

ALTERNATIVE DISPUTE RESOLUTION DIRECTIVE INSTRUMENT 2015

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes and amends:
- (i) the rules relating to complaints handling procedures of the Financial Ombudsman Service; and
 - (ii) the standard terms for Voluntary Jurisdiction participants;
- as set out in Annex A and Parts 1, 3, 4 and 5 of Annex B of this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary Jurisdiction);
 - (2) paragraph 8 (Guidance) of Schedule 17;
 - (3) paragraph 14 (The scheme operator’s rules) of Schedule 17;
 - (4) paragraph 15 (Fees) of Schedule 17;
 - (5) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
 - (6) paragraph 22 (Consultation) of Schedule 17.
- B. The making (and amendment) of the rules and standard terms in Annex A and Parts 1, 3 and 4 of Annex B by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- C. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Act:
- (1) section 137A (FCA’s general rule-making power);
 - (2) section 137T (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance);
 - (4) section 226 (Compulsory jurisdiction); and
 - (5) paragraph 13(1), (3) and (4) (FCA’s procedural rules) of Schedule 17.
- D. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority consents to and approves the rules and standard terms made and amended by the Financial Ombudsman Service Limited in Annex A and Parts 1, 3, 4 and 5 of Annex B to this instrument.

Commencement

- F. This instrument comes into force on 9 July 2015.

Amendments to the Handbook

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

Notes

- I. In Annexes A and B to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- J. This instrument may be cited as the Alternative Dispute Resolution Directive Instrument 2015.

By order of the Board of the Financial Ombudsman Service
20 April 2015

By order of the Board of the Financial Conduct Authority
23 April 2015

Annex A

Amendments to the Glossary of definitions

In this annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>ADR Directive</i>	Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC.
<i>ADR entity</i>	any entity, however named or referred to, which is listed in accordance with article 20(2) of the <i>ADR Directive</i> . [Note: article 4(1) of the <i>ADR Directive</i>]
<i>ADR Regulations</i>	the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (SI 2015/542).
<i>cross-border dispute</i>	(as defined in regulation 5 of the <i>ADR Regulations</i>) a dispute concerning contractual obligations arising from a <i>sales contract or a service contract</i> where, at the time the <i>consumer</i> orders the goods or services, the <i>trader</i> is established in the <i>United Kingdom</i> and the <i>consumer</i> is resident in another Member State. [Note: article 4(1) of the <i>ADR Directive</i>]
<i>domestic dispute</i>	(as defined in regulation 5 of the <i>ADR Regulations</i>) a dispute concerning contractual obligations arising from a <i>sales contract or a service contract</i> where, at the time the <i>consumer</i> orders the goods or services, the <i>consumer</i> is resident, and the <i>trader</i> is established, in the <i>United Kingdom</i> . [Note: article 4(1) of the <i>ADR Directive</i>]
<i>ODR Regulation</i>	Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC.
<i>sales contract</i>	(as defined in regulation 5 of the <i>ADR Regulations</i>) a contract under which a <i>trader</i> transfers or agrees to transfer the ownership of goods to a <i>consumer</i> , and the <i>consumer</i> pays or agrees to pay the price, including any contract that has both goods and services as its object. [Note: article 4(1) of the <i>ADR Directive</i>]

service contract (as defined in regulation 5 of the *ADR Regulations*) a contract, other than a *sales contract*, under which a *trader* supplies, or agrees to supply a service to a *consumer* and the *consumer* pays, or agrees to pay, the price.

[**Note:** article 4(1) of the *ADR Directive*]

trader a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in his name or on his behalf.

[**Note:** article 4(1) of the *ADR Directive*]

Amend the following text as shown.

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

(a) the *Ombudsman* considers it apparent from the *complaint*, when it is received, and from any *final response* or *redress determination* which has been issued by the *firm* or *licensee*, that the *complaint* should not proceed because:

...

(iii) the *Ombudsman* considers that the *complaint* should be dismissed without consideration of its merits under ~~*DISP 3.3*~~ *DISP 3.3.4R* or *DISP 3.3.4AR(2) to (5)* (Dismissal of complaints without consideration of the merits ~~and test cases~~); or

(b) the *Ombudsman* considers, at any stage, that the *complaint* should be dismissed under *DISP 3.3.4R(2)* or *DISP 3.3.4AR(1)* on the grounds that it is frivolous and vexatious; ~~or~~

(c) the *Ombudsman* considers it apparent from the *complaint* when it is received, and from any *redress determination* which has been issued by the *respondent*, that the *respondent* has reviewed the subject matter of the *complaint* and issued a *redress determination* in accordance with the terms of a *consumer redress scheme*.

consumer ...

