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Financial Services Authority and
Financial Ombudsman Service

Complaints-handling Rules: transitional arrangements and other amendments

June 2001



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The Financial Services Authority invites comments on this consultation paper. Comments should reach us by 27 July 2001.

Comments may be sent by electronic submission using the form on the FSA's website (at www.fsa.gov.uk/pubs/cp/cp99_response.html).

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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.

1 Executive summary

- 1.1 In December 2000, the Financial Services Authority (FSA) and the Financial Ombudsman Service Limited (FOS) published a joint Policy Statement¹ on Consultation Paper 49 (CP49). This provided feedback on the responses to CP49 and set out the ‘final’ rules relating to the handling of consumer complaints by firms and the jurisdiction and procedures of the new Financial Ombudsman Service.
- 1.2 We explained that the rules contained in that paper had been approved by the FSA and FOS Boards and would be legally ‘made’ when the FSA and the FOS received their rule-making powers, subject to the need to make some further amendments to take account of outstanding issues in other areas – in particular, transitional arrangements to be made by the Treasury under s.426-428 of the Financial Services and Markets Act 2000 (FSMA). We also anticipated that some minor amendments might be necessary to take account of policies which were still being finalised elsewhere in the Handbook.
- 1.3 In April this year, the Treasury published a consultation paper on the arrangements which the Government proposes to make to ensure a smooth transition to the new complaints arrangements (including the draft Order² which it proposes to make under s. 426-428 of the FSMA). As previously anticipated, this extends the scope of the FOS to enable it to handle complaints about pre-N2 business and therefore necessitates some amendments to the Complaints Sourcebook rules published in December 2000.

Purpose of paper

- 1.4 The main purpose of this paper is to consult on the amendments which we propose to make to the complaints rules in the light of the Treasury’s proposed extension of the FOS’s scope to cover pre-N2 complaints.

1 Complaints Handling Arrangements: Response on CP49 – A joint FSA/FOS policy statement. December 2000.

2 The draft Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001.

- 1.5 We are also taking advantage of this opportunity to make a small number of clarificatory amendments to the text in the light of some of the queries we have received since publication of the December Policy Statement and to reflect recent developments elsewhere in the Handbook.
- 1.6 As indicated in previous consultation papers on the new complaints arrangements, the power to make rules relating to firms' internal complaints procedures falls to the FSA. The powers to make rules relating to the new ombudsman scheme are shared between the FSA and the FOS, which has been set up by the FSA to operate the new scheme. As with previous papers, this paper is therefore issued jointly by the FSA and the FOS.

Transitional Arrangements

- 1.7 The transitional arrangements proposed by the Treasury do not alter the basic requirements set out in the 'final' complaints rules published in December 2000. They simply extend the scope of the FOS to enable it to handle complaints about pre-N2 business (whether received before or after N2) where these could have been handled by a 'former scheme' which the FOS will replace.³ They also prescribe the extent to which those complaints are to be handled in line with either the new FOS procedures or the procedures of the relevant former scheme.
- 1.8 The Treasury's draft Order does not in any way affect the treatment of complaints relating to acts or omissions occurring after N2. Nor does it affect complaints relating to bodies or persons that were not subject to any of the former schemes.
- 1.9 The Order distinguishes between two types of pre-N2 complaint (described as 'relevant complaints' in the Order):
- **Relevant existing complaints** (i.e. partly completed complaints made to the former schemes before N2 which the FOS will inherit at N2); and
 - **Relevant new complaints** (i.e. complaints made to the FOS after N2, but which relate to pre-N2 business in respect of which the firm concerned was covered by a former scheme).
- 1.10 The Order enables the FOS to handle **relevant new complaints** in accordance with its new procedures, with only a few exceptions where this is necessary to safeguard the respective interests of consumers or firms. We therefore propose to extend the rules in DISP 1 to DISP 3 to apply to this kind of pre-N2 complaint, with a small number of modifications, where appropriate.

3 These are: the Banking Ombudsman scheme; the Building Societies Ombudsman scheme; the Insurance Ombudsman scheme; the Personal Insurance Arbitration Service; the Personal Investment Authority Ombudsman scheme; the Office of the Investment Ombudsman ('the IMRO scheme'); the SFA Complaints Bureau and Consumer Arbitration Scheme ('the SFA scheme'); and the FSA Complaints Unit and Independent Investigator ('the FSA scheme').

- 1.11 However, the Order provides for **relevant existing complaints** to be completed by the FOS for the most part in accordance with the procedures of the relevant former scheme from which they are inherited. In order to maintain the clarity of the existing rules, a new Annex has been added to the rules to indicate how this type of complaint must be handled. It sets out the various ways in which, under the Treasury Order, relevant existing complaints must be treated differently from the other complaints under the Financial Ombudsman Service, but applies the new procedures, where possible. (This Annex will be dropped as soon as the last inherited case is completed.)
- 1.12 Most of the proposed amendments relating to the transitional arrangements take the form of new guidance, but there are also a small number of new (or amended) rules. This is because, in many respects, the draft Treasury Order extends the scope of the scheme directly. Where this is the case, we simply propose to insert additional *guidance* to indicate the effect of the Order. In other areas, however, the draft Order extends the FSA or the FOS rule-making powers to enable these to cover pre-N2 complaints. Where this is the case, we propose to amend the relevant rules or insert new rules, as appropriate, in order to extend their scope.
- 1.13 As noted above, the Treasury has consulted separately on the policy issues underlying the transitional arrangements which it proposes to make.⁴ For the most part, the transitional amendments proposed in this paper merely reflect those policies and this paper therefore repeats these only insofar as they are relevant to the amendments which the FSA and the FOS propose to make to their rules to take account of the Treasury's proposals. **It is important to note that the Treasury Order has not yet been finalised and that this paper does not in any way pre-judge the outcome of the Treasury's consultation. Should the Treasury decide to modify its proposals in the light of any representations received in response to its consultation paper, we propose to modify the relevant DISP rules accordingly.**

Other Proposed Amendments

- 1.14 The other amendments proposed in this paper mainly relate to DISP 1. **These are intended to assist firms by clarifying practical issues which they have raised as they begin to adapt their procedures to comply with the new requirements. However, they do include a small number of additional requirements.** We do not believe any of these to be controversial or to have significant cost implications.

⁴ 'Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order: Consultation Document'. (April 2001). (The Treasury's consultation paper is on the Treasury's web-site at www.hm-treasury.gov.uk/pub/html/reg/index.html or can be obtained by telephoning 020 7270 1634.)

Next Steps

- 1.15 In these circumstances, we believe that a short consultation period is appropriate. Subject to the outcome of this consultation and the Treasury's separate consultation on the draft Order, we propose to incorporate these changes into the rules and publish these as final Handbook text later this year. These rules will come into force at N2 (the date when the main provisions of the FSMA come into force).
- 1.16 The revised rules (with the exception of DISP 4 and 5⁵) are set out in full at Annex A. For ease of reference, the proposed changes have been underlined in the text and are summarised and explained in the following chapters. As noted above, the rest of the text has already been approved as 'final' text by the FSA and FOS Boards. **However we should welcome comments on any of the proposed changes highlighted in the Annex.**

5 DISP4 (which sets out the Standard Terms for participation in the Voluntary Jurisdiction of the scheme) is not affected by the Treasury's proposed transitional arrangements and no amendments are proposed to the text published in December. DISP 5 (on FOS funding) has been subject to separate consultation. These chapters are therefore not reproduced at Annex A.

2 Transitional arrangements

Treasury Proposals / Draft Order

- 2.1 Part XVI of the FSMA requires the FSA to establish a single Ombudsman scheme to deal with disputes relating to acts or omissions by firms in carrying on financial services activities specified in the jurisdiction rules (compulsory or voluntary).¹
- 2.2 The FSMA provides that the complaints which the FOS can cover must relate to an act or omission which occurred at a time when the jurisdiction rules were in force in relation to the activity in question. This means that the Compulsory Jurisdiction rules (which are to be made by the FSA) can apply only to acts or omissions occurring on or after N2. The scope of the Compulsory Jurisdiction of the FOS is therefore effectively limited to complaints about activities which took place after N2.²
- 2.3 However, it has always been recognised that arrangements for dealing with complaints about pre-N2 business will be needed for some considerable time after N2 and we believe that it makes sense for the FOS to be able to handle these complaints. This will avoid the need for the current schemes which the FOS will replace to stay in existence to deal with pre-N2 complaints. It will also enable consumers to reap the benefits of a ‘one-stop shop’ for complaints from N2 and will enable us to effect a smooth transition to the new scheme.
- 2.4 As anticipated, the Treasury therefore proposes to make transitional provisions, using the powers conferred by s.426 – s. 428 of the FSMA, to achieve this objective. As noted above, the draft Order³ containing these transitional provisions has recently been the subject of a separate consultation paper by the Treasury. The policy reasons underpinning the proposed

1 The FSA is responsible for making the Compulsory Jurisdiction rules; the FOS (with FSA approval) is responsible for the Voluntary Jurisdiction rules.

2 Section 227 (13) and (14) of the FSMA enable the FOS to make rules extending the scope of the Voluntary Jurisdiction to cover pre-N2 complaints, where these could have been dealt with by a former scheme and, as indicated in previous consultations, the FOS intends to do so.

3 Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001.

arrangements are set out in that paper and are repeated in this paper only insofar as they are relevant to the amendments which the FSA and the FOS propose to make to their rules to take account of the Treasury's proposals.

Draft HM Treasury Order: summary of proposed approach

- 2.5 The transitional provisions contained in the Treasury's draft Order will enable the FOS to take over responsibility for dealing with complaints against members of the former schemes which it will replace, relating to acts or omissions occurring before N2, where these could have been handled by one of the former schemes. These are described as 'relevant complaints'.
- 2.6 The draft Order does not in any way affect the treatment of complaints relating to acts or omissions occurring after N2. Nor does it affect complaints relating to bodies or firms that were not subject to any of the former schemes. For example, complaints about pre-N2 investment business conducted by former members of the Recognised Professional Bodies (whether received before or after N2) will continue to be handled, after N2, by the relevant professional body.
- 2.7 As indicated in the Treasury's recent consultation document, the proposals contained in the Order are based on the following basic principles:-
- The arrangements should be fair to firms and protect consumers' rights to obtain redress for acts or omissions occurring before N2;
 - The arrangements should be as simple and transparent as possible, so that people are clear where they stand;
 - The benefits of a single ombudsman scheme should be delivered as soon as possible; and
 - The arrangements should be simple to administer, allowing the FOS to operate efficiently.
- 2.8 The transitional arrangements are therefore designed to enable the FOS, once it assumes responsibility for dealing with all complaints at N2, to apply a single set of procedures wherever possible. This will not only allow the FOS to streamline its procedures and operate more efficiently, but should also enable firms to rationalise their own complaints-handling arrangements. Consumers will also benefit as both the FOS and firms start to deal with complaints on a consistent basis.
- 2.9 The draft Order therefore proposes that complaints relating to events occurring before N2 involving firms which were members of the former schemes should normally be dealt with under the rules of the new scheme. However, it recognises that this would not be appropriate in all circumstances and makes separate provision for certain types of complaint.

- 2.10 It distinguishes between two types of ‘**relevant complaint**’ as follows:-
- ‘**relevant existing complaints**’ – i.e. complaints made to one of the former schemes before N2 which remain unresolved at N2; and
 - ‘**relevant new complaints**’ – i.e. complaints made to the FOS after N2, but which relate to an act or omission occurring before N2 in respect of which a firm was subject to a former scheme immediately before N2 (described in the rules as ‘commencement’).
- 2.11 Under the draft Order, both types of **relevant complaint** will be dealt with by the FOS after N2, but the extent to which they will be handled under the new FOS scheme procedures varies as between these two categories of complaint. This is described in more detail in the following paragraphs.

Relevant Existing Complaints

- 2.12 *Relevant existing complaints* will be dealt with under the new scheme, but subject to a number of detailed provisions set out in the draft Order. These reflect the Treasury’s view that it would not be fair – either to firms or consumers – to alter the criteria by which complaints which are partly completed by the schemes at N2 will be determined by the FOS after N2 or the effect which that determination could have.
- 2.13 In respect of *relevant existing complaints*, the Treasury therefore proposes that:
- access to the FOS will depend on whether or not the complaint and complainant would have been eligible under the former scheme;
 - the FOS Ombudsman will be required, in determining whether a complaint should be dismissed without considering its merits, to take into account whether an equivalent complaint would have been so dismissed under the relevant former scheme, as it had effect immediately before N2;
 - the FOS Ombudsman will be required, in determining such a complaint, to apply, so far as practicable, the same criteria as would have been applied by an ombudsman, arbitrator or adjudicator under the former scheme in question immediately before N2 (e.g. determining complaints, where appropriate, according to strict legal criteria, rather than on a ‘fair and reasonable’ basis);
 - the FOS Ombudsman’s ability to make awards or issue directions will be limited to awards or directions that could have been made or issued under the relevant former scheme (including the existing limits on awards and the availability or otherwise of costs awards); and
 - the awards will be binding on one or both parties only to the extent that they would have been under the relevant former scheme.

2.14 An exception to the above is made in the case of complaints about IMRO firms, which, prior to N2, have been subject to awards by the Investment Ombudsman under the IMRO scheme. This is because, whilst in theory binding awards can only be made under the IMRO scheme where these have been subject to ‘adjudication’, in practice, adjudication has not proved necessary. Virtually all complaints have been determined by the Investment Ombudsman on a ‘fair and reasonable basis’ and the result has been binding on the firm if the complainant accepted it. The draft Order therefore preserves this situation by providing for such complaints to be determined in accordance with the new scheme procedures.

2.15 In addition, the draft Order makes special provision for:-

- complaints under **the FSA scheme** which have been submitted to arbitration before N2 to continue to be dealt with under the terms already agreed. However, determinations under the FOS scheme relating to complaints which have not been submitted to arbitration by N2 will not be binding on either party;
- complaints under **the SFA scheme** which, prior to N2, either have been or could have been submitted to arbitration under the Consumer Arbitration Scheme (but not under the Full Arbitration Scheme) to be determined in a way which is binding on both parties;
- complaints under the IMRO scheme where adjudication has begun or been offered prior to N2 to be completed under the relevant provisions of the IMRO scheme, so far as practicable, with references to the Investment Ombudsman being read as references to the FOS Ltd;
- complaints under the Building Societies Ombudsman Scheme which are subject to arbitration at N2 to be determined in a way which is binding on the parties to the extent provided for under the terms of the arbitration; and
- building societies to retain the right to exercise the so-called ‘publicity option’⁴ as an alternative to complying with the Ombudsman’s award in respect of ‘*relevant existing complaints*’.

