

Financial Services Authority

Dispute Resolution: the Complaints Sourcebook

A joint FSA/FOS Policy Statement on CP74
and CP99 (including the made text of
DISP 1-4 and 'final' text of DISP 5); and

An FOS Consultation Paper on Transitional
Case Fees

October 2001



Contents

1	Introduction and executive summary	3
2	Summary of responses to CP99	10
3	Summary of responses to CP74	14
4	Detailed commentary on amendments to draft rules in CP74	32
5	Special transitional case fees: FOS consultation	35
	Annex A: Made DISP 1 to 4 Rules and draft DISP 5 rules	
	Annex B: FOS industry-blocks: comparison of CP74 proposals and revised proposals	
	Annex C: Comparison of FOS industry-blocks and FSA fee-blocks	
	Annex D: Glossary	
	Annex E: List of CP74 respondents	
	Annex F: List of CP99 respondents	

This Policy Statement reports on the main issues arising from CP74. It also contains feedback on CP99.

Comments and enquiries:

Faridah Pullara
Complaints Policy
The Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7676 0826
Fax: 020 7676 9713
E-mail: cp99@fsa.gov.uk

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

1 Introduction and executive summary

1.1 The purpose of this paper is:

- to provide feedback on Consultation Paper (CP) 99,¹ including the final DISP 1-4 rules, which the Financial Services Authority (FSA) and Financial Ombudsman Service (FOS) Boards have now legally made in final form;
- to provide feedback on CP74,² including the revised funding rules in DISP 5, which are now in ‘virtually final’ form, subject to consultation on the specific fees and levies for 2002/03; and
- to consult on the special transitional case fees, which the FOS proposes to charge, where necessary, during the post-N2 portion of the current financial year.

1.2 DISP 1-4 are likely to be of interest to firms and also to consumers who are eligible to use the scheme. DISP 5 will be of interest mainly to firms.

1.3 The Complaints Sourcebook rules comprise:

DISP 1	Complaint handling procedures for firms
DISP 2	Jurisdiction of the FOS
DISP 3	Complaint handling procedures of the FOS
DISP 4	Standard terms (for Voluntary Jurisdiction)
DISP 5	FOS funding rules
DISP App1	Relevant Existing Complaints
DISP App 2	Guidance on handling mortgage endowment complaints

(These form part of Block 4 of the Handbook on Redress.)

1 CP99: ‘Complaints handling Rules: transitional arrangements and other amendments’ (June 2001). A Joint FSA/FOS Consultation Paper on DISP 1-4 (the non-funding rules).

2 CP74: ‘Funding the Financial Ombudsman Service’(November 2000). A joint FSA/FOS consultation paper on DISP 5 (the funding rules).

- 1.4 The powers to make rules relating to the FOS contained in the Financial Services and Markets Act 2000 (the FSMA) are shared between the FSA and the FOS. The FOS is the independent ‘scheme operator’, set up by the FSA to operate the new scheme, as required under the FSMA. Its rules and budget are subject to FSA approval. As with previous papers, this paper is therefore issued jointly by the FSA and the FOS.
- 1.5 All of these rules have been subject to extensive consultation over the past 18 months. However, we have consulted separately on the funding rules in DISP 5. This is because, unlike the non-funding rules in DISP 1-4, which come into force at N2, the DISP 5 rules (with a few minor exceptions) do not come into force until the start of April 2002. In the meantime, transitional funding arrangements are in place to fund the period between N2 and the end of the current financial year in order to avoid the need for a mid-year levy (see paragraph 3.70).

DISP 1-4 (Non-Funding Rules)

- 1.6 The rules in DISP 1-4 were published in virtually final form, in December 2000, subject to the need for amendments to reflect the transitional arrangements which the Treasury was expected to make under sections 426-427 of the FSMA, to enable the FOS to handle pre-N2 complaints. The Treasury published a draft Order containing its proposed transitional arrangements for consultation in April 2001 and this Order³ was finalised at the end of June. We consulted, in June to July, in CP99, on the amendments to the rules which we proposed to make as a result of the Order. We also took the opportunity to consult on a small number of clarificatory amendments.

Results of Consultation on CP99

- 1.7 We received a total of 34 responses to CP99 and are grateful to those who commented. (A list of respondents is attached at Annex F.) The proposed amendments were widely supported and have been incorporated into the text. The further changes which we have made to the CP99 text following consultation mainly reflect subsequent changes to the draft Treasury Order before it was finalised. However, a small number of substantive changes have also been made in the light of the responses received – in particular, to clarify the circumstances in which firms may treat a complaint as closed. These changes are summarised in Chapter 2 of this paper. They do not have a significant effect on the compatibility statement or the cost benefit analysis contained in previous consultation papers on these rules. **The FSA and FOS Boards have now legally made DISP 1-4 (including the two appendices**

3 Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001. SI 2001/2326

referred to at paragraph 1.3). These rules will come into force at N2⁴ (1 December 2001) and are set out in final form in Annex A.

DISP 5 (Funding Rules)

- 1.8 The arrangements for funding the FOS have been subject to two separate consultations. CP33⁵ set out the fundamental objectives and high level proposals and CP74 developed these proposals in the light of the feedback received in response to CP33 and sought views on draft funding rules. Chapters 3 and 4 of this paper provide feedback on CP74, and Annex A contains the ‘virtually final’ FOS funding rules. The changes made do not have a significant impact on the compatibility statement contained in previous consultation papers on these rules.
- 1.9 The FOS funding rules timetable has also, to some extent, been dependent on consultation on the FSA’s own post-N2 fee-raising arrangements, since our aim is for the FOS general levy arrangements to mirror the FSA’s fee-raising arrangements as far as possible. We have therefore delayed finalising the draft rules (and issuing a Policy Statement on CP74) in order to take account of the changes to the FSA fee-blocks resulting from CP79⁶ and CP95.⁷ We have also taken account of the transitional arrangements in the Treasury Order, which now extends the scope of the FOS, to enable it to deal with pre-N2 complaints.
- 1.10 The FSA’s and the FOS’s fee-raising powers are summarised in the introduction to the Complaints Sourcebook at Annex A. The FSA is responsible for the general levy rules. The FOS is responsible for the case fee rules, which will apply to firms in the Compulsory Jurisdiction⁸ against which it handles complaints, and for the funding rules relating to the Voluntary Jurisdiction. The FSA is also responsible for approval of the FOS Budget, which will be subject to consultation each year.
- 1.11 As with the non-funding rules, the FSA and the FOS have worked closely together to produce a single, coherent set of requirements and guidance. Wherever possible, these funding rules will apply both to Compulsory Jurisdiction and to Voluntary Jurisdiction participants. Where necessary, however, additional industry-blocks will be created to cover activities which are covered only by the Voluntary Jurisdiction.

4 N2 is the date when the FSMA will come into force.

5 CP33: ‘Consumer complaints and the new single ombudsman scheme’ (November 1999).

6 CP79: ‘Feedback statement to CP56 and second Consultation Paper on the FSA’s post-N2 fee-raising arrangements’ (December 2000)

7 CP95: ‘Third Consultation Paper on the FSA’s post-N2 fee-raising arrangements including feedback on CP79’ (May 2001)

8 The Compulsory Jurisdiction is the jurisdiction of the FOS to which authorised firms (and certain unauthorised firms as a result of the Ombudsman Transitional Order) are compulsorily subject.

Results of Consultation on CP74

- 1.12 We received 60 written responses to CP74 and, again, we are grateful to all who responded. The respondents are listed at Annex E. The majority of responses came from the financial services industry (including all the major trade bodies), but we also received some comments from regulatory bodies. Respondents generally welcomed the modifications which we had made to our earlier proposals. As expected, the main focus of respondents' comments was on the industry-block and tariff-base proposals.

Summary of Main Changes to Draft Rules in CP74

- 1.13 The main changes to the draft rules on which we consulted in CP74 are as follows:
- Mortgage lenders to be included in the deposit acceptor, mortgage lender and administrator block (formerly known as the deposit-taker and lender block), unlike the FSA fees arrangements;
 - Separate new industry-blocks have been created for:
 - Corporate finance advisors
 - Execution-only arrangers, dealers and brokers
 - Society of Lloyd's (on behalf of members)
 - Credit unions }
 - Cash plan health providers } (see paragraphs 3.46-3.55)
 - Small friendly societies }
 - The industry-blocks for unit trust managers/OEICs, authorised corporate directors and trustees of collective investment schemes/OEIC depositaries have been combined into one industry block (as in the FSA context).
 - The fee-blocks relating to Controlled Functions 21, 22, 24, 25 and 26 have been simplified by the creation of two new separate blocks for advisory arrangers, dealers or brokers. These have been separated, depending on whether they hold and control client money and/or assets.
 - The tariff-bases for certain industry-blocks have been changed, mainly to reflect changes in the parallel FSA tariff-bases, as follows:
 - **Dealers as principal** – now the number of traders (rather than number of approved persons).
 - **Execution-only arrangers, dealers or brokers** – now relevant commission or fee income (rather than number of approved persons).

- **Society of Lloyd’s** – the Society will now form a single industry-block and will allocate the sum to be raised from that block amongst its members and managing agents as it considers appropriate.
 - **Advisory arrangers, dealers or brokers holding and controlling client money and/or assets** – number of approved persons.
 - **Advisory arrangers, dealers or brokers not holding and controlling client money and/or assets** – number of approved persons.
 - **Advisers only** – number of approved persons.
- The funding arrangements for credit unions, cash plan health providers and small friendly societies conducting low value business have been modified in the light of responses to CP74 and subsequent discussions with relevant trade associations. Separate industry-blocks have been created for these firms and modified arrangements apply to these blocks (see paragraphs 3.46-3.55).
 - Administrative arrangements relating to the invoicing of the general levy (in respect of authorised firms in the Compulsory Jurisdiction) are to be delegated to the FOS by the FSA, as proposed in CP74. (The FSA will collect ‘relevant business’ data from authorised firms and pass this to the FOS, who will calculate these firms’ individual levies in accordance with the appropriate tariff-rates and invoice accordingly.)

Expected Expenditure in 2001/02 and 2002/03

- 1.14 Expenditure for the year to March 2002 was published for consultation in the FOS Plan and Budget 2001/02, in January 2001. It forecast that 38,000 cases for investigation would be received, and that expenditure of £27.6m would be incurred, resulting in a ‘unit cost’ per completed case of £688. Following the consultation, the budget was approved by the FSA.
- 1.15 Expenditure for the year to March 2003 will depend on the number of cases the FOS expects to receive. Predicting complaint volumes is an inexact science and patterns of complaint distribution and growth are difficult to forecast. An estimate will be made in January 2002 as part of the FOS’s budget consultation, and this will take into account the volume of cases received by the end of 2001. As noted above, the FOS budget is subject each year to FSA approval.
- 1.16 At present, however, a reasonable assumption to make is that 2002/03 will see a repeat of the pattern in 2001/02 with a slight increase. This would see expenditure somewhere between £28.5m and £30.5m, of which 50% (between £14.25m-£15.25m) will be raised by way of general levy. It is proposed that the balance of the total costs would be raised by a standard case fee, calculated as the remaining 50% expenditure divided by the number of expected cases during the year. It may reasonably be anticipated that 22%

of the total expenditure would relate to Block 1 (Banking and Loans), 20% to Blocks 2 and 3 (Insurance), and 58% to Blocks 4 to 12 (Investments). The costs related to Blocks 13,14, and 15 are not considered to be material.

Status of DISP 5 (Funding Rules)

- 1.17 The DISP 5 rules at Annex A are now in ‘virtually final’ form, subject to consultation on the specific figures to be included in the fee-instrument in DISP5 Annex 1R. This sets the tariff-rates for general levy purposes and the case fees which firms must pay, and will be subject to consultation in January each year as part of the annual budget-setting process.
- 1.18 Transitional funding arrangements are in place in respect of the remainder of the current financial year 2001/02 (see paragraph 3.70). The majority of the rules in DISP 5 will therefore come into force, for the first time, in respect of the first complete financial year after N2, i.e. 2002/03. We will be consulting on the relevant figures for 2002/03 when the FOS consults on its budget for that year in January 2002 and the rules will be legally made in March 2002.
- 1.19 However, certain of the FOS’s special case fee rules will need to be made before this and brought into force at N2. As indicated in previous consultation papers, these are required (in respect of former PIA members, ‘new joiners’ and unauthorised firms which will be subject to the FOS as a result of the Treasury Order) as part of the transitional arrangements for funding the remainder of the current financial year.
- 1.20 The FOS is therefore consulting, in Chapter 5 of this paper, on the special transitional case fees which it proposes to charge these firms in respect of complaints against them which the FOS handles between N2 and 31 March 2002. The relevant case fee rules in DISP 5 will then be legally made by the FOS (subject to FSA approval) in November this year.

Conclusion

- 1.21 **DISP 1-4 (Non-funding Rules)** Chapter 2 provides a summary of the main changes made to the rules in DISP 1-4 (the non-funding rules) in the light of responses to CP99. These rules have now been legally made by the FSA and FOS Boards and are set out at Annex A in their final form. They will come into force at N2.
- 1.22 **DISP 5 (Funding Rules)** Chapter 3 provides a summary of the main issues raised by CP74 respondents and Chapter 4 contains a detailed summary of the changes which the FSA and the FOS have made to the DISP 5 rules on funding the FOS in the light of those responses. The DISP 5 rules are now in ‘virtually final’ form, but as noted above, these have not yet been made. **Respondents are asked to restrict any further comments which they may have on these to the changes made to the draft CP74 rules only.**

- 1.23 **FOS Consultation on Special Transitional Case Fees.** Chapter 5 sets out the special transitional case fees which the FOS proposes to charge certain classes of firms during the transitional period from N2 to 31 March 2002. Respondents are invited to comment on these proposals by 31 October 2001.

2 Summary of responses to CP99

- 2.1 DISP 1-4 of the Complaints Sourcebook (i.e. the non-funding rules) were published in ‘final’ form⁹ in December 2000, subject to any amendments which might be needed to reflect the transitional arrangements which the Treasury was then expected to make under sections 426-427 of the FSMA.
- 2.2 The Treasury’s draft Order containing the proposed transitional arrangements was published for consultation in April 2001. As anticipated, this extends the scope of the FSA’s and FOS’s rule-making powers to include complaints about pre-N2 business. In June 2001, we published CP99, which sought views on the amendments which we proposed to make to the Complaints Sourcebook rules in the light of the Treasury’s proposals. At the same time, we consulted on a small number of clarificatory amendments, which were designed to take account of queries which we had received since publication of the December 2000 Policy Statement.
- 2.3 Consultation on CP99 ended on 27 July and the proposed transitional arrangements were widely welcomed as a sensible and pragmatic approach. The clarificatory amendments and guidance also received strong support. Most of the amendments proposed in CP99 have therefore been incorporated into the final text of these rules.
- 2.4 The further changes made to the CP99 text following consultation mainly reflect subsequent amendments to the Treasury Order, which was made in June this year – or take the form of technical drafting points. In particular, we have amended the text, in line with the revised Treasury Order, to make it clear that:
 - the terms ‘firm’ and ‘eligible complainant’ now include, where appropriate, unauthorised persons who are subject to the Compulsory Jurisdiction of the FOS in relation to ‘relevant complaints’ as a result of

9 FSA/FOS Policy Statement on CP49 (December 2000).

the Treasury Order, and the definition of 'Compulsory Jurisdiction' has been expanded accordingly (see Glossary at Appendix D);

- the Personal Insurance Arbitration Service (rather than the FOS) will complete the handling of complaints against its members which it is already handling at N2 (i.e. 'relevant existing complaints'), but the FOS will handle any new complaints received after N2 about members' pre-N2 business (i.e. 'relevant new complaints'); and
- the FOS will not be able to deal with complaints from small businesses (as distinct from private individuals) which relate to the pre-N2 business of former members of the Insurance Ombudsman Bureau (IOB). (The IOB is not currently able to handle such complaints.)

2.5 However, we have also made a few substantive changes as a result of the responses which we received to CP99 and these are summarised below:

Partly completed complaints at N2

2.6 We have modified the application of DISP 1 to complaints which firms are in the process of handling at N2, to enable them to finish dealing with these in accordance with the complaints handling requirements to which they were subject before N2. However, this is with the proviso that, within no more than 8 weeks of N2, they must inform a complainant who remains dissatisfied of his right to refer his complaint to the FOS (see DISP 1.4.6R.);

Continued use of former scheme's logo for a transitional period

2.7 We have inserted a new Transitional Provision (Transitional Provision 1R), which allows firms to continue to use letter-headed paper and marketing literature which refers to their membership of a former scheme which the FOS will replace, until 30 June 2002.

Final Response Letters

2.8 We have amended the rules in DISP 1.4 relating to the circumstances when a firm must send out a 'final response' letter. This is to take account of concerns expressed by a significant number of CP99 respondents about the practical implications of the requirements relating to 'final response' letters and to align these with the amendments to the reporting requirements proposed in CP99, which were widely welcomed.

2.9 These new rules relieve firms of the obligation to send out a 'final response' letter where, within eight weeks of the firm's receipt of a complaint, the complainant has already accepted in writing an earlier response from the firm, provided that he has been told how to pursue his complaint if he remains dissatisfied (see DISP 1.4.7R and DISP 1.4.8G).

- 2.10 The rules also now allow for the fact that complainants may not always respond to a firm, or may be slow in doing so. This is of particular relevance to firms with a two-stage complaint process where the next step for a dissatisfied complainant may be to revert to the firm or to the firm's head office before a final response is sent out. (See DISP 1.4.9R to DISP 1.4.10R).
- 2.11 The amended rules specify that, provided that a firm has sent a letter which complies with the conditions in DISP 1.4.9R within eight weeks of receiving the complaint, the requirement to send out a 'final response' letter does not apply until (and unless) the complainant replies. If the complainant replies, the clock resumes ticking, but DISP 1.4.10R provides that any time in excess of a week taken by the consumer to respond will not count towards the eight week time limit in DISP 1.4.5R. If the complainant does not reply, DISP 1.5.7R(3) (which we consulted on in CP99) enables the firm to treat the complaint as a closed complaint for the purposes of the report which it is required to make to the FSA every six months. The effect of these amendments is explained in a new guidance note at DISP 1.4.11G.
- 2.12 We have also slightly amended the wording of the Glossary definition of 'final response' to remove a potential ambiguity in the drafting, on which some respondents had commented. The revised definition, together with the other new or amended Glossary definitions on which we consulted in CP99, are listed at Annex D.

Exemption Notifications

- 2.13 In view of the timing of N2, we have amended the time limit within which a firm must notify the FSA that it 'qualifies' for an exemption from DISP 1 and 5. Firms must now notify the FSA within three months of N2 (rather than one month) and that notice will remain current until the end of the following year. Thereafter, exemptions must be 'renewed' in February each year (see DISP 1.1.8R).

Submission of Reports

- 2.14 We have revised the wording of DISP 1.5.10R which deals with how firms should submit their reports on complaints handling to the FSA under DISP 1.5.4R. This now refers to the relevant provisions in the Supervision Manual (SUP 16.3.6R and SUP 16.3.16G). However, DISP 1.5.10R indicates that firms will have to send their reports to an FSA department (yet to be named), rather than to their usual supervisory contact, and we will advise firms of the appropriate department as soon as this has been determined.

Guidance on handling mortgage endowment complaints

- 2.15 We indicated in CP99 that the guidance on handling mortgage endowment complaints, which the FSA published in final form in May 2001, would be

included in the Handbook as an appendix to the Complaints Sourcebook. This has now been made by the FSA Board and is inserted at DISP App 2 (see guidance note at DISP 1.2.20G).

Conclusion

- 2.16 The amendments described above are designed to assist firms and we hope that they will welcome the additional flexibility which they afford.
- 2.17 The Complaints Sourcebook rules (excluding DISP 5, which covers the arrangements for funding the FOS) were made by the FSA and FOS Boards in September. These rules will come into force at N2 and are set out at Annex A.
- 2.18 Chapters 3 and 4 explain the changes made to the draft DISP 5 funding rules in the light of responses to CP74. As indicated in paragraph 5.11, a small number of provisions relating to the funding requirements for Voluntary Jurisdiction participants will be added to DISP 4 when the DISP 5 rules are made.

3 Summary of responses to CP74

3.1 CP74 contained detailed proposals for funding the FOS. In particular, these covered:

- general levy (on all authorised firms – unless exempt);
- case fees (i.e. the ‘user pays’ element);
- recovery of the costs of setting up the FOS (‘establishment costs’); and
- special arrangements for funding the FOS in the ‘transitional’ year in which N2 falls (i.e. 2001/02).

The general levy rules are the responsibility of the FSA; the case fee rules are the responsibility of the FOS, subject to FSA approval. References to ‘we’ in this chapter should be read accordingly.

3.2 In this chapter, we set out the list of questions in CP74, summarise the feedback received on each of these issues, and explain how the rules have been amended to take account of respondents’ comments. We also indicate, where relevant, why, in certain instances, we have decided not to amend the rules in the way respondents suggested. In finalising these rules, we have taken account of responses to CP74, and also, where relevant, of responses to the FSA’s consultation papers on its own fee-raising arrangements as set out in CP56,¹⁰ CP79 and CP95.