(7) (in the definitions of *cross-border dispute*, *domestic dispute*, *sales contract* and *service contract*, and in *DISP 2.7.3R* and *DISP 2.7.9AR*) has the meaning in regulation 3 of the *ADR Regulations*, which is an individual acting for purposes which are wholly or mainly outside that individual's trade, business,

craft, or profession.

[Note: article 4(1) of the *ADR Directive*]

Annex B

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Part 1

The rules and guidance in this Part are made by the Financial Conduct Authority in relation to the compulsory jurisdiction of the ombudsman scheme, and by the Financial Ombudsman Service (with the approval of the Financial Conduct Authority) in relation to the voluntary jurisdiction of the ombudsman scheme.

1 Treating complainants fairly

...

1.2 Consumer awareness rules

Publishing and providing summary details, and information about the Financial Ombudsman Service

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

...

(2) refer *eligible complainants* to the availability of this information:

...

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

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

...

(b) when acknowledging a *complaint*; and

(4) provide information to *eligible complainants*, in a clear, comprehensible and easily accessible way, about the *Financial Ombudsman Service*, including the *Financial Ombudsman Service's* website address:

(a) on the *respondent's* website, where one exists; and

- (b) if applicable, in the general terms and conditions of the respondent's contract with the eligible complainant.

[**Note:** article 15 of the *UCITS Directive*, article 13(2) of the *ADR Directive* and article 14(1) of the *ODR Regulation*]

...

Content of summary details

- 1.2.3 G ~~These~~ The summary details concerning internal complaints handling procedures should cover at least:

...

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

...

1.6 Complaints time limit rules

...

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', being a written response from the *respondent* which:

...

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

- (da) provides the website address of the *Financial Ombudsman Service*;

- (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~~ ; and

- (f) indicates whether or not the *respondent* consents to waive the relevant time limits in *DISP* 2.8.2R or *DISP* 2.8.7R (Was the

complaint referred to the Financial Ombudsman Service in time?) by including the appropriate wording set out in *DISP* 1 Annex 3R; or

- (2) a written response which:
- ...
- (b) informs the complainant that he may now refer the *complaint* to the *Financial Ombudsman Service*; ~~and~~
- (ba) indicates whether or not the *respondent* consents to waive the relevant time limits in *DISP* 2.8.2R or *DISP* 2.8.7R (Was the complaint referred to the Financial Ombudsman Service in time?) if it becomes apparent that the complaint has been made or is referred outside those time limits;
- (c) encloses a copy of the *Financial Ombudsman Service* standard explanatory leaflet; and
- (d) provides the website address of the *Financial Ombudsman Service*.

[Note: article 13 of the *ADR Directive*]

...

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) 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;
- (3) enclosed a copy of the *Financial Ombudsman Service* standard explanatory leaflet;
- (4) provided the website address of the *Financial Ombudsman Service*; and
- (5) indicated whether or not the *respondent* consents to waive the relevant time limits in *DISP* 2.8.2R or *DISP* 2.8.7R (Was the complaint referred to the Financial Ombudsman Service in time?) by including the appropriate wording set out in *DISP* 1 Annex 3R.

- 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) should be set out clearly, comprehensibly, in an easily accessible way and prominently, within the text of those responses.

[Note: article 13 of the *ADR Directive*]

...

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* 2.8), 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.~~

Part 2

The rules and guidance in this Part are made by the Financial Conduct Authority in relation to the compulsory jurisdiction of the ombudsman scheme.

1.11 The Society of Lloyd's

Complaints handling procedures

...

- 1.11.2A R The *Society* must ensure that the arrangements which the *member* maintains include a requirement which corresponds to *DISP* 1.2.1R(4) (Publishing and providing summary details, and information about the Financial Ombudsman Service).

[Note: article 13 of the *ADR Directive* and article 14 of the *ODR Regulation*]

...

Application to members

- 1.11.7 G Each *member* of the *Society* is individually subject to the *rules* in this chapter as a result of the *insurance market direction* given in ~~*DISP* 2.5.4G~~ *DISP* 2.1.7D under section 316 of the *Act* (Direction by ~~Authority~~ a regulator).

...

Part 3

The rules and guidance in this Part are made by the Financial Conduct Authority in relation to the compulsory jurisdiction of the ombudsman scheme, and by the Financial Ombudsman Service (with the approval of the Financial Conduct Authority) in relation to the voluntary jurisdiction of the ombudsman scheme.

After DISP 1 Annex 2G insert the following new Annex. All of the text is new and is not underlined.