2.16 The draft Order also preserves (in relation to *relevant existing complaints* only):

- the rights of appeal under the SFA scheme, where a complaint which has been determined by an arbitrator prior to N2 is the subject of either an appeal or an application for leave to appeal, or is capable of being the subject of an application for leave to appeal, so that the relevant provisions of that scheme will continue to apply so far as practicable; and

⁴ Under the current Building Societies Ombudsman Scheme a society may be relieved of its obligation to comply with the Ombudsman’s determination if it complies instead with conditions as to the giving of notice of its reasons for non-fulfilment of those obligations set by the Ombudsman (the so-called ‘publicity option’).

- the right, under the Building Societies legislation, to state a case for the opinion of the High Court or Court of Session, where, prior to N2, a complaint has been determined by the Building Societies Ombudsman Scheme and a case has either been stated – or was capable of being stated – with respect to that determination.

(These provisions are reflected in new DISP App 1, which is described in Chapter 3.)

Relevant New Complaints

2.17 In contrast to this, the Treasury proposes that *relevant new complaints* should be dealt with by the FOS in accordance with the new scheme rules. This means that :

- access to the new scheme would depend on the eligibility criteria of the new scheme, rather than those of the former scheme; and
- the complaint would be determined in accordance with the new FOS procedures and the criteria laid down in the FSMA for determining complaints falling within the Compulsory Jurisdiction (including the new criteria for determining complaints, the remedies available and the extent to which the determination is binding).

2.18 However, the draft Order does contain 3 additional safeguards in respect of *relevant new complaints* as follows:-

- Article 3(3) allows the Ombudsman to treat as eligible any complainants who would have been eligible under the rules of the relevant former scheme, even if they would not be eligible under the new scheme's eligibility rules;
- Article 5 requires the Ombudsman, in determining whether a *relevant new complaint* should be dismissed without considering its merits, to take into account whether an equivalent complaint would have been so dismissed under the relevant former scheme, as it had effect immediately before N2; and
- Article 7(2) requires the FOS Ombudsman, in determining in relation to a *relevant new complaint* what is fair and reasonable and what amount (if any) constitutes fair compensation, to take into account:
 - what determination the former ombudsman might have been expected to reach; and
 - what amount (if any) might have been expected to be awarded by way of compensation, in relation to an equivalent complaint dealt with under the former scheme in question immediately before N2.

(These are reflected in new guidance notes at DISP 2.4.14G, DISP 3.3.2G and DISP 3.8.2G respectively, which are described in Chapter 3.)

- 2.19 Whilst the eligibility criteria of the new scheme are generally more generous than those of the former schemes, the first of these safeguards is designed to ensure that consumers are not disenfranchised as a result of the transition to the new scheme. The Treasury recognises, in its consultation paper, that this could result in firms' being subject to the FOS in respect of some complaints which could not have been considered by a former scheme (e.g. insurance-related complaints from small businesses). It does not believe the effects of these changes will be significant, but has invited views on whether or not this is the case. The other two safeguards are designed, in the interests of fairness, to ensure that the FOS Ombudsman takes into account how a similar complaint would have been handled under the relevant former scheme.
- 2.20 It should be noted that, under the Treasury's proposals, all complaints which could have been dealt with under a former scheme immediately before N2 (whether compulsory or voluntary) would be classed as *relevant new complaints* and could be handled by the FOS (including complaints against firms which do not become authorised by the FSA at N2). This is because it is not practicable, if the current schemes are to cease to operate at N2, to maintain the link that currently exists between membership of the current schemes and the scope of the ombudsman's jurisdiction to deal with relevant complaints. By looking instead to whether a complaint could have been dealt with under a former scheme *immediately before N2*, the draft Order aims to ensure that consumers do not lose their access to a dispute-resolution service as a result of the transition to the new scheme.

Procedures applying to all 'relevant complaints'

- 2.21 The draft Order extends the scope of the FSA's rule-making power under paragraph 13(4) of the FSMA (relating to the maintenance of complaints procedures by firms) in order to allow us to require authorised firms to establish procedures for resolving 'relevant complaints', as well as post N2 complaints. **The FSA therefore proposes to extend the application of the rules in DISP 1 to all 'relevant complaints', subject to the time limit exceptions referred to in paragraph 2.24 below.**

Time Limits

- 2.22 The general effect of the draft Order is that the eligibility of a **relevant complaint** (whether existing or new) will depend on whether it could have been handled by a former scheme. However, the Order proposes that the new time limits imposed by the FSA under paragraph 13 of Schedule 17 to the FSMA for bringing a complaint to the scheme (see DISP 2.3.1R) should apply

to both types of ‘relevant complaint’, rather than those which applied under the relevant former scheme.

- 2.23 Even though this may sometimes mean that a relevant complaint which would otherwise have been out of time will qualify for consideration by the FOS under the Order, it is felt that a single set of time limits will be more straightforward for both firms and consumers to understand and should be achieved as soon as possible.
- 2.24 However, in order to guard against the possibility that some consumers might be disenfranchised by this provision, the draft Order provides that where the new time limit is shorter than the time limit which would have applied under the former scheme, then for the first 12 months after N2 in the case of *relevant new complaints* and for all *relevant existing complaints*, the old time limit will continue to apply. **We have inserted a new guidance note (at DISP 2.3.2G and in DISP App 1.4.1G) to take account of this.**

Funding

- 2.25 The draft Treasury Order also extends the FSA’s and FOS’s funding powers to enable the funding rules to cover the cost of handling ‘relevant complaints’. Consultation on the draft funding rules in CP74 (which will not come into force until April 2002) finished earlier this year and we will be issuing a Policy Statement, together with ‘final rules’, as soon as the FSA fee-blocks (which we propose to mirror) have been finalised.
- 2.26 **In the light of the additional powers contained in the draft Order, we propose to extend the FSA’s general levy rules and the definition of ‘chargeable case’ in the FOS’s case fee rules in DISP 5 to make it clear that these funding rules also cover ‘relevant complaints’.**

Information

- 2.27 The draft Order enables information held by those responsible for the operation of a former scheme in connection with the operation of that scheme to be passed to the FOS or to an Ombudsman appointed by the FOS, without contravening any restriction on disclosure of the information (imposed by statute or otherwise) to which the persons responsible for the former schemes are subject. However, it provides that the FOS will, thereafter, be deemed to be subject to the same restrictions (and exceptions) as would have applied to the persons previously responsible for each of the former schemes. This has been reflected in a new guidance note at DISP 3.10.2G.
- 2.28 The following chapter sets out the amendments which we propose to make to the rules.

3 Proposed amendments/additions to *DISP* Rules

- 3.1 This chapter summarises the amendments to the *DISP* rules which we propose to make in the light of the Treasury’s proposed transitional arrangements, as set out in its draft Order. We also set out, in the last section of this chapter, a few additional amendments which we propose to make to take account of certain queries which we have received on the *DISP* rules since the Policy Statement on CP49 was published in December and a few developments elsewhere in the Handbook. These are highlighted in the revised rules text at Annex A. (References to rule numbers are to the revised rule numbers; these will not always be the same as those in the December Policy Statement.

Transitional Provisions

- 3.2 In the interests of keeping the rules as simple and accessible as possible, we have adopted a different approach in respect of ‘*relevant new complaints*’ and ‘*relevant existing complaints*’. *Relevant new complaints* are covered in the main body of the rules, whereas *relevant existing complaints* are covered in an Appendix, with cross references to the main rules where appropriate.
- 3.3 We believe that this makes good sense for two main reasons:-
- (i) *relevant new complaints* will, for the most part, be handled in the same way as complaints which are received after N2 and relate to post-N2 events, whereas *relevant existing complaints* will have to be handled differently in a significant number of respects, which would result in very complex rules; and
 - (ii) the requirements relating to *relevant existing complaints* will have a relatively short life span, since the need for them will fall away once the FOS has completed the cases it inherits from the former schemes at N2, whereas the FOS can expect to continue to receive and have to deal with *relevant new complaints* for several years after N2.

- 3.4 The proposed approach allows us to maintain the clarity of the rules and also means that the Appendix covering *relevant existing complaints* can be dropped after the last complaint inherited from the former schemes has been completed.
- 3.5 The proposed changes arising from the Treasury draft Order are summarised below.

Introduction

The Introduction to the Complaints Sourcebook has been expanded to explain the effect of the draft Treasury Order.

DISP1 – Complaint handling procedures for firms

New DISP 1.1.3R makes it clear that the rules apply to *relevant new complaints* in the same way as to post N2 complaints, unless specified otherwise.

New DISP 1.4.6R has been added to make it clear that a firm must send the complainant, as soon as possible after N2, a response which satisfies the requirements in either DISP 1.4.5R (1) or (2) where, at N2, 8 weeks have already elapsed since the firm received the complaint, and the complaint remains unresolved and could be handled by the FOS as a *relevant new complaint*. (This means that a firm must either send a ‘final response’ letter or explain why it cannot do so and notify the complainant of his right to refer the complaint to the FOS at N2 in respect of all such complaints.)

New DISP 1.5.8 G cross refers to new Transitional Provision 2R relating to the reporting requirement in DISP 1.5.4R (see section on Transitional Schedule below).

DISP 2 – Jurisdiction of the Financial Ombudsman Service

New DISP 2.1.3G has been added to make it clear that references in this chapter to a ‘complaint’ under the Compulsory Jurisdiction include *relevant new complaints*. (This is a guidance note rather than a rule because, unlike DISP 1, this is achieved directly via the Treasury Order.)

DISP 2.2.1G (which sets out the conditions which must be met before a complaint can be dealt with by the FOS) has been amended to indicate that these conditions have been modified in respect of *relevant new complaints* by the Order (as described in new DISP 2.2.2G).

New DISP 2.2.2G describes the circumstances in which (subject to certain modifications) the Compulsory Jurisdiction applies to *relevant new complaints* as a result of the Treasury Order.

DISP 2.3.1 R (1) and (2) have been amended to take account of the provisions on time limits relating to *relevant new complaints* contained in the Treasury Order.

New DISP 2.3.2G explains that the time limits for bringing a complaint to the FOS set out in DISP2.3.1R(1) (b) and (c) do not apply where the Treasury Order requires the Ombudsman to extend them in respect of a *relevant new complaint* made not later than 12 months after N2 so that the time limit is the same as the time limit which would have applied under the relevant former scheme immediately before N2.

New DISP 2.4.14G cross refers to article 3(3) of the Order, which allows the Ombudsman, in relation to a *relevant new complaint*, to treat as eligible a complainant who would have been eligible under a former scheme, but not under the new FOS rules, if he considers it appropriate to do so.

New DISP 2.6.3 R cross refers to Article 3 of the Order, which sets out the circumstances in which the FOS can consider a *relevant new complaint* under the Compulsory Jurisdiction.

DISP 3 – Complaint handling Procedures of FOS

New DISP 3.1.4R has been inserted to make it clear that references in DISP 3 to a ‘complaint’ include a *relevant new complaint*, unless otherwise specified.

New DISP 3.1.5G notes that, under the Order, *relevant new complaints* are to be determined in accordance with the FOS requirements, with some specified exceptions.

New DISP 3.2.2G cross refers to the different criteria which the Ombudsman is required, under the Order, to take into account in deciding whether or not a *relevant new complaint* falls within the scheme’s jurisdiction.

New DISP 3.3.2G cross refers to article 5(2)(b) of the Order which requires the Ombudsman to take into account, in dealing with a *relevant new complaint*, whether an equivalent complaint would have been dismissed without consideration of its merits under the relevant former scheme.

New DISP 3.8.2G and **new DISP 3.9.4G** cross refer to the Ombudsman’s obligation, under the Order, to take into account, in determining a *relevant new complaint*, what determination an ombudsman in a former scheme might have reached and what amount of compensation (if any) he might have awarded.

New DISP 3.10.2G cross refers to the circumstances in which information from the former schemes can be transferred to the FOS under article 11 of the Order and the subsequent handling requirements.

New DISP App 1 on Relevant Existing Complaints

New DISP App1 sets out how the FOS must handle the partly completed complaints which it inherits from the former schemes at N2. DISP App. 1.1.1R to 1.1.2R define the scope of the appendix and provide that DISP 1 to 5 apply in respect of *relevant existing complaints*, except as stated in the appendix. The remainder of the appendix consists of guidance, which describes the ways in which the draft Treasury Order requires the FOS Ombudsman to treat *relevant existing complaints* differently from other complaints subject to DISP 1 to 5 (as described in Chapter 2 above).

DISP 5 – Funding Rules

As noted in Chapter 2, we propose to extend DISP 5 (on which we consulted in draft earlier this year)¹ to make it clear that the general levy rules include the cost of handling ‘relevant complaints’ and to extend the definition of ‘chargeable case’ in the case fee rules to include ‘relevant complaints’. (We aim to publish these rules in September.)

Transitionals Schedule

- 3.6 We have added four new transitional provisions to the Transitional schedule at the front of the rules, making five altogether. These are summarised below.

Transitional Provision 1R (contained in December Policy Statement) postpones the coming into force of the reporting requirements in DISP 1.5.4R to 1.5.7R until 1 April 2002.

Transitional Provision 2R requires firms to include, in their first 6-monthly report to the FSA under DISP 1.5.4R (in respect of the April – September 2002 reporting period) the total number of complaints subject to DISP 1.4 to 1.7 which they have received but not resolved at the start of that reporting period (i.e. the outstanding balance of unresolved complaints as at 1 April 2002). This information is required in addition to the information required under DISP 1.5.4R and should include complaints capable of being handled under the FOS as *relevant new complaints*.

Transitional Provision 3G explains the effect of Transitional Provision 2R. In particular, it makes it clear that firms are not required to provide a breakdown by category code or generic product type of the number required under Transitional Provision 2R (ie the number of unresolved complaints carried forward at 1 April 2002). However, they must do so in respect of complaints received during the 1 April – 30 September 2002 reporting period and in respect of all subsequent reporting periods, as required under DISP 1.5.4R.

1 CP74: Funding the Financial Ombudsman Service. (November 2000).

Transitional Provision 4R provides that an ‘expert private customer’ who is treated as an *intermediate customer* during the transitional period defined in the COB transitional rules, will, nevertheless, be treated as an eligible complainant, provided that the other conditions in DISP 2.4 are met.