Q1 Do respondents agree with the proposed FOS industry-blocks set out in Annex D – and do they have any views on whether it is appropriate to create a separate mortgage lending block? (CP74 paragraphs 3.9-3.14)

3.3 The proposals relating to the industry-blocks and tariff-bases which will form part of the general levy rules attracted the lion’s share of comments. Not

¹⁰ CP56: ‘The FSA’s post-N2 fee-raising arrangements’ (June 2000).

surprisingly, many of these comments were also voiced in relation to the proposed FSA fee-blocks on which the proposed FOS industry-blocks were based. Whilst there was broad support for the majority of the proposed industry blocks, we received a number of comments about the composition of certain blocks and several suggestions for additional new blocks (see paragraph 3.23).

- 3.4 There were also some more general concerns. In particular, many respondents expressed uncertainty as to which block they would fall into, and a significant number of respondents expressed concern about the potential for ‘double-counting’ (i.e. that firms could fall into more than one industry block and might have to pay the general levy more than once). This issue arises where approved persons are used as the tariff-base and we deal with this in more detail under Q3 (i) & (ii) below (see paragraphs 3.36-3.37)

Composition of industry-blocks

- 3.5 The revised, final FOS industry-blocks are set out in Annex B. The activities covered by each of these industry-blocks are the same as those covered by the parallel FSA fee-block. Annex B compares the FOS blocks proposed in CP74 with the revised FOS blocks in this paper, and Annex C provides a comparison of the FOS industry-blocks and the FSA fee-blocks.
- 3.6 There was general support for the proposed composition of blocks 2, 3, 4, 7 and 10 (in CP74), and these remain unchanged. The rest of this section focuses on the blocks which attracted comments, and explains where we have decided to amend these. As previously noted, we have endeavoured to mirror the FSA fee-blocks as far as possible, unless it appears inappropriate to do so in the FOS context.
- 3.7 In light of the responses we received regarding the need for special arrangements for firms doing low value business, we are proposing to have three additional industry-blocks outside those already established, to cover small friendly societies, cash plan health providers and credit unions. This represents a different approach from that adopted in the FSA fees context. This is dealt with in more detail in paragraphs 3.46-3.55 below.

Former Block 1 – Deposit-takers and lenders

- 3.8 In CP74, we proposed a single industry-block for deposit-takers and lenders (including credit unions). However, we noted that the FSA proposed to create a separate fee-block for mortgage lenders and indicated that we intended to consider this further in the light of responses to the FSA’s consultation paper on mortgage regulation,¹¹ which was, at that time, subject to consultation.

11 CP70: ‘Mortgage Regulation: The FSA’s high level approach’ (November 2000).

- 3.9 We have examined the case for a separate mortgage lending industry-block and have concluded that this is not necessary in the FOS context. In reaching this conclusion, we have taken account of responses to CP74 and CP79, and have also had detailed discussions with the relevant trade associations. In particular, we took careful note of the fact that the FSA has decided to have a separate fee-block for FSA fee-raising purposes in order to reflect the different risk profile of this type of business. However, in the FOS context, we concluded that this is unnecessary, since the ‘user pays’ case fee will provide a direct reflection of the extent to which particular firms and types of business give rise to complaints with which the FOS has to deal.
- 3.10 It was proposed in CP74 that credit unions would fall within Block 1, together with other deposit takers. However, since then, the FSA has consulted separately on the regulation of credit unions in CP 94.¹² In the light of this, we have decided to create a separate industry-block for credit unions (new Block 14). (The arrangements for credit unions are explained in more detail at paragraph 3.54.)
- 3.11 New Block 1 therefore differs from the parallel FSA fee-block in these two respects.

Former Block 2 – Insurance activities subject to prudential regulation only, Lloyds Managing Agents, Society of Lloyds

- 3.12 Former industry-block 2 comprised the proposed FSA fee blocks A3, A5 and A6 as they appeared in CP79. The FSA fee-blocks remain unchanged following the FSA’s various consultations on those. However, we have made changes to FOS industry-block 2 as described in paragraphs 3.13 and 3.14 below.

Separate block for Society of Lloyd’s (New FOS Block 3)

- 3.13 We have decided, on reflection, that it is necessary, in the FOS context, to create a separate industry-block for the Society of Lloyd’s (new FOS Block 3) because of the particular nature of the Lloyd’s arrangements. (This corresponds to FSA fee-block A6.) The Society will be responsible, under DISP 1.7, for paying a single composite fee on behalf of its Members (in the same way that it currently pays a single corporate membership fee to the Insurance Ombudsman Bureau). As in the FSA context, this block will contain only one ‘firm’ – the Society. The general levy will reflect the expected cost of handling policyholder complaints against Members of the Society or Managing Agents, and the Society will allocate the fee between those

12 CP94: ‘Credit unions: consumer compensation and consumer complaints’. (May 2001)

Members or Managing Agents which do business with ‘eligible complainants’, as it considers appropriate.

Former Block 3 – insurance activities subject to both prudential and conduct of business regulation (long term life insurers)

- 3.14 This block remains largely unchanged, but becomes new FOS Block 4 and corresponds to FSA fee-block A4. However, for the reasons noted at paragraph 3.7 above, small friendly societies have been excluded from the FOS industry-block and placed in a separate category.

Former Block 4 – Fund Managers (including those holding client money/assets and not holding client money/assets)

- 3.15 The fund managers’ block remains as proposed in CP74 but is re-numbered as FOS Block 5. It corresponds to FSA fee-blocks A7 and A8.

Former Block 5 – Unit trust managers/OEIC authorised corporate directors

Former Block 6 – Trustees of collective investment schemes/OEIC depositaries

- 3.16 As in the FSA context, these two blocks have been combined to form a new single block covering operators, trustees and depositaries of collective investment schemes. This becomes new FOS Block 6, which corresponds to new FSA fee-block A9.

Former Block 7 – Dealers as principal

- 3.17 This block (FOS Block 7) remains unchanged in the light of the FSA’s further work and consultation on fee-blocks. It corresponds to FSA fee-block A10.

Former Block 8 – Stockbrokers and corporate finance advisers

Former Block 9 – Brokers, including independent financial advisers

- 3.18 In CP74 we proposed that although corporate finance advisers were in a separate fee-block for FSA fees purposes, this was not necessary in the FOS context and could be combined with the block for execution-only brokers and brokers holding client money and/or assets. However, following consultation, the relevant FSA fee-block (A14) has been re-defined to include all those authorised persons who are carrying out corporate finance business, and corporate finance advisory firms are now specifically excluded from the other fee-blocks into which they would otherwise have fallen. We have therefore decided to mirror the FSA’s approach and to place corporate finance advisers in a separate block (new separate FOS industry-block 10). (This corresponds to FSA fee-block A14 in CP 95 and covers Controlled Function 23.)

- 3.19 The FSA has also simplified its fee-blocks relating to Controlled Functions 21, 22, 24, 25 and 26. There are now two new FSA fee-blocks as follows:
- A12 – covering advisory arrangers, dealers or brokers holding and controlling client money and/or assets; and
 - A13 – covering advisory arrangers, dealers or brokers not holding and controlling client money and/or assets.

In line with our intention to mirror the FSA’s fee-blocks wherever possible, we have created a new industry-block 8 (corresponding to FSA fee-block A12) and a new block 9 (corresponding to FSA fee-block A13).

- 3.20 Similarly, we have decided to mirror the FSA’s approach in relation to execution-only brokers, in the light of further consultation on the FSA fee-blocks since CP74 and, in particular, the decision to adopt a different tariff-base (i.e. relevant commission or fee income rather than the number of approved persons). We have therefore created a separate block (new FOS industry-block 11) for execution-only arrangers, dealers or brokers, instead of including them in the same block as corporate finance advisors and those dealing as principal as previously proposed in CP74 (former Block 8). The new FOS industry-block 11 corresponds to FSA fee-block A11)

Former Block 10 – Advisers only

- 3.21 Advisory only firms remain in a block of their own for FSA funding purposes, and there is, therefore, no need for any change to the arrangements proposed in CP74 in this respect. (This now becomes new industry-block 12, which corresponds to FSA fee-block A15.)

Low Value Business

- 3.22 We have previously recognised that special arrangements are justified for small organisations, such as credit unions, cash plan health providers and friendly societies, which conduct ‘low value’ business. We have therefore set up three separate industry-blocks, relating to each of these sectors. The amount to be raised from each block will be based on the actual costs (i.e. the full unit cost) to the FOS of handling complaints against these firms. The total sum will then be allocated between firms in these blocks in accordance with the relevant tariff-base, which will be different in each block. These arrangements are dealt with further in the response to Q9 below.

Other issues raised

- 3.23 CP 74 respondents also suggested that additional new blocks should be created in other cases (e.g. for trustees and depositaries of collective investment schemes, venture capital firms and professional firms). However,

we note that the FSA does not propose to do this in the context of FSA fees and do not see any reason to adopt a different approach in the FOS context.

3.24 Trade associations representing IMRO and SFA regulated firms noted that some of their members would fall into the same block as other independent advisors who were currently predominantly PIA members. These respondents were concerned that, given the different profile of their business activities, their members would have to meet an unfair share of the levy, since their client base was unlikely to generate as many complaints as that for independent financial advisers. They also considered it inappropriate for some of their members to pay fees on a different basis. Similar views were expressed in the FSA fees context. However, after careful consideration, the FSA has decided that it is not appropriate to depart from the general principle that fee-blocks are defined in terms of permissions and also notes that the number of fee-payers in question is very small. Again, we do not see any justification for adopting a different approach in the FOS context and therefore do not propose to modify the FOS industry-blocks in this respect.

Q 2 Do respondents agree with the tariff-bases proposed in the table at 3.19 in CP74?

Q 3 In particular, do respondents have a view on:

- (i) whether the tariff-base for deposit-takers should be weighted in some way to take account of different types of account, and
- (ii) whether the appropriate tariff-base for advisers and brokers should be the number of relevant approved persons or relevant commission/fee income?

3.25 As noted earlier, the majority of the responses to CP74 related to the proposals on industry-blocks and tariff-bases, and the FSA has received similar comments in response to its consultation papers on FSA regulatory fees. Again, in deciding what policy we should adopt, we have taken careful account of the work done in the context of FSA fees, and, in particular, the FSA workshops on tariff-bases.

3.26 While respondents supported most of the tariff-base proposals, opinions were divided on the most appropriate tariff-bases for certain industry-blocks. These are explained below. (The references to industry-block numbers are to the new FOS industry-blocks as they appear in Annex B, unless otherwise stated.)

Deposit-takers and lenders (New FOS Block 1)

3.27 Our proposal in CP74 that the tariff-base for deposit-takers and lenders should be the number of relevant accounts received unanimous support. We also sought views on whether the proposed tariff-base should be weighted to reflect the fact that certain types of account might generate more complaints

than others. However, there was a general consensus that weighting was not necessary and the tariff-base for this block therefore remains unchanged.

General insurers (New FOS Block 2) and long-term life insurers (New FOS Block 4)

- 3.28 The proposed tariff-base of relevant gross premium income for Blocks 2 and 3 in CP74 was also supported and has been adopted in the case of both general and long-term life insurance activities. However, as noted above, a separate industry-block (new Block 3) has been created for the Society of Lloyds. The Society will be required to pay a single fee in respect of the Lloyds insurance business conducted with eligible complainants and will then allocate these costs amongst its members (or managing agents), as it considers appropriate.

Fund managers (New FOS Block 5)

- 3.29 We proposed in CP74 that the appropriate tariff-base for fund managers was relevant funds under management. Some respondents suggested that a firm's income from fund management would be preferable, since it would be more activity-based, and we have therefore given this issue further careful consideration.
- 3.30 We have been influenced, in particular, by the extensive consultation and workshops on tariff-bases carried out in the context of the FSA fees. In the light of these, we have decided that funds under management is the appropriate tariff-base for fund managers for FSA fees purposes (Blocks A7 and A8 in CP95), and we have concluded, on balance, that there is no reason to adopt a different approach in the FOS context. However, we are limiting the tariff-base to relevant funds under management (i.e. funds which relate to business done with private individuals), which we believe goes some way to addressing the concern that the tariff-base should be more activity-based.

Unit trust managers/OEIC corporate directors and trustees of unit trusts/OEIC depositaries (New FOS Block 6)

- 3.31 We have adopted a tariff-base of relevant gross income from the activity for both these areas, as proposed in CP74. As set out earlier, these activities have been combined into a single fee-block for FSA fees purposes (Block A9 in CP 95), and we are replicating this in the FOS funding context.

Dealers as principal (New FOS Block 7)

- 3.32 The majority of firms which will fall into this block are currently charged fees by the SFA on the basis of the number of registered individuals. However, it will not be possible after N2 to use the number of approved persons (the concept which will replace registered individuals) since there will not be a controlled function for proprietary trading. In CP74, we proposed a tariff-base

of relevant gross assets. However, following detailed further consultation in the FSA fees context, we have concluded that the appropriate tariff-base for FSA fees purposes is the number of traders engaged in dealing in investments as principal. We have therefore amended the FOS tariff-base to bring it into line with the FSA tariff-base. However, as with other FOS industry-blocks, it is limited to ‘relevant business’ (i.e. business done with private individuals only).

Advisers and brokers (New FOS Blocks 8, 9 10 and 12)

- 3.33 The tariff-base on which the views were most divided and inconclusive was that for advisers and brokers.¹³ CP74 sought views on two options for each of these blocks: either (i) the number of (relevant) approved persons or (ii) the relevant commission and/or fee income from the activity.
- 3.34 While the responses were finely balanced, there was marginally more support for the number of approved persons option. Respondents who favoured approved persons felt that this was the administratively simpler approach and agreed with the proposal that it should include only client-facing approved persons, (i.e. Controlled Functions 21-27 in the Policy Statement to CP 53¹⁴). However, respondents from certain sectors (notably those currently regulated by Recognised Professional Bodies (RPBs)) argued that the income-related basis would be fairer since it reflected business volumes.
- 3.35 In deciding how to proceed, we have taken into account the responses to the proposals for FSA’s fee-raising proposals, where similar issues arose. In that context, the FSA has decided to adopt a tariff-base of approved persons for advisers and brokers. This is mainly because of concerns that much of the data reported on an income-based measure (e.g. from small companies and sole traders), would not have been independently audited. We have therefore decided to mirror this approach in the FOS context with regard to advisers and brokers, by adopting an approved persons tariff-base.
- 3.36 Some respondents expressed concern about the scope, particularly in small and medium-sized firms, for double counting if approved persons were used as the tariff-base. This is because a firm might have approved persons who spent only a small proportion of their time on a range of different regulated activities, which would fall into a number of different fee-blocks. Respondents noted that this was likely to be especially problematic in professional firms, where individuals might be spending only part of their time on regulated activities.
- 3.37 This issue has also arisen in the FSA fee-raising context and the FSA has given the matter careful thought in both cases. In particular, we have considered whether it might be appropriate to introduce banded rates for approved

13 Now FSA fee-blocks A12,A13,A14 and A15 in CP95.

14 Now Controlled Functions 21,22,24,25 and 26 in CP95.

persons according to what percentage of each approved person's time was spent on investment business matters. However, such an approach would require an additional return to be made by fee-payers. This extra data would be difficult to validate and would generate only small changes to fees. This potential difficulty will not in any case crystallise until 2002/03 when these rules will come into force. We have therefore decided to wait until we have further information about the distribution of approved persons between fee-blocks, which will enable us to assess whether it is indeed a problem. We will review the matter again before the rules are finally made, in the light of the information we then have.

Execution-only arrangers, dealers and brokers (New FOS Block 11)

3.38 In CP74, we sought views on whether the tariff-base should be relevant approved persons or relevant commission/fee income. However, as noted above, the industry-blocks into which these firms will fall have been reconfigured in line with the proposed FSA fee-blocks. The majority of firms which will fall into this block are currently regulated by the SFA and pay fees based on the number of registered individuals. However, an approved persons tariff-base will not be practicable after N2, since there will not be a controlled function for either introducers or execution-only dealers. Following detailed consultation, the FSA has decided to adopt the commission or fee income (earned over the 12 months ending on 31 December prior to the year to which the fees relate) as a tariff-base for this block and we propose to adopt the same tariff-base in the FOS context.

Q4 Do respondents agree that, for FOS general levy purposes, 'relevant business' should be restricted to business done with private individuals only? (CP74 paragraphs 3.26-3.28)

3.39 In CP74, we acknowledged that firms might have difficulty in identifying the extent to which they did 'relevant business' with small businesses eligible to use the FOS. We therefore proposed that 'relevant business' should be restricted to private individuals only, and that complaints from small businesses should be funded by a special case fee. The majority of respondents supported this proposal, and we have therefore adapted the rules accordingly.

3.40 A number of respondents indicated, however, that it could be difficult in practical terms to identify 'relevant business' for the purposes of applying certain of the tariff-bases. Particular concern was expressed on behalf of firms currently regulated by the SFA, who, it was felt, might have problems distinguishing the extent to which they do business with private individuals, as distinct from small businesses who will be eligible to use the FOS.

3.41 We have therefore annotated the tariff-bases to make it clear that they relate to 'relevant business', (i.e. business done with private individuals), and we

accept that the information on ‘relevant business’ will have to be a best estimate by firms. We will, however, keep the decision to limit ‘relevant business’ to private individuals under review, in case this should prove problematic in the light of experience.

Q5 Do respondents agree that small business complaints should be funded separately by a special case fee (as described in paragraphs 3.27-28 of CP74)?

3.42 There was broad agreement with the proposal in CP74 that complaints from small businesses should be funded by way of a special case fee, and the FOS have therefore to make such a charge. This fee will reflect the full unit cost of dealing with complaints generally, and will apply only to cases where the firm, or the Ombudsman, has ascertained that the small business complainant is eligible to use the scheme (i.e. has an annual turnover of less than £1million and meets the other criteria set out in DISP 2.4).

Q6 Do respondents agree that a ‘straight-line’ approach should be adopted for the FOS industry-blocks?

3.43 There was general agreement with the proposal that the relevant tariff in each industry block should be applied on a ‘straight line’ basis so that levies increase on a continuous and uniform basis. A significant number of respondents felt that this would be fairer, though some noted that this was contingent on their being satisfied with the suitability of both the tariff-base and the relevant industry-block. We are addressing the concerns about fee-blocks and tariff-bases as described elsewhere in this paper, and therefore intend to implement the straight line approach as proposed.

Q7 Do respondents believe that the logarithmic approach described in paragraph 3.31 of CP74 should be applied to the fund managers industry-block (or any other proposed industry blocks)?

3.44 We also sought views in CP74 on whether a logarithmic scale would be appropriate in the fund managers’ industry-block (or other blocks), where the range in the size of firms’ business is particularly large. This approach would mean that the general levy would be reduced at the higher end of the scale. However, most respondents felt that a straight line approach for all industry-blocks would be fairer and simpler, and that it would be unfair to apply the logarithmic approach to only some blocks as this would create unfairness as between firms. We therefore intend to implement a straight line approach for all industry-blocks.

Q8 Do respondents agree with the proposal for a minimum levy?

Q9 Do respondents agree with the proposal that those firms which qualify for the minimum levy should not be subject to case fees?

3.45 In CP74, we proposed that there should be a minimum general levy in each industry-block, mainly because there is a minimum level below which it will not be economic to collect a levy. There was broad agreement across all sectors that a minimum levy was appropriate, although a number of respondents were keen to know at what level this would be pitched. We therefore propose to implement this proposal, and will consult on the amount of the minimum levy each year at the same time as we consult on the tariff-rates.

Special Arrangements for Low Value Business

- 3.46 We are conscious that some firms will be undertaking ‘relevant business’ which is low value, where the case fee could be significantly larger than the amount at issue in a complaint, and disproportionate in relation to the firm’s income from the product. We have therefore noted in earlier consultations that special funding arrangements may be needed for very small firms such as credit unions, small friendly societies and cash plan health providers conducting this type of business.
- 3.47 In CP74, we sought views on the suggestion that a possible means of addressing the issue would be for firms which qualified for the minimum levy in an industry-block to be exempt from case fees.
- 3.48 Opinion was divided on this issue. As expected, the smaller firms were strongly in favour. On the other hand, larger organisations pointed out that small businesses do not necessarily generate low numbers of complaints and also noted that case fees provide an incentive for good complaints handling. They therefore felt that small firms subject to the minimum levy should not be totally exempt from case fees. Several also observed that the situation would need careful monitoring to ensure that the minimum levy was pitched at an appropriate level and that appropriate account was taken of the numbers and complexity of cases generated by these firms to guard against minimum levy firms being subsidised by other firms.
- 3.49 A significant number of respondents from different sectors of the industry suggested a compromise solution whereby those firms which qualify for the minimum levy should not have to pay case fees, provided that the number of cases against them did not exceed a specified annual figure. Under this proposal, if the FOS were to deal with more than the specified number of cases, a firm subject to a minimum levy would then be obliged to pay case fees. We were initially attracted by this suggestion, but, after careful consideration, have decided not to adopt it at this stage since it does not address the concerns about cross-subsidisation and would be complex (and potentially problematic) to administer.

