

08/3

Financial Services Authority and
Financial Ombudsman Service

Dispute Resolution: the Complaints sourcebook

Further simplification, minor changes
and extending the voluntary
jurisdiction

March 2008



Financial
Ombudsman
Service



Contents

- 1 Overview
- 2 CP07/14: DISP Chapter 1
- 3 CP07/14: DISP Chapters 2-4
- 4 FOS Consultation Paper: Voluntary Jurisdiction

Annex 1: List of non-confidential responses to CP07/14

Annex 2: List of non-confidential responses to FOS voluntary jurisdiction Consultation Paper

Annex 3: Summary and destination tables for final DISP 2-4

Appendix 1: New Handbook text for DISP

This Policy Statement reports on the main issues arising from Consultation Paper 07/14 (*Dispute Resolution: the Complaints Sourcebook – further simplification and minor changes*) and publishes final rules.

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Copies of this Policy Statement are available to download from our website – www.fsa.gov.uk. Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

1 Overview

Introduction

- 1.1 In the Consultation Paper *Dispute Resolution: the Complaints sourcebook – Further simplification and minor changes* (CP07/14), we – the Financial Services Authority (FSA) and the Financial Ombudsman Service (FOS) – published proposals for the Dispute Resolution sourcebook of the FSA Handbook (referred to as ‘DISP’).
- 1.2 The FOS also issued the Consultation Paper *Voluntary jurisdiction: filling gaps for EEA business* (VJ CP)¹, in parallel with the joint FSA and FOS paper CP07/14. The rules and guidance governing the FOS’s voluntary jurisdiction are in Chapters 2-4 of DISP, so it is appropriate to combine the Policy Statement for the VJ CP within the one for CP07/14.

Proposals in CP07/14

- 1.3 CP07/14 proposed two changes to Chapter 1 of DISP, which concern the requirements to treat complainants fairly that apply in the Compulsory Jurisdiction (CJ), Consumer Credit Jurisdiction (CCJ) and the Voluntary Jurisdiction (VJ). The whole of DISP 1 has already been extensively revised² and the two changes proposed were limited and supplementary.
- 1.4 CP07/14 contained proposals that aimed to make Chapters 2-4 of DISP clearer, shorter and easier to use, and included several changes that aimed to benefit those who use the FOS. Chapters 2-4 of DISP set out the jurisdiction and operation of the FOS:
 - DISP 2 sets out the scope of the CJ, CCJ and VJ of the FOS.
 - DISP 3 sets out the complaints-handling procedures of the FOS for the CJ, CCJ and VJ.
 - DISP 4 contains the contractual terms by which VJ participants take part in the VJ.

1 See www.financial-ombudsman.org.uk/news/VJ-eeabusiness.pdf

2 As set out in PS07/19 *Treating Complainants Fairly – feedback on CP06/19 (part) and made rules* (July 2007)

- 1.5 Most of the 26 responses we received on CP07/14 supported our proposals.³ We are grateful to all consultees for the time and effort they put into these responses and have carefully considered the comments. Some consultees raised policy issues that were outside the scope of CP07/14. Although not relevant for our current work, we have carefully considered the comments and will bear these in mind for any future proposed changes.
- 1.6 The new version of DISP published with this paper does not differ significantly from the version we consulted on. The proposals in CP07/14 were of most interest to those who engage with consumers who are eligible to bring a complaint to the FOS – namely firms, consumer credit licensees and voluntary jurisdiction participants. The proposals were of less interest to consumers and their representatives.

Proposals in VJ CP

- 1.7 Activities covered by the voluntary jurisdiction include some which are directed at consumers in the UK by financial businesses from an establishment elsewhere in the European Economic Area (EEA). The FOS's VJ CP proposed to extend the range of activities which are covered by the FOS's voluntary jurisdiction to include all those activities that would be covered by the compulsory jurisdiction, if conducted from an establishment in the UK.
- 1.8 The FOS received five responses, which were supportive in principle. So the FOS's new extended voluntary jurisdiction published with this Policy Statement is unchanged from the version which was consulted on.

Background

- 1.9 Under the Financial Services and Markets Act 2000 (FSMA):
- the FSA makes rules about how firms (covered by the CJ) should deal with complaints;
 - the FOS (with the approval of the FSA) makes rules about how licensees (covered by the CCJ) and VJ participants (covered by the VJ) should deal with complaints;
 - the FSA makes rules about the scope of the CJ and the level of compensation that can be awarded under it;
 - the FOS (with the FSA's approval) makes rules about the scope of the CCJ and the VJ and the level of compensation that can be awarded under them; and
 - the FOS (with the FSA's approval) makes rules about the procedures to be followed by the FOS in the CJ, the CCJ and the VJ.
- 1.10 So we (the FSA and the FOS) are issuing this Policy Statement jointly.
- 1.11 The FOS is the single dispute resolution scheme established under FSMA to resolve disputes between consumers and financial services firms. It is charged with resolving disputes quickly and with minimum formality on the basis of what is fair and reasonable in the circumstances. The FOS covers a wide range of complaints concerning banking,

³ Not all of the consultees commented on all of the proposals.

insurance, personal pensions, other investments and consumer credit. The Consumer Credit Act 2006 amended FSMA and extended the FOS's remit to include disputes between consumers and businesses with standard consumer credit licences.

Structure of this Policy Statement

- 1.12 This paper outlines the new rules for DISP. It provides feedback on the questions and issues raised in CP07/14 and the FOS's VJ CP and is set out as follows:
- **Chapter 2 – outlines the final DISP 1 rules**, including feedback on the proposals in CP07/14;
 - **Chapter 3 – outlines the final DISP 2-4 rules**, including feedback on the proposals in CP07/14; and
 - **Chapter 4 – outlines the final voluntary jurisdiction rules**, including feedback on the proposals in the FOS's VJ CP.

Next steps

- 1.13 The new DISP rules will be in force from:
- DISP 2-4 (including the new voluntary jurisdiction rules) and DISP 1 (consequential changes): 6 April 2008
 - DISP 1 (rules on providing information about the FOS): 6 July 2008
- 1.14 An implementation period is unnecessary for new DISP 2-4, as the proposed rules have the same effect as the previous rules, save for a few small changes.

Who should read this Policy Statement?

- 1.15 This Policy Statement is likely to be of interest to firms, CCJ licensees and VJ participants or potential participants. It is likely to be of less interest to consumers and their representatives.

2 CP07/14: DISP Chapter 1

Final changes to DISP Chapter 1 – Treating Complainants Fairly

- 2.1 In CP07/14, we (the FSA and the FOS) consulted on two minor changes to the complaints time limit rules in DISP 1. The proposed changes were intended to ensure that there was clear and timely disclosure of the availability of the FOS in all the types of substantive response to complainants allowed under DISP. The two areas of concern we identified in CP07/14 were the ‘complainant’s written acceptance’ rule and the need to clarify the form in which complainants were told about the FOS.

FOS disclosure – ‘complainant’s written acceptance’ rule

- 2.2 The ‘complainant’s written acceptance’ rule allows respondents to close complaints, without a final response, by obtaining the complainant’s written acceptance of an ‘earlier response’.⁴ But a response under this rule does not have to refer to the ultimate availability of the FOS, as is required under the two-stage process.⁵

- 2.3 So we asked:

Q15: Do you agree with the proposed requirement to refer to the ultimate availability of FOS in non-final responses inviting the complainant’s written acceptance?

- 2.4 Overall, most consultees agreed with the proposal, recognising its consistency with what was already required in the two-stage process. Some commented that:

- referring to the availability of the FOS at an earlier stage might encourage customers to approach the FOS prematurely, before the process had been completed with the firm;

4 DISP 1.6.4R

5 DISP 1.6.5R(3)

6 PS08/3: DISP: further simplification (March 2008)

- there were already sufficient requirements on firms to tell customers how to complain and making additional references to the availability of the FOS would increase the number of complaints; and
- making reference to the FOS only at the final stage underlined the point that the FOS was an independent arbiter.

Our response: In our view, no new issues were raised in the consultation responses. We examined the costs and benefits of this change in the Consultation Paper. So we have made the rule unchanged from that consulted on.

Providing information about the FOS

2.5 In CP07/14, we also expressed concern that some respondents merely referred to the FOS among much other detail in standard complaints leaflets enclosed alongside their responses, rather than on the face of the responses themselves. Our concern was that complainants who did not read the leaflet might miss the reference to the FOS, and this would not achieve the original intention that respondents must inform complainants of their right to go to the FOS. We felt that respondents should refer to the availability of the FOS on the face of their responses, in order to make it an integral part of the explanation of how the complaints process would work. And we proposed guidance to make this expectation clear.

2.6 We asked:

Q16: Do you agree with the proposed guidance making clear our expectation that respondents set out the various information about FOS required under the different response types on the face of those responses?

2.7 Most responses agreed with this proposal. However, some respondents said:

- the proposed requirement was prescriptive and it should be left to respondents to make their own assessment of their customers' information needs;
- there was already enough information provided about the availability of the FOS;
- the requirement for the information to be 'on the face of' the response was unclear, because this appeared to imply that it had to be on the front page; and
- it should be sufficient for the letter to draw attention to an accompanying leaflet communicating the availability of the FOS.

Our response: As we said in the original Consultation Paper, we do not believe that referring to an accompanying leaflet is enough to highlight the availability of the FOS. We conclude that we should proceed as proposed. But, in response to queries raised, we have altered the guidance to make it clearer that the requirement is to include information about the customer's right of referral to the FOS within the response letter, although this does not necessarily have to be on the front page.

Implementation Period

2.8 We asked the following question:

Q17: Do you agree a three-month period is sufficient for implementing the proposed changes?

2.9 Almost all consultees were content with this change. A small number of consultees felt they needed additional time to make the necessary changes to their letters.

Our response: As there was little objection to making the change within three months, and we want the benefits of these changes to flow to consumers as quickly as possible, we have made the rules to provide a three-month implementation period.

3 CP07/14: DISP Chapters 2-4

Final DISP Chapters 2-4

- 3.1 Feedback from users of DISP 2-4 suggested that the rules and guidance had become unnecessarily complicated over the years. In CP07/14 we sought to simplify DISP 2-4, in line with the FSA's more principles-based regulation programme to make the FSA's Handbook easier for people to use.
- 3.2 We also proposed several changes to the rules and guidance to provide greater clarity about expectations of how the FOS operates and help it to continue providing an effective independent service for resolving disputes. The changes arose from the work to simplify DISP 2-4 rather than from a wholesale review of the substance of the rules. It has not been our intention to alter the substance of the existing rules, save in the minor respects described in CP07/14 and this Policy Statement.
- 3.3 The FSA's cost-benefit analysis and statement on the compatibility of the proposals with its duties under FSMA were not disputed in the responses to the consultation and remain unchanged from CP07/14.
- 3.4 The new version of DISP 2-4 does not differ significantly from what we consulted on. The new rules and guidance are approximately 30% shorter than the previous version.

Comments received on the proposed approach to simplifying DISP Chapters 2-4 and our response

- 3.5 In proposing to simplify DISP 2-4, we asked in CP07/14:
 - Q1: What material would you find useful to familiarise yourself with the new rules?
 - Q2: Do you agree with the FSA's and FOS's approach to simplifying DISP 2-4?
- 3.6 The vast majority of consultees were in favour of our producing material to help them familiarise themselves with the new rules. Opinions were mixed on whether a summary of the most notable changes or a confirmed set of destination tables would be useful.⁶

⁶ A set of destination tables linking the existing DISP 2-4 with the proposed DISP 2-4 was published in CP07/14.

- 3.7 The vast majority of consultees also supported our proposal to simplify the existing rules and guidance. Some thought that, as part of the move to more principles-based regulation, the proposals could have gone further. Several felt we had missed an opportunity to address what they saw as the more challenging issues associated with the relationship between the FSA and the FOS under a more principles-based approach to regulation. Another consultee agreed in principle with simplifying the rules, though believed that firms need guidance and structure to work within when handling complaints.
- 3.8 One consultee thought we could make things clearer by amending the ‘fair and reasonable’ test used by the FOS to determine complaints to take account of the FSA’s new confirmation process for FSA-approved Industry Guidance.

Our response: We have published a summary of the notable changes and a confirmed set of destination tables in Annex 3 of this Policy Statement. We believe our proposed approach to simplifying DISP 2-4 provides structure and clarity on how the FOS operates in respect of its jurisdictions and procedures, without being more restrictive than needed to achieve our objectives.

The question of how FSA-approved Industry Guidance fits within the application of the ‘fair and reasonable’ test used by the FOS⁷ was addressed in the FSA’s Policy Statement on Industry Guidance in September 2007 (PS07/16), so we did not include this question in CP07/14. However, as FSA-approved Industry Guidance is a relatively new concept, we will bear consultees’ views in mind as this area develops.

In PS07/16, the FSA said that the FOS’s decisions are not about enforcing FSA rules: they are about protecting the rights of consumers. And approved Industry Guidance cannot affect the rights of third parties, such as consumers when they seek to enforce their rights through the courts or the FOS. So there is no explicit requirement within the new DISP rules for the FOS to consider approved Industry Guidance. However, relevant Industry Guidance may help the FOS to establish what was thought to be good industry practice at a particular time or to explain to a consumer that a firm’s approach is not unique.

