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Financial Services Authority and
Financial Ombudsman Service

Complaints handling arrangements:

Feedback statement on CP33 and draft rules

A joint consultation paper

May 2000



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Glossary

The Financial Services Authority and the Financial Ombudsman Service Limited invite comments on this joint Consultation Paper. Both the FSA and the Financial Ombudsman Service Limited will receive copies of all responses.

Comments should reach us by 31 August 2000. You can send your response by electronic submission using the form on the FSA's website (at www.fsa.gov.uk/pubs/cp/cp49_response.html), in writing or by e-mail to the following:

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It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise.

Executive summary

- 1 This paper provides feedback on Consultation Paper 33 (CP33), which sought views on detailed proposals for the new arrangements for handling consumer complaints under the new regulatory framework. It also sets out for comment the draft rules which the FSA and the Financial Ombudsman Service Limited (FOS) propose to make in the light of responses received. These rules will appear in the Redress Block of the FSA Handbook of Rules and Guidance, which will also contain the rules relating to the Financial Services Compensation Scheme.
- 2 Under the Financial Services and Markets Bill (FSMB), responsibility for making the complaints handling rules relating to firms falls to the FSA. Responsibility for the rules relating to the various aspects of the Financial Ombudsman Service (the Scheme) is shared between the FSA and the FOS, the company which the FSA has set up to operate the new Scheme. Both the FSA and the FOS are required to consult on the draft rules before they can be made and the FOS's rules are subject to the approval of the FSA. Like CP33, therefore, this paper is issued jointly by the FSA and the FOS.
- 3 The draft rules contained in this paper will apply to all FSA-authorized firms which conduct business with persons who are eligible to refer a complaint to the Scheme. These firms will be subject to the Compulsory Jurisdiction of the Scheme and are likely to include any firm which conducts 'retail' financial services business, including investment firms, deposit takers and general insurers. These rules will also apply (by contractual agreement) to unauthorised firms which choose to join the Voluntary Jurisdiction. The activities covered by the Compulsory Jurisdiction are specified by the FSA; those covered by the Voluntary Jurisdiction are specified by the FOS.

Outline of paper

- 4 **Chapter 1** introduces the paper and provides feedback on the following main issues which were consulted on in CP33:
 - **the scope of the Scheme**, including who should have access to the Scheme, which firms and activities the Scheme should cover and what the territorial limits on the Scheme's scope should be;
 - **the Scheme rules** which will govern the way in which complaints will be handled under the Scheme;
 - **the funding of the Scheme**;
 - **complaints handling by firms** – a single set of requirements for all FSA authorised firms.
- 5 The paper summarises the responses received to CP33. Most of the FSA's and the FOS's proposals were supported by the majority of respondents. However, some proposals have been modified or clarified to accommodate concerns expressed by respondents and these are explained in this chapter.
- 6 **Chapter 2** provides a commentary on the draft complaints handling rules for firms and the draft ombudsman scheme rules, which are set out in Annex A – with the exception of the draft funding rules (see below).
- 7 In order to make the rules comprehensible and accessible to those who will have to refer to them, we have sought to produce a single coherent set of rules, rather than a series of separate instruments which mirror the FSA's and FOS's different areas of responsibility under the FSMB. Wherever possible, the requirements relating to the Compulsory and Voluntary Jurisdictions are identical and, in order to avoid duplication and undue complexity, a substantial number of rules are therefore 'common' rules, which will be made by both the FSA and the FOS under their respective powers under the legislation.
- 8 The draft rules are based on the provisions of the FSMB as it currently stands. Transitional provisions will be made under the FSMB once enacted. However, we expect that the Scheme will be able to deal with pre-N2¹ complaints which the relevant existing schemes would have been able to handle.
- 9 **Chapter 3** contains a statement of the FSA's reasons for believing that the proposed rules and guidance are compatible with its general duties under the

1 'N2' is the date when the FSA and the FOS will assume their full powers. The date of N2 has not yet finally been decided.

FSMB. The FSA believes that the new complaints rules and the existence of the FOS, which will play a key part in the new regulatory system, will help it to meet its statutory objectives, particularly its consumer protection objective.

- 10 **Chapter 4** contains a cost benefit analysis of the new arrangements, as required by the FSMB.
- 11 **Annex A** sets out the draft rules which the FSA and the FOS respectively propose to make. These will replace the various different arrangements which currently apply to firms with a single set of requirements at N2.
- 12 The draft rules comprise four chapters:
 - Complaints Handling Procedures for Firms;
 - Jurisdiction Rules;
 - Complaints Handling Procedures of the Scheme; and
 - Standard Terms (for participation in the Voluntary Jurisdiction).
- 13 The draft funding rules (which will form a fifth chapter) are not included in this paper and will be published separately for consultation later this year. The FSA has decided to postpone consultation on these rules for two main reasons. This will provide further time for the Industry Funding Group (which has been providing us with valuable assistance) to help us to develop our views on how the funding proposals should be refined in order to achieve a result which is equitable across all industry sectors. It will also enable us to co-ordinate publication of these proposals with the publication of proposals for funding the FSA, on which a separate consultation paper is due to be issued during the summer.
- 14 The draft rules reflect policy decisions which have been taken following careful consideration of the responses received to CP33 (and the FSA's earlier consultation paper, CP4). The feedback statement explains the reasons for the conclusions which we have reached. **The FSA and the FOS now invite representations on the draft rules (including the Category Codes for reporting purposes) set out in Annex A by 31 August 2000.**

1 Introduction and responses to CP33

Introduction

- 1.1 The FSA and the FOS² published a joint Consultation Paper (CP33) in November last year. This sought views on detailed proposals relating to the arrangements which should apply for handling consumer complaints under the new system of financial services regulation, both within firms and within the new single ombudsman scheme.
- 1.2 The purpose of this paper (which is also a joint paper) is to provide feedback on CP33 and to seek views on the rules³ which the FSA and the FOS propose to make in the light of that consultation.
- 1.3 In this paper, references to the 'FOS' are to the Financial Ombudsman Service Limited, which has been set up by the FSA to be the Scheme Operator. References to 'the Scheme' or to 'the Financial Ombudsman Service'⁴ are to the legal framework contained in the FSMB.
- 1.4 Since the publication of CP33, significant further progress has been made in bringing together the eight existing dispute resolution schemes ('the existing schemes'⁵) which the Financial Ombudsman Service will replace in advance of the implementation of the FSMB. In particular:

2 Previously known as the Financial Services Ombudsman Scheme Limited (prior to an amendment to the FSMB during Committee stage in the House of Commons).

3 This paper provides feedback on the funding proposals set out in CP33, but does not contain draft funding rules. Draft rules will be published separately later this year.

4 Previously known as 'the Financial Services Ombudsman Scheme'.

5 Insurance Ombudsman Bureau; Office of the Banking Ombudsman; Office of the Building Societies Ombudsman; PIA Ombudsman Bureau; Office of the Investment Ombudsman; SFA Complaints Bureau, the FSA Complaints Unit and the Personal Insurance Arbitration Service.

- The staff of 7 of the 8 existing schemes⁶ transferred onto FOS contracts on 1 April this year and are now co-located at the FOS's new premises at South Quay Plaza in London's Docklands;
- The FOS has assumed day-to-day responsibility for these schemes under Service Level Agreements, which have been put in place with each of the schemes;
- These schemes' services are now being provided by FOS staff, although the schemes will retain their separate legal identities and terms of reference until 'N2', when the FOS will assume its statutory powers and functions. (This arrangement is broadly similar to the one between FSA and the various bodies which it will replace at N2.)

1.5 The rest of this chapter deals with the responses to CP33 and our policy conclusions.

Responses to CP33

1.6 We received a total of 170 responses to CP33 and are grateful to those who responded for their detailed and helpful comments on the various issues which we raised in that paper. A list of the respondents is at Annex B.

1.7 This section of the paper summarises the responses which we received and outlines the policy conclusions which we have reached in the light of those responses. As in CP33, these are grouped under the following headings:-

- Scope of the Financial Ombudsman Service
- Scheme Rules, standard terms and costs rules
- Funding the Scheme
- Complaints handling by firms.

⁶ The Personal Insurance Arbitration Service (PIAS) is run by the Chartered Institute of Arbitrators. No staff will transfer to FOS but member firms will become subject to FOS at N2.

Scope of the Financial Ombudsman Service

1.8 The main scope-related issues on which views were sought were:

- Which complainants should have access to the Scheme?
- Which firms should be subject to the Scheme?
- Which activities should be covered by the Scheme (Compulsory and Voluntary Jurisdictions);
- What should the territorial coverage of the Scheme be?
- What should the limits on awards be?

Which complainants should have access to the Scheme?

1.9 CP33 proposed that the Scheme should be made available to:

- **Private individuals;**
- **Small businesses** with a turnover of less than £1million and fewer than 5 employees (including small companies, unincorporated bodies and partnerships) but with some flexibility for charities; and
- **Third parties** (in specified circumstances) which fall into one of the above categories).

(These proposals related to both the Compulsory and the Voluntary Jurisdiction of the Scheme and across all industry sectors.)

1.10 **Private individuals** As expected, there was general support for the proposal that the Scheme should be available to all private individuals, regardless of their personal wealth. However, opinion was more divided on the extent to which small businesses should have access to the Scheme.

1.11 **Small Businesses** The two key issues relating to small businesses on which we sought respondents' views were:

- (i) how small businesses should be defined; and
- (ii) whether a common definition was appropriate for all sectors.

- 1.12 Most respondents supported the first part of the proposed double test (ie the under £1million turnover limit). However, a significant number expressed concern about the practicability of the *additional* ‘fewer than 5 employees’ test, which they felt would be complex and time-consuming to administer. Some were also concerned that this test would exclude some small businesses which currently have access to an existing scheme. Others sought clarification about how the tests would be applied in practice. The recently published Cruickshank Report on ‘Competition in UK Banking’⁷ also expressed views on this subject, recommending a turnover limit of at least £5million and removal of the employees test.
- 1.13 The FSA and the FOS have therefore given further thought to the definition of a ‘small business’. In doing so, we have had regard not only to the responses to CP33, but also to the responses which the FSA received to its earlier consultation paper (CP4⁸), which also sought views on the extent to which small business customers should have access to the new scheme.
- 1.14 The FSA originally consulted, in CP4, on a £5million turnover limit for small businesses. However, the majority of respondents opposed this proposal on the grounds that it was too wide and not in keeping with an ombudsman scheme designed to provide an alternative dispute resolution mechanism for those who could not reasonably be expected to go to the courts. The Joint Committee of both Houses of Parliament which was set up to consider the draft FSMB subsequently recommended that the ombudsman scheme should be available to private individuals, not firms. HM Treasury indicated in its response to the Joint Committee that the Government believed that ‘complaints handling arrangements should in principle be available for some classes of business, for example, small family firms, who may in practice be in a position close to that of the individual consumer’.
- 1.15 CP33 therefore proposed a narrower definition – ie the double test of a £1million turnover limit combined with a ‘fewer than 5 employees’ test. We noted that a significant number of small businesses would meet each of these individual tests and that simply lowering the turnover limit or the number of employees would not result in a significant reduction in the number of potentially eligible firms. The aim of this double test was therefore to try to achieve a tighter definition which would limit access to the Scheme to those small firms whose circumstances were similar to those of private individuals. However, as CP33 recognised, figures for the number of firms which would meet *both* tests are not available.

7 ‘Competition in UK Banking: A Report to the Chancellor of the Exchequer’. Don Cruickshank. March 2000.

8 ‘Consumer Complaints’: December 1997

Against this background and in view of the concerns expressed by CP33 respondents, we have decided not to apply an employees test at the start of the Scheme but to apply a single £1million annual turnover test. (The £1million limit will apply, in the case of charities, to their income and, in the case of trustees, to the net assets of the trust.) We do not consider it appropriate, in the light of our earlier consultation on this point, to increase the turnover limit at this stage, but we will keep this under review. The turnover test will apply at the point when the complaint is referred to the Scheme. The FOS will normally rely on self-certification by a firm, but will be entitled to ask the firm to provide further proof where necessary. A subsidiary of a corporate group will be able to use the Scheme only where the group as a whole meets this test.

- 1.16 **Charities** CP33 recognised that some flexibility might be needed for charities and non-profit-making bodies and this was supported by those who commented on this point. We believe that removing the employees test will meet this concern, since further research has revealed that 98% of registered charities would qualify for access to the Scheme under the proposed £1million income test.
- 1.17 **Third Parties** There was general support for the proposal to extend access to the Scheme to complainants who are not contracting parties (ie not direct customers) in certain specified circumstances – and to confine this, in the case of the insurance sector, to circumstances where an insured person would have legal rights to enforce a contract under the Contracts (Rights of Third Parties) Act 1999 or other legislation.
- 1.18 The latter proposal will help to clarify the position of employees covered by a group insurance policy taken out by their employer (eg a group permanent health policy). These have sometimes been denied access to the relevant existing scheme on the grounds that direct claims can only be made on the policy by the policyholder /employer rather than by an employee, and a number of respondents shared our concern about the need for greater clarity in this area. Under the proposed rules, employees will have direct access to the Scheme, provided that the policy contract makes it clear that the policy confers a benefit on the employees (as distinct from the employer). It will therefore be important for insurers to make explicit at the outset whether or not this is the case and we very much welcome indications from the industry that they are proposing to adopt a constructive approach to resolving this area of uncertainty.
- 1.19 Respondents also asked for clarification of the position of trustees of various kinds. Trustees will be able to refer complaints to the Scheme, provided that

they have net assets of less than £1million, as noted above. We do not believe that implementing a £1million limit is likely to cause difficulties, as the existing schemes' experience indicates that complaints from trustees are rarely, if ever, made. Furthermore, trustees of occupational pension schemes have access to the Pensions Ombudsman in respect of complaints about such schemes. Any concerns which a trustee may have about an authorised firm should be brought to the attention of the FSA.

- 1.20 Holders of shares in investment trust companies will have access to the Scheme insofar as their complaint relates to the investment management of an investment trust company by an authorised firm, but not to the investment trust company itself or to the companies in which the trust invests.
- 1.21 **Personal Representatives** Some CP33 respondents asked for further clarification of the circumstances in which personal representatives of complainants will have access to the Scheme. Personal representatives may include the representatives of deceased or incapacitated complainants or those with legal authority (eg trustees in bankruptcy and those with power of attorney). In such cases, the access test will apply to the underlying complainant, rather than to the representative.
- 1.22 **Customer Classification** A number of respondents sought clarification on how the proposed criteria for access to the Scheme fitted with the FSA's customer classification proposals. Further details about the FSA's customer classification proposals have been published⁹ since the publication of CP33 and we intend to align the criteria for access to the Scheme with these as far as possible.¹⁰ We propose to exclude 'intermediate customers' and 'market counterparties', who do not, in our view, require this protection.
- 1.23 Access to the Scheme will therefore be limited to 'private customers' only. However, the Scheme will not be available to all private customers. Small businesses with a turnover of over £1million would be excluded, although the FSA's proposed definition of 'private customer' includes firms with a turnover of under £5million. We believe that the apparent discrepancy is justified in this context for the reasons mentioned at paragraphs 1.14-1.15 above. Potential (as distinct from actual) customers will be entitled to use the Scheme only where they have suffered financial loss, material distress or material inconvenience as a result of a firm's actions or failure to act (eg where they have been refused a loan or insurance policy as a result of maladministration or illegal discrimination).

9 CP 43: 'Customer Classification' published in February 2000.

10 The FSA's customer classification regime will apply only to firms subject to conduct of business regulation by the FSA.

1.24 **Authorised persons** The FSMB provides that authorised persons will not be eligible to use the Scheme, except as specified by the FSA. There was general support for our proposal that authorised firms should have access to the Scheme in their own right only where they meet the ‘small business’ test and where their complaint relates to an activity which they are not themselves authorised to conduct. (Authorised persons will, nevertheless, have access to the Scheme where they are acting as the personal representative of a complainant.)

Should small business complainants about insurers have access to the Scheme?

1.25 The other key issue relating to access to the Scheme on which views were sought was whether respondents agreed with the proposal that small businesses should have access to the Scheme across all industry sectors. CP33 noted that this proposal would mean that small business customers of insurers would be eligible to bring a complaint to the Scheme for the first time.

1.26 This proposal received a mixed response. It met with strong resistance from most (but not all) of the insurance companies who responded. (These made up 28% of CP33 respondents.) Most of these respondents pointed to the clear and well established distinction between personal lines and commercial lines of business and argued that significant training would be needed to enable staff to deal with complaints from small businesses. Some were concerned about the potential complexity and more resource-intensive nature of the complaints which small businesses might generate and noted that small businesses generally have access to professional advice. Others argued that there was no significant demand from small businesses for dispute resolution mechanisms and therefore no need for an extension of complaints arrangements into this area.

1.27 However, there was strong support from other sectors of the industry (eg banks, building societies, IFAs) and from consumer bodies for a level playing field in this area. These respondents felt that the logic – and fairness – of applying a single approach to all sectors of the financial services industry outweighed the potential additional burden which it might create.

1.28 The FSA appreciates that insurance companies have significant concerns about this proposal and we have given this matter careful thought in the light of the responses received. Whilst we recognise the distinction which the insurance industry draws between commercial business and personal business, we are not convinced that this necessarily makes it inappropriate or impractical to

extend access to small businesses in the insurance sector. Nor are we persuaded that small business complaints in the insurance sector are intrinsically more complex and time-consuming to handle than in other sectors.

- 1.29 We therefore find it difficult to justify excluding small business complaints from the Scheme in this sector alone. We believe that this would be confusing to consumers and unfair to firms. There is no conclusive evidence either way as to how many extra complaints this proposal is likely to generate for the Scheme. However, the experience of the existing schemes and the results of our cost benefit analysis survey, which took account of the numbers of small business complaints currently dealt with by firms, would seem to suggest that the numbers of complaints which will be referred to the Scheme should not be large.¹¹ In addition to the turnover limit, the £100,000 limit on awards is also likely to restrict the numbers of such complaints to the Scheme.

We therefore propose to introduce a common definition of ‘small business’ for all sectors, but undertake to review the position if it gives rise to significant difficulties or increases in the volume of complaints in the insurance sector.

Which firms should be subject to the Scheme?

- 1.30 In CP33, the FSA proposed that all authorised firms should be subject to the Compulsory Jurisdiction although firms which were not permitted to do business with potentially eligible complainants would be exempt from the obligation to comply with the funding and complaints handling rules. This was widely welcomed. Exempt firms will be required to certify to the FSA – on an annual basis – that they do not conduct business which could give rise to an eligible complaint. Alignment with FSA’s customer classification proposals should facilitate this process.
- 1.31 **Mortgage lenders** After CP33 was published, the Government announced (on 26 January 2000) that mortgage lenders will require authorisation by the FSA (although this is not expected to be until after N2). This means that they will all, in due course, be subject to the Compulsory Jurisdiction of the Scheme.

¹¹ All of the existing schemes except the IOB currently accept small business complaints, but, in practice, it is only in the banking sector that anything like a significant number (6% of total cases and 17% of those requiring investigation) is received.

- 1.32 Approximately 95% of mortgage lenders (eg banks and building societies) will be subject to the Compulsory Jurisdiction from N2. This is because they will require authorisation for other activities (eg deposit-taking). Their mortgage lending activities will also be covered, as this is one of the currently unregulated activities which will be covered by the Compulsory Jurisdiction if conducted by an authorised firm (see paragraph 1.40 below). However, the remaining 5% are unauthorised firms and will not be subject to the Compulsory Jurisdiction until mortgage lending becomes an authorisable activity. On the assumption that there will be a significant gap between N2 and the requirement for mortgage lender authorisation, the FOS plans to make the Voluntary Jurisdiction available to these firms until they require authorisation and transfer to the Compulsory Jurisdiction.
- 1.33 **Credit unions** Since CP33 was published, the Government has also indicated (in November 1999) that credit unions are to be brought within the scope of the FSMB and regulated by the FSA. However, these firms cannot be brought into the Compulsory Jurisdiction until they require authorisation, which is likely to be in the final quarter of 2001. Unlike some mortgage lenders, none of these firms will be subject to the Compulsory Jurisdiction before this date and the FOS therefore does not propose to open the Voluntary Jurisdiction to them in the meantime.
- 1.34 **Professional Firms** In CP30¹² and CP33, the FSA proposed that professional firms requiring authorisation by the FSA at N2 should be subject to the Compulsory Jurisdiction of the Scheme in respect of all of their regulated activities (and any other activities falling within the Compulsory Jurisdiction). We noted, however, that complaints against these firms might relate in part to investment business and in part to professional services. In the interest of providing consumers with a single point of entry for investment business complaints, we proposed that where it appeared that any element of a complaint related directly to the conduct of activities within the scope of the Scheme, the complainant should be directed to the Scheme in the first instance. The FOS would have arrangements with the professional bodies to ensure that, where appropriate, these complaints would be passed to the relevant professional body for disciplinary or redress purposes.
- 1.35 However, some respondents questioned this approach. Several favoured a single route, but differed in their views as to whether this should be to the Scheme or to the professional body. A number noted that the statutory basis of the current arrangements for handling complaints against solicitors could

12 The FSA's Regulation of Professional Firms (October 1999)

not be over-ridden by alternative arrangements. Others emphasised the need to avoid double jeopardy for firms and for complainants to be clear about how a complaint would be handled.