Transitional Provision 5R simply cross refers to the new DISP Appendix 1, which sets out the ways in which *relevant existing complaints* are to be handled under the FOS.

Definitions

We have also added some new definitions to the Glossary. These are listed at Annex B. Where the Treasury Order uses different terminology for a concept already defined in the Handbook Glossary, we have amended the Glossary (and rule) to bring these into line. For example, ‘predecessor scheme’ has been changed to ‘former scheme’ and the names used to refer to the various former schemes have been brought into line with those used in the Treasury Order.

Other Proposed Amendments

- 3.7 In addition to the above changes relating to the proposed transitional arrangements, we also propose to make the following amendments to take account of recent developments elsewhere in the Handbook and some queries received from firms since the final rules were published.

Introduction References to the ‘scheme operator’ have been replaced with references to ‘FOS Ltd’.

DISP 1.1.1R – New DISP 1.1.1R (3) has been inserted to make it clear that DISP 1 does not apply to an authorised professional firm insofar as its ‘non-mainstream regulated activities’ are concerned and new DISP 1.1.1R(4) has been added to explain how DISP 1 applies to the Society of Lloyd’s and members of the Society of Lloyd’s respectively.

DISP 1.1.7R ‘Financial year’ has now been italicised to make it clear that this is a defined term, which relates to the period from 1 April to 31 March, and the wording of DISP 1.1.7R has been slightly modified to clarify its meaning.

DISP 1.2.22G has been inserted to refer to the FSA’s endowment mortgage guidance,² which will be attached, in due course, as DISP Appendix 2.

DISP 1.4.1R The word ‘business’ has been inserted in line 2 to make it clear that firms must send an acknowledgement within five *business* days of receiving a complaint.

² See the FSA’s recent Policy Statement: ‘Endowment Mortgage Complaints: Feedback on CP75 and ‘final’ text.’ (May 2001).

DISP 1.4.12R to DISP 1.4.14G have been added to make special provision for complaints which are subject to the 'FSAVC Review'.³ Under current PIA rules, where a complaint is subject to this review, firms are required to inform the complainant of his right to go to the PIA Ombudsman on completion of the review, rather than within 8 weeks of receiving the complaint. The new provisions continue this arrangement after N2.

DISP 1.5.4R (2) has been amended to make its meaning clearer. In particular, the revised drafting aims to make it clear that:

- the reporting requirements in DISP 1.5.4R (1)(2) and (3) apply only to complaints which are subject to DISP 1.4 to 1.7 (including complaints about pre-N2 business, which are capable of being referred to the FOS);
- the requirement to provide a breakdown by category code and generic product type in DISP 1.5.4(1) relates to complaints subject to DISP 1.4 to 1.7 which are received by firms in the relevant reporting period.
- the requirements in DISP 1.5.4R(2) and (3) simply require firms to indicate the total number of complaints closed during the reporting period within each of the time-frames specified and the total number of complaints outstanding at the end of the reporting period. (Unlike the figures required under DISP 1.5.4(1), these figures do not have to be broken down by category code and product type.)
- the time-scales in DISP 1.5.4R(2) (a) and (b) are mutually exclusive. **We have also inserted, for the sake of completeness, a new provision at DISP 1.5.4R(2)(c) requiring firms to indicate the number of complaints closed more than 8 weeks after receipt.**

(As noted at paragraph 3.6, Transitional Provision 1R postpones the commencement of the reporting requirement in DISP 1.5.4R until April 2002. Transitional Provision 2R requires firms to include in their first 6 monthly report to the FSA, (in addition to the information required under DISP 1.5.4R) the total number of unresolved complaints subject to DISP 1.4 to 1.7 at the start of that period (i.e. at 1 April 2002).

DISP 1.5.7R The current rule allows a firm to count a complaint as 'closed' for the purposes of the reporting requirement in DISP 1.5.4R only where it has sent a 'final response' (as defined). In response to queries, we have amended this rule to cater for the fact that (a) some complainants may accept a firm's offer before a 'final response' is sent out; and (b) some complainants may never respond to a firm. **The amended rule therefore also allows firms to count a complaint as closed for reporting purposes where:**

³ See FSA's Policy Statement for the review of specific categories of FSAVC business issued by the FSA on 28 February 2000.

- the complainant has positively indicated his acceptance of the firm's earlier response; or
- where the complainant has failed to respond to the firm within 8 weeks of the firm's most recent letter.

DISP 1.5.9G has been added to remind firms that the record-keeping and reporting requirements in DISP 1.5 apply to complaints which are subject to the FSAVC review only where the complainant is dissatisfied with the outcome of the review.

DISP 1.7 has been extended to clarify the respective responsibilities of the Society of Lloyd's and members of the Society of Lloyd's in complying with DISP 1. These amendments simply ensure that the original policy is achieved.

DISP 1 Ann R In response to queries from firms, we have extended the description of two of the codes in DISP1 Ann R and added one new code, as follows:

- The 'churning' category code now relates to 'Switching / Churning'; and
- The generic product type category code relating to 'Unit trusts' now includes OEICS; and
- An additional generic product type code for 'investment bonds' has been inserted.

DISP 2.4.3R(2)(a) has been slightly amended to read 'who is an intermediate customer or market counterparty' (rather than 'properly classified as') to fit with the customer classification provisions in COB.

DISP 2.5.3G has been extended to explain how, in certain circumstances, certain obligations under DISP 1 must be complied with by the Society of Lloyd's on behalf of its members.

DISP 2.6.7R has been amended in line with revised definitions elsewhere in the Handbook. (This makes it clear that a complaint about an *authorised professional firm* cannot be handled under the Compulsory Jurisdiction of the FOS if it relates solely to *non-mainstream regulated activity* and can be handled by a *designated professional body*.)

DISP 3.2.12R has been amended to make it clear that the parties will be informed of their right to make representations before the Ombudsman makes a determination. If the Ombudsman considers that the complaint can be fairly determined without convening a hearing, he will determine the complaint. If not, he will invite the parties to attend a hearing. No hearing will be held after the Ombudsman has determined the complaint.

- 3.8 Annex C explains why we think that these proposed amendments are most appropriate for the purpose of meeting our regulatory objectives. Most of

these changes arise as a result of the transitional arrangements which the Treasury proposes to make. Those which do not are designed either to clarify aspects of the rules published in December 2000 or to facilitate compliance with them and will, we believe, be welcomed.

- 3.9 **We do not believe that any of the amendments proposed here have significant cost implications for firms, but should welcome any comments which respondents may have on these proposed changes to the rules.**

Amended *DISP* Rules

COMPLAINTS SOURCEBOOK

DISPUTE RESOLUTION: COMPLAINTS

Introduction

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 (*FOS Ltd*).

This module of the *FSA Handbook* contains the rules and guidance 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 *FOS Ltd*, with those rules written by the *FOS Ltd* being subject to approval by, or the consent of, the *FSA*.

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

- (a) The *Compulsory Jurisdiction* covers *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* can cover financial services activities not included in the *Compulsory Jurisdiction*. Both *firms* and unauthorised *firms* can participate in the *Voluntary Jurisdiction* by contractual agreement with the *FOS Ltd* (in accordance with the *Standard Terms* – see below) and are known as *VJ participants*.

Although the authority to make the rules relating to the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction* derives from different sections of the *Act*, the provisions have been co-ordinated to ensure that, wherever possible, they are identical.

Chapter 1: Complaint handling procedures for firms

These rules set out the complaint handling procedures which *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 s138 of the *Act* and paragraph 13 of Schedule 17 to the *Act*. These rules, with some exceptions, are applied to *VJ participants* by contract via the *Standard Terms* set by the *FOS Ltd* (Chapter 4).

Chapter 2: Jurisdiction rules

These rules set out the scope of the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*. They specify who can refer a complaint to the *Financial Ombudsman Service* and the time limits for doing so, as well as which activities are covered by the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction*. The rules also set out the territorial scope of the *Financial Ombudsman Service*. They are relevant to consumers who may wish to refer complaints to the *Financial Ombudsman Service*; to firms which are subject to the *Compulsory Jurisdiction*, to *VJ participants* and to the *Ombudsman* himself. The rules relating to the scope of the *Compulsory Jurisdiction* are made by the *FSA* (under s226 of the *Act*); the rules relating to the scope of the *Voluntary Jurisdiction* are made by the *FOS Ltd*, with *FSA* approval (under s227). The rules relating to the time limits for referring a complaint to the *Financial Ombudsman Service* are made by the *FSA* under paragraph 13 of Schedule 17 to the *Act* and are applied to *VJ participants* by contract via the *Standard Terms* set by the *FOS Ltd*.

Chapter 3: Complaint handling procedures of the Financial Ombudsman Service

These rules apply to the *Ombudsman*, to firms and are also relevant to complainants. They set out how the *FOS Ltd* and, in particular, the *Ombudsman* will handle complaints under the *Financial Ombudsman Service*. For the purposes of the *Compulsory Jurisdiction*, they comprise the scheme rules and the costs rules (made by the *FOS Ltd*, with *FSA* consent or approval, under paragraph 14 of Schedule 17 and s230 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 (s229). These procedural rules are applied to *VJ participants* via the *Standard Terms*.

Chapter 4: The Standard Terms

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

Appendix 1: Relevant Existing Complaints

The *Ombudsman Transitional Order*, [made] by HM Treasury under s.426-428 of the *Act*, extends the scope of the *Financial Ombudsman Service* to enable it to deal with complaints about pre-commencement business where these could have been handled by a former scheme ("relevant complaints") and makes special provision for the handling of these complaints.

It distinguishes between:

- (a) relevant existing complaints (ie partly completed complaints under former schemes) (see article 2 of the *Ombudsman Transitional Order*); and
- (b) relevant new complaints (ie complaints made after commencement which relate to a pre-commencement act or omission, in respect of which the firm was, immediately before commencement, subject to a former scheme) (see article 3 of the *Ombudsman Transitional Order*).

The Order enables the FOS Ltd, with only a few exceptions, to handle *relevant new complaints* in accordance with its new procedures, as set out in DISP 1 to 5 and these are covered in the main body of the DISP rules. Except as otherwise indicated, the term "complaint" in DISP 1 to 5 therefore includes a *relevant new complaint*.

However, the *Ombudsman Transitional Order* makes different provision for the handling of *relevant existing complaints* (ie partly completed complaints under the *former schemes at commencement*). These complaints will be passed over to the *Financial Ombudsman Service* by the *former schemes at commencement* and the *Ombudsman Transitional Order* requires the FOS Ltd to complete the handling of these cases, but it provides that the *Financial Ombudsman Service* must do this, in a significant number of respects, in accordance with the procedures of the relevant *former scheme*. The arrangements for dealing with these complaints are set out in DISP App 1. This describes the ways in which *relevant existing complaints* must be treated differently from the other complaints under the *Financial Ombudsman Service*, but cross refers to the provisions in DISP 1 to 5, where appropriate.

[Appendix 2: FSA's guidance on handling mortgage endowment complaints]

Complaints Handling Procedures for Firms

Schedule 4

Transitional Provisions

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	<i>DISP</i> 1.5.4R – 1.5.7R	R	<i>DISP</i> 1.5.4R – <i>DISP</i> 1.5.7R do not apply until 1 April 2002	<i>Commencement day</i> - 01.04.02	<i>Commencement day</i>
<u>2</u>	<u><i>DISP</i> 1.5.4R-1.5.7R</u>	<u>R</u>	<u><i>Firms</i> must also include, in the first report which they submit to the <i>FSA</i> in respect of the 1 April 2002 – 30 September 2002 reporting period the total number of reportable complaints (ie complaints subject to <i>DISP</i> 1.4 to 1.7) which they have received but not resolved at the beginning of that reporting period (including complaints which are capable of being handled by the <i>FOS Ltd</i> as <i>relevant new complaints</i> by virtue of the <i>Ombudsman Transitional Order</i></u>	<u><i>Commencement day</i> - 31.10.02</u>	<u><i>Commencement day</i></u>
<u>3</u>	<u><i>DISP</i> 1.5.4R - 1.5.7R</u>	<u>G</u>	<u>Transitional Provision 2R requires <i>firms</i>, in addition to complying with the reporting requirements in <i>DISP</i> 1.5.4R, to include in their first report under <i>DISP</i> 1.5.4R, the total number of complaints subject to <i>DISP</i> 1.4 to 1.7 which remain unresolved at the beginning of that reporting period (ie on 1 April 2002). This will enable the <i>FSA</i> to know how many complaints were carried forward into the first reporting period. (<i>Firms</i> are not required to provide a breakdown by category code or generic product type of the complaints carried forward at 1 April 2002, but must do so in respect of complaints received during the 1 April to 30 September 2002 reporting period and in respect of subsequent reporting periods.)</u>	<u><i>Commencement day</i> - 31.10.02</u>	<u><i>Commencement day</i></u>

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
4	<u>DISP 2.4.3</u>	<u>R</u>	<u>An expert private customer who is being treated as an intermediate customer during the transitional period (as set out in the COB Transitional Rules) will be an eligible complainant for DISP purposes, provided the conditions in DISP 2.4 are met.</u>	<u>Commencement day - 30.06.02</u>	<u>Commencement day</u>
5	<u>DISP APP 1</u>	<u>G</u>	<u>The Ombudsman Transitional Order makes separate provision for the handling of “relevant existing complaints” (ie partly completed complaints under the former schemes at commencement). The arrangements for handling these complaints are set out in DISP App 1.</u>	<u>Commencement day –</u>	<u>Commencement day</u>

1. Complaint handling procedures for firms

1.1 Application and Purpose

APPLICATION

- 1.1.1 R This chapter applies to every *firm* in respect of activities carried on from an establishment maintained by the *firm* (or its *appointed representative*) in the *United Kingdom*, except:
- (1) a *firm* that is exempt under *DISP* 1.1.6R; or
 - (2) a *UCITS* *qualifier*; or
 - (3) an authorised professional firm insofar as its non-mainstream regulated activities are concerned; or
 - (4) in relation to the Society of Lloyd's and members of the Society, DISP 1 applies subject to DISP 1.7.
- 1.1.2 G It is also relevant to those who might wish to refer a complaint to the *Financial Ombudsman Service*.
- 1.1.3 R Except as otherwise specified, references to a "complaint" in this chapter include a complaint which is capable of becoming a "relevant new complaint".
- 1.1.4 G *Firms* are responsible for ensuring their *appointed representatives'* compliance with *DISP* 1.
- 1.1.5 G *VJ participants* are subject to *DISP* 1, except *DISP* 1.1.3 R and *DISP* 1.5 (record keeping and reporting), by contract under the *Standard Terms* (see *DISP* 4). *DISP* 1.2 applies only in relation to complaints about activities of the *VJ participant* specified in *DISP* 2.6.9R.

