DISP* 2); or
 - (iii) the *Ombudsman* considers that the ~~complaint~~ complaint should be dismissed without consideration of its merits under *DISP* 3.3 (Dismissal of complaints without consideration of the merits and test cases); or
- (b) the *Ombudsman* considers, at any stage, that the ~~complaint~~ complaint should be dismissed under *DISP* 3.3.4~~R~~(2) on the grounds that it is frivolous or vexatious.

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complaint (1) ...

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(4) (in *DISP*) reference to a *complaint* includes:

- (a) under all jurisdictions, part of a *complaint*; and
- (b) under the *Compulsory Jurisdiction*, all or part of a *relevant complaint*.

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eligible complainant a person eligible to have a ~~complaint~~ complaint considered under the *Financial Ombudsman Service*, as defined in *DISP* 2.4 (~~Who can refer a complaint to the Financial Ombudsman Service~~) 2.7 (Is the complainant eligible?).

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firm

- (1) an *authorised person*, but not a *professional firm* unless it is an *authorised professional firm*; (see also *GEN 2.2.18R* for the position of an authorised partnership or unincorporated association which is dissolved);
- (2) (in *DISP 2* and *3*) includes, in accordance with the *Ombudsman Transitional Order*, *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant existing complaints* and *relevant new complaints*.
- (3) (in *DISP 2* and *3*) includes, in accordance with the *Mortgage and General Insurance Complaints Transitional Order*, former *firms* subject to the *Compulsory Jurisdiction* in relation to *relevant transitional complaints*.
- (4) (in *DISP 2* and *3*) includes, as a result of the *insurance market direction* given in *DISP 2.1.7D* under section 316 of the *Act* (*Direction by Authority*), *members of the Society of Lloyd's*.

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relevant business

- (1) (in *DISP* and *FEES*) that part of a *firm's* business which it conducts with private individuals and which is subject to the jurisdiction of the *Financial Ombudsman Service* as provided for in *DISP 2.6* (~~To which activities do the rules apply?~~) *2.3* (*To which activities does the Compulsory Jurisdiction apply?*), *DISP 2.4* (*To which activities does the Consumer Credit Jurisdiction apply?*) and *DISP 2.5* (*To which activities does the Voluntary Jurisdiction apply?*), measured by reference to the appropriate tariff-base for each *industry block*.

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respondent

- (1) (in *DISP*) a *firm* (except a *UCITS qualifier*), *licensee* or *VJ participant* covered by the ~~compulsory jurisdiction~~ *Compulsory Jurisdiction*, ~~consumer credit jurisdiction~~ *Consumer Credit Jurisdiction* or ~~voluntary jurisdiction~~ *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.
- (2) (in *DISP 2* and *3*) includes, as a result of sections 226 and 226A of the *Act*:
 - (a) an *unauthorised person* who was formerly a *firm* in respect of a *complaint* about an act or omission which occurred at the time when the *firm* was *authorised*, provided that the compulsory jurisdiction rules were in force in relation to the activity in question; and
 - (b) a *person* who was formerly a *licensee* in respect of a *complaint* about an act or omission which occurred at the time when it was a *licensee*, provided the *complaint* falls within a description specified in the consumer credit rules in force at the time of the

act or omission.

(3) (in DISP 2 and 3) includes, in accordance with the *Ombudsman Transitional Order*, an *unauthorised person* subject to the *Compulsory Jurisdiction* in relation to *relevant existing complaints* and *relevant new complaints*.

(4) (in DISP 2 and 3) includes, in accordance with the *Mortgage and General Insurance Complaints Transitional Order*, a former *firm* subject to the *Compulsory Jurisdiction* in relation to *relevant transitional complaints*.

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Annex B

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

Part 1

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

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- 1.1.5 R This chapter does not apply to:
- (1) a ~~UCITS~~ qualifier; [deleted]

...

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 2.8*) 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.

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Part 2

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

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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:
- (1) ~~informs~~ informed the complainant how to pursue his *complaint* with the *respondent* if he remains dissatisfied; and
 - (2) referred to the ultimate availability of the *Financial Ombudsman Service* if he remains dissatisfied with the *respondent's* response.

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- 1.6.6A G The information regarding the *Financial Ombudsman Service* required to be provided in responses sent under the *complaints* time limit rules (*DISP* 1.6.2R, 1.6.4R and 1.6.5R) should be set out prominently within the text of those responses.

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DISP TP 1

Transitional provisions

1.1 Transitional Provisions table

(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	...				
...					
<u>20</u>	<u><i>DISP</i> 1.6.4R</u>	<u>R</u>	<u>Where a complainant indicates after 6 July 2008 their acceptance of a response sent by the <i>respondent</i> under</u>	<u>From 6 July 2008 to 6 September 2008</u>	<u>6 July 2008</u>

			<u>DISP 1.6.4R before 6 July 2008 then that response need not have referred to the ultimate availability of the <i>Financial Ombudsman Service</i>.</u>		
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Part 3

The introduction to *DISP*, and *DISP 2*, *DISP 3* and *DISP 4* are deleted and replaced with the following text. All the text is new and is not underlined.

Introduction

This part of the *Handbook* sets out how *complaints* are to be dealt with by *respondents* (*firms*, *licensees* and *VJ participants*) and the *Financial Ombudsman Service*.

It refers to relevant provisions in the *Act* and in transitional provisions made by the Treasury under the *Act*. It includes *rules* made by the *FSA* and rules made (and *standard terms* set) by *FOS Ltd* with the consent or approval of the *FSA*. Schedule 4 specifies the sections of the *Act* under which the rules in this sourcebook are made.

The powers to make rules (or set *standard terms*) relating to *firms*, *licensees* and *VJ participants* derive from various legislative provisions; but the rules (and *standard terms*) have been co-ordinated to ensure that they are identical, wherever possible.

Chapter 1: Treating complainants fairly

DISP 1 contains rules and guidance on how *respondents* should deal with *complaints* promptly and fairly, including *complaints* that could be referred to the *FOS*. Some of these rules also apply to certain *branches* of *firms* elsewhere in the *EEA*.

Chapters 2 - 4: The Financial Ombudsman Service

Chapters 2, 3 and 4 set out how the *Financial Ombudsman Service* (operated by *FOS Ltd*) considers unresolved *complaints*.

Chapter 2 sets out the scope of the *Financial Ombudsman Service*'s three jurisdictions:

- the *Compulsory Jurisdiction*;
- the *Consumer Credit Jurisdiction*; and
- the *Voluntary Jurisdiction*.

The scope of the three jurisdictions is defined by: the type of activity to which the *complaint* relates; the place where the activity took place; the eligibility of the complainant; and the time limits for referring a *complaint* to the *Financial Ombudsman Service*.

Chapter 3 sets out the procedures of the *Financial Ombudsman Service*, including consideration and determination of *complaints* and how the *Financial Ombudsman Service* deals with information received.

Chapter 4 sets out the terms under which *VJ participants* participate in the *Voluntary Jurisdiction*.

Appendix 1: FSA's guidance on handling mortgage-endowment complaints

This appendix contains the *FSA's guidance to firms* on handling *complaints* relating to mortgage endowments.