- 1.36 We have therefore decided to modify our previous proposal to take account of these concerns. Where a complaint is wholly or mainly about regulated activities, we propose that it should be sent to the Scheme in the first instance and where a complaint is wholly or mainly about a firm's professional services, we propose that it should be handled, in the first instance, under the relevant professional body's arrangements. As previously envisaged, the FOS will seek to agree with each of the professional bodies appropriate working arrangements to ensure that there is effective information-sharing so that where both have an interest in the same complaint they will liaise to determine how it should be handled and to avoid duplication.
- 1.37 We are conscious that professional firms which are not authorised will be able to carry on some regulated activities ('exempt regulated activities') under regulation by a professional body and without the need for authorisation by the FSA. Similar activities carried on by a professional firm authorised by the FSA will be within the FSA's regulatory scope. In order to ensure consistency of treatment in respect of such activities between authorised and exempt firms, we propose that complaints of this kind should be handled by the relevant professional body, rather than by the Scheme.
- 1.38 Lloyd's Respondents supported our intention to make the Society of Lloyd's (which is currently a member of the Insurance Ombudsman Bureau) subject to the Compulsory Jurisdiction of the Scheme (and FSA's complaints handling rules for firms) in respect of complaints from personal policyholders (and small businesses) only. Complaints will continue to be handled, as now, by the Lloyd's Complaints Department in the first instance. Members (and former members) of Lloyd's will not have access to the Scheme in respect of complaints about the conduct of regulated activities within the Lloyd's market permissions by the Society of Lloyd's or their advisers / agents.¹³ Lloyd's will be required to maintain adequate alternative dispute resolution arrangements for dealing with such complaints about the Society of Lloyd's and underwriting agents. Members' advisers will be required to maintain effective arrangements for handling any complaints from an underwriting member or former member about their conduct of regulated activities within the Lloyd's market permissions.
- 1.39 **EEA Firms** In CP33, we proposed that EEA firms which would automatically qualify for authorisation under Schedule 3, 4 or 5 to the FSMB if they sought to

13 See Lloyd's Sourcebook Consultation Paper, which is currently out for consultation.

conduct business in the UK by virtue of a ‘passport’ under one of the relevant EC Directives should be subject to the Compulsory Jurisdiction. In practice, this should mean that those incoming EEA firms which establish a branch in the UK would be covered. Our proposals for the territorial jurisdiction of the Scheme are outlined in further detail at paragraphs 1.45 to 1.48 below.

Which activities should be subject to the Compulsory Jurisdiction?

- 1.40 There was widespread support from CP33 respondents for Option 2 (the FSA’s preferred option). This would mean that authorised firms would be covered by the Scheme on a *compulsory* basis for regulated activities, plus those unregulated activities which are currently covered by the existing schemes – ie mortgage lending, unsecured lending in the form of overdrafts, loan accounts and credit cards, and the provision of general insurance services by a bank or building society.¹⁴
- 1.41 There was also substantial support for our longer term objective of moving to Option 3 (ie bringing all of the financial services activities of authorised firms into the Compulsory Jurisdiction), although opinions differed sharply on whether this should happen as soon as possible or over a much longer period of time. However, most respondents recognised the need for FOS to be able to manage its workload before expanding further and virtually all agreed that any move to Option 3 should take place only after further consultation and detailed cost benefit analysis.

The FSA therefore proposes that the Compulsory Jurisdiction should cover, at N2, all regulated activities (as defined in the Regulated Activities Order), plus mortgage lending and unsecured lending in the form of overdrafts, loan accounts and credit cards, where these activities are conducted by authorised firms and the provision of general insurance services by a bank or building society.

14 The Banking and Building Societies Ombudsman Schemes currently cover complaints about services provided by banks or building societies. Complaints about insurance-related services constitute only 3% of complaints received by these schemes.

Which activities should be subject to the Voluntary Jurisdiction?

- 1.42 The scope of the Voluntary Jurisdiction is a matter for the FOS (although the FSA must approve the FOS's rules). The scope of the Voluntary Jurisdiction is potentially very wide – it can cover the financial services activities of authorised or unauthorised firms. In CP33, the FOS indicated that the long term aim is to offer as comprehensive a service as possible, but highlighted the importance of ensuring that its Voluntary Jurisdiction services were made available in a controlled way which was consistent with its ability to handle the volume of complaints generated and with budgetary constraints. The need for a phased approach to the opening of the Voluntary Jurisdiction was generally recognised and accepted by CP33 respondents, although there was widespread support for opening it up as soon as possible.
- 1.43 As noted above, the recent Government decision to bring mortgage lenders into the scope of the new regulatory regime, which means that they will ultimately be subject to the Compulsory Jurisdiction, also has implications for the scope of the Voluntary Jurisdiction.

At N2, the FOS therefore proposes to open up the Voluntary Jurisdiction to:

- **Unauthorised mortgage lenders until these transfer to the Compulsory Jurisdiction (in order to create a level playing field); and**
- **Unauthorised firms whose activities are currently covered by membership of an existing scheme – in order to avoid depriving consumers of an existing avenue for redress (see paragraph 1.44 below).**

- 1.44 **In the longer term**, the FOS will be giving thought to opening up the Voluntary Jurisdiction, over a period of time, to:
- **Authorised firms** in respect of any of their financial services activities which are not brought into the Compulsory Jurisdiction. (The FOS aims to do this over a phased period once it has further information about the volume and nature of these activities and is satisfied that the firms concerned have in place effective complaints-handling policies and procedures);
 - **Mortgage Intermediaries** There was substantial support from CP33 respondents for the FOS to bring mortgage intermediaries into the Voluntary Jurisdiction, in view of the Government's decision to bring mortgage lenders within the regulatory scope of the FSA (and thus the Compulsory Jurisdiction). The Council of Mortgage Lenders (CML) has

indicated that it may want to explore with the FOS and the Mortgage Code Compliance Board (MCCB) the possibility of making it compulsory for mortgage intermediaries which subscribe to the Mortgage Code to join the Voluntary Jurisdiction and the FOS will pursue this with the CML and the MCCB in due course; and

- **General Insurance Intermediaries** A number of respondents also favoured bringing general insurance intermediaries into the Voluntary Jurisdiction as soon as possible, preferably by way of an arrangement with the General Insurance Standards Council (GISC). As indicated in CP33, the FOS also favours this in principle, but needs to have a clearer view of the nature and volume of complaints that might be received. FOS is in discussion with GISC about interim arrangements. As a transitional measure, FOS would intend to offer the small number of providers of general insurance services which have joined the Insurance Ombudsman Bureau the ability to join the Voluntary Jurisdiction at N2 so that their customers will not be prejudiced. This will also apply to non-authorised subsidiaries of banks or building societies.

What should the territorial scope of the Scheme be?

- 1.45 Respondents generally supported CP33's proposal that the Scheme should cover authorised firms doing business in or from the UK. As noted at paragraph 1.39 above, in practice, this would mean that all firms operating in the UK which required FSA authorisation (including branches of overseas firms based in the UK) would be covered. The extent to which business conducted into the UK via the Internet would be covered (ie where providers were outside the UK) was of concern to some respondents. This led them to argue that firms conducting business into the UK on a services basis which did not require authorisation should, nevertheless, also be included within the scope of the Scheme. Some also suggested that there should be a UK residence qualification for complainants.
- 1.46 We recognise the force of these concerns but do not think that amendment of the policy proposed in CP33 provides an appropriate solution for a number of reasons. In terms of EEA firms, the proposal is consistent with European Commission initiatives currently in train to create a network of EEA redress mechanisms. Furthermore, the ability to enforce awards made by the FOS in the UK against firms based in other EEA Member States would be problematic. The need for extensive translation facilities would also add to the complexity – and expense – of the process.

- 1.47 This problem is not, of course, confined to incoming EEA firms passporting into the UK on a services-only basis. It also arises where consumers do cross border business with firms based in countries outside the EEA. The FOS has given thought to whether or not the Voluntary Jurisdiction should be made available to overseas firms not requiring FSA authorisation in respect of business done with UK consumers. However, the same jurisdictional and enforcement problems arise. The FOS has therefore decided not to open the Voluntary Jurisdiction to such firms at present, but will keep this matter under review in the light of developments.
- 1.48 The FSA believes that the solution to this problem lies, in the EEA context, in the creation of a comprehensive and complementary system of redress mechanisms across the EEA for financial services and we are working with the European Commission in support of this initiative. In the meantime, (and in the longer term as far as non-EEA countries are concerned), we aim, as far as possible, to put in place appropriate disclosure requirements (supplemented by consumer education initiatives) to ensure that consumers know whether or not a particular firm is covered by an ombudsman scheme (or equivalent) and we will seek to alert consumers to the need to check the status of any firm with which they propose to do business. The FOS also proposes to develop appropriate liaison arrangements with its counterparts in the EEA (and beyond) so that complainants can be referred to the appropriate scheme.

Limits on awards

- 1.49 Respondents were in broad agreement with the proposed overall limit of £100,000 on money awards and with the proposal to review this limit every 3 years. Some (in particular, consumer bodies) felt that an increase to reflect inflation was appropriate. However, the existing schemes have confirmed that this limit has not, in practice, been a problem, and the Ombudsman will, in any case, be able to recommend awards in excess of this limit, where he considers it appropriate.

We have therefore decided to keep to the original proposal of a £100,000 limit, but will review this in the light of experience within 3 years of N2 and every 3 years thereafter.

- 1.50 A significant number of respondents favoured the introduction of sub-limits (in the region of £1,000-£2,500) for distress and inconvenience awards to ensure consistency and provide certainty for firms. However, support for this came almost exclusively from the investment business sector and consumer bodies

were opposed to any such limits. Higher awards have sometimes been appropriate in other sectors because of the nature of the business, but there is insufficient evidence at this stage to justify setting different limits for different sectors. The FOS intends to put in place appropriate mechanisms within the Scheme to ensure a consistent approach to similar cases across all sectors. It also intends to develop – and publish – clear guidelines on how and in what circumstances such awards would be made.

On this basis, the FSA does not propose to set any sub-limits on particular types of award at this stage, but will keep this matter under review in the light of experience.

Scheme rules, standard terms and costs rules

- 1.51 There was little dissent from the FOS's proposals in relation to the Scheme Rules, which will cover the procedure for considering complaints, the circumstances in which a complaint could be terminated early and the matters to be taken into account in reaching a fair and reasonable decision.
- 1.52 There were a number of comments concerning the European Convention on Human Rights (ECHR). Some focused on precisely how the FOS will apply it in practice. Some firms feared complainants would request hearings unnecessarily. Some consumer bodies feared that firms would request hearings and that complainants would suffer if the firms were legally represented. Only time will tell how often hearings are actually requested and by whom.
- 1.53 The FOS will provide complainants and firms with full details of its procedures, including those arising from ECHR obligations, and these will be updated regularly to reflect how the courts interpret the Human Rights Act 1998. In some cases, before an Ombudsman issues a determination, he will need to hold an oral hearing in public or private. This will be the case in particular if either party requires an oral hearing and the ECHR guarantees apply. The Ombudsman will control the proceedings and ensure that an unrepresented party is not disadvantaged.
- 1.54 Some firms commented on the proposal to give the Ombudsman wide powers concerning the admissibility of evidence, and contrasted this with what would happen in court. In fact, courts have very wide discretion to admit and exclude evidence, and to say how it should be provided, and the proposed rules for the Scheme are based on those recently adopted by the courts.

FOS Standard Terms

- 1.55 There was a general welcome for the proposal that the Standard Terms (governing the Voluntary Jurisdiction) should implement the relevant rules for the Compulsory Jurisdiction – so that complaints proceed in substantially the same way whether in the Compulsory Jurisdiction, the Voluntary Jurisdiction or partly in one and partly in the other.

There will therefore be a harmonised set of rules for both the Compulsory and Voluntary Jurisdictions covering complaint handling by firms, and the jurisdiction, procedures and funding of the Scheme. In the Voluntary Jurisdiction, firms will not be required to report to the FSA but will have to give notice to the FOS (and agree arrangements for handling current complaints) before withdrawing from the Scheme. They will also be required to keep records of complaints for a sufficient period to enable them to co-operate with the Ombudsman where complaints are referred to the Scheme.

FOS Cost Rules

- 1.56 The FSMB gives the FOS a limited power to make Costs Rules in certain circumstances. It permits the FOS to make rules enabling the Ombudsman to require a complainant to contribute to the Scheme's costs (but not to the firm's costs), although he may do so only where the complainant's conduct was improper or unreasonable or where he was responsible for an unreasonable delay. However, the FOS noted in CP33 that consumers would have to be given 'costs warnings' before any such awards could be made and indicated that it did not propose to exercise this power. This received strong support from consumer bodies who agreed that complainants should not be at risk of being ordered to pay any costs, as this could discourage legitimate complaints. Some firms who responded to CP33 felt that complainants should be required to pay costs to the firm if the complaint was not upheld. However, as noted above, the FSMB specifically prevents this.

The FOS has therefore decided not to make rules enabling the Ombudsman to make costs awards against complainants.

- 1.57 There is, however, one area where the FOS does propose to make Costs Rules. Where a complaint is upheld, the Ombudsmen in the existing schemes may, in appropriate circumstances, include within their awards an element to

compensate the complainant for costs which he has reasonably incurred. The FOS proposes to continue this practice. However, under the FSMB, compensation of this kind cannot be included in the Ombudsman's award, and must be separately provided for by Costs Rules.

The FOS therefore proposes to make Costs Rules enabling the Ombudsman (in appropriate cases) to make an award against a firm for costs reasonably incurred by the complainant.

Complaints against the FOS

- 1.58 There was widespread approval for the proposal to appoint an independent Complaints Commissioner to deal with complaints about the handling of a case by the FOS (as opposed to the merits of the decision) and to report to the FOS Board with recommendations for improvements in procedures, where appropriate.

The FOS Board will appoint an independent Complaints Commissioner before the FOS acquires its statutory powers.

Funding the Scheme

- 1.59 Chapter 5 of CP33 set out the proposed funding arrangements which would apply, via rules made by the FSA, to firms in the Compulsory Jurisdiction of the Scheme and, via the FOS's Standard Terms, to firms in the Voluntary Jurisdiction. However, we noted that the complexity and diversity of the funding issues were such that the proposals would need to be reviewed and refined in further consultation with the industry and in the light of experience of operating the new Scheme.
- 1.60 The proposal to set up an Industry Funding Group (IFG)¹⁵ to assist with this work was widely welcomed and this was set up shortly after the publication

15 The IFG is made up of representatives from the Association of British Insurers (ABI), Association of Friendly Societies, Association of Independent Financial Advisers (AIFA), Association of Private Client Investment Managers and Stockbrokers (APCIMS), Association of Unit Trusts and Investment Funds (AUTIF), British Bankers Association (BBA), the Board of The Office of the Banking Ombudsman, the Board of the Insurance Ombudsman Bureau, the Investment Ombudsman Committee, the Building Societies Association (BSA), British Health Care Association (BHCA), Fund Managers' Association (FMA), FSA Small Business Practitioner Panel, London Investment Banking Association (LIBA), Futures and Options Association (FOA) and the Life Insurance Association (LIA).

of CP33. We have been working closely with the IFG on the main issues to emerge from the consultation exercise and are grateful to the members of this group for their valuable input in refining our proposals.

- 1.61 Whilst a number of broad principles have now been agreed, the IFG is continuing to work closely with us on fine-tuning the detailed mechanism for allocating the levy between the different industry sectors to make these as fair as possible. Our proposals also need to take account of how the FSA itself will be funded, on which a consultation paper is due to be published shortly. We have therefore decided to consult separately on the draft funding rules, which will be published later in the year, as will the details of the proposed FOS budget. The rest of this section therefore provides feedback on the funding proposals contained in CP33 and sets out the broad principles which have been agreed.
- 1.62 There was general support amongst respondents for the overall methodology proposed in CP33, but a range of comments on some of the more detailed propositions. Respondents agreed that it would be essential to keep the funding mechanism under review in the light of experience.
- 1.63 The main points to emerge were as follows:
- **General levy/case-related charge ratio:** The proposed 50/50 split between the general levy and the case-related charge was seen as a reasonable starting point by most respondents. However, there was a very strongly held view that it was inappropriate to collect 100% of budgeted annual operating costs on account at the beginning of the year – FOS now plans to offer a facility for quarterly collection, if possible by direct debit.
 - **Allocation of costs:** There was general agreement that contributions to the funding of the scheme should be related to the *budgeted* costs for each industry sector in order to reflect the extent to which different sectors generate different volumes of complaints. We therefore propose to have separate ‘contribution groups’ for each of the three case-working divisions – Investments, Banking and Loans, and Insurance, with sub-groups within the Investments division to reflect the different types of business which this division will cover. Costs will be allocated on the basis of budgeted costs for each of the three divisions and where a firm’s business falls into more than one division, its levy will be calculated accordingly.
 - **Matrix** There was general support for the concept of the matrix approach as a means of allocating costs between the various different types of firms, but, as expected, respondents highlighted the need to refine the illustrative matrix in some respects to rectify certain anomalies. However, the decision

to move to a divisional basis for the allocation of costs removes the need to group firms from different industry sectors into comparable bands. It also makes possible a more sophisticated distribution of costs between individual firms. Rather than grouping units of measure into specific bands, it is now proposed to adopt a simple proportionate levy related to each unit of measure. This will mean that each firm will pay a contribution more exactly related to its volume of activity. Members of the IFG are currently working with us to refine and develop the levy basis in the light of these comments in order to achieve an outcome which is as fair as possible for all concerned.

- **Units of Measure** There was general support for the proposed units of measure, although opinion was divided amongst independent financial advisers as to which measure (turnover or the number of Approved Persons) was the more appropriate and there was some support for adopting a transaction-based approach (rather than turnover) across the board. Following further consultation with the IFG and representatives from the Recognised Professional Bodies, the current thinking on units of measure is as follows:

Category of firm	Unit of measure
Deposit takers	Number of relevant accounts
General Insurers	Relevant gross premium income
Long term/life insurers	Relevant gross premium income
Fund managers	Relevant funds under management
Stockbrokers/future&options dealers	No. of relevant Approved Persons
Independent Financial Advisers	No. of relevant Approved Persons
Professional Firms	Relevant Turnover

(Most firms indicated that they did not anticipate too much difficulty in identifying their relevant (ie retail) business for funding purposes, although we are giving further thought to how this will be achieved in relation to units of measure such as approved persons.)

- **Case-related charge** The benefits of calculating this on a flat-rate basis initially were generally accepted. However, there was considerable support for the FOS's proposal to explore, in the light of experience of operating the Scheme and in consultation with the industry, the feasibility of moving in the longer term to 'tiered' charging (ie different charges depending on the stage at which a case is settled) and the FOS proposes to pursue this. Many respondents also flagged the need for a specific definition of what will constitute a 'case' for charging purposes. Most felt that the cost of dealing with enquiries, complaints outside FOS's jurisdiction and frivolous

and vexatious complaints should be excluded. (A definition of a ‘chargeable case’ will be included in the draft funding rules.)