- 3.9 The definition of ‘respondents’ in the DISP rules collectively referred to firms, CCJ licensees and VJ participants⁸. We proposed to amend the definition to include certain unauthorised persons who are subject to the FOS’s jurisdiction as a result of FSMA or transitional orders made under it by the Treasury.
- 3.10 In CP07/14 we asked:
- Q3: Do you agree with our proposal to use the definition ‘respondents’ (as amended) in DISP 2-4 to save repetition?
- 3.11 Most consultees agreed with our proposal. Of the two who disagreed, one was concerned that the term ‘respondents’ could lead to customer confusion and questioned whether the change is necessary and whether it might instead be in customers’ best interest to retain the term ‘firm’. The other thought that the FOS should no longer have jurisdiction for either ongoing or new complaints once a firm

⁷ Part XVI of FSMA and new DISP 3.6.1R (old DISP 3.8.1R).

⁸ See PS07/09 *Treating Complainants Fairly – feedback on CP06/19 (part) and made rules* (July 2007).

has been declared in default by the Financial Services Compensation Scheme (FSCS) and this should be made clear in the definition of ‘respondent’.

Our response: The term ‘respondent’ is already used in the FSA Handbook to refer to firms, consumer credit licensees and VJ participants and the term is also used in FSMA. In our view, amending the definition is unlikely to create confusion. The term ‘firm’ has been retained and will continue to be used as is appropriate. The question of whether the FOS’s jurisdiction should be fettered if the FSCS declares a firm in default was not considered in CP07/14. The FOS and the FSCS work cooperatively with each other as is appropriate in particular circumstances.

Comments received on the proposals for DISP Chapter 2 and our response

3.12 We proposed changing the reference to the Mortgage and General Insurance Complaints Transitional Order in old DISP 2.6.3A G to more accurately reflect the wording in the Order in new DISP 2.3.2 G (2). In CP07/14 we asked:

Q4: Do you agree with our proposal to change the guidance so it more accurately reflects the wording in the Order?

3.13 We proposed to clarify that ancillary banking services include ‘foreign currency exchange’ for the purposes of DISP 2, by adding this to the examples of ancillary banking services in new DISP 2.5.5 G. In CP07/14 we asked:

Q5: Do you agree with our proposal to clarify that ancillary banking services includes foreign currency exchange for the purposes of DISP 2?

3.14 We proposed to change the word ‘statute’ to the word ‘legislation’ in the new DISP 2.7.6 R (2) to make it clear that it covers those who have acquired a right under all statutory forms, for the purpose of defining who is eligible to complain to the FOS. In CP07/14 we asked:

Q6: Do you agree with our proposal to change the wording so ‘legislation’ replaces the word ‘statute’?

3.15 Consultees agreed unanimously to all three proposals, with several noting that the changes will result in greater clarity for users of DISP.

Our response: We have made the rules unchanged from those consulted on.

3.16 We proposed to extend the scope of the current DISP rules by adding ‘assignment’. This would allow complainants who have acquired the right to benefit from a contract of insurance under an equitable assignment to go to the FOS. This would be the only substantive change, as assignments meeting contractual or statutory requirements are already included in the old DISP 2.4.12 R (4).

Q7: Do you agree with our proposal that complainants who have acquired a right to benefit from a contract of insurance under an equitable assignment should be able to complain to the FOS?

- 3.17 Most of the consultees supported our proposal. However some consultees raised concerns about how the FOS would deal with complaints from equitable owners of a policy in practice. They particularly asked:
- a) how the FOS would avoid both the original policyholder and subsequent equitable owners complaining about the same issue, thus exposing the firm to the risk that the same complaint could be considered (and redress could potentially be paid) twice; and
 - b) what matters the equitable owner could complain about. Some consultees were particularly concerned that the equitable owner might be able to pursue a complaint about the mis-sale of the original policy.
- 3.18 One consultee was unconvinced of the need to change the rules to give the FOS jurisdiction to hear equitable assignment complaints because, according to our cost benefit analysis, the FOS is only approached to consider on average 12 such complaints a year.

Our response: Bringing together in new DISP 2.7.6 R all of the classes of complainant eligibility which were previously distributed among old rules (DISP 2.4.7 R, 2.4.8 R, 2.4.11 R and 2.4.12 R) is not intended to alter existing complainant eligibility, save in the two minor respects described in CP07/14.

We have reviewed our proposal to extend the scope of the DISP rules by adding 'assignment' in light of the concerns expressed to us and concluded that the FOS will be able to deal appropriately with complaints based on equitable assignments. So we have decided to proceed as we proposed in CP07/14. We note the concerns that complaints could be considered, and redress paid, twice. However we believe it is unlikely that such a situation will occur, not least because the firm will be able to alert the FOS if it has already dealt with a complaint on the same issue and the FOS will not award double compensation for a single financial loss.

In relation to the concerns about claims for mis-selling, new DISP 2.7.6 R (6) will require the FOS to be satisfied that a claim from an assignee has arisen from the relationship of being an assignee. So before the FOS can consider a complaint from an assignee about a mis-sale of an original policy, the FOS would have to be satisfied that the rights assigned include the rights which could form the basis of a mis-selling claim.

In addition to establishing that the complainant meets the eligibility criteria, the FOS will also take into account any evidential issues that might arise in circumstances where the assignee was not a party to the original sale. The FOS will also consider whether the assignor would need to be joined in the complaint in order for it to proceed. However, such considerations are not new or novel and the FOS is well used to dealing with complaints where these and similar issues arise. Ultimately, the FOS may conclude that it cannot safely and fairly proceed with a complaint and that it should dismiss the complaint under the relevant provisions in its procedural rules.

Our cost benefit analysis in CP07/14 acknowledged that we expect the FOS will receive only a very small number of complaints based on equitable assignments. However, we do not believe this is sufficient reason alone for the FOS to be unable to hear such complaints. The FOS's operational costs in enabling people with equitable assignments to access it are

expected to be insignificant. Firms and consumers are expected to benefit from having the FOS as an alternative to pursuing an action through the courts. On balance we expect the benefits will be modest.

3.19 In setting out who is not an eligible complainant under the CCJ, we proposed to substitute the term ‘companies’ by ‘body corporate’ in the proposed DISP 2.7.9 R (3), as this would more accurately reflect the wording in the Consumer Credit Act 2006.

3.20 In CP07/14 we asked:

Q8: Do you agree with the proposal to change the rule so it more accurately reflects the wording in the Act?

3.21 All but one of the consultees expressed support for our proposal, with the remaining consultee having no strong views.

Our response: We have made the rule unchanged from that consulted on.

3.22 The FSA sought to clarify its existing policy position regarding the FOS’s jurisdiction to consider disputes between insurers and those claiming against the insurer’s policyholder, in relation to motor accidents.

3.23 In CP07/14 we asked:

Q9: Do you agree with the FSA’s proposal to clarify its existing policy position on motor insurance claims by third parties?

3.24 The vast majority of the consultees supported our proposal, with many commenting that there was current uncertainty in this area.

3.25 One consultee thought that, as a matter of normal statutory interpretation, it would follow that where the right was devolved by other legislation, the third party would be an eligible complainant. Another consultee believed that the position was unclear and welcomed our proposal to clarify. One consultee queried whether the intention of the proposal was to exclude third parties as set out in the existing guidance, but continue to allow third-party claimants access to the FOS under liability policies where the policyholder has become insolvent, under the Third Parties (Rights Against Insurers) Act 1930.

Our response: The CP07/14 acknowledged that questions have arisen regarding the FOS’s jurisdiction to consider disputes between insurers and those claiming against the insurer’s policyholder, in relation to motor accidents. The proposal was to clarify that FSA’s policy position on the extent to which third parties are eligible to access the FOS is unchanged from that of 1999.⁹ This meant that those with complaints about the actions of the insurer of the other driver in a car accident were not eligible to complain to the FOS, unless they fell under the Third Parties (Rights Against Insurers) Act 1930. As the vast majority of respondents supported the proposal, we have made the rule unchanged from that consulted on, but will keep this area under review as is appropriate.

⁹ Refer CP33 FSA and FOS Joint Consultation Paper on Consumer Complaints and the New Single Ombudsman Scheme (November 1999).

Comments received on the proposals for DISP Chapters 3- 4 and our response and an additional change to DISP

3.26 The FOS proposed to clarify that when dealing with a complaint against a partnership (or former partnership), it is enough for it to communicate with one partner (or former partner) on behalf of the partnership.

3.27 In CP07/14 we asked:

Q10: Do you agree with the FOS's proposal to reflect the legal position in communicating with one partner when dealing with a complaint against a partnership?

3.28 The vast majority of consultees agreed with the proposal. One consultee felt that the FOS should initially deal with all the parties, while others said it made sense for the FOS to communicate with a single partner on behalf of the partnership. One consultee assumed that if an agreement to resolve a complaint is reached with one partner on behalf of the partnership, the FOS will regard such an agreement as binding on the rest of the partners in the partnership.

Our response: In our view, it is appropriate for the partners to correspond with each other rather than the FOS endeavouring to communicate with all the partners. As is consistent with the Partnership Act 1890, a resolution reached by one of the partners with the FOS will bind the partnership. As the proposal was supported by the vast majority of the consultees, we have made the rule unchanged from that consulted on.

3.29 The FOS sought to clarify in the new DISP 3.3.4 R (6) when it may dismiss a complaint without considering its merits, in certain specified circumstances.

3.30 In CP07/14 we asked:

Q11: Do you agree with the FOS's proposal to clarify that the FOS may dismiss a previously-considered complaint unless material new evidence has become available to the complainant?

3.31 Most of the consultees viewed the proposal as providing helpful clarification. One consultee was concerned that this should be made clear to eligible complainants at the outset. The consultee recognised, however, that this might mean the FOS could be presented with large volumes of evidence up front, which would be time consuming to consider. One consultee queried whether the proposed rule was sufficiently clear and another asked for guidance on the meaning of 'material'.

Our response: The FOS is conscious of the need to ensure that complainants understand the importance of providing evidence. Complainants are given every opportunity to present evidence all the way through the FOS's process, including before any final decision is made (including a decision to dismiss a case). So we do not consider that this clarification will be problematic for complainants or the FOS. We are comfortable that the new rule is sufficiently clear to achieve its purpose and have made it unchanged from that consulted on. We have not provided guidance on the meaning of 'materiality', as this is for the Ombudsman to decide in each case.

3.32 The FOS proposed new guidance to clarify how it may help consumers who find it difficult to establish which respondent is responsible for the matter they wish to complain about.

3.33 In CP07/14 we asked:

Q12: Do you agree with the FOS's proposed guidance to explain how the FOS can help consumers identify the relevant respondent?

3.34 Most consultees were supportive of the proposed guidance to explain how the FOS can help consumers identify the relevant respondent, though one disagreed with the proposal and several questioned how the FOS would do this in practice. Several consultees were concerned that the draft DISP 3.5.2 G was insufficiently clear to achieve its purpose of highlighting that the FOS can help the complainant ensure their complaint is addressed to the correct respondent in the first instance.

Our response: The FOS recognises that when it helps the consumer to identify the relevant respondent, it has to do so carefully and transparently. The FOS is comfortable that it can operate the guidance for the benefit of both consumers and businesses. In response to the concerns that the draft guidance was unclear, we have altered the wording in new DISP 3.5.2 G, to ensure that it achieves its purpose of highlighting that the FOS can help the complainant address their complaint to the correct respondent in the first instance.

3.35 The FOS proposed new guidance to clarify how it may deal with two or more complaints from one complainant arising from connected circumstances.

3.36 In CP07/14 we asked:

Q13: Do you agree with the FOS's proposed guidance to explain how the FOS will deal with complaints related to connected circumstances?

3.37 All of the consultees were supportive of the proposed guidance in principle. One consultee expected that an Ombudsman would make reference to his/her overall decision in replying to both respondents. Another said that DISP 3.6.3 G should make it clear that in issuing separate assessments and determinations an Ombudsman's recommendation will not exceed the overall maximum payout. Consultees also asked us to clarify whether FOS case fees will be incurred by each respondent and to confirm that no issue of confidentiality or data protection will arise where a case involving a number of respondents is managed jointly.

3.38 Several consultees questioned whether the proposed DISP 3.5.3 G was sufficiently clear to achieve its purpose, suggesting that the guidance should be amended to make explicit reference to a single complainant.

Our response: New DISP 3.5.3 G and 3.6.3 G do not change the rules providing for the maximum award that the FOS can make and when the FOS case fees are incurred. The expectation on how the Ombudsman will structure their decision is noted, although it is at the Ombudsman's discretion to decide what is appropriate in each case. In response to the concerns that the draft guidance was unclear, we have altered the wording in new DISP 3.5.3 G to emphasise that it refers to related complaints from a single complainant.

3.39 For the greater convenience of the parties, and where the circumstances are appropriate, the FOS proposed that it be able to hold hearings by telephone.

3.40 In CP07/14 we asked:

Q14: Do you agree with the FOS's proposal that the FOS should be able to hold telephone hearings in appropriate circumstances?

3.41 Consultees were supportive of the proposal, though a number sought clarification on how the FOS would operate telephone hearings. A common view was that face-to-face meetings should not be abandoned entirely, with value being placed on non-verbal communication. It was thought more suitable to hold a face-to-face hearing if the facts or issues are complex or where there are a number of parties involved. One consultee invited the FOS to provide some guidance on the type of cases it would consider appropriate for telephone hearings, or recognise that telephone hearings are not appropriate in all cases

3.42 Several consultees did not expect the introduction of telephone hearings to result in an overall increase in the number of hearings. One consultee thought that the FOS should be able to hold telephone hearings only in exceptional circumstances. Several consultees queried whether the responding party could take part in a hearing by telephone if the complaining party appeared in person. One consultee thought that the rules should confirm that firms are allowed to attend in person if the complainant wished to attend by telephone. A number of consultees raised operational questions, such as whether there would be appropriate checks to ensure that the correct person was in fact on the phone.