Financial Ombudsman Service fees

The rules on fees charged in respect of the *Financial Ombudsman Service* are in Chapter 5 of the Fees manual.

2 Jurisdiction of the Financial Ombudsman Service

2.1 Purpose, interpretation and application

Purpose

- 2.1.1 G The purpose of this chapter is to set out *rules* and guidance on the scope of the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* and the *Voluntary Jurisdiction*, which are the *Financial Ombudsman Service's* three jurisdictions:
- (1) the *Compulsory Jurisdiction* is not restricted to *regulated activities* and covers:
 - (a) certain *complaints* against *firms* (and businesses which were *firms* at the time of the events complained about); and
 - (b) *relevant complaints* against former members of *former schemes* under the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order*;
 - (2) the *Consumer Credit Jurisdiction* covers certain *complaints* against *licensees* (and businesses which were *licensees* at the time of the events complained about); and
 - (3) the *Voluntary Jurisdiction* covers certain *complaints* against *VJ participants*, including in relation to events before they joined the *Voluntary Jurisdiction*.
- 2.1.2 G *Relevant complaints* covered by the *Compulsory Jurisdiction* comprise:
- (1) *relevant existing complaints* referred to a *former scheme* before *commencement* and inherited by the *Financial Ombudsman Service* under the *Ombudsman Transitional Order*;
 - (2) *relevant new complaints* about events before *commencement* but referred to the *Financial Ombudsman Service* after *commencement* under the *Ombudsman Transitional Order*; and
 - (3) *relevant transitional complaints* referred to the *Financial Ombudsman Service* after the *relevant commencement date* under the *Mortgage and General Insurance Complaints Transitional Order*.
- 2.1.3 G The *Ombudsman Transitional Order* requires the *Financial Ombudsman Service* to complete the handling of *relevant existing complaints*, in a significant number of respects, in accordance with the requirements of the relevant *former scheme* rather than in accordance with the requirements of this chapter.

Interpretation

- 2.1.4 G In this chapter, carrying on an activity includes:
- (1) offering, providing or failing to provide a service in relation to an activity;
 - (2) administering or failing to administer a service in relation to an activity; and
 - (3) the manner in which a *respondent* has administered its business, provided that the business is an activity subject to the *Financial Ombudsman Service's* jurisdiction.
- 2.1.5 G In this chapter, ancillary banking services include, for example, the provision and operation of cash machines, foreign currency exchange, safe deposit boxes and account aggregation services (services where details of accounts held with different financial service providers can be accessed by a single password).

Application

- 2.1.6 R This chapter applies to the *Ombudsman* and to *respondents*.
- 2.1.7 D Part XVI of the *Act* (The Ombudsman Scheme), particularly section 226 (Compulsory Jurisdiction), applies to *members* of the *Society of Lloyd's* in respect of the *regulated activities* of *effecting* or *carrying out contracts of insurance* written at Lloyd's.

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

- 2.2.1 G The scope of the *Financial Ombudsman Service's* three jurisdictions depends on:
- (1) the type of activity to which the *complaint* relates (see *DISP 2.3*, *DISP 2.4* and *DISP 2.5*);
 - (2) the place where the activity to which the *complaint* relates was carried on (see *DISP 2.6*);
 - (3) whether the complainant is eligible (see *DISP 2.7*); and
 - (4) whether the *complaint* was referred to the *Financial Ombudsman Service* in time (see *DISP 2.8*).

2.3 To which activities does the Compulsory Jurisdiction apply?

2.3.1 R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:

- (1) *regulated activities*;
- (2) *consumer credit activities*;
- (3) lending *money* secured by a charge on land;
- (4) lending *money* (excluding *restricted credit* where that is not a *consumer credit activity*);
- (5) paying *money* by a *plastic card* (excluding a *store card* where that is not a *consumer credit activity*);
- (6) providing ancillary banking services;

or any ancillary activities, including advice, carried on by the *firm* in connection with them.

2.3.2 G The *Ombudsman* can also consider under the *Compulsory Jurisdiction*:

- (1) as a result of the *Ombudsman Transitional Order*, a *relevant existing complaint* or a *relevant new complaint* that relates to an act or omission by a *firm* or an *unauthorised person* which was subject to a *former scheme* immediately before *commencement*; or
- (2) as a result of the *Mortgage and General Insurance Complaints Transitional Order*, a *relevant transitional complaint* that relates to an act or omission by a *firm* (or an *unauthorised person* that ceased to be a *firm* after the *relevant commencement date*) which was subject to a *former scheme* at the time of the act or omission;

provided that:

- (3) the act or omission occurred in the carrying on by that *firm* or *unauthorised person* of an activity to which that *former scheme* applied; and
- (4) the complainant is eligible and wishes to have the *complaint* dealt with by the *Ombudsman*.

2.3.3 G *Complaints* about acts or omissions by a *firm* include *complaints* about acts or omissions in respect of activities for which the *firm* is responsible (including business of any *appointed representative* for which the *firm* has accepted responsibility).

2.3.4 R 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*.

2.4 To which activities does the Consumer Credit Jurisdiction apply?

- 2.4.1 R The *Ombudsman* can consider a *complaint* under the *Consumer Credit Jurisdiction* if:
- (1) it is not covered by the *Compulsory Jurisdiction*; and
 - (2) it relates to an act or omission by a *licensee* in carrying on:
 - (a) one or more *consumer credit activities*; or
 - (b) any ancillary activities, including advice, carried on by the *licensee* in connection with them.

2.5 To which activities does the Voluntary Jurisdiction apply?

- 2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:
- (1) it is not covered by the *Compulsory Jurisdiction* or the *Consumer Credit Jurisdiction*; and
 - (2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:
 - (a) an activity carried on after 28 April 1988 which:
 - (i) was not a *regulated activity* at the time of the act or omission, but
 - (ii) was a *regulated activity* when the *VJ participant* joined the *Voluntary Jurisdiction* (or became an *authorised person*, if later);
 - (b) a financial services activity carried on after *commencement* by a *VJ participant* which was covered in respect of that activity by a *former scheme* immediately before the *commencement day*;
 - (c) activities which (at 1 July 2007) were *regulated activities* or would be *regulated activities* if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Ann 1G*);
 - (d) activities which would be *consumer credit activities* if they were carried on from an establishment in the *United*

Kingdom;

- (e) lending *money* secured by a charge on land;
- (f) lending *money* (excluding *restricted credit* where that is not a *consumer credit activity*);
- (g) paying *money* by a *plastic card* (excluding a *store card* where that is not a *consumer credit activity*);
- (h) providing ancillary banking services;
- (i) acting as an intermediary for a loan secured by a charge over land;
- (j) acting as an intermediary for *general insurance business* or *long-term insurance business*;
- (k) National Savings and Investments' business;

or any ancillary activities, including advice, carried on by the *VJ participant* in connection with them.