- **Weighted scale for smaller firms** There was a mixed response to the suggestion that smaller firms should pay a proportionately lower amount in relation to their unit of measure than larger firms. We are currently considering with the IFG, whether, in fact, the need for weighting falls away, in the light of the decision to move to a divisional approach, since this removes the need to allocate firms to broad bands and enables us to differentiate between firms’ charges on a more individual basis.
- **Special pooling arrangements** The concept of pooled arrangements for very small firms – eg cash plan health providers, credit unions (once included) and small friendly societies – received a particular welcome from these sectors, which fear that the case fee might otherwise outweigh the value of the claim. We are currently considering, with representatives from the relevant industry trade associations, how, in practice, such an arrangement might work.
- **Establishment / Transitional Costs** The majority of respondents felt unable to comment on proposals for recovering transitional costs in the absence of detailed information about what these costs are likely to be. We propose to include information on transitional costs at the same time as details of the FOS’s proposed budget are published.
- **Funding arrangements for the ‘start-up’ year.** Those who commented on this point agreed that it made sense for the whole of the transitional year in which N2 falls to be funded on the basis of the existing schemes’ funding arrangements, with the balance being passed to the FOS at N2 in order to avoid the need for a further levy by the FOS at N2. This has now been agreed and incorporated into service level agreements with each of the schemes.
- **Proposed funding arrangements for the Voluntary Jurisdiction** Very few respondents commented specifically on the proposed Voluntary Jurisdiction arrangements, but those who did agreed that the Voluntary Jurisdiction should be funded along as similar lines as possible to the Compulsory Jurisdiction.

Complaints handling by firms

- 1.64 The FSA’s proposals for the new rules governing the way in which authorised firms should handle consumer complaints were set out in Chapter 6 of CP33.

These proposed that common standards of complaints handling should be introduced for all firms which would be subject to the Compulsory Jurisdiction of the Scheme. The FOS indicated that it intended to apply these standards – via the Standard Terms – to firms which chose to participate in the Voluntary Jurisdiction.

1.65 In summary, CP33 proposed that firms should be subject to a general requirement to have in place an appropriate written complaints procedure and to ensure that this was operated effectively. This would be supplemented by a number of specific rules setting out the minimum standards which these procedures would be expected to meet, including requirements on firms:

- to publish complaints procedures and make them easily available to consumers;
- to investigate complaints promptly, within appropriate timescales;
- to offer appropriate levels of redress where complaints were upheld;
- to keep records of complaints and report aggregate data to the FSA;
- to co-operate with the Scheme in its investigation of complaints.

1.66 Most respondents welcomed the intention to introduce consistent standards of complaints handling across the financial services industry and supported most of the FSA's proposals. Many firms considered that their existing procedures already complied with the principles outlined in CP33 which, to a large extent, reflected best practice. As indicated in CP33, in establishing their complaints handling procedures, firms may wish to take account of British Standard 8600:1999 – 'Complaints Management Systems – Guide to Design and Implementation'. **Firms may obtain a copy of BS8600, free of charge, from the FSA on request.**

1.67 The main concerns expressed by firms related to:

- the proposed definition of 'complaint' for record keeping and reporting purposes;
- the proposed requirements to publicise complaints procedures;
- the time limits for handling complaints; and
- the time limits for keeping records of complaints.

Definition of complaint

- 1.68 CP33 proposed that the definition of a complaint for the purposes of firms' internal complaints handling procedures should be widely drawn and include any written or oral expression of dissatisfaction, whether justified or not. For the purposes of referring a complaint to the Scheme, however, CP33 proposed that the complaint should also involve an allegation of financial loss, material distress and/or material inconvenience.
- 1.69 The FSA's aim in proposing the adoption of a wide definition by firms was to ensure that they treated all complaints from consumers on a fair and consistent basis. Whilst respondents, particularly consumer groups, were supportive of this aim, the large majority of firms raised serious concerns about using this definition for record-keeping and reporting purposes. They felt that capturing complaints information on this basis could lead to significant additional administrative burdens and costs.
- 1.70 The FSA continues to believe that, as far as the general complaints handling requirement is concerned, a wide definition of complaint is essential. Firms should have procedures in place to deal with any expression of dissatisfaction which they receive – whether oral or written, serious or trivial. However, we recognise the concerns raised by firms about the costs involved in establishing systems to record and report to the FSA all such expressions of dissatisfaction. In many cases (particularly oral complaints), firms will be able to resolve a complaint on the spot – by means of a simple apology or an explanation. In such circumstances, it will not be necessary or appropriate to invoke the full complaints procedure and we have, therefore, modified our proposals to accommodate these concerns.

We have therefore concluded that the wider definition of complaint should apply for the purposes of the general requirement on firms to have appropriate procedures for handling complaints, but that authorised firms should be required to keep records of – and report to the FSA on – complaints only if they involve an allegation of financial loss and/or material distress or material inconvenience and relate to an activity within the jurisdiction of the Scheme. This will bring the definition for record keeping and reporting purposes into line with the definition of complaints which can be handled by the Scheme.

Requirement to publicise procedures

- 1.71 Respondents generally supported the FSA's various proposals designed to improve the accessibility of firms' complaints procedures and to publicise

their ‘membership’ of the Financial Ombudsman Service. However, a number of firms emphasised the need for a reasonable lead time to enable them to revise their existing literature to take account of these requirements.

The draft rules therefore provide firms with a transitional period until 1 January 2002 to bring their literature into compliance with this particular requirement.

- 1.72 Respondents also supported the proposal to make contact details for complainants available on the FSA Register of authorised firms. However, several noted that it might, in some cases, be more appropriate for the contact point to be a department rather than a designated (ie named) individual and we have built this flexibility into the rules.

Time limits

- 1.73 The current time limits for dealing with a complaint vary widely and CP33 proposed the following standard time limits for all firms:
- a total of 8 weeks for a firm to resolve a complaint under its internal procedures before it becomes eligible for referral to the Scheme, (with a requirement that the firm send a holding reply to the complainant after 4 weeks if it is unable at that stage to send a final reply);
 - a maximum of 6 months for a complainant to refer a complaint to the Scheme if he or she remains dissatisfied with the final response from the firm;
 - alignment with the English law of limitations in respect of the time limit for making a complaint to the Scheme after the act or omission giving rise to the matter in question.
- 1.74 The majority of respondents were content with the proposed overall 8 week time limit for firms to resolve complaints before complainants must be informed of their right to refer their complaint to the Scheme. However, there was widespread misunderstanding about the effect of some of the other proposals – in particular the 4-week rule – which we need to clarify.
- 1.75 A number of respondents were concerned about what they saw as the introduction of a 4-week time limit for completing complaints, which they felt would be unduly burdensome and would prevent them from dealing

properly with complaints. However, this is not the intended effect of the proposal. The purpose of the 4-week limit is to ensure that the complainant is informed of progress if the firm is not in a position to accept or reject the complaint at that stage. Whilst we would hope that firms will aim to resolve a significant proportion of complaints within this time frame, we recognise that a longer period of time will be needed in some cases.

- 1.76 Some large firms which operate a two-tier complaint handling procedure (eg local branch and then head office) expressed concern about the proposed 8-week time limit. They feared that delays by complainants in embarking on the second stage of the process could reduce the overall time available to the firm for completing the complaints process and result in a large number of additional complaints being referred to the Scheme unnecessarily. However, this was not our intention.
- 1.77 Appropriate arrangements for the escalation of complex complaints within a firm are a key part of an effective complaints procedure. They should not, however, mean that a complainant is unduly inconvenienced or has to wait longer to have his or her complaint resolved. The rules therefore make it clear that where the firm has sent a final response to the complainant at the first stage (eg local level), but the complainant has a right to pursue the matter at a higher level within the firm, the overall time limit of 8 weeks will apply to the whole process, provided that the complainant exercises his right of ‘appeal’ promptly. If, however, the complainant takes more than a week to indicate that he or she wishes to pursue the matter further, the extra time taken for him or her to do so will not count for the purposes of the 8-week limit. We would expect firms operating this sort of complaints procedure to provide their customers with easy access to the next stage of the process.
- 1.78 Some respondents were concerned that all complaints would have to be referred to the Scheme at the end of the 8-week period. However, this is not the case. The point of the 8-week rule is to ensure that complainants are informed that they have the right, if they so wish, to refer their case to the Scheme at that stage (rather than having to wait, as now, for the firm to send them a ‘deadlock’ letter). It will not prevent the firm from continuing to investigate the complaint if the complainant is satisfied with the progress that is being made and does not wish to exercise this right. The draft rules make this clear.
- 1.79 We recognise that delays in handling a complaint may arise for reasons outside a firm’s control (eg delays by the consumer or by a third party in providing information) and that this could result in complaints being passed to the Scheme before the firm has had a reasonable opportunity to resolve the complaint. Where this is the case, the FOS may decide that it is appropriate to

delay the point at which the complaint is treated as a ‘case’ for charging purposes.

- 1.80 The proposed 6 month time limit for complainants to refer cases to the Scheme after receiving a final reply from the firm met with general approval, as did the proposal to mirror the English law relating to the limitation of actions and these are reflected in the draft rules. Some concern was expressed about the need for firms to have clarity about the circumstances in which the Ombudsman would exercise discretion to extend these time limits. The draft rules therefore specify that the Ombudsman may only extend these time limits in exceptional circumstances and provide guidance on what those circumstances might be.

Reporting requirements

- 1.81 CP33 proposed that firms subject to the Compulsory Jurisdiction of the Scheme should be required to provide the FSA with bi-annual returns containing the following details:

- the number of complaints received;
- the percentage of complaints resolved within the 4 week and 8 week period; and
- a breakdown according to the subject matter of those complaints.

The FSA noted that the introduction of such requirements for firms which are prudentially supervised only would be a new departure in this area and sought views on whether it would be unduly burdensome for these firms to provide such data. However, the responses were inconclusive on this point.

- 1.82 A large number of firms did not comment. A significant number of those who did comment indicated that the reporting requirements would be burdensome for them and that a transitional period would be needed, but their concerns appeared to stem largely from the need to introduce new systems to capture data on the basis of the wider definition of ‘complaint’. (This should now fall away in the light of our revised proposals.) However, some smaller firms indicated a preference for the new reporting requirements to be annual, rather than bi-annual. A more widespread concern was the purpose of collecting this information – in particular, whether it would be used for comparative information purposes or ‘naming and shaming’.

- 1.83 We believe that our decision to adopt the narrower definition of ‘complaint’ for reporting purposes will go a long way to alleviating concerns about the potential additional administrative burden. The survey of a sample of firms which we conducted for cost benefit analysis purposes appears to support this.

Whilst we still consider it appropriate to require reports from firms on a twice-yearly basis, we are conscious of the need for firms to have time to put appropriate systems in place to enable them to meet this requirement. We therefore propose to require firms to report complaints information to the FSA once only in respect of the last 6 months of the first full year after the rules come into force. We also plan to align the timing of these reports as far as possible with FSA’s other reporting requirements in order to streamline the process for firms. This data will provide the FSA with valuable regulatory feedback, including early warnings of potential problems with particular firms or products, and could also highlight the need for consumer education initiatives in specific areas. The use of such data for comparative information purposes is something to which we will be giving further thought in the light of the specific recommendation on this point in the recent Cruickshank report.

- 1.84 CP33 also sought views on what the appropriate categories of complaint might be for reporting purposes and the general consensus was that categories should be relatively general and broad. A list of approximately 20 categories, based on respondents’ suggestions, is included in the draft rules as an annex to the complaints-handling rules for firms. The FSA would welcome views on these categories and on the different products/services on which firms should be required to report.

Record-keeping requirements

- 1.85 The record-keeping requirements proposed in CP33 sought to link the proposed requirement to keep records of complaints to a firm’s monitoring cycle. However, most respondents indicated that they would prefer the record-keeping requirement to be for a set period. Many also noted that the proposal represented a reduction in relation to current requirements (and existing practice) and indicated that they would prefer to keep such records for much longer, in line with their other records.

We therefore propose to require authorised firms to keep records of complaints for a minimum period of 6 years. This requirement will not apply to Voluntary Jurisdiction participants, but they will be required (via the Standard Terms) to keep complaint records for a sufficient period of time to enable them to co-operate with the Ombudsman where complaints are referred to the Scheme. (The narrower definition of complaint will apply for these purposes.)

Information-sharing arrangements between the FOS and the FSA

- 1.86 Whilst the need to respect the confidentiality of information supplied to the Ombudsman is accepted (and is specifically covered in the rules relating to the Scheme), there are circumstances in which it would be appropriate for information to be passed to the FSA. Most respondents who commented on this point emphasised the importance of appropriate information-sharing arrangements between the FSA and the FOS, since the latter will play a crucial role in enabling the FSA to fulfil its consumer protection objective.

A Memorandum of Understanding between the FSA and the FOS which, amongst other things, covers the circumstances in which information will be shared has now been drawn up and the relevant section is attached at Annex C.

Co-operation with the Ombudsman by firms

- 1.87 CP33 proposed that firms should be required to co-operate fully with the Ombudsman in the course of his investigations, including responding to requests for documents, attending any necessary oral hearings and complying promptly with any settlements or awards. This was supported by respondents and has been incorporated into the draft rules. However, most respondents felt that the proposal to encourage firms not to take precipitate action (such as instituting legal proceedings) which would prejudice the resolution of a bona fide complaint would restrict their rights unduly.

We have therefore decided not to include such a provision in the rules or guidance.

2 Commentary on the draft rules and guidance

- 2.1 The draft rules relating to the handling of complaints by firms and to the operation of the Scheme are set out in Annex A. These rules will form part of a block on Redress, covering complaints and compensation, in the FSA Handbook of Rules and Guidance.
- 2.2 The structure of the draft rules deserves special comment. Under the FSMB, the FSA is responsible for the complaint rules relating to authorised firms, but responsibility for the rules relating to different aspects of the Financial Ombudsman Service is shared between the FSA and the FOS. (The FOS rules are subject to FSA approval.) The draft rules relating to the Scheme have therefore been written by the FSA and the FOS, with each organisation drafting the rules for which it will have responsibility under the FSMB, but careful co-ordination has been essential.
- 2.3 In the interests of drafting the rules in a format which will be comprehensible and accessible to those who will have to refer to them, we have sought to produce a single, coherent set of rules, rather than a series of separate instruments which mirror the FSA's and the FOS's different areas of responsibility under the FSMB.
- 2.4 The draft rules therefore follow the sequence of the complaints handling process and are divided into four chapters as follows:
- (1) **Complaint handling procedures for firms;**
 - (2) **Jurisdiction of the Financial Ombudsman Service** ('the Jurisdiction Rules');
 - (3) **Complaint handling procedures of the Financial Ombudsman Service;**
and

- (4) **Standards Terms** (ie the contractual terms for participation in the Voluntary Jurisdiction).

As explained in Chapter 1, the rules relating to the funding arrangements for the Scheme (which will form a fifth chapter) are not included in this paper and will be published separately later in the year.

- 2.5 We have aimed to ensure, wherever possible, that requirements relating to the Compulsory and the Voluntary Jurisdiction (eg access to the Scheme) are identical. In order to avoid duplication and undue complexity, a substantial number of rules are therefore ‘common’ rules (ie rules relating to both jurisdictions, which will be made by both the FSA and the FOS under powers derived from different sections of the FSMB). However, the Handbook will contain a document indicating under which powers the various rules are made.
- 2.6 The draft rules are based on the provisions of the FSMB as it currently stands. Transitional provisions will be made under the FSMB, once enacted, but we expect that the Scheme will be able to deal with complaints which the relevant predecessor schemes would have been able to handle. The draft rules contain (at the end of Annex A), some transitional provisions designed to provide firms with the necessary time to adapt to the new requirements contained in these rules.
- 2.7 These rules will replace a range of different requirements which currently apply to the eight existing schemes, four of which are part of the current regulatory system and four of which are voluntary schemes set up by the industry. They cover not only the complaints handling requirements relating to firms, but also the terms of reference of the new single ombudsman scheme. It is therefore difficult to quantify how far they represent a reduction in comparison with existing requirements. These vary from sector to sector and even between firms, as some firms are currently subject to two or more schemes. However, we believe that they represent a significant simplification and streamlining of the requirements to which firms are currently subject.

Chapter 1: Complaint handling procedures for firms

- 2.8 These rules will apply to authorised firms subject to the Compulsory Jurisdiction (unless exempt – see paragraph 2.9 below) and (with certain exceptions) to those firms which choose to participate in the Voluntary Jurisdiction.¹⁶ They

¹⁶ The requirements relating to firms in the Compulsory Jurisdiction will be applied (with a few modifications) to participants in the Voluntary Jurisdiction on a contractual basis under the ‘Standard Terms’ (which form Chapter 4 of the draft rules).

set out the internal complaint handling procedures which these firms must establish, the main features of which are summarised below.

- 2.9 All authorised firms in the Compulsory Jurisdiction and participants in the Voluntary Jurisdiction are required to establish and operate appropriate and effective internal complaint procedures, which must comply with the requirements set out in these rules (1.3.1). However, authorised firms may be exempt from these complaint handling rules (and from the funding rules) if they certify to the FSA at the time of authorisation, and on an annual basis thereafter, that they do not conduct – and have no reasonable likelihood of conducting – business activities which are subject to the Compulsory Jurisdiction with ‘eligible complainants’(1.1.4).
- 2.10 For the purposes of this general requirement, the term ‘complaint’ includes any expression of dissatisfaction (whether oral or written) about financial services activities. However, for reporting and record-keeping purposes – and for the purpose of referral to the Financial Ombudsman Service – a complaint must involve financial loss, material distress or material inconvenience and be about activities which fall within the jurisdiction of the Financial Ombudsman Service.
- 2.11 Firms must ensure that all relevant staff members (and appointed representatives) are aware of – and act in accordance with – their complaint procedures. Wherever possible, they should arrange for complaints to be handled or reviewed by a member of staff with sufficient experience and authority and who was not involved in the matter which is the subject of the complaint. They should also ensure that they have in place appropriate management controls to ensure that complaints are handled fairly, consistently and promptly and that any recurring or systemic problems are identified and remedied.

Accessibility

- 2.12 A firm’s complaints procedures must be published and their existence (together with the firm’s ‘membership’ of the Financial Ombudsman Service) must be drawn to the customer’s attention either at the first point of contact or when the customer is first provided with documentation. Copies of a firm’s complaints procedures should be made available to consumers on request and must be sent to complainants as soon as a complaint is received, unless their complaint can be resolved on the spot. Reference should be made to a firm’s ‘membership’ of the Financial Ombudsman Service in all official stationery and marketing literature. (The rules allow firms a transitional period until 1 January 2002 to amend their stationery and literature in order to comply with this requirement.)

- 2.13 Complaints should be acknowledged promptly and acknowledgements should include details of the relevant contact point within the firm. Firms must also supply the FSA with a contact point for complainants (either a named individual or a department) which will be published on the FSA's Register.

Time limits

- 2.14 A firm has a maximum of eight weeks from receipt of a complaint in which to try to resolve it before the complaint becomes eligible for referral to the Scheme (1.4). However, if, after 4 weeks, it is not in a position either to accept or reject the complaint, it must write to the complainant to explain why it needs more time. Where a firm decides to reject a complaint, it must give its reasons for doing so. Where it makes a settlement offer which the complainant accepts, it must comply with that settlement promptly (1.5.1).
- 2.15 If the firm has not resolved the complaint at the end of the 8-week period, or at the point when it sends a final response either accepting or rejecting the complaint, if this is sooner, the firm must inform the complainant of his right to refer his complaint to the Scheme if the complaint involves an allegation of financial loss or material distress or material inconvenience and is about an activity covered by the Scheme (1.4.7). Where the complaint remains unresolved, the firm must also give reasons for the further delay and an indication of when it expects to be able to provide a response, so that the complainant can decide whether or not to exercise his right to refer his complaint to the Scheme at this stage.
- 2.16 The firm must also inform the complainant that he has six months from the date of its final letter within which to refer the complaint to the Scheme and must send him a copy of the Financial Ombudsman Service leaflet. The rules require that the complaint must also be referred to the Scheme within 6 years of the event complained of or within 3 years of the date when the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint (1.6.1). An Ombudsman will be able to deal with complaints outside these time limits only when, in his view, exceptional circumstances apply. (The rules contain guidance on what these might be.)