Our response: The purpose of enabling the FOS to hold telephone hearings is to enable it to resolve complaints informally, in line with its FSMA obligations. Many of the comments made by respondents related to operational matters and when and how telephone hearings will be held. Recognising that the circumstances of what is fair and appropriate may differ in each case, the FOS will take account of the individual circumstances in each case and also the European Convention on Human Rights, in deciding whether to hold a hearing and if it should be in person or by telephone. Enabling the FOS to hold telephone hearings does not affect the existing policy on how hearings are operated generally. In this respect, new DISP 3.5.5 R and 3.5.7 G are substantively the same as old DISP 3.2.12 R and 3.2.14 G.

3.43 We have made a further change in addition to the proposals in CP07/14, in light of a recent High Court decision.¹⁰ The decision concerned section 229 of FSMA, which lists money awards and directions as options that an Ombudsman may include as part of a determination.

3.44 The FSA has fixed the maximum money award at £100,000 (new DISP 3.7.4 R). Previous guidance in DISP provided that the maximum money award had no bearing on any direction which an Ombudsman may make as part of a determination.

¹⁰ *Bunney v Burns Anderson Plc & Anor; Cabill v Timothy James Partners Ltd* [2007] EWHC 1240. Since CP07/14 was published, it has been confirmed that the High Court's decision is not being appealed.

Following the High Court's recent finding that the maximum money award applies both to money awards and to directions which require payment of money to the complainant or for their benefit, the proposed new DISP 3.7.12G has been deleted.¹¹ We consider it appropriate to make this change without consultation to reflect the Court's finding.

11 Proposed DISP 3.7.12 G was to replace the old DISP 3.9.9 G and provided that the maximum limit on money awards has no bearing on any direction in an Ombudsman's determination.

4 FOS Consultation Paper: Voluntary Jurisdiction

Voluntary Jurisdiction: Filling gaps for EEA Business

- 4.1 The FOS's voluntary jurisdiction is open to those businesses that choose to join it. The VJ covers complaints about certain specified activities, so far as they are not already covered by the compulsory jurisdiction or consumer credit jurisdiction. This includes some activities (but not all) which are directed at consumers in the UK by financial services businesses from an establishment elsewhere in the European Economic Area (EEA).
- 4.2 The FOS published its Consultation Paper, *Voluntary jurisdiction: filling gaps for EEA business* (VJ CP) in July 2007. It proposed to extend the range of activities which are covered by its voluntary jurisdiction to include all those activities directed at consumers in the UK by financial services businesses from an establishment elsewhere in the EEA that would be covered by the compulsory jurisdiction, if conducted from an establishment in the UK.
- 4.3 In the VJ CP the FOS asked:
1. Do you agree in principle with the proposal to extend the voluntary jurisdiction of the Financial Ombudsman Service so as to include all activities directed at the UK from the EEA where those activities are FSA-regulated activities or would have been if conducted from an establishment in the UK?
 2. Do you have any detailed drafting points concerning the draft rules in annex C? If so, please say what they are.
- 4.4 The FOS received five responses in total; all five were supportive in principle. Most consultees were of the view that this was merely a starting point for improving consumer protection in cross-border transactions and that they would like to see greater consistency across the EU in terms of consumer access to redress mechanisms. No comments were received on the draft rules in annex C of the VJ CP.
- 4.5 Firms are not expected to incur costs as a result of the changes, and businesses that wish to join the FOS's voluntary jurisdiction because their activities can now be covered will benefit.

Our response: The FOS has made the rules to extend its voluntary jurisdiction unchanged from those consulted on. The FOS is a member of FIN-NET, the European network of national out-of-court dispute-resolution bodies for financial services. The FOS, together with 15 of its fellow FIN-NET members recently provided a joint response to the European Commission green paper on Retail Financial Services. The joint response supported the green paper's view that consumers would have more confidence in buying financial services cross-border if they knew that they could get redress in the event of a dispute. The response recognised that despite the existence of FIN-NET, there were still many gaps – either because member states did not have comprehensive arrangements for out-of-court dispute-resolution or because an existing redress body had not joined FIN-NET. To improve the handling of disputes between consumers and providers of financial services cross-border, the FOS and its fellow FIN-NET members made a number of recommendations, including that member states should be encouraged to establish comprehensive out-of-court dispute-resolution arrangements for financial services where these did not already exist.

List of non-confidential responses to CP07/14

Association of British Insurers (ABI)

Adam Samuel

Aviva

AXA

Barclays

Dunfermline Building Society

Financial Services Consumer Panel

Gill Cardy (Professional Partnerships) (member of the FSA Smaller Businesses Practitioner Panel)

Glasgow Credit Union

Hastings Insurance Services Limited

International Underwriting Association (IUA)

Investment and Life Assurance Group (ILAG)

Keith Morris (Sabre Insurance) (member of the FSA Smaller Businesses Practitioner Panel)

Legal & General Group

Lloyd's Market Association

Openwork

Prudential Assurance Co Ltd and Prudential Health Ltd

Regulatory Alliance of Mortgage Packagers (RAMP)

Reynolds Porter Chamberlain LLP

Royal & Sun Alliance

Scottish Widows Group

The First Financial Consultancy

Unum Limited

Wesleyan Assurance Society

List of non-confidential responses to FOS Voluntary Jurisdiction Consultation Paper

AXA

Financial Services Consumer Panel

Legal & General Group

Personal Touch Home Financial Services (Nuneaton) Ltd

Which?

Summary and destination tables for final DISP 2-4

Annex 3

Guide to the new DISP 2-4

Part 1

Summary of the main changes to DISP Chapters 2-4

Change	Rule in final Handbook text	Discussed in this policy statement
<p><i>Glossary</i></p> <p>Firms, CCJ licensees and VJ participants collectively referred to as 'respondents'.</p>	Glossary	Paragraphs 3.9 – 3.11
<p><i>Relevant transitional complaints</i></p> <p>Old DISP 2.6.3A G changed to better reflect the wording in the Mortgage and General Insurance Complaints Transitional Order.</p>	DISP 2.3.2G (2)	Paragraph 3.12
<p><i>Activities to which the rules apply</i></p> <p>Addition of 'foreign currency exchange' to the guidance on 'ancillary banking services' in old DISP 2.6.6 G.</p> <p>The FOS's voluntary jurisdiction is extended to include all those activities directed at the UK from elsewhere in the EEA that would be covered by the compulsory jurisdiction, if conducted from an establishment in the UK (as at 1 July 2007).</p>	DISP 2.1.5 G DISP 2.5.1 R and DISP 2 Ann 1G	Paragraph 3.13 Paragraphs 4.1 – 4.5
<p><i>Eligible complainants</i></p> <p>Old DISP 2.4.12 R (3) changed by replacing the word 'statute' with 'legislation' and the scope extended by adding 'assignment'.</p> <p>Old DISP 2.4.3 R (2)(aa) changed by replacing the word 'companies' with 'bodies corporate'.</p> <p>Old DISP 2.4.11 R (3) changed by adding '(save the European Community (Rights against Insurers) Regulations 2002) and part of old DISP 2.4.13 G deleted.</p>	DISP 2.7.6 R(6) DISP 2.7.9 R(3) DISP 2.7.6 R(6)	Paragraphs 3.14 – 3.25

<p><i>Complaint handling procedures of the FOS</i></p> <p>Clarification that it is sufficient for the FOS to communicate with one partner (or former partner) on behalf of the partnership.</p> <p>Clarification that the FOS can dismiss a complaint without considering its merits if the matter has previously been considered under the FOS or former scheme (unless material new evidence likely to affect the outcome has subsequently become available to the complainant).</p> <p>Clarification that the FOS can assist a consumer to establish which respondent is responsible for the matter they wish to complain about.</p> <p>Clarification that the FOS may investigate two or more complaints related to connected circumstances together and, where two respondents are each responsible for a loss, the Ombudsman may determine the proportions in which each of the respondents should contribute to the overall loss..</p> <p>The FOS can hold telephone hearings.</p> <p>DISP 3.9.9 G deleted to reflect a recent High Court finding that the maximum money award applies both to money awards and to directions which require payment of money to the complainant or for his benefit.</p>	<p>DISP 3.1.3 R</p> <p>DISP 3.3.1 R</p> <p>DISP 3.5.2 G</p> <p>DISP 3.5.3 G & DISP 3.6.3 G</p> <p>DISP 3.5.5 R</p> <p>Deleted</p>	<p>Paragraphs 3.26 – 3.44</p>
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Part 2

Destination tables for DISP Chapters 2-4

These destination tables show where old DISP 2-4 rules appear in the new DISP 2-4 rules, which old rules have been deleted and the new additions.

DISP 2

Old DISP 2	New DISP 2	Explanation
2.1.1 R	2.1.7 R	
2.1.2 G	2.1.1 G	
2.1.3 R	2.1.4 R	
2.1.4 G	Amended Glossary	

Old DISP 2	New DISP 2	Explanation
2.1.4A G	Amended Glossary	See paragraphs 3.09 – 3.11 of this policy statement
2.1.5 G	2.2.1 G	
2.2.1 G	-	See new 2.1.3 G. Apart from this, these are dealt with in the relevant sections introduced by new 2.2.1 G. As these are clearer and shorter, they do not need this introduction.
2.2.2 G	-	
2.2.2A G	-	
2.2.3 G	-	Unnecessary repetition.
2.3.1 R	2.8.1 R and 2.8.2 R	
2.3.1A G	2.8.6 G	
2.3.2 G	-	Now obsolete.
2.3.3 G	2.8.3 G and 2.8.4 G	
2.3.4 G	-	Unnecessary detail, see FSA Sourcebook FEES 5.5.1 R.
2.3.5 R	2.8.5 R	
2.3.6 R	2.8.7 R	
2.4.1 R	2.7.1 R	
2.4.2 G	-	Unnecessary repetition.
2.4.3 R	2.7.3 R and 2.7.9 R	See paragraphs 3.14 to 3.18 of this policy statement.
2.4.4 G	2.7.4 G	Latter part of current 2.4.4 G is unnecessary repetition.
2.4.5 G	2.7.5G	
2.4.6 G	2.7.4 G	
2.4.7 R	2.7.6 R (1)	
2.4.8 R	2.7.6 R (2)	
2.4.9 G	-	Unnecessary detail.
2.4.10 R to 2.4.12 R	2.7.6 R (3) to (13)	See paragraphs 3.16 to 3.25 of this policy statement.
2.4.12A R	-	Now obsolete.
2.4.13 G	2.7.7 G	See paragraphs 3.22 to 3.25 of this policy statement.
2.4.14 G	2.7.8 G	
2.4.15 G	2.7.10 G (1)	
2.4.15A G	2.7.10 G (2)	
2.4.15B G	2.7.10 G (3)	

Old DISP 2	New DISP 2	Explanation
2.4.16 R and 2.4.17 R	2.7.2 R	Part of current 2.4.17 R is unnecessary repetition.
2.5.1 G	-	Unnecessary repetition.
2.5.2 G	-	Unnecessary repetition.
2.5.3 G	Amended Glossary	
2.5.4 D	2.1.8 D	
2.6.1 R and 2.6.2 R	2.3.1 R	
2.6.3 G	2.3.2 G (1)	
2.6.3A G	2.3.2 G (2)	See paragraphs 3.12 to 3.15 of this policy statement.
2.6.4 G	2.1.5 G	To avoid repetition throughout DISP 2.
2.6.5 G	2.3.3 G	
2.6.6 G	2.1.6 G	To avoid repetition throughout DISP 2.
2.6.7 R	2.3.4 R	
2.6.8 G	-	Old 2.6.8 G repeats substance of preceding rule which is unnecessary repetition.
2.6.8A R and 2.6.8B R	2.4.1 R	
2.6.8C G	2.1.5 G	To avoid repetition throughout DISP 2.
2.6.9 R	2.5.1 R	Voluntary jurisdiction extended, see Chapter 4 of this policy statement.
2.6.9A G	-	Unnecessary repetition - see wording of new 2.5.1 R.
2.6.9B G	-	Detailed explanation is unnecessary.
2.6.9C G	-	Detailed explanation is unnecessary.
2.6.10 G	2.5.4 G	
2.6.10A G	2.1.6 G	To avoid repetition throughout DISP 2.
2.6.10B G	2.5.3 G	
2.6.11 R	2.5.1 R	
2.6.12 R	2.5.5 R	
2.6.13 G	-	Unnecessary repetition.
2.7.1 R	2.6.1 R, 2.6.3 R and 2.6.4 R (1)	
2.7.2 R	2.6.4 R (2)	

Old DISP 2	New DISP 2	Explanation
2.7.3 G	-	Old 2.7.3G repeats substance of old preceding rule which is unnecessary repetition.
2.7.4 G	2.6.2 G	
2.7.4A G	-	Unnecessary repetition, see new 2.6.3. R
2.7.5 G	-	Unnecessary repetition.
2.7.6 G	2.6.5 G	
New	DISP 2 Ann 1G	Voluntary jurisdiction extended, see Chapter 4 of this policy statement.

