Powers exercised by the Financial Ombudsman Service Limited

A. The Financial Ombudsman Service Limited makes:

(1) the rule in Annex A of this instrument for firms relating to the Compulsory Jurisdiction;

(2) the rules and guidance in Annex A and Parts 1, 2A, 3 and 4A of Annex B of this instrument for licensees relating to the Consumer Credit Jurisdiction; and

(3) the standard terms and guidance in Annex A and Parts 1, 2A, 3 and 4A of Annex 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) paragraph 8 (Guidance) of Schedule 17;
(e) paragraph 14 (The scheme operator’s rules) of Schedule 17;
(f) paragraph 16B (Consumer credit jurisdiction: Procedure for complaints etc) of Schedule 17; and
(g) 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 following powers and related provisions in the Act:

(1) section 138 (General rule-making power);
(2) section 156 (General supplementary powers);
(3) section 157(1) (Guidance);
(4) section 226 (Compulsory jurisdiction);
(5) section 229 (Awards); and
(6) paragraph 13 (Authority’s procedural rules) of Schedule 17.

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 as follows:

(1) Part 1 of Annex B comes into force on 1 July 2011;
(2) Annex A and Parts 2A and 2B of Annex B come into force on 1 September 2011;
(3) Part 3 of Annex B comes into force on 1 January 2012; and
(4) Parts 4A and 4B of Annex B come into force on 1 July 2012.

Amendments to the Handbook

F. The Glossary of definitions is amended in accordance with Annex A to this instrument.

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

Citation

H. This instrument may be cited as the Dispute Resolution: Complaints (Amendment No 3) Instrument 2011.

By order of the Board of the Financial Ombudsman Service Limited
10 May 2011

By order of the Board of the Financial Services Authority
26 May 2011
Annex A

Amendments to the Glossary of definitions

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

Comes into force on 1 September 2011

(2) (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. [deleted]

(3) (in DISP) has the meaning given in DISP 1.6.2R(1).
Annex B

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

Part 1: Comes into force on 1 July 2011

…

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 information regarding their internal process procedures for dealing with the reasonable and prompt handling of complaints promptly and fairly;

(2) refer eligible complainants to the availability of these summary details this information:

(a) in relation to a payment service, in the information on out-of-court complaint and redress procedures required to be provided or made available under regulations 36(2)(e) (Information required prior to the conclusion of a single payment service contract) or 40 (Prior general information for framework contracts) of the Payment Services Regulations; or

(b) otherwise, in writing at, or immediately after, the point of sale; and

(3) provide such summary details information in writing and free of charge to eligible complainants:

…

1.3.1A R These procedures must ensure that a complaint may be made free of charge.

…
Part 2A: Comes into force on 1 September 2011

1.3.2A G These procedures should, taking into account the nature, scale and complexity of the respondent’s business, ensure that lessons learned as a result of determinations by the Ombudsman are effectively applied in future complaint handling, for example by:

1. relaying a determination by the Ombudsman to the individuals in the respondent who handled the complaint and using it in their training and development;

2. analysing any patterns in determinations by the Ombudsman concerning complaints received by the respondent and using this in training and development of the individuals dealing with complaints in the respondent; and

3. analysing guidance produced by the FSA, other relevant regulators and the Financial Ombudsman Service and communicating it to the individuals dealing with complaints in the respondent.

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

1. investigate the complaint competently, diligently and impartially,

obtaining additional information as necessary;

... 

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

... 

1.4.2(4) appropriate analysis of decisions by the Financial Ombudsman Service concerning similar complaints received by the respondent (procedures for which are described in DISP 1.3.2AG).

... 

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 a ‘final response’, being a written response from the 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; or

(2) …

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). [deleted]

Part 2B: Comes into force on 1 September 2011

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. [deleted]

1.1.9A G The scope of this sourcebook does not include:

(1) a complaint about pre-commencement investment business which was regulated by a recognised professional body (those complaints will be handled under the arrangements of that professional body); or

(2) a complaint about the administration of an occupational pension scheme, because this is not a regulated activity (firms should refer complainants to the Pensions Advisory Service rather than to the Financial Ombudsman Service).