Record-keeping

- 2.17 For the purpose of this requirement, a complaint must allege financial loss, material distress or material inconvenience and relate to an activity covered by the Compulsory Jurisdiction. An authorised firm is required to keep records of any such complaints for a minimum period of 6 years from the

date of receipt (1.7). This requirement applies only to authorised firms in the Compulsory Jurisdiction. However, Voluntary Jurisdiction participants will be required, via the Standard Terms, to ensure that they keep appropriate records of any complaints which might be referred to the Scheme for a sufficient period of time to ensure that they are able to co-operate with the Ombudsman if required to do so.

Reporting requirements

- 2.18 An authorised firm must also report information about the number and nature of the complaints which it receives to the FSA on a twice-yearly basis. However, in order to provide firms with time to put the necessary systems in place, the rules contain a transitional provision in respect of this requirement, such that firms will not be required to submit a report until the end of the first complete financial year after N2. (The same definition of complaint as for the record-keeping requirement applies.)
- 2.19 The information which authorised firms will be required to report to the FSA is as follows (1.8.1):
- the total number of complaints received, broken down by type in accordance with the category codes set out in the appendix to these rules;
 - the number completed within:
 - 4 weeks of receipt; and
 - 8 weeks of receipt; and
 - the number of complaints which the firm accepted as valid.
- 2.20 A ‘completed complaint’ is one which a firm has either accepted or rejected and where the complainant has been notified of his right to refer the case to the Scheme. The category codes set out in the annex to these rules indicate the broad topics in relation to which firms are asked to report. These require firms, amongst other things, to distinguish how many complaints they receive from private individuals and how many from small businesses, and to differentiate between different products/services.
- 2.21 These rules also require firms to co-operate fully with the Ombudsman in the consideration and investigation of complaints (including producing promptly documents requested by the Ombudsman and attending oral hearings when required to do so).

Chapter 2: Jurisdiction of the Financial Ombudsman Service

2.22 The jurisdiction rules apply to authorised firms and participants in the Voluntary Jurisdiction of the Scheme. They are also relevant to complainants who might wish to use the Scheme.

2.23 The jurisdiction rules cover the following areas:

- (i) who can refer a complaint to the Scheme;
- (ii) which firms are subject to the rules of the Scheme;
- (iii) which activities are subject to the rules of the Scheme; and
- (iv) the territorial scope of the Scheme.

(They also provide guidance on the circumstances in which a complaint can be referred to the Scheme (2.3.1).)

(i) Complainants

2.24 To be able to refer a complaint to the Scheme, a complainant must be an 'eligible complainant'. An 'eligible complainant' is a complainant who falls into one of the classes of person specified in the rules and who has either a direct or an indirect customer relationship with the firm which is the subject of the complaint, or is acting as agent for such a person. (Potential customers will be eligible only where they have suffered financial loss, material distress or material inconvenience as a result of something which the firm has done or omitted to do.) (2.4)

2.25 The classes of person who can be eligible complainants (Rule 2.4.3) are:

- a private individual;
- a business or a charity with a turnover/income of less than £1 million a year; or
- the trustee of a trust which has a net asset value of less than £1 million.

2.26 Rules 2.4.9 and 2.4.10 set out in detail the circumstances in which a customer with an indirect relationship with a firm is an eligible complainant. Rule 2.4.13 describes the circumstances in which a personal representative may complain to the Scheme on an eligible complainant's behalf.

2.27 Individuals classified as ‘intermediate customers’ or ‘market counterparties’ under the FSA’s rules are excluded, as are authorised firms (unless the complaint relates to an activity which that firm is not permitted to conduct) and Voluntary Jurisdiction participants (unless the complaint relates to an activity for which the VJ participant is not a member of the Scheme).

(ii) Firms

2.28 The rules provide that all firms authorised by the FSA are subject to the Compulsory Jurisdiction, although firms which certify to the FSA that they cannot give rise to an eligible complaint are exempt from the complaint handling rules for firms and also from the funding rules. Businesses (whether authorised or unauthorised) can also choose to become subject to the Voluntary Jurisdiction under contract. (2.5)

(iii) Activities

2.29 A complaint about an authorised firm (or VJ participant) can be referred to the Scheme, provided that the activity complained about is subject to the FOS jurisdiction (see below)(2.6).

2.30 **Compulsory Jurisdiction** The activities which are subject to the Compulsory Jurisdiction are those regulated activities defined in HM Treasury’s Regulated Activities Order – plus mortgage lending, certain forms of unsecured lending and (where this is carried out by a bank or a building society) the provision of general insurance services. (2.6.2)

2.31 **Voluntary Jurisdiction** Unauthorised firms will be able to join the Voluntary Jurisdiction at N2 in respect of their mortgage lending activities. They will also be able to join the Voluntary Jurisdiction in respect of any financial services activity for which they were, immediately prior to N2, a member of one of the existing schemes which the Scheme will replace. (2.6.7)

(iv) Territorial scope

2.32 A complaint can be referred to the Scheme if it concerns an activity which is specified in the Jurisdiction Rules and carried out by an authorised firm (or Voluntary Jurisdiction participant) in or from the UK. The territorial scope of the Scheme therefore includes complaints about business done in or from the UK by EEA firms which are authorised in their home state and ‘passport’ into the UK by virtue of an EC directive. In practice, this means that complaints

about EEA firms which establish a permanent place of business in the UK would be covered. (2.7)

Chapter 3: Complaint handling procedures of the Financial Ombudsman Service

- 2.33 These rules apply to all firms which are subject to the jurisdiction of the FOS (whether compulsory or voluntary) and to those who might wish to refer a complaint to the Scheme.
- 2.34 The rules provide that the Ombudsman will attempt to resolve the complaint at the earliest possible stage and by whatever means appears to be most appropriate. This may be achieved by mediation, or may involve investigation followed by a provisional assessment or a formal determination by the Ombudsman. Various aspects of the complaint handling process (apart from the formal determination of an award by the Ombudsman) may be delegated to FOS staff. (3.9).
- 2.35 The Ombudsman will normally consider a complaint only if it has been submitted to the firm first and the firm has had up to 8 weeks to attempt to resolve it. The rules allow the Ombudsman to dismiss a complaint without considering its merits in specified circumstances, (eg where the complaint is frivolous or vexatious; where fair compensation has already been offered, or where the complaint concerns a legitimate exercise of a firm's commercial judgement). (3.5)
- 2.36 On receipt of a complaint, the first step will be to determine whether or not the complaint is eligible. If the firm has not had a reasonable opportunity to consider the complaint, the Ombudsman may refer the complaint to the firm (3.4.2). If there are doubts about the eligibility of a complaint, the Ombudsman may give both the firm and the complainant the opportunity to make representations and, if he then decides to dismiss a complaint, he will give reasons for his decision. (3.4.4-3.4.5)
- 2.37 If the complaint is eligible and the Ombudsman considers that there is a reasonable prospect of achieving a mediated settlement, he will attempt to negotiate a settlement between the parties. If this fails, or if there appears to be no prospect of achieving such a settlement, the Ombudsman will investigate the complaint, giving each party the opportunity to make representations, and will notify them of his provisional assessment. If either party (firm or complainant) disagrees with the provisional assessment, he will proceed to a determination. (3.4.7-3.4.8)

- 2.38 Provision is made for oral hearings to be held where appropriate (3.3.2-3.3.3). If, before a final determination is made, either party requests an oral hearing, the Ombudsman will decide whether, when, where and how such a hearing should be held for the purposes of fairly and properly determining the dispute. In doing so, the Ombudsman will have regard to the provisions of the European Convention on Human Rights.
- 2.39 The rules (at 3.7) specify the circumstances in which the Ombudsman can require evidence to be presented (in what ways and to what extent) and set out the various procedural powers which the Ombudsman has in relation to the treatment of evidence. Rule 3.8 gives the Ombudsman the power to set and extend time limits for different stages of the process and indicates how he may deal with failure (by a firm or a complainant) to meet any time limit set.
- 2.40 Under the FSMB, the Ombudsman must determine a complaint with reference to what, in his opinion, is fair and reasonable in all the circumstances of the case. The rules specify that he must take into account the relevant law, regulations (including regulatory rules and guidance), relevant codes of practice and, where appropriate, what he considers to be good industry practice (3.10). Rule 3.11 sets out the procedure which the Ombudsman will follow after making a determination in order to establish whether or not the complainant accepts the award. If he does so within the period stipulated by the Ombudsman, the award is binding on both the firm and the complainant.
- 2.41 Where an Ombudsman finds in a complainant's favour, he can make a money award in respect of financial loss and other specified kinds of loss or damage (eg distress and inconvenience)(3.12). Under Rule 3.13.1, the maximum money award which an Ombudsman may make is £100,000. However, if he considers that a larger sum is required as fair compensation, he may recommend that the firm pay an amount above that limit (3.13.2). He may also award the complainant's costs against the firm (3.14) (but not vice versa). In addition, or as an alternative, to a money award, he may direct the firm to take whatever steps in relation to the complainant he considers just and appropriate (3.12.1.G (1)).
- 2.42 The rules require firms to comply promptly with an Ombudsman's determination or with any settlements which they may agree to pay at an earlier stage of the Scheme's procedures (3.15). Rule 3.16 provides that any evidence held by the FOS in relation to the consideration or investigation of a complaint must be treated in confidence except as required by the law or under any agreement requiring or enabling disclosure to the FSA. (As noted in Chapter 1, the FOS will provide the FSA with information in the limited

circumstances specified in its MoU with the FSA, the relevant section of which is set out at Annex C.)

Chapter 4: Standard Terms

- 2.43 The Standard Terms (which are set by the FOS, subject to FSA approval) provide the contractual basis on which complaints will be dealt with and determined under the Voluntary Jurisdiction. They apply to any firm (whether authorised or not) which participates in the Voluntary Jurisdiction of the Scheme.
- 2.44 The Standard Terms make VJ participants subject (with a few exceptions – eg reporting and record-keeping requirements) to the same procedural rules as authorised firms in the Compulsory Jurisdiction. They provide that VJ participants will pay fees to the FOS in accordance with either the funding rules which apply to authorised firms or separate fees rules made by the FOS (4.2.8).
- 2.45 The Standard Terms also set out the terms on which participants can withdraw from the Voluntary Jurisdiction. In particular, they ensure that participants provide 6 months' notice of their intention to withdraw from the Voluntary Jurisdiction and take appropriate steps (agreed with the Ombudsman) to draw this to the attention of their existing customers (4.2.9). They provide that the Ombudsman will have the same power to make awards against VJ participants as against authorised firms in the Compulsory Jurisdiction and that an Ombudsman's award may be enforced in the court (4.2.7). They also make provision for immunity from liability in damages for the FOS, its Board members, Ombudsmen and staff, unless an act or omission is shown to have been in bad faith or in contravention of section 6(1) of the Human Rights Act 1998 (4.2.5).

Chapter 5: Funding of the Financial Ombudsman Service

- 2.46 The funding rules will apply to all authorised firms, except those who are exempt because they cannot give rise to an eligible complaint. They will also apply, where appropriate, to Voluntary Jurisdiction participants, via the Standard Terms. For reasons explained in the previous chapter, these rules are not included in this consultation paper and will be published later in the year.
- 2.47 The draft rules which the FSA and the FOS propose to make (with the exception of the funding rules) are set out at Annex A. **Representations on these draft rules are invited by 31 August 2000.**

3 Statement of compatibility with the FSA's general duties

- 3.1 This chapter contains a statement of the FSA's reasons for believing that making (or approving) the draft rules and guidance set out in Annex A of this paper will be compatible with its general duties under clause 2 of the FSMB (in addition to fulfilling the statutory purpose of the Scheme).
- 3.2 Our general duties require us to discharge our general functions in the way that we consider most appropriate for the purpose of meeting our regulatory objectives. For the reasons set out in this chapter and elsewhere in this consultation document, we believe that our proposals achieve that balance.

The consumer protection objective

- 3.3 The new single ombudsman scheme will play a key and complementary part in helping the FSA to achieve the appropriate degree of protection for retail consumers, by providing them with a free, accessible and user-friendly alternative to the courts. We believe that the wide coverage proposed in terms of the activities covered is the best way of achieving this. In particular, we believe that extending the scope of the Compulsory Jurisdiction beyond regulated activities to include other financial services will help to protect consumers of regulated activities who are also likely to be consumers of those other services by providing them with a one-stop shop for complaints.
- 3.4 As required under clause 5(2) of the FSMB, our proposals have regard to the differing degrees of experience and expertise that different consumers may have in relation to different kinds of regulated activity; the need which consumers may have for advice and accurate information and the general principle that consumers should take responsibility for their decisions. Access to the Scheme will be limited to private individuals and small businesses which are in a similar position to private individuals. In the case of firms which are subject to the FSA's customer classification rules, their customers will be able

to use the Scheme only if they are private customers. Intermediate customers and market counterparties are excluded, as are authorised firms, unless their complaint is entirely unrelated to their own carrying on of regulated activities.

The public awareness objective

- 3.5 Effective complaints handling requirements will help to promote general awareness of the standards which consumers can expect of the firms with which they deal. The requirement on firms to report complaints information to the FSA will also help inform FSA's consumer education work, enabling it to target its efforts towards particular products or services which appear to be causing difficulties. The FSA will consider the recommendation by the Cruickshank Review to publish comparative tables of firms' complaints handling in due course, when the Comparative Information project is more advanced.

The market confidence and reduction of financial crime objectives

- 3.6 The impact of the proposals on the market confidence and reduction of financial crime objectives will be less visible. However, we believe that improved complaints handling arrangements by firms will help to increase consumer confidence in the financial services sector and also provide the FSA and the senior management within firms with valuable information about consumer problems and issues of concern to consumers. The FSA also believes that the new arrangements will help to reduce the need for regulatory intervention and therefore benefit consumers and firms, as set out in CP33.

Compliance with general duties

- 3.7 Clause 2(3) of the FSMB sets out other matters to which the FSA must have regard in exercising its general functions. The FSA's reasons for believing that making the draft complaints handling and ombudsman scheme rules is compatible with these principles are set out below.

(a) The need to use its resources in the most efficient and effective way

- 3.8 The FSA aims to ensure the cost effectiveness of the overall regulatory framework and will apply this approach to its responsibilities to approve the FOS's annual budget and to make rules to recover its set-up costs. Active

discussions on the appropriate level of resourcing for FOS are currently in train between the FSA and FOS.

(b) The responsibilities of those who manage the affairs of authorised persons

3.9 The proposed rules require managers of authorised firms to ensure that appropriate arrangements for handling complaints are put in place and that these are operated effectively. These should include procedures for referring complaints to staff of an appropriate level of seniority where necessary and for rectifying problems which are identified as giving rise to complaints. Firms will also be required to co-operate with the Ombudsman and to honour awards/settlements promptly and this will ultimately be the responsibility of those who manage the affairs of authorised persons. The rules reinforce the role of senior management to run their business in a sound and prudent way.

(c) The principle that the burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden.

3.10 A detailed cost benefit analysis of the proposals is given in Chapter 4. This attempts to assess the impact, in terms of economic costs and benefits, of the proposed new arrangements. It focuses on the proposals which represent a change from the arrangements currently in place across different sectors of the industry which will be regulated by the FSA in order to identify the incremental costs involved.

3.11 The scope of the new single ombudsman scheme will, in the first instance, be broadly similar to that of the existing schemes, although this will increase as the Voluntary Jurisdiction is gradually opened up, and as other activities/institutions become authorisable (eg mortgage regulation).

3.12 Whilst the move to a single ombudsman scheme does seem likely to give rise to some limited short term additional costs, we believe that these will be outweighed by the benefits. Consumers will benefit from the existence of enhanced and consistent regulatory requirements for the handling of complaints by firms and from the existence of a single, accessible ombudsman service to deal independently with any dispute which they cannot resolve with the authorised firm. Firms will also benefit from increased customer satisfaction and corporate reputation deriving from having sound customer complaint handling systems and from being able to deal with a single scheme with a single set of procedures and funding arrangements.

(d) The desirability of facilitating innovation in connection with regulated activities

3.13 We believe that the existence of consistent (and improved) complaints handling standards across the industry will increase consumer confidence in the financial services industry. The FSMB enables the FSA (and the FOS) to amend their rules to change the coverage of the Compulsory and Voluntary Jurisdiction to reflect the development of new activities and products. The proposed rules will not prevent firms from adopting an innovative approach to the development of their products and services and should, in fact, facilitate innovation since they will help generate the necessary level of consumer confidence to make the development of new products and services worthwhile.

(e) The international character of financial services and markets and the desirability of maintaining the competitive position of the United Kingdom

3.14 Effective complaints handling and external dispute resolution arrangements should add to consumer and market confidence, enhancing the competitive position of the UK. In particular, requiring overseas firms which have a permanent place of business in the UK to be subject to the complaints handling rules and the Compulsory Jurisdiction of the Scheme on the same basis as UK-based firms, should help maintain the confidence of all consumers using UK markets since this will prevent any individual firm which might choose not to adhere to the proposed standards from damaging the reputation of financial services firms as a whole. Furthermore, we believe that the proposed arrangements will ensure the necessary protection for overseas consumers wishing to do business in the UK, since they will be equally available to all consumers of UK financial services, irrespective of where they live.

(f) The need to minimise the adverse effects on competition that may arise from anything done in the discharge of those functions

3.15 The main obligations imposed by the rules will apply to all authorised firms which do business with persons eligible to use the Scheme and will not restrict firms' ability to compete with each other in providing financial services. In particular, the approach which the FSA proposes to adopt in relation to standardised complaints handling will ensure consistency between authorised firms. The proposals relating to the scope of the Compulsory Jurisdiction and the Voluntary Jurisdiction also take careful account of the need to avoid, as far as possible, creating adverse effects on competition between authorised and unauthorised firms which are conducting similar business.

(g) The desirability of facilitating competition between those who are subject to any form of regulation by the Authority

- 3.16 The existence of common standards and consistent procedures for complaints handling across the industry both within the firms themselves and within the single ombudsman scheme will encourage competition between firms. They will also help to provide a level playing field on which firms can compete, in terms of the standards of service which firms are expected to provide (and the amount of redress which they will be required to pay if they fail to do so). The existence of compulsory complaints handling arrangements should increase levels of confidence amongst consumers to buy from any authorised firm.
- 3.17 In formulating proposals for the scope of the scheme, we have had regard to the need to ensure, as far as possible, a level playing field between firms which are conducting similar activities. For example, mortgage lending will, in the first instance after N2, be covered by the Compulsory Jurisdiction if conducted by an authorised firm, and by the Voluntary Jurisdiction for unauthorised firms. Similarly, general insurance broking will not be brought into the Compulsory Jurisdiction to avoid creating an unlevel playing field between authorised independent financial advisers and general insurance brokers which do not require authorisation. Instead, the aim is to open up, in due course, the Voluntary Jurisdiction to any firm, whether authorised or not, in respect of its general insurance broking activities. (In the first instance, the Voluntary Jurisdiction will be available to those firms which have already chosen to join a voluntary scheme for complaints about general insurance broking to avoid depriving consumers of the protection which they currently enjoy.)

Approval of FOS Rules

- 3.18 Under the FSMB, the rules and standard terms of the FOS¹⁷ are subject to the approval of the FSA. This implies that the FSA has some oversight responsibility for FOS's rule-making and we set out below the approach we propose to adopt for carrying out this function.
- 3.19 **Vires** – We need to be satisfied about the powers which the FOS proposes to use and about the legality of what is proposed.

¹⁷ Under the FSMB, the FOS has the power, subject to FSA approval or consent, to make: Voluntary Jurisdiction rules; Cost rules; Scheme Rules (for the Compulsory and Voluntary Jurisdiction); Standard Terms (for Voluntary Jurisdiction participants) and case fee rules. FSA approval is also required if the FOS wishes to delegate the exercise of any part of the Voluntary Jurisdiction to another body and for the FOS budget.

- 3.20 **ECHR** – While we would generally expect to be able to rely on the FOS to ensure that its proposed rules were ECHR-compliant, we would need to take steps to ensure that this was the case in situations where there was any doubt.
- 3.21 **Policy issues** – While we would not normally propose to ‘second guess’ the FOS on the substance of their policies underlying their proposed rules, we would expect to refuse our approval or consent where the decision which we were being asked to endorse seemed to us to be unwise, perverse, unfair or where it gave rise to an inefficient or over-costly use of resources.
- 3.22 Clause 220 of the FSMB identifies three criteria for the Scheme of:
a) quick resolution,
b) minimum formality; and
c) independent decision-making.