DISP 3

Old DISP 3	New DISP 3	Explanation
3.1.1 R	3.1.5 R	
3.1.2 G	-	Unnecessary detail.
3.1.3 G	-	Unnecessary detail.
3.1.4 R	Amended Glossary	
3.1.5 G	Amended Glossary	
3.1.5A G	Amended Glossary	See paragraphs 3.9 – 3.11 of this policy statement.
3.1.6 G	-	Part covered by DISP 2, rest in relevant sections.
3.1.7 G	3.1.1 G	
3.2.1 R (1) to (3)	3.2.1 R	
3.2.1 R (4)	3.3.4 R	
3.2.2 G	-	Unnecessary repetition; see DISP 2.
3.2.3 R	3.2.2 R	
3.2.4 R	3.2.2 R	
3.2.5 R (part)	3.2.4 R	
3.2.5 R (part)	3.2.5 R	
3.2.5 R (part)	3.2.6 R	
3.2.6 G	-	Unnecessary detail.
3.2.7 R (part)	3.2.3 R	
3.2.7 R (part)	3.2.5 R	
3.2.7 R (part)	3.2.6 R	

Old DISP 3	New DISP 3	Explanation
3.2.8 R (part)	3.3.1 R	
3.2.8 R (part)	3.3.2 R	
3.2.9 R 3.2.10 G	3.5.1 R	Substance of 3.2.10 G is in old 3.2.9 R. The two are combined into new 3.5.1 R. No substantive change is intended.
3.2.11 R	3.5.4 R	
3.2.12 R	3.5.5 R	See paragraphs 3.39 to 3.42 of this policy statement.
3.2.13 R	3.5.6 R	
3.2.14 G	3.5.7 G	
3.3.1 R	3.3.4 R	
3.3.1A R	3.3.5 R	
3.3.1B G	3.3.6 G	
3.3.2 G	3.3.3 G	
3.3.2A G	3.3.3 G	
3.3.3 G	3.3.4 R	Substance of 3.3.3 G is in old 3.3.1 R. The two are combined into new 3.3.4 R. No substantive change is intended.
3.3.4 G	-	Unnecessary detail.
3.3.5 G	-	Unnecessary detail.
3.3.6 G	-	Unnecessary detail.
3.4.1 R	3.4.1 R	
3.5.1 R	3.5.8 R	
3.5.2 R	3.5.9 R	
3.5.3 G	-	Unnecessary detail.
3.5.4 G	3.5.10 G	
3.5.5 G	3.5.11 G	
3.5.6 G	3.5.12 G	
3.6.1 R	3.5.13 R	
3.6.2 R	3.5.14 R	
3.6.3 R	3.5.15 R	
3.7.1(1) R	3.9.1 A R	
3.7.1(2) R	3.9.1 A R	

Old DISP 3	New DISP 3	Explanation
3.7.1(3) R	3.9.2 G	This is a consequence of the effect of new 3.9.1 R. Therefore guidance status is appropriate.
3.7.2 G	-	Unnecessary detail.
3.8.1(1) R	3.6.1 R	
3.8.1(2) R	3.6.4 R	
3.8.2 (part) G	3.6.5 G	
3.8.2 (part) G	3.7.3 G	
3.8.2A (part) G	3.6.5 G	
3.8.2A (part) G	3.7.3 G	
3.8.3 R	3.6.6 R	
3.9.1 (part) G	3.7.1 G	
3.9.1 (part) G	3.7.11 G	
3.9.2 R	3.7.2 R	
3.9.3 G	3.7.2 R	Substance of 3.9.3 G is in old 3.9.2 R. The two are combined into new 3.7.2 R. No substantive change is intended.
3.9.4 G	3.7.3 G	
3.9.4A G	3.7.3 G	
3.9.5 R	3.7.4 R	
3.9.6 G	3.7.6 G	
3.9.7 G	3.7.8 G	
3.9.8 G	3.7.5(1) G	
3.9.9 G	-	Deleted in the light of the High Court decision <i>Bunney v Burns Anderson Plc & Anor; Cahill v Timothy James Partners Ltd</i> [2007] EWHC 1240. See paragraphs 3.43 – 3.44 of this policy statement
3.9.10 R	3.7.9 R	
3.9.11 G	3.7.10 G	
3.9.12 R	3.7.9 R	
3.9.13 G	3.7.5(2) G	
3.9.14 R	3.7.12 R	
3.9.15 R	3.7.7 R	
3.9.16 G	3.7.13 G	
3.9.17 G	3.7.13 G	

Old DISP 3	New DISP 3	Explanation
3.10.1(1) R	3.8.1 R	
3.10.1(2) R	3.8.2 B R	
3.10.1(3) R	3.8.3 R	
3.10.2	-	Unnecessary detail.
3.10.3	-	Unnecessary detail.
New	3.1.2 R	Definition; to avoid repetition throughout DISP 3.
New	3.1.3 R	See paragraphs 3.26 – 3.28 of this policy statement.
Appendix 1	3.1.4 G	Transferred from old Appendix 1 1.6.1 G.
New	3.5.2 G	See paragraphs 3.32 to 3.34 of this policy statement.
New	3.5.3 G	See paragraphs 3.35 and 3.38 of this policy statement.
New	3.6.2 G	Notes that the source of the FOS's discretion to determine cases is FSMA.
New	3.6.3 G	See paragraphs 3.35 and 3.38 of this policy statement.
Appendix 1.14.1 R	New 1.4.4 R	Shifted to new rule – see FSA document PS07/9.

DISP 4

Old DISP 4	New DISP 4	Explanation
4.1.1 G	4.1.2 G	
4.1.2 G	4.1.1 G	
4.2.1 R	4.2.1 R	
4.2.2 R	4.2.3 R	
4.2.3 G	-	Provided for in DISP 1.10 (in force 1 November 2007).
4.2.4 R	4.2.3 R	
4.2.5 R	4.2.2 R	
4.2.6 R	4.2.3 R	
4.2.7 R	4.2.8 R	
4.2.8 R	4.2.4 R	
4.2.9 R	4.2.4 R	
4.2.10 R	4.2.5 R	

New Handbook text for DISP

DISPUTE RESOLUTION: COMPLAINTS (SIMPLIFICATION (NO 2) AND OTHER AMENDMENTS) INSTRUMENT 2008

Powers exercised by the Financial Ombudsman Service Limited

A. The Financial Ombudsman Service Limited makes:

- (1) the rules and guidance in Annexes A and B to this instrument for licensees relating to the Consumer Credit Jurisdiction; and
- (2) the standard terms and guidance in Annexes A and B to this instrument for VJ participants relating to the Voluntary Jurisdiction;

in exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

- (a) section 226A (Consumer credit jurisdiction);
- (b) section 227 (Voluntary Jurisdiction);
- (c) section 229 (Awards);
- (d) section 230 (Costs);
- (e) paragraph 8 (Guidance) of Schedule 1;
- (f) paragraph 14 (The scheme operator's rules) of Schedule 17;
- (g) paragraph 16B (Consumer credit jurisdiction) of Schedule 17; and
- (h) paragraph 18 (Terms of reference to the scheme) of Schedule 17.

B. The making of these rules and standard terms by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Services Authority.

Powers exercised by the Financial Services Authority

C. The Financial Services Authority makes the rules and guidance in this instrument for firms relating to the Compulsory Jurisdiction in the exercise of the powers and related provisions in or under:

- (1) the following sections of the Act:
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers);
 - (c) section 157(1) (Guidance);
 - (d) section 226 (Compulsory jurisdiction);
 - (e) section 229 (Awards);
 - (f) paragraph 13 (Authority's procedural rules) of Schedule 17;
- (2) article 15 (Record-keeping and reporting requirements relating to relevant complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001 (SI 2001/2326);

- (3) article 9 (Record-keeping and reporting requirements relating to relevant transitional complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (SI 2004/454); and
 - (4) the other powers referred to in Schedule 4 of the General Provisions.
- D. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.
- E. The Financial Services Authority consents to and approves the rules and standard terms made by the Financial Ombudsman Service Limited.

Commencement

- F. Part 2 of Annex B to this instrument comes into force on 6 July 2008. The remainder of this Instrument comes into force on 6 April 2008.

Amendments to the Dispute Resolution: the Complaints sourcebook

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

Other amendments to the Handbook

- H. The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

Glossary of definitions	Annex A
Fees manual	Annex C
Credit Unions sourcebook	Annex D
Professional Firms sourcebook	Annex E

Citation

- I. This instrument may be cited as the Dispute Resolution: Complaints (Simplification (No 2) and other Amendments) Instrument 2008.

By order of the Board of the Financial Ombudsman Service Limited

5 March 2008

By order of the Board of the Financial Services Authority

27 March 2008

Annex A

Amendments to the Glossary of definitions

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

...

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

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

(i) the complainant is not an *eligible complainant* in accordance with *DISP* 2; or

(ii) the ~~complaint~~ complaint does not fall within the jurisdiction of the *Financial Ombudsman Service* (as described in *DISP* 2); or

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

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

...

complaint (1) ...

...

(4) (in *DISP*) reference to a *complaint* includes:

(a) under all jurisdictions, part of a *complaint*; and

(b) under the *Compulsory Jurisdiction*, all or part of a *relevant complaint*.

...

eligible complainant a person eligible to have a ~~complaint~~ complaint considered under the *Financial Ombudsman Service*, as defined in *DISP* 2.4 (~~Who can refer a complaint to the Financial Ombudsman Service~~) 2.7 (Is the complainant eligible?).

...

firm

- (1) an *authorised person*, but not a *professional firm* unless it is an *authorised professional firm*; (see also *GEN 2.2.18R* for the position of an authorised partnership or unincorporated association which is dissolved);
- (2) (in *DISP 2* and *3*) includes, in accordance with the *Ombudsman Transitional Order*, *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant existing complaints* and *relevant new complaints*.
- (3) (in *DISP 2* and *3*) includes, in accordance with the *Mortgage and General Insurance Complaints Transitional Order*, former *firms* subject to the *Compulsory Jurisdiction* in relation to *relevant transitional complaints*.
- (4) (in *DISP 2* and *3*) includes, as a result of the *insurance market direction* given in *DISP 2.1.7D* under section 316 of the *Act* (*Direction by Authority*), *members of the Society of Lloyd's*.

...

relevant business

- (1) (in *DISP* and *FEES*) that part of a *firm's* business which it conducts with private individuals and which is subject to the jurisdiction of the *Financial Ombudsman Service* as provided for in *DISP 2.6* (~~To which activities do the rules apply?~~) *2.3* (*To which activities does the Compulsory Jurisdiction apply?*), *DISP 2.4* (*To which activities does the Consumer Credit Jurisdiction apply?*) and *DISP 2.5* (*To which activities does the Voluntary Jurisdiction apply?*), measured by reference to the appropriate tariff-base for each *industry block*.

...

...

respondent

- (1) (in *DISP*) a *firm* (except a *UCITS qualifier*), *licensee* or *VJ participant* covered by the ~~compulsory jurisdiction~~ *Compulsory Jurisdiction*, ~~consumer credit jurisdiction~~ *Consumer Credit Jurisdiction* or ~~voluntary jurisdiction~~ *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.
- (2) (in *DISP 2* and *3*) includes, as a result of sections 226 and 226A of the *Act*:
 - (a) an *unauthorised person* who was formerly a *firm* in respect of a *complaint* about an act or omission which occurred at the time when the *firm* was *authorised*, provided that the compulsory jurisdiction rules were in force in relation to the activity in question; and
 - (b) a *person* who was formerly a *licensee* in respect of a *complaint* about an act or omission which occurred at the time when it was a *licensee*, provided the *complaint* falls within a description specified in the consumer credit rules in force at the time of the

act or omission.

(3) (in DISP 2 and 3) includes, in accordance with the *Ombudsman Transitional Order*, an *unauthorised person* subject to the *Compulsory Jurisdiction* in relation to *relevant existing complaints* and *relevant new complaints*.

(4) (in DISP 2 and 3) includes, in accordance with the *Mortgage and General Insurance Complaints Transitional Order*, a former *firm* subject to the *Compulsory Jurisdiction* in relation to *relevant transitional complaints*.

...

Annex B

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

Part 1

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

...

- 1.1.5 R This chapter does not apply to:
- (1) a ~~UCITS~~ qualifier; [deleted]

...

1.8 Complaints time barring rule

- 1.8.1 R If a *respondent* receives a *complaint* which is outside the time limits for referral to the *Financial Ombudsman Service* (see *DISP 2.3 2.8*) it may reject the *complaint* without considering the merits, but must explain this to the complainant in a *final response* in accordance with *DISP 1.6.2R* and indicate that the *Ombudsman* may waive the time limits in exceptional circumstances.

...

Part 2

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

...

Complainant's written acceptance

- 1.6.4 R *DISP* 1.6.2R does not apply if the complainant has already indicated in writing acceptance of a response by the *respondent*, provided that the response:
- (1) ~~informs~~ informed the complainant how to pursue his *complaint* with the *respondent* if he remains dissatisfied; and
 - (2) referred to the ultimate availability of the *Financial Ombudsman Service* if he remains dissatisfied with the *respondent's* response.

...

- 1.6.6A G The information regarding the *Financial Ombudsman Service* required to be provided in responses sent under the *complaints* time limit rules (*DISP* 1.6.2R, 1.6.4R and 1.6.5R) should be set out prominently within the text of those responses.

...