- 2.5.2 G The scope of the *Voluntary Jurisdiction* is wider than that of the *Compulsory Jurisdiction*, and so some activities are referred to in both jurisdictions.
- 2.5.3 G *DISP 2.5.1R(2)(a)* is for those that are subject to the *Compulsory Jurisdiction* for *regulated activities* but are not covered by the *Ombudsman Transitional Order* or the *Mortgage and General Insurance Complaints Transitional Order*. It enables the *Financial Ombudsman Scheme* to cover *complaints* about earlier events relating to those activities before they became *regulated activities*.
- 2.5.4 G *DISP 2.5.1R(2)(b)* is for those that were members of one of the *former schemes* replaced by the *Financial Ombudsman Service* immediately before *commencement*. It enables the *Financial Ombudsman Scheme* to cover *complaints* that arise out of acts or omissions occurring after *commencement* for any activities which are not covered by the *Compulsory Jurisdiction* but that would have been covered by the relevant *former scheme*.
- 2.5.5 R The *Voluntary Jurisdiction* covers an act or omission that occurred before the *VJ participant* was participating in the *Voluntary Jurisdiction*, and whether the act or omission occurred before or after *commencement*, either:
 - (1) if the *complaint* could have been dealt with under a *former scheme*; or
 - (2) under the agreement by the *VJ participant* in the *Standard Terms*.

2.6 What is the territorial scope of the relevant jurisdiction?

Compulsory Jurisdiction

2.6.1 R The *Compulsory Jurisdiction* covers only *complaints* about the activities of a *firm* (including its *appointed representatives*) carried on from an establishment in the *United Kingdom*.

2.6.2 G This:

- (1) includes *incoming EEA firms* and *incoming Treaty firms*; but
- (2) excludes *complaints* about business conducted in the *United Kingdom* on a services basis from an establishment outside the *United Kingdom*.

Consumer Credit Jurisdiction

2.6.3 R The *Consumer Credit Jurisdiction* covers only *complaints* about the activities of a *licensee* carried on from an establishment in the *United Kingdom*.

Voluntary Jurisdiction

2.6.4 R The *Voluntary Jurisdiction* covers only *complaints* about the activities of a *VJ participant* carried on from an establishment:

- (1) in the *United Kingdom*; or
- (2) elsewhere in the *EEA* if the following conditions are met:
 - (a) the activity is directed wholly or partly at the *United Kingdom* (or part of it);
 - (b) contracts governing the activity are (or, in the case of a potential customer, would have been) made under the law of England and Wales, Scotland or Northern Ireland; and
 - (c) the *VJ participant* has notified appropriate regulators in its *Home State* of its intention to participate in the *Voluntary Jurisdiction*.

Location of the complainant

2.6.5 G A *complaint* can be dealt with under the *Financial Ombudsman Service* whether or not the complainant lives or is based in the *United Kingdom*.

2.7 Is the complainant eligible?

- 2.7.1 R A *complaint* may only be dealt with under the *Financial Ombudsman Service* if it is brought by or on behalf of an *eligible complainant*.
- 2.7.2 R 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. It is immaterial whether the *person* authorised to act on behalf of an *eligible complainant* is himself an *eligible complainant*.

Eligible complainants

- 2.7.3 R An *eligible complainant* must be a *person* that is:
- (1) a private individual;
 - (2) a business, which has a group annual turnover of less than £1 million at the time the complainant refers the *complaint* to the *respondent*;
 - (3) a charity which has an annual income of less than £1 million at the time the complainant refers the *complaint* to the *respondent*; or
 - (4) a trustee of a trust which has a net asset value of less than £1 million at the time the complainant refers the *complaint* to the *respondent*.
- 2.7.4 G A business includes a *sole trader*, a *company*, an unincorporated body and a *partnership* carrying on any trade or profession. A subsidiary of a corporate group will be eligible only where the corporate group as a whole meets the turnover test.
- 2.7.5 G If a *respondent* is in 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.
- 2.7.6 R To be an *eligible complainant* a *person* must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:
- (1) the complainant is (or was) a customer of the *respondent*;
 - (2) the complainant is (or was) a potential customer of the *respondent*;
 - (3) the complainant is the holder, or the beneficial owner, of *units* in a *collective investment scheme* and the *respondent* is the *operator* or *depository* of the *scheme*;

- (4) the complainant is a beneficiary of, or has a beneficial interest in, a *personal pension scheme* or *stakeholder pension scheme*;
- (5) the complainant is a *person* for whose benefit a *contract of insurance* was taken out or was intended to be taken out with or through the *respondent*;
- (6) the complainant is a *person* on whom the legal right to benefit from a claim against the *respondent* under a *contract of insurance* has been devolved by contract, assignment, subrogation or legislation (save the European Community (Rights against Insurers) Regulations 2002);
- (7) the complainant relied in the course of his business on a cheque guarantee card issued by the *respondent*;
- (8) the complainant is the true owner or the *person* entitled to immediate possession of a cheque or other bill of exchange, or of the funds it represents, collected by the *respondent* for someone else's account;
- (9) the complainant is the recipient of a banker's reference given by the *respondent*;
- (10) the complainant gave the *respondent* a guarantee or security for:
 - (a) a mortgage;
 - (b) a loan;
 - (c) an actual or prospective *regulated consumer credit agreement*;
 - (d) an actual or prospective *regulated consumer hire agreement*; or
 - (e) any linked transaction as defined in the Consumer Credit Act 1974 (as amended);
- (11) the complainant is a *person* about whom information relevant to his financial standing is or was held by the *respondent* in operating a credit reference agency as defined by section 145(8) of the Consumer Credit Act 1974 (as amended);
- (12) the complainant is a *person* from whom the *respondent* has sought to recover payment under a *regulated consumer credit agreement* or *regulated consumer hire agreement* in carrying on debt-collecting as defined by section 145 (7) of the Consumer Credit Act (1974) (as amended); or
- (13) the complainant is a beneficiary under a trust or estate of which

the *respondent* is trustee or personal representative.

2.7.7 G *DISP* 2.7.6R(5) and (6) 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.

2.7.8 G In the *Compulsory Jurisdiction*, under the *Ombudsman Transitional Order* and the *Mortgages and General Insurance Complaints Transitional Order*, where a complainant:

- (1) wishes to have a *relevant new complaint* or a *relevant transitional complaint* dealt with by the *Ombudsman*; and
- (2) is not otherwise eligible; but
- (3) would have been entitled to refer an equivalent *complaint* to the *former scheme* in question immediately before the relevant transitional order came into effect;

if the *Ombudsman* considers it appropriate, he may treat the complainant as an *eligible complainant*.

Exceptions

2.7.9 R The following are not *eligible complainants*:

- (1) (in all jurisdictions) a *firm*, *licensee* or *VJ participant* whose *complaint* relates in any way to an activity which:

- (a) the *firm* itself has *permission* to carry on; or
- (b) the *licensee* or *VJ participant* itself conducts;

and which is subject to the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* or the *Voluntary Jurisdiction*;

- (2) (in the *Compulsory Jurisdiction*) a complainant, other than a trustee of a *pension scheme* trust, who was:

- (a) a *professional client*; or
- (b) an *eligible counterparty*;

in relation to the *firm* and activity in question at the time of the act or omission which is the subject of the *complaint*; and

- (3) (in the *Consumer Credit Jurisdiction*):

- (a) a body corporate;
- (b) a *partnership* consisting of more than three persons;

- (c) a *partnership* all of whose members are bodies corporate; or
- (d) an unincorporated body which consists entirely of bodies corporate.

