

DISPUTE RESOLUTION: COMPLAINTS (AMENDMENT NO 3) INSTRUMENT 2011

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

*final
response*

....

- (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:

...

- (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*).

...

- 1.3.3B G 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*.
- 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). 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).~~
- 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. [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.
- ...
- 1.9.2 G The records of the measures taken for resolution of *complaints* may be used to assist with the collection of management information pursuant to *DISP* 1.3.3BG(1) and regular reporting to the *senior personnel* pursuant to *DISP* 1.3.3BG(6).

Part 3: Comes into force on 1 January 2012

- 3.7.4 R The maximum money award which the *Ombudsman* may make is ~~£100,000~~ £150,000.

TP Transitional provision

(1)	(2) Material provision to which transitional	(3)	(4) Transitional provision	(5) Transitional provision: dates	(6) Handbook provision: coming
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	provision applies			in force	into force
...					
28	<u>DISP 3.7.4R</u>	<u>R</u>	For a <i>complaint</i> referred to the <i>Financial Ombudsman Service</i> before 1 January 2012 the maximum money award which the <i>Ombudsman</i> may make is £100,000.	From 1 January 2012	1 January 2012

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 ~~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).~~ [deleted]

...

1 Annex 1R 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

(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
...					
29	<u>DISP 1.10.2R and DISP 1 Annex 1R</u>	R	<u>Where a firm reports information on any complaints closed under a two-stage procedure before 1 July 2012, the rules and guidance in DISP 1.6.6R, DISP 1.10.3G(2), DISP 1.10.7R(3) and DISP 1.10.8R and DISP 1 Annex 1R apply as they stood on 30 June 2012.</u>	<u>1 July 2012 to 31 December 2012</u>	<u>1 August 2009</u>