EXEMPTION

- 1.1.6 R A *firm* which does not conduct business with *eligible complainants* and has no reasonable likelihood of doing so is exempt from *DISP* 1.2 – *DISP* 1.7 to the extent that it notifies the *FSA* of this fact and that notice remains current.
- 1.1.7 R A notice under *DISP* 1.1.6R must be given:
- (1) within one month of the *commencement day*, in which case it will remain current until the end of the *financial year* in which it is given; or
 - (2) at as soon as practicable after the time of its authorisation by the *FSA*, in which case it will remain current until the end of the *financial year* in which it is given; or

- (3) ~~at~~ **as soon as practicable after the point when** it ceases to conduct business with *eligible complainants*, in which case it will remain current until the end of the *financial year* in which it is given; or
- (4) ~~no later than one month before the start of a~~ **in February of each financial year**, in which case it will remain current until the end of the **next financial year**. ~~after that in which it is given.~~

1.1.8 G A notice under *DISP* 1.1.6R will be renewable every 12 months.

END OF EXEMPTION

1.1.9 R **A firm which is exempt under *DISP* 1.1.6R must notify the FSA if the conditions in *DISP* 1.1.6R no longer apply.**

1.1.10 R **A firm to which the conditions in *DISP* 1.1.6R no longer apply will then become subject to *DISP* 1.2 – *DISP* 1.7.**

PURPOSE

1.1.11 G The purpose of this chapter is to set out the rules relating to the internal handling of complaints by *firms*, including the procedures which a *firm* must put in place; the time limits within which a *firm* must deal with a complaint; the records of a complaint which a *firm* must make and retain; and the requirements on a *firm* to report information about complaints to the *FSA*. This is to ensure that complaints are handled fairly, effectively and promptly, and resolved at the earliest possible opportunity, thereby minimising the number of unresolved complaints which need to be referred to the *Financial Ombudsman Service*. This purpose is consistent with the *FSA's* consumer protection statutory objective.

1.2 Internal complaint handling procedures: general requirements

1.2.1 R **A firm must have in place and operate appropriate and effective internal complaint handling procedures (which must be written down) for handling any expression of dissatisfaction, whether oral or written, and whether justified or not, from or on behalf of an *eligible complainant* about that firm's provision of, or failure to provide, a financial services activity.**

1.2.2 G An *eligible complainant* is a person who would be eligible to refer a complaint to the *Financial Ombudsman Service* defined in *DISP* 2.4.

1.2.3 G *Firms* are not obliged to restrict their internal complaint handling procedures to expressions of dissatisfaction from *eligible complainants*. They may, if they wish, also establish procedures for handling complaints from other customers.

1.2.4 G The internal complaint handling procedures should provide for:

- (1) receiving complaints;
- (2) responding to complaints;

- (3) the appropriate investigation of complaints; and
 - (4) notifying complainants of their right to go to the *Financial Ombudsman Service* where relevant.
- 1.2.5 G When deciding what constitutes an appropriate complaint handling procedure (see *DISP* 1.2.1R), a *firm* should have regard to:
- (1) the type of business it undertakes;
 - (2) its size and organisational structure;
 - (3) the nature and complexity of the complaints it is likely to receive; and
 - (4) the likely number of complaints it will receive and have to investigate.
- 1.2.6 G *DISP* 1.2.1R does not prevent the use of a third party administrator for the purposes of handling complaints.
- 1.2.7 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*.
- 1.2.8 R A *firm* must:**
- (1) refer in writing to the availability of its internal complaint handling procedures at, or immediately after, the point of sale;**
 - (2) publish details of its internal complaint handling procedures, supply a copy on request and supply a copy automatically to the complainant when it receives a complaint (unless the complaint is resolved by close of business on the next business day); and**
 - (3) display in each of its branches or sales offices to which *eligible complainants* have access a notice indicating that it is covered by the *Financial Ombudsman Service*.**
- 1.2.9 G In order to comply with *DISP* 1.2.8 (1), a *firm* may include reference to its complaint handling procedures in contractual documentation, for example, (where the *firm* is subject to the requirements in *COB*) in a *terms of business* letter, *key features* document or customer agreement.
- 1.2.10 G Where a complaint is also subject to the more detailed requirements in *DISP* 1.3 - 1.7, the *firm* may send out a copy of its complaint handling procedures (as required under *DISP* 1.2.8R (2)) at the same time as the acknowledgement required under *DISP* 1.4.1R.
- 1.2.11 G For the purposes of satisfying *DISP* 1.2.8R(2) a *firm* may wish to produce a leaflet which summarises its internal complaint handling procedures.
- 1.2.12 G A *firm* may also, if it wishes to do so, disclose the fact that it is covered by the *Financial Ombudsman Service* by including the *Financial Ombudsman Service* logo in any marketing literature or correspondence directed at *eligible complainants*, provided that it does so in a way which is not misleading.

- 1.2.13 R **A firm's internal complaint handling procedures under DISP 1.2.1R must make provision for:**
- (1) **complaints to be investigated by an employee of sufficient competence who, where appropriate, was not directly involved in the matter which is the subject of the complaint;**
 - (2) **the person charged with responding to complaints to have the authority to settle complaints (including the offering of redress where appropriate) or to have ready access to someone who has the necessary authority; and**
 - (3) **responses to complaints to address adequately the subject matter of the complaint and, where a complaint is upheld, to offer appropriate redress.**
- 1.2.14 R **Where 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 and comply with any offer of redress which the complainant accepts.**
- 1.2.15 R **A firm must take reasonable steps to ensure that all relevant employees (including employees of appointed representatives) are aware of the firm's internal complaint handling procedures and must endeavour to ensure that they act in accordance with them.**
- 1.2.16 R **A firm must put in place appropriate management controls and take reasonable steps to ensure that in complying with DISP 1.2.1R 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.**
- 1.2.17 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).
- 1.2.18 G *Firms' correspondence and literature relating to complaints should be in clear and plain language.*
- 1.2.19 G The FSA will take account of the size and nature of the firm in applying DISP 1.2.
- 1.2.20 G In deciding whether or not to accept a complaint and what would be appropriate redress, firms may wish to consider any relevant guidance published by the FSA, the *Financial Ombudsman Service* or by any of the *former schemes*.
- 1.2.21 G Appropriate redress will not always involve financial redress. It may, for example, simply involve an apology. Where financial redress is deemed appropriate, it may include a reasonable rate of interest.
- 1.2.22 G The FSA's guidance on handling mortgage endowment complaints is at DISP App 2.

1.3 Internal complaint handling procedures: additional requirements

- 1.3.1 R **DISP 1.4 – DISP 1.7 do not apply:**
- (1) **where the *firm* has taken reasonable steps to determine, and has determined, that the complaint:**
 - (a) **is not made by, or on behalf of, an *eligible complainant*; or**
 - (b) **does not relate to an activity of that *firm* which comes under the jurisdiction of the *Financial Ombudsman Service*; or**
 - (c) **does not involve an allegation that the complainant has suffered, or may suffer, financial loss, material distress or material inconvenience; or**
 - (2) **where the complaint has been resolved by close of business on the business day following its receipt.**

1.3.2 G Financial loss includes consequential or prospective loss, in addition to actual loss. For example, a complaint may involve an allegation that the complainant may suffer financial loss which has not yet crystallised because of the type of product involved (eg pensions, endowments etc).

1.4 Time limits for dealing with a complaint

1.4.1 R **A *firm* must send a written acknowledgement of a complaint within five business days of its receipt, giving the name or job title of the person handling the complaint within the *firm* (together with details of the *firm*'s internal complaint handling procedures).**

1.4.2 G A *firm* which is able to provide a *final response* within five business days of receipt of a complaint may combine its acknowledgement of the complaint with the *final response*. (For complaints which are subject to the FSAVC review, see *DISP 1.4.12 to DISP 1.4.14*.)

1.4.3 G A *firm* should aim to resolve complaints at the earliest possible stage.

1.4.4 R **A *firm* must, within four weeks of receiving a complaint, send the complainant either:**

- (1) **a *final response*; or**
- (2) **a holding response, which explains why it is not yet in a position to resolve the complaint and indicates when the *firm* will make further contact (which must be within eight weeks of receipt of the complaint).**

1.4.5 R **By the end of eight weeks after its receipt of a complaint, the *firm* must send the complainant either:**

- (1) **a *final response*; or**
- (2) **a response which:**

- (a) explains that the *firm* is still not in a position to make a *final response*, gives reasons for the further delay and indicates when it expects to be able to provide a *final response*; and
- (b) informs the complainant that he may refer the complaint to the *Financial Ombudsman Service* if he is dissatisfied with the delay and encloses a copy of the *Financial Ombudsman Service's* explanatory leaflet.

1.4.6 R Where, at commencement,

- (1) a complaint remains unresolved; and
- (2) the complaint is capable of being handled by the *Financial Ombudsman Service* as a *relevant new complaint*; and
- (3) 8 weeks have already elapsed since receipt of the complaint.

the *firm* must send the complainant, as soon as possible after commencement, a response which satisfies either *DISP* 1.4.5R (1) or (2).

1.4.7 R When a *firm* sends a complainant its *final response*, the *final response* must:

- (1) inform the complainant that he may refer the complaint to the *Financial Ombudsman Service* if he is dissatisfied with the *final response* and that he must do so within 6 months; and
- (2) enclose a copy of the *Financial Ombudsman Service's* explanatory leaflet (unless it has already done so under *DISP* 1.4.5R(2)(b)).

1.4.8 G Copies of the *Financial Ombudsman Service's* explanatory leaflet may be reproduced under licence or can be obtained from the *Financial Ombudsman Service*.

1.4.9 G Under *DISP* 1.4.5R and *DISP* 1.4.7R:

- (1) 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 and has failed to do so in that time; the complainant may decide whether to give the *firm* more time before exercising any right he may have to refer a complaint to the *Financial Ombudsman Service*; and
- (2) the 6 month time limit within which a complainant must refer a complaint to the *Financial Ombudsman Service* begins at the date when the *final response* is sent by the *firm*.

- 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 1.4.1R – DISP 1.4.7R*. However, if a complainant, who is dissatisfied with the branch's response and has been told how to refer his complaint to the next stage (eg head office or central complaint department), takes more than a week to do so, the additional time in excess of a week will not count for the purposes of the eight week period in *DISP 1.4.5R*.
- 1.4.11 G The FSA expects that *firms* operating a two-tier internal complaint handling procedure will wish to provide customers with easy access to the second stage of the process (for example, by offering to refer complaints on to the next stage for them if they are dissatisfied).
- 1.4.12 R *DISP 1.4.1R, DISP 1.4.4R to 1.4.7R, DISP 1.4.10R and DISP 1.5.1R and DISP 1.5.4R do not apply where the complaint is subject to a review under the terms of the policy statement for the review of specific categories of FSAVC business issued by the FSA on 28 February 2000, and as subsequently modified by the FSA, the PIA or if relevant by another SRO.*
- 1.4.13 R Where *DISP 1.4.12R* applies, the *firm* must, if the complainant remains dissatisfied on completion of that review, treat that expression of dissatisfaction as a complaint and comply with *DISP 1.4.1R, DISP 1.4.4R to DISP 1.4.7R, DISP 1.4.10R, DISP 1.5.1R and DISP 1.5.4R.*
- 1.4.14 G The effect of *DISP 1.4.12R* is to relieve the *firm* of the obligation to comply with the requirements and time limits for replying to complainants, and the record-keeping and reporting requirements in *DISP 1.5.1R and DISP 1.5.4R* where a complaint is subject to the FSAVC review. However, if a complainant remains dissatisfied with the outcome of the review, *DISP 1.4.13R* requires the firm to treat this as a complaint and comply with these requirements just as it would in respect of any other complaint. *Firms* are therefore required to record and report such complaints only where they receive a complaint about the outcome of the review.

1.5 Record Keeping and Reporting

MAKING AND RETAINING RECORDS OF COMPLAINTS

- 1.5.1 R A *firm* must make and retain records of complaints subject to *DISP 1.4 – DISP 1.7* for a minimum period of three years from the date of its receipt of a complaint.
- 1.5.2 G The records required by *DISP 1.5.1R* are for the purposes of monitoring by the FSA and also to ensure that the *firm* is able to co-operate, as necessary, with the *Financial Ombudsman Service*. These should include:
- (1) the name of the complainant;
 - (2) the substance of the complaint; and
 - (3) any correspondence between the *firm* and the complainant, including details of any redress offered by the *firm*.

1.5.3 G *DISP* 4.2.3G covers record-keeping by *VJ* participants.

REPORTING COMPLAINTS TO THE FSA

1.5.4 R A *firm* 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 subject to *DISP* 1.4 – *DISP* 1.7 received by the *firm*, broken down according to the categories and in respect of each of the generic product types listed at *DISP* 1 Ann R which are relevant to the *firm*; and
- (2) the total number of complaints subject to *DISP* 1.4-1.7 closed by the *firm*:
 - (a) within four weeks or less of receipt; and
 - (b) within four to eight weeks of receipt; and
 - (c) more than eight weeks after receipt; and
- (3) the total number of complaints subject to *DISP* 1.4-1.7 outstanding at the end of the reporting period.

1.5.5 G Where a complaint could fall into more than one category, the complaint should be recorded against the category which the *firm* considers to form the main part of the complaint.

1.5.6 R For the purposes of *DISP* 1.5.4R:

- (1) the relevant reporting periods are from 1 April to 30 September and from 1 October to 31 March each year; and
- (2) reports are to be submitted to the *FSA* within one month of the end of the relevant reporting period.

1.5.7 R For the purpose of *DISP* 1.5.4R(2), a closed complaint is a complaint:

- (1) where the *firm* has sent a *final response*; or
- (2) where the complainant has positively indicated acceptance of the *firm's* earlier response; or
- (3) where the complainant has failed to revert to the *firm* within 8 weeks of the *firm's* most recent letter.

1.5.8 G Transitional Provision 2R relating to *DISP* 1.5.4R requires *firms* to include in the first report which they submit to the *FSA* after commencement, the total number of reportable complaints (ie complaints subject to *DISP* 1.4 to 1.7) which they have received but not yet resolved at the beginning of the reporting period (including complaints which are capable of being handled under the *Financial Ombudsman Service* as relevant new complaints by virtue of the *Ombudsman Transitional Order*).