2.7.10 G In the *Compulsory Jurisdiction*, in relation to *relevant new complaints* under the *Ombudsman Transitional Order* and *relevant transitional complaints* under the *Mortgages and General Insurance Complaints Transitional Order*:

- (1) where the *former scheme* in question is the *Insurance Ombudsman Scheme*, a complainant is not to be treated as an *eligible complainant* unless:
 - (a) he is an individual; and
 - (b) the *relevant new complaint* does not concern aspects of a policy relating to a business or trade carried on by him;
- (2) where the *former scheme* in question is the *GISC facility*, a complainant is not to be treated as an *eligible complainant* unless:
 - (a) he is an individual; and
 - (b) he is acting otherwise than solely for the purposes of his business; and
- (3) where the *former scheme* in question is the *MCAS scheme*, a complainant is not to be treated as an *eligible complainant* if:
 - (a) the *relevant transitional complaint* does not relate to a breach of the Mortgage Code published by the Council of Mortgage Lenders;
 - (b) the *complaint* concerns physical injury, illness, nervous shock or their consequences; or
 - (c) the complainant is claiming a sum of money that exceeds £100,000.

2.8 Was the complaint referred to the Financial Ombudsman Service in time?

2.8.1 R The *Ombudsman* can only consider a *complaint* if:

- (1) the *respondent* has already sent the complainant its *final response*; or
- (2) eight weeks have elapsed since the *respondent* received the *complaint*.

2.8.2 R The *Ombudsman* cannot consider a *complaint* if the complainant refers it to the *Financial Ombudsman Service*:

- (1) more than six *months* after the date on which the *respondent* sent the complainant its *final response*; or
- (2) more than:
 - (a) six years after the event complained of; or (if later)
 - (b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the *complaint* to the *respondent* or to the *Ombudsman* within that period and has a written acknowledgement or some other record of the *complaint* having been received;

unless:

- (3) in the view of the *Ombudsman*, the failure to comply with the time limits was as a result of exceptional circumstances; or
- (4) the *Ombudsman* is required to do so by the *Ombudsman Transitional Order*; or
- (5) the *respondent* has not objected to the *Ombudsman* considering the *complaint*.

2.8.3 G The six-month time limit is only triggered by a response which is a *final response*. A *final response* must tell the complainant about the six-month time limit that the complainant has to refer a *complaint* to the *Financial Ombudsman Service*.

2.8.4 G An example of exceptional circumstances might be where the complainant has been or is incapacitated.

Reviews of past business

2.8.5 R The six-year and the three-year time limits do 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.

Mortgage endowment complaints

- 2.8.6 G If a *complaint* relates to the sale of an endowment *policy* for the purpose of achieving capital repayment of a mortgage, the receipt by the complainant of a letter which states that there is a risk (rather than a high risk) that the *policy* would not, at maturity, produce a sum large enough to repay the target amount is not, itself, sufficient to cause the three year time period in *DISP* 2.8.2R(2) to start to run.
- 2.8.7 R (1) If a *complaint* relates to the sale of an endowment *policy* for the purpose of achieving capital repayment of a mortgage and the complainant receives a letter from a *firm* or a *VJ participant* warning that there is a high risk that the *policy* will not, at maturity, produce a sum large enough to repay the target amount then, subject to (2), (3), (4) and (5):
- (a) time for referring a *complaint* to the *Financial Ombudsman Service* starts to run from the date the complainant receives the letter; and
 - (b) ends three years from that date (“the final date”).
- (2) Paragraph (1)(b) applies only if the complainant also receives within the three year period mentioned in (1)(b) and at least six months before the final date an explanation that the complainant’s time to refer such a *complaint* would expire at the final date.
- (3) If an explanation is given but is sent outside the period referred to in (2), time for referring a *complaint* will run until a date specified in such an explanation which must not be less than six months after the date on which the notice is sent.
- (4) A complainant will be taken to have complied with the time limits in (1) to (3) above if in any case he refers the *complaint* to the *firm* or *VJ participant* within those limits and has a written acknowledgement or some other record of the *complaint* having been received.
- (5) Paragraph (1) does not apply if the *Ombudsman* is of the opinion that, in the circumstances of the case, it is appropriate for *DISP* 2.8.2R(2) to apply.

DISP 2 Ann 1G

Regulated activities at 1 July 2007

The activities which (at 1 July 2007) were *regulated activities* were, in accordance with section 22 of the *Act* (The classes of activity and categories of investment), any of the following activities specified in Part II of the *Regulated Activities Order*:

- (1) *accepting deposits* (article 5);
- (2) *issuing electronic money* (article 9B);
- (3) *effecting contracts of insurance* (article 10(1));
- (4) *carrying out contracts of insurance* (article 10(2));
- (5) *dealing in investments as principal* (article 14);
- (6) *dealing in investments as agent* (article 21);
- (7) *arranging (bringing about) deals in investments* (article 25(1));
- (8) *making arrangements with a view to transactions in investments* (article 25(2));
- (9) *arranging (bringing about) regulated mortgage contracts* (article 25A(1));
- (10) *making arrangements with a view to regulated mortgage contracts* (article 25A(2));
- (11) *arranging (bringing about) a home reversion plan* (article 25B(1));
- (12) *making arrangements with a view to a home reversion plan* (article 25B(2));
- (13) *arranging (bringing about) a home purchase plan* (article 25C(1));
- (14) *making arrangements with a view to a home purchase plan* (article 25C(2));
- (15) *managing investments* (article 37);
- (16) *assisting in the administration and performance of a contract of insurance* (article 39A);
- (17) *safeguarding and administering investments* (article 40);
- (18) *sending dematerialised instructions* (article 45(1));
- (19) *causing dematerialised instructions to be sent* (article 45(2));
- (20) *establishing, operating or winding up a collective investment scheme* (article 51(1)(a));
- (21) *acting as trustee of an authorised unit trust scheme* (article 51(1)(b));
- (22) *acting as the depositary or sole director of an open-ended investment company* (article 51(1)(c));
- (23) *establishing, operating or winding up a stakeholder pension scheme* (article 52(a));
- (24) *providing basic advice on a stakeholder product* (article 52B);
- (25) *establishing, operating or winding up a personal pension scheme* (article 52(b));
- (26) *advising on investments* (article 53);
- (27) *advising on regulated mortgage contracts* (article 53A);
- (28) *advising on a home reversion plan* (article 53B);

- (29) *advising on a home purchase plan* (article 53C);
- (30) *advising on syndicate participation at Lloyd's* (article 56);
- (31) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's* (article 57);
- (32) *arranging deals in contracts of insurance written at Lloyd's* (article 58);
- (33) *entering into a regulated mortgage contract* (article 61(1));
- (34) *administering a regulated mortgage contract* (article 61(2));
- (35) *entering into a home reversion plan* (article 63B(1));
- (36) *administering a home reversion plan* (article 63B(2));
- (37) *entering into a home purchase plan* (article 63F(1));
- (38) *administering a home purchase plan* (article 63F(2));
- (39) *entering as provider into a funeral plan contract* (article 59);
- (40) *agreeing to carry on a regulated activity* (article 64);

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of (20), (21), (22) and (23), is carried on in relation to property of any kind.