1 **Appropriate wording for inclusion in a final response or written acceptance** **Annex** **3R**

	The respondent does not consent to waive the six-month time limit in <i>DISP</i> 2.8.2R(1)
(1)	<p>“You have the right to refer your complaint to the Financial Ombudsman Service, free of charge – but you must do so within six months of the date of this letter.</p> <p>If you do not refer your complaint in time, the Ombudsman will not have our permission to consider your complaint and so will only be able to do so in very limited circumstances. For example, if the Ombudsman believes that the delay was as a result of exceptional circumstances.”</p>

	The complaint was received outside the time limits in <i>DISP</i> 2.8.2R(2) and the respondent does not consent to waive those time limits or the six-month time limit in <i>DISP</i> 2.8.2R(1)
(2)	<p>“You have the right to refer your complaint to the Financial Ombudsman Service, free of charge.</p> <p>The Ombudsman might not be able to consider your complaint if:</p> <ul style="list-style-type: none"> • what you’re complaining about happened more than six years ago, and • you’re complaining more than three years after you realised (or should have realised) that there was a problem. <p>We think that your complaint was made outside of these time limits but this is a matter for the Ombudsman to decide. If the Ombudsman agrees with us, they will not have our permission to consider your complaint and so will only be able to do so in very limited circumstances (see below).</p> <p>If you do decide to refer your complaint to the Ombudsman you must do so within six months of the date of this letter.</p> <p>If you do not refer your complaint to the Ombudsman within six months of the date of this letter, the Ombudsman will not have our permission to consider your</p>

	<p>complaint and so will only be able to do so in very limited circumstances.</p> <p>The very limited circumstances referred to above include, where the Ombudsman believes that the delay was as a result of exceptional circumstances.”</p>
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	<p>The complaint was received outside the time limits in <i>DISP</i> 2.8.2R(2) and the respondent does not consent to waive those time limits but does consent to waive the six-month time limit in <i>DISP</i> 2.8.2R(1)</p>
(3)	<p>“You have the right to refer your complaint to the Financial Ombudsman Service, free of charge.</p> <p>The Ombudsman might not be able to consider your complaint if:</p> <ul style="list-style-type: none"> • what you’re complaining about happened more than six years ago, and • you’re complaining more than three years after you realised (or should have realised) that there was a problem. <p>We think that your complaint was made outside of these time limits but this is a matter for the Ombudsman to decide. If the Ombudsman agrees with us, they will not have our permission to consider your complaint and so will only be able to do so in very limited circumstances. For example, if the Ombudsman believes that the delay was as a result of exceptional circumstances.</p> <p>The time limit for referring complaints to the Ombudsman is usually six months but we will consent to the Ombudsman considering your complaint even if you refer the complaint later than this.”</p>

	<p>The respondent does not consent to waive the time limits in <i>DISP</i> 2.8.7R relating to mortgage endowment complaints</p>
(4)	<p>“You have the right to refer your complaint to the Financial Ombudsman Service, free of charge – but you must do so within six months of the date of this letter.</p> <p>The Ombudsman might not be able to consider your complaint if:</p> <ul style="list-style-type: none"> • you received a letter warning you that there was a high risk that your mortgage endowment policy would not produce a sum large enough to repay the target amount at maturity; and • you’re complaining more than three years after you received that letter, and • you’re complaining more than six months after the date on which we sent you a further communication notifying you when the three-year period would expire. <p>We think that your complaint was made outside of these time limits but this is a matter for the Ombudsman to decide. If the Ombudsman agrees with us, they will</p>

	not have our permission to consider your complaint and so will only be able to do so in limited circumstances.”
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	The respondent consents to waive all applicable time limits
(5)	<p>“You have the right to refer your complaint to the Financial Ombudsman Service, free of charge.</p> <p>Although there are time limits for referring your complaint to the Ombudsman, we will consent to the Ombudsman considering your complaint even if you refer the complaint outside the time limits.”</p>

	Other circumstances not dealt with above
(6)	Where the <i>respondent</i> proposes to waive the time limits in <i>DISP 2.8.2R</i> or <i>DISP 2.8.7R</i> and appropriate wording for the <i>respondent’s</i> circumstances is not set out in (1) to (5), the <i>respondent</i> must adapt the appropriate wording as necessary.

Amend the following text as shown.

2 Jurisdiction of the Financial Ombudsman Service

...

2.7 Is the complainant eligible?

...

2.7.9A R *DISP 2.7.9R(1)* and *DISP 2.7.9R(2)* do not apply to a complainant who is a *consumer* in relation to the activity to which the *complaint* relates.

...

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:

...

(3) ...

...

(b) the *respondent* has failed to send a *redress determination* in

accordance with the time limits specified under the scheme;

unless:

(4) the respondent consents and:

(a) the Ombudsman has informed the complainant that the respondent must deal with the complaint within eight weeks and that it may resolve the complaint more quickly than the Ombudsman; and

(b) the complainant nevertheless wishes the Ombudsman to deal with the complaint.