- 3.50 Having reviewed the matter carefully and, in the light of discussions with the relevant industry bodies, we have modified the arrangements proposed in CP 74 in a way which we believe achieves the desired objective and also addresses concerns about the potential for cross subsidisation by firms in other blocks.
- 3.51 The revised arrangements involve the creation of separate industry-blocks for the three groups of firms which we have previously identified as requiring different treatment – credit unions, cash plan health providers and small friendly societies. This was on the basis that they are essentially ‘not for profit’ organisations, which mainly undertake low value business which is unlikely to give rise to large awards of compensation.
- 3.52 Following discussions with trade associations and other interested parties, a ‘small friendly society’ is defined, for this purpose, as one in which at least 95% of its business is tax-exempt. The vast majority of friendly societies are expected to fall into this category, but those which do not, will fall into the fee-blocks relating to their FSA permission and be charged accordingly. All credit unions and all cash plan health providers will fall into the other two blocks respectively, but only smaller credit unions will qualify for special treatment (see paragraph 3.54 below).
- 3.53 The approach which we propose to adopt in each of these blocks is broadly the same, but with one or two variations, at the request of the trade associations concerned, as described below.

Cash plan health providers and small friendly societies (New FOS Blocks 13 and 15)

- 3.54 All firms in the cash plan health providers block and the small friendly society block will pay a general levy, but no case fees. The general levy will be based on the full unit cost to the FOS of handling complaints against the firms in these blocks, and there will be a minimum levy of £50 per block. The tariff-base for small friendly societies will be relevant gross premium income (in line with the tariff-base for the insurers’ block into which the larger friendly societies will fall). The amount to be raised from the cash plan health providers block will (at their request) be divided evenly between these firms.

Credit Unions (New FOS Block 14)

- 3.55 The approach in the credit union block differs slightly from the other two blocks because of the varying size of the firms which will fall into this block. The general levy will be calculated in the ‘usual’ way, with a minimum levy of £50, but **only those credit unions who qualify for the minimum levy will not pay case fees**. For the larger credit unions, the approach will be the same as for firms in the deposit-acceptor block, although the tariff-base will be asset-based, rather than based on the number of accounts. (This has been

subject to separate consultation in CP94 and was favoured by the majority of respondents.)

Q10 Do respondents agree that there should be no maximum levy?

3.56 There was virtually unanimous agreement that the general levy should not be capped, and there will therefore be no maximum levy.

Q11 Do respondents have any views on the issues relating to the possible future refinement of the approach to case fees outlined above?

3.57 In CP74, the FOS sought views on several options for refining case fees for possible future consideration:

- (i) whether the case fee should take account of possible differentials between sectors;
- (ii) whether the case fee should be tiered, with a view to attracting a lower fee if the complaint were resolved at an earlier stage in the FOS's procedures; and
- (iii) whether there should be a small fee for enquiries from consumers about individual firms, handled by the FOS.

3.58 Many respondents supported the principle that case fees should reflect any differential costs of handling complaints between industry sectors, which might become apparent once complaints across all sectors are being handled on the basis of a single terms of reference. There was also strong support for tiering case fees, to take account of the stage in the Ombudsman's process at which a complaint is resolved. Some respondents suggested that the FOS should also take into account whether the complaint would have ended sooner had the complainant co-operated with the firm or the Ombudsman. The FOS will keep both of these proposals in mind, with a view to developing them in the light of experience.

3.59 There was, however, virtually no support at all for the suggestion that the FOS might levy a charge in respect of enquiries. The majority of respondents felt that the cost of enquiries should be covered by the general levy, and noted that they would have no control over the extent to which consumers might make use of that service. The FOS, therefore, does not propose to pursue the option of a case fee for handling enquiries without further consultation.

3.60 At a more general level, there was overwhelming support across the board for the general principle that the 'user pays' element of funding the FOS should increase over time, and many respondents expressed a wish to have some indication of when this would happen. As noted in our earlier consultation paper, the 50:50 split between the amount to be raised via the general levy and the amount to be raised via case fees is generally accepted as a reasonable starting point, but not a permanent arrangement. We propose to review this at

the end of the first complete year of operating the new scheme and will consult on any adjustment to this ratio which we consider appropriate in the light of experience.

- 3.61 As explained at paragraph 3.37 in CP74, we have considered the issue of whether to charge case fees only where a complaint has been upheld by the Ombudsman, and is therefore 'valid'. Our conclusion is that it is problematic to define a 'valid complaint', for example where the Ombudsman upholds a complaint in part, or increases an offer of redress where the firm has already accepted liability. The FOS has therefore decided not to adopt this approach for now, although we will keep the matter under review.

Q12 Do respondents agree with the proposal for the FOS to charge special case fees in the circumstances outlined above? (CP74 paragraph 3.41)

- 3.62 Special transitional arrangements (which are explained at paragraph 3.70) are proposed for funding the post-N2 portion of the 'transitional' year in which N2 falls (i.e. 2001/02). However, these do not cover new complaints against former PIA members which may be received during that period, since the PIA Ombudsman Bureau is currently mainly funded by case fees payable on receipt of a complaint, rather than by a levy at the start of the year. Nor do they cover firms which are 'new joiners' at N2 (e.g. former RPB-certified firms). The FOS therefore proposed, in CP74, that special transitional case fees should be chargeable in these particular circumstances until the new funding rules come into force on 1 April 2002.

- 3.63 The FOS also proposed that special case fees should apply from 1 April 2002 in respect of:

- complaints from small businesses; and
- complaints about firms which were formerly authorised by the FSA.

- 3.64 Most respondents agreed with these proposals. In particular, they agreed that the FOS should charge special case fees, reflecting the full unit cost of handling a complaint, in respect of any complaint about a 'new joiner', which is both received and closed in the transitional period between N2 and the end of the current financial year. The FOS therefore intends to proceed on this basis and, as indicated in CP99, intends to charge a similar special case fee to unauthorised firms whose pre-N2 complaints come within the FOS's jurisdiction by virtue of the transitional arrangements recently made by the Treasury.

- 3.65 **The special case fees which the FOS proposes to charge during the transitional period are set out in Chapter 5. Subject to any comments received on these proposals, the relevant special case fee rules in DISP 5 will be made in November and come into force at N2. (The standard terms in DISP 4 will be**

extended to include the necessary contractual provisions in respect of Voluntary Jurisdiction participants.)

- 3.66 The FOS will consult on the other special case fees which will apply from 1 April 2002 onwards, and which do not relate to the transitional period, when it consults on its 2002/03 budget. These fees will cover the circumstances set out in CP74, namely complaints from small businesses, and complaints about business conducted by firms when they were authorised by the FSA, but which are received after their authorisation has ceased.

Q13 Do respondents have any comments on the proposed definition of chargeable case? (CP74 paragraph 3.42)

- 3.67 There was virtually unanimous support for the definition of 'chargeable case'. It has, however, been extended to include 'relevant complaints' (i.e. complaints about pre-N2 business which fall within the scope of the FOS by virtue of the Treasury Order).

Q14 Do respondents agree with the proposal for recovering the establishment (set-up) costs of the new Scheme?

- 3.68 We suggested in CP74 that the costs of setting up the FOS should be recovered by means of a supplementary levy over the first three full financial years of FOS's operation (i.e. starting from April 2002). The supplementary levy would be raised in the same way as the general levy. (This mirrors the way in which the FSA intends to recover its own set-up costs.) There was general agreement with this proposal, although almost all those who commented on this point were keen to see estimates of the likely size of the set-up costs. These figures were included in the FOS's budget, which was published for consultation in January 2001, (during the consultation period on CP74) and firms should therefore now have a clearer idea of the figures involved.¹⁵

- 3.69 Some respondents commented that the period for recovering the establishment costs was too short, and suggested that this should extend beyond three years. Others expressed concern that firms might postpone joining the Voluntary Jurisdiction until after the three year period to avoid having to pay the supplementary levy. We have given these comments careful consideration, but we consider that on balance, the set-up costs should be recovered from all member firms, and not just those in the Compulsory Jurisdiction. We have therefore decided not to modify our proposal in this respect.

Q15 Do respondents agree with the proposals for funding 2001/02 as set out in paragraphs 3.48-3.50 in CP74?

15 The FOS Budget of January 2001 estimated set-up costs of £4.7 million, to be recovered over 3 years from 2002/03 onwards.

3.70 We noted in CP74 that N2 was likely to fall part way through the financial year 2001/02, and this has since been confirmed by the Treasury, which announced that N2 will be on 1 December 2001. We therefore suggested special transitional funding arrangements for 2001/02 in order to avoid the need for a further mid-year levy. These envisaged that the existing schemes would raise the sums necessary to fund the FOS for the whole of the 2001/02 financial year under their current funding procedures and that they would pass the balance of this funding to the FOS at N2. There was unanimous support for this proposal from respondents who replied to this question and these arrangements are contained in the individual Service Level Agreements which the FOS has with each of the existing schemes. As noted above, those who have not already contributed to the funding of the new scheme during this transitional period will be charged a special case fee.

Q16 Do respondents have comments on any of the administrative arrangements/requirements proposed in CP74 (i.e. chapter 4)?

Setting the tariff-rates

3.71 As indicated in the draft Guidance at DISP 5.4.3G in Annex A of CP74, the FSA will consult in each financial year on the amount of the general levy to be raised from each industry-block and on the tariff-rates for each block, based on the FOS's budgeted costs and anticipated complaint numbers. The FOS proposes to publish its budget for consultation in early January each year and the FSA will consult on these issues at the same time. The FOS budget is subject to FSA approval.

Collection of data

3.72 In paragraph 4.13 of CP74, we proposed, subject to further cost benefit analysis considerations, that, in the interests of simplicity and cost-effectiveness, the FSA should delegate the invoicing and collection of the general levy to the FOS. The FSA would collect 'relevant business' data from firms relating to both FSA regulatory fees and the FOS general levy, but would then pass the FOS-related data to the FOS, who would collect the general levy.

3.73 Some respondents expressed concern about the FSA receiving this data and suggested that it would compromise the independence of the FOS. However, the power to raise the general levy and to collect the information on which it is based rests with the FSA. As previously anticipated, we have now confirmed that it would be simpler and more cost-effective for the FSA to collect 'relevant business' data for general levy purposes from authorised firms in the Compulsory Jurisdiction. This information will then be passed to the FOS, which will calculate the fees payable by individual firms in accordance with the relevant FSA rules and invoice firms accordingly.

3.74 CP74 (paragraph 4.14) proposed that firms' relevant business data should be calculated as at 31 December each year (or for the year ending 31 December, as appropriate), and that firms should be required to submit that data by the end of February of the following year. Some respondents were concerned that this would not give them sufficient time to identify and report the amount of their relevant business for FOS general levy purposes, especially where they would be dependent on audited accounts for this information. However, this is in line with the approach which we propose to adopt in the FSA context and we do not see any reason to adopt a different approach in the FOS context.

Invoicing and Collection of Levies

3.75 As proposed in CP74, the invoicing and collection of levies will be delegated to the FOS, but the FOS will do this in accordance with the general levy rules made by the FSA and set out in DISP 5.

Payment Terms

3.76 Payment terms in respect of the general levy, as proposed in paragraph 4.18 of CP74, are confirmed and the rules reflect this. The only change is that case fees will be invoiced monthly rather than quarterly (see 'Credit Control' below).

Joiners and Leavers

3.77 The proposals in paragraph 4.20 of CP74 are confirmed and the rules reflect this.

Credit Control

General Levy

3.78 CP74 indicated that the FOS proposed to issue general levy invoices on 1 April each year with firms having the option to pay in full or quarterly in advance by direct debit. This was generally accepted by respondents.

3.79 The general levy will be invoiced as follows:

- Firms paying a levy that is more than the minimum levy will be able to pay quarterly in advance by direct debit.
- Firms paying the minimum levy annually must do so within 30 days of issue of the invoice.
- Late payments will be subject to an interest charge of 10% a year on the outstanding amounts.
- Invoices will be sent to the compliance officer of the firm at the firm's principal place of business in the UK, as notified to the FSA.

- In order to ensure that firms which supply their relevant data late to the FSA do not hold up the invoicing process, it is intended to issue the first and second quarterly invoices based on the previous year's levy. The third and fourth quarters' invoices will be adjusted in order that the correct charge for the year is collected. Firms subject to the general levy who pay annually will receive an estimated invoice in April, with an adjusted invoice in October.

Case Fees

- 3.79 The FOS's proposal in CP74 was that case fees would be billed quarterly in arrears with a month allowed for payment. Several respondents felt that this was too short a time to reconcile these with their internal records but, as these cases will be billed on closure, there are unlikely to be any disputes about their validity.
- 3.80 However, in order to reduce the numbers of chargeable cases invoiced to firms on a quarterly basis, the FOS proposes to invoice monthly. This will reduce firms' administrative burden so enabling them to pay within 30 days. Invoices will be sent to the firm's compliance officer at the firm's principal place of business in the UK. Late payments will be subject to an interest charge at 10% a year on the outstanding amounts.

4 Detailed commentary on amendments to Draft Rules in CP74

- 4.1 This chapter summarises the amendments made to the draft DISP 5 rules set out in Annex A to CP74. These changes reflect the responses to CP74 and also take account of changes to the FSA fee-blocks which have been made in the light of CP79 and CP95, where these are also relevant in the FOS context. Rule references relate to the revised numbering. The table at Annex B sets out, for the purposes of comparison, the former industry-blocks as they appeared in CP74, and the revised FOS industry-blocks as they are now.

Application Section

- 4.2 References to the ‘scheme operator’ throughout the Complaints Sourcebook (including DISP 5) have been replaced with references to ‘FOS Ltd’ (in order to avoid any potential confusion with operators of collective investment schemes).
- 4.3 **DISP 5.1.1R** has been amended and **DISP 5.1.3G** inserted to make it clear that DISP 5 now also applies to firms which are not authorised by the FSA but could be the subject of a ‘relevant complaint’ which the FOS could handle as a result of the Treasury Order, as proposed in CP99.
- 4.4 **DISP 5.1.2G** has been amended to indicate that the relevant provisions of DISP 5 are applied to Voluntary Jurisdiction participants by the standard terms in DISP 4.

Exemption

- 4.5 **DISP 5.1.4R** has been amended and simplified to provide that firms which have notified the FSA under DISP 1.1.7R that they qualify for exemption from DISP 1 are also exempt from DISP 5.2 to DISP 5.8. Firms now have to provide the necessary notice to the FSA within three months (rather than one month) of N2, and, thereafter, in February each year.

- 4.6 New DISP 5.1.5R and DISP 5.1.6R provide for firms which become exempt or cease to be exempt to be treated in the same way as leavers and joiners for funding purposes.

Purpose

- 4.7 DISP 5.2.1G and new DISP 5.3.4G now indicate that unauthorised firms may also be charged case fees in respect of any 'relevant complaints' against them which the FOS handles, as a result of the Treasury Order.

Lloyd's

- 4.8 New 5.4.9R has been inserted to take account of the unique nature of Lloyd's complaint handling arrangements. This rule specifies that, although members of Lloyd's are to be treated as authorised firms for the purposes of DISP (by virtue of Market Services Direction LLD 6.2.1D), the Society of Lloyd's will be required to pay a single fee on behalf of its members (and, where appropriate, managing agents), as if the Society and its members/managing agents were a single firm subject to the Compulsory Jurisdiction.

Information Requirement

- 4.9 DISP 5.5.1R has been amended slightly to make it clear that, depending on the nature of the tariff-base, a firm's relevant business will be calculated as at 31 December, or in the year to 31 December, as appropriate.

Case Fees

- 4.10 DISP 5.6.1R has been amended to make it clear that a standard case fee will not be charged if a special case fee is payable (or has been paid) in respect of a particular complaint.
- 4.11 DISP 5.6.3R now provides that a credit union which is subject to the minimum levy in the credit union block is not required to pay standard case fees.
- 4.12 DISP 5.6.4R now provides that firms falling into the small friendly societies block or the cash plan health providers block are not required to pay standard case fees.
- 4.13 DISP 5.6.5R explains the special arrangements provided for in respect of cash plan health providers, small friendly societies and small credit unions in DISP 5.6.3R and DISP 5.6.4R.
- 4.14 New DISP 5.6.8R and new DISP 5.6.9G have been added to enable the FOS to charge a special case fee in respect of a complaint which it could handle as a result of the Treasury Order, even if the firm concerned does not become authorised by the FSA.

The Supplementary Levy

- 4.15 **DISP 5.7.1G** and **DISP 5.7.4G** have been amended to make it clear that the Voluntary Jurisdiction participants will also contribute to the supplementary levy.

Payment

- 4.16 **DISP 5.8.1R** has been amended to clarify when firms must make their general levy payments.
- 4.17 **DISP 5.8.2R** and **DISP 5.8.3G** and **DISP 5.8.4R** have been amended to clarify when firms must make their case fee payments.
- 4.18 **DISP 5.8.6R** has been amended to specify that the FOS may charge interest at 10% per annum on overdue payments.
- 4.19 **DISP 5.8.8R** and **DISP 5.8.9R** have been added to enable the FSA or the FOS to reduce or remit all or part of any fee which either is payable or has been paid in exceptional circumstances.

DISP 5 Ann 1R

4.20 Industry-blocks and tariff-bases

- The industry-blocks and tariff-bases in the fee-tariff table in Part 2 of this annex have been amended, as described (and for the reasons explained) in Chapter 3 of this paper.
- The table in Part 3 of this annex (relating to standard and special case fees) has been expanded to indicate, for ease of reference, the type of special case fees concerned (instead of including only the rules reference).
- The fee-tariff table for the supplementary levy formerly in Part 5 of this annex (which simply replicated the table in Part 2) has been removed. The heading for the table in Part 2 now refers to both the general levy and the supplementary levy.

4.21 Glossary

- The definitions contained in CP74 have been revised as indicated in Annex D to bring them into line with the latest definitions in the Glossary made by the FSA and to update the cross-references to relevant rules. A new definition – ‘annual budget’ – has also been added.

5 Special transitional case fees: FOS consultation

- 5.1 The purpose of this chapter is to consult on the level of the special transitional case fees which the FOS proposes to charge certain types of firms during the transitional period from N2 until 31 March 2002, when the new funding rules in DISP 5 will come into force.

Expected Expenditure

- 5.2 As set out in Chapter 1, the FOS is seeking comments from respondents on the level of the special case fees which it proposes to charge firms in the transitional period, until the new funding arrangements take effect on 1 April 2002. The FOS budget for the current financial year is £27.6m (which is based on a forecast that it will receive 38,000 cases for investigation during the course of the year). This results in a unit cost per completed case of £688, and the level of the special case fees on which the FOS is consulting are set in this context.

Period between 1 December 2001 and 31 March 2002

- 5.3 As explained in paragraph 3.70, most of the firms which will be subject to the FOS at N2 will have paid a levy to their former scheme in respect of the whole of the current financial year. The FOS has entered into Service Level Agreements with most of these schemes, as a result of which it will receive the balance of the funding covering the period up to the end of the financial year. For most firms therefore there is no need to charge fees relating to this period.
- 5.4 However, the FOS will need to be able to charge special case fees during the transitional period in respect of the following types of firm:
- former PIA members;
 - ‘new joiners’ (including Voluntary Jurisdiction participants);
 - certain unauthorised firms.

Former PIA members

- 5.5 PIA members currently pay a case fee of £500 once a case is accepted for investigation, which is supplemented by a subvention from their PIA membership subscriptions, as necessary. PIA firms have therefore already contributed through their PIA subscriptions an element to cover the difference between the actual cost of completing a case (£688) and the case fee of £500, and this amount will be paid by the PIA to the Financial Ombudsman Service at N2. **The FOS therefore proposes that former PIA firms should continue to pay case fees of £500 in respect of cases accepted for investigation until the end of the financial year when the new general levy/case fee arrangements come into effect.**

New Joiners

- 5.6 New joiners (i.e. firms which were not members of a former scheme) will not have contributed in any way to the costs of running the new scheme during the current year. **The FOS therefore considers it appropriate to charge these firms a special case fee of £688 on case closure to recover the full unit cost of handling complaints during the transitional period.**

- 5.7 These special case fees will be payable in respect of:

- complaints about the post-N2 business of firms that were not members of one of the schemes currently operating under Service Level Agreements with the FOS; and
- complaints about Voluntary Jurisdiction participants who join the Voluntary Jurisdiction after N2 and who were not members of a former scheme.

Unauthorised firms

- 5.8 The FOS will also need to be able to make a special case fee charge, where appropriate, to certain unauthorised firms which will be subject to the Compulsory Jurisdiction in respect of complaints about pre-N2 business as a result of the Treasury Order. (This particular transitional case fee is likely to be needed beyond the end of the current financial year.) **For the same reasons as set out in paragraph 5.6 above, the FOS proposes to set this fee at £688 for the remainder of this financial year.**
- 5.9 It is important to emphasise that these special case fees will not apply to a new joiner or unauthorised firm which has already contributed to the funding of the FOS for the current financial year, through its membership of one of the former schemes prior to N2.
- 5.10 The relevant rules are **DISP 5.6.10R, DISP 5.6.11R and DISP 5.6.12R** as set out in Annex A.