We would expect the FOS to have regard to these criteria in formulating any rules which it proposes to make. The FOS is also subject to a requirement to consult on its rules and we would expect to be satisfied that this process has been carried out and that due account has been taken of the responses received. In addition, the FOS’s budget is subject to formal approval by the FSA and the FSA would expect to ensure that the FOS was using its resources in a cost-effective way.

- 3.23 The FSA is required, under Clause 2 of the FSMB, to comply with its general duties in determining the general policy and principles by reference to which it approves or consents to the rules and Standard Terms which the FOS proposes to make. Again, the FSA’s preliminary view, subject to this consultation, is that approving the FOS’s rules would be consistent with its general duties, since we believe that they complement the FSA’s own rules and achieve the aims set out in the rest of this Statement.

4 Cost benefit analysis

Introduction

- 4.1 The purpose of cost benefit analysis (CBA) is to assess, in quantitative terms where possible, and in qualitative terms where not, the economic costs and benefits of a proposed new policy. Any CBA of a new regulatory proposal seeks to compare the new regulatory environment with that which is currently in place to identify the real incremental changes that will arise, should the proposals be implemented.
- 4.2 The FSMB requires the FSA to publish an estimate of the costs and an analysis of the benefits that will arise as a result of the proposed FSA rules although this requirement does not apply if the FSA considers that, making a comparison between the overall position if the rules are made and the overall position if they are not made, there is no increase in costs or there will be an increase in costs but it will be of minimal significance.
- 4.3 This CBA looks at the costs and benefits of the proposals arising from CP33. It concentrates on the aspects of the proposals which represent a change to arrangements currently in place for complaints handling, as they affect the different industry sectors which will fall to be regulated by the FSA.
- 4.4 We do not believe that the proposed rules to be made by the FSA will by themselves result in an increase in costs of more than minimal significance because in most cases they do little more than reproduce the coverage and requirements of the existing range of ombudsman schemes. However, various changes related to the establishment and operation of a single ombudsman scheme do seem likely to lead to limited short term additional costs. Full

details of the expected expenditure of the FOS will be analysed in more detail when the FSA consults on its funding rules for the FOS later this year.

Scope of the work

4.5 Bearing in mind the above framework for this exercise and the scope of the FSA's obligation under the terms of the FSMB to carry out CBA, the policy issues for attention, representing a change from current arrangements, are:

- **the scope of the FOS's Compulsory Jurisdiction**, specifically:
 - the extension of access to the Scheme to small business clients in the insurance sector;
 - the eligibility of shareholders in investment trust companies to make complaints to the FOS;
 - the monetary limit on Ombudsman awards of £100,000, and the increase this represents for firms currently subject to SFA complaints handling arrangements.
- the **compliance costs** of the proposals relating to firms' complaints procedures, specifically in the areas of time limits, access, reporting, recording, and handling;
- the rules relating to the types of loss for which the Ombudsman can make awards.

4.6 The following paragraphs detail the work carried out and conclusions drawn on the costs and benefits of these proposed changes. A summary of these findings is as follows:

- **Compulsory Jurisdiction/small businesses:** changes to small business eligibility criteria would not appear to result in significant costs;
- **Compulsory Jurisdiction/eligibility of investment trust shareholders:** based on experience to date the costs involved in the extension of eligibility in this sector would not appear to be significant;
- **Compulsory Jurisdiction/monetary limits on awards:** unlikely to create material costs;

- **Compliance costs:** There is a significant variation in the costs of internal complaints handling systems for individual firms. Costs per case depend on the size of firm, and the type and volume of business it does. Our research indicates that these costs can vary from around £50 to around £1,700 per case, and the extent to which they are significant for an individual firm will again depend on the business base and level of activity. Against this background of extreme variation, we have investigated the incremental compliance costs for firms of implementing the changes to internal procedures proposed in CP33. Based on this research we consider that there will be only minimal cost implications. Some firms expressed concern that the proposals would require significant additional expenditure on internal handling procedures, and that the requirements for the provision of information to consumers could have considerable publication costs. However we believe these concerns will largely be addressed by clarification of the requirements and transitional arrangements to be put in place, and these are covered in paragraphs 4.37-4.43 below;
- **Awards by the FOS:** the new rules governing the scope of the Ombudsman to make awards would not appear to result in any significant additional costs.
- **Benefits arising:** consumers benefit from the existence of regulatory requirements for the in-house processing of complaints, and from the existence of an external body to deal independently with any dispute they cannot resolve with an authorised firm. This encourages consumer confidence to do more financial services business. At the same time, the common standards applicable across the industry encourage efficient competition between firms, both new entrants and long-established operators. Whilst these benefits exist to some extent under the current system involving a number of external complaints handling bodies, they are considerably enhanced by the additional consistency in procedures and standards of services inherent in a single ombudsman scheme.

These conclusions have been taken into account in coming to a decision on wider policy grounds.

Direct costs of the FOS

- 4.7 The longer-term operating costs of the Scheme are not yet available for analysis. The aggregate costs of the existing schemes are approximately £16.5 million, with existing schemes typically charging fees of around £500 per case, and additional overhead costs being borne by general levies on all

members. However, it does seem that the operational demands on the new Scheme are likely to contain some elements which will affect costs in a way not currently within the experience of the existing schemes. This includes the effects of Human Rights legislation which may lead to additional hearings and challenges and increased emphasis on consistency and comparability across a wide spectrum of complaints. We will be consulting separately on the expected expenditure and draft funding rules later in the year.

Benefits

4.8 The benefits of a single ombudsman scheme have been well rehearsed in both this and earlier consultation papers. The specific CBA considerations are as follows:

- the quality of the complaints handling process should improve as a result of increased consistency and more uniform access to the new Scheme;
- the quantity of complaints handled may increase, but this can be seen as a positive feature, reflecting clearer access procedures, a less confusing structure and a better understanding by consumers of what they can expect under the system;
- there should be greater efficiency of operation, for example in the standardisation of procedures, improvement of IT systems, and the streamlining of management structures;
- competition should be affected positively in that all regulated firms will participate in the Scheme, obvious gaps will be plugged, and cover can be extended as required by the use of the Voluntary Jurisdiction, allowing the Compulsory Jurisdiction coverage to evolve at a reasonable pace.

Changes to the scope of Compulsory Jurisdiction

4.9 There are three main areas of change to the scope of Compulsory Jurisdiction. These are dealt with individually below.

(i) Eligibility of small businesses as complainants

4.10 CP33 proposed that certain kinds of small businesses, falling within specified parameters, should be eligible to complain to the Scheme. This is currently the case in all sectors of financial services other than insurance.

- 4.11 The common definition of small business which we are proposing to introduce (ie a single test of a maximum £1m annual turnover) is broadly in line with the definition currently used by the existing schemes. The main issue for CBA therefore is the impact of the extension of small business eligibility to the insurance sector.
- 4.12 There can be no certainty about the additional numbers of complaints which this will generate for the Scheme. However, responses from the insurance industry about firms' current experience of handling small business complaints indicate that the inclusion of small businesses should not lead to a material increase in the number of complaints going before the Ombudsman and the number of small business complaints currently received by the existing schemes is small.

(ii) Eligibility of shareholders in investment trust companies

- 4.13 The CP33 proposals envisage that certain third parties to a transaction will be able to refer complaints to the Scheme. In the case of holders of shares in investment trust companies, this is an extension of the current eligibility criteria. Whilst such shareholders would at present be able to take complaints about administration or marketing of an investment trust saving scheme to the relevant ombudsman scheme, they could not make a complaint against an external investment manager of the company because they would have no direct contractual relationship with that manager. This position contrasts with that of unit trust holders and investors in other types of investment vehicle, who do have the ability to make such complaints.

Cost implications

- 4.14 There are currently around 300 investment trust companies, about ten of these being 'self-managed'. The investment management of the remainder is carried out by separate entities. All such managers, which are already required to be regulated persons, will currently maintain internal complaints handling systems.
- 4.15 The volume of complaints in the investment trust area currently is not large. Neither regulators nor the industry think it likely that many additional complaints would fall to be considered by investment management companies as a result of the proposed extension. Moreover, only a subset of these complaints would ultimately flow through to the Scheme.

Conclusion

- 4.16 On the basis of the relatively low numbers of complaints which past experience indicates might be referred to the new ombudsman scheme, and the fact that the firms affected will already have complaints handling systems in place, it appears that any compliance costs arising from this proposal are unlikely to be significant.

(iii) Monetary limits on awards

- 4.17 All but one of the existing complaints handling schemes already has an upper monetary limit of £100,000 on an award. (The SFA Consumer Arbitration Scheme has an upper limit of £50,000.) The FSA proposes to establish a common upper limit of £100,000 for the Scheme.

Cost implications

- 4.18 This extension of the upper limit in theory creates potential additional costs for firms currently using the SFA complaints arrangements, in that the raising of the limit might encourage more consumers to refer complaints to the Ombudsman, thus generating additional administration and handling costs. (The redress payment itself is a 'transfer' in that the 'loss' suffered initially by the complainant is 'repaid' by the firm making the redress payment – it is not a new cost and is therefore not relevant to the CBA calculation.)
- 4.19 In practice, however, it seems that such additional costs are unlikely to materialise. Over the last three years the SFA Consumer Arbitration Scheme has dealt with only 17 out of 180 cases where a claim of £50,000 was made. Moreover, the SFA's Full Arbitration Scheme, which could deal with cases in excess of £50,000, has only handled one case since 1986.

Conclusion

- 4.20 Examination of the available evidence indicates that raising the limit in this instance will not lead to a material increase in costs.

Compliance costs of the proposals

- 4.21 The preceding paragraphs have dealt in effect with compliance costs which might arise in specific and isolated areas of the industry. In addition to these are more general compliance costs which will impact on all sectors arising from the proposed new rules. These changes concern the way firms themselves handle complaints.
- 4.22 The proposals focus on five specific areas:
- **Time limits:** firms must either resolve complaints within four weeks, or alternatively explain why the complaint has not been resolved, and an additional four weeks' processing time then applies;
 - **Access:** firms must publish details of their complaints handling procedures and make this available to complainants; they must also draw attention to their membership of the FOS and the existence of their own complaints procedures at the point of sale;
 - **Reporting:** twice-yearly reports on the level and types of complaints received by firms should be provided to the FSA (a new requirement for firms only prudentially supervised);
 - **Recording:** firms should make and retain records of any complaints for a set period;
 - **Handling:** firms should ensure that complaints are adequately reviewed, that administration is prompt and that consumers are kept informed of progress.
- 4.23 Each of these is an area where firms are likely already to have procedures of some kind, either through regulatory requirements or because of their own internal control arrangements.
- 4.24 In order to estimate the compliance costs involved, a questionnaire was sent out to a representative sample of firms representing some 250 regulated firms and corporate groups. This sample was augmented to ensure adequate inclusion of smaller firms, including those regulated currently by Recognised Professional Bodies (RPBs). The sample was designed to reflect around 2.5% of the population of firms which would be subject to the new complaints arrangements.
- 4.25 The questionnaire asked firms to provide details of current complaints volumes and the costs of handling these complaints, and to provide an

estimate of what the proposals summarised in paragraph 4.22 above might mean in terms of additional compliance costs.

- 4.26 Firms were also asked to gauge to what extent their answers would be affected if a wide definition of complaint including ‘any expression of dissatisfaction’ were adopted. However, as noted elsewhere in this Paper, the FSA has decided in the light of CP33 responses to use the narrower definition for reporting and record keeping purposes.

Overview of the results of the questionnaire

- 4.27 The responses received represent around 40–60% of the total sample (the spread resulting from the many cases of firms and groups regulated by several regulators, and returns which dealt with data about several of the different complaints handling arrangements currently in place).
- 4.28 The responses confirm that there is very little comparability in the nature of complaints and the effort which is required to resolve them. This variability is apparent from the results, not just between industry sectors, but also within individual sectors, and indeed in firms themselves.
- 4.29 Similarly, it is difficult for firms to predict the number of complaints which might find their way into the ombudsman scheme, although the overall proportion appears to be relatively low (one respondent estimated 6%). Even then such figures may be distorted by events in different sectors of the industry which prompt increased consumer interest in complaints (e.g. endowments).
- 4.30 Based on our research, we estimate that the number of complaints received by individual firms varies from nil, or single figures, to thousands or hundreds of thousands where large branch networks are involved. Where significant volumes of complaints are received, the costs of handling are also significant, with a number of larger respondents reporting costs of £500,000-£1million, or even considerably more, on complaints volumes of anywhere between 5,000 and 50,000 per annum. A few cases report significantly in excess of this.
- 4.31 The costs of handling these complaints vary considerably. In general, the large branch networks or firms with significant marketing strategies generate the highest numbers of complaints. Such firms tend to apply lower unit costs of handling complaints (i.e. £ per hour), reflecting the mix of staff active in the initial stages of complaints handling. Figures of under £20 per hour or under £50 per case are not unusual in the responses.

- 4.32 However, this is not uniformly the case, with some large respondents reporting high handling costs per case. This is likely to reflect the large variety of cases handled, and the differing grades of staff involved. The response of one organisation noted that its own staff might be costed at £10–15 per hour, £35–40 per hour, or £150–200 per hour, depending on the individuals required to deal with a specific case.
- 4.33 In other sectors (in particular those which do not carry out mass marketing or involve significant branch networks) complaint levels can be very low indeed. Attendant costs can however be fairly high. This may reflect the fact that such firms may well need to divert the attention of a variety of staff to individual complaints, either because the firm's operations do not necessitate the large scale employment of dedicated complaints handling staff, or because the complaints themselves may be more complex in nature. This may also reflect outside professional costs. Variation here can be between £9-£500 per hour, and £95-£1,666 per case. The extent to which such costs are significant depends on the business base and the level of activity of individual firms.

Cost implications of the proposals

- 4.34 However whereas complaints handling experience differs between individual firms, the basic components of the complaints process are common to practically all, even though not all sectors currently have regulatory requirements to meet. It is therefore possible to extract indicators and draw comparisons on the incremental costs arising from the proposed changes, expressed as a proportion of the overall costs of individual firms.
- 4.35 A large proportion of the returns reported that the proposals would create nil, negligible or minimal extra costs over and above internal complaints procedures already in place. This result would tend to support the view of the FSA that the proposals in the main represent good business practice as to the manner of dealing with complaints, and reflect current regulatory requirements.
- 4.36 A number of respondents reported that costs were likely to increase significantly, but we believe that the following explanations largely resolve these anticipated problems.

The wider definition of complaint

- 4.37 Many respondents were concerned that recording and reporting requirements would encompass all expressions of dissatisfaction, rather than only those

complaints which fall within the scope of the ombudsman Scheme, and that this would give rise to additional handling costs. The policy move away from this wider definition for reporting and record keeping purposes should mean that these concerns fall away.

Time limits

- 4.38 A significant number of respondents were of the view that proposals on time limits would create significant additional costs. However, this view appears to be based on a mistaken assumption that the proposals would require all complaints to be resolved within four weeks.
- 4.39 This is in fact not the case. The proposal introduces a ‘checkpoint’ at the four week mark, so that a consumer whose complaint is still unresolved is told what is happening, and internal review procedures in the firm are alerted. However, the firm still has a further four week period to resolve the case before it must notify the complainant of his/her right to refer the complaint to the Scheme, so that time limits are essentially similar to the current requirements for firms covered by the existing compulsory schemes. The proposals will impose more specific time limits on firms which are members of the current voluntary schemes, although they are currently subject to general requirements to respond promptly. However, we do not think that this would result in significant extra costs for firms for reasons explained elsewhere in this Paper.
- 4.40 Some respondents expressed concern that internal monitoring and handling costs were likely to increase, particularly as, in the light of their current complaints experience, there would be a likely increase in cases going to the Ombudsman before internal procedures had been able to resolve matters.
- 4.41 We believe this concern is misplaced. The eight week requirement does not mean that the complaint will automatically be referred to the Scheme at that point. It requires that the complainant must be informed of his/her right to refer the complaint to the Scheme at that stage. If the complainant is happy with the firm’s progress, he/she will allow the firm to continue to resolve the complaint.
- 4.42 In addition the FOS will make appropriate allowance in cases where delays have arisen due to circumstances beyond the firm’s control (e.g. a delay in obtaining crucial third party information or a delay in the complainant’s responding to the firm’s questions).

Literature and publication costs

- 4.43 A number of respondents expressed concern that the proposals to improve access to the Scheme could mean significant costs would be incurred in reprinting literature. We do, however, intend to give firms a transitional period for reprinting literature, where such reprinting is necessary. In addition, firms will, we believe, be reassured to know that the accessibility proposals do not mean that their complaints procedures must be sent out to all customers at the point of sale. They will be required to publicise their membership of the Scheme and the existence of their complaints procedures at point of sale, but they will not have to give customers a copy of those procedures at this stage. They will, however, have to make them available on request or when someone complains. We believe that these clarifications should also help remove firms' concerns on costs.

Smaller businesses

- 4.44 The FSA was particularly concerned to ensure that the effect on smaller businesses was assessed so that the proposals did not impose unreasonable burdens. This CBA exercise paid particular attention to the information supplied by smaller firms (irrespective of sector) and the questionnaire sample was increased specifically to involve a greater number of smaller firms and representative organisations.
- 4.45 The effect of the proposals on firms currently regulated by RPBs which will require authorisation by the FSA from N2 was taken into account. The questionnaire sample was increased to ensure information from this sector could be incorporated into the CBA work.
- 4.46 The questionnaire responses revealed a markedly similar response from smaller firms across all sectors. Smaller firms tend to have low numbers of complaints and the attendant costs are generally not significant. If concerns about the wider definition and time limits can be discounted (as explained in paragraphs 4.37-4.42 above), the evidence indicates that smaller firms do not anticipate significant additional costs arising from the proposals. Where concerns were expressed, these tended to be in the area of documentation and customer literature. As noted above, flexibility in the implementation of these requirements should help to alleviate these concerns.

RPB firms

- 4.47 We have also given particular consideration to whether these proposals will have a significant impact on firms currently regulated by RPBs, given the different requirements for complaints handling which have hitherto applied to them.
- 4.48 Overall, responses from this sector revealed that complaint volumes are not such that additional costs arising from a move to the new FSA procedures would have a significant effect on such firms. Respondents did however note their concern about a tendency to ‘over-bureaucracy’ in the move to the FSA system, and the need to avoid inefficiencies in any ‘overlap’ between investment business complaints and those arising from ‘professional’ work. These matters will be taken into account in the Memoranda of Understanding which the FOS proposes to agree with each of the Professional Bodies.

Other smaller operators

- 4.49 The questionnaire sample also covered credit unions and cash plan health care providers. Their responses on costs tended to reflect the trend amongst smaller firms as noted in paragraphs 4.44-4.46 above. One respondent in particular noted the burden which regulatory procedures can place on very small organisations, sometimes with volunteer operators. A separate consultation paper containing proposals relating to credit unions will be issued by the FSA later this year, which will, amongst other things, cover complaints handling arrangements.

Benefits

- 4.50 The FSA proposals in effect represent good business practice and customer service, and are already generally in place to varying degrees across the industry. A system requiring common time limits, strong internal controls and clarity of process and of information generally is likely to provide considerable general benefit to consumers, by leading to more uniformity in service standards, more efficient processing of complaints, more consistent standards of redress and better understanding amongst consumers of where they stand.
- 4.51 In addition to these immediate benefits in terms of the service available to consumers, there are also wider-ranging market benefits.

- 4.52 Because of information asymmetries, retail investors, including small businesses, can find it difficult to monitor the financial firms with which they deal to ensure those firms are in fact delivering the service promised. The existence of independent complaints handling procedures in effect acts as a ‘warranty’ for those consumers, by providing a relatively quick and cheap method (when compared with the costs, for both parties, of taking a case to court) of resolving any dispute as to the nature of the service provided.
- 4.53 For their part, firms have an incentive to deliver an acceptable service in the first place, as they know that any problems will eventually find their way to the Scheme. The existence of the Scheme as a backstop for unresolved complaints promotes market confidence and increases consumers’ willingness to purchase financial services.
- 4.54 These benefits already exist to some extent as a result of the network of complaints handling procedures which exist under the current system. They are however considerably enhanced by the introduction of standardised requirements and the creation of a single scheme. This new system will be able to promote a consistent level of service across the financial services industry, both in the standards which the firms themselves will need to observe as part of their in-house procedures, and in a common approach to disputes which a single external body can provide. Since most firms already follow good business practice, the cost of improving this ‘warranty’ – as set out in the proposals – should be minimal (and this is supported by responses to the CBA questionnaire).
- 4.55 The existence of the ‘warranty’ already promotes competition, as the commitment to good standards applies to long-established firms and new entrants alike, thus removing any barrier to entry to the market relating to the perceived quality of an individual firm. The establishment of a single scheme facilitates efficient competition further, in that there would be no disparity in the standards applicable to different sectors of the industry, and firms can therefore compete on common grounds in this respect.