- 1.5.9 G Where a complaint is subject to the FSAVC review, the record-keeping and reporting requirements in DISP 1.5.1R and DISP 1.5.4R apply only where the complainant is dissatisfied with the outcome of that review (by virtue of DISP 1.4.12R and DISP 1.4.13R).
- 1.5.10 G The address to which reports should be sent is:
 [Relevant Department]
 The FSA
 25 The North Colonnade
 Canary Wharf
 London
 E14 5HS
 e.mail: []
- 1.5.11 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 a single contact point within the firm for complainants and must notify the FSA of any subsequent change.**
- 1.5.12 G The contact point can be by name, job title or department(s) and may include, for example, a helpline telephone number.
- 1.6 Co-operation by firms with the Ombudsman**
- 1.6.1 R **A firm must co-operate fully with the Ombudsman in the handling of complaints against it.**
- 1.6.2 G Co-operation with the Ombudsman includes, but is not limited to, producing requested documents, adhering to any specified time limits, attending hearings when requested to do so and complying promptly with any settlements or awards.
- 1.7 The Society of Lloyd's**
- 1.7.1 R **The Society of Lloyd's must establish and maintain appropriate and effective procedures for handling complaints by policyholders against members of the Society, which comply with DISP 1.**
- 1.7.2 R **Members of the Society of Lloyd's must, in complying with DISP 1, ensure that the arrangements which the member maintains are compatible with the procedures maintained by the Society in accordance with DISP 1.7.1R, so that, taken as a whole, the requirements of DISP are met.**
- 1.7.3 R **The Society of Lloyd's must take reasonable steps to ensure that complaints by policyholders against members of the Society are dealt with under the procedures in DISP 1.7.1R and that members comply with the requirements of those procedures.**
- 1.7.4 R **A complaint by a policyholder against a member of the Society of Lloyd's may not be referred to the Financial Ombudsman Service until after the internal procedures in DISP 1.7.1R have been completed or until after the end of eight weeks from receipt of the complaint, whichever is the earlier.**

- 1.7.5** R **Notices under DISP 1.1.6R must be given to the FSA by the Society of Lloyd's on behalf of any member eligible for an exemption under that rule.**
- 1.7.6** R **The Society of Lloyd's must notify the FSA, in accordance with DISP 1.1.9R, if the conditions in DISP 1.1.6R no longer apply to a member who is exempt.**
- 1.7.7** R **The report in DISP 1.5.4R must be provided by the Society of Lloyd's and must cover all complaints by policyholders against members falling within the scope of DISP 1.5.4R**
- 1.7.8 G Each member of the *Society of Lloyd's* is individually subject to the rules in *DISP 1* as a result of the *insurance market direction* given in *LLD 6.2.1D* under section 316 of the *Act* (*Direction by Authority*).
- 1.7.9 G However, the *Society of Lloyd's* operates a two-tier internal complaints handling procedure, currently set out in the "*Code for Underwriting Agents: UK Personal Lines Claims and Complaints Handling*". Under this procedure, complaints by *policyholders* against *members* of the *Society* are considered by the *managing agent* and then, if necessary, by the *Society of Lloyd's* in-house Complaints Department. This procedure (and any procedure that may replace it) will be subject to the requirements in *DISP 1*.
- 1.7.10 G *Members* will individually comply with *DISP 1* if and only if all complaints by *policyholders* against *members* are dealt with under the internal procedure established by the *Society of Lloyd's* for handling those complaints, provided that this procedure complies with *DISP*. Accordingly, certain of the obligations under *DISP 1*, for example the obligation to report on complaints received and the obligation to pay fees under *DISP 5* must be complied with by the *Society* on behalf of *members*.
- 1.7.11** R **A *members' adviser* must establish and maintain effective arrangements for handling any complaint from a *member* of the *Society of Lloyd's* regarding advice given to the *member* in connection with the acquiring or disposing of syndicate participation.**
- 1.7.12 G Complaints from *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 *LLD* (the *Lloyd's Sourcebook*), for further information concerning complaints by *members* of the *Society of Lloyd's*.)

**DISP 1 Ann R (see DISP 1.5.4R)
Complaint Categories**

Firms are required to report the total number of complaints subject to DISP 1.4-1.7 received in respect of each of the generic product types listed, according to the categories below.

Generic Product Type*	
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Category	Total Number of Complaints	
	Private Individual	Small Businesses
Overcharging / incorrect charges		
Delay		
Other administrative errors		
Unsuitable or misleading advice		
Failure to carry out instructions		
Poor customer service		
Misleading advertising/product information		
Disputes over sums/amounts payable		
<u>Switching/Churning</u> (wrong advice to surrender one investment and take out)		
Breach of customer agreement or contract		
Other		
Total		

*Generic Product Types
Free Standing AVC
Personal Pension
Stakeholder Pension
Mortgage Endowment
Other Endowment
Whole of Life
Permanent Health
Term Assurance
PEP/ISA
Unit Trust/ <u>OEIC</u>
<u>Investment Bond</u>
Share/Derivative
Current Account
Deposit and savings accounts
Loan secured on land
Other Loans
General insurance – motor
General insurance – property
General insurance – other
Other

2 Jurisdiction of the Financial Ombudsman Service

2.1 Application and Purpose

APPLICATION

2.1.1 R This chapter applies to the *Ombudsman*, to *firms (except UCITS qualifiers)* and to *VJ participants*.

2.1.2 G It is also relevant to those who might wish to refer a complaint to the *Financial Ombudsman Service*.

2.1.3 G A reference in this chapter to a "complaint" under the *Compulsory Jurisdiction* includes a *relevant new complaint*.

PURPOSE

2.1.4 G The purpose of this chapter is to set out the rules which govern the scope of both the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*. They specify who may refer a complaint to the *Financial Ombudsman Service* and the time limits for doing so. They also set out which activities are covered by the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction* and the territorial scope of the *Financial Ombudsman Service*.

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

2.2.1 G Subject to the *Ombudsman Transitional Order* provisions described in *DISP 2.2.2G*, the following conditions will need to be satisfied before a complaint (other than a *relevant new complaint*) can be dealt with under the *Financial Ombudsman Service*:

- (1) the complainant must be an *eligible complainant* (see *DISP 2.4*);
- (2) the *firm* or *VJ participant* about which the complaint is made must be one which is subject to either the *Compulsory Jurisdiction* or the *Voluntary Jurisdiction*, as appropriate;
- (3) the activity to which the complaint relates must be subject to either the *Compulsory Jurisdiction* or the *Voluntary Jurisdiction*, as appropriate;
- (4) in relation to the *Compulsory Jurisdiction*, the act or omission complained of must have occurred at a time when the rules in *DISP 2* were in force, in relation to the activity being complained about;
- (5) the *firm* or *VJ participant* must have failed to resolve the complaint to the satisfaction of the complainant within eight weeks of receiving it; and
- (6) the *firm* or *VJ participant* about which the complaint is made must:
 - (a) in the case of the *Compulsory Jurisdiction*, have been authorised by the *FSA* 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* or a member of a *former scheme* at the time of the act or omission to which the complaint relates or have agreed to let the *Financial Ombudsman Service* consider such complaints and must not have withdrawn from being a *VJ participant* at the time when the complaint is referred to the *Financial Ombudsman Service*.

2.2.2 G Article 3 of the *Ombudsman Transitional Order* provides that (subject to certain modifications) the *Compulsory Jurisdiction* applies to a *relevant new complaint*, provided that:

- (1) the act or omission is that of a person who was, immediately before commencement, subject to a *former scheme*;
- (2) the act or omission occurred in the carrying on by that person of an activity to which that *former scheme* applied; and
- (3) the complainant is eligible and wishes to have the complaint dealt with under the new scheme.

For the purposes of (3) above, the *Ombudsman Transitional Order* enables the *Ombudsman*, if he considers it appropriate, to treat the complainant as eligible if he would have been entitled to make an equivalent complaint under the *former scheme* in question immediately before commencement.

The *Ombudsman Transitional Order* enables *relevant new complaints* to be handled, as far as possible, under the *Financial Ombudsman Service* procedures, but provides for the rules of the *former schemes* to apply or be taken into account in certain circumstances, as indicated in *DISP* 1, 2, 3 [and 5].

The *Ombudsman Transitional Order* makes separate provision for the treatment of *relevant existing complaints*, as described in *DISP* App 1.

2.2.3 G Under *DISP* 3.3.1R(1), the *Ombudsman* may dismiss a complaint without considering its merits if he is satisfied that the complainant has not suffered, or is unlikely to suffer, financial loss, material distress or material inconvenience.

2.3 Time Limits for referral of complaints to the Financial Ombudsman Service

- 2.3.1 R (1) **Except as described in *DISP* 2.3.1R (2) or as required under Article 4(2) of the *Ombudsman Transitional Order* (see *DISP* 2.3.2G), the *Ombudsman* will not entertain a complaint if the complainant refers it to the *Financial Ombudsman Service*:**
- (a) **less than eight weeks after receipt of the complaint by the *firm* or *VJ participant*, unless the *firm* or *VJ participant* has already sent the complainant its *final response*; or**
 - (b) **more than six months after the date on which the complainant is advised by the *firm* or *VJ participant* in its *final response* that he may refer his complaint to the *Financial Ombudsman Service*; or**

(c) more than six years after the event complained of or (if later) more than three years from the date on which he became aware (or ought reasonably to have become aware) that he had cause for complaint.

(2) The *Ombudsman* can consider complaints outside the time limits in (1)(b) or (c) only when, in his view, the failure to comply with the time limits was as a result of exceptional circumstances or where he is required to do so by the *Ombudsman Transitional Order*.

2.3.2 G In relation to *DISP* 2.3.1R (1)(b) and (c), article 4(2) of the *Ombudsman Transitional Order* requires an *Ombudsman* to extend the time limit in respect of a *relevant new complaint* made not later than twelve months after commencement so the time limit applying to the complaint is the same as that which would have applied under the *former scheme* in question as it had effect immediately before commencement.

2.3.3 R *DISP* 2.3.1R(1)(c) does not apply where:

(1) the time limit has been extended under a scheme for review of past business approved by H.M Treasury under section 404 of the Act (Schemes for reviewing past business); or

(2) the complaint concerns a contract or policy which is or may be the subject of a review under:

(a) the terms of the Statement of Policy on 'Pension Transfers and Opt-outs' issued by the FSA on 25 October 1994 and as subsequently modified by the *PIA* or if relevant by another SRO; or

(b) the terms of the policy statement for the review of specific categories of FSAVC business issued by the FSA on 28 February 2000 and as subsequently modified by the FSA, the *PIA* or if relevant by another SRO.

2.3.4 G For the purposes of *DISP* 2.3.1R(2), an example of an exceptional circumstance might be where the complainant has been or is incapacitated or where the *firm* or *VJ participant* has failed, in its *final response*, to inform the complainant that he may refer his complaint to the *Financial Ombudsman Service* or that he must do so within 6 months.

2.3.5 G Under *DISP* [5.6.1R] a *firm* or *VJ participant* is liable to pay a case fee in respect of *chargeable cases*. However, in some circumstances, the *Ombudsman* may conclude that a *firm* or *VJ participant* should have more time to resolve a complaint before a case fee is incurred (for example, 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* or *VJ participant* in the investigation of the complaint).

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 it is brought by or on behalf of an *eligible complainant*.

- 2.4.2 G *Eligible complainants* are those falling within one of the classes of person specified in *DISP* 2.4.3R; and
- (1) having a customer or potential customer relationship with a *firm* or *VJ participant* (as specified in *DISP* 2.4.7R and *DISP* 2.4.8R); or
 - (2) having an indirect relationship with a *firm* or *VJ participant* (as specified in *DISP* 2.4.10R).

CLASSES OF PERSON

- 2.4.3 R (1) Subject to (2), an *eligible complainant* is:
- (a) a private individual; or
 - (b) a business, which has a group annual turnover of less than £1million at the time the complainant refers the complaint to the *firm* or *VJ participant*; or
 - (c) a charity which has an annual income of less than £1million at the time the complainant refers the complaint to the *firm* or *VJ participant*; or
 - (d) a trustee of a trust which has a net asset value of less than £1million at the time the complainant refers the complaint to the *firm* or *VJ participant*;

and who satisfies the relevant criteria in *DISP* 2.4.7R – *DISP* 2.4.12R.

- (2) The following are not *eligible complainants* under (1):
- (a) an individual, business, charity or trustee who is an intermediate customer or market counterparty in relation to the *firm* in question at the time the complaint is made to the *firm* and in respect of the activity which is the subject of that complaint; and
 - (b) a *firm* or *VJ participant* whose 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 *Compulsory Jurisdiction* or the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.

- 2.4.4 G For the purposes of *DISP* 2, a business includes a *sole trader*, a company, an unincorporated body and a *partnership* carrying out any trade or profession.
- 2.4.5 G If a *firm* or *VJ participant* is in any doubt about the eligibility of a business, charity or trust, it should treat the complainant as if it were eligible. If the complaint is referred to the *Financial Ombudsman Service*, the *Ombudsman* will determine eligibility by reference to appropriate evidence, such as audited accounts or VAT returns.

- 2.4.6 G For the purposes of *DISP* 2.4.3R(1)(b), a subsidiary of a corporate group (as defined in section 262(1) of the Companies Act 1985) will be eligible only where the corporate group as a whole meets the turnover test.

ELIGIBLE COMPLAINANTS: CUSTOMERS

- 2.4.7 R A person is an *eligible complainant* if:

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

ELIGIBLE COMPLAINANTS: POTENTIAL CUSTOMERS

- 2.4.8 R A person is an *eligible complainant* if:

- (1) the complaint arises out of a *firm's* or *VJ participant's* actions or failure to act for the complainant in his capacity as a potential customer of the *firm* or *VJ participant*; and
- (2) he falls into one of the classes of person in *DISP* 2.4.3R(1).

- 2.4.9 G *DISP* 2.4.8R is intended to enable potential customers to use the *Financial Ombudsman Service* where the complaint involves an allegation that they have suffered or may suffer financial loss, material distress or material inconvenience as a result of a *firm's* or *VJ participant's* wrongful act or omission (eg where a service has not been provided as a result of maladministration or illegal discrimination). A complaint about the legitimate exercise of a *firm's* or *VJ participant's* commercial judgement may be dismissed by an *Ombudsman* without consideration of its merits under *DISP* 3.3.1R(11).