- 5.11 In addition, the FOS also proposes to insert provisions into DISP 4 in respect of new Voluntary Jurisdiction participants as follows:

DISP 4.2.13R

A VJ participant which joins the Voluntary Jurisdiction before the end of the financial year in which the commencement day falls must pay to FOS Ltd the special case fee specified in DISP 5 Ann1R for DISP 5.6.10R in respect of each chargeable case falling within the Voluntary Jurisdiction and closed under the Financial Ombudsman Service before 31 March 2002, unless it was, immediately before the commencement day, a member of a former scheme, which has paid an agreed sum to the FOS Ltd in respect of the handling of complaints against its former members up to 31 March 2002.

DISP 4.2.14G

At commencement, the general levy, supplementary levy and standard and special case fees which will apply to VJ participants under DISP 4.2.12R will not have been fixed. So, in order to fund the Voluntary Jurisdiction until the end of 2001/02 financial year, VJ participants joining in the period up to the end of the first financial year after commencement will pay the special case fee in DISP 4.2.13R. The fee is the same as that specified for firms not in former schemes which become subject to the Compulsory Jurisdiction at commencement.'

- 5.12 Subject to any comments which respondents may have, the FOS proposes to make these rules in November 2001 and to bring them into force with effect from 1 December 2001.
- 5.13 Respondents are invited to comment on these proposals by 31 October 2001.

Made DISP 1 to 4 Rules and Draft DISP 5 Rules

Handbook Modules

Transitional provisions

1 Table 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	<i>DISP</i> 1.2.15G	R	A firm must cease to use letter-headed paper or marketing literature which refers to its membership of a former scheme no later than 30 June 2002.	<i>Commencement</i> to 30.6.02	<i>Commencement</i>
2	<i>DISP</i> 1.5.4R – <i>DISP</i> 1.5.7R	R	A firm must include, in the first report which it submits to the FSA under <i>DISP</i> 1.5.4R in respect of the 1 April 2002 – 30 September 2002 reporting period, the total number of reportable complaints (that is, complaints subject to <i>DISP</i> 1.4 – <i>DISP</i> 1.6) which it has received but not closed by the beginning of that reporting period (including any such complaint which could be referred to the <i>Financial Ombudsman Service</i> as a relevant new complaint under the <i>Ombudsman Transitional Order</i>.	01.4.02 – 31.10.02	01.4.02

(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
3	<i>DISP</i> 1.5.4R – <i>DISP</i> 1.5.7R	G	Transitional provision 2R requires a <i>firm</i> , in addition to complying with the reporting requirements in <i>DISP</i> 1.5.4R, to include in its first report under <i>DISP</i> 1.5.4R the total number of complaints subject to <i>DISP</i> 1.4 – <i>DISP</i> 1.6 which remain open at the beginning of that reporting period (that is, on 1 April 2002). This will enable the <i>FSA</i> to know how many complaints were carried forward into the first reporting period. (A <i>firm</i> is not required to provide a breakdown by category code or generic product type of the complaints carried forward at 1 April 2002, but must do so in respect of complaints received during the 1 April 2002 to 30 September 2002 reporting period and in respect of subsequent reporting periods.)	01.4.02 – 31.10.02	01.4.02
4	<i>DISP</i> App 1	R	<i>Firms are subject to DISP App 1 in relation to relevant existing complaints.</i>	From commencement	Commencement
5	<i>DISP</i> App 1	G	The <i>Ombudsman Transitional Order</i> makes special provision for the handling by <i>FOS Ltd</i> of "relevant existing complaints" (that is, complaints which the former schemes have partly completed at commencement). The arrangements for handling these complaints are set out in <i>DISP</i> App 1. (The handling of complaints which <i>firms</i> have partly completed at commencement is described at <i>DISP</i> 1.4.6R.)	From commencement	Commencement
6	<i>DISP</i> 2, <i>DISP</i> 3, <i>DISP</i> 5 and <i>DISP</i> App 1	R	<i>In DISP 2, DISP 3, DISP 5 and DISP App 1, references to a "firm" or "firms" include unauthorised persons subject to the Compulsory Jurisdiction in accordance with the Ombudsman Transitional Order.</i>	From commencement	Commencement

(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
7	<i>DISP 2, DISP 3, DISP 5 and DISP App 1</i>	G	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 "firm" in <i>DISP 2, DISP 3, DISP 5 and DISP App 1</i> include <i>unauthorised persons</i> subject to the <i>Compulsory Jurisdiction</i> in relation to <i>relevant complaints</i> , where applicable.	From commencement	Commencement
8	<i>DISP 1, DISP 2, DISP 3, DISP 4, DISP 5 and DISP App 1</i>	R	In relation to <i>relevant complaints</i>, references in <i>DISP 1, DISP 2, DISP 3, DISP 4, DISP 5 and DISP App 1</i> to an "eligible complainant" 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 shall be construed accordingly.	From commencement	Commencement

COMPLAINTS SOURCEBOOK

DISPUTE RESOLUTION: COMPLAINTS

Introduction

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

This module of the *FSA Handbook* contains the rules and guidance relating to the handling of complaints by *firms* and to the operation of the *Financial Ombudsman Service*. Responsibility for the rules relating to the *Financial Ombudsman Service* is shared under the *Act* between the *FSA* and the *FOS Ltd*, with those rules and other requirements written by the *FOS Ltd* being subject to approval by, or the consent of, the *FSA*.

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

- (a) The *Compulsory Jurisdiction* covers *firms* which are required to participate in the *Financial Ombudsman Service* in respect of complaints about activities specified by the *FSA* [and *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*];
- (b) The *Voluntary Jurisdiction* can cover financial services activities not included in the *Compulsory Jurisdiction*. Both *firms* and *unauthorised firms* can participate in the *Voluntary Jurisdiction* by contractual agreement with the *FOS Ltd* (in accordance with the *Standard Terms* – see below) and are known as *VJ participants*.

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

Chapter 1: Complaint handling procedures for firms

These rules set out the complaint handling procedures which *firms* capable of giving rise to an eligible complaint under the *Compulsory Jurisdiction* (see Chapter 2) must establish. They are made by the *FSA* under section 138 of the *Act* and paragraph 13 of Schedule 17 to the *Act*. These rules, with some exceptions, are applied to *VJ participants* by contract via the *Standard Terms* set by the *FOS Ltd* (Chapter 4).

Chapter 2: Jurisdiction rules

These rules set out the scope of the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*. They specify who can refer a complaint to the *Financial Ombudsman Service* and the time limits for doing so, as well as which activities are covered by the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction*. The rules also set out the territorial scope of the *Financial Ombudsman Service*. They are relevant to consumers who may wish to refer complaints to the *Financial Ombudsman Service*; to firms which are subject to the *Compulsory Jurisdiction*; to *unauthorised persons* who are subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*; to *VJ participants* and to the *Ombudsman* himself. The rules relating to the scope of the *Compulsory Jurisdiction* are made by the *FSA* (under section 226 of the *Act*); the rules relating to the scope of the *Voluntary Jurisdiction* are made by the *FOS Ltd*, with *FSA* approval (under section 227). The rules relating to the time limits for referring a complaint to the *Financial Ombudsman Service* are made by the *FSA* under paragraph 13 of Schedule 17 to the *Act* and are applied to *VJ participants* by contract via the *Standard Terms* set by the *FOS Ltd*.

Chapter 3: Complaint handling procedures of the Financial Ombudsman Service

These rules apply to the *Ombudsman*, to *firms*, and to *unauthorised persons* who are subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*. They are also relevant to complainants. They set out how the *FOS Ltd* and, in particular, the *Ombudsman* will handle complaints under the *Financial Ombudsman Service*. For the purposes of the *Compulsory Jurisdiction*, they comprise the scheme rules and the costs rules (made by the *FOS Ltd*, with *FSA* consent or approval, under paragraph 14 of Schedule 17 and section 230 respectively) and rules made by the *FSA* on the kinds of loss or damage that can be compensated, including the maximum amount which can be awarded (s229). These procedural rules are applied to *VJ participants* via the *Standard Terms*.

Chapter 4: The Standard Terms

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

Appendix 1: Relevant Existing Complaints

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

It distinguishes between:

- (a) *relevant existing complaints* (ie complaints referred to, but not determined by, a former scheme (other than the *Personal Insurance Arbitration Service*) before commencement (see article 2 of the *Ombudsman Transitional Order*); and

- (b) *relevant new complaints* (ie complaints referred to the *Financial Ombudsman Service* after *commencement* which relate to a pre-*commencement* act or omission, in respect of which the *firm* was, immediately before *commencement*, subject to a *former scheme*) (see article 3 of the *Ombudsman Transitional Order*).

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

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

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

DISP App 2 contains FSA's guidance to *firms* on handling mortgage endowment complaints..

1.1 Application and Purpose

Application

- 1.1.1** **R** _{/1} This chapter applies to every *firm* in respect of activities carried on from an establishment maintained by the *firm* (or its *appointed representative*) in the *United Kingdom*, except:
- (1) (a) a *firm* that is exempt under *DISP* 1.1.7R;
 - (b) a *UCITS* *qualifier*;
 - (c) an *authorised professional firm* in so far as its *non-mainstream regulated activities* are concerned; and
 - (2) in relation to the *Society of Lloyd's*, *members of the Society* and *managing agents*, *DISP* 1 applies subject to *DISP* 1.7 (the *Society of Lloyd's*).
- 1.1.2** **G** _{/1} This chapter is also relevant to those who might wish to refer a complaint to the *Financial Ombudsman Service*.
- 1.1.3** **G** _{/1} *Firms* are responsible for ensuring their *appointed representatives'* compliance with *DISP* 1.
- 1.1.4** **G** _{/1} *VJ participants* are subject to *DISP* 1, except *DISP* 1.1.5R and *DISP* 1.5 (Record keeping and reporting), by contract under the *standard terms* (see *DISP* 4). *DISP* 1.2 applies to *VJ participants* only in relation to complaints about activities of the *VJ participant* specified in *DISP* 2.6.9R.
- 1.1.5** **R** _{/1} Except as otherwise specified, references to a "complaint" in this chapter include a complaint which is capable of becoming a *relevant new complaint*.
- 1.1.6** **G** _{/1} A complaint about pre-commencement investment business carried on by a *firm* which was regulated in respect of that business by a *recognised professional body* will be handled under the arrangements of that *professional body*, and is outside the scope of *DISP*.

Exemption

1.1.7 **R** _{/1} A *firm* which does not conduct business with *eligible complainants* and has no reasonable likelihood of doing so is exempt from *DISP* 1.2 – *DISP* 1.7, if it notifies the *FSA* in writing of this fact and that notice remains current, with effect from the date that notice is received by the *FSA*.

1.1.8 **R** _{/1} A notice under *DISP* 1.1.7R must be given:

- (1) by 28 February 2002, in which case it will remain current until 31 March 2003; or
- (2) before, or as soon as practicable after, the time of the *firm's* *authorisation* by the *FSA*, in which case it will remain current until the end of the *financial year* in which it is given; or
- (3) as soon as practicable after the *firm* ceases to conduct business with *eligible complainants*, in which case it will remain current until the end of the *financial year* in which it is given; or
- (4) in February of each *financial year* (beginning with February 2003), in which case it will remain current until the end of the next *financial year*.

1.1.9 **G** _{/1} A notice under *DISP* 1.1.7R will be renewable every 12 *months*.

End of exemption

1.1.10 **R** _{/1} A *firm* which is exempt under *DISP* 1.1.7R must notify the *FSA* if the conditions in *DISP* 1.1.7R no longer apply.

1.1.11 **G** _{/1} A *firm* to which the conditions in *DISP* 1.1.7R no longer apply is subject to *DISP* 1.2 – *DISP* 1.7.

Purpose

1.1.12 **G** _{/1} The purpose of this chapter is to set out the rules relating to the internal handling of complaints by *firms*, including the procedures which a *firm* must put in place; the time limits within which a *firm* must deal with a complaint; the records of a complaint which a *firm* must make and retain; and the requirements on a *firm* to report information about complaints to the *FSA*. This is to ensure that complaints are handled fairly, effectively and promptly, and resolved at the earliest possible opportunity, minimising the number of unresolved complaints which need to be referred to the *Financial Ombudsman Service*. This purpose is consistent with the *FSA's* consumer protection regulatory objective.

1.2 Internal complaint handling procedures: general requirements

Requirement to have internal complaint handling procedures

- 1.2.1** **R** /1 A *firm* must have in place and operate appropriate and effective internal complaint handling procedures (which must be written down) for handling any expression of dissatisfaction, whether oral or written, and whether justified or not, from or on behalf of an *eligible complainant* about that *firm's* provision of, or failure to provide, a financial service.
- 1.2.2** **G** /1 An *eligible complainant* is a *person* who would be eligible to refer a complaint to the *Financial Ombudsman Service*, as defined in *DISP* 2.4.
- 1.2.3** **G** /1 *Firms* are not obliged to restrict their internal complaint handling procedures to expressions of dissatisfaction from *eligible complainants*. They may, if they wish, also establish procedures for handling complaints from other customers.
- 1.2.4** **G** /1 The internal complaint handling procedures should provide for:
- (1) receiving complaints;
 - (2) responding to complaints;
 - (3) the appropriate investigation of complaints; and
 - (4) notifying complainants of their right to go the *Financial Ombudsman Service* where relevant.
- 1.2.5** **G** /1 When deciding what constitutes an appropriate complaint handling procedure (see *DISP* 1.2.1R), a *firm* should have regard to:
- (1) the type of business it undertakes;
 - (2) its size and organisational structure;
 - (3) the nature and complexity of the complaints it is likely to receive; and
 - (4) the likely number of complaints it will receive and have to investigate.
- 1.2.6** **G** /1 *DISP* 1.2.1R does not prevent the use of a third party administrator for the purposes of handling complaints.

1.2.7 G /1 In establishing their internal complaint handling procedures, *firms* may wish to take account of British Standard 8600:1999 “Complaints Management Systems - Guide to Design and Implementation”. This is available on request from the *FSA*.

1.2.8 G /1 The internal complaint handling procedures should enable complainants to make a complaint by any reasonable means (for example, letter, telephone, e-mail or in person).

Publicising the procedures

1.2.9 R /1 **A *firm* must:**

- (1) **refer in writing to the availability of its internal complaint handling procedures at, or immediately after, the point of sale;**
- (2) **publish details of its internal complaint handling procedures, supply a copy on request, and supply a copy automatically to the complainant when it receives a complaint (unless the complaint is resolved by close of business on the next *business day*); and**
- (3) **display in each of its branches or sales offices to which *eligible complainants* have access a notice indicating that it is covered by the *Financial Ombudsman Service*.**

1.2.10 G /1 The requirements in *DISP* 1.2.9R(1)-(3) relate to the internal complaints procedures required by *DISP* 1.2.1R.

1.2.11 G /1 In order to comply with *DISP* 1.2.9R(1), a *firm* may include reference to its complaint handling procedures in contractual documentation, for example, (where the *firm* is subject to the requirements in *COB*) in a *terms of business* letter, *key features document* or *client agreement*.

1.2.12 G /1 Where a complaint is also subject to the more detailed requirements in *DISP* 1.4 - *DISP* 1.6, the *firm* may send out a copy of its complaint handling procedures (as required by *DISP* 1.2.9R (2)) at the same time as the acknowledgement required by *DISP* 1.4.1R.

1.2.13 G /1 For the purposes of satisfying *DISP* 1.2.9R(2) a *firm* may wish to produce a leaflet which summarises its internal complaint handling procedures.

1.2.14 G /1 *Firms’* literature and correspondence relating to complaints should be in clear and plain language.

1.2.15 G /1 A *firm* may also, if it wishes to do so, disclose the fact that it is covered by the *Financial Ombudsman Service* by including the *Financial Ombudsman Service* logo in any marketing literature or correspondence directed at *eligible complainants*, provided that it does so in a way which is not misleading.

Particular matters for which procedures must make provision

1.2.16 R /1 **A *firm’s* internal complaint handling procedures under *DISP* 1.2.1R must make provision for:**

- (1) complaints to be investigated by an employee of sufficient competence who, where appropriate, was not directly involved in the matter which is the subject of the complaint;
- (2) the *person* charged with responding to complaints to have the authority to settle complaints (including the offering of redress where appropriate) or to have ready access to someone who has the necessary authority; and
- (3) responses to complaints to address adequately the subject matter of the complaint and, where a complaint is upheld, to offer appropriate redress.

Providing compensation

- 1.2.17 **R** /1 Where a *firm* decides that redress is appropriate, a *firm* must provide a complainant with fair compensation for any acts or omissions for which it was responsible and comply with any offer of redress which the complainant accepts.
- 1.2.18 **G** /1 In deciding whether or not to accept a complaint and what would be appropriate redress, *firms* may wish to consider any relevant guidance published by the FSA, the *Financial Ombudsman Service* or by any of the *former schemes*.
- 1.2.19 **G** /1 Appropriate redress will not always involve financial redress. It may, for example, simply involve an apology. Where financial redress is deemed appropriate, it may include a reasonable rate of interest.
- 1.2.20 **G** /1 *DISP* App 2 contains *guidance* to *firms* on the approach to assessing financial loss and appropriate compensation in circumstances where a *firm* regards a complaint in relation to the sale of an endowment policy (which is sold for the purposes of repaying a mortgage) as justified.

Using the procedures

- 1.2.21 **R** /1 A *firm* must take reasonable steps to ensure that all relevant employees (including employees of *appointed representatives*) are aware of the *firm's* internal complaint handling procedures and must endeavour to ensure that they act in accordance with them.
- 1.2.22 **R** /1 A *firm* must put in place appropriate management controls and take reasonable steps to ensure that in complying with *DISP* 1.2.1R it handles complaints fairly, consistently and promptly and that it identifies and remedies any recurring or systemic problems, as well as any specific problem identified by a complaint.



1.3 Internal complaint handling procedures: additional requirements

1.3.1 **G** _{/1} *DISP 1.4-DISP 1.6* contain additional requirements, concerning time limits, record keeping and reporting and cooperation with the *Ombudsman*, for handling complaints, unless *DISP 1.3.3R* applies.

1.3.2 **R** _{/1} *DISP 1.4-DISP 1.6* also apply to any complaints that are capable of becoming *relevant new complaints*, unless *DISP 1.3.3R* applies.

1.3.3 **R** _{/1} *DISP 1.4 – DISP 1.6* do not apply:

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

1.3.4 **G** _{/1} Under the *Ombudsman Transitional Order*, a complaint received by a *firm* either before or after *commencement* is capable of becoming a *relevant new complaint*. A *firm* is expected to handle such complaints in accordance with *DISP 1*. However, where a *firm* has already received, but only partly completed the handling of, such a complaint by *commencement*, *DISP 1.4.6R* recognises that this may not always be practicable.

1.3.5 **G** _{/1} Financial loss includes consequential or prospective loss, in addition to actual loss. For example, a complaint may involve an allegation that the complainant may suffer financial loss which has not yet crystallised because of the type of product involved (for example, pensions, endowments etc).

1.4 Time limits for dealing with a complaint

Written acknowledgement within five business days

1.4.1 **R** ^{/1} A *firm* must send a written acknowledgement of a complaint within five *business days* of its receipt, giving the name or job title of the individual handling the complaint for the *firm* (together with details of the *firm*'s internal complaint handling procedures).

1.4.2 **G** ^{/1} A *firm* which is able to provide a *final response* within five *business days* of receipt of a complaint may combine its acknowledgement of the complaint with the *final response*. (For complaints which are subject to the FSAVC review, see *DISP* 1.4.15R to *DISP* 1.4.17G.)

1.4.3 **G** ^{/1} A *firm* should aim to resolve complaints at the earliest possible stage.

Final or holding response within four weeks

1.4.4 **R** ^{/1} A *firm* must, within four weeks of receiving a complaint, (unless *DISP* 1.4.7R or *DISP* 1.4.9R applies) send the complainant either:

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

Final or other response within eight weeks

1.4.5 **R** ^{/1} A *firm* must, by the end of eight weeks after its receipt of a complaint, (unless *DISP* 1.4.7R or *DISP* 1.4.9R applies) send the complainant either:

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

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

Complaints being dealt with at commencement

- 1.4.6 **R** /1 Where, at *commencement*, a *firm* is still dealing with a complaint that is capable of being referred to the *Financial Ombudsman Service* as a *relevant new complaint*:
- (1) it may continue to try to resolve the complaint in accordance with its *pre-commencement* complaints procedures; but
 - (2) it must, within eight weeks of *commencement*, send the complainant a response which satisfies *DISP 1.4.5R*, unless *DISP 1.4.7R* or *DISP 1.4.9R* applies)

Early resolution of complaints

- 1.4.7 **R** /1 *DISP 1.4.4R* to *DISP 1.4.6R* do not apply if the complainant has already indicated in writing acceptance of a response by the *firm*, provided that the response informed the complainant how to pursue his complaint if he remained dissatisfied.

- 1.4.8 **G** /1 *DISP 1.4.7R* recognises that a response by the *firm* will not necessarily be its *final response* but that it may, nonetheless, resolve the complaint.