3 Complaint handling procedures of the Financial Ombudsman Service

3.1 Purpose, interpretation and application

Purpose

- 3.1.1 G The purpose of this chapter is to set out:
- (1) the procedures of the *Financial Ombudsman Service* for investigating and determining *complaints*;
 - (2) the basis on which the *Ombudsman* makes decisions; and
 - (3) the awards which the *Ombudsman* can make.

Interpretation

- 3.1.2 R In this chapter, ‘out of jurisdiction’ means outside the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* and the *Voluntary Jurisdiction* in accordance with *DISP 2*.
- 3.1.3 R Where the *respondent* is a *partnership* (or former *partnership*), it is sufficient for the *Ombudsman* to communicate with one partner (or former partner).
- 3.1.4 G The *Ombudsman Transitional Order* requires the *Financial Ombudsman Service* to complete the handling of *relevant existing complaints*, in a significant number of respects, in accordance with the requirements of the relevant *former scheme* rather than in accordance with the requirements of this chapter.

Application

- 3.1.5 R This chapter applies to the *Ombudsman* and to *respondents*.

3.2 Jurisdiction

- 3.2.1 R The *Ombudsman* will have regard to whether a *complaint* is out of jurisdiction.
- 3.2.2 R Unless the *respondent* has already had eight weeks to consider the *complaint* or issued a *final response*, the *Ombudsman* will refer the *complaint* to the *respondent*.
- 3.2.3 R Where the *respondent* alleges that the *complaint* is out of jurisdiction, the *Ombudsman* will give both parties an opportunity to make representations before he decides.
- 3.2.4 R Where the *Ombudsman* considers that the *complaint* may be out of

jurisdiction, he will give the complainant an opportunity to make representations before he decides.

3.2.5 R Where the *Ombudsman* then decides that the *complaint* is out of jurisdiction, he will give reasons for that decision to the complainant and inform the *respondent*.

3.2.6 R Where the *Ombudsman* then decides that the *complaint* is not out of jurisdiction, he will inform the complainant and give reasons for that decision to the *respondent*.

3.3 Dismissal without consideration of the merits and test cases

3.3.1 R Where the *Ombudsman* considers that the *complaint* may be one which should be dismissed without consideration of the merits, he will give the complainant an opportunity to make representations before he decides.

3.3.2 R Where the *Ombudsman* then decides that the *complaint* should be dismissed without consideration of the merits, he will give reasons to the complainant for that decision and inform the *respondent*.

3.3.3 G Under the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order*, where the *Ombudsman* is dealing with a *relevant complaint*, he must take into account whether an equivalent complaint would have been dismissed without consideration of its merits under the *former scheme* in question, as it had effect immediately before the relevant transitional order came into effect.

Grounds for dismissal

3.3.4 R The *Ombudsman* may dismiss a *complaint* without considering its merits if he considers that:

- (1) the complainant has not suffered (or is unlikely to suffer) financial loss, material distress or material inconvenience; or
- (2) the *complaint* is frivolous or vexatious; or
- (3) the *complaint* clearly does not have any reasonable prospect of success; or
- (4) the *respondent* has already made an offer of compensation (or a goodwill payment) which is:
 - (a) fair and reasonable in relation to the circumstances alleged by the complainant; and
 - (b) still open for acceptance; or

- (5) the *respondent* has reviewed the subject matter of the *complaint* in accordance with:
- (a) the regulatory standards for the review of such transactions prevailing at the time of the review; or
 - (b) the terms of a scheme order under section 404 of the *Act* (Schemes for reviewing past business); or
 - (c) 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 considers that they did not address the particular circumstances of the case; or
- (6) the subject matter of the *complaint* has previously been considered or excluded under the *Financial Ombudsman Service*, or a *former scheme* (unless material new evidence which the *Ombudsman* considers likely to affect the outcome has subsequently become available to the complainant); or
- (7) the subject matter of the *complaint* has been dealt with, or is being dealt with, by a comparable independent complaints scheme or dispute-resolution process; or
- (8) the subject matter of the *complaint* has been the subject of court proceedings where there has been a decision on the merits; or
- (9) 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) it would be more suitable for the subject matter of the *complaint* to be dealt with by a court, arbitration or another complaints scheme; or
- (11) it is a *complaint* about the legitimate exercise of a *respondent's* commercial judgment; or
- (12) it is a *complaint* about employment matters from an employee or employees of a *respondent*; or
- (13) it is a *complaint* about investment performance; or
- (14) it is a *complaint* about a *respondent's* decision when exercising a discretion under a will or private trust; or

- (15) it is a *complaint* about a *respondent'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) it is a *complaint* which:
 - (a) involves (or might involve) more than one *eligible complainant*; and
 - (b) 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) there are other compelling reasons why it is inappropriate for the *complaint* to be dealt with under the *Financial Ombudsman Service*.

Test cases

- 3.3.5 R The *Ombudsman* may dismiss a *complaint* without considering its merits, so that a court may consider it as a test case, if:
 - (1) before he has made a determination, he has received in writing from the *respondent*:
 - (a) a detailed statement of how and why, in the *respondent's* opinion, the *complaint* raises an important or novel point of law with significant consequences; and
 - (b) an undertaking in favour of the complainant that, if the complainant or the *respondent* commences court proceedings against the other in respect of the *complaint* in any court in the *United Kingdom* within six *months* of the *complaint* being dismissed, the *respondent* will: pay the complainant's reasonable costs and disbursements (to be assessed if not agreed on an indemnity basis) in connection with the proceedings at first instance and any subsequent appeal proceedings brought by the *respondent*; and 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.
- 3.3.6 G Factors the *Ombudsman* may take into account in considering whether to dismiss a *complaint* so that it may be the subject of a test case in court

include (but are not limited to):

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

3.4 Referring a complaint to another complaints scheme

- 3.4.1 R The *Ombudsman* may refer a *complaint* to another complaints scheme where:
- (1) he considers that it would be more suitable for the matter to be determined by that scheme; and
 - (2) the complainant consents to the referral.

3.5 Resolution of complaints by the Ombudsman

- 3.5.1 R 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.
- 3.5.2 G The *Ombudsman* may inform the complainant that it might be appropriate to complain against some other *respondent*.
- 3.5.3 G Where two or more *complaints* from one complainant relate to connected circumstances, the *Ombudsman* may investigate them together, but will issue separate provisional assessments and determinations in respect of each *respondent*.
- 3.5.4 R If the *Ombudsman* decides that an investigation is necessary, he will then:
- (1) ensure both parties have been given an opportunity of making

representations;

- (2) send both 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 that time limit, proceed to determination.

Hearings

3.5.5 R If the *Ombudsman* 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 take part in a hearing. A hearing may be held by any means which the *Ombudsman* considers appropriate in the circumstances, including by telephone. No hearing will be held after the *Ombudsman* has determined the *complaint*.

3.5.6 R A party who wishes to request a hearing must do so in writing, setting out:

- (1) the issues he wishes to raise; and
- (2) (if appropriate) any reasons why he considers the hearing should be in private;

so that the *Ombudsman* may consider whether:

- (3) the issues are material;
- (4) a hearing should take place; and
- (5) any hearing should be held in public or private.