ELIGIBLE COMPLAINANTS: INDIRECT COMPLAINTS

- 2.4.10 R A person is an *eligible complainant* if:

- (1) he is not, and has not been, a customer or potential customer of the *firm* or *VJ participant* in relation to the subject matter of the complaint; and
- (2) he has a complaint against the *firm* or *VJ participant* which either:
 - (a) arises out of a relationship which he has with the *firm* or *VJ participant* as described in *DISP* 2.4.11R; or
 - (b) is derived from another person and which arises from any of the circumstances described in *DISP* 2.4.12R; and
- (3) he falls into one of the classes of persons in *DISP* 2.4.3R(1).

- 2.4.11 R The relationships with the *firm* or *VJ participant* relevant for *DISP* 2.4.10R(2)(a) are:
- (1) the complainant has given the *firm* or *VJ participant* a guarantee or security for a mortgage or loan; or
 - (2) the complainant has relied in the course of his business on a cheque guarantee card issued by the *firm* or *VJ participant*; or
 - (3) the complainant is the true owner or the person entitled to immediate possession of a cheque, or of the funds it represents, collected by the *firm* or *VJ participant* for someone else's account; or
 - (4) the complainant is the recipient of a banker's reference given by the *firm* or *VJ participant*; or
 - (5) the complainant is the holder of units or shares in unit trusts or other collective investment schemes and the *firm* or *VJ participant* is the manager, operator, trustee or depository.

- 2.4.12 R The circumstances relevant for *DISP* 2.4.10R(2)(b) are:
- (1) that the complainant is a beneficiary under a trust or estate of which the *firm* or *VJ participant* is trustee or personal representative; or
 - (2) that the complainant is a person for whose benefit an insurance policy was taken out or was intended to be taken out; or
 - (3) that the complainant is a person on whom the legal right to benefit from a claim under a contract of insurance has been devolved by contract, statute or subrogation.

2.4.13 G *DISP* 2.4.12R(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.

2.4.14 G In respect of a *relevant new complaint*, where the complainant is not eligible in accordance with *DISP* 2.4, article 3(3) of the *Ombudsman Transitional Order* provides that the *Ombudsman* may, nonetheless, if he considers it appropriate, treat the complainant as an *eligible complainant* if he or she would have been entitled to make an equivalent complaint under the *former scheme* in question immediately before *commencement*, provided that the complainant wishes to have the complaint dealt with under the new scheme.

REPRESENTATIVES OF ELIGIBLE COMPLAINANTS

- 2.4.15 R A complaint may be brought on behalf of an *eligible complainant*, or a deceased person who would have been an *eligible complainant*, by a person authorised by the *eligible complainant* or authorised by law.
- 2.4.16 R It is immaterial whether the person authorised to act on behalf of an *eligible complainant* under *DISP* 2.4.15R:

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

2.5 Which firms are subject to the jurisdiction of the Financial Ombudsman Service?

- 2.5.1 G All *firms* are subject to the *Compulsory Jurisdiction* of the *Financial Ombudsman Service*. *VJ participants* are subject to the *Voluntary Jurisdiction* and to *DISP 2* to the extent specified in the *Standard Terms (DISP 4)*.
- 2.5.2 G *Firms* may, however, be exempt from the requirements of *DISP 1* and *DISP 5*, if they qualify under *DISP 1.1.6R*.
- 2.5.3 G Members of the Society of Lloyd's are treated as *firms* for the purposes of the *Compulsory Jurisdiction* (including the rules in *DISP 1* relating to *firms'* complaints procedures) and are subject to *DISP 1* as a result of the *insurance market direction* given in *LLD 6.2.1D*, under section 316 of the *Act (Direction by Authority)*. However, as set out in *DISP 1.7*, *members* will individually comply with *DISP 1* if and only if all complaints by *policyholders* against *members* are dealt with under the internal procedures established by the *Society of Lloyd's* for handling those complaints, provided that these procedures themselves comply with *DISP 1*. Accordingly, certain of the obligations under *DISP 1*, for example, the obligation to report on complaints received, must be complied with by the Society on behalf of *members*.

2.6 To which activities do the rules apply?

THE COMPULSORY JURISDICTION

- 2.6.1 R The *Ombudsman* can consider a complaint under the *Compulsory Jurisdiction* only if it relates to an act or omission by a *firm* in the carrying on of one or more of the following activities:
- (1) *regulated activities*;
 - (2) lending money secured by a charge on land;
 - (3) lending money (other than *restricted credit*);
 - (4) paying money by a *plastic card* (other than a *store card*);
 - (5) the provision of ancillary banking services.
- 2.6.2 R The activities in *DISP 2.6.1R* include any ancillary activities, including advice, provided by the *firm* in connection with those activities.

- 2.6.3** R **Under article 3 of the *Ombudsman Transitional Order*, the *Ombudsman* can also consider a *relevant new complaint* under the *Compulsory Jurisdiction* where it relates to an act or omission of a *firm* which was, immediately before *commencement*, subject to a *former scheme*, provided that:**
- (1) the act or omission occurred in the carrying on by that *firm* of an activity to which that *former scheme* applied; and**
 - (2) the complainant is eligible and wishes to have the complaint dealt with under the new scheme.**
- 2.6.4 G The carrying on of an activity in *DISP* 2.6.1R includes offering, providing or failing to provide and administering or failing to administer a service in relation to the activities covered by that rule. 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*.
- 2.6.5 G Complaints about acts or omissions by a *firm* include complaints about acts or omissions in respect of activities for which the *firm* is responsible (ie the activities of their *appointed representatives*).
- 2.6.6 G For the purposes of *DISP* 2.6.1R(5), ancillary banking services include, for example, the provision and operation of cash machines, safe deposit boxes etc.
- 2.6.7 R **A complaint about an *authorised professional firm* cannot be handled under the *Compulsory Jurisdiction* of the *Financial Ombudsman Service* if it relates solely to *non mainstream regulated activity* and can be handled by a *designated professional body*.****
- 2.6.8 G A complaint about a *non-mainstream regulated activity* conducted by an *authorised professional firm* will be handled by the relevant professional body.

THE VOLUNTARY JURISDICTION

- 2.6.9 R **The *Ombudsman* can consider a complaint under the *Voluntary Jurisdiction* only if it is not covered by the *Compulsory Jurisdiction* and 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 covered by a *former scheme* in so far as the *VJ participant* was a member of that *former scheme*, in respect of that activity, immediately before the *commencement day*.**
- 2.6.10 R The activities in *DISP* 2.6.9R include any ancillary activities, including advice, provided by the *VJ participant* in connection with those activities.

2.6.11 R The *Ombudsman* can consider a complaint under the *Voluntary Jurisdiction* and subject to these rules even though it relates to an act or omission that occurred before the *VJ participant* was participating in the *Financial Ombudsman Service* and whether the act or omission occurred before or after the *commencement day* either:

(1) if the complaint could have been dealt with under a *former scheme*; or

(2) as a consequence of the agreement of the *VJ participant* in *DISP 4.2.5R*.

2.6.12 G *DISP 2.6.9R(2)* enables complaints about *VJ participants* which, immediately before the *commencement day*, were members of one of the *former schemes* replaced by the *Financial Ombudsman Service* to be dealt with under the *Voluntary Jurisdiction* in respect of the financial services activities for which the *VJ participant* was 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* or *VJ participant's* activities conducted in or from an establishment which the firm or the VJ participant maintains in the United Kingdom.

2.7.2 G The territorial scope therefore covers *firms* or *VJ participants* operating from a permanent place of business in the *United Kingdom*, including *incoming EEA firms* and *incoming Treaty firms* which qualify for authorisation under Schedule 3 (EEA Passport Rights) or Schedule 4 (Treaty Rights) to the *Act*.

2.7.3 G Complaints which concern business conducted by branches of *firms* or *VJ participants* outside the *United Kingdom* are not subject to the *Compulsory Jurisdiction* or the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.

2.7.4 G A complaint can be dealt with under the *Financial Ombudsman Service* irrespective of whether the complainant lives or is based in the *United Kingdom*.

3 Complaint handling procedures of the Financial Ombudsman Service

3.1 Application and Purpose

APPLICATION

3.1.1 R This chapter applies to the *Ombudsman* and to *firms*.

3.1.2 G It is also relevant to those who might wish to refer a complaint to the *Financial Ombudsman Service*.

3.1.3 G *VJ participants* are subject to the rules in this chapter by contract under the *Standard Terms* (see *DISP 4*).

3.1.4 R Except as otherwise specified, references in this chapter to a "complaint" include a relevant new complaint.

3.1.5 G The *Ombudsman Transitional Order* provides, with some exceptions (see *DISP 2.2.2G* (scope of *Compulsory Jurisdiction*), *DISP 2.3.2G* (time limits), *DISP 2.4.14G* (eligible complainant) and *DISP 3.8.2G* (determinations), for *relevant new complaints* to be determined in accordance with the requirements of the *Financial Ombudsman Service*.

PURPOSE

3.1.6 G The purpose of this chapter is to set out the way in which the *Financial Ombudsman Service* and, in particular, the *Ombudsman*, will operate to ensure that complaints may be resolved quickly and with minimum formality. It sets out the procedures for the investigation and consideration of complaints, including the circumstances in which a complaint may be terminated without consideration of its merits; the evidence which may be required or admitted; the provisions for fixing and extending time limits for different aspects of the proceedings; the factors which the *Ombudsman* will take into account in determining what is fair and reasonable; the types of loss or damage for which the *Ombudsman* can award compensation; the limits on awards and the costs that can be awarded.

3.2 The investigation and consideration of complaints by the Ombudsman

3.2.1 R On receipt of a complaint (and subsequently if necessary) the *Ombudsman* must have regard to the following matters:

- (1) whether or not the complaint meets the criteria in *DISP 2.2*;**
- (2) whether or not the complaint is within the time limits in *DISP 2.3*;**
- (3) whether or not the complainant is an *eligible complainant*; and**
- (4) whether or not the complaint is one which should be dismissed without consideration of its merits under *DISP 3.3*.**

- 3.2.2 G In the case of a *relevant new complaint*, the *Ombudsman* will take account of the relevant criteria under the *Ombudsman Transitional Order*, referred to in *DISP 2.2.2G* and will extend the time limits in *DISP 2.3*, as required under article 4(2) of the *Ombudsman Transitional Order* and described in *DISP 2.3.2G*.
- 3.2.3 R Where the *firm* has not had the eight weeks provided for under *DISP 1.4.5R* to consider the complaint, the *Ombudsman* will refer the complaint to the *firm*, unless the *firm* has already issued a *final response*.
- 3.2.4 R Where a *firm* fails to send a complainant a *final response* by the end of eight weeks, the *Ombudsman* may consider the complaint.
- 3.2.5 R Where the *Ombudsman* considers that the complaint or the complainant may be ineligible under the jurisdiction rules (see *DISP 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 that decision and inform the *firm* of his decision.
- 3.2.6 G *DISP 3.2.5R* applies without prejudice to a *firm's* right to raise the issue of eligibility subsequently.
- 3.2.7 R Where the *firm* disputes 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.
- 3.2.8 R Where the *Ombudsman* considers that the complaint may be one which should be dismissed without consideration of its merits, under *DISP 3.3*, he must give the complainant an opportunity to make representations before he makes his decision. If he then decides that the complaint should be dismissed, he must give reasons to the complainant for that decision and inform the *firm* of that decision.
- 3.2.9 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 may attempt to negotiate a settlement between the parties.
- 3.2.10 G The *Ombudsman* will attempt to resolve complaints at the earliest possible stage and by whatever means appear to him to be most appropriate, including mediation or investigation.
- 3.2.11 R If the *Ombudsman* decides that an investigation is necessary, he will:
- (1) during the investigation, 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 within the time limit prescribed in *DISP* 3.2.11R(2), proceed to determination (see *DISP* 3.8).

3.2.12 R **The parties will be informed of their right to make representations before the Ombudsman makes a determination. If he considers that the complaint can be fairly determined without convening a hearing, he will determine the complaint. If not, he will invite the parties to attend a hearing. No hearing will be held after the Ombudsman has determined the complaint.**

3.2.13 R A party who wishes to request a hearing must do so in writing, setting out the issues he wishes to raise and (if appropriate) any reasons why he considers the hearing should be in private, so that the *Ombudsman* may consider whether the issues are material, whether a hearing should take place and, if so, whether it should be held in public or private.

3.2.14 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.

3.3 Dismissal of complaints without consideration of the merits

3.3.1 R The *Ombudsman* may dismiss a complaint without considering its merits if he:

- (1) is satisfied that the complainant has not suffered, or is unlikely to suffer, financial loss, material distress or material inconvenience; or
- (2) considers the complaint to be frivolous or vexatious; or
- (3) considers that the complaint clearly does not have any reasonable prospect of success; or
- (4) is satisfied 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 is still open for acceptance; or
- (5) 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, or in accordance with the terms of a scheme order under section 404 of the *Act* (Schemes for reviewing past business), including, if appropriate, making an offer of redress to the complainant, unless he is of the opinion that the standards or terms of the scheme order did not address the particular circumstances of the case; or

- (6) is satisfied that the matter has previously been considered or excluded under the *Financial Ombudsman Service*, or a *former scheme* (unless material new evidence likely to affect the outcome has subsequently become available); or
- (7) 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
- (8) 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
- (9) 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
- (10) considers that it would be more suitable for the matter to be dealt with by a court, arbitration or another complaints scheme; or
- (11) is satisfied that it is a complaint about the legitimate exercise of a *firm's* commercial judgement; or
- (12) is satisfied that it is a complaint about employment matters from an employee or employees of a *firm*; or
- (13) is satisfied that it is a complaint about investment performance; or
- (14) is satisfied that it is a complaint about a *firm's* decision when exercising a discretion under a will or private trust; or
- (15) is satisfied that it is 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; or
- (16) is satisfied that a complaint which involves or might involve more than one *eligible complainant* has been referred without the consent of the other complainant(s) and the *Ombudsman* considers that it would be inappropriate to deal with the complaint without that consent; or
- (17) is satisfied that there are other compelling reasons why it is inappropriate for the complaint to be dealt with under the *Financial Ombudsman Service*.