Firms with two-stage complaints procedures

- 1.4.9 **R** /1 Where, within eight weeks of receiving a complaint, the *firm* sends the complainant a written response which:
- (1) offers redress (whether or not it accepts the complaint) or rejects the complaint and gives reasons for doing so;
 - (2) informs the complainant how to pursue his complaint with the *firm* if he remains dissatisfied;
 - (3) refers to the ultimate availability of the *Financial Ombudsman Service* if he remains dissatisfied with the *firm's* response; and

- (4) indicates that it will regard the complaint as closed if it does not receive a reply within eight weeks;

the *firm* is not obliged to continue to comply with *DISP* 1.4.4R or *DISP* 1.4.5R unless the complainant indicates that he remains dissatisfied, in which case, the obligation to comply with *DISP* 1.4.5R resumes.

1.4.10

R

/1

If the complainant takes more than a week to reply to a written response of the kind described in *DISP* 1.4.9R, the additional time in excess of a week will not count for the purposes of the time limits in *DISP* 1.4.4R-*DISP* 1.4.6R.

1.4.11

G

/1

- (1) *DISP* 1.4.9R caters for the situation where a *firm's* complaints procedures provide for a complainant who is dissatisfied with the *firm's* response to refer the complaint back to the *firm* again or to the *firm's* head office before a *final response* is issued.
- (2) Such *firms* are subject to the time limits in *DISP* 1.4.4R to *DISP* 1.4.6R in the same way as any other *firm*. However, *DISP* 1.4.9R recognises that some complainants may never respond to a *firm* or may take a long time to do so.
- (3) Provided that the *firm* has sent a letter which complies with the conditions in *DISP* 1.4.9R within eight weeks of receiving the complaint:
- (a) if the complainant does not reply at all, the *firm* is not required to send a *final response*;
 - (b) if the complainant does not reply within eight weeks of the *firm's* letter, *DISP* 1.5.7R(3) enables the *firm* to treat the complaint as a closed complaint for the purposes of the reporting requirement in *DISP* 1.5.4R;
 - (c) if the complainant does reply (within or after eight weeks), the *firm* is required to continue to comply with *DISP* 1.4.5R, and the time limits in *DISP* 1.4.5R therefore resume. But *DISP* 1.4.10R allows the *firm* to discount, for the purposes of the time limits in *DISP* 1.4.4R to *DISP* 1.4.6R, any time in excess of a week taken by the complainant to reply.
- (4) The *FSA* expects that *firms* operating a two-stage complaints procedure will wish to provide complainants with easy access to the second stage of the process (for example, by referring complaints on to the next stage for them if they remain dissatisfied).

The final response

1.4.12

R

/1

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

- (1) inform the complainant that he may refer the complaint to the *Financial Ombudsman Service* if he is dissatisfied with the *final response* and that he must do so within six *months*; and

(2) enclose a copy of the *Financial Ombudsman Service's* explanatory leaflet (unless it has already done so under *DISP 1.4.5R(2)(b)*).

1.4.13

G

/1

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

1.4.14

G

/1

Under *DISP 1.4.5R* and *DISP 1.4.6R*:

- (1) a complainant can refer his complaint to the *Financial Ombudsman Service* if he receives a *final response* with which he is dissatisfied or the *firm* has had at least eight weeks to resolve the complaint and has failed to do so in that time; the complainant may decide whether to give the *firm* more time before exercising any right he may have to refer a complaint to the *Financial Ombudsman Service*;
- (2) the six *month* time limit within which a complainant must refer a complaint to the *Financial Ombudsman Service* begins at the date when the *final response* is sent by the *firm*.

Complaints subject to the FSAVC review

1.4.15

R

/1

DISP 1.4.1R to *DISP 1.4.14G* and *DISP 1.5.1R* and *DISP 1.5.4R* do not apply where the complaint is subject to a review directly or indirectly under the terms of the policy statement for the review of specific categories of FSAVC business issued by the *FSA* on 28 February 2000.

1.4.16

R

/1

Where *DISP 1.4.15R* applies, the *firm* must, if the complainant remains dissatisfied on completion of that review, treat that expression of dissatisfaction as a complaint and comply with *DISP 1.4.1R-DISP 1.4.14G*, *DISP 1.5.1R* and *DISP 1.5.4R*.

1.4.17

G

/1

The effect of *DISP 1.4.15R* is to relieve the *firm* of the obligation to comply with the requirements and time limits for replying to complainants, and the record-keeping and reporting requirements in *DISP 1.5.1R* and *DISP 1.5.4R*, where a complaint is subject to the FSAVC review. However, if a complainant remains dissatisfied with the outcome of the review, *DISP 1.4.16R* requires the *firm* to treat this as a complaint and comply with these requirements just as it would in respect of any other complaint. *Firms* are therefore required to record and report such complaints only where they receive a complaint about the outcome of the review.

1.5 Record keeping and reporting

Making and retaining records of complaints

1.5.1 **R** ^{/1} A *firm* must make and retain records of complaints subject to *DISP* 1.4 – *DISP* 1.6 for a minimum period of three years from the date of its receipt of the complaint.

1.5.2 **G** ^{/1} The records required by *DISP* 1.5.1R are for the purposes of monitoring by the *FSA* and also to ensure that the *firm* is able to cooperate, as necessary, with the *Financial Ombudsman Service*. They should include:

- (1) the name of the complainant;
- (2) the substance of the complaint; and
- (3) any correspondence between the *firm* and the complainant, including details of any redress offered by the *firm*.

1.5.3 **G** ^{/1} *DISP* 4.2.3G covers record keeping by *VJ participants*.

Reporting complaints to the *FSA*

1.5.4 **R** ^{/1} A *firm* must provide the *FSA*, twice a year, with a report containing (for the relevant reporting period) information about:

- (1) the total number of complaints subject to *DISP* 1.4 – *DISP* 1.6 received by the *firm*, broken down according to the categories and in respect of each of the generic product types listed at *DISP* 1 Ann 1R which are relevant to the *firm*; and
- (2) the total number of complaints subject to *DISP* 1.4 - *DISP* 1.6 closed by the *firm*:
 - (a) within four weeks or less of receipt;
 - (b) within four to eight weeks of receipt; and
 - (c) more than eight weeks after receipt; and

(3) the total number of complaints subject to *DISP* 1.4 - *DISP* 1.6 outstanding at the end of the reporting period.

1.5.5

G
/1

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

1.5.6

R
/1

For the purposes of *DISP* 1.5.4R:

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

Reporting: when is a complaint closed?

1.5.7

R
/1

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

- (1) where the *firm* has sent a *final response*; or
- (2) where the complainant has indicated in writing acceptance of the *firm's* earlier response; or
- (3) where *DISP* 1.4.9R applies, provided that the complainant has not responded to the *firm* within eight weeks of the written response referred to in that *rule*.

1.5.8

G
/1

Where a complaint is reported as closed under *DISP* 1.5.7(3) because the complainant has not replied to the *firm* within eight weeks of a written response which meets the requirements in *DISP* 1.4.9R, the *firm* may treat the date of that response as the date when the complaint was closed for the purposes of the reporting requirements in *DISP* 1.5.4(2).

Reporting: complaints subject to the FSAVC review

1.5.9

G
/1

Where a complaint is subject to the FSAVC review, the record keeping and reporting requirements in *DISP* 1.5.1R and *DISP* 1.5.4R apply only where the complainant is dissatisfied with the outcome of that review (under *DISP* 1.4.15R and *DISP* 1.4.16R).

Method of submission of reports

1.5.10

R
/1

A report under this section must be given or addressed, and delivered, in the way set out in *SUP* 16.3.6R - *SUP* 16.3.16G (General provisions on reporting), except that, instead of the *firm's* usual supervisory contact, the report should be given or addressed to [to be added later].

Notification of contact point for complainants

1.5.11

R

/1

For the purpose of inclusion in the public record maintained by the *FSA*, a *firm* must provide the *FSA*, at the time of its *authorisation*, with details of a single contact point within the *firm* for complainants and must notify the *FSA* of any subsequent change.

1.5.12

G

/1

The contact point can be by name, job title or department and may include, for example, a helpline telephone number.



1.6 Cooperation by firms with the Ombudsman

1.6.1

R

/1

A *firm* must cooperate fully with the *Ombudsman* in the handling of complaints against it.

1.6.2

G

/1

Cooperation with the *Ombudsman* includes, but is not limited to, producing requested *documents*, adhering to any specified time limits, attending hearings when requested to do so and complying promptly with any settlements or awards.

1.7 The Society of Lloyd's

- 1.7.1 **R** /1 The *Society* of Lloyd's must establish and maintain appropriate and effective procedures for handling complaints by policyholders against *members* of the *Society*, which comply with *DISP* 1.
- 1.7.2 **R** /1 *Members* of the *Society* of Lloyd's must, in complying with *DISP* 1, ensure that the arrangements which the *member* maintains are compatible with the procedures maintained by the *Society* in accordance with *DISP* 1.7.1R, so that, taken as a whole, the requirements of *DISP* are met.
- 1.7.3 **R** /1 The *Society* of Lloyd's must take reasonable steps to ensure that complaints by policyholders against *members* of the *Society* are dealt with under the procedures in *DISP* 1.7.1R and that *members* comply with the requirements of those procedures.
- 1.7.4 **R** /1 A complaint by a policyholder against a *member* of the *Society* of Lloyd's may not be referred to the *Financial Ombudsman Service* until after the internal procedures in *DISP* 1.7.1R have been completed or until after the end of eight weeks from receipt of the complaint, whichever is the earlier.
- 1.7.5 **R** /1 Notices under *DISP* 1.1.7R must be given to the *FSA* by the *Society* of Lloyd's on behalf of any *member* eligible for an exemption under that *rule*.
- 1.7.6 **R** /1 The *Society* of Lloyd's must notify the *FSA* if the conditions in *DISP* 1.1.7R no longer apply to a *member* who is exempt.
- 1.7.7 **R** /1 The report in *DISP* 1.5.4R must be provided by the *Society* of Lloyd's and must cover all complaints by policyholders against *members* falling with the scope of *DISP* 1.5.4R.
- 1.7.8 **G** /1 Each *member* of the *Society* of Lloyd's is individually subject to the *rules* in *DISP* 1 as a result of the *insurance market direction* given in *LLD* 6.2.1D under section 316 of the *Act* (Direction by Authority).
- 1.7.9 **G** /1 However, the *Society* of Lloyd's operates a two-tier internal complaints handling procedure, currently set out in the "Code for Underwriting agents: UK Personal Lines Claims and Complaints Handling". Under this procedure, complaints by policyholders against *members* of the *Society* are considered by the *managing agent* and then, if necessary, by the *Society* of Lloyd's in-house Complaints Department.

This procedure (and any procedure that may replace it) will be subject to the requirements in *DISP* 1.

1.7.10

G
/1

Members will individually comply with *DISP* 1 if and only if all complaints by policyholders against *members* are dealt with under the internal procedure established by the *Society* of Lloyd's for handling those complaints, provided that this procedure complies with *DISP*. Accordingly, certain of the obligations under *DISP* 1, for example the obligation to report on complaints received and the obligation to pay fees under *DISP* 5, must be complied with by the *Society* on behalf of *members*. *Managing agents* will not have to make a separate report to the *FSA* on complaints reported under *DISP* 1.7.7R.

1.7.11

R
/1

A members' adviser must establish and maintain effective arrangements for handling any complaint from a member of the Society of Lloyd's regarding advice given to the member in connection with the acquiring or disposing of syndicate participation.

1.7.12

G
/1

Complaints from *members* of the *Society* of Lloyd's regarding the activities of *members' advisers*, which cannot be resolved by the *members' adviser*, cannot be referred to the *Financial Ombudsman Service*. (See *LLD* (the Lloyd's sourcebook), for further information concerning complaints by *members* of the *Society* of Lloyd's.)

DISP 1 Ann 1R

Table

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

Firms are required to report the total number of complaints subject to DISP 1.4-1.6 received in respect of each of the generic product types listed, according to the categories below.

Generic Product Type*	
-----------------------	--

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

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



2.1 Application and Purpose

Application

- 2.1.1** **R** _{/1} This chapter applies to the *Ombudsman*, to *firms* (except *UCITS qualifiers*) and to *VJ participants*.
- 2.1.2** **G** _{/1} It is also relevant to those who might wish to refer a complaint to the *Financial Ombudsman Service*.
- 2.1.3** **R** _{/1} A reference in this chapter to a "complaint" under the *Compulsory Jurisdiction* includes a *relevant new complaint*.
- 2.1.4** **G** _{/1} References in this chapter to "*firms*" are to be construed, where relevant, as including:

 - (1) in accordance with the *Ombudsman Transitional Order*, *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*; and
 - (2) as a result of section 226 of the *Act*, *unauthorised persons* who were formerly *firms* in respect of complaints about acts or omissions which occurred at the time when they were *authorised*, provided that the *Compulsory Jurisdiction* rules were in force in relation to the activity in question.

Purpose

- 2.1.5** **G** _{/1} The purpose of this chapter is to set out the rules which govern the scope of both the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*. They specify who may refer a complaint to the *Financial Ombudsman Service* and the time limits for doing so. They also set out which activities are covered by the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction* and the territorial scope of the *Financial Ombudsman Service*.



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

Complaints (other than relevant new complaints)

2.2.1

G
/1

The following conditions will need to be satisfied before a complaint (other than a *relevant new complaint*) can be dealt with under the *Financial Ombudsman Service*:

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

Relevant new complaints

2.2.2

G
/1

- (1) Article 3 of the *Ombudsman Transitional Order* provides that (subject to certain modifications) the *Compulsory Jurisdiction* applies to a *relevant new complaint*, provided that:
 - (a) the act or omission is that of a *person* who was, immediately before *commencement*, subject to a *former scheme*;

- (b) the act or omission occurred in the carrying on by that *person* of an activity to which that *former scheme* applied; and
 - (c) the complainant is eligible and wishes to have the complaint dealt with under the new scheme.
- (2) For the purposes of (1)(c), the *Ombudsman Transitional Order* enables the *Ombudsman*, if he considers it appropriate, to treat the complainant as eligible if he would have been entitled to refer an equivalent complaint to the *former scheme* in question immediately before *commencement*.
- (3) The *Ombudsman Transitional Order* enables *relevant new complaints* to be handled, as far as possible, under the *Financial Ombudsman Service* procedures, but provides for the rules of the *former schemes* to apply or be taken into account in certain circumstances.
- (4) The *Ombudsman Transitional Order* makes separate provision for the treatment of *relevant existing complaints*, as described in *DISP* App 1.

Dismissal of complaints without consideration of the merits

2.2.3

G
/1

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



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

2.3.1

R
/1

- (1) The *Ombudsman* cannot consider a complaint (except as described in (2)) if the complainant refers it to the *Financial Ombudsman Service*:
 - (a) less than eight weeks after receipt of the complaint by the *firm* or *VJ participant*, unless the *firm* or *VJ participant* has already sent the complainant its *final response*; or
 - (b) more than six *months* after the date on which the complainant is advised by the *firm* or *VJ participant* in its *final response* that he may refer his complaint to the *Financial Ombudsman Service*; or
 - (c) more than six years after the event complained of or (if later) more than three years from the date on which he became aware (or ought reasonably to have become aware) that he had cause for complaint (but see *DISP 2.3.5R*).
- (2) The *Ombudsman* can consider complaints outside the time limits in (1)(b) or (c) when, in his view, the failure to comply with the time limits was as a result of exceptional circumstances or where he is required to do so by the *Ombudsman Transitional Order* (see *DISP 2.3.2G*).

2.3.2

G
/1

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

2.3.3

G
/1

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

2.3.4

G
/1

Under *DISP 5.6.1R* a *firm* or *VJ participant* is liable to pay a case fee in respect of *chargeable cases*. However, in some circumstances, the *Ombudsman* may conclude that a *firm* or *VJ participant* should have more time to resolve a complaint before a case fee is incurred (for example, where there has been delay in obtaining information from third parties or where the *Ombudsman* considers that the

complainant has not fully cooperated with the *firm* or *VJ participant* in the investigation of the complaint).

Exceptions for reviews of past business

2.3.5

R

/1

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

- (1) the time limit has been extended under a scheme for review of past business approved by 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.



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

2.4.1 **R** /1 A complaint may be dealt with under the *Financial Ombudsman Service* only if it is brought by or on behalf of an *eligible complainant*.

2.4.2 **G** /1 *Eligible complainants* are those falling within one of the classes of *person* specified in *DISP* 2.4.3R; and

- (1) having a customer or potential customer relationship with a *firm* or *VJ participant* (as specified in *DISP* 2.4.7R and *DISP* 2.4.8R); or
- (2) having an indirect relationship with a *firm* or *VJ participant* (as specified in *DISP* 2.4.10R);

or, in relation to *relevant complaints*, those specified in the *Ombudsman Transitional Order* (see *DISP* 2.4.14G and *DISP* 2.4.15G and *DISP* App 1.3.1G).

Classes of person

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

who satisfies the relevant criteria in *DISP* 2.4.7R – *DISP* 2.4.12R, and is not within (2).

- (2) The following are not *eligible complainants*:

- (a) an individual, business, charity or trustee, who was an *intermediate customer* or *market counterparty* in relation to the *firm* in question at the time of the act or omission, and in respect of the activity, which is the subject of the complaint;
- (b) a *firm* or *VJ participant* whose complaint relates in any way to an activity which the *firm* itself has *permission* to carry on or which the *VJ participant* itself conducts, and which is subject to the *Compulsory Jurisdiction* or the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.

2.4.4 **G**_{/1} For the purposes of *DISP* 2, a business includes a *sole trader*, a *company*, an unincorporated body and a *partnership* carrying on any trade or profession.

2.4.5 **G**_{/1} If a *firm* or *VJ participant* is in any doubt about the eligibility of a business, charity or trust, it should treat the complainant as if it were eligible. If the complaint is referred to the *Financial Ombudsman Service*, the *Ombudsman* will determine eligibility by reference to appropriate evidence, such as audited accounts or VAT returns.

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

Eligible complainants: customers

2.4.7 **R**_{/1} A *person* is an *eligible complainant* if:

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

Eligible complainants: potential customers

2.4.8 **R**_{/1} A *person* is an *eligible complainant* if:

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

2.4.9 **G**_{/1} *DISP* 2.4.8R is intended to enable a potential customer to use the *Financial Ombudsman Service* where the complaint involves an allegation that he has suffered or may suffer financial loss, material distress or material inconvenience as a result of a *firm's* or *VJ participant's* wrongful act or omission (for example, where, as a result of maladministration or illegal discrimination, a service has not been provided). A complaint about the legitimate exercise of a *firm's* or *VJ participant's* commercial

judgment may be dismissed by an *Ombudsman* without consideration of its merits under *DISP* 3.3.1R(11).

Eligible complainants: indirect complaints

2.4.10

R

/1

A *person* is an *eligible complainant* if:

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

2.4.11

R

/1

The relationships with the *firm* or *VJ participant* relevant for *DISP* 2.4.10R(2)(a) are:

- (1) the complainant has given the *firm* or *VJ participant* a guarantee or security for a mortgage or loan; or
- (2) the complainant has relied in the course of his business on a cheque guarantee card issued by the *firm* or *VJ participant*; or
- (3) the complainant is the true owner or the *person* entitled to immediate possession of a cheque, or of the funds it represents, collected by the *firm* or *VJ participant* for someone else's account; or
- (4) the complainant is the recipient of a banker's reference given by the *firm* or *VJ participant*; or
- (5) the complainant is the holder of *units* in a *collective investment scheme* and the *firm* or *VJ participant* is the *operator* or *depository* of the *scheme*.

2.4.12

R

/1

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

- (1) that the complainant is a beneficiary under a trust or estate of which the *firm* or *VJ participant* is trustee or personal representative; or
- (2) that the complainant is a *person* for whose benefit a *contract of insurance* was taken out or was intended to be taken out; or

(3) that the complainant is a *person* on whom the legal right to benefit from a claim under a *contract of insurance* has been devolved by contract, statute or subrogation.

2.4.13

G
/1

DISP 2.4.12R(2) and(3) 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.

2.4.14

G
/1

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

2.4.15

G
/1

Article 3(4) of the *Ombudsman Transitional Order* provides that, in the case of a *relevant new complaint*, where the *former scheme* in question is the *Insurance Ombudsman Scheme*, a complainant is not to be treated as an *eligible complainant* unless:

- (1) he is an individual; and
- (2) the complaint does not concern aspects of a policy relating to a business or trade carried on by him.

Representatives of eligible complainants

2.4.16

R
/1

A complaint may be brought on behalf of an *eligible complainant*, or a deceased *person* who would have been an *eligible complainant*, by a *person* authorised by the *eligible complainant* or authorised by law.