Conclusion

- 4.56 Based on our research and analysis, we conclude that the cost impact of the new requirements will have no more than minimal significance. Where firms have so far pointed out potential problems, we expect these to fall away as a result of the additional clarifications and amendments described in paragraphs 4.37-4.43 above.

The scope of the Ombudsman to make awards

- 4.57 The FSMB enables the Ombudsman to make money awards in respect of financial loss. It also enables the FSA to specify other types of loss or damage for which the Ombudsman may award compensation. The FSA's proposed rules allow the Ombudsman, in addition, to award compensation for pain and suffering, distress and inconvenience and damage to reputation. Although these are stated somewhat differently from the rules of the existing schemes, there will, in practice, be little difference between the redress which can be awarded by the Scheme and that which can be awarded under current arrangements.
- 4.58 As part of the cost benefit analysis of the proposals, the proposed new powers relating to awards were reviewed and compared with the existing schemes to establish whether arrangements under the FOS would introduce significant changes. However, each of the main schemes has confirmed that they do not foresee that the proposed FSA rules relating to awards will introduce any real changes to current practice.
- 4.59 On this basis there would appear to be no significant cost implications arising from the proposals and a full CBA has therefore not been carried out.

Annex A

Draft rules

Complaints handling procedures for firms

Jurisdiction rules

Complaints handling procedures of the Financial Ombudsman Service

Standard Terms (for Voluntary Jurisdiction)

ANNEX A

DRAFT RULES AND GUIDANCE

Introduction to the Complaint/Ombudsman Scheme Rules

Access for retail consumers to mechanisms for dealing with complaints about financial services firms is a key part of the regulatory regime. *The Act* gives *the FSA* the power to make rules relating to the handling of complaints by firms and provides for the establishment of an independent dispute resolution scheme (the “Financial Ombudsman Service”) to resolve complaints about financial services *firms* quickly and with minimum formality. The body established to administer and operate this scheme (the “*scheme operator*”) is the Financial Ombudsman Service Limited.

This module of *the FSA* Handbook contains the rules and terms of reference relating to the handling of complaints by firms and to the operation of the *Financial Ombudsman Service*. Responsibility for the rules relating to the *Financial Ombudsman Service* is shared under *the Act* between *the FSA* and the *scheme operator*, with those rules written by *the scheme operator* being subject to approval by *the FSA*.

Under *the Act*, the *Financial Ombudsman Service* comprises two jurisdictions:

- a The Compulsory Jurisdiction covers authorised firms which are required to participate in the *Financial Ombudsman Service* in respect of complaints about activities specified by *the FSA*;
- b The Voluntary Jurisdiction covers *firms* (“*Voluntary Jurisdiction participants*”) which have chosen to join the Financial Ombudsman Service by contractual agreement with the *scheme operator* (in accordance with the ‘Standard Terms’ – see below). The *Voluntary Jurisdiction* may also cover unauthorised firms and financial services activities not included in the Compulsory Jurisdiction.

Although the authority to make the rules relating to the *Compulsory* and *Voluntary Jurisdictions* derives from different sections of *the Act*, the provisions have been co-ordinated to ensure that, wherever possible, they are identical, particularly from a consumer's perspective. The rules which follow, therefore, relate to both the *Compulsory* and *Voluntary Jurisdictions*.

Chapter 1: Complaint handling procedures for firms

These rules set out the complaint handling procedures which authorised firms capable of giving rise to an eligible complaint under the *Compulsory Jurisdiction* (see Chapter 2) must establish. They are made by *the FSA* under s133 of *the Act* and paragraph 13 of Schedule 17 to *the Act*. The same rules are applied to *Voluntary Jurisdiction participants* by contract via the Standard Terms set by the *scheme operator* (Chapter 4);

Chapter 2: Jurisdiction rules

These rules set out the scope of the *Compulsory* and *Voluntary Jurisdictions* of the Financial Ombudsman Service. They specify who can refer a complaint to the *Financial Ombudsman Service*, as well as which firms and activities are covered by the *Compulsory* and *Voluntary Jurisdictions*. The rules also set out the territorial scope of the *Financial Ombudsman Service*. They apply, or are of interest, to consumers who may wish to refer complaints to the *Financial Ombudsman Service*; to firms which are subject to the *Financial Ombudsman Service* (either the *Compulsory* or the *Voluntary Jurisdiction*) and to the *Financial Ombudsman Service* itself. The rules relating to the scope of Compulsory Jurisdiction are made by *the FSA* (under s221 of *the Act*); the rules relating to the scope of Voluntary Jurisdiction are made by the *scheme operator*, with *FSA* approval (under s222);

Chapter 3: Complaint handling procedures of the Financial Ombudsman Service

These rules apply to the *Financial Ombudsman Service*, to firms and to complainants, and set out the procedures which will apply to the handling of complaints under the *Financial Ombudsman Service*. For the purposes of the *Compulsory Jurisdiction*, they comprise, the scheme rules and the cost rules (made by the *scheme operator*, with *FSA* approval, under Schedule 17 paragraph 14 and s225 respectively) and rules made by *the FSA* on the kinds of loss or damage that can be compensated, including the maximum amount which can be awarded (s224). These procedural rules are applied to *Voluntary Jurisdiction participants* via the Standard Terms.

Chapter 4: The Standard Terms

The Standard Terms are made, with *FSA* approval, by the *scheme operator* under paragraph 18 of Schedule 17 to *the Act* and are the contractual terms by which firms participate in the *Voluntary Jurisdiction*.

1. Complaint handling procedures for firms

1.1. Application

- 1.1.1 R This chapter applies to all firms (unless exempt) and to participants in the Voluntary Jurisdiction ("*VJ participants*"). It is also addressed to those who might wish to refer a complaint to the *Financial Ombudsman Service*.
- 1.1.2 G For the purposes of the "Complaints" module of the Handbook, references to a "firm" include an *Authorised Person* subject to the *Compulsory Jurisdiction* and a *VJ participant* (whether authorised or non-authorised), unless otherwise stated.
- 1.1.3 G *VJ participants* are subject to the rules in this chapter under the Standard Terms (see DISP chapter 4).
- 1.1.4 R An *authorised person* is exempt from the rules in this chapter (and also from the Funding Rules) if it certifies to the *FSA*, at the time of its authorisation and on an annual basis thereafter, that it does not conduct, and has no reasonable likelihood of conducting, activities subject to the jurisdiction of the *Financial Ombudsman Service*, with eligible complainants.
- 1.1.5 G The rules which state whether a firm or an activity is subject to the jurisdiction of the *Financial Ombudsman Service* and whether a complainant is eligible, are set out in DISP Chapter 2.
- 1.1.6 R The record keeping (DISP 1.7) and information reporting (DISP 1.8) requirements do not apply to *non-authorised VJ participants*.

1.2. Contents

- 1.2.1 G This chapter sets out the procedural rules for the handling of complaints by firms, in particular:
- (1) the internal complaint handling procedures which a firm must put in place (DISP 1.3);
 - (2) the time limits within which a firm must deal with a complaint (DISP 1.4R);
 - (3) the rules concerning redress (DISP 1.5);
 - (4) the time limits for referral of a complaint to the *Financial Ombudsman Service* (DISP 1.6);
 - (5) the records of complaints which a firm (but not a *non-authorised VJ participant*) must make and retain (DISP 1.7);
 - (6) the requirements on a firm (but not a *non-authorised VJ participant*) for reporting information about complaints to the *FSA* (DISP 1.8);
 - (7) the rules concerning co-operation by firms with the *Ombudsman* (DISP 1.9); and
 - (8) the rules concerning the Society of Lloyd's (DISP 1.10).

1.3. Internal complaint handling procedures

- 1.3.1 R A firm must have in place and operate appropriate and effective procedures (which must be written down) for handling complaints about any expression of dissatisfaction, whether oral or written, and whether justified or not, about a service or activity relating to financial services offered, provided or withheld by that firm.

- 1.3.2 G The internal complaint handling procedures should provide for:
- (1) receiving complaints;
 - (2) responding to complaints; and
 - (3) where a complaint cannot be resolved on the spot, the appropriate investigation of complaints.
- 1.3.3 G When deciding what constitutes an appropriate complaint handling procedure, a firm should have regard to:
- (1) the type of business it undertakes;
 - (2) the nature and complexity of the complaints it is likely to receive;
 - (3) the likely number of complaints it will receive and have to investigate; and
 - (4) its size and organisational structure.
- 1.3.4 G In establishing their internal complaint handling procedures, firms may wish to take account of British Standard 8600:1999 "Complaints Management Systems - Guide to Design and Implementation". This is available on request from the [FSA](#).
- 1.3.5 R A firm's internal complaint handling procedures must meet the following requirements:**
- (1) A firm must:**
 - (a) publicise the fact that it is subject to the *Financial Ombudsman Service* in all of its official stationery and marketing literature;**
 - (b) publish its own internal complaint handling procedures and, at the point of sale or when it first provides customers with documentation, refer to their availability;**
 - (c) supply details of its internal complaint handling procedures on request or when it first receives a complaint (unless the firm is able to resolve the complaint immediately).**
 - (2) A firm must take reasonable steps to ensure that all relevant staff and appointed representatives are aware of the firm's internal complaint handling procedures and must endeavour to ensure that they act in accordance with them.**
 - (3) A firm must put in place appropriate management controls and take reasonable steps to ensure that it handles complaints fairly, consistently and promptly and that it identifies and remedies any recurring or systemic problems, as well as any specific problem identified by a complaint.**

- (4) A firm must, wherever possible, make provision for complaints to be handled or reviewed by a member of staff of sufficient experience, competence and authority who was not directly involved in the matter which is the subject of the complaint.**
- (5) A firm must ensure that its response adequately addresses the subject matter of the complaint and, where it upholds a complaint, it must offer appropriate redress.**

- 1.3.6 G A firm may wish to comply with the requirement to publicise the availability of its internal complaint handling procedures and the fact that it is subject to the jurisdiction of the *Financial Ombudsman Service* by displaying a notice at all of its branches, on its web-site and in its advertisements.
- 1.3.7 G The internal complaint handling procedures should enable complainants to make a complaint by any reasonable means (for example, letter, telephone, e-mail or in person).
- 1.3.8 G All correspondence and literature relating to complaints should be in clear and plain language.
- 1.3.9 G The person charged with investigating a complaint should have authority to settle complaints (including the offering of redress where appropriate).
- 1.3.10 G The *FSA* will take account of the size and nature of the firm in applying DISP 1.3.5R(4).

1.4. Time limits for dealing with a complaint

- 1.4.1 R Where a complaint cannot be resolved on the spot, a firm must promptly send a written acknowledgement of the complaint which must include the name or job title of the relevant contact point within the firm (together with details of its internal complaint procedures).**
- 1.4.2 G If a complaint is made orally, a firm should try to confirm its understanding of the complaint when it sends an acknowledgement.
- 1.4.3 G A complaint may be acknowledged by e-mail if received by e-mail.
- 1.4.4 G A firm should aim to resolve complaints at the earliest possible stage.
- 1.4.5 R For the purpose of the requirements imposed on firms by DISP 1.4.6R & DISP 1.4.7R, a complaint must involve an allegation that the complainant has suffered, or may suffer, financial loss, material inconvenience or material distress and must relate to an activity which, in relation to that firm, comes under the jurisdiction of the *Financial Ombudsman Service*.**
- 1.4.6 R A firm must, within no more than four weeks of receiving a complaint, send the complainant either:**
 - (1) a *final response* which:**
 - (a) accepts the complaint and, where appropriate, offers redress (financial or otherwise); or**

(b) offers redress without accepting the complaint ; or

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

Or

(2) a holding response, which explains why it is not yet in a position to resolve the complaint and gives an indication of when the firm will make further contact (which must be within eight weeks of receipt of the complaint).

1.4.7 R Within eight weeks of the receipt of a complaint, or when it sends the complainant a *final response* (if this is earlier) a firm must:

(1) inform the complainant that he may refer the complaint to the *Financial Ombudsman Service* if he remains dissatisfied;

(2) inform the complainant that, if he wishes to refer his complaint to the *Financial Ombudsman Service*, he should do so within six months; and

(3) send the complainant an explanatory leaflet about the *Financial Ombudsman Service*.

1.4.8 R If, at the end of eight weeks, the firm is still not in a position to make a *final response*, it must, as well as providing the information required in DISP 1.4.7 R, give reasons for the further delay, indicating when it will provide a *final response*.

1.4.9 G A complainant can refer his complaint to the *Financial Ombudsman Service* if he receives a *final response* with which he is dissatisfied or the firm has had at least eight weeks to resolve the complaint. DISP 1.4.8R enables the complainant to decide whether or not to give the firm more time before exercising any right he may have to refer a complaint to the *Financial Ombudsman Service*.

1.4.10 R Where a firm operates a two-tier internal complaint handling procedure (eg local branch, then head office), it must still comply with DISP 1.4.6R, 1.4.7R and 1.4.8R. However, if a complainant, who is dissatisfied with the branch's response, takes more than a week to refer his complaint to the next stage (eg head office or a central complaint department), the additional time in excess of a week will not count for the purposes of the eight-week period in DISP 1.4.7R or 1.4.8R.

1.4.11 G The *FSA* would expect firms operating a two-tier internal complaint handling procedure to provide customers with easy access to the second stage of the process.

1.5. Offers of redress

1.5.1 R A firm must comply promptly with any offer of redress which the complainant accepts.

1.5.2 G Where a complainant has suffered financial loss and a firm decides that redress is appropriate, a firm should aim to provide a complainant with fair compensation for any acts or omissions for which it was responsible.

1.5.3 G Redress may include a reasonable rate of interest (based on a *UK* clearing bank rate).

1.5.4 G In deciding whether or not to accept a complaint and what would be an appropriate amount of redress, firms should consider any guidance published by the *Financial Ombudsman Service*.

1.6. Time limits for referral of complaints to the Financial Ombudsman Service

1.6.1 R (1) The *Ombudsman* will, except in circumstances stated in DISP 1.6.1 R (2), consider a complaint only if the complainant refers it to the *Financial Ombudsman Service*:

(a) within six months of the date on which he is advised by the firm that he may refer his complaint to the *Financial Ombudsman Service*; and

(b) within six years of the event complained of, or within three years of the date when he became aware (or ought reasonably to have become aware) that he had cause for complaint, if this was longer than six years after the event in question.

(2) The *Ombudsman* can consider complaints outside these time limits only when, in his view, exceptional circumstances apply.

1.6.2 G An example of an exceptional circumstance might be where the complainant has been or is incapacitated or where the firm has failed, in its *final response*, to inform the complainant that he may refer his complaint to the *Financial Ombudsman Service*.

1.6.3 G The *Ombudsman* will not normally consider a complaint against a firm unless that firm has either had eight weeks to try to resolve it or has sent the complainant a *final response* (if this is earlier).

1.6.4 G In circumstances where the *Ombudsman* might conclude that the firm should have more time to resolve the complaint, (such as where there has been delay in obtaining information from third parties or where the *Ombudsman* considers that the complainant has not fully co-operated with the firm in the investigation of the complaint), *the scheme operator* may take these matters into account in deciding at what stage to make a case-related charge.

1.7. Making and retaining records of complaints

- 1.7.1 R** A firm (but not a *non-authorised VJ participant*) must make and retain adequate records of complaints falling within DISP 1.7.4R for a minimum period of six years from the date of receipt of a complaint.
- 1.7.2 G The records required by DISP 1.7.1R should contain matters such as:
- (1) the name of the complainant;
 - (2) the substance of the complaint;
 - (3) any correspondence between the firm and the complainant; and
 - (4) details of any redress offered by the firm.
- 1.7.3 G This requirement (DISP 1.7.1R) does not apply to *non-authorised VJ participants*, but they should keep records of any relevant complaints for sufficient time to enable them to provide the *Ombudsman* with necessary information in the event of such a complaint being referred to the *Financial Ombudsman Service* (see Standard Terms DISP chapter 4).
- 1.7.4 R** For the record-keeping purposes in DISP 1.7.1R, a complaint must involve an allegation that the complainant has suffered, or may suffer, financial loss, material inconvenience or material distress and a firm need not, for that purpose, treat as a complaint one which, to the knowledge of the firm, does not fall within the jurisdiction of the *Financial Ombudsman Service*.
- ## 1.8. Reporting complaints to the FSA
- 1.8.1 R** A firm (but not a *non-authorised VJ participant*) must provide the *FSA*, on a twice-yearly basis, with a report containing (for the relevant reporting period) information about:
- (1) the total number of complaints received by the firm, broken down according to the categories at DISP Annex A;
 - (2) the number of complaints completed by the firm within:
 - (a) four weeks of receipt;
 - (b) eight weeks of receipt;
 - (3) the number of complaints which were accepted as valid by the firm.
- 1.8.2 R** For the purpose of the requirement to report to the *FSA* (DISP 1.8.1R) a complaint must involve an allegation that the complainant has suffered, or may suffer, financial loss, material inconvenience or material distress and a firm need not, for that purpose, treat as a complaint one which, to the knowledge of the firm, does not fall within the jurisdiction of the *Financial Ombudsman Service*.

- 1.8.3 R** The relevant reporting periods for the purposes of DISP 1.8 are the periods from 1 April to 30 September and from 1 October to 31 March each year. Reports are to be submitted to the **FSA** within one month of the end of the relevant reporting period.
- 1.8.4 R** For the purpose of DISP 1.8.1R(1) a firm must provide a separate breakdown by category for each of its different products/services.
- 1.8.5 R** For the purpose of DISP 1.8.1R(2), a completed complaint is a complaint falling within DISP 1.8.2 R where the firm has sent a final response either accepting or rejecting the complaint.
- 1.8.6 G The address to which reports should be sent is:
- The FSA
25 The North Colonnade
Canary Wharf
London
E14 5HS
- 1.8.7 R** For the purpose of inclusion in the public record maintained by the **FSA**, a firm must provide the **FSA**, at the time of its authorisation, with details of the appropriate contact point for complaints within the firm and must notify the **FSA** of any subsequent change.
- 1.8.8 G The contact point can be by name, job title or department(s).
- 1.8.9 G Reference to a firm in DISP 1.8 does not include *non-authorised VJ participants*.
- 1.9. Co-operation by firms with the Ombudsman**
- 1.9.1 R** A firm must co-operate fully with the **Ombudsman** in the handling of complaints.
- 1.9.2 G Co-operation with the **Ombudsman** includes, but is not limited to, producing requested documents, adhering to any specified time limits and attending hearings when requested to do so.
- 1.10. The Society of Lloyd's**
- 1.10.1 R** A complainant who has a complaint against an underwriting member of the Society of Lloyd's cannot refer the complaint to the **Financial Ombudsman Service** until the internal complaint procedures of the Society of Lloyd's have been completed.
- 1.10.2 R** A **members' adviser** must establish and maintain effective arrangements for handling any complaint from an underwriting member of the Society regarding advice given to the member in connection with the acquiring or disposing of syndicate participation.
- 1.10.3 G Complaints from underwriting members of the Society of Lloyd's regarding the activities of **members' advisers**, which cannot be resolved by the members' adviser, cannot be referred to the **Financial Ombudsman Service**. (See Lloyd's Source Book - LLD Block 5, for further information concerning complaints about the Society of Lloyd's.)

DISP Annex A
Complaint Category Codes

Product/Service	
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Category	Number of Complaints Received		Total
	<i>Private Individuals</i>	<i>Small Businesses</i>	
Overcharging / incorrect charges			
Delay			
Other administrative errors			
Unsuitable advice			
Mismanagement of investments			
Failure to carry out instructions			
Poor customer service			
Poor sales conduct			
Miscalculation/misapplication of interest			
Misleading advertising/product literature			
Disputes over sums/amounts payable			
Misrepresentation			
Churning (wrong advice to surrender one investment and take out another)			
Breach of customer agreement / contract			
Mis-use of personal customer information			
Other			
Total			

Total no. of complaints received	Total no. of complaints closed within 4 weeks	Total no. of complaints closed within 8 weeks

2 Jurisdiction of the Financial Ombudsman Service

2.1. Application

2.1.1 R This chapter applies to firms and *VJ participants* and is also addressed to those who might wish to refer a complaint to the *Financial Ombudsman Service*.