DISP TP 1

Transitional provisions

1.1 Transitional Provisions table

(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	...				
...					
<u>20</u>	<u><i>DISP</i> 1.6.4R</u>	<u>R</u>	<u>Where a complainant indicates after 6 July 2008 their acceptance of a response sent by the <i>respondent</i> under</u>	<u>From 6 July 2008 to 6 September 2008</u>	<u>6 July 2008</u>

			<u>DISP 1.6.4R before 6 July 2008 then that response need not have referred to the ultimate availability of the <i>Financial Ombudsman Service</i>.</u>		
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Part 3

The introduction to *DISP*, and *DISP 2*, *DISP 3* and *DISP 4* are deleted and replaced with the following text. All the text is new and is not underlined.

Introduction

This part of the *Handbook* sets out how *complaints* are to be dealt with by *respondents* (*firms*, *licensees* and *VJ participants*) and the *Financial Ombudsman Service*.

It refers to relevant provisions in the *Act* and in transitional provisions made by the Treasury under the *Act*. It includes *rules* made by the *FSA* and rules made (and *standard terms* set) by *FOS Ltd* with the consent or approval of the *FSA*. Schedule 4 specifies the sections of the *Act* under which the rules in this sourcebook are made.

The powers to make rules (or set *standard terms*) relating to *firms*, *licensees* and *VJ participants* derive from various legislative provisions; but the rules (and *standard terms*) have been co-ordinated to ensure that they are identical, wherever possible.

Chapter 1: Treating complainants fairly

DISP 1 contains rules and guidance on how *respondents* should deal with *complaints* promptly and fairly, including *complaints* that could be referred to the *FOS*. Some of these rules also apply to certain *branches* of *firms* elsewhere in the *EEA*.

Chapters 2 - 4: The Financial Ombudsman Service

Chapters 2, 3 and 4 set out how the *Financial Ombudsman Service* (operated by *FOS Ltd*) considers unresolved *complaints*.

Chapter 2 sets out the scope of the *Financial Ombudsman Service*'s three jurisdictions:

- the *Compulsory Jurisdiction*;
- the *Consumer Credit Jurisdiction*; and
- the *Voluntary Jurisdiction*.

The scope of the three jurisdictions is defined by: the type of activity to which the *complaint* relates; the place where the activity took place; the eligibility of the complainant; and the time limits for referring a *complaint* to the *Financial Ombudsman Service*.

Chapter 3 sets out the procedures of the *Financial Ombudsman Service*, including consideration and determination of *complaints* and how the *Financial Ombudsman Service* deals with information received.

Chapter 4 sets out the terms under which *VJ participants* participate in the *Voluntary Jurisdiction*.

Appendix 1: FSA's guidance on handling mortgage-endowment complaints

This appendix contains the *FSA's guidance to firms* on handling *complaints* relating to mortgage endowments.

Financial Ombudsman Service fees

The rules on fees charged in respect of the *Financial Ombudsman Service* are in Chapter 5 of the Fees manual.

2 Jurisdiction of the Financial Ombudsman Service

2.1 Purpose, interpretation and application

Purpose

- 2.1.1 G The purpose of this chapter is to set out *rules* and guidance on the scope of the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* and the *Voluntary Jurisdiction*, which are the *Financial Ombudsman Service's* three jurisdictions:
- (1) the *Compulsory Jurisdiction* is not restricted to *regulated activities* and covers:
 - (a) certain *complaints* against *firms* (and businesses which were *firms* at the time of the events complained about); and
 - (b) *relevant complaints* against former members of *former schemes* under the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order*;
 - (2) the *Consumer Credit Jurisdiction* covers certain *complaints* against *licensees* (and businesses which were *licensees* at the time of the events complained about); and
 - (3) the *Voluntary Jurisdiction* covers certain *complaints* against *VJ participants*, including in relation to events before they joined the *Voluntary Jurisdiction*.
- 2.1.2 G *Relevant complaints* covered by the *Compulsory Jurisdiction* comprise:
- (1) *relevant existing complaints* referred to a *former scheme* before *commencement* and inherited by the *Financial Ombudsman Service* under the *Ombudsman Transitional Order*;
 - (2) *relevant new complaints* about events before *commencement* but referred to the *Financial Ombudsman Service* after *commencement* under the *Ombudsman Transitional Order*; and
 - (3) *relevant transitional complaints* referred to the *Financial Ombudsman Service* after the *relevant commencement date* under the *Mortgage and General Insurance Complaints Transitional Order*.
- 2.1.3 G The *Ombudsman Transitional Order* requires the *Financial Ombudsman Service* to complete the handling of *relevant existing complaints*, in a significant number of respects, in accordance with the requirements of the relevant *former scheme* rather than in accordance with the requirements of this chapter.

Interpretation

- 2.1.4 G In this chapter, carrying on an activity includes:
- (1) offering, providing or failing to provide a service in relation to an activity;
 - (2) administering or failing to administer a service in relation to an activity; and
 - (3) the manner in which a *respondent* has administered its business, provided that the business is an activity subject to the *Financial Ombudsman Service's* jurisdiction.
- 2.1.5 G In this chapter, ancillary banking services include, for example, the provision and operation of cash machines, foreign currency exchange, safe deposit boxes and account aggregation services (services where details of accounts held with different financial service providers can be accessed by a single password).

Application

- 2.1.6 R This chapter applies to the *Ombudsman* and to *respondents*.
- 2.1.7 D Part XVI of the *Act* (The Ombudsman Scheme), particularly section 226 (Compulsory Jurisdiction), applies to *members* of the *Society of Lloyd's* in respect of the *regulated activities* of *effecting* or *carrying out contracts of insurance* written at Lloyd's.

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

- 2.2.1 G The scope of the *Financial Ombudsman Service's* three jurisdictions depends on:
- (1) the type of activity to which the *complaint* relates (see *DISP 2.3*, *DISP 2.4* and *DISP 2.5*);
 - (2) the place where the activity to which the *complaint* relates was carried on (see *DISP 2.6*);
 - (3) whether the complainant is eligible (see *DISP 2.7*); and
 - (4) whether the *complaint* was referred to the *Financial Ombudsman Service* in time (see *DISP 2.8*).

2.3 To which activities does the Compulsory Jurisdiction apply?

2.3.1 R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:

- (1) *regulated activities*;
- (2) *consumer credit activities*;
- (3) lending *money* secured by a charge on land;
- (4) lending *money* (excluding *restricted credit* where that is not a *consumer credit activity*);
- (5) paying *money* by a *plastic card* (excluding a *store card* where that is not a *consumer credit activity*);
- (6) providing ancillary banking services;

or any ancillary activities, including advice, carried on by the *firm* in connection with them.

2.3.2 G The *Ombudsman* can also consider under the *Compulsory Jurisdiction*:

- (1) as a result of the *Ombudsman Transitional Order*, a *relevant existing complaint* or a *relevant new complaint* that relates to an act or omission by a *firm* or an *unauthorised person* which was subject to a *former scheme* immediately before *commencement*; or
- (2) as a result of the *Mortgage and General Insurance Complaints Transitional Order*, a *relevant transitional complaint* that relates to an act or omission by a *firm* (or an *unauthorised person* that ceased to be a *firm* after the *relevant commencement date*) which was subject to a *former scheme* at the time of the act or omission;

provided that:

- (3) the act or omission occurred in the carrying on by that *firm* or *unauthorised person* of an activity to which that *former scheme* applied; and
- (4) the complainant is eligible and wishes to have the *complaint* dealt with by the *Ombudsman*.

2.3.3 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 (including business of any *appointed representative* for which the *firm* has accepted responsibility).

2.3.4 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 a *non-mainstream regulated activity* and can be handled by a *designated professional body*.

2.4 To which activities does the Consumer Credit Jurisdiction apply?

- 2.4.1 R The *Ombudsman* can consider a *complaint* under the *Consumer Credit Jurisdiction* if:
- (1) it is not covered by the *Compulsory Jurisdiction*; and
 - (2) it relates to an act or omission by a *licensee* in carrying on:
 - (a) one or more *consumer credit activities*; or
 - (b) any ancillary activities, including advice, carried on by the *licensee* in connection with them.

2.5 To which activities does the Voluntary Jurisdiction apply?

- 2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:
- (1) it is not covered by the *Compulsory Jurisdiction* or the *Consumer Credit Jurisdiction*; and
 - (2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:
 - (a) an activity carried on after 28 April 1988 which:
 - (i) was not a *regulated activity* at the time of the act or omission, but
 - (ii) was a *regulated activity* when the *VJ participant* joined the *Voluntary Jurisdiction* (or became an *authorised person*, if later);
 - (b) a financial services activity carried on after *commencement* by a *VJ participant* which was covered in respect of that activity by a *former scheme* immediately before the *commencement day*;
 - (c) activities which (at 1 July 2007) were *regulated activities* or would be *regulated activities* if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Ann 1G*);
 - (d) activities which would be *consumer credit activities* if they were carried on from an establishment in the *United*

Kingdom;

- (e) lending *money* secured by a charge on land;
- (f) lending *money* (excluding *restricted credit* where that is not a *consumer credit activity*);
- (g) paying *money* by a *plastic card* (excluding a *store card* where that is not a *consumer credit activity*);
- (h) providing ancillary banking services;
- (i) acting as an intermediary for a loan secured by a charge over land;
- (j) acting as an intermediary for *general insurance business* or *long-term insurance business*;
- (k) National Savings and Investments' business;

or any ancillary activities, including advice, carried on by the *VJ participant* in connection with them.

- 2.5.2 G The scope of the *Voluntary Jurisdiction* is wider than that of the *Compulsory Jurisdiction*, and so some activities are referred to in both jurisdictions.
- 2.5.3 G *DISP 2.5.1R(2)(a)* is for those that are subject to the *Compulsory Jurisdiction* for *regulated activities* but are not covered by the *Ombudsman Transitional Order* or the *Mortgage and General Insurance Complaints Transitional Order*. It enables the *Financial Ombudsman Scheme* to cover *complaints* about earlier events relating to those activities before they became *regulated activities*.
- 2.5.4 G *DISP 2.5.1R(2)(b)* is for those that were members of one of the *former schemes* replaced by the *Financial Ombudsman Service* immediately before *commencement*. It enables the *Financial Ombudsman Scheme* to cover *complaints* that arise out of acts or omissions occurring after *commencement* for any activities which are not covered by the *Compulsory Jurisdiction* but that would have been covered by the relevant *former scheme*.
- 2.5.5 R The *Voluntary Jurisdiction* covers an act or omission that occurred before the *VJ participant* was participating in the *Voluntary Jurisdiction*, and whether the act or omission occurred before or after *commencement*, either:
 - (1) if the *complaint* could have been dealt with under a *former scheme*; or
 - (2) under the agreement by the *VJ participant* in the *Standard Terms*.

2.6 What is the territorial scope of the relevant jurisdiction?

Compulsory Jurisdiction

2.6.1 R The *Compulsory Jurisdiction* covers only *complaints* about the activities of a *firm* (including its *appointed representatives*) carried on from an establishment in the *United Kingdom*.

2.6.2 G This:

- (1) includes *incoming EEA firms* and *incoming Treaty firms*; but
- (2) excludes *complaints* about business conducted in the *United Kingdom* on a services basis from an establishment outside the *United Kingdom*.

Consumer Credit Jurisdiction

2.6.3 R The *Consumer Credit Jurisdiction* covers only *complaints* about the activities of a *licensee* carried on from an establishment in the *United Kingdom*.

Voluntary Jurisdiction

2.6.4 R The *Voluntary Jurisdiction* covers only *complaints* about the activities of a *VJ participant* carried on from an establishment:

- (1) in the *United Kingdom*; or
- (2) elsewhere in the *EEA* if the following conditions are met:
 - (a) the activity is directed wholly or partly at the *United Kingdom* (or part of it);
 - (b) contracts governing the activity are (or, in the case of a potential customer, would have been) made under the law of England and Wales, Scotland or Northern Ireland; and
 - (c) the *VJ participant* has notified appropriate regulators in its *Home State* of its intention to participate in the *Voluntary Jurisdiction*.

Location of the complainant

2.6.5 G A *complaint* can be dealt with under the *Financial Ombudsman Service* whether or not the complainant lives or is based in the *United Kingdom*.

2.7 Is the complainant eligible?

- 2.7.1 R A *complaint* may only be dealt with under the *Financial Ombudsman Service* if it is brought by or on behalf of an *eligible complainant*.
- 2.7.2 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. It is immaterial whether the *person* authorised to act on behalf of an *eligible complainant* is himself an *eligible complainant*.