2.4.17

R
/1

It is immaterial whether the *person* authorised to act on behalf of an *eligible complainant* under DISP 2.4.16R:

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



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

- 2.5.1** G_{/1} All *firms* are subject to the *Compulsory Jurisdiction* of the *Financial Ombudsman Service*. *VJ participants* are subject to the *Voluntary Jurisdiction* and to *DISP 2* to the extent specified in the *standard terms (DISP 4)*.
- 2.5.2** G_{/1} *Firms* may, however, be exempt from the requirements of *DISP 1* (Complaint handling procedures for firms) and *DISP 5 (Financial Ombudsman Service funding rules)*, if they qualify under *DISP 1.1.7R (Exemption)*.
- 2.5.3** G_{/1} *Members* of the *Society of Lloyd’s* are treated as *firms* for the purposes of the *Compulsory Jurisdiction* (including the *rules* in *DISP 1* relating to *firms’* complaints procedures) and are subject to *DISP 1* as a result of the *insurance market direction* given in *LLD 6.2.1D*, under section 316 of the *Act* (Direction by Authority). However, as set out in *DISP 1.7*, *members* will individually comply with *DISP 1* if and only if all complaints by policyholders against *members* are dealt with under the internal procedures established by the *Society of Lloyd’s* for handling those complaints, provided that these procedures themselves comply with *DISP 1*. Accordingly, certain of the obligations under *DISP 1*, for example, the obligation to report on complaints received, must be complied with by the *Society* on behalf of *members*.



2.6 To which activities do the rules apply?

The Compulsory Jurisdiction

2.6.1

R

/1

The *Ombudsman* can consider a complaint under the *Compulsory Jurisdiction* only if it relates to an act or omission by a *firm* in the carrying on of one or more of the following activities (unless the provision described in DISP 2.6.3G applies):

- (1) *regulated activities*;
 - (2) lending money secured by a charge on land;
 - (3) lending money (other than *restricted credit*);
 - (4) paying money by a *plastic card* (other than a *store card*);
 - (5) the provision of ancillary banking services (see DISP 2.6.6G);
- or activities ancillary to them (see DISP 2.6.2R).

2.6.2

R

/1

The activities in DISP 2.6.1R include any ancillary activities, including advice, provided by the *firm* in connection with those activities.

2.6.3

G

/1

Under article 3 of the *Ombudsman Transitional Order*, the *Ombudsman* can also consider a *relevant new complaint* under the *Compulsory Jurisdiction* where it relates to an act or omission of a *firm* which was, immediately before *commencement*, subject to a *former scheme*, provided that:

- (1) the act or omission occurred in the carrying on by that *firm* of an activity to which that *former scheme* applied; and
- (2) the complainant is eligible and wishes to have the complaint dealt with under the new scheme.

2.6.4

G

/1

The carrying on of an activity in DISP 2.6.1R includes offering, providing or failing to provide and administering or failing to administer a service in relation to the activities covered by that rule. This includes the manner in which a *firm* has administered its business, provided that the business is an activity subject to the jurisdiction of the *Financial Ombudsman Service*.

- 2.6.5 G /1 Complaints about acts or omissions by a *firm* include complaints about acts or omissions in respect of activities for which the *firm* is responsible (that is the activities of their *appointed representatives*).
- 2.6.6 G /1 For the purposes of *DISP* 2.6.1R(5), ancillary banking services include, for example, the provision and operation of cash machines and safe deposit boxes.
- 2.6.7 R /1 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*.
- 2.6.8 G /1 A complaint about a *non-mainstream regulated activity* conducted by an *authorised professional firm* will be handled by the relevant *professional body*.

The Voluntary Jurisdiction

- 2.6.9 R /1 The *Ombudsman* can consider a complaint under the *Voluntary Jurisdiction* only if it is not covered by the *Compulsory Jurisdiction* and it relates to an act or omission in the carrying on of one or more of the following activities by a *VJ participant*:
 - (1) lending money secured by a charge over land;
 - (2) a financial services activity carried on after *commencement* and which had been covered by a *former scheme* in so far as the *VJ participant* was a member of that *former scheme*, in respect of that activity, immediately before the *commencement day*;

or an activity ancillary to it (see *DISP* 2.6.11R).
- 2.6.10 G /1 *DISP* 2.6.9R(2) enables complaints about *VJ participants* which, immediately before the *commencement day*, were members of one of the *former schemes* replaced by the *Financial Ombudsman Service* to be dealt with under the *Voluntary Jurisdiction*. This is in respect of the financial services activities for which the *VJ participant* was previously covered but excludes complaints which fall into the *Compulsory Jurisdiction* as *relevant complaints*. So the complaints which are covered by *DISP* 2.6.9R(2) are only those which arise out of acts or omissions occurring after the *commencement day*.
- 2.6.11 R /1 The activities in *DISP* 2.6.9R include any ancillary activities, including advice, provided by the *VJ participant* in connection with those activities.
- 2.6.12 R /1 A complaint subject to these rules which is not covered by the *Compulsory Jurisdiction* can be considered by the *Ombudsman* even though it relates to an act or omission that occurred before the *VJ participant* was participating in the *Financial Ombudsman Service*, and whether the act or omission occurred before or after the *commencement day*, either:

2.6.13

G
/1

- (1) if the complaint could have been dealt with under a *former scheme*; or
- (2) as a consequence of the agreement of the *VJ participant* in *DISP 4.2.5R*.

The provisions of *DISP 2.6.12R* are made under the power in section 227(13) of the *Act*. The section allows for a complaint relating to an act or omission occurring either before *commencement* or before the *VJ participant* joined the *Voluntary Jurisdiction* (or both) to be dealt with under the *Financial Ombudsman Service* provided the *VJ participant* agrees. The act or omission must, however, be one which could have been dealt with under a *former scheme*. Where complaints in this category are not already covered by the *Compulsory Jurisdiction* as *relevant complaints*, they can, therefore, be included in the *Voluntary Jurisdiction* under *DISP 2.6.12R*.



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

- 2.7.1 **R**_{/1} The territorial scope of the jurisdiction of the *Financial Ombudsman Service* covers complaints about the activities of a *firm*, an *appointed representative* or a *VJ participant* carried on from an establishment in the *United Kingdom*.
- 2.7.2 **G**_{/1} The territorial scope therefore covers *firms* (including *appointed representatives*) or *VJ participants* operating from a permanent place of business in the *United Kingdom*, including *incoming EEA firms* and *incoming Treaty firms* which qualify for *authorisation* under Schedule 3 (*EEA Passport Rights*) or Schedule 4 (*Treaty rights*) to the *Act*.
- 2.7.3 **G**_{/1} Complaints which concern business conducted by branches of *firms* or *VJ participants* outside the *United Kingdom* or by *EEA firms* operating in the *United Kingdom* on a services basis from outside the *United Kingdom* are not subject to the *Compulsory Jurisdiction* or the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.
- 2.7.4 **G**_{/1} A complaint can be dealt with under the *Financial Ombudsman Service* irrespective of whether the complainant lives or is based in the *United Kingdom*.



3.1 Application and Purpose

Application

- 3.1.1 **R** This chapter applies to the *Ombudsman* and to *firms*.
/1
- 3.1.2 **G** It is also relevant to those who might wish to refer a complaint to the *Financial Ombudsman Service*.
/1
- 3.1.3 **G** *VJ participants* are subject to the rules in this chapter by contract under the *standard terms* (see *DISP* 4).
/1
- 3.1.4 **R** Except as otherwise specified, references in this chapter to a "complaint" include a *relevant new complaint*.
/1
- 3.1.5 **G** References in this chapter to "*firms*" are to be construed, where relevant, as including:
 - (1) in accordance with the *Ombudsman Transitional Order*, *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*; and
 - (2) as a result of section 226 of the *Act*, *unauthorised persons* who were formerly *firms* in respect of complaints about acts or omissions which occurred at the time when they were *firms*, provided that the *Compulsory Jurisdiction* rules were in force in relation to the activity in question.
- 3.1.6 **G** The *Ombudsman Transitional Order* provides, with some exceptions (see *DISP* 2.2.2G (scope of *Compulsory Jurisdiction*), *DISP* 2.3.2G (time limits), *DISP* 2.4.14G and *DISP* 2.4.15G (*eligible complainant*) and *DISP* 3.8.2G (determinations), for *relevant new complaints* to be determined in accordance with the requirements of the *Financial Ombudsman Service*.
/1

Purpose

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

the types of loss or damage for which the *Ombudsman* can award compensation; the limits on awards and the costs that can be awarded.



3.2 The investigation and consideration of complaints by the Ombudsman

- 3.2.1** **R** /1 On receipt of a complaint (and subsequently if necessary) the *Ombudsman* must have regard to the following matters:
- (1) whether or not the complaint meets the criteria in *DISP 2.2* (Which complaints can be dealt with under the *Financial Ombudsman Service*?);
 - (2) whether or not the complaint is within the time limits in *DISP 2.3* (Time limits for referral of complaints to the *Financial Ombudsman Service*);
 - (3) whether or not the complainant is an *eligible complainant*; and
 - (4) whether or not the complaint is one which should be dismissed without consideration of its merits under *DISP 3.3* (Dismissal of complaints without consideration of the merits).
- 3.2.2** **G** /1 In the case of *relevant new complaints*, the *Ombudsman* will take account of the relevant criteria under the *Ombudsman Transitional Order*, referred to in *DISP 2.2.2G*, and will extend the time limits in *DISP 2.3*, as required under article 4(2) of the *Ombudsman Transitional Order* and described in *DISP 2.3.2G*.
- 3.2.3** **R** /1 Where the *firm* has not had the eight weeks provided for under *DISP 1.4.5R* to consider the complaint, the *Ombudsman* will refer the complaint to the *firm*, unless the *firm* has already issued a *final response*.
- 3.2.4** **R** /1 Where a *firm* fails to send a complainant a *final response* by the end of eight weeks, the *Ombudsman* may consider the complaint.
- 3.2.5** **R** /1 Where the *Ombudsman* considers that the complaint or the complainant may be ineligible under the jurisdiction rules (see *DISP 2* (Jurisdiction of the *Financial Ombudsman Service*)) he must give the complainant an opportunity to make representations before he reaches his decision and he must give reasons to the complainant for that decision and inform the *firm* of his decision.
- 3.2.6** **G** /1 *DISP 3.2.5R* applies without prejudice to a *firm*'s right to raise the issue of eligibility subsequently.

- 3.2.7 **R** /1 Where the *firm* disputes the eligibility of the complaint or the complainant, the *Ombudsman* must give the parties an opportunity to make representations before he reaches his decision and he must give reasons to the parties for that decision.
- 3.2.8 **R** /1 Where the *Ombudsman* considers that the complaint may be one which should be dismissed without consideration of its merits, under *DISP* 3.3 (Dismissal of complaints without consideration of the merits), he must give the complainant an opportunity to make representations before he makes his decision. If he then decides that the complaint should be dismissed, he must give reasons to the complainant for that decision and inform the *firm* of that decision.
- 3.2.9 **R** /1 Where the *Ombudsman* considers that both the complaint and the complainant are eligible and that there is a reasonable prospect of resolving the complaint by mediation, he may attempt to negotiate a settlement between the parties.
- 3.2.10 **G** /1 The *Ombudsman* will attempt to resolve complaints at the earliest possible stage and by whatever means appear to him to be most appropriate, including mediation or investigation.
- 3.2.11 **R** /1 If the *Ombudsman* decides that an investigation is necessary, he will:

 - (1) during the investigation, give both parties an opportunity of making representations;
 - (2) send to the parties a provisional assessment, setting out his reasons and a time limit within which either party must respond; and
 - (3) if either party indicates disagreement with the provisional assessment within the time limit prescribed in *DISP* 3.2.11R(2), proceed to determination (see *DISP* 3.8 (Determination by the *Ombudsman*)).
- 3.2.12 **R** /1 The parties will be informed of their right to make representations before the *Ombudsman* makes a determination. If he considers that the complaint can be fairly determined without convening a hearing, he will determine the complaint. If not, he will invite the parties to attend a hearing. No hearing will be held after the *Ombudsman* has determined the complaint.
- 3.2.13 **R** /1 A party who wishes to request a hearing must do so in writing, setting out the issues he wishes to raise and (if appropriate) any reasons why he considers the hearing should be in private, so that the *Ombudsman* may consider whether the issues are material, whether a hearing should take place and, if so, whether it should be held in public or private.

3.2.14

G
/1

In deciding if there should be a hearing and, if so, whether it should be in public or private, the *Ombudsman* will have regard to the provisions of the European Convention on Human Rights.



3.3 Dismissal of complaints without consideration of the merits

3.3.1

R

^{/1}

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

- (1) is satisfied that the complainant has not suffered, or is unlikely to suffer, financial loss, material distress or material inconvenience; or
- (2) considers the complaint to be frivolous or vexatious; or
- (3) considers that the complaint clearly does not have any reasonable prospect of success; or
- (4) is satisfied that the *firm* has already made an offer of compensation which is fair and reasonable in relation to the circumstances alleged by the complainant and which is still open for acceptance; or
- (5) is satisfied that the complaint relates to a transaction which the *firm* in question has reviewed in accordance with the regulatory standards for the review of such transactions prevailing at the time of the review, or in accordance with the terms of a scheme order under section 404 of the *Act* (Schemes for reviewing past business), including, if appropriate, making an offer of redress to the complainant, unless he is of the opinion that the standards or terms of the scheme order did not address the particular circumstances of the case; or
- (6) is satisfied that the matter has previously been considered or excluded under the *Financial Ombudsman Service*, or a *former scheme* (unless material new evidence likely to affect the outcome has subsequently become available); or
- (7) is satisfied that the matter has been dealt with, or is being dealt with, by a comparable independent complaints scheme or dispute resolution process; or
- (8) is satisfied that the subject matter of the complaint has been the subject of court proceedings where there has been a decision on the merits; or

- (9) is satisfied that the subject matter of the complaint is the subject of current court proceedings unless proceedings are stayed or sisted (by agreement of all parties or order of the court) in order that the matter may be considered under the *Financial Ombudsman Service*; or
- (10) considers that it would be more suitable for the matter to be dealt with by a court, arbitration or another complaints scheme; or
- (11) is satisfied that it is a complaint about the legitimate exercise of a *firm's* commercial judgment; or
- (12) is satisfied that it is a complaint about employment matters from an employee or employees of a *firm*; or
- (13) is satisfied that it is a complaint about investment performance; or
- (14) is satisfied that it is a complaint about a *firm's* decision when exercising a discretion under a will or private trust; or
- (15) is satisfied that it is a complaint about a *firm's* failure to consult beneficiaries before exercising a discretion under a will or private trust, where there is no legal obligation to consult; or
- (16) is satisfied that a complaint which involves or might involve more than one *eligible complainant* has been referred without the consent of the other complainant or complainants and the *Ombudsman* considers that it would be inappropriate to deal with the complaint without that consent; or
- (17) is satisfied that there are other compelling reasons why it is inappropriate for the complaint to be dealt with under the *Financial Ombudsman Service*.

3.3.2 G_{/1} Under article 5(2)(c) of the *Ombudsman Transitional Order*, the *Ombudsman*, in deciding whether a *relevant complaint* is to be dismissed without consideration of its merits, is to take into account whether an equivalent complaint would have been so dismissed under the *former scheme* in question, as it had effect immediately before *commencement*.

3.3.3 G_{/1} For the purposes of *DISP* 3.3.1R(4), offers of compensation include ex gratia payments.

3.3.4 G_{/1} In *DISP* 3.3.1R(5) the transaction could, for example, be a pension transaction which has been reviewed by the *firm* in accordance with the relevant regulatory standards. The *Ombudsman* may decide not to proceed with a complaint about the result of that review unless he considers that the standards or guidance published by the regulator did not address the particular circumstances of the case.

3.3.5 G_{/1} When deciding if it would be suitable for a complaint to be dealt with outside the *Financial Ombudsman Service* (*DISP* 3.3.1R(10)), the *Ombudsman* may consider whether, in view of a conflict of evidence, a fair resolution of the complaint could be achieved only through examination of the evidence by the courts.

3.3.6

G

/1

The *Ombudsman* may decide to proceed with a complaint which would otherwise be dismissed under *DISP* 3.3.1R(13), (14) or (15) if he considers that the complaint involves an allegation of negligence or maladministration.



3.4 Referral of a complaint to another complaints scheme for determination

3.4.1

R
/1

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



3.5 Evidence

3.5.1

R

/1

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

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

3.5.2

R

/1

The *Ombudsman* may:

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

3.5.3

G

/1

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

3.5.4

G

/1

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

3.5.5

G

/1

The *Ombudsman* may request a party to a complaint to provide evidence necessary for the determination of the complaint under section 231 of the *Act*. A failure to comply with the request can be dealt with by the court under section 232.



3.6 Time limits

- 3.6.1 **R** ^{/1} The *Ombudsman* may fix time limits and extend fixed time limits for any aspect of the consideration of a complaint by the *Financial Ombudsman Service*.
- 3.6.2 **R** ^{/1} If a *firm* fails to comply with a time limit, the *Ombudsman* may proceed to the next stage of consideration of the complaint and may, if appropriate, make provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.
- 3.6.3 **R** ^{/1} If a complainant fails to comply with a time limit, the *Ombudsman* may either proceed to the next stage or dismiss the complaint.



3.7 Delegation of the Ombudsman's powers

3.7.1

R

/1

- (1) Only an *Ombudsman* may determine a complaint or decide the circumstances in which information may be disclosed under *DISP* 3.10.1R (3).
- (2) The *Ombudsman* may designate members of the staff of *FOS Ltd* to exercise any of the other powers of the *Ombudsman* relating to the reference, investigation or consideration of a complaint.
- (3) Where any *person* is so designated, *DISP* 2 - *DISP* 4 apply as if any reference to "the *Ombudsman*" included a reference to that *person*.

3.7.2

G

/1

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

3.8 Determination by the Ombudsman

Opinion as to fairness and reasonableness

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

- 3.8.2** **G** /1 In determining, in relation to a *relevant new complaint*, what is fair and reasonable in all the circumstances of the case and what amount (if any) constitutes fair compensation, for the purposes of section 229(2)(a) of the *Act* (money awards), the *Ombudsman* is required, under article 7(2) of the *Ombudsman Transitional Order*, to take into account:

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

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

The Ombudsman's determination

- 3.8.3** **R** /1 The *Ombudsman's* determination will include the following stages:
- (1) When a complaint has been determined, the *Ombudsman* will give both the complainant and the *firm* a signed written statement of the determination, stating the reasons for it.
- (2) The statement will invite the complainant to notify the *Ombudsman* in writing before the date specified in the statement whether he accepts or rejects the determination.

- (3) If the complainant notifies the *Ombudsman* that he accepts the determination within the time limit set, it is final and binding on both the complainant and the *firm*.
- (4) If the complainant either rejects the determination or does not notify the *Ombudsman* by the specified date that he accepts the determination, the complainant will be treated as having rejected the determination, and the *firm* will not be bound by it.
- (5) The *Ombudsman* must notify the *firm* of the complainant's response (or lack of response).

3.9 Awards by the Ombudsman

Money awards

- 3.9.1** **G**_{/1} As provided for under section 229 of the *Act* (Awards), if a complaint is determined in favour of the complainant, the determination may include:
- (1) a money award against the *firm* of such amount as the *Ombudsman* considers fair compensation for financial loss or for loss or damage of a kind specified in *DISP* 3.9.2R and subject to the maximum limit in *DISP* 3.9.5R; or
 - (2) a direction that the *firm* take such steps in relation to the complainant as the *Ombudsman* considers just and appropriate (whether or not a court could order those steps to be taken); or
 - (3) both of these.
- 3.9.2** **R**_{/1} Where the *Ombudsman* decides to make a money award, in addition to (or instead of) awarding compensation for financial loss, he may award compensation for the following kinds of loss or damage, whether or not a court would award compensation:
- (1) **pain and suffering; or**
 - (2) **damage to reputation; or**
 - (3) **distress or inconvenience.**
- 3.9.3** **G**_{/1} For the purposes of awards by the *Ombudsman*, financial loss includes consequential or prospective loss.
- 3.9.4** **G**_{/1} In determining, in relation to a *relevant new complaint*, what amount (if any) constitutes fair compensation for the purposes of a money award, the *Ombudsman* is required under article 7(2) of the *Ombudsman Transitional Order* to take into account what amount (if any) might have been expected to be awarded by way of compensation, in relation to an equivalent complaint dealt with under the *former scheme* in question immediately before *commencement*.

Limits on money awards

- 3.9.5** **R**_{/1} The maximum money award which the *Ombudsman* may make is £100,000.

- 3.9.6 G
/1 If the *Ombudsman* considers that an amount more than the maximum is required as fair compensation, then he may in addition recommend to the *firm* that it pays the balance.
- 3.9.7 G
/1 The *Ombudsman* may specify in his award that reasonable interest must be paid on the award (at the rate and from the date he states).
- 3.9.8 G
/1 For the purposes of calculating the monetary limit referred to in *DISP* 3.9.5R the amount of interest awarded does not form part of the award itself.
- 3.9.9 G
/1 The limit on the maximum money award has no bearing on any direction which an *Ombudsman* may make as part of a determination.