2.2. Contents

- 2.2.1 G This chapter sets out the rules which govern both the *Compulsory* and *Voluntary Jurisdictions* of the *Financial Ombudsman Service*, in particular:
- (1) who can refer a complaint to the *Financial Ombudsman Service* (see DISP 2.4);
 - (2) which firms are subject to the *Compulsory Jurisdiction* of the *Financial Ombudsman Service* (see DISP2.5);
 - (3) which participants are subject to the *Voluntary Jurisdiction* of the Financial *Ombudsman* Service (see DISP2.5);
 - (4) which activities are subject to the *Compulsory Jurisdiction* (see DISP2.6.2R);
 - (5) which activities are subject to the *Voluntary Jurisdiction* (DISP 2.6.7R); and
 - (6) the territorial scope of the *Financial Ombudsman Service* (see DISP 2.7).

2.3. When can a complaint be referred to the Financial Ombudsman Service?

- 2.3.1 G For a complaint to be referred to the *Financial Ombudsman Service*:
- (1) the complainant must be eligible; and
 - (2) the firm about which the complaint is made must be one which is subject to the rules in this chapter; and
 - (3) the activity to which the complaint relates must be subject to the rules in this chapter; and
 - (4) the act or omission complained of must have occurred at a time when the rules in this chapter were in force, in relation to the activity being complained about; and
 - (5) the firm must have failed to resolve the complaint to the satisfaction of the complainant within eight weeks of receiving it; and
 - (6) the firm about which the complaint is made must:
 - (a) in the case of the *Compulsory Jurisdiction*, have been authorised at the time of the act or omission to which the complaint relates; or
 - (b) in the case of the *Voluntary Jurisdiction*, have been a *VJ participant* at the time of the act or omission to which the complaint relates and must not have withdrawn from being a *VJ participant* at the time when the complaint is referred to the *Financial Ombudsman Service*.

- 2.3.2 G Where a firm has accepted or rejected a complaint in less than the eight weeks allowed under the internal complaint handling rules (DISP1.4.7R) the complaint may be referred to the *Financial Ombudsman Service* at that stage.

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

- 2.4.1 R **A complaint may be dealt with under the *Financial Ombudsman Service* only if the complainant is an eligible complainant.**

- 2.4.2 G Eligible complainants are those falling within one of the specified classes of person specified in DISP 2.4.3R; and

- (1) having a customer or potential customer relationship with a firm (as specified in DISP 2.4.6R and DISP 2.4.7R); or
- (2) having an indirect relationship with a firm (as specified in DISP 2.4.9R); or
- (3) Bringing a complaint as an agent for an eligible complainant (as specified in DISP 2.4.12R).

Classes of person

- 2.4.3 R **(1) The classes of person who can be an eligible complainant under the following provisions in this section are:**

(a) a private individual;; or

(b) a business, which has a group annual turnover of less than £1million; or

(c) a registered charity which has an annual income of less than £1million; or

(d) a trustee of a trust which has a net asset value of less than £1million.

- (2) A firm or *VJ participant* which falls within any sub paragraph of DISP 2.4.3R(1) is not an eligible complainant if its complaint relates in any way to an activity which the firm itself is permitted to carry on, or which the *VJ participant* itself conducts, and which is subject to the jurisdiction of the *Financial Ombudsman Service*. An individual, business, charity or trustee is not an eligible complainant if he or it is classified as an *intermediate customer* or *market counterparty* in relation to the firm in question**

- 2.4.4 G The time at which turnover, income or asset value is to be assessed for the purposes of DISP 2.4.3R is when the complainant refers the complaint to the *Financial Ombudsman Service*.

- 2.4.5 G For the purposes of the rules in this chapter, a business includes a sole trader, a company, an unincorporated body and a partnership carrying out any trade or profession.

Eligible complainants: customers

- 2.4.6 R A person is an eligible complainant if:**
- (1) he is or has been a customer of the firm;**
 - (2) the complaint arises out of matters relevant to his being or having been a customer of the firm; and**
 - (3) he falls into one of the classes of person in DISP 2.4.3R.**

Eligible complainants: potential customers

- 2.4.7 R A person is an eligible complainant if:**
- (1) the complaint arises out of things done or omitted to be done for the complainant as a potential customer of the firm; and**
 - (2) he falls into one of the classes of person in DISP 2.4.3R.**

Eligible complainants: indirect complaints

- 2.4.8 R A person is an eligible complainant if:**
- (1) he is not, and has not been, a customer or potential customer of the firm in relation to the subject matter of the complaint; and**
 - (2) he has a complaint against the firm which either:**
 - (a) arises out of a relationship which he has with the firm as described in DISP 2.4.9R; or**
 - (b) is derived from another person arising from any of the circumstances described in DISP 2.4.10R; and**
 - (3) he falls into one of the classes of persons in DISP 2.4.3R.**

- 2.4.9 R The relationships with the firm relevant for DISP 2.4.8R(2)(a) are:**
- (1) the complainant has given the firm a guarantee or security for a mortgage or loan;**
 - (2) the complainant has relied in the course of his business on a cheque guarantee card issued by the firm;**
 - (3) the complainant is a true owner of a cheque, or of the funds it represents, collected by the firm for someone else's account;**
 - (4) the complainant is the recipient of a banker's reference given by the firm;**
 - (5) the complainant is the holder of units or shares in unit trusts or other collective investment schemes and the firm is the manager or operator or trustee or depository; or**

- (6) **the complainant is the holder of shares in an investment trust company and the firm is the manager or investment manager of the investment trust company.**

2.4.10 R The circumstances relevant for DISP 2.4.8R(2)(b) are:

- (1) that the complainant is a beneficiary under a trust or estate;**
- (2) that the complainant is a person for whose benefit an insurance policy was taken out;**
- (3) that the complainant is a person on whom the legal right to act as the policy holder under a contract of insurance has been conferred by statute or by subrogation;**

2.4.11 G DISP 2.4.10R(3) includes, 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.

Eligible complainants: agency complaints

2.4.12 R A person is an eligible complainant if:

- (1) he is acting as agent for another person, and the agency is one of the types specified in DISP 2.4.13R(1); and**
- (2) that other person qualified as an eligible complainant under DISP 2.4.3R and DISP 2.4.6R, DISP 2.4.7R or DISP 2.4.8R, as the case may be.**

2.4.13 R The types of agent relevant for DISP 2.4.12R(1) are:

- (1) the representative of a beneficiary with a claim under a trust or estate;**
- (2) a person representing a deceased person, a minor or a person lacking mental capacity; and**
- (3) the holder of a power of attorney.**

2.4.14 R In the context of DISP 2.4.12R it is immaterial whether the agent himself:

- (1) can satisfy any of the criteria applicable to the person under DISP 2.4.3R;**
- (2) has a claim of his own, or as agent for another person against the firm; or**
- (3) is or was a customer or potential customer of the firm.**

- 2.5. Which firms are subject to the jurisdiction of the Financial Ombudsman Service?**
- 2.5.1 R All **authorised persons** are subject to the **Compulsory Jurisdiction** of the **Financial Ombudsman Service**. **VJ participants** are subject to the **Voluntary Jurisdiction** and the rules in this chapter by virtue of the **Standard Terms (DISP chapter 4)**.
- 2.5.2 G **Authorised persons** may, however, be exempt from the rules in DISP chapter 1 and from the Funding Rules (see DISP 1.1.2R).
- 2.6. To which activities do the rules apply?**
- 2.6.1 The Compulsory Jurisdiction
- 2.6.2 R The **Ombudsman** can consider a complaint under the **Compulsory Jurisdiction** only if it relates to an act or omission in the carrying on of one or more of the following activities:
- (1) regulated activities;
 - (2) lending money secured by a charge over land;
 - (3) lending money (other than **restricted credit**);
 - (4) lending or paying money by a **plastic card** (other than a **store card**);
 - (5) the provision of general insurance services by a bank or building society.
- 2.6.3 G The carrying on of an activity covers offering, withholding, providing and administering a service in relation to the regulated or specified activities. For the avoidance of doubt, this includes the manner in which a firm has administered its business, provided that the business is an activity subject to the jurisdiction of the **Financial Ombudsman Service**.
- 2.6.4 R A complaint about an authorised member of a designated professional body which relates to an otherwise **exempt regulated activity** (with reference to Part XX of **the Act**) cannot be handled under the **Compulsory Jurisdiction** of the **Financial Ombudsman Service**.
- 2.6.5 G A complaint about an otherwise **exempt regulated activity** conducted by an authorised firm will be handled by the relevant professional body.
- 2.6.6 The Voluntary Jurisdiction
- 2.6.7 R The **Ombudsman** can consider a complaint under the **Voluntary Jurisdiction** only if it relates to an act or omission in the carrying on of one or more of the following activities by a **VJ participant**:
- (1) lending money secured by a charge over land;

(2) A financial services activity conducted by a non-authorised *VJ* participant where that activity was covered by a relevant *predecessor scheme* and the *VJ participant* was a member of that scheme, in respect of that activity, immediately prior to the establishment of the *Financial Ombudsman Service*.

2.6.8 G DISP 2.6.7R(2) allows firms which were, immediately prior to the establishment of the Financial Ombudsman Service, members of one of the voluntary schemes which it has replaced, and which do not require authorisation under the Act, to be covered by the Voluntary Jurisdiction in respect of the financial services activities for which they were previously covered.

2.7. The territorial scope of the jurisdiction of the Financial Ombudsman Service

2.7.1 R **The territorial scope of the jurisdiction of the *Financial Ombudsman Service* covers complaints about a firm's activities conducted in or from the *United Kingdom*.**

2.7.2 G Firms include incoming *European Economic Area* firms and incoming Treaty firms and UCITS qualifiers which qualify for automatic authorisation under Schedules 3 (*EEA* Passport Rights), 4 (Treaty Rights) or 5 (Collective investment schemes) to *the Act*.

2.7.3 R **A complaint can be referred to the *Financial Ombudsman Service* whether or not the complainant lives or is based in the *United Kingdom*.**

2.7.4 G Complaints which concern business conducted by branches of *United Kingdom* firms outside the *UK* are not subject to the *Compulsory Jurisdiction* of the *Financial Ombudsman Service*.

3.0 Complaint handling procedures of the Financial Ombudsman Service

3.1 Application

- 3.1.1 R This chapter applies to all firms and *VJ participants* about whom a complaint is referred to the *Financial Ombudsman Service*; and is also addressed to those who might wish to refer a complaint to *the Financial Ombudsman Service*.

3.2 Contents

- 3.2.1 G This chapter sets out the complaints handling procedures of *the Financial Ombudsman Service*, in particular:
- (1) the procedure for investigation and consideration of complaints (DISP 3.4 and 3.11);
 - (2) the circumstances in which a complaint may be terminated without consideration of its merits (DISP 3.5);
 - (3) the referral of a complaint to another body for determination (DISP 3.6);
 - (4) the evidence which may be required or admitted and the consequences of failing to produce it (see DISP 3.7);
 - (5) the provisions for fixing and extending time limits for different aspects of the proceedings (DISP 3.8);
 - (6) the provisions for delegating some of the powers of the *Ombudsman* to *Financial Ombudsman Service* staff (DISP 3.9);
 - (7) the factors which an Ombudsman will take into account in determining what is fair and reasonable (DISP 3.10);
 - (8) the types of loss or damage for which the *Ombudsman* can award compensation (see DISP 3.12.4 R);
 - (9) the rules concerning the limits on awards (DISP 3.13.);
 - (10) the costs that can be awarded (DISP 3.14);
 - (11) the rules relating to compliance with awards (DISP 3.15);
 - (12) the duty of confidentiality (DISP 3.16).

3.3 The investigation and consideration of complaints by the Ombudsman

- 3.3.1 G The *Ombudsman* will attempt to resolve complaints at the earliest possible stage and by whatever means appear to be most appropriate. This may be achieved by mediation, or may require investigation, provisional assessment or formal determination by the *Ombudsman*.
- 3.3.2 G If, before a final determination has been made, either party requests an oral hearing, an *Ombudsman* will decide whether, when, where and how such a hearing should be held for the purposes of fairly and properly determining the dispute.

- 3.3.3 G In deciding if 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.

3.4 Procedures

Initial stage

- 3.4.1 R On receipt of a complaint (and subsequently if necessary) the *Ombudsman* must have regard to the following matters, as appropriate:
- (1) whether or not the firm has had a reasonable opportunity to consider the complaint;
 - (2) whether or not the complaint and the complainant are eligible;
 - (3) whether or not the complaint is one which should be dismissed without consideration of its merits.
- 3.4.2 R Where the *Ombudsman* considers that the firm has not had a reasonable opportunity of considering the complaint he may refer the complaint to the firm.
- 3.4.3 G The *Ombudsman* will normally consider or investigate a complaint only if it has first been submitted to the firm which is the subject of the complaint and the firm has either given the complainant a *final response* or has had eight weeks to deal with the complaint.(DISP 1.4)
- 3.4.4 R Where the *Ombudsman* considers the complaint or the complainant to be ineligible under the jurisdiction rules (see DISP chapter 2) he must give the complainant an opportunity to make representations before he reaches his decision and he must give reasons to the complainant for his decision.
- 3.4.5 R Where the firm objects to the eligibility of the complaint or the complainant, the *Ombudsman* must give the parties an opportunity to make representations before he reaches his decision and he must give reasons to the parties for that decision.
- 3.4.6 R Where the *Ombudsman* considers that the complaint may be one that should be dismissed without consideration of its merits, under DISP 3.5, he must, before he makes his decision, give the complainant an opportunity to make representations. If he then decides that the complaint should be dismissed, he must give his reasons for doing so to the complainant.

Next stage

- 3.4.7 R Where the *Ombudsman* considers that both the complaint and the complainant are eligible and that there is a reasonable prospect of resolving the complaint by mediation, he will attempt to negotiate such a settlement between the parties.

Final stage

- 3.4.8 R If the ***Ombudsman*** decides that there is no prospect of a mediated settlement (or that this is inappropriate) and that an investigation is necessary, he will:
- (1) give both parties an opportunity of making representations;
 - (2) send to the 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, proceed to determination (See DISP 3.11.)

3.5 Early termination

- 3.5.1 R The ***Ombudsman*** may dismiss a complaint without considering its merits if he:
- (1) is satisfied that the complainant has not suffered financial loss, material inconvenience or material distress; or
 - (2) is satisfied that the complaint has been referred outside the time limits (as stated in DISP 1.6) and that no exceptional circumstances apply; or
 - (3) considers the complaint to be frivolous or vexatious; or
 - (4) considers that the complaint clearly does not have any reasonable prospect of success; or
 - (5) considers that the firm has already made an offer of compensation which is fair and reasonable in relation to the circumstances alleged by the complainant (and which remains open); or
 - (6) is satisfied that the complaint relates to a transaction which the firm in question has reviewed in accordance with the regulatory standards for the review of such transactions prevailing at the time of the review, unless he is of the opinion that the standards did not address the particular circumstances of the case; or
 - (7) is satisfied that the matter has previously been considered under the ***Financial Ombudsman Service***, or a predecessor scheme (unless material new evidence likely to affect the outcome has subsequently become available); or
 - (8) is satisfied that the matter has been dealt with, or is being dealt with, by a comparable independent complaints scheme or dispute resolution process; or

- (9) is satisfied that the subject matter of the complaint has been the subject of court proceedings where there has been a decision on the merits; or
- (10) is satisfied that 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
- (11) considers that it would be more suitable for the matter to be dealt with by a court, arbitration or, (pursuant to 3.6.1R) another complaints scheme; or
- (12) is satisfied that there are other compelling reasons why it is inappropriate for the complaint to be dealt with under the *Financial Ombudsman Service*.

3.5.2 G In DISP 3.5.1R(6) the transaction could, for example, be a pension transaction which has been reviewed by the firm and a complainant has either been offered compensation or informed that no compensation is payable. A complaint about the result of the review can be referred to the *Financial Ombudsman Service* only where it is alleged that the standards or guidance, which the regulator may have published, relating to the conduct of the review (at that time), have not been followed.

3.5.3 G When deciding if it would be suitable for a complaint to be dealt with outside *the Financial Ombudsman Service* (DISP 3.5.1R(11)), the *Ombudsman* may consider whether, in view of a conflict of evidence, a fair resolution of the complaint could only be achieved through examination of the evidence by the courts.

3.5.4 R A complaint may also be dismissed by an *Ombudsman* without consideration of its merits if he is satisfied that it is:

- (1) a complaint about the legitimate exercise of a firm's commercial judgement; or
- (2) a complaint about investment performance, except to the extent that there are allegations of negligence or maladministration; or
- (3) a complaint about employment matters from an employee or employees of a firm; or
- (4) a complaint about a firm's decision when exercising a discretion under a will or private trust, except to the extent that there are allegations of negligence, maladministration or unfair treatment; or
- (5) a complaint about a firm's failure to consult beneficiaries before exercising a discretion under a will or private trust, where there is no legal obligation to consult, except to the extent that there are allegations of negligence, maladministration or unfair treatment.

3.6 Referral of a complaint to another body for determination

3.6.1 R A complaint may be referred to another complaints body where the *Ombudsman* considers that it would be more suitable for the matter to be determined by that body and the complainant consents to the referral.

3.7 Evidence

3.7.1 R An *Ombudsman* may, in relation to the evidence which may be required or admitted when he considers and determines a complaint, give directions as to:

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

3.7.2 R The *Ombudsman* may:

- (1) exclude evidence that would otherwise be admissible in a court of law or include evidence that would not be admissible in such a court;
- (2) accept information in confidence, so that only its general nature or an edited version is disclosed to the other party, if he considers this necessary and appropriate;
- (3) reach a decision on the basis of what has been supplied (drawing any appropriate inference from the failure to supply all the required information), where a complainant or firm fails to provide information that an *Ombudsman* has requested; and
- (4) dismiss a complaint if a complainant fails to supply required information.

3.8 Time limits

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

3.8.2 R If a firm or complainant fails to comply with a time limit the *Ombudsman* may proceed to the next stage of consideration of the complaint, or dismiss the complaint.

3.8.3 R If a firm fails to comply with a time limit, the *Ombudsman* may take that failure into account when considering an award.

3.8.4 R If a complainant fails to comply with a time limit the *Ombudsman* may either draw appropriate inferences or terminate consideration of the complaint.

3.9 Delegation of the Ombudsman's powers

3.9.1 R The *Ombudsman* may designate members of the staff of *the Financial Ombudsman Service* to exercise the powers of the *Ombudsman* relating to the reference, investigation or consideration (but not determination) of a complaint; where any person is so designated, these rules apply as if any reference to "the *Ombudsman*" included a reference to that person.

3.9.2 G The Chief Ombudsman will designate those members of staff of *the Financial Ombudsman Service* who are to have these powers.

3.10 Opinion as to fairness and reasonableness

3.10.1 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. He must take into account the relevant law, regulations, regulators' rules and guidance and standards, relevant codes of practice and, where appropriate, what he considers to be good industry practice.

3.11 The Ombudsman's determination

3.11.1 R The *Ombudsman's* determination will include the following stages:

- (1) When a complaint has been determined, the *Ombudsman* will give both the complainant and the firm a signed written statement of the determination, stating the reasons for it.
- (2) The statement will invite 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, it is final and binding on both the complainant and the firm.
- (4) If the complainant either rejects the determination or does not notify the *Ombudsman* by the specified date that he accepts the determination, the complainant will be treated as having rejected the determination, and the firm will not be bound by it.
- (5) The *Ombudsman* must notify the firm of the complainant's response (or lack of response).