3.5.7 G In deciding whether 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.

Evidence

3.5.8 R The *Ombudsman* may give directions as to:

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

3.5.9 R The *Ombudsman* may:

- (1) exclude evidence that would otherwise be admissible in a court or include evidence that would not be admissible in a court;

- (2) accept information in confidence (so that only an edited version, summary or description is disclosed to the other party) where he considers it appropriate;
- (3) reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested; and
- (4) dismiss a *complaint* if a complainant fails to supply requested information.

3.5.10 G Evidence which the *Ombudsman* may accept in confidence includes confidential evidence about third parties and security information.

3.5.11 G The *Ombudsman* has the power to require a party to provide evidence. Failure to comply with the request can be dealt with by the court.

3.5.12 G The *Ombudsman* may take into account evidence from third parties, including (but not limited to) the *FSA*, other regulators, experts in industry matters and experts in consumer matters.

Procedural time limits

3.5.13 R The *Ombudsman* may fix (and extend) time limits for any aspect of the consideration of a *complaint* by the *Financial Ombudsman Service*.

3.5.14 R If a *respondent* fails to comply with a time limit, the *Ombudsman* may:

- (1) proceed with consideration of the *complaint*; and
- (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.

3.5.15 R If a complainant fails to comply with a time limit, the *Ombudsman* may:

- (1) proceed with consideration of the *complaint*; or
- (2) dismiss the *complaint*.

3.6 Determination by the Ombudsman

Fair and reasonable

3.6.1 R The *Ombudsman* will determine a *complaint* by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case.

3.6.2 G Section 228 of the *Act* sets the ‘fair and reasonable’ test for the *Compulsory Jurisdiction* and the *Consumer Credit Jurisdiction* and *DISP* 3.6.1R extends it to the *Voluntary Jurisdiction*.

- 3.6.3 G Where a complainant makes *complaints* against more than one *respondent* in respect of connected circumstances, the *Ombudsman* may determine that the *respondents* must contribute towards the overall award in the proportion that the *Ombudsman* considers appropriate.
- 3.6.4 R In considering what is fair and reasonable in all the circumstances of the case, the *Ombudsman* will take into account:
- (1) relevant:
 - (a) law and regulations;
 - (b) regulators' rules, guidance and standards;
 - (c) codes of practice; and
 - (2) (where appropriate) what he considers to have been good industry practice at the relevant time.
- 3.6.5 G Where the *Ombudsman* is determining what is fair and reasonable in all the circumstances of a *relevant new complaint* or a *relevant transitional complaint*, the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order* require him to take into account what determination the *former Ombudsman* might have been expected to reach in relation to an equivalent complaint dealt with under the *former scheme* in question immediately before the relevant transitional order came into effect.

The Ombudsman's determination

- 3.6.6 R When the Ombudsman has determined a *complaint*:
- (1) the *Ombudsman* will give both parties a signed written statement of the determination, giving the reasons for it;
 - (2) the statement will require the complainant to notify the *Ombudsman* 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 that time limit, it is final and binding on both parties;
 - (4) if the complainant does not notify the *Ombudsman* that he accepts the determination within that time limit, the complainant will be treated as having rejected the determination, and neither party will be bound by it; and
 - (5) the *Ombudsman* will notify the *respondent* of the outcome.

3.7 Awards by the Ombudsman

- 3.7.1 R Where a *complaint* is determined in favour of the complainant, the *Ombudsman's* determination may include one or more of the following:
- (1) a money award against the *respondent*; or
 - (2) an interest award against the *respondent*; or
 - (3) a costs award against the *respondent*; or
 - (4) a direction to the *respondent*.

Money awards

- 3.7.2 R A money award may be such amount as the *Ombudsman* considers to be fair compensation for one or more of the following:
- (1) financial loss (including consequential or prospective loss); or
 - (2) pain and suffering; or
 - (3) damage to reputation; or
 - (4) distress or inconvenience;

whether or not a court would award compensation.

- 3.7.3 G Where the *Ombudsman* is determining what amount (if any) constitutes fair compensation as a money award in relation to a *relevant new complaint* or a *relevant transitional complaint*, the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order* require him 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 the relevant transitional order came into effect.

- 3.7.4 R The maximum money award which the *Ombudsman* may make is £100,000.

- 3.7.5 G For the purpose of calculating the maximum money award, the following are excluded:

- (1) any interest awarded on the amount payable under a money award;
- (2) any costs awarded; and
- (3) any interest awarded on costs.

- 3.7.6 G If the *Ombudsman* considers that fair compensation requires payment of

a larger amount, he may recommend that the *respondent* pays the complainant the balance.

3.7.7 R The *Ombudsman* will maintain a register of each money award.

Interest awards

3.7.8 R An interest award may provide for the amount payable under the money award to bear interest at a rate and as from a date specified in the award.

Costs awards

3.7.9 R A costs award may:

- (1) be such amount as the *Ombudsman* considers to be fair, to cover some or all of the costs which were reasonably incurred by the complainant in respect of the *complaint*; and
- (2) include interest on that amount at a rate and as from a date specified in the award.

3.7.10 G In most cases complainants should not need to have professional advisers to bring *complaints* to the *Financial Ombudsman Service*, so awards of costs are unlikely to be common.

Directions

3.7.11 R A direction may require the respondent to 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).

Complying with awards and settlements

3.7.12 R A *respondent* must comply promptly with:

- (1) any award or direction made by the *Ombudsman*; and
- (2) any settlement which it agrees at an earlier stage of the procedures.

3.7.13 G Under the *Act*, a complainant can enforce through the courts a money award registered by the *Ombudsman* or a direction made by the *Ombudsman*.

3.8 Dealing with information

3.8.1 R In dealing with information received in relation to the consideration of a *complaint*, the *Financial Ombudsman Service* will have regard to the parties' rights of privacy.

- 3.8.2B R This does not prevent the *Ombudsman* disclosing information:
- (1) to the extent that he is required or authorised to do so by law; or
 - (2) to the parties to the *complaint*; or
 - (3) in his determination; or
 - (4) at a hearing in connection with the *complaint*.
- 3.8.3 R 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.
- 3.9 Delegation of the Ombudsman's powers**
- 3.9.1A R The *Ombudsman* may designate members of the staff of *FOS Ltd* to exercise any of the powers of the *Ombudsman* relating to the consideration of a *complaint* apart from the powers to:
- (1) determine a *complaint*; or
 - (2) authorise the disclosure of information to the *FSA* or any other body exercising regulatory or statutory functions.
- 3.9.2 G In *DISP 2* to *DISP 4* any reference to "the *Ombudsman*" includes a reference to any member of the staff of *FOS Ltd* to whom the exercise of any of the powers of the *Ombudsman* has been delegated.

4 Standard terms

4.1 Purpose and application

Purpose

- 4.1.1 G The purpose of this chapter is to set out how *complaints* against *VJ participants* are dealt with under the *Voluntary Jurisdiction*.

Application

- 4.1.2 G These *standard terms* apply to any business which has agreed to be a *VJ participant*.