Costs

- 3.9.10 R
/1 **When the *Ombudsman* finds in a complainant’s favour, he may also award an amount which covers some or all of the costs which were reasonably incurred by the complainant in respect of the complaint.**
- 3.9.11 G
/1 It is not anticipated that awards of costs will be common, since in most cases complainants should not need to have professional advisers to bring complaints to the *Financial Ombudsman Service*.
- 3.9.12 R
/1 **The amount payable under the award of costs may, if the *Ombudsman* orders, bear interest at a reasonable rate specified in the order and from a date specified in the order.**
- 3.9.13 G
/1 For the purposes of calculating the monetary limit specified in *DISP* 3.9.5R, an award of costs does not form part of the award itself.

Complying with awards and settlements

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

3.10 Dealing with information

3.10.1

R

/1

- (1) In dealing with any information received in relation to the consideration or investigation of a complaint, the *Financial Ombudsman Service* must have regard to the parties' rights of privacy.
- (2) Paragraph (1) does not prevent the *Ombudsman* disclosing information (either in full, or where he considers it necessary or appropriate under *DISP* 3.5.2R(2), in the form of an edited version or (where this is not practicable) a summary or description):
 - (a) to the extent that he is required or authorised to do so by law; or
 - (b) to the parties to the complaint; or
 - (c) in his determination; or
 - (d) at a hearing in connection with the complaint.
- (3) So long as he has regard to the parties' rights of privacy, the *Ombudsman* may disclose information to the *FSA* or any other body exercising regulatory or statutory functions for the purpose of assisting that body or the *Financial Ombudsman Service* to discharge its functions.

3.10.2

G

/1

Under article 11 of the *Ombudsman Transitional Order*, any information held by any *person* responsible for the operation of a *former scheme* in connection with the operation of a *former scheme* may be disclosed by that *person* (after *commencement*) to *FOS Ltd* or to an *Ombudsman* without contravening any restriction on disclosure of that information (imposed by statute or otherwise) to which that *person* was subject. But *FOS Ltd* or the *Ombudsman* is subject to any restrictions on disclosure (and exceptions) which would have applied to the former holder of that information.

3.10.3

G

/1

Article 11 of the *Ombudsman Transitional Order* does not, however, prevent the application of section 31(4A) of the Data Protection Act 1998. This provides for an exemption in respect of subject information provisions to the extent to which the application of those provisions to data would be likely to prejudice the proper discharge of the functions conferred under Part XVI of the *Act* (The *Ombudsman Scheme*).

4.1 Application and Purpose

Application

4.1.1

G
/1

The *standard terms* apply to any *company, partnership*, individual practitioner or other business which has decided to be a participant in the *Voluntary Jurisdiction* (a *VJ participant*). They are fixed by *FOS Ltd* with the approval of the *FSA* in accordance with paragraph 18 of Schedule 17 to the *Act*.

Purpose

4.1.2

G
/1

The *standard terms* are the basis on which complaints will be dealt with and determined under the *Voluntary Jurisdiction*. They cover:

- (1) the rules and guidance for handling complaints (see *DISP* 4.2.2R to *DISP* 4.2.6R);
- (2) an indemnity for *FOS Ltd*, any member of its governing body, any member of its staff and any *person* acting as an *Ombudsman*, as permitted by paragraph 18(5) of Schedule 17 to the *Act* (see *DISP* 4.2.7R);
- (3) the *Ombudsman's* powers relating to determinations and awards (see *DISP* 4.2.8R);
- (4) the enforcement of a determination (see *DISP* 4.2.10R); and
- (5) the process for withdrawal by a *VJ participant* from the *Voluntary Jurisdiction* (see *DISP* 4.2.11R).

4.2 The standard terms

4.2.1

R

/1

- (1) For the purposes of the *standard terms*, a *company, partnership, individual practitioner or other business*, whether authorised or unauthorised, agreeing to participate in the *Voluntary Jurisdiction* of the *Financial Ombudsman Service* is known as a *VJ participant*.
- (2) In consequence of the agreement by the *VJ participant* to participate in the *Voluntary Jurisdiction*, the *standard terms* fix the basis on which complaints relating to relevant acts or omissions of the *VJ participant* are to be dealt with and determined.
- (3) Where the *standard terms* apply rules relating to the *Compulsory Jurisdiction* for the purposes of the *Voluntary Jurisdiction*, those are to be treated as part of the *standard terms*.
- (4) A *VJ participant* is subject to the *standard terms*, which may be amended or supplemented with the approval of the *FSA*.

Complaint handling procedures

4.2.2

R

/1

The rules and guidance contained in *DISP 1* (Complaint handling procedures for firms) will apply to *VJ participants* for the purposes of the *Voluntary Jurisdiction* as if they were *firms*, with the exception of *DISP 1.5* (Record keeping and reporting). *DISP 1.2* (Internal complaint handling procedures: general requirements) applies in relation to complaints about activities of the *VJ participant* specified in *DISP 2.6.9R*.

4.2.3

G

/1

DISP 1.5.1R contains a requirement for a *firm* in the *Compulsory Jurisdiction* to make and retain records of complaints subject to *DISP 1.4-DISP 1.6* for a minimum period of three years from the date of its receipt of a complaint. Although this requirement is not applied to *VJ participants*, they may need to keep records of complaints for sufficient time to enable them to provide the *Ombudsman* with necessary information in the event of a complaint being referred to the *Financial Ombudsman Service*. The requirement for reporting complaints to the *FSA* under *DISP 1.5.4R* is also not applied to *VJ participants*.

Jurisdiction of the Financial Ombudsman Service

4.2.4 **R** /1 The rules and guidance contained in *DISP 2* will apply for the purposes of the *Voluntary Jurisdiction*, with the exception of *DISP 2.6.1R - DISP 2.6.8G*.

4.2.5 **R** /1 By agreeing to participate in the *Voluntary Jurisdiction*, a *VJ participant* also agrees to complaints relating to activities covered by *DISP 2.6.9R* being dealt with under *DISP 2.6.12R*.

Complaint handling procedures of the Financial Ombudsman Service

4.2.6 **R** /1 The rules and guidance contained in *DISP 3* will apply to *VJ participants* for the purposes of the *Voluntary Jurisdiction* as if they were *firms* (except where their application to *VJ participants* is specifically excluded or necessarily inapplicable).

Liability

- 4.2.7 **R** /1
- (1) None of the following is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of any functions in connection with the *Voluntary Jurisdiction*:
- (a) *FOS Ltd*;
 - (b) any member of its governing body;
 - (c) any member of its staff;
 - (d) any *person* acting as an *Ombudsman* for the purposes of the *Financial Ombudsman Service*.
- (2) Paragraph (1) does not apply:
- (a) where the act or omission is shown to have been in bad faith; or
 - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

Determination and awards

4.2.8 **R** /1 If the *Ombudsman* determines a complaint under the *Voluntary Jurisdiction* in favour of the complainant, the determination may include:

- (1) a “money award”, that is, an award against the *VJ participant* of such amount as the *Ombudsman* considers fair compensation for financial loss or for loss or damage of a kind specified in *DISP* 3.9.2R that has been suffered, or may be suffered, by the complainant;
- (2) a direction that the *VJ participant* take such steps in relation to the complainant as the *Ombudsman* considers just and appropriate (whether or not a court could order those steps to be taken).

4.2.9

G

/1

DISP 4.2.8R gives the *Ombudsman* the same powers to make money awards and directions as he has, under section 229 of the *Act* (Awards), in relation to *firms* in the *Compulsory Jurisdiction*.

Enforcement of a determination

4.2.10

R

/1

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

Withdrawal from the Voluntary Jurisdiction of the Financial Ombudsman Service

4.2.11

R

/1

A *VJ participant* may not withdraw from the *Voluntary Jurisdiction* of the *Financial Ombudsman Service* unless the *VJ participant*:

- (1) has submitted a written plan to *FOS Ltd* setting out its proposals for:
 - (a) notifying its existing customers of its intention to withdraw from the *Voluntary Jurisdiction*; and
 - (b) the handling of complaints against it prior to its withdrawal from the *Voluntary Jurisdiction*; and
- (2) the plan has been approved in writing by *FOS Ltd*; and
- (3) the *VJ participant* has paid the *general levy* for the year in which it withdraws and any other fees payable; and
- (4) *FOS Ltd* has agreed in writing the date on which the *VJ participant* may withdraw from the *Voluntary Jurisdiction* (which date is not to be earlier than six *months* from the date of approval of the plan).

5.1 Application

- 5.1.1** **R** This chapter and *DISP* 5 Ann 1R apply to:
/1
- (1) Every *firm* which is subject to the *Compulsory Jurisdiction* of the *Financial Ombudsman Service*; and
 - (2) Every other *person* who is subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*.
- 5.1.2** **G** The relevant provisions of *DISP* 5 are applied to *VJ participants* by the *standard terms* (see *DISP* 4).
/1
- 5.1.3** **G** References in this chapter to "*firms*" are to be construed, where relevant, as including:
/1
- (1) in accordance with the *Ombudsman Transitional Order*, *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant complaints* (see Transitional Provisions 7 and 8); and
 - (2) as a result of section 226 of the *Act*, *unauthorised persons* who were formerly *firms* in respect of complaints about acts or omissions which occurred at the time when they were *firms*, provided that the *Compulsory Jurisdiction* rules were in force in relation to the activity in question.
- Exemption
- 5.1.4** **R** A *firm* which is exempt under *DISP* 1.1.7R is also exempt from *DISP* 5.2 - 5.8.
/1
- 5.1.5** **R** A *firm* which ceases to be exempt under *DISP* 5.1.4R is to be treated, for the purposes of its contribution to the *general levy*, as a *firm* to which *DISP* 5.9 applies.
/1
- 5.1.6** **R** A *firm* which becomes exempt under *DISP* 5.1.4R during the course of a *financial year* will be treated for the purposes of its contribution to the *general levy*, as a firm to which *DISP* 5.10 applies.
/1



5.2 Purpose








5.2.1

G
/1

The purpose of this chapter is to set out the requirements on *firms* to pay annual *fees* (through a *general levy*) and case *fees* to the *FOS Ltd* in order to fund the operation of the *Financial Ombudsman Service*. This chapter also contains a requirement on *firms* to pay a *supplementary levy* towards the costs of establishing the *Financial Ombudsman Service*. It also provides for *unauthorised persons* to pay case *fees* to the *FOS Ltd* in respect of any *relevant complaints* which it handles.



5.3 Introduction

- 5.3.1**  Paragraph 9 of Schedule 17 to the *Act* (The Ombudsman Scheme) requires the *FOS Ltd* to adopt an annual budget which has been approved by the *FSA*. The *annual budget* must distinguish between the costs of operating the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction*.
/1
- 5.3.2**  Section 234 of the *Act* (Industry Funding) enables the *FSA* to require the payment to it or to *FOS Ltd*, by *firms* or any class of firm of specified amounts (or amounts calculated in a specified way) to cover the costs of:
/1
- (1) Establishing the *Financial Ombudsman Service*; and
 - (2) Its operation in relation to the *Compulsory Jurisdiction*.
- 5.3.3**  Paragraph 15 of Schedule 17 to the *Act* enables the *FOS Ltd* to require *firms* subject to the *Compulsory Jurisdiction* and any other respondents to a complaint to pay specified fees to it in respect of complaints closed by the *Financial Ombudsman Service*.
/1
- 5.3.4**  The *Ombudsman Transitional Order* provides for *unauthorised persons* to be charged fees in respect of any *relevant complaints* against them which the *FOS* handles.
/1
- 5.3.5**  Paragraph 18 of Schedule 17 to the *Act* enables the *FOS Ltd* to require *VJ participants* to pay to it such amounts at such times as it specifies in the *standard terms*.
/1
- 5.3.6**  The relevant provisions of these rules will be applied to *VJ participants* through the *standard terms* made by the *FOS Ltd* under paragraph 18 of Schedule 17 to the *Act* (see *DISP 4*).
/1
- 5.3.7**  This chapter sets out the framework for the funding arrangements of the *Financial Ombudsman Service*, including the method by which fees will be calculated. Details of the actual fees payable will vary from year to year, depending on the annual budget of the *FOS*. These details will be set out in an annex to this chapter (*DISP 5 Ann 1R*). A new annex will be prepared and consulted on for each *financial year*.
/1

5.4 The General levy

- 5.4.1** **G**_{/1} Each *financial year*, the FSA and the FOS Ltd will consult on the amount of the annual budget of the *Financial Ombudsman Service* which is to be raised by the *general levy*.
- 5.4.2** **G**_{/1} For the purposes of the *general levy*, a firm will fall into one or more of the *industry blocks* set out in DISP 5 Ann 1R depending on the business activities which it conducts.
- 5.4.3** **G**_{/1} The FSA will determine, following consultation, the amount to be raised from each *industry block*. This will be based on the budgeted costs and numbers of *Financial Ombudsman Service* staff required to deal with the volume of complaints which the *Financial Ombudsman Service* expects to receive about the *firms* in each *industry block*. Modified arrangements have been made for certain types of small *firms* (see DISP 5.6.3R to 5.6.5G).
- 5.4.4** **G**_{/1} Part 2 of DISP 5 Ann 1R sets out the fee tariffs for each *industry block*.
- 5.4.5** **G**_{/1} The FSA will specify a *minimum levy* for *firms* in each *industry block*.
- 5.4.6** **R**_{/1} **A firm must pay to the FOS Ltd a general levy towards the costs of operating the Compulsory Jurisdiction of the Financial Ombudsman Service.**
- 5.4.7** **G**_{/1} Under the *standard terms*, VJ participants will be required to pay an amount calculated on a similar basis towards the costs of operating the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.
- 5.4.8** **R**_{/1} **A firm's general levy is calculated as follows:**
- (1) identify each of the tariff bases set out in part 2 of DISP 5 Ann 1R which apply to the *relevant business* of the *firm* for the relevant year;
 - (2) for each of those tariff bases, calculate the sum payable in relation to the *relevant business* of the *firm* for that year;
 - (3) add together the amounts calculated under DISP 5.4.8R(2).
- 5.4.9** **R**_{/1} For the purpose of DISP 5.4.6R and DISP 5.4.8R a *member* of the *Society of Lloyd's* or a *Managing Agent* at Lloyd's will not be treated as a *firm* but the *Society of Lloyd's* will pay a *general levy* in respect of Lloyd's insurance business conducted with *eligible complainants*.



5.5 Information Requirement

5.5.1

R
/1

A *firm* must provide the *FSA* by the end of February each year with a statement of the total amount of *relevant business* (measured in accordance with the appropriate tariff base(s)) which it conducted, as at or in the year to 31 December of the previous year as appropriate, in relation to the tariff-base for each of the *industry blocks* set out in *DISP 5 Ann 1R*.

5.6 Case Fees

Standard Case Fee

- 5.6.1** **R** ^{/1} A *firm* must pay to the *FOS Ltd* the standard case fee specified in *DISP 5 Ann 1R* in respect of each *chargeable case* relating to that *firm* which is closed by the *Financial Ombudsman Service*, unless a special case fee is payable or has been paid in respect of that case under *DISP 5.6.6R - DISP 5.6.12R*.
- 5.6.2** **G** ^{/1} The standard case fee, which will be subject to consultation each year, will be calculated by dividing the *annual budget* for the *Compulsory Jurisdiction*, less the amount to be raised by the *general levy*, by the estimated number of *chargeable cases* which the *Financial Ombudsman Service* expects to close in the relevant *financial year*.
- 5.6.3** **R** ^{/1} A *credit union* which is subject to the *minimum levy* in an *industry block* is not required to pay a standard case fee in respect of *chargeable cases* relating to that *industry block*.
- 5.6.4** **R** ^{/1} Any *firm* falling into either *industry block 13* or *industry block 15* of *DISP 5 Ann 1R* is not required to pay the standard case fee.
- 5.6.5** **G** ^{/1} The *firms* in *industry blocks 13* and *15* are cash plan health providers and small *friendly societies*. These arrangements have been made in respect of these *firms* to take account of the fact that the amount at issue is likely to be small relative to the case fee. Instead, the full unit cost of handling complaints against these *firms* will be recovered via the *general levy* in accordance with the relevant tariff-base and no case fee will be payable. Similar arrangements have been made under *DISP 5.6.3R* in respect of small *credit unions*.

Special Case Fees: Complaints from small businesses

- 5.6.6** **R** ^{/1} A *firm* must pay to *FOS Ltd* a special case fee, as specified in *DISP 5 Ann 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 2.4.3R(1)(b), (c) or (d)*.

Special Case Fees: *Firms which cease to be authorised*

- 5.6.7 **R** ^{/1} A *firm* which ceases to be *authorised* must pay to the *FOS Ltd* a special case fee, as specified in *DISP 5 Ann 1R*, in respect of each *chargeable case* relating to that *firm* closed by the *Financial Ombudsman Service* which concerned an act or omission occurring when the *firm* was *authorised* and where the complaint was made after its *authorisation* ceased.

Special case fees: *Relevant complaints against persons who were subject to a former scheme*

- 5.6.8 **R** ^{/1} An *unauthorised person* who is subject to the *Compulsory Jurisdiction* in relation to a *relevant complaint* must pay to *FOS Ltd* a special case fee as specified in *DISP 5 Ann 1R*, in respect of each *chargeable case* relating to that *unauthorised person* closed by the *Financial Ombudsman Service*.

- 5.6.9 **G** ^{/1} Under the *Ombudsman Transitional Order* the *FOS Ltd* can handle complaints about *members* of a *former scheme* which that scheme could have handled before the *commencement day*, even if the *unauthorised person* concerned does not become *authorised* by the *FSA* after that date. Where the *FOS Ltd* handles such complaints, the *unauthorised person* concerned will be required to pay a special case fee.

Special case fees for 2001/02

- 5.6.10 **R** ^{/1} A *firm* which was a *member* of the *PIA* before the *commencement day* must pay to the *FOS Ltd* a special case fee, as specified in *DISP 5 Ann 1R*, in respect of each *chargeable case* relating to that firm received by the *Financial Ombudsman Service* after the *commencement day* and before 31 March 2002.

- 5.6.11 **R** ^{/1} *DISP 5.6.10R* does not apply in relation to a *chargeable case* which relates to a complaint which proceeded or would have proceeded under a *former scheme* other than the *PIAOB*.

- 5.6.12 **R** ^{/1} A *firm* which was not a *member* of a *former scheme* before the *commencement day* must pay to the *FOS Ltd* a special case fee, as specified in *DISP 5 Ann 1R*, in respect of each *chargeable case* which relates to business conducted by the firm after the *commencement day* and which is closed by the *Financial Ombudsman Service* before 31 March 2002.

- 5.6.13 **G** ^{/1} The relevant provisions of *DISP 5.6* will be applied to *VJ participants* via the *standard terms*.

- 5.6.14 **G** ^{/1} A *firm* which was, before *commencement*, a *member* of the *PIA* and a *former scheme* other than *PIAOB* will not, on account of the exclusion in *DISP 5.6.11R*, be required to pay the special case fee specified by *DISP 5.6.10R* in respect of all

chargeable cases relating to it but only those which arise in respect of investment business matters which would have been eligible under the PIAOB scheme.



5.7 The Supplementary Levy

- 5.7.1** **G**_{/1} For the purposes of calculating the *supplementary levy*, the FSA will apportion the *establishment costs* between the *industry blocks* in the same proportions as the operating costs for the purposes of the *general levy*. The *supplementary levy* will therefore be raised from *firms* on the same basis and at the same time as the *general levy* (see DISP 5 Ann 1R).
- 5.7.2** **G**_{/1} The *establishment costs* will be recovered via the *supplementary levy* over the first three full *financial years* of the *Financial Ombudsman Service's* operation.
- 5.7.3** **G**_{/1} The amount of *establishment costs* to be raised each year through the *supplementary levy* will be specified in DISP 5 Ann 1R.
- 5.7.4** **G**_{/1} The *supplementary levy* will be identified separately from the *general levy* for the purposes of invoicing *firms* and *VJ participants*.
- 5.7.5** **R**_{/1} A *firm* must pay to the FOS Ltd a *supplementary levy* towards the costs of establishing the *Financial Ombudsman Service* ("the *establishment costs*").
- 5.7.6** **R**_{/1} A *firm's supplementary levy* is a sum payable in accordance with the fee tariffs set out in part 5 of DISP 5 Ann 1R and will be calculated in the same way as the *general levy* in DISP 5.4.8R.
- 5.7.7** **G**_{/1} Under the *Standard Terms*, *VJ participants* will also be required to pay an amount calculated on a similar basis towards the costs of establishing the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.