…
The processes that a firm should have in place in order to comply with DISP 1.3.3R may include, taking into account the nature, scale and complexity of the firm's business including, in particular, the number of complaints the firm receives:

(1) the collection of management information on the causes of complaints and the products and services complaints relate to, including information about complaints that are resolved by the firm by close of business on the business day following its receipt;

(2) a process to identify the root causes of complaints (DISP 1.3.3R(1));

(3) a process to prioritise dealing with the root causes of complaints;

(4) a process to consider whether the root causes identified may affect other processes or products (DISP 1.3.3R(2));

(5) a process for deciding whether root causes discovered should be corrected and how this should be done (DISP 1.3.3R(3));

(6) regular reporting to the senior personnel where information on recurring or systemic problems may be needed for them to play their part in identifying, measuring, managing and controlling risks of regulatory concern; and

(7) keeping records of analysis and decisions taken by senior personnel in response to management information on the root causes of complaints.

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). In respect of complaints that relate to MiFID business, a firm should put in place appropriate management controls and take reasonable steps, in the same way as for complaints that do not relate to MiFID business (see DISP 1.3.3R and DISP 1.3.3BG), in order to detect and minimise any risk of compliance failures (SYSC 6.1) and to comply with Principle 6 (Customers’ interests).

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. [deleted]
1.3.6 G Where a firm identifies (from its complaints or otherwise) recurring or systemic problems in its provision of, or failure to provide, a financial service, it should (in accordance with Principle 6 (Customers’ interests) and to the extent that it applies) consider whether it ought to act with regard to the position of customers who may have suffered detriment from, or been potentially disadvantaged by, such problems but who have not complained and, if so, take appropriate and proportionate measures to ensure that those customers are given appropriate redress or a proper opportunity to obtain it. In particular, the firm should:

(1) ascertain the scope and severity of the consumer detriment that might have arisen; and

(2) consider whether it is fair and reasonable for the firm to undertake proactively a redress or remediation exercise, which may include contacting customers who have not complained.

1.3.7 R (1) A firm must appoint an individual at the firm, or in the same group as the firm, to have responsibility for oversight of the firm’s compliance with DISP 1.

(2) The individual appointed must be carrying out a governing function at the firm or in the same group as the firm.

1.3.8 G Firms are not required to notify the name of the individual to the FSA or the Financial Ombudsman Service but would be expected to do so promptly on request. There is no bar on a firm appointing different individuals to have the responsibility at different times where this is to accommodate part-time or flexible working.

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<td>28  DISP 3.7.4R</td>
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For a complaint referred to the Financial Ombudsman Service before 1 January 2012 the maximum money award which the Ombudsman may make is £100,000.

Part 4A: Comes into force on 1 July 2012

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.

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. [deleted]

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. [deleted]

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, and DISP 1.6.4R and DISP 1.6.5R) should be set out prominently within the text of those responses.

...
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.

Part 4B: Comes into force on 1 July 2012

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) …

(2) Under DISP 1.10.2R(3)(a), a firm should report any complaint to which it has given a response which upholds the complaint, even if any redress offered is disputed by the complainant. For this purpose, ‘response’ includes a response under the complainant’s written acceptance rule (DISP 1.6.4R), the two stage complaints procedures rule (DISP 1.6.5R) (unless a final response was sent later) and a final response. Where a complaint is upheld in part or where the firm does not have enough information to make a decision yet chooses to make a goodwill payment to the complainant, a firm should treat the 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) …

…

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;

(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). [deleted]
Illustration of the reporting requirements, referred to in DISP 1.10.1R

Complaints Return (DISP 1 Ann 1R)

NOTES ON THE COMPLETION OF THIS RETURN

Complaints opened

*Firms* operating the two-stage process (*DISP* 1.6.5R) may decide to re-open a closed *complaint* after more than eight weeks from the complainant’s receipt of its non-final response where the complainant has indicated he remains dissatisfied. These re-opened *complaints* should be reported in this return as new *complaints*.

### TP Transitional provisions

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<td>29</td>
<td><em>DISP</em> 1.10.2R and <em>DISP</em> 1 Annex 1R</td>
<td>R</td>
<td>Where a <em>firm</em> reports information on any complaints closed under a two-stage procedure before 1 July 2012, the <em>rules and guidance in</em> <em>DISP</em> 1.6.6R, <em>DISP</em> 1.10.3G(2), <em>DISP</em> 1.10.7R(3) and <em>DISP</em> 1.10.8R and <em>DISP</em> 1 Annex 1R apply as they stood on 30 June 2012.</td>
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