4.2 Standard terms

- 4.2.1 R A *VJ participant* is subject to these *standard terms*, which may be amended or supplemented by the *Financial Ombudsman Service* with the approval of the *FSA*.

- 4.2.2 R By agreeing to participate, a *VJ participant* also agrees that the *Voluntary Jurisdiction* covers an act or omission that occurred before the *VJ participant* was participating in the *Voluntary Jurisdiction*, whether the act or omission occurred before or after *commencement*.

Application of DISP 1 to DISP 3

- 4.2.3 R The following rules and guidance apply to *VJ participants* as part of the *standard terms*, except where the context requires otherwise:

- (1) *DISP 1* (Treating complaints fairly), except:
 - (a) *DISP 1.5* (Complaints record rule);
 - (b) *DISP 1.6* (Complaints reporting rules); and
 - (c) *DISP 1.7* (Lloyd's);
- (2) *DISP 2* (Jurisdiction of the Financial Ombudsman Service), except:
 - (a) *DISP 2.3* (Compulsory Jurisdiction); and
 - (b) *DISP 2.4* (Consumer Credit Jurisdiction); and
- (3) *DISP 3* (Complaints-handling procedures of the Financial Ombudsman Service).

Determinations and awards

- 4.2.4 R The *Ombudsman* has the same powers to make determinations and awards under the *Voluntary Jurisdiction* as he has under the *Compulsory Jurisdiction* (see *DISP 3.7 (Awards by the Ombudsman)*).
- 4.2.5 R If the complainant accepts the *Ombudsman*'s determination within the time limit specified by the *Ombudsman*, the determination will be binding on the *VJ Participant* and may be enforced in court by the complainant.
- 4.2.6 R The following *rules* in *FEES* apply to *VJ participants* as part of the *standard terms*, but substituting '*VJ participant*' for '*firm*':
- (1) *FEES 2.2.1R* (late payment) but substituting '*FOS Ltd*' for 'the *FSA*';
 - (2) *FEES 2.3.1R* and *2.3.2R* (remission of fees);
 - (3) *FEES 4.2.6R(1)(b)* (periodic fees);
 - (4) *FEES 5.3.6R* (general levy) but substituting:
 - (a) '*Voluntary Jurisdiction*' for '*Compulsory Jurisdiction*'; and
 - (b) '*FOS Ltd*' for 'the *FSA*';
 - (5) *FEES 5.3.8R* (calculation of general levy) but substituting 'part 4' for 'part 2';
 - (6) *FEES 5.4.1R* (information) but substituting:
 - (a) '*FOS Ltd*' for 'the *FSA*'; and
 - (b) 'part 4' for 'part 2';
 - (7) *FEES 5.5.1R* (standard case fee) but substituting 'part 4' for 'part 3';
 - (8) *FEES 5.5.6R* (special case fee);
 - (9) *FEES 5.5.15R* (case fee exemption);
 - (10) *FEES 5.7.1R, 5.7.2R to 5.7.4R* (payment) but substituting, in *FEES 5.7.1R*, '*FOS Ltd*' for 'the *FSA*';
 - (11) *FEES 5.8.1R* (joining the Financial Ombudsman Service); and
 - (12) *FEES 5 Annex 1R* (fees payable).

Withdrawal from participation

- 4.2.7 R A *VJ participant* may not withdraw from the *Voluntary Jurisdiction* unless:

- (1) the *VJ participant* has submitted to *FOS Ltd* a written plan for:
 - (a) notifying its existing customers of its intention to withdraw; and
 - (b) handling *complaints* against it before its withdrawal;
- (2) the *VJ participant* has paid the general levy for the year in which it withdraws and any other fees payable; and
- (3) *FOS Ltd* has approved in writing both the *VJ Participant's* plan and the date of withdrawal (which must be at least six months from the date of the approval of the plan).

Exemption from liability

4.2.8 R None of the following is to be liable in damages for anything done or omitted to be done in the discharge (or purported discharge) of any functions in connection with the *Voluntary Jurisdiction*:

- (1) *FOS Ltd*;
- (2) any member of its governing body;
- (3) any member of its staff;
- (4) any person acting as an *Ombudsman* for the purposes of the *Financial Ombudsman Service*;

except where:

- (5) the act or omission is shown to have been in bad faith; or
- (6) it would prevent an award of damages being 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.

Part 4

1. Appendix 1 to *DISP* (Relevant Existing Complaints) is deleted.
2. Appendix 2 to *DISP* (Handling Mortgage Endowment Complaints) becomes Appendix 1 to *DISP* and is renumbered accordingly.
3. References in the Handbook to provisions in Appendix 2 to *DISP* are replaced with references to the corresponding provisions in Appendix 1 to *DISP*.

Part 5

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

(Note: Other changes to DISP transitional provisions are set out in Part 2.)

Transitional Provisions
Dispute Resolution: Complaints

DISP TP 1
Transitional provisions
1.1 Transitional Provisions table

(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	...				
...					
1B	<u>DISP 2.4.3</u> <u>2.7.9</u>	R	In relation to a <i>complaint</i> concerning an act or omission before 1 November 2007, in DISP 2.4.3R(1)(a) <u>2.7.9R(2)</u> substitute "an <i>intermediate customer or market counterparty</i> " for "(a) a <i>professional client</i> ; or (b) <i>eligible counterparty</i> ".	From 1 November 2007	1 November 2007
...					
4	DISP App 1	R	Firms are subject to DISP App 1 in relation to relevant existing complaints.	From commencement	Commencement
5	DISP App 1	G	The Ombudsman Transitional Order makes special provision for the	From commencement	Commencement

			<p>handling by <i>FOS Ltd</i> of "<i>relevant existing complaints</i>" (that is, complaints which the former schemes have partly completed at commencement). The arrangements for handling these complaints are set out in <i>DISP App 1</i>. (The handling of complaints which <i>firms</i> have partly completed at commencement is described at <i>DISP 1.4.6 R</i>.)</p>		
6	<i>DISP 2, DISP 3 and FEES 5 and DISP App 1</i>	R	<p><i>DISP 2, DISP 3 and FEES 5 and DISP App 1</i> In references to a "<i>firm</i>" or "<i>firms</i>" include <i>unauthorised persons</i> subject to the <i>Compulsory Jurisdiction</i> in relation to <i>relevant complaints</i> in accordance with the <i>Ombudsman Transitional Order</i>.</p>	From commencement	Commencement
7	<i>DISP 2, DISP 3 and FEES 5 and DISP App 1</i>	G	<p>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 "<i>firm</i>" in <i>DISP 2, DISP 3, and FEES 5</i></p>	From commencement	Commencement