3.12 Awards by the Ombudsman

- 3.12.1 G As provided for under section 224 of the Act, if the *Ombudsman* decides a complaint in the complainant's favour, he may:
- (1) direct that the firm take such steps in relation to the complainant as he considers just and appropriate (whether or not a court could order those steps to be taken); or
 - (2) make a money award against the firm of whatever amount he considers fair compensation for the loss or damage suffered; or
 - (3) do both of these.
- 3.12.2 G The *Ombudsman* may make a money award for any financial loss suffered by the complainant.
- 3.12.3 G The *Ombudsman* may also make awards for loss or damage of a kind specified in DISP 3.12.4 R.
- 3.12.4 R Where the *Ombudsman* decides to make a money award, in addition to awarding compensation for financial loss he may award compensation for the following kinds of loss or damage:**
- (1) pain and suffering;**
 - (2) distress or inconvenience;**
 - (3) damage to reputation.**

3.13 Limits on money awards

- 3.13.1 R The maximum money award which the *Ombudsman* may make is **£100,000**.
- 3.13.2 R If an *Ombudsman* considers that an amount more than the maximum is required as fair compensation, then he may in addition recommend to the firm that it pays the balance.
- 3.13.3 G The *Ombudsman* may specify in his award that interest must be paid on the award (at the rate and from the date he states).
- 3.13.4 G For the purposes of calculating the maximum referred to in DISP 3.13.1R the amount of interest awarded does not form part of the award itself.
- 3.13.5 G A complainant can enforce a direction or a money award in the courts.

3.14 Costs

- 3.14.1 R When the *Ombudsman* finds in a complainant's favour, he may also award an amount which covers some or all of the professional costs incurred by the complainant in respect of the complaint.
- 3.14.2 R The amount payable under the award of costs may, if the *Ombudsman* orders, bear interest at a rate specified in the order and from a date specified in the order.

3.14.3 G An award of costs does not form a part of a money award for the purpose of calculating the monetary limit specified in DISP 3.13.1R. The rules relating to costs applies to *VJ participants* by the Standard Terms (see DISP chapter 4).

3.15 Complying with awards

3.15.1 R A firm must comply promptly with:

- (1) the *Ombudsman's* determination, including any money award or direction which he may make; and
- (2) with any settlement which it agrees at an earlier stage of *the scheme operator's* procedures.

3.16 Duty of confidentiality

3.16.1 R Any evidence held by *the scheme operator* in relation to the consideration and investigation of a complaint must be treated in confidence except as required by law or under any agreement requiring or enabling disclosure to the *FSA*.

4. Standard Terms

4.1 Introduction

- 4.1.1 G The Standard Terms are the basis on which complaints will be dealt with and determined under the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*. They apply to any company, partnership, individual practitioner or other business which has decided to be a participant in the Voluntary Jurisdiction (a "VJ participant"). They are fixed by the scheme operator with the approval of the Financial Services Authority in accordance with paragraph 18 of Schedule 17 to the Financial Services and Markets Act.
- 4.1.2 G The Standard Terms cover:
- (1) the rules specified (See DISP 4.2.2, 4.2.3 and 4.2.4);
 - (2) an Indemnity for *the scheme operator*, any member of its governing body, any member of its staff and any person acting as an *Ombudsman*, as permitted by Schedule 17, paragraph 18(5) of *the Act* (see DISP 4.2.5);
 - (3) the Ombudsman's powers relating to determinations and awards (see DISP4.2.6);
 - (4) the enforcement of a determination (see DISP 4.2.7);
 - (5) the payment of fees to *the scheme operator* (see DISP 4.2.8); and
 - (6) the process for withdrawal by a firm from the *Voluntary Jurisdiction* (see DISP4.2.9).

4.2 The Standard Terms

- 4.2.1 R
- (1) **For the purposes of the Standard Terms, a company, partnership, individual practitioner or other business, whether authorised or unauthorised, agreeing to participate in the *Voluntary Jurisdiction* of the *Financial Ombudsman Service* is known as a *VJ participant*.**
 - (2) **In consequence of the agreement by the *VJ participant* to participate in the *Voluntary Jurisdiction*, these Standard Terms fix the basis on which complaints relating to relevant acts or omissions of the *VJ participant* are to be dealt with and determined.**
 - (3) **Where these Standard Terms apply rules for the purposes of the *Voluntary Jurisdiction*, those are regarded as part of the Standard Terms.**

Complaint handling procedures for firms

- 4.2.2 R **The rules and guidance contained in DISP chapter 1 will apply for the purposes of the *Voluntary Jurisdiction* (except where their application to *VJ participants* is specifically excluded).**

Jurisdiction of the Financial Ombudsman Service

- 4.2.3 R The rules and guidance contained in DISP chapter 2 will apply for the purposes of the *Voluntary Jurisdiction* (except where their application to *VJ participants* is specifically excluded).

Complaint handling procedures of the Financial Ombudsman Service

- 4.2.4 R The rules and guidance contained in DISP chapter 3 will apply for the purposes of the *Voluntary Jurisdiction* (except where their application to *VJ participants* is specifically excluded).

Liability

- 4.2.5 R (1) None of the following is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of any functions in connection with the *Voluntary Jurisdiction*:
- (a) *the scheme operator*;
 - (b) any member of its governing body;
 - (c) any member of its staff;
 - (d) any person acting as an *Ombudsman* for the purposes of the *Financial Ombudsman Service*.
- (2) Paragraph (1) does not apply:
- (a) if the act or omission is shown to have been in bad faith; or
 - (b) so as to prevent an award of damages 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.

Determination and awards

- 4.2.6 R If a complaint which has been dealt with under the *Voluntary Jurisdiction* is determined in favour of the complainant, the determination may include:
- (1) a “money award”, that is an award against the *VJ participant* of such amount as an *Ombudsman* considers fair compensation for financial loss or for loss or damage of a kind specified in DISP 3.12.4 R that has been suffered, or may be suffered, by the complainant;
 - (2) a direction that the *VJ participant* take such steps in relation to the complainant as an *Ombudsman* considers just and appropriate (whether or not a court could order those steps to be taken).

Enforcement of a determination

- 4.2.7 R An *Ombudsman*'s determination, if accepted by the complainant within the time limit specified by an *Ombudsman*, will be binding on the *VJ participant* and final and may be enforced in court by the complainant.

Fees

- 4.2.8 R The Funding Rules and guidance made under s. 229 of the Act or any fees rules made under paragraph 15 to Schedule 17 of the Act, as appropriate, will apply as part of the agreement by the *VJ participant* to be subject to the *Voluntary Jurisdiction*.

Withdrawal from the Voluntary Jurisdiction of the Financial Ombudsman Service

- 4.2.9 R A participant may not withdraw from the *Voluntary Jurisdiction* of the *Financial Ombudsman Service* unless the *VJ participant*:
- (1) has submitted a written plan to the scheme operator setting out its proposals for:
 - (a) notifying its existing customers of its intention to withdraw from the *Voluntary Jurisdiction*; and
 - (b) the handling of complaints against it prior to its withdrawal from the *Voluntary Jurisdiction*; and
 - (2) the plan (in DISP 4.2.9R(1)) has been approved in writing by *the scheme operator*; and
 - (3) *the scheme operator* has agreed in writing the date on which the *VJ participant* may withdraw from the *Voluntary Jurisdiction* (which date is not to be earlier than six months from the date of approval of the plan).

Transitional Rule Provisions

DISP 1.3.5R(1)(a)

Firms must comply with the provisions in DISP 1.3.5R(1)(a) by 1 January 2002.

DISP 1.8.1R

A firm which becomes subject to these rules at N2, will be deemed to have complied with DISP 1.8.1R if it submits a report to the FSA in respect of the last six months of the first complete financial year, within one month of the end of that year.

DEFINITIONS

Definition title	Definition wording
Authorised person	<p>one of the following persons authorised for the purposes of the Act:</p> <p>(a) a person who has a permission given by the FSA under Part IV of the Act (Permission to Carry on Regulated Activities), or having effect as if so given;</p> <p>(b) an EEA firm qualifying for authorisation under Schedule 3 to the Act (EEA Passport Rights);</p> <p>(c) a Treaty firm qualifying for authorisation under Schedule 4 to the Act (Treaty Rights);</p> <p>(d) a person who is otherwise authorised by a provision of, or made under, the Act;</p>
Authorised VJ Participant	A participant in the Voluntary Jurisdiction who is a person authorised by the FSA
Compulsory Jurisdiction	The jurisdiction of the Financial Ombudsman Service to which authorised firms are subject.
EEA	See European Economic Area
European Economic Area	The free-trade area established in 1992 which [at 31 March 1999] includes Belgium, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, Spain, the United Kingdom, Austria, Finland and Sweden.
Final Response	The response from the firm with either accepts the complaint, and where appropriate, offers redress, offers redress without accepting the complaint, or rejects the complaint and gives reasons for doing so, which should be clearly marked as a final response and should not make any reference to any possible further action by the complainant or firm other than information about referral to the Financial Ombudsman Service, or if the final response comes from a branch, to head office or a central complaints department.
Financial Ombudsman Service	The scheme which the FS&M Act requires to be set up for the resolution of disputes.
FSA, the	the Financial Services Authority;
Intermediate customer	a client who is not a market counterparty or a private customer.
Market counterparty	<p>(a) a person dealing with the firm as principal or as agent for an unidentified principal in the course of investment business of the same description as that in the course of which the firm acts; or</p> <p>(b) a person properly treated as a market counterparty in accordance with [the rules]</p>
Members' adviser	A firm that is not an underwriting agent but is permitted by the FSA to advise an underwriting member of the Society to become, continue or cease to be a member of a particular syndicate.
Non-authorised VJ participant	A participant in the Voluntary Jurisdiction who is not a person authorised by the FSA
Ombudsman	A person appointed by the Financial Ombudsman Service to determine complaints.
Plastic card	A plastic card is a card, or a token with an equivalent function, which a customer can use to pay for goods and services, to obtain cash or both – such as a credit card, charge card, debit card, cash card or electronic purse.
Predecessor scheme	<p>The following schemes are the relevant predecessor schemes for the purpose of DISP 2.6.7R(2):</p> <p>The Banking Ombudsman Scheme Building Societies Ombudsman Scheme Insurance Ombudsman Bureau Personal Insurance Arbitration Service</p>
Regulated activity	<p>an activity of a kind specified in an order made by the Treasury;</p> <p>the following activities are specified in the Regulated Activities Order []:</p> <p>Accepting deposits; Effecting contracts of insurance; Carrying out contracts of insurance; Establishing etc. a collective investment scheme; Making a market; Buying with a view to selling; Regularly soliciting the public to deal in securities; Dealing as principal in contractually based investments; Dealing as agent; Arranging deals for another; Making arrangements enabling or facilitating deals; Safeguarding and administering investments; Sending dematerialised instructions; Causing dematerialised instructions to be sent; Managing investments; Certain investment advice; Advice on syndicate participation at Lloyd's; [Acting as] Lloyd's managing agents; Agreeing to carry on certain regulated activities;</p>

Restricted credit	Restricted credit is a loan where, as a result of an existing arrangement between a supplier and a firm, the application by the customer to the firm is submitted through the supplier and the terms of the loan require that it be paid to the supplier for goods or services supplied to the customer. It does not apply to lending money secured by a charge over land or to lending or paying money by plastic card (other than a store card).
Store card	A store card is a card restricted to paying for goods or services from a particular supplier or group of suppliers and where the price of the goods or services is paid directly to the supplier or group of suppliers by the customer or the firm. A plastic card used to pay for goods or services through a network such as Visa or Mastercard is not a store card.
The Act	Financial Services and Markets Act
The Scheme Operator	The independent company established by the FSA to administer the Financial Ombudsman Service (ie The Financial Ombudsman Service Limited).
UK	England, Wales, Scotland, Northern Ireland, but not the Channel Islands or the Isle of Man.
United Kingdom	England, Wales, Scotland and Northern Ireland, but not the Channel Islands or Isle of Man
VJ	See Voluntary Jurisdiction
Voluntary Jurisdiction	The jurisdiction of the Financial Ombudsman Service in which businesses (whether authorised or non - authorised) participate under contract.
VJ participant.	A business which comes under the Voluntary Jurisdiction of the Financial Ombudsman Service via contract.

Annex B

Respondents to CP33

Abbey Life
Aberdeen Asset Management
Alliance & Leicester plc
American Banking & Securities Association of London
AON Warranty Group
Association of British Insurers
Association of Friendly Societies
Association of Independent Financial Advisers
Association of Private Client Investment Managers and Stockbrokers
Association of Solicitor Investment Managers
Association of Unit Trusts and Investment Funds
AXA Insurance
AXA Sunlife
Banking Ombudsman, (Mr David Thomas)/
The Council of the Office of the Banking Ombudsman
Baptist Insurance Company plc
Barclays plc
Bradford & Bingley Building Society
Brewin Dolphin Securities Ltd
Bristol & West plc
British Bankers' Association
British Health Care Association
Brooks Homes (Southern) Ltd
Building Societies Association
Canada Life Ltd
CIGNA Healthcare & Group Life
CIS Co-operative Insurance
Combined Insurance Company of America
Commonwealth Bank of Australia
Communications Workers Friendly Society Ltd
Compliance Institute
Consumer Arbitration Panel (of the SFA)
Consumers in Europe Group
Council of Mortgage Lenders
Council on Tribunals
Cox Insurance Holdings plc
Cripps Harries Hall
Customer Management Consultancy
DBS Financial Management plc
Deposit and Trustee Association
Dibb Lupton Alsop
Direct Line Group
Ecclesiastical Insurance Group plc
Efford, Mr Clive (MP)
Eurolife Assurance Company Ltd
Faculty of Actuaries/Institute of Actuaries
Fidelity Investment Services Ltd
Finance & Leasing Association
Financial Futures (IFA) Ltd
Financial Services Consumer Panel
First-e
Foreign & Colonial Management Ltd
Forward Planning Independent Financial Adviser
Friendly Societies Commission
FSA Independent Complaints Commissioner (Mr Jock Worsley)
FSA Small Business Practitioner Panel
Fund Managers Association
Futures & Options Association
GE Insurance Holdings
Grainger Consulting
Groupama Insurances
Halifax plc
Hammond Consultancy
Hargreaves Lansdown
Healthsure Group Ltd

HFC Bank plc
 Hill Martin Financial Planning & Investment Management
 Hospital Saturday Fund, The
 HSBC Holdings plc
 Institute of Credit Management
 Insurance Ombudsman Bureau, The Board and Council of the
 Invesco Asset Management Ltd
 Investment & Life Assurance Group
 Investors Compensation Scheme
 Johnston, Mr C M
 Kauders Portfolio Management
 Keevil McIntosh Gibson (Financial) Ltd
 Kent Reliance Building Society
 Law Society, The
 Law Society of Scotland, The
 Leeds Hospital Fund Ltd
 Legal & General Assurance Society
 Legal & General Insurance
 Leyton Financial Services
 Life Insurance Association
 Liverpool Victoria Friendly Society Ltd
 Lloyd's
 Lloyds Motor Underwriters Association
 Lloyds TSB Insurance
 London Investment Banking Association
 Maddocks, Mr W F J
 Marks & Spencer Financial Services
 McGee, Mr David
 Mercury Asset Management
 Money Management Council
 Moorgate House plc
 National Association of Citizens Advice Bureaux
 National Consumer Council
 National Deposit Friendly Society Ltd
 National Federation of Consumer Groups
 National Mutual
 Natwest Group
 NFU Mutual
 Nikko Global Asset Management (UK) Ltd
 Northern Rock plc
 Norwich Union
 Office of Fair Trading
 Office of the Building Societies Ombudsman, The Council and the Board of the
 Padgett, Mr H M
 Pearl Assurance plc
 Penrith Building Society
 Pensions Management Institution, The
 Perpetual plc
 Pharmacy Mutual Insurance Company Ltd
 Philip J Milton & Co plc
 PIA Small Business Panel
 Pickerings Claims Consultants
 Pinnacle Insurance plc
 POIS Assurance
 Police Mutual Assurance Society
 Portman Building Society
 PPP Healthcare
 Prime Health Limited
 ProShare
 Provincial Hospital Services Association
 Quilter & Co Ltd
 Rangeley FCA, Mr R D
 Rennison, Mr R W
 Royal & Sun Alliance plc
 Royal Bank of Scotland, The
 Ruffer Investment Management Ltd
 Samuel, Mr Adam
 Save & Prosper/Flemings Group
 Scottish Amicable
 Scottish Widows' Fund and Life Assurance Society
 Seagood, Mr R D
 Shurman, Mr Laurence
 Skandia Life Group
 Society of Pension Consultants, The
 Sperryn, Mr Anthony N
 Standard Life Assurance Company, The
 Stroud & Swindon Building Society
 Sun Life of Canada
 Swiss Life (UK) plc
 T H March Insurance
 Towry Law
 Travel and Personal Underwriters Ltd
 United Assurance Group
 Universities Superannuation Scheme Ltd
 Unum Ltd
 URC Insurance Company Ltd
 Virgin Direct Personal Financial Service Ltd
 Watson Wyatt Partners
 Wesleyan Assurance Society
 Westfield Contributory Health Scheme
 Wholesale Markets Brokers' Association, The
 Windsor Life Assurance Company Ltd
 Winterthur Life UK Ltd
 Woolwich plc, The
 Yardley, Sir David (Alternate FSA Complaints Commissioner)
 Yorkshire Building Society
 Zurich Financial Services (UKISA) Ltd

Extract from Memorandum of Understanding between the FSA and the FOS

Information-sharing

- 14 Both the FSA and the FOS recognise that complaints are an important source of regulatory information insofar as they can provide a valuable early warning of problems, both existing and potential, with, for example, particular firms, products or rules. The FOS therefore accepts the need for the FSA to have timely access to certain types of information and the FSA acknowledges the need to give due consideration to any information provided by the FOS and to take appropriate action.
- 15 The FSA does not, in the normal course of events, expect the FOS to provide it with detailed information about individual cases, except in the circumstances specified in paragraphs 16(d) and (e) below.
- 16 The FOS agrees to provide the FSA with:
 - (a) statistical information about its complaints-handling activities (e.g. the number of enquiries handled, the number of complaints received, the overall proportion of complaints upheld against firms, the proportion of complaints resolved by formal award, the number of oral hearings, etc.) on a monthly basis, and also on request, as necessary;
 - (b) statistical and qualitative information on the different types (i.e. root causes) of complaints and enquiries (including general feedback on problem rules, products, or services) on a monthly basis, and also on an ad hoc basis as necessary;
 - (c) information about any matters of general principle or major importance arising out of the exercise by the FOS of its functions (e.g. major consumer concerns, the case for rule changes, etc.);

(d) specific information, whether it relates to a particular authorised firm or individual:

- where there is reason to call into question a firm's fitness and propriety (such as where it appears to have committed a criminal offence or a serious regulatory breach);
- where it appears that the interests of a class of consumers may have been damaged;
- where some kind of enforcement action might need to be considered by the FSA;
- where information is requested by the FSA in respect of enforcement action which it is taking or contemplating taking; and
- where the FOS considers it to be in the public interest to do so;

and

(e) specific information about any authorised firm;

- which the FOS considers has failed to comply with an ombudsman award;
- which has failed to comply without reasonable cause with a requirement to provide information or produce documents to an ombudsman; or
- whose internal complaints handling mechanism the FOS considers to be inadequate.

The FOS will retain discretion over what (and when) information is provided under (d) and (e) above.

17 The FSA will provide the FOS with information necessary and relevant to the performance of the FOS's functions.

Glossary

CBA	Cost Benefit Analysis
CJ	Compulsory Jurisdiction
CML	Council of Mortgage Lenders
ECHR	European Convention on Human Rights
EEA	European Economic Area
FOS	Financial Ombudsman Service Limited
FSA	Financial Services Authority
FSMB	Financial Services and Markets Bill
GISC	General Insurance Standards Council
IFA	Independent Financial Adviser
IFG	Industry Funding Group
IMRO	Investment Management Regulatory Organisation
IOB	Insurance Ombudsman Bureau
MCCB	Mortgage Code Compliance Board
MOU	Memorandum of Understanding
N2	The date when the Financial Services Authority will acquire its powers under the Financial Services and Markets Act.
OBO	Office of the Banking Ombudsman
OBSO	Office of the Building Societies Ombudsman
OIO	Office of the Investment Ombudsman
PIA	Personal Investment Authority
PIAOB	Personal Investment Authority Ombudsman Bureau
PIAS	Personal Insurance Arbitration Service
RAO	Regulated Activities Order
RPB	Recognised Professional Body
SFA	Securities and Futures Authority
SFACB	Securities and Futures Authority Complaints Bureau
SME	Small and Medium Enterprise
SRO	Self Regulating Organisation
VJ	Voluntary Jurisdiction