- 3.3.2 G Under article 5(2)(b) of the *Ombudsman Transitional Order*, the *Ombudsman*, in deciding whether a *relevant complaint* is to be dismissed without consideration of its merits, is to take into account whether an equivalent complaint would have been so dismissed under the *former scheme* in question, as it had effect immediately before *commencement*.
- 3.3.3 G For the purposes of *DISP* 3.3.1R(4), offers of compensation include ex gratia payments.
- 3.3.4 G In *DISP* 3.3.1R(5) the transaction could, for example, be a pension transaction which has been reviewed by the *firm* in accordance with the relevant regulatory standards. The *Ombudsman* may decide not to proceed with a complaint about the result of that review unless he considers that the standards or guidance published by the regulator did not address the particular circumstances of the case.
- 3.3.5 G When deciding if it would be suitable for a complaint to be dealt with outside the *Financial Ombudsman Service* (*DISP* 3.3.1R(10)), the *Ombudsman* may consider whether, in view of a conflict of evidence, a fair resolution of the complaint could be achieved only through examination of the evidence by the courts.
- 3.3.6 G The *Ombudsman* may decide to proceed with a complaint which would otherwise be dismissed under *DISP* 3.3.1R(13), (14) or (15) if he considers that the complaint involves an allegation of negligence or maladministration.

3.4 Referral of a complaint to another complaints scheme for determination

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

3.5 Evidence

- 3.5.1 R The *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*.
- 3.5.2 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) where he considers it necessary or appropriate, accept information in confidence, so that only an edited version or (where this is not practicable) a summary or description is disclosed to the other party;
- (3) reach a decision on the basis of what has been supplied and take account of the failure by a complainant or a *firm* to provide information that an *Ombudsman* has requested; and
- (4) dismiss a complaint if a complainant fails to supply required information.

3.5.3 G The provisions in *DISP* 3.5.2R(1) follow the provisions of the Civil Justice Rules.

3.5.4 G For the purposes of *DISP* 3.5.2R(2), evidence which the *Ombudsman* may accept in confidence includes confidential evidence about third parties and security information.

3.6 Time limits

3.6.1 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*.

3.6.2 R If a *firm* fails to comply with a time limit, the *Ombudsman* may proceed to the next stage of consideration of the complaint and may, if appropriate, make provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.

3.6.3 R If a complainant fails to comply with a time limit, the *Ombudsman* may either proceed to the next stage or dismiss the complaint.

3.7 Delegation of the Ombudsman's powers

3.7.1 R (1) Only an *Ombudsman* may determine a complaint or decide the circumstances in which information may be disclosed under *DISP* 3.10.1R (3).

(2) The *Ombudsman* may designate members of the staff of the *FOS Ltd* to exercise any of the other powers of the *Ombudsman* relating to the reference, investigation or consideration of a complaint.

(3) Where any person is so designated, these rules apply as if any reference to "the *Ombudsman*" included a reference to that person.

3.7.2 G The Chief Ombudsman will designate those members of staff of the *FOS Ltd* who are to have these powers.

3.8 Determination by the Ombudsman

OPINION AS TO FAIRNESS AND REASONABLENESS

- 3.8.1 R (1) The *Ombudsman* will determine a complaint by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case.
- (2) In considering what is fair and reasonable in all the circumstances of the case, the *Ombudsman* will take into account the relevant law, regulations, regulators' rules and guidance and standards, relevant codes of practice and, where appropriate, what he considers to have been good industry practice at the relevant time.

3.8.2 G In determining, in relation to a *relevant new complaint*, what is fair and reasonable in all the circumstances of the case and what amount (if any) constitutes fair compensation, for the purposes of s.229(2)(a) of the *Act* (money awards), the *Ombudsman* is required, under article 7(2) of the *Ombudsman Transitional Order*, to take into account:

- (1) what determination the *former ombudsman* might have been expected to reach, and
- (2) what amount (if any) might have been expected to be awarded by way of compensation,

in relation to an equivalent complaint dealt with under the *former scheme* in question immediately before *commencement*.

THE OMBUDSMAN'S DETERMINATION

- 3.8.3 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 within the time limit set, 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).

3.9 Awards by the Ombudsman

MONEY AWARDS

- 3.9.1 G As provided for under section 229 of the *Act* (Awards), if a complaint is determined in favour of the complainant, the determination may include:
- (1) a money award against the *firm* of such amount as the *Ombudsman* considers fair compensation for financial loss or for loss or damage of a kind specified in *DISP* 3.9.2R and subject to the maximum limit in *DISP* 3.9.5R; or
 - (2) a direction that the *firm* take such steps in relation to the complainant as the *Ombudsman* considers just and appropriate (whether or not a court could order those steps to be taken); or
 - (3) both of these.

- 3.9.2 R **Where the *Ombudsman* decides to make a money award, in addition to (or instead of) awarding compensation for financial loss, he may award compensation for the following kinds of loss or damage, whether or not a court would award compensation:**

- (1) pain and suffering; or**
- (2) damage to reputation; or**
- (3) distress or inconvenience.**

- 3.9.3 G For the purposes of awards by the *Ombudsman*, financial loss includes consequential or prospective loss.

- 3.9.4 G In determining, in relation to a *relevant new complaint*, what amount (if any) constitutes fair compensation for the purposes of a money award, the *Ombudsman* is required under article 7(2) of the *Ombudsman Transitional Order* to take into account what amount (if any) might have been expected to be awarded by way of compensation, in relation to an equivalent complaint dealt with under the *former scheme* in question immediately before *commencement*.

LIMITS ON MONEY AWARDS

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

- 3.9.6 G If the *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.

- 3.9.7 G The *Ombudsman* may specify in his award that reasonable interest must be paid on the award (at the rate and from the date he states).

- 3.9.8 G For the purposes of calculating the monetary limit referred to in *DISP* 3.9.5R the amount of interest awarded does not form part of the award itself.

- 3.9.9 G The limit on the maximum money award has no bearing on any direction which an *Ombudsman* may make as part of a determination.

COSTS

- 3.9.10 R** When the *Ombudsman* finds in a complainant's favour, he may also award an amount which covers some or all of the costs which were reasonably incurred by the complainant in respect of the complaint.
- 3.9.11 G It is not anticipated that awards of costs will be common, since in most cases complainants should not need to have professional advisers to bring complaints to the *Financial Ombudsman Service*.
- 3.9.12 R** The amount payable under the award of costs may, if the *Ombudsman* orders, bear interest at a reasonable rate specified in the order and from a date specified in the order.
- 3.9.13 G For the purposes of calculating the monetary limit specified in *DISP* 3.9.5R, an award of costs does not form part of the award itself.

COMPLYING WITH AWARDS/SETTLEMENTS

- 3.9.14 R** A *firm* must comply promptly with:
- (1) any money award or direction made by the *Ombudsman*; and
 - (2) any settlement which it agrees at an earlier stage of the procedures.
- 3.9.15 R** The *Ombudsman* must maintain a register of each money award and direction made.
- 3.9.16 G A money award registered in accordance with *DISP* 3.9.15R can be recovered or enforced through the courts under paragraph 16 of Schedule 17 to the *Act*.
- 3.9.17 G A complainant may enforce a direction by injunction or order in accordance with section 229(9) of the *Act* (Awards).

3.10 Dealing with information

- 3.10.1 R**
- (1) In dealing with any information received in relation to the consideration or investigation of a complaint, the *Financial Ombudsman Service* must have regard to the parties' rights of privacy.
 - (2) *DISP* 3.10.1R(1) does not prevent the *Ombudsman* disclosing information (either in full, or where he considers it necessary or appropriate under *DISP* 3.5.2R(2), in the form of an edited version or (where this is not practicable) a summary or description):
 - (a) to the extent that he is required or authorised to do so by law; or
 - (b) to the parties to the complaint; or
 - (c) in his determination; or

(d) at a hearing in connection with the complaint.

(3) So long as he has regard to the parties' rights of privacy, the *Ombudsman* may disclose information to the *FSA* or any other body exercising regulatory or statutory functions for the purpose of assisting that body or the *Financial Ombudsman Service* to discharge its functions.

3.10.2 G Under article 11 of the *Ombudsman Transitional Order*, information held by *former schemes* may be transferred to the *FOS Ltd* at *commencement* without contravening any restriction on disclosure of that information (imposed by statute or otherwise) to which the relevant *former scheme* was subject. But the *FOS Ltd* must treat this information in accordance with any restrictions (and exceptions) which would have applied to the handling of that information by the *former scheme* in question.

DISP App 1 – Relevant Existing Complaints

Application and Purpose

APPLICATION

- 1.1.1 R** **This appendix applies to firms, the FOS Ltd, to the Ombudsman and to those who might wish to refer a complaint to the Financial Ombudsman Service in respect of relevant existing complaints.**

PURPOSE

- 1.1.2 R** **DISP1 to DISP5 apply to firms, to the Ombudsman and to the FOS Ltd in respect of relevant existing complaints, except as stated in this appendix.**

- 1.1.3 G The purpose of this appendix is to describe how the FOS Ltd must handle relevant existing complaints inherited from the former schemes, as stated in the Ombudsman Transitional Order.

- 1.1.4 G Relevant existing complaints will be passed to the FOS Ltd for completion at commencement. Article 2 of the Ombudsman Transitional Order enables the FOS Ltd to complete the handling of these cases, but provides that, in a significant number of respects, it must do this in accordance with the requirements of the relevant former scheme.

- 1.1.5 G This appendix describes the ways in which the FOS Ltd is required to treat these complaints differently from the other complaints which are subject to DISP1 to 5. Apart from these exceptions, the rules in DISP and the statutory provisions in s. 225-234 of the Act apply as they do to other complaints.

Eligible Complaint

- 1.2.1 G Article 2 of the Ombudsman Transitional Order disapplies the conditions set out in s.226(2) of the Act (and in DISP 2.2.1G) and requires that the FOS Ltd deal with a complaint which:

(a) was made under a former scheme at any time before commencement, by a person who was at that time entitled, under the terms of the former scheme, to make such a complaint (whether described in that scheme as the making of a complaint, the referral of a dispute, the submission of a claim, or otherwise), and

(b) had not, at commencement, been rejected, withdrawn, settled or determined, by the former ombudsman (whether by a substantive decision, or by closure of the case without a substantive decision).

These complaints are described as relevant existing complaints.

Eligible Complainant

- 1.3.1 G Under article 2 (1) (a) of the *Ombudsman Transitional Order*, a person will be treated under the *Financial Ombudsman Service* as an *eligible complainant* in respect of a *relevant existing complaint*, if he was entitled, under the terms of the *former scheme*, to make such a complaint at the time when the complaint was referred to that scheme.

Time Limits

- 1.4.1 G Article 4(2) of the *Ombudsman Transitional Order* requires an *Ombudsman* to extend the time limits set under *DISP* 2.3.1R(1)(b) and (c) in respect of a *relevant existing complaint* where the effect of that extension is that the time limit applying to the complaint is the same as that which would have applied under the *former scheme* in question as it had effect immediately before *commencement*.

Determination of complaints

- 1.5.1 G Article 5(2)(a) provides that the *FOS*'s power to specify in its scheme rules the matters to be taken into account in making determinations does not apply to *relevant existing complaints* (see *DISP* 3.8.1).
- 1.5.2 G Article 5(2)(b) requires the *Ombudsman*, in deciding whether a "*relevant complaint*" (including a *relevant existing complaint*) is to be dismissed without consideration of its merits under the scheme rules to take into account whether an equivalent complaint would have been so dismissed under the *former scheme* in question, as it had effect immediately before *commencement*.
- 1.5.3 G Article 6(1) disapples, in respect of *relevant existing complaints*, the provisions in the *Act* relating to the criteria for determining complaints in s.228(2) and those relating to awards in s.229 (with the exception of s.229(4) and (5), which relate to the maximum limits which the *FSA* can set on money awards for certain types of loss or damage and the *Ombudsman*'s ability to make recommendations in excess of those limits). It also disapples the provisions relating to the costs awards in s.230, except to the extent referred to in *DISP* App 1.11.1G.
- 1.5.4 G Apart from this, s.228 of the *Act* applies in relation to *relevant existing complaints* as it applies to other complaints which are subject to the *Compulsory Jurisdiction*.

Criteria for determining complaints

- 1.6.1 G Article 6(2) provides that a *relevant existing complaint* is to be determined (so far as practicable) by reference to such criteria as would have applied to the determination of the complaint by the *former ombudsman* under the *former scheme* in question immediately before *commencement* (provided that where the *former scheme* in question is the *FSA scheme*, the criteria are those which would have applied to the determination of the complaint by an *Independent Investigator* under that scheme at that time).
- 1.6.2 G An exception is, however, made in respect of *relevant existing complaints* about former *IMRO* members inherited from the *Investment Ombudsman* under the *IMRO Scheme* in order to reflect the way in which those complaints have been determined in practice under that scheme. The effect of article 6(2) and 6(11) taken together is that, as with all new complaints received after *commencement*, these will be determined according to what is, in the opinion of the *Ombudsman*, fair and reasonable in all the circumstances of the case and will be binding on both parties subject to the complainant's agreement.

Awards / Remedies

- 1.7.1 G The remedy that the *Ombudsman* can impose in determining a *relevant existing complaint* is limited by article 6(3) to such remedy as could have been included in a determination (whether described as a determination, award, recommendation or otherwise) made under the *former scheme* in question immediately before commencement.

Extent to which Awards are Binding

- 1.8.1 G Under article 6, except in the circumstances set out in *DISP* App 1.8.2 G to *DISP* App 1.8.6 G, the *Ombudsman* will, in respect of *relevant existing complaints*, provide the *firm* and the complainant with a written statement of his determination (including reasons) in accordance with s.228(3)-(9) of the *Act* (see *DISP* 3.8.3R) and if the complainant notifies the *Ombudsman*, within the time period specified, that he accepts the determination, it is binding on both parties and final.
- 1.8.2 G Under article 6(7), where the *former scheme* in question was the *FSA scheme* and the *relevant existing complaint* was, at commencement, subject to arbitration in accordance with that scheme, the extent to which the determination of the complaint under the new scheme is binding and final depends on the terms of the arbitration. Where a complaint under the *FSA scheme* was not subject to arbitration at commencement, the determination of the case under the new scheme is not binding on the *firm* or the complainant. The requirements (in s.228 (4)(c) and (5) to (7) of the *Act*) do not apply in relation to the complaint.
- 1.8.3 G Under article 6(8), where the *former scheme* in question was the *SFA scheme*:
- (a) if the *relevant existing complaint* has not been submitted to arbitration under that scheme, and would not have been eligible to be so submitted under that scheme as it had effect immediately before commencement (disregarding any requirement for certification by the *SFA Complaints Bureau* that the complaint had not been resolved by conciliation) the determination of the complaint under the *Financial Ombudsman Service* is not binding on the *firm* or the complainant;
- (b) if the *relevant existing complaint* has been submitted to arbitration under the *SFA scheme*, or would have been eligible to have been so submitted under that scheme as it had effect immediately before commencement (disregarding any such requirement), the determination of the complaint under the *Financial Ombudsman Service* is binding on the *firm* and the complainant and final;
- and the requirements in s.228(4)(c) and (5) to (7) of the *Act* do not apply in relation to the complaint.
- 1.8.4 G Under article 6(9), where the *former scheme* in question was the *Building Societies Ombudsman Scheme* and the *relevant existing complaint* was, at commencement, subject to arbitration in accordance with that scheme, the extent to which the determination of the complaint under the *Financial Ombudsman Service* is binding and final depends on the terms of the arbitration, and the requirements in s.228(4)(c) and (5) to (7) of the *Act* do not apply in relation to the complaint.
- 1.8.5 G Under article 6(10), where the *former scheme* in question was the *Building Societies Ombudsman Scheme* and the *firm* would have been relieved of its obligation to comply with a determination under that scheme if it had complied with conditions as to the giving of notice of its non-fulfilment of the obligations imposed by the

determination, the determination of the complaint under the *Financial Ombudsman Service* is (notwithstanding s.228 (5) of the *Act*) not binding on the *firm* if it complies with equivalent conditions. (This preserves the "publicity option" under the *Building Societies Ombudsman Act 1986* in respect of *relevant existing complaints*.)