Eligible complainants

- 2.7.3 R An *eligible complainant* must be a *person* that is:
- (1) a private individual;
 - (2) a business, which has a group annual turnover of less than £1 million at the time the complainant refers the *complaint* to the *respondent*;
 - (3) a charity which has an annual income of less than £1 million at the time the complainant refers the *complaint* to the *respondent*; or
 - (4) a trustee of a trust which has a net asset value of less than £1 million at the time the complainant refers the *complaint* to the *respondent*.
- 2.7.4 G A business includes a *sole trader*, a *company*, an unincorporated body and a *partnership* carrying on any trade or profession. A subsidiary of a corporate group will be eligible only where the corporate group as a whole meets the turnover test.
- 2.7.5 G If a *respondent* is in 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.
- 2.7.6 R To be an *eligible complainant* a *person* must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:
- (1) the complainant is (or was) a customer of the *respondent*;
 - (2) the complainant is (or was) a potential customer of the *respondent*;
 - (3) the complainant is the holder, or the beneficial owner, of *units* in a *collective investment scheme* and the *respondent* is the *operator* or *depository* of the *scheme*;

- (4) the complainant is a beneficiary of, or has a beneficial interest in, a *personal pension scheme* or *stakeholder pension scheme*;
- (5) the complainant is a *person* for whose benefit a *contract of insurance* was taken out or was intended to be taken out with or through the *respondent*;
- (6) the complainant is a *person* on whom the legal right to benefit from a claim against the *respondent* under a *contract of insurance* has been devolved by contract, assignment, subrogation or legislation (save the European Community (Rights against Insurers) Regulations 2002);
- (7) the complainant relied in the course of his business on a cheque guarantee card issued by the *respondent*;
- (8) the complainant is the true owner or the *person* entitled to immediate possession of a cheque or other bill of exchange, or of the funds it represents, collected by the *respondent* for someone else's account;
- (9) the complainant is the recipient of a banker's reference given by the *respondent*;
- (10) the complainant gave the *respondent* a guarantee or security for:
 - (a) a mortgage;
 - (b) a loan;
 - (c) an actual or prospective *regulated consumer credit agreement*;
 - (d) an actual or prospective *regulated consumer hire agreement*; or
 - (e) any linked transaction as defined in the Consumer Credit Act 1974 (as amended);
- (11) the complainant is a *person* about whom information relevant to his financial standing is or was held by the *respondent* in operating a credit reference agency as defined by section 145(8) of the Consumer Credit Act 1974 (as amended);
- (12) the complainant is a *person* from whom the *respondent* has sought to recover payment under a *regulated consumer credit agreement* or *regulated consumer hire agreement* in carrying on debt-collecting as defined by section 145 (7) of the Consumer Credit Act (1974) (as amended); or
- (13) the complainant is a beneficiary under a trust or estate of which

the *respondent* is trustee or personal representative.

2.7.7 G *DISP* 2.7.6R(5) and (6) include, 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.

2.7.8 G In the *Compulsory Jurisdiction*, under the *Ombudsman Transitional Order* and the *Mortgages and General Insurance Complaints Transitional Order*, where a complainant:

- (1) wishes to have a *relevant new complaint* or a *relevant transitional complaint* dealt with by the *Ombudsman*; and
- (2) is not otherwise eligible; but
- (3) would have been entitled to refer an equivalent *complaint* to the *former scheme* in question immediately before the relevant transitional order came into effect;

if the *Ombudsman* considers it appropriate, he may treat the complainant as an *eligible complainant*.

Exceptions

2.7.9 R The following are not *eligible complainants*:

- (1) (in all jurisdictions) a *firm*, *licensee* or *VJ participant* whose *complaint* relates in any way to an activity which:
 - (a) the *firm* itself has *permission* to carry on; or
 - (b) the *licensee* or *VJ participant* itself conducts;

and which is subject to the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* or the *Voluntary Jurisdiction*;

- (2) (in the *Compulsory Jurisdiction*) a complainant, other than a trustee of a *pension scheme* trust, who was:
 - (a) a *professional client*; or
 - (b) an *eligible counterparty*;

in relation to the *firm* and activity in question at the time of the act or omission which is the subject of the *complaint*; and

- (3) (in the *Consumer Credit Jurisdiction*):
 - (a) a body corporate;
 - (b) a *partnership* consisting of more than three persons;

- (c) a *partnership* all of whose members are bodies corporate; or
- (d) an unincorporated body which consists entirely of bodies corporate.

2.7.10 G In the *Compulsory Jurisdiction*, in relation to *relevant new complaints* under the *Ombudsman Transitional Order* and *relevant transitional complaints* under the *Mortgages and General Insurance Complaints Transitional Order*:

- (1) where the *former scheme* in question is the *Insurance Ombudsman Scheme*, a complainant is not to be treated as an *eligible complainant* unless:
 - (a) he is an individual; and
 - (b) the *relevant new complaint* does not concern aspects of a policy relating to a business or trade carried on by him;
- (2) where the *former scheme* in question is the *GISC facility*, a complainant is not to be treated as an *eligible complainant* unless:
 - (a) he is an individual; and
 - (b) he is acting otherwise than solely for the purposes of his business; and
- (3) where the *former scheme* in question is the *MCAS scheme*, a complainant is not to be treated as an *eligible complainant* if:
 - (a) the *relevant transitional complaint* does not relate to a breach of the Mortgage Code published by the Council of Mortgage Lenders;
 - (b) the *complaint* concerns physical injury, illness, nervous shock or their consequences; or
 - (c) the complainant is claiming a sum of money that exceeds £100,000.

2.8 Was the complaint referred to the Financial Ombudsman Service in time?

2.8.1 R The *Ombudsman* can only consider a *complaint* if:

- (1) the *respondent* has already sent the complainant its *final response*;
or
- (2) eight weeks have elapsed since the *respondent* received the *complaint*.

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

- (1) more than six *months* after the date on which the *respondent* sent the complainant its *final response*; or
- (2) more than:
 - (a) six years after the event complained of; or (if later)
 - (b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the *complaint* to the *respondent* or to the *Ombudsman* within that period and has a written acknowledgement or some other record of the *complaint* having been received;

unless:

- (3) in the view of the *Ombudsman*, the failure to comply with the time limits was as a result of exceptional circumstances; or
- (4) the *Ombudsman* is required to do so by the *Ombudsman Transitional Order*; or
- (5) the *respondent* has not objected to the *Ombudsman* considering the *complaint*.

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

2.8.4 G An example of exceptional circumstances might be where the complainant has been or is incapacitated.

Reviews of past business

2.8.5 R The six-year and the three-year time limits do not apply where:

- (1) the time limit has been extended under a scheme for review of past business approved by the Treasury under section 404 of the *Act* (Schemes for reviewing past business); or
- (2) the *complaint* concerns a contract or policy which is the subject of a review directly or indirectly under:
 - (a) the terms of the Statement of Policy on 'Pension transfers and Opt-outs' issued by the *FSA* on 25 October 1994; 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.

Mortgage endowment complaints

- 2.8.6 G If a *complaint* relates to the sale of an endowment *policy* for the purpose of achieving capital repayment of a mortgage, the receipt by the complainant of a letter which states that there is a risk (rather than a high risk) that the *policy* would not, at maturity, produce a sum large enough to repay the target amount is not, itself, sufficient to cause the three year time period in *DISP* 2.8.2R(2) to start to run.
- 2.8.7 R (1) If a *complaint* relates to the sale of an endowment *policy* for the purpose of achieving capital repayment of a mortgage and the complainant receives a letter from a *firm* or a *VJ participant* warning that there is a high risk that the *policy* will not, at maturity, produce a sum large enough to repay the target amount then, subject to (2), (3), (4) and (5):
- (a) time for referring a *complaint* to the *Financial Ombudsman Service* starts to run from the date the complainant receives the letter; and
 - (b) ends three years from that date (“the final date”).
- (2) Paragraph (1)(b) applies only if the complainant also receives within the three year period mentioned in (1)(b) and at least six months before the final date an explanation that the complainant’s time to refer such a *complaint* would expire at the final date.
- (3) If an explanation is given but is sent outside the period referred to in (2), time for referring a *complaint* will run until a date specified in such an explanation which must not be less than six months after the date on which the notice is sent.
- (4) A complainant will be taken to have complied with the time limits in (1) to (3) above if in any case he refers the *complaint* to the *firm* or *VJ participant* within those limits and has a written acknowledgement or some other record of the *complaint* having been received.
- (5) Paragraph (1) does not apply if the *Ombudsman* is of the opinion that, in the circumstances of the case, it is appropriate for *DISP* 2.8.2R(2) to apply.

DISP 2 Ann 1G

Regulated activities at 1 July 2007

The activities which (at 1 July 2007) were *regulated activities* were, in accordance with section 22 of the *Act* (The classes of activity and categories of investment), any of the following activities specified in Part II of the *Regulated Activities Order*:

- (1) *accepting deposits* (article 5);
- (2) *issuing electronic money* (article 9B);
- (3) *effecting contracts of insurance* (article 10(1));
- (4) *carrying out contracts of insurance* (article 10(2));
- (5) *dealing in investments as principal* (article 14);
- (6) *dealing in investments as agent* (article 21);
- (7) *arranging (bringing about) deals in investments* (article 25(1));
- (8) *making arrangements with a view to transactions in investments* (article 25(2));
- (9) *arranging (bringing about) regulated mortgage contracts* (article 25A(1));
- (10) *making arrangements with a view to regulated mortgage contracts* (article 25A(2));
- (11) *arranging (bringing about) a home reversion plan* (article 25B(1));
- (12) *making arrangements with a view to a home reversion plan* (article 25B(2));
- (13) *arranging (bringing about) a home purchase plan* (article 25C(1));
- (14) *making arrangements with a view to a home purchase plan* (article 25C(2));
- (15) *managing investments* (article 37);
- (16) *assisting in the administration and performance of a contract of insurance* (article 39A);
- (17) *safeguarding and administering investments* (article 40);
- (18) *sending dematerialised instructions* (article 45(1));
- (19) *causing dematerialised instructions to be sent* (article 45(2));
- (20) *establishing, operating or winding up a collective investment scheme* (article 51(1)(a));
- (21) *acting as trustee of an authorised unit trust scheme* (article 51(1)(b));
- (22) *acting as the depositary or sole director of an open-ended investment company* (article 51(1)(c));
- (23) *establishing, operating or winding up a stakeholder pension scheme* (article 52(a));
- (24) *providing basic advice on a stakeholder product* (article 52B);
- (25) *establishing, operating or winding up a personal pension scheme* (article 52(b));
- (26) *advising on investments* (article 53);
- (27) *advising on regulated mortgage contracts* (article 53A);
- (28) *advising on a home reversion plan* (article 53B);

- (29) *advising on a home purchase plan* (article 53C);
- (30) *advising on syndicate participation at Lloyd's* (article 56);
- (31) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's* (article 57);
- (32) *arranging deals in contracts of insurance written at Lloyd's* (article 58);
- (33) *entering into a regulated mortgage contract* (article 61(1));
- (34) *administering a regulated mortgage contract* (article 61(2));
- (35) *entering into a home reversion plan* (article 63B(1));
- (36) *administering a home reversion plan* (article 63B(2));
- (37) *entering into a home purchase plan* (article 63F(1));
- (38) *administering a home purchase plan* (article 63F(2));
- (39) *entering as provider into a funeral plan contract* (article 59);
- (40) *agreeing to carry on a regulated activity* (article 64);

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of (20), (21), (22) and (23), is carried on in relation to property of any kind.

3 Complaint handling procedures of the Financial Ombudsman Service

3.1 Purpose, interpretation and application

Purpose

- 3.1.1 G The purpose of this chapter is to set out:
- (1) the procedures of the *Financial Ombudsman Service* for investigating and determining *complaints*;
 - (2) the basis on which the *Ombudsman* makes decisions; and
 - (3) the awards which the *Ombudsman* can make.

Interpretation

- 3.1.2 R In this chapter, ‘out of jurisdiction’ means outside the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* and the *Voluntary Jurisdiction* in accordance with *DISP 2*.
- 3.1.3 R Where the *respondent* is a *partnership* (or former *partnership*), it is sufficient for the *Ombudsman* to communicate with one partner (or former partner).
- 3.1.4 G The *Ombudsman Transitional Order* requires the *Financial Ombudsman Service* to complete the handling of *relevant existing complaints*, in a significant number of respects, in accordance with the requirements of the relevant *former scheme* rather than in accordance with the requirements of this chapter.

Application

- 3.1.5 R This chapter applies to the *Ombudsman* and to *respondents*.

3.2 Jurisdiction

- 3.2.1 R The *Ombudsman* will have regard to whether a *complaint* is out of jurisdiction.
- 3.2.2 R Unless the *respondent* has already had eight weeks to consider the *complaint* or issued a *final response*, the *Ombudsman* will refer the *complaint* to the *respondent*.
- 3.2.3 R Where the *respondent* alleges that the *complaint* is out of jurisdiction, the *Ombudsman* will give both parties an opportunity to make representations before he decides.
- 3.2.4 R Where the *Ombudsman* considers that the *complaint* may be out of

jurisdiction, he will give the complainant an opportunity to make representations before he decides.

3.2.5 R Where the *Ombudsman* then decides that the *complaint* is out of jurisdiction, he will give reasons for that decision to the complainant and inform the *respondent*.

3.2.6 R Where the *Ombudsman* then decides that the *complaint* is not out of jurisdiction, he will inform the complainant and give reasons for that decision to the *respondent*.

3.3 Dismissal without consideration of the merits and test cases

3.3.1 R Where the *Ombudsman* considers that the *complaint* may be one which should be dismissed without consideration of the merits, he will give the complainant an opportunity to make representations before he decides.

3.3.2 R Where the *Ombudsman* then decides that the *complaint* should be dismissed without consideration of the merits, he will give reasons to the complainant for that decision and inform the *respondent*.

3.3.3 G Under the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order*, where the *Ombudsman* is dealing with a *relevant complaint*, he must take into account whether an equivalent complaint would have been dismissed without consideration of its merits under the *former scheme* in question, as it had effect immediately before the relevant transitional order came into effect.