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

...

unless:

...

(5) the respondent has not objected, on the grounds that the time limits in ~~DISP 2.8.2R or DISP 2.8.7R have been exceeded~~, consented to the Ombudsman considering the complaint where the time limits in *DISP 2.8.2R or DISP 2.8.7R* have expired (but this does not apply to a “relevant complaint” within the meaning of section 404B(3) of *FSMA*).

2.8.2A R If a respondent consents to the Ombudsman considering a complaint in accordance with *DISP 2.8.2R(5)*, the respondent may not withdraw consent.

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

...

Part 4

The rules and guidance in this Part are made by the Financial Ombudsman Service (with the consent and approval of the Financial Conduct Authority) in relation to the compulsory and voluntary jurisdictions of the ombudsman scheme.

3 Complaint handling procedures of the Financial Ombudsman Service

...

3.3 Dismissal without consideration of the merits

...

Grounds for dismissal

3.3.4 R The Ombudsman may dismiss a *complaint* referred to the *Financial Ombudsman Service* before 9 July 2015 without considering its merits if ~~the~~ the Ombudsman considers that:

...

- (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~~ so that the matter may be considered ~~under~~ by the *Financial Ombudsman Service*; or

...

3.3.4A R The Ombudsman may dismiss a *complaint* referred to the *Financial Ombudsman Service* on or after 9 July 2015 without considering its merits if the Ombudsman considers that:

- (1) the *complaint* is frivolous or vexatious; or
- (2) the subject matter of the *complaint* has been dealt with, or is being dealt with, by a comparable *ADR entity*; or
- (3) the subject matter of the *complaint* has been the subject of court proceedings where there has been a decision on the merits; or
- (4) 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) so that the matter may be considered by the *Financial Ombudsman Service*; or
- (5) dealing with such a type of *complaint* would otherwise seriously impair the effective operation of the *Financial Ombudsman Service*.

3.3.4B G Examples of a type of *complaint* that would otherwise seriously impair the effective operation of the *Financial Ombudsman Service* may include:

- (1) where it would be more suitable for the *complaint* to be dealt with by a court or a comparable *ADR entity*; or
- (2) where the subject matter of the *complaint* has already been dealt with by a comparable dispute resolution scheme; or
- (3) where the subject matter of the *complaint* has previously been considered or excluded under the *Financial Ombudsman Service* (unless material new evidence which the Ombudsman considers likely to affect the outcome has subsequently become available to the

complainant); or

(4) 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 *eligible complainant* or complainants,

and the *Ombudsman* considers that it would be inappropriate to deal with the *complaint* without that consent.

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.
[deleted]~~

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. [deleted]~~

3.4 Referring a complaint to another complaints scheme or court

...

Test cases

3.4.2 R The *Ombudsman* may, with the complainant's consent, cease to consider the merits of a *complaint* so that it may be referred to a court to consider as a test case, if:

- (1) before the *Ombudsman* has made a determination, they have 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:
 - (i) 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
 - (ii) 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.

3.4.3 G Factors that the *Ombudsman* may take into account in considering whether to cease to consider the merits of 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.

3.5 Resolution of complaints by the Ombudsman

...

Evidence

...

3.5.9 R The *Ombudsman* may:

...

(4) ~~dismiss a *complaint*~~ treat the *complaint* as withdrawn and cease to consider the merits if a complainant fails to supply requested information.

...

Procedural time limits

...

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

...

- (2) ~~dismiss~~ treat the *complaint* as withdrawn and cease to consider the merits.

3.6 Determination by the Ombudsman

...

Consumer redress schemes

- 3.6.5A G As a result of section 404B of the *Act*, if the subject matter of a *complaint* falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, the *Ombudsman* will determine the *complaint* by reference to what, in the opinion of the *Ombudsman*, the *redress determination* under the *consumer redress scheme* should be or should have been, unless the complainant and the *respondent* agree that the *complaint* should not be dealt with in accordance with the *consumer redress scheme*.

Part 5

The rule in this Part is made by the Financial Conduct Authority in relation to the compulsory jurisdiction of the ombudsman scheme, and by the Financial Ombudsman Service (with the approval of the Financial Conduct Authority) in relation to the voluntary jurisdiction of the ombudsman scheme.

TP 1 Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provisions	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
...					
38	<u>DISP 1</u>	R	<u>In respect of a <i>complaint</i> received by a <i>respondent</i> on or before 8 July 2015 the <i>respondent</i> must handle, resolve, record and report the <i>complaint</i> in accordance with the <i>rules</i> as they stood at the date on which the <i>complaint</i> was received by the <i>respondent</i>.</u>	<u>From 9 July 2015</u>	<u>From 9 July 2015.</u>