- 1.8.6 G The effect of article 6(2) and 6(11) taken together is that, where the *former scheme* in question was the *IMRO Scheme*, the determination will be binding on both parties subject to the complainant's agreement, unless, prior to *commencement*, the complaint has been determined by a *former ombudsman* under that scheme and the *former ombudsman* has offered the complainant adjudication (see *DISP* 1.9.1-1.9.2G).

Complaints determined before commencement

- 1.9.1 G Under article 8, where, before *commencement*, a *relevant existing complaint* has been determined by a *former ombudsman* under the *IMRO Scheme* and that ombudsman has offered adjudication:

(a) if the matter is already subject to adjudication at *commencement*, the relevant provisions of the *former scheme* will continue to apply so far as practicable, with references to the *Investment Ombudsman* being read as references to the *FOS Ltd*; or

(b) if the matter has not been referred to adjudication before *commencement*, but the complainant accepts adjudication, the *FOS Ltd* must appoint an adjudicator to determine the matter, and if the complainant agrees to the appointment of the adjudicator, the *firm* must concur in the reference to adjudication.

- 1.9.2 G The relevant provisions of the *IMRO Scheme* will apply, so far as practicable, as they would have applied to adjudication under that scheme, with references to the *Investment Ombudsman* being read as references to the *FOS Ltd*.

- 1.9.3 G Under article 9, where a *relevant existing complaint* has been determined before *commencement* by a person appointed as an arbitrator under the *SFA scheme*:

(a) if, at *commencement*, that determination is the subject of an appeal, or an application for leave to appeal, under that scheme which has not been determined or withdrawn, the relevant provisions of that scheme will continue to apply to that appeal or application (and any ensuing appeal) so far as practicable;

(b) if, at *commencement*, an application for leave to appeal against the determination was capable of being entertained under that scheme, the relevant provisions of that scheme will apply, so far as practicable, to the making of any such application for leave and any ensuing appeal, as they would have applied to an application for leave or an appeal before *commencement*.

- 1.9.4 G The *FOS Ltd* may appoint such persons, on such terms and conditions and for such duration, as it thinks fit to hear any appeal or application for leave to appeal made after *commencement* and references in the relevant provisions of the *SFA scheme* to the *SFA* or its Arbitration Secretariat will be read as references to the *FOS Ltd*.

- 1.9.5 G Under article 10, where a complaint has been determined before *commencement* under the *Building Societies Ombudsman Scheme*, and, at *commencement*, a case either has been stated with respect to that determination for the opinion of the High Court or Court of Session under s.84 (5) to (7) of the *Building Societies Act 1986(a)* and no decision has been reached on the case or could be stated [under those

provisions], those subsections continue to apply as if they provided for the Court to direct that the complaint be dealt with under the *Financial Ombudsman Service as a relevant [existing] complaint*.

Enforceability of Awards

- 1.10.1 G Where the *Ombudsman* makes a determination which includes an award against a firm of compensation payable to the complainant, it is enforceable (by virtue of article 6(4)) in the same way as a money award made under the *Compulsory Jurisdiction*.
- 1.10.2 G Where the *Ombudsman* makes a determination which includes a requirement for the *firm* to take any steps in relation to the complainant, it is enforceable (by virtue of article 6(5)) in the same way as a direction made under the *Compulsory Jurisdiction*.

Costs

- 1.11.1 G Where the *former scheme* in question, as it had effect immediately before *commencement*, included provision for the award of costs, the *Ombudsman* may, by virtue of article 6(6), on determining the *relevant existing complaint*, award costs in accordance with that provision (irrespective of whether those costs were incurred, or relate to anything done, before or after *commencement*) and s.230 (6) and (7) and paragraph 16 of Schedule 17 of the *Act* apply in relation to the enforcement of such an award of costs in the same way as they apply to awards of costs made under the *new Financial Ombudsman Service* procedures.

Additional Glossary definitions

<u><i>the Banking Ombudsman scheme</i></u>	<u><i>the former scheme set up, on a voluntary basis, to handle complaints against those banks which subscribed to it</i></u>
<u><i>the Building Societies Ombudsman scheme</i></u>	<u><i>the former scheme set up and recognised under the Building Societies Act 1986 to handle complaints about building societies.</i></u>
<u><i>former Ombudsman</i></u>	<u><i>an ombudsman (or arbitrator) appointed under a former scheme</i></u>
<u><i>former scheme(s)</i></u>	<u><i>the Banking Ombudsman scheme</i></u> <u><i>the Building Societies Ombudsman scheme</i></u> <u><i>the FSA scheme</i></u> <u><i>the IMRO scheme</i></u> <u><i>the Insurance Ombudsman scheme</i></u> <u><i>the Personal Insurance Arbitration Service</i></u> <u><i>the PIA Ombudsman scheme</i></u> <u><i>the SFA scheme</i></u>
<u><i>the FSA scheme</i></u>	<u><i>the former scheme operated by the FSA under paragraph 4 of Schedule 7 to the Financial Services Act 1986 for the investigation of complaints arising out of the conduct of investment business.</i></u>
<u><i>the IMRO scheme</i></u>	<u><i>the former scheme set up by IMRO under the Financial Services Act 1986 and the Investment Ombudsman Memorandum to handle complaints against members of IMRO.</i></u>

<u>Independent Investigator</u>	<u>The former ombudsman under the FSA scheme</u>
<u>the Insurance Ombudsman scheme</u>	<u>the former scheme set up, on a voluntary basis, to handle complaints against those insurance companies which subscribed to it.</u>
<u>Investment Ombudsman</u>	<u>the former ombudsman under the IMRO scheme</u>
<u>Ombudsman Transitional Order</u>	<u>The Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001 [to be] made by HM Treasury under s. 426-428 of the Act</u>
<u>the Personal Insurance Arbitration Service</u>	<u>the former scheme set up on a voluntary basis and run by the Chartered Institute of Arbitrators to handle complaints against those insurance companies which subscribed to it.</u>
<u>the PIA Ombudsman scheme</u>	<u>the former scheme set up by the PIA under the Financial Services Act 1986 and operated by the PIA Ombudsman Bureau Ltd to handle complaints against members of the PIA.</u>
<u>relevant complaint</u>	<u>a relevant existing complaint or a relevant new complaint</u>
<u>relevant existing complaint</u>	<p><u>Subject to the provisions of the Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001, a complaint which:</u></p> <p><u>(a) was made under a former scheme at any time before commencement by a person who was at that time entitled, under the terms of the former scheme, to make such a complaint (whether described in that scheme as the making of a complaint, the referral of a dispute, the submission of a claim, or otherwise), and</u></p> <p><u>(b) had not, at commencement, been rejected, withdrawn, settled or determined by the former ombudsman (whether by a substantive decision, or by closure of the case without a substantive decision).</u></p>
<u>relevant new complaint</u>	<u>Subject to the provisions of the Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001, a complaint made after commencement which relates to an act or omission occurring before</u>

commencement if:

(a) the act or omission is that of a person who was, immediately before commencement, subject to a former scheme;

(b) the act or omission occurred in the carrying on by that person of an activity to which that former scheme applied; and

(c) the complainant is eligible and wishes to have the complaint dealt with under the new scheme.

For the purposes of (c) above, where the complainant is not eligible in accordance with rules made under s226(6) and (7) of the Act, an Ombudsman may, nonetheless, if he considers it appropriate, treat the complainant as eligible if he would have been entitled to make an equivalent complaint under the former scheme in question immediately before commencement.

the SFA Complaints Bureau

the first stage of the SFA scheme which aimed to resolve complaints by conciliation

the SFA Consumer Arbitration Scheme

The second stage of the SFA scheme, which determined complaints by means of arbitration

the SFA scheme

the former scheme (including the SFA Complaints Bureau and the SFA Consumer Arbitration Scheme) set up by the SFA to handle complaints against members of the SFA under the Financial Services Act 1986.

Statement of compatibility with the FSA's general duties

This annex contains a statement of the FSA's reasons for believing that making (or approving) the proposed amendments to the 'final' rules and guidance published in December which are highlighted in Annex A of this paper is compatible with its general duties under section 2 of the FSMA (in addition to fulfilling the statutory purpose of the Scheme).

Our general duties require us to discharge our general functions so far as is reasonably possible in a way which is compatible with our regulatory objectives and which we consider most appropriate for the purpose of meeting those 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

As noted in earlier consultation papers, the new single ombudsman scheme will play a key 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.

The proposed transitional arrangements provide important additional protection for consumers. By extending the scope of the FOS to enable it to handle complaints about pre-N2 business against members of the former schemes which the FOS will replace, they preserve consumers' ability to obtain redress for acts or omissions occurring before N2. They do so even where a member of a former scheme does not become authorised after N2 and include special provisions (eg in relation to eligibility and time limits) to ensure that consumers who currently have access to one of the current schemes will not be disenfranchised when the new scheme comes into operation at N2. The FOS's ability to cover pre-N2 complaints also means that consumers will be able to enjoy the benefits of a single 'one-stop' shop for handling complaints much sooner than would otherwise have been the case.

The public awareness objective

The transitional arrangements have been designed to be as comprehensible as possible to consumers, consistent with the need to be fair to firms. The proposal that the FOS should be able to deal with pre-N2 complaints and adopt its single new procedures wherever possible simplifies the arrangements and makes it easier for the FSA to promote public awareness of consumers' rights and for the FSA, the FOS and firms to issue clear and intelligible messages about the steps consumers need to take should they wish to complain.

The market confidence and reduction of financial crime objectives

The inclusion of pre-N2 complaints within the scope of the scheme and the FSA's rules relating to firms' own internal complaints procedures should help further to increase consumer confidence in the financial services sector. It will also enable the FSA to start to receive early warnings about potential problem areas at an earlier stage.

Compliance with general duties

Section 2(3) of the FSMA sets out other matters to which the FSA must have regard in discharging its functions. The FSA's reasons for believing that making the proposed transitional rules amendments is compatible with these principles are set out below.

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

The proposed transitional arrangements will avoid the need for the existing schemes (including those for which the FSA and the SROs are responsible) to remain in existence for a considerable period of time to deal with pre-N2 complaints. They will also enable both the FOS and firms to adopt streamlined complaints handling processes from soon after N2 which should be relatively simple to administer and enable them to operate more efficiently.

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

The proposals will help to clarify managers' responsibilities. Managers of authorised firms will need to ensure that the complaint handling procedures which they put in place take appropriate account of the proposed transitional arrangements and that their staff are aware of these provisions.

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

As noted above the extension of the scope of the rules relating to firms and to the FOS to include pre-N2 complaints will provide a significant and necessary additional consumer protection benefit. Firms should also benefit from being subject to a single set of procedures at an earlier stage both in terms of simpler administration and increased consumer satisfaction – and also from the clarificatory amendments proposed in this paper.

We recognise that, in deciding how pre-N2 complaints should be handled, there is a balance to be achieved between consumer protection on the one hand and fairness to firms on the other. Fairness requires that the reasonable expectations of all parties as to what remedy might have been available under the relevant former scheme should be taken into account and that consistency and continuity is important where a complaint is in mid-stream at N2.

The Treasury is consulting separately on the rationale for the policy proposals in the draft Order and we will take account of the outcome of that process. Like the Treasury, we recognise that in some areas (e.g. eligibility and time limits), the proposals may result in firms' being subject to the FOS, where they would not have been subject to the relevant former scheme. However, we do not expect these instances to be significant and believe that they are outweighed by the consumer protection benefits and the virtues of simplicity and comprehensibility mentioned above. We believe that adopting the proposed differentiated approach for handling relevant existing complaints and relevant new complaints enables us to achieve an appropriate balance.

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

We believe that the smooth transition that the transitional arrangements will bring about will benefit both consumers and firms, as all complaints will be handled by a single scheme and in a consistent way. The proposed amendments will not prevent firms from adopting an innovative approach to the development of their products and services and should, in fact, facilitate innovation by helping to 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

The existence of an independent comprehensive dispute resolution mechanism should add to consumer and market confidence, enhancing the competitive position of the UK. In particular, requiring overseas firms with a permanent place of business in the UK to be subject to the Compulsory Jurisdiction of the Scheme on the same basis as UK-based firms should help to maintain the confidence of all consumers using UK markets. The new arrangements will ensure the necessary protection for overseas consumers wishing to do business in the UK, since they will be available to all consumers of UK financial

services, irrespective of where they live. A smooth transition to the new scheme is in everyone's interests and we believe that the proposed arrangements will achieve this.

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

The existence of common standards and consistent procedures for complaints handling across the industry both within the firms themselves and within the 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 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 proposed amendments will expedite the adoption of streamlined complaint handling procedures and ensure that all authorised firms are treated fairly and consistently. A smooth transition from the old schemes to the new should also increase levels of confidence amongst consumers to buy from any authorised firm.

Approval of FOS Rules

Under the FSMA, the rules and standard terms of the FOS are subject to the approval of the FSA. The FSA's preliminary view, subject to the outcome of this consultation and the Treasury's consultation, is that approving the amendments which the FOS proposes to make to its rules would be consistent with its general duties, since we believe that they complement the FSA's own rules and meet the criteria for approval set out in paragraphs 3.18-3.23 of CP49.