Grounds for dismissal

3.3.4 R The *Ombudsman* may dismiss a *complaint* without considering its merits if he considers that:

- (1) the complainant has not suffered (or is unlikely to suffer) financial loss, material distress or material inconvenience; or
- (2) the *complaint* is frivolous or vexatious; or
- (3) the *complaint* clearly does not have any reasonable prospect of success; or
- (4) the *respondent* has already made an offer of compensation (or a goodwill payment) which is:
 - (a) fair and reasonable in relation to the circumstances alleged by the complainant; and
 - (b) still open for acceptance; or

- (5) the *respondent* has reviewed the subject matter of the *complaint* in accordance with:
- (a) the regulatory standards for the review of such transactions prevailing at the time of the review; or
 - (b) the terms of a scheme order under section 404 of the *Act* (Schemes for reviewing past business); or
 - (c) any formal regulatory requirement, standard or guidance published by the *FSA* or other regulator in respect of that type of *complaint*;
- (including, if appropriate, making an offer of redress to the complainant), unless he considers that they did not address the particular circumstances of the case; or
- (6) the subject matter of the *complaint* has previously been considered or excluded under the *Financial Ombudsman Service*, or a *former scheme* (unless material new evidence which the *Ombudsman* considers likely to affect the outcome has subsequently become available to the complainant); or
- (7) the subject matter of the *complaint* has been dealt with, or is being dealt with, by a comparable independent complaints scheme or dispute-resolution process; or
- (8) the subject matter of the *complaint* has been the subject of court proceedings where there has been a decision on the merits; or
- (9) the subject matter of the *complaint* is the subject of current court proceedings, unless proceedings are stayed or sisted (by agreement of all parties, or order of the court) in order that the matter may be considered under the *Financial Ombudsman Service*; or
- (10) it would be more suitable for the subject matter of the *complaint* to be dealt with by a court, arbitration or another complaints scheme; or
- (11) it is a *complaint* about the legitimate exercise of a *respondent's* commercial judgment; or
- (12) it is a *complaint* about employment matters from an employee or employees of a *respondent*; or
- (13) it is a *complaint* about investment performance; or
- (14) it is a *complaint* about a *respondent's* decision when exercising a discretion under a will or private trust; or

- (15) it is a *complaint* about a *respondent'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) it is a *complaint* which:
 - (a) involves (or might involve) more than one *eligible complainant*; and
 - (b) has been referred without the consent of the other complainant or complainants;
 and the *Ombudsman* considers that it would be inappropriate to deal with the *complaint* without that consent; or
- (17) there are other compelling reasons why it is inappropriate for the *complaint* to be dealt with under the *Financial Ombudsman Service*.

Test cases

- 3.3.5 R The *Ombudsman* may dismiss a *complaint* without considering its merits, so that a court may consider it as a test case, if:
 - (1) before he has made a determination, he has received in writing from the *respondent*:
 - (a) a detailed statement of how and why, in the *respondent's* opinion, the *complaint* raises an important or novel point of law with significant consequences; and
 - (b) an undertaking in favour of the complainant that, if the complainant or the *respondent* commences court proceedings against the other in respect of the *complaint* in any court in the *United Kingdom* within six *months* of the *complaint* being dismissed, the *respondent* will: pay the complainant's reasonable costs and disbursements (to be assessed if not agreed on an indemnity basis) in connection with the proceedings at first instance and any subsequent appeal proceedings brought by the *respondent*; and make interim payments on account of such costs if and to the extent that it appears reasonable to do so; and
 - (2) the *Ombudsman* considers that the *complaint*:
 - (a) raises an important or novel point of law, which has important consequences; and
 - (b) would more suitably be dealt with by a court as a test case.
- 3.3.6 G Factors the *Ombudsman* may take into account in considering whether to dismiss a *complaint* so that it may be the subject of a test case in court

include (but are not limited to):

- (1) whether the point of law is central to the outcome of the dispute;
- (2) how important or novel the point of law is in the context of the dispute;
- (3) the significance of the consequences of the dispute for the business of the *respondent* (or *respondents* in that sector) or for its (or their) customers;
- (4) the amount at stake in the dispute;
- (5) the remedies that a court could impose;
- (6) any representations made by the *respondent* or the complainant; and
- (7) the stage already reached in consideration of the dispute.

3.4 Referring a complaint to another complaints scheme

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

3.5 Resolution of complaints by the Ombudsman

- 3.5.1 R 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.
- 3.5.2 G The *Ombudsman* may inform the complainant that it might be appropriate to complain against some other *respondent*.
- 3.5.3 G Where two or more *complaints* from one complainant relate to connected circumstances, the *Ombudsman* may investigate them together, but will issue separate provisional assessments and determinations in respect of each *respondent*.
- 3.5.4 R If the *Ombudsman* decides that an investigation is necessary, he will then:
- (1) ensure both parties have been given an opportunity of making

representations;

- (2) send both 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 that time limit, proceed to determination.

Hearings

3.5.5 R 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 take part in a hearing. A hearing may be held by any means which the *Ombudsman* considers appropriate in the circumstances, including by telephone. No hearing will be held after the *Ombudsman* has determined the *complaint*.

3.5.6 R A party who wishes to request a hearing must do so in writing, setting out:

- (1) the issues he wishes to raise; and
- (2) (if appropriate) any reasons why he considers the hearing should be in private;

so that the *Ombudsman* may consider whether:

- (3) the issues are material;
- (4) a hearing should take place; and
- (5) any hearing should be held in public or private.

3.5.7 G In deciding whether 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.

Evidence

3.5.8 R The *Ombudsman* may give directions as to:

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

3.5.9 R The *Ombudsman* may:

- (1) exclude evidence that would otherwise be admissible in a court or include evidence that would not be admissible in a court;

- (2) accept information in confidence (so that only an edited version, summary or description is disclosed to the other party) where he considers it appropriate;
- (3) reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested; and
- (4) dismiss a *complaint* if a complainant fails to supply requested information.

3.5.10 G Evidence which the *Ombudsman* may accept in confidence includes confidential evidence about third parties and security information.

3.5.11 G The *Ombudsman* has the power to require a party to provide evidence. Failure to comply with the request can be dealt with by the court.

3.5.12 G The *Ombudsman* may take into account evidence from third parties, including (but not limited to) the *FSA*, other regulators, experts in industry matters and experts in consumer matters.

Procedural time limits

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

3.5.14 R If a *respondent* fails to comply with a time limit, the *Ombudsman* may:

- (1) proceed with consideration of the *complaint*; and
- (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.

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

- (1) proceed with consideration of the *complaint*; or
- (2) dismiss the *complaint*.

3.6 Determination by the Ombudsman

Fair and reasonable

3.6.1 R The *Ombudsman* will determine a *complaint* by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case.

3.6.2 G Section 228 of the *Act* sets the ‘fair and reasonable’ test for the *Compulsory Jurisdiction* and the *Consumer Credit Jurisdiction* and *DISP* 3.6.1R extends it to the *Voluntary Jurisdiction*.

- 3.6.3 G Where a complainant makes *complaints* against more than one *respondent* in respect of connected circumstances, the *Ombudsman* may determine that the *respondents* must contribute towards the overall award in the proportion that the *Ombudsman* considers appropriate.
- 3.6.4 R In considering what is fair and reasonable in all the circumstances of the case, the *Ombudsman* will take into account:
- (1) relevant:
 - (a) law and regulations;
 - (b) regulators' rules, guidance and standards;
 - (c) codes of practice; and
 - (2) (where appropriate) what he considers to have been good industry practice at the relevant time.
- 3.6.5 G Where the *Ombudsman* is determining what is fair and reasonable in all the circumstances of a *relevant new complaint* or a *relevant transitional complaint*, the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order* require him to take into account what determination the *former Ombudsman* might have been expected to reach in relation to an equivalent complaint dealt with under the *former scheme* in question immediately before the relevant transitional order came into effect.

The Ombudsman's determination

- 3.6.6 R When the Ombudsman has determined a *complaint*:
- (1) the *Ombudsman* will give both parties a signed written statement of the determination, giving the reasons for it;
 - (2) the statement will require 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 that time limit, it is final and binding on both parties;
 - (4) if the complainant does not notify the *Ombudsman* that he accepts the determination within that time limit, the complainant will be treated as having rejected the determination, and neither party will be bound by it; and
 - (5) the *Ombudsman* will notify the *respondent* of the outcome.

3.7 Awards by the Ombudsman

- 3.7.1 R Where a *complaint* is determined in favour of the complainant, the *Ombudsman's* determination may include one or more of the following:
- (1) a money award against the *respondent*; or
 - (2) an interest award against the *respondent*; or
 - (3) a costs award against the *respondent*; or
 - (4) a direction to the *respondent*.

Money awards

- 3.7.2 R A money award may be such amount as the *Ombudsman* considers to be fair compensation for one or more of the following:
- (1) financial loss (including consequential or prospective loss); or
 - (2) pain and suffering; or
 - (3) damage to reputation; or
 - (4) distress or inconvenience;

whether or not a court would award compensation.

- 3.7.3 G Where the *Ombudsman* is determining what amount (if any) constitutes fair compensation as a money award in relation to a *relevant new complaint* or a *relevant transitional complaint*, the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order* require him 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 the relevant transitional order came into effect.

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

- 3.7.5 G For the purpose of calculating the maximum money award, the following are excluded:

- (1) any interest awarded on the amount payable under a money award;
- (2) any costs awarded; and
- (3) any interest awarded on costs.

- 3.7.6 G If the *Ombudsman* considers that fair compensation requires payment of

a larger amount, he may recommend that the *respondent* pays the complainant the balance.

3.7.7 R The *Ombudsman* will maintain a register of each money award.

Interest awards

3.7.8 R An interest award may provide for the amount payable under the money award to bear interest at a rate and as from a date specified in the award.

Costs awards

3.7.9 R A costs award may:

- (1) be such amount as the *Ombudsman* considers to be fair, to cover some or all of the costs which were reasonably incurred by the complainant in respect of the *complaint*; and
- (2) include interest on that amount at a rate and as from a date specified in the award.

3.7.10 G In most cases complainants should not need to have professional advisers to bring *complaints* to the *Financial Ombudsman Service*, so awards of costs are unlikely to be common.

Directions

3.7.11 R A direction may require the respondent to 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).

Complying with awards and settlements

3.7.12 R A *respondent* must comply promptly with:

- (1) any award or direction made by the *Ombudsman*; and
- (2) any settlement which it agrees at an earlier stage of the procedures.

3.7.13 G Under the *Act*, a complainant can enforce through the courts a money award registered by the *Ombudsman* or a direction made by the *Ombudsman*.

3.8 Dealing with information

3.8.1 R In dealing with information received in relation to the consideration of a *complaint*, the *Financial Ombudsman Service* will have regard to the parties' rights of privacy.

- 3.8.2B R This does not prevent the *Ombudsman* disclosing information:
- (1) to the extent that he is required or authorised to do so by law; or
 - (2) to the parties to the *complaint*; or
 - (3) in his determination; or
 - (4) at a hearing in connection with the *complaint*.

3.8.3 R 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.

3.9 Delegation of the Ombudsman's powers

3.9.1A R The *Ombudsman* may designate members of the staff of *FOS Ltd* to exercise any of the powers of the *Ombudsman* relating to the consideration of a *complaint* apart from the powers to:

- (1) determine a *complaint*; or
- (2) authorise the disclosure of information to the *FSA* or any other body exercising regulatory or statutory functions.

3.9.2 G In *DISP 2* to *DISP 4* any reference to "the *Ombudsman*" includes a reference to any member of the staff of *FOS Ltd* to whom the exercise of any of the powers of the *Ombudsman* has been delegated.

4 Standard terms

4.1 Purpose and application

Purpose

- 4.1.1 G The purpose of this chapter is to set out how *complaints* against *VJ participants* are dealt with under the *Voluntary Jurisdiction*.

Application

- 4.1.2 G These *standard terms* apply to any business which has agreed to be a *VJ participant*.

4.2 Standard terms

- 4.2.1 R A *VJ participant* is subject to these *standard terms*, which may be amended or supplemented by the *Financial Ombudsman Service* with the approval of the *FSA*.

- 4.2.2 R By agreeing to participate, a *VJ participant* also agrees that the *Voluntary Jurisdiction* covers an act or omission that occurred before the *VJ participant* was participating in the *Voluntary Jurisdiction*, whether the act or omission occurred before or after *commencement*.

Application of DISP 1 to DISP 3

- 4.2.3 R The following rules and guidance apply to *VJ participants* as part of the *standard terms*, except where the context requires otherwise:

- (1) *DISP 1* (Treating complaints fairly), except:
 - (a) *DISP 1.5* (Complaints record rule);
 - (b) *DISP 1.6* (Complaints reporting rules); and
 - (c) *DISP 1.7* (Lloyd's);
- (2) *DISP 2* (Jurisdiction of the Financial Ombudsman Service), except:
 - (a) *DISP 2.3* (Compulsory Jurisdiction); and
 - (b) *DISP 2.4* (Consumer Credit Jurisdiction); and
- (3) *DISP 3* (Complaints-handling procedures of the Financial Ombudsman Service).