			and DISP App 1 include <i>unauthorised persons</i> subject to the <i>Compulsory Jurisdiction</i> in relation to relevant complaints <i>relevant complaints</i> , where applicable.		
7A	DISP 2.3.6R <u>2.8.7R</u>	R	Nothing in <i>DISP</i> 2.3.6R <u>2.8.7R</u> affects the position of a complaint <i>complaint</i> which, on 31 May 2004, could not have been considered by the <i>Ombudsman</i> under <i>DISP</i> 2.3.1R(1)(e) <u>2.8.2R(2)</u> ; or <i>DISP</i> 2.3.6R(1)(b) <u>2.8.7R(1)(b)</u> as it then stood (as <i>DISP</i> 2.3.6R(1)(b) <u>2.3.6R(1)(b)</u>).	From 1 June 2004	Amended with effect from 1 June 2004
7B	DISP 2.3.6R <u>2.8.7R</u>	R	In the case of a complainant falling within <i>DISP</i> 2.3.6R <u>2.8.7R</u> , (and whose time for referring a complaint <i>complaint</i> under the rules as they stood before amendment <i>DISP</i> 2.3.6R as it stood on <u>5 April 2008</u> has not expired), time will expire in accordance with the amended rule <i>DISP</i> <u>2.8.7R</u> save that if the final date would otherwise be before 30 November 2004 an explanation of the final date will be in conformity with <i>DISP</i> 2.3.6R(2) <u>2.8.7R(2)</u> , provided	From 1 June 2004	Amended with effect from 1 June 2004

			it stipulates a final date which is not less than two months from the date on which the explanation is likely to be received by the complainant.		
8	DISP 1 DISP 2 DISP 3 DISP 4 and FEES 5 and DISP App 1	R	In relation to <i>relevant complaints</i> , references in <i>DISP 1, DISP 2, DISP 3, DISP 4, and FEES 5 and DISP App 1</i> to an " <i>eligible complainant</i> " 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 <i>complaint</i> shall be construed accordingly.	From commencement	<i>Commencement</i>
...					

1.2 Table Fee tariffs for industry blocks

Industry Block	Tariff Base
1 Deposit acceptors	Number of accounts relevant to the activities in DISP 2.6.1 <u>2.3.1R</u>
...	

...

Schedule 4 Powers Exercised DISP Sch 4.1

1	The following powers and related provisions in the <i>Act</i> and in the <i>Ombudsman Transitional Order</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>DISP</i> :
---	--

	(1)	Section 138 (General rule-making power)
	(2)	Section 156 (General supplementary powers)
	(3)	Section 226 (Compulsory Jurisdiction)
	(4)	Section 229 (Awards)
	(4A)	Section 234 (Funding)
	(4B)	Section 316(1) (Direction by Authority)
	(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
	(7)	Section 226A(7) (Consumer Credit Jurisdiction)
	(8)	Section 229 (Awards)
	(9)	Schedule 17 paragraph 16B, D
2	...	
	(1)	...
3	The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FOS Ltd</i> to make the rules in <i>DISP</i> :	
	(1)	Section 227 (Voluntary Jurisdiction)
	(1A)	Section 226A (Consumer Credit Jurisdiction)
	<u>(1B)</u>	<u>Section 229 (Awards)</u>
	(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)
	(5A)	Schedule 17 paragraph 16B (Consumer Credit Jurisdiction)
	(6)	Schedule 17 paragraph 18 (Terms of reference to the scheme)

DISP Sch 4.2

<p>Table: The powers to make rules relating to the new ombudsman scheme are shared between the <i>FSA</i> and the Financial Ombudsman Service (<i>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:</p>	
<i>DISP 1</i>	...
<i>DISP 2</i>	2.6.9R 2.6.11R 2.6.8 A-BR <u>2.4.1R</u> <u>2.5.1R</u> <u>2.5.5R</u> <u>2.6.3R</u> <u>2.6.4R</u> <u>2.7.9R(3)</u>
<i>DISP 3</i>	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 <u>All the rules in this chapter, except for <i>DISP 3.7.4R</i> (which is made by the <i>FSA</i>) and <i>DISP 3.7.12R</i> (which is made by the <i>FSA</i> and the <i>FOS Ltd</i>).</u>
...	

Annex C

Amendments to the Fees manual (FEES)

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

...

- 5.4.4 G A firm should not provide a statement of *relevant business* if it deals only with *eligible complainants* who are not private individuals. *Relevant business* is defined in the *Glossary* as business done with private individuals only. So *FEES 5.4.1R* does not apply in relation to business done with other types of *eligible complainant* described in *DISP 2.4.3R(1)(b), (c) and (d)* 2.7.3R(2), (3) and (4); the funding of *FOS Ltd* in relation to that business is by special case fee only (see *FEES 5.5.6R*).

...

- 5.5.6 R A firm must pay to *FOS Ltd* a special case fee, as specified in part 3 of *FEES 5 Annex 1R* in respect of each *chargeable case* relating to that firm closed by the *Financial Ombudsman Service* which was referred to the *Financial Ombudsman Service* by *eligible complainants* who fall within *DISP 2.4.3 R(1)(b), (c) and (d)* 2.7.3R(2), (3) and (4).

...

FEES 5 Annex 1R

Annual Fees Payable in Relation to 2007/08

...

Part 2: Fee tariffs for general levy and supplementary levy

Industry block	Tariff base	General levy payable by firm
1-Deposit acceptors, <i>home finance providers</i> and <i>administrators</i> (excluding <i>firms</i> in block 14)	Number of accounts relevant to the activities in <i>DISP 2.6.1R</i> <u>2.3.1R</u>	£0.0009 per relevant account, subject to a minimum levy of £100
...		

Part 4: VJ participants

Table: Fee tariffs and case fees for VJ participants

Voluntary jurisdiction – general levy tariff and case fee table					
industry block and business activity		tariff base	tariff rate	Minimum Levy <u>minimum</u> levy	<u>standard</u> <u>case fee</u> <u>and special</u> case fee*
...

Annex D

Amendments to the Credit Unions sourcebook (CRED)

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

17.2.2 G An *eligible complainant* is a *person* who would be eligible to refer a complaint to the *Financial Ombudsman Service*. The term is defined for all *firms* in ~~DISP 2.4~~ 2.7, but *guidance* for *credit unions* is provided at CRED 17.3 below.

...

17.3.1 G The definition of *eligible complainant* in ~~DISP 2.4~~ 2.7 applies for the purposes of this chapter.

...

17.4.2 G ~~DISP-2.6~~ 2.3 (To which activities does the Compulsory Jurisdiction apply?) sets out the activities which come under the Compulsory Jurisdiction ~~jurisdiction~~ of the *Financial Ombudsman Service*, as follows:

- (1) *regulated activities*;
- (2) *lending money* secured by a charge on land;
- (3) *lending money* (~~other than~~ excluding restricted credit where that is not a consumer credit activity);
- (4) *paying money* by a *plastic card* (~~other than~~ excluding a store card where that is not a consumer credit activity);
- (5) ~~the provision of~~ providing ancillary banking services;
- (6) *consumer credit activities*;

~~or activities ancillary to them (see DISP 2.6.2R)~~ or any ancillary activities, including advice, carried on by the firm in connection with them.

...

Annex E

Amendments to the Professional Firms sourcebook (PROF)

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

...

Dispute resolution: Complaints sourcebook

- 5.3.6 G *DISP* 1.1.1R(3) provides that *DISP* 1 (Treating complainants fairly) only applies to an *authorised professional firm* in so far as its mainstream regulated activities are concerned. *DISP* ~~2.6.7R~~ 2.3.4R further provides that a ~~complaint~~ 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~~ complaint will be handled by the relevant professional body.

...