Determinations and awards

- 4.2.4 R The *Ombudsman* has the same powers to make determinations and awards under the *Voluntary Jurisdiction* as he has under the *Compulsory Jurisdiction* (see *DISP 3.7* (Awards by the Ombudsman)).
- 4.2.5 R If the complainant accepts the *Ombudsman*'s determination within the time limit specified by the *Ombudsman*, the determination will be binding on the *VJ Participant* and may be enforced in court by the complainant.
- 4.2.6 R The following *rules* in *FEES* apply to *VJ participants* as part of the *standard terms*, but substituting '*VJ participant*' for '*firm*':
- (1) *FEES 2.2.1R* (late payment) but substituting '*FOS Ltd*' for 'the *FSA*';
 - (2) *FEES 2.3.1R* and *2.3.2R* (remission of fees);
 - (3) *FEES 4.2.6R(1)(b)* (periodic fees);
 - (4) *FEES 5.3.6R* (general levy) but substituting:
 - (a) '*Voluntary Jurisdiction*' for '*Compulsory Jurisdiction*'; and
 - (b) '*FOS Ltd*' for 'the *FSA*';
 - (5) *FEES 5.3.8R* (calculation of general levy) but substituting 'part 4' for 'part 2';
 - (6) *FEES 5.4.1R* (information) but substituting:
 - (a) '*FOS Ltd*' for 'the *FSA*'; and
 - (b) 'part 4' for 'part 2';
 - (7) *FEES 5.5.1R* (standard case fee) but substituting 'part 4' for 'part 3';
 - (8) *FEES 5.5.6R* (special case fee);
 - (9) *FEES 5.5.15R* (case fee exemption);
 - (10) *FEES 5.7.1R*, *5.7.2R* to *5.7.4R* (payment) but substituting, in *FEES 5.7.1R*, '*FOS Ltd*' for 'the *FSA*';
 - (11) *FEES 5.8.1R* (joining the Financial Ombudsman Service); and
 - (12) *FEES 5 Annex 1R* (fees payable).

Withdrawal from participation

- 4.2.7 R A *VJ participant* may not withdraw from the *Voluntary Jurisdiction* unless:

- (1) the *VJ participant* has submitted to *FOS Ltd* a written plan for:
 - (a) notifying its existing customers of its intention to withdraw; and
 - (b) handling *complaints* against it before its withdrawal;
- (2) the *VJ participant* has paid the general levy for the year in which it withdraws and any other fees payable; and
- (3) *FOS Ltd* has approved in writing both the *VJ Participant's* plan and the date of withdrawal (which must be at least six months from the date of the approval of the plan).

Exemption from liability

4.2.8 R None of the following is to be liable in damages for anything done or omitted to be done in the discharge (or purported discharge) of any functions in connection with the *Voluntary Jurisdiction*:

- (1) *FOS Ltd*;
- (2) any member of its governing body;
- (3) any member of its staff;
- (4) any person acting as an *Ombudsman* for the purposes of the *Financial Ombudsman Service*;

except where:

- (5) the act or omission is shown to have been in bad faith; or
- (6) it would prevent an award of damages being made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

Part 4

1. Appendix 1 to *DISP* (Relevant Existing Complaints) is deleted.
2. Appendix 2 to *DISP* (Handling Mortgage Endowment Complaints) becomes Appendix 1 to *DISP* and is renumbered accordingly.
3. References in the Handbook to provisions in Appendix 2 to *DISP* are replaced with references to the corresponding provisions in Appendix 1 to *DISP*.

Part 5

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

(Note: Other changes to DISP transitional provisions are set out in Part 2.)

Transitional Provisions
Dispute Resolution: Complaints

DISP TP 1
Transitional provisions
1.1 Transitional Provisions table

(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	...				
...					
1B	<u>DISP 2.4.3</u> <u>2.7.9</u>	R	In relation to a <i>complaint</i> concerning an act or omission before 1 November 2007, in DISP 2.4.3R(1)(a) <u>2.7.9R(2)</u> substitute "an <i>intermediate customer or market counterparty</i> " for "(a) a <i>professional client</i> ; or (b) <i>eligible counterparty</i> ".	From 1 November 2007	1 November 2007
...					
4	DISP App 1	R	Firms are subject to DISP App 1 in relation to relevant existing complaints.	From commencement	Commencement
5	DISP App 1	G	The Ombudsman Transitional Order makes special provision for the	From commencement	Commencement

			<p>handling by <i>FOS Ltd</i> of "<i>relevant existing complaints</i>" (that is, complaints which the former schemes have partly completed at commencement). The arrangements for handling these complaints are set out in <i>DISP App 1</i>. (The handling of complaints which <i>firms</i> have partly completed at commencement is described at <i>DISP 1.4.6 R</i>.)</p>		
6	<i>DISP 2, DISP 3 and FEES 5 and DISP App 1</i>	R	<p><i>DISP 2, DISP 3 and FEES 5 and DISP App 1</i> In references to a "<i>firm</i>" or "<i>firms</i>" include <i>unauthorised persons</i> subject to the <i>Compulsory Jurisdiction</i> in relation to <i>relevant complaints</i> in accordance with the <i>Ombudsman Transitional Order</i>.</p>	From commencement	Commencement
7	<i>DISP 2, DISP 3 and FEES 5 and DISP App 1</i>	G	<p>Under the <i>Ombudsman Transitional Order</i>, a <i>relevant complaint</i> is subject to the <i>Compulsory Jurisdiction</i> whether or not it is about a <i>firm</i> or an <i>unauthorised person</i>. <i>Unauthorised persons</i> are not subject to <i>DISP 1</i>, but references to "<i>firm</i>" in <i>DISP 2, DISP 3, and FEES 5</i></p>	From commencement	Commencement

			and DISP App 1 include <i>unauthorised persons</i> subject to the <i>Compulsory Jurisdiction</i> in relation to relevant complaints <i>relevant complaints</i> , where applicable.		
7A	DISP 2.3.6R <u>2.8.7R</u>	R	Nothing in <i>DISP</i> 2.3.6R <u>2.8.7R</u> affects the position of a complaint <i>complaint</i> which, on 31 May 2004, could not have been considered by the <i>Ombudsman</i> under <i>DISP</i> 2.3.1R(1)(e) <u>2.8.2R(2)</u> ; or <i>DISP</i> 2.3.6R(1)(b) <u>2.8.7R(1)(b)</u> as it then stood (as <i>DISP</i> 2.3.6R(1)(b) <u>2.3.6R(1)(b)</u>).	From 1 June 2004	Amended with effect from 1 June 2004
7B	DISP 2.3.6R <u>2.8.7R</u>	R	In the case of a complainant falling within <i>DISP</i> 2.3.6R <u>2.8.7R</u> , (and whose time for referring a complaint <i>complaint</i> under the rules as they stood before amendment <i>DISP</i> 2.3.6R as it stood on <u>5 April 2008</u> has not expired), time will expire in accordance with the amended rule <i>DISP</i> <u>2.8.7R</u> save that if the final date would otherwise be before 30 November 2004 an explanation of the final date will be in conformity with <i>DISP</i> 2.3.6R(2) <u>2.8.7R(2)</u> , provided	From 1 June 2004	Amended with effect from 1 June 2004

			it stipulates a final date which is not less than two months from the date on which the explanation is likely to be received by the complainant.		
8	DISP 1 DISP 2 DISP 3 DISP 4 and FEES 5 and DISP App 1	R	In relation to <i>relevant complaints</i> , references in <i>DISP 1, DISP 2, DISP 3, DISP 4, and FEES 5 and DISP App 1</i> to an " <i>eligible complainant</i> " include a person who is to be treated as an <i>eligible complainant</i> in accordance with the <i>Ombudsman Transitional Order</i> and references to a complaint <i>complaint</i> shall be construed accordingly.	From commencement	<i>Commencement</i>
...					

1.2 Table Fee tariffs for industry blocks

Industry Block	Tariff Base
1 Deposit acceptors	Number of accounts relevant to the activities in DISP 2.6.1 <u>2.3.1R</u>
...	

...

Schedule 4 Powers Exercised DISP Sch 4.1

1	The following powers and related provisions in the <i>Act</i> and in the <i>Ombudsman Transitional Order</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>DISP</i> :
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	(1)	Section 138 (General rule-making power)
	(2)	Section 156 (General supplementary powers)
	(3)	Section 226 (Compulsory Jurisdiction)
	(4)	Section 229 (Awards)
	(4A)	Section 234 (Funding)
	(4B)	Section 316(1) (Direction by Authority)
	(5)	Schedule 17 paragraph 13 (FSA's procedural rules)
	(6)	Article 15 (Record-keeping and reporting requirements relating to relevant complaints) of the Ombudsman Transitional Order
	(7)	Section 226A(7) (Consumer Credit Jurisdiction)
	(8)	Section 229 (Awards)
	(9)	Schedule 17 paragraph 16B, D
2	...	
	(1)	...
3	The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FOS Ltd</i> to make the rules in <i>DISP</i> :	
	(1)	Section 227 (Voluntary Jurisdiction)
	(1A)	Section 226A (Consumer Credit Jurisdiction)
	<u>(1B)</u>	<u>Section 229 (Awards)</u>
	(2)	Section 230 (Costs)
	(3)	Schedule 17 paragraph 8 (Guidance)
	(4)	Schedule 17 paragraph 14 (The scheme's rules)
	(5)	Schedule 17 paragraph 15 (Fees)
	(5A)	Schedule 17 paragraph 16B (Consumer Credit Jurisdiction)
	(6)	Schedule 17 paragraph 18 (Terms of reference to the scheme)

DISP Sch 4.2

<p>Table: The powers to make rules relating to the new ombudsman scheme are shared between the <i>FSA</i> and the Financial Ombudsman Service (<i>FOS Ltd</i>). <i>FOS Ltd</i>'s rules are subject to <i>FSA</i> consent or approval. The rules made exclusively by <i>FOS Ltd</i> are:</p>	
<i>DISP 1</i>	...
<i>DISP 2</i>	2.6.9R 2.6.11R 2.6.8 A-BR <u>2.4.1R</u> <u>2.5.1R</u> <u>2.5.5R</u> <u>2.6.3R</u> <u>2.6.4R</u> <u>2.7.9R(3)</u>
<i>DISP 3</i>	3.2.5R 3.2.7R 3.2.8R 3.2.9R 3.2.11R 3.2.12R 3.2.13R 3.3.1R 3.4.1R 3.5.1R 3.5.2R 3.6.1R 3.6.2R 3.6.3R 3.7.1R 3.8.1R(2) 3.8.3R 3.9.10R 3.9.12R 3.9.15R

	3-10.1R <u>All the rules in this chapter, except for <i>DISP 3.7.4R</i> (which is made by the <i>FSA</i>) and <i>DISP 3.7.12R</i> (which is made by the <i>FSA</i> and the <i>FOS Ltd</i>).</u>
...	

Annex C

Amendments to the Fees manual (FEES)

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

...

- 5.4.4 G A firm should not provide a statement of *relevant business* if it deals only with *eligible complainants* who are not private individuals. *Relevant business* is defined in the *Glossary* as business done with private individuals only. So *FEES* 5.4.1R does not apply in relation to business done with other types of *eligible complainant* described in *DISP* ~~2.4.3R(1)(b), (c) and (d)~~ 2.7.3R(2), (3) and (4); the funding of *FOS Ltd* in relation to that business is by special case fee only (see *FEES* 5.5.6R).

...

- 5.5.6 R A firm must pay to *FOS Ltd* a special case fee, as specified in part 3 of *FEES* 5 Annex 1R in respect of each *chargeable case* relating to that firm closed by the *Financial Ombudsman Service* which was referred to the *Financial Ombudsman Service* by *eligible complainants* who fall within *DISP* ~~2.4.3 R(1)(b), (c) and (d)~~ 2.7.3R(2), (3) and (4).

...

FEES 5 Annex 1R

Annual Fees Payable in Relation to 2007/08

...

Part 2: Fee tariffs for general levy and supplementary levy

Industry block	Tariff base	General levy payable by firm
1-Deposit acceptors, <i>home finance providers</i> and <i>administrators</i> (excluding <i>firms</i> in block 14)	Number of accounts relevant to the activities in <i>DISP</i> 2.6.1R <u>2.3.1R</u>	£0.0009 per relevant account, subject to a minimum levy of £100
...		

Part 4: VJ participants

Table: Fee tariffs and case fees for VJ participants

Voluntary jurisdiction – general levy tariff and case fee table					
industry block and business activity		tariff base	tariff rate	Minimum Levy <u>minimum</u> levy	<u>standard</u> <u>case fee</u> <u>and special</u> case fee*
...

Annex D

Amendments to the Credit Unions sourcebook (CRED)

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

17.2.2 G An *eligible complainant* is a *person* who would be eligible to refer a complaint to the *Financial Ombudsman Service*. The term is defined for all *firms* in ~~DISP 2.4~~ 2.7, but *guidance* for *credit unions* is provided at CRED 17.3 below.

...

17.3.1 G The definition of *eligible complainant* in ~~DISP 2.4~~ 2.7 applies for the purposes of this chapter.

...

17.4.2 G ~~DISP-2.6~~ 2.3 (To which activities does the Compulsory Jurisdiction apply?) sets out the activities which come under the Compulsory Jurisdiction ~~jurisdiction~~ of the *Financial Ombudsman Service*, as follows:

- (1) *regulated activities*;
- (2) *lending money* secured by a charge on land;
- (3) *lending money* (~~other than~~ excluding restricted credit where that is not a consumer credit activity);
- (4) *paying money* by a *plastic card* (~~other than~~ excluding a store card where that is not a consumer credit activity);
- (5) ~~the provision of~~ providing ancillary banking services;
- (6) *consumer credit activities*;

~~or activities ancillary to them (see DISP 2.6.2R)~~ or any ancillary activities, including advice, carried on by the firm in connection with them.

...

Annex E

Amendments to the Professional Firms sourcebook (PROF)

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

...

Dispute resolution: Complaints sourcebook

- 5.3.6 G *DISP* 1.1.1R(3) provides that *DISP* 1 (Treating complainants fairly) only applies to an *authorised professional firm* in so far as its mainstream regulated activities are concerned. *DISP* ~~2.6.7R~~ 2.3.4R further provides that a ~~complaint~~ 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*. This is because such a ~~complaint~~ complaint will be handled by the relevant professional body.

...

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