5.8 Payment

- 5.8.1** **R** ^{/1} A *firm* must pay the *general levy* and any *supplementary levy* to which it is subject to the *FOS Ltd* either:
- (1) annually, on or before the later of 1 April and 30 calendar *days* after the date when the invoice is issued by the *FOS Ltd*; or
 - (2) provided the amount payable exceeds the *minimum levy*, quarterly, at the beginning of each quarter, by direct debit agreement.
- 5.8.2** **R** ^{/1} A *firm* must pay to the *FOS Ltd* any standard case fee or special case fee which it is liable to pay under *DISP 5.6.1R*, *DISP 5.6.6R*, *DISP 5.6.7R*, *DISP 5.6.8R*, *DISP 5.6.10R*, or *DISP 5.6.12R*, as appropriate, in respect of *chargeable cases* for which it is invoiced by the *FOS Ltd* within 30 calendar *days* of the date when the invoice is issued by *FOS Ltd*.
- 5.8.3** **G** ^{/1} The *FOS* will invoice *firms* for case fees on a monthly basis and *firms* will be required to pay these fees within 30 calendar *days* of receiving the invoice.
- 5.8.4** **R** ^{/1} A *firm* or an *unauthorised person* who is subject to the *Compulsory Jurisdiction* in relation to a *relevant complaint* must pay any standard case fee or special case fee within 30 calendar *days* of the date when the invoice is issued by *FOS Ltd*.
- 5.8.5** **G** ^{/1} *FOS Ltd* will issue invoices for the *general levy*, any *supplementary levy*, standard case fees and special case fees. The invoice will be payable within 30 calendar *days*. Invoices will be sent to the *firm's* Compliance Officer at the principal place of business in the *United Kingdom* last notified to the *FSA*.
- 5.8.6** **R** ^{/1} If a *firm* or an *unauthorised person* does not pay a levy or case fee in full within 30 calendar *days* of the date when the invoice is issued it must, thereafter, pay interest at 10% per annum for each *day* the unpaid part remains outstanding.
- 5.8.7** **G** ^{/1} If a *firm* (or *unauthorised person*) fails to make payment under this chapter, after expiry of the 30 *day* period, the *FOS Ltd* may:
- (1) take steps to recover any money owed (including interest);
 - (2) refer the matter to the *FSA* so that the *FSA* may take whatever disciplinary action it considers necessary.

5.8.8

R

/1

If it appears to the *FSA* or the *FOS Ltd* that, owing to the exceptional circumstances of a particular case, the payment of any fee would be inequitable, the *FSA* or the *FOS Ltd* may reduce or remit all or part of the fee in question which would otherwise be payable.

5.8.9

R

/1

If it appears to the *FSA* or the *FOS Ltd* that, owing to the exceptional circumstances of a particular case to which *GEN 3.2.7R* does not apply, the retention by the *FSA* or the *FOS Ltd* of a fee which has been paid would be inequitable, the *FSA* or the *FOS Ltd* may refund all or part of the fee.

5.9 Joining the Financial Ombudsman Service

5.9.1

R

/1

A *firm* which becomes subject to the *Financial Ombudsman Service* part way through a *financial year* must pay a rateable proportion of the *general levy* and the *supplementary levy* as indicated in Table DISP 5.9.2R

5.9.2

R

/1

Table Table DISP 5.9.2

Quarter in which the firm becomes subject to the Financial Ombudsman Service	Proportion payable
1 April to 30 June inclusive	100%
1 July to 30 September inclusive	75%
1 October to 31 December inclusive	50%
1 January to 31 March inclusive	25%



5.10 Leaving the Financial Ombudsman Service

5.10.1

R

/1

Where a *firm* ceases to be *authorised* part way through a *financial year*:

- (1) it will remain liable to pay standard case fees in respect of *chargeable cases* against it closed by the *Financial Ombudsman Service* for the remainder of that *financial year*; and
- (2) thereafter, it must pay the special case fee specified under *DISP 5.6.7R* in respect of any other *chargeable cases* against it closed by the *Financial Ombudsman Service*.

5.10.2

G

/1

Firms which cease to be *authorised* and, therefore subject to the *Compulsory Jurisdiction* part way through the year will not, normally, receive a refund of their *general levy* (or *supplementary levy*). However, exceptions may be made if *firms* have informed the *FSA* of their plans before the end of the previous *financial year*. *Firms* will continue to be liable for any case fees relating to *chargeable cases* closed by the *Financial Ombudsman Service* after they cease to be *authorised*. *Firms* will be charged the standard case fee where the complaint was closed by the *Financial Ombudsman Service* before the end of the year in which their *authorisation* ceased. The special case fee will apply to any complaint closed after the end of that year since the *firm* will no longer be contributing to the *general levy*.

DISP 5 Ann 1R: Illustrative Annual Fees Payable in Relation to 2002/03

Introduction: Annual budget

- 1 The FOS annual budget for [year] by the FSA is £[x].

Part 1: General levy and Supplementary levy

- 2 The total amount of the general levy to be raised in [year] will be £[x].

Part 2: Fee tariffs for General levy and Supplementary levy

- 3 Table: fee tariffs for industry blocks

Industry Block	Tariff Base	Fee Payable by firm
1–Deposit acceptors, mortgage lenders and administrators (excluding firms in block 14)	Number of accounts relevant to the activities in DISP 2.6.1R	£[x] per number of relevant accounts subject to a minimum levy of £[x]
2–Firms that undertake insurance activities subject to prudential regulation only (excluding firms in blocks 13 & 15).	Relevant annual gross premium income	£[x] per £[x] of relevant annual gross premium income, subject to a minimum levy of £[x]
3–Society of Lloyd’s	To be allocated by the Society	To be allocated by the Society of Lloyd’s

4–Firms that undertake insurance activities subject to both prudential and conduct of business regulation (long term life insurers) (excluding firms in block 15)	Relevant adjusted annual gross premium income	£[x] per £[x] of relevant annual gross premium income, subject to a minimum levy of £[x]
5–Fund managers (including those holding client money/assets and not holding client money/assets)	Relevant funds under management	£[x] per £[x] of relevant funds under management subject to a minimum levy of £[x]
6–Operators, Trustees and Depositories of collective investment schemes	Relevant annual gross income	£[x] per £[x] of relevant annual gross income from the activity subject to a minimum levy of £[x]
7–Dealers as Principal	Number of traders	£[x] per number of traders subject to a minimum levy of £[x]
8–Advisory arrangers, dealers or Brokers holding and controlling client money and/or assets	Number of relevant approved persons (Controlled functions 21, 22, 24, 25, 26)	£[x] per number of relevant approved persons (controlled functions 21, 22, 24, 25, 26), subject to a minimum levy of £[x]
9–Advisory arrangers, dealers or Brokers not holding and controlling client money and/or assets	Number of relevant approved persons (Controlled functions 21, 22, 24, 25, 26)	£[x] per number of relevant approved persons (controlled functions 21, 22, 24, 25, 26), subject to a minimum levy of £[x]
10–Corporate Finance Advisers	Number of relevant approved persons (Controlled function 23)	£[x] per number of relevant approved persons (controlled function 23) subject to a minimum levy of £[x]
11–Execution-only arrangers, dealers or brokers	Relevant annual commission or fee income	£[x] per £[x] of relevant annual commission or fee income, subject to a minimum levy of £[x]

12–Advisers only	Number of relevant approved persons (Controlled functions 21, 22, 24, 25)	£[x] per number of relevant approved persons (Controlled functions 21, 22, 24, 25), subject to a minimum levy of £[x]
13–Cash plan health providers	Flat fee	£[x] per £[x] of relevant annual gross premium income, subject to a minimum levy of £[x]
14–Credit Unions	Gross assets	£[x] per £[x] of [relevant] gross assets, subject to a minimum levy of £[x]
15–Friendly Societies whose tax-exempt business represents 95% or more of their total relevant business	Relevant annual gross premium income	£[x] per £[x] of relevant annual gross premium income subject to a minimum levy of £[x]

- G Where the tariff base in the table is defined in the same terms as the FSA fee tariff base for the relevant FSA block, it is intended to be calculated in the same way as the FSA fee tariff base.
- G For the purposes of the tariff bases, references to 'relevant' relate to a firm's relevant business.

Part 3: Case Fees

4 Standard Case Fees and Special Case Fees

Governing Provisions	Case Fee	Amount
DISP 5.6.1R	Standard	£[x]
DISP 5.6.6R	Special case fee: complaints from small businesses	£[x]
DISP 5.6.7R	Special case fee: firms which cease to be authorised	£[x]
DISP 5.6.8R	Special case fee: unauthorised persons who were subject to a former scheme	£[x]
DISP 5.6.10R, DISP 5.6.11R and DISP 5.6.12R	Special case fee: for 2001/02	£[x]

Part 4: Supplementary levy

5 The total amount of establishment costs to be raised in [year] by the supplementary levy is £[x].

Appendix 1

Relevant Existing Complaints

1.1 Application and Purpose

Application

1.1.1 **R** This appendix applies to *firms*, to *FOS Ltd*, to the *Ombudsman* and to those who might wish to refer a complaint to the *Financial Ombudsman Service* in respect of *relevant existing complaints*.
/1

1.1.2 **G** References in this chapter to "*firms*" are to be construed, where relevant, as including:
/1

- (1) in accordance with the *Ombudsman Transitional Order*, *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*; and
- (2) as a result of section 226 of the *Act*, *unauthorised persons* who were formerly *firms* in respect of complaints about acts or omissions which occurred at the time when they were *firms*, provided that the *Compulsory Jurisdiction* rules were in force in relation to the activity in question.

Purpose

1.1.3 **R** *DISP 2 to DISP 5* apply to *firms*, to the *Ombudsman* and to *FOS Ltd* in respect of *relevant existing complaints*, except as stated in this appendix.
/1

1.1.4 **G** The purpose of this appendix is to describe how *FOS Ltd* must handle *relevant existing complaints* (that is, the partly completed complaints which it inherits from the *former schemes* at *commencement* under the *Ombudsman Transitional Order*). Complaints which *firms* (as opposed to the *former schemes*) have partly completed at *commencement* will be handled as described in *DISP 1* (Complaint handling procedures for firms) (see, in particular, *DISP 1.4.6R*).
/1

1.1.5 **G** *Relevant existing complaints* will be referred by the *former schemes* to *FOS Ltd* for completion at *commencement*. Article 2 of the *Ombudsman Transitional Order* provides that *FOS Ltd* will complete the handling of these cases, but requires that, in a significant number of respects, it must do this in accordance with the requirements of the relevant *former scheme*.
/1

- 1.1.6** G_{/1} This appendix describes the ways in which *FOS Ltd* is required to treat these complaints differently from the other complaints which are subject to *DISP* 1 to 5. Apart from these exceptions, the rules in *DISP* 2 to *DISP* 5 and the statutory provisions in sections 225-234 of the *Act* apply as they do to other complaints.

1.2 Eligible complaint

- 1.2.1** G_{/1} (1) Article 2 of the *Ombudsman Transitional Order* requires that, irrespective of whether the conditions set out in section 226(2) of the *Act* are met (see *DISP* 2.2.1G), a complaint which:
- (a) was referred to a *former scheme* (other than the *Personal Insurance Arbitration Service*) at any time before *commencement*, by a *person* who was at that time entitled, under the terms of the *former scheme*, to refer such a complaint (whether described in that scheme as the making of a complaint, the referral of a dispute, the submission of a claim, or otherwise), and
 - (b) has not, before *commencement*, been rejected, withdrawn, settled or determined, by the *former Ombudsman* (whether by a substantive decision, or by closure of the case without a substantive decision);

- 1.2.1** G_{/1} is to be dealt with under the *Financial Ombudsman Service* (and not the *former scheme*).

- (2) These complaints are described as *relevant existing complaints*.

- 1.2.2** G_{/1} Article 2 of the *Ombudsman Transitional Order* provides that a complaint is not to be treated as determined before *commencement* if the determination was, at *commencement*, subject to (or capable of being subject to) an appeal, a reference to arbitration or similar procedure.

- 1.2.3** G_{/1} The definition of a *relevant existing complaint* excludes complaints referred to the *Personal Insurance Arbitration Service* before *commencement*, which will be completed by the *Personal Insurance Arbitration Service*, not *FOS Ltd*. It also excludes complaints about pre-*commencement* investment business conducted by *firms* which were formerly authorised by a *recognised professional body*. These will be handled by the relevant *professional body*.

1.3 Eligible complainant

- 1.3.1** G_{/1} Under article 2(1)(a) of the *Ombudsman Transitional Order*, a *person* will be treated under the *Financial Ombudsman Service* as an *eligible complainant* in respect of a *relevant existing complaint*, if he was entitled, under the terms of the

former scheme, to refer such a complaint at the time when the complaint was referred to that scheme.

1.4 Time limits

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

1.5 Determination of complaints

- 1.5.1 **G**_{/1} Article 5(2)(a) provides that *FOS Ltd's* power to specify in its scheme rules the matters to be taken into account in making determinations does not apply to *relevant existing complaints* (see *DISP* 3.8.1R).
- 1.5.2 **G**_{/1} Article 5(2)(c) requires the *Ombudsman*, in deciding whether a *relevant complaint* (including a *relevant existing complaint*) is to be dismissed without consideration of its merits under the scheme rules, to take into account whether an equivalent complaint would have been so dismissed under the *former scheme* in question, as it had effect immediately before *commencement*.
- 1.5.3 **G**_{/1} Article 6(1) disapplies, in respect of *relevant existing complaints*, the provisions in the *Act* relating to the criteria for determining complaints in section 228(2) and those relating to awards in section 229 (with the exception of those in section 229(8)(b) and paragraph 16 of Schedule 17 relating to the enforceability of money awards and those in section 229(9) and (10) relating to the enforceability of directions made by the *Ombudsman*). It also disapplies the provisions relating to costs awards in section 230, except to the extent referred to in *DISP* App 1.11.1G.
- 1.5.4 **G**_{/1} Apart from this, section 228 of the *Act* applies in relation to *relevant existing complaints* as it applies to other complaints which are subject to the *Compulsory Jurisdiction*.

1.6 Criteria for determining complaints

- 1.6.1 **G**_{/1} Article 6(2) provides that a *relevant existing complaint* is to be determined (so far as practicable) by reference to such criteria as would have applied to the determination

of the complaint by the *former ombudsman* under the *former scheme* in question immediately before *commencement* (provided that where the *former scheme* in question is the *FSA scheme*, the criteria are those which would have applied to the determination of the complaint by an *independent investigator* under that scheme at that time).

1.6.2

G

^{/1}

An exception is, however, made in respect of *relevant existing complaints* about former *IMRO* members inherited from the *Investment Ombudsman* under the *IMRO scheme* in order to reflect the way in which those complaints have been determined in practice under that scheme. The effect of article 6(2) and 6(11) taken together is that, as with all new complaints received after *commencement*, these will be determined according to what is, in the opinion of the *Ombudsman*, fair and reasonable in all the circumstances of the case and will be binding on both parties subject to the complainant's agreement.

1.7

Awards and remedies

1.7.1

G

^{/1}

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

1.8

Extent to which awards are binding

1.8.1

G

^{/1}

Under article 6, except in the circumstances set out in *DISP* App 1.8.2G to *DISP* App 1.8.6G, the *Ombudsman* will, in respect of *relevant existing complaints*, provide the *firm* and the complainant with a written statement of his determination (including reasons) in accordance with section 228(3)-(9) of the *Act* (see *DISP* 3.8.3R) and if the complainant notifies the *Ombudsman*, within the time period specified, that he accepts the determination, it is binding on both parties and final.

1.8.2

G

^{/1}

Under article 6(7), where the *former scheme* in question was the *FSA scheme* and the *relevant existing complaint* was, at *commencement*, subject to arbitration in accordance with that scheme, the extent to which the determination of the complaint under the new scheme is binding and final depends on the terms of the arbitration. Where a complaint under the *FSA scheme* was not subject to arbitration at *commencement*, the determination of the case under the new scheme is not binding on the *firm* or the complainant. The requirements in section 228 (4)(c) and (5) to (7) of the *Act* do not apply in relation to the complaint.

1.8.3

G

^{/1}

Under article 6(8), where the *former scheme* in question was the *SFA scheme*:

- (1) if the *relevant existing complaint* has not been submitted to arbitration under that scheme, and would not have been *eligible* to be so submitted under that

scheme as it had effect immediately before *commencement* (disregarding any requirement for certification by the *SFA Complaints Bureau* that the complaint had not been resolved by conciliation), the determination of the complaint under the *Financial Ombudsman Service* is not binding on the *firm* or the complainant;

- (2) if the *relevant existing complaint* has been submitted to arbitration under the *SFA scheme*, or would have been eligible to be so submitted under that scheme as it had effect immediately before *commencement* (disregarding any such requirement), the determination of the complaint under the *Financial Ombudsman Service* is binding on the *firm* and the complainant and final, but if the complaint has been submitted to arbitration, the terms of arbitration are otherwise unaffected;

and the requirements in section 228(4)(c) and (5) to (7) of the *Act* do not apply in relation to the complaint.

1.8.4 G_{/1} Under article 6(9), where the *former scheme* in question was the *Building Societies Ombudsman Scheme* and the *relevant existing complaint* was, at *commencement*, subject to arbitration in accordance with that scheme, the extent to which the determination of the complaint under the *Financial Ombudsman Service* is binding and final depends on the terms of the arbitration (which remain unaffected), and the requirements in section 228(4)(c) and (5) to (7) of the *Act* do not apply in relation to the complaint.

1.8.5 G_{/1} Under article 6(10), where the *former scheme* in question was the *Building Societies Ombudsman Scheme* and the *firm* would have been relieved of its obligation to comply with a determination under that scheme if it had complied with conditions as to the giving of notice of its non-fulfilment of the obligations imposed by the determination, the determination of the complaint under the *Financial Ombudsman Service* is (notwithstanding section 228(5) of the *Act*) not binding on the *firm* if it complies with equivalent conditions. (This preserves the "publicity option" under the *Building Societies Ombudsman Act 1986* in respect of *relevant existing complaints*.)

1.8.6 G_{/1} The effect of article 6(2) and 6(11) taken together is that, where the *former scheme* in question was the *IMRO scheme*, the determination will be binding on both parties subject to the complainant's agreement, unless, before *commencement*, the complaint has been determined by a *former ombudsman* under that scheme and the *former ombudsman* has offered the complainant adjudication (see *DISP App 1.9.1G-1.9.2G*).

1.9 Complaints determined before commencement

1.9.1 G_{/1} Under article 8, where, before *commencement*, a *relevant existing complaint* has been determined by a *former ombudsman* under the *IMRO scheme* and that *former ombudsman* has offered adjudication:

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

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

1.9.2

G
/1

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

1.9.3

G
/1

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

- (1) if, at *commencement*, that determination is the subject of an appeal, or an application for leave to appeal, under that scheme which has not been determined or withdrawn, the relevant provisions of that scheme will continue to apply to that appeal or application (and any ensuing appeal) so far as practicable;
- (2) if, at *commencement*, an application for leave to appeal against the determination was capable of being entertained under that scheme, the relevant provisions of that scheme will apply, so far as practicable, to the making of any such application for leave and any ensuing appeal, as they would have applied to an application for leave or an appeal before *commencement*.

1.9.4

G
/1

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

1.9.5

G
/1

Under article 10, where a complaint has been determined before *commencement* under the *Building Societies Ombudsman Scheme*, and, at *commencement*, a case either has been stated with respect to that determination for the opinion of the High Court or Court of Session under section 84(5) to (7) of the Building Societies Act 1986 and no decision has been reached on the case or could be stated under those provisions, those subsections continue to apply as if they provided for the Court to direct that the complaint be dealt with under the *Financial Ombudsman Service* as a *relevant existing complaint*.

1.10

Enforceability of awards

1.10.1

G
/1

Where the *Ombudsman* makes a determination which includes an award against a *firm* of compensation payable to the complainant, it is enforceable (under article 6(4)) in the same way as a money award made under the *Compulsory Jurisdiction*.

1.10.2

G
/1

Where the *Ombudsman* makes a determination which includes a requirement for the *firm* to take any steps in relation to the complainant, it is enforceable (under article 6(5)) in the same way as a direction made under the *Compulsory Jurisdiction*.

1.11 Costs

- 1.11.1** G_{/1} Where the *former scheme* in question, as it had effect immediately before *commencement*, included provision for the award of costs, the *Ombudsman* may, under article 6(6), on determining the *relevant existing complaint*, award costs in accordance with that provision (irrespective of whether those costs were incurred, or relate to anything done, before or after *commencement*) and section 230(6) and (7) and paragraph 16 of Schedule 17 to the *Act* apply in relation to the enforcement of such an award of costs in the same way as they apply to awards of costs made under the *Financial Ombudsman Service* procedures.

1.12 Funding and fees

- 1.12.1** G_{/1} Under *DISP 5*, *firms* will be subject to case fees in respect of *relevant complaints*. If *FOS Ltd* deals with a *relevant existing complaint* against a *person* who is not *authorised* by the *FSA*, a special case fee will be charged (see *DISP 5 (Financial Ombudsman Service Funding Rules)*) and this will be recoverable as a debt to *FOS Ltd* in the same way as case fees relating to complaints about *firms*.

1.13 Time limits, record keeping and reporting requirements

- 1.13.1** G_{/1} The time limits, record keeping and reporting requirements in *DISP 1.4* (Time limits for dealing with a complaint) and *DISP 1.5* (Record keeping and reporting) do not apply to *firms* in respect of *relevant existing complaints* since these, by definition, will already have been referred to a *former scheme*.

1.14 Cooperation with the Ombudsman

- 1.14.1** R_{/1} *Firms* must comply with *DISP 1.6* (Cooperation by *firms* with the *Ombudsman*) in respect of *relevant existing complaints*.

Appendix 2

Handling Mortgage Endowment Complaints

2.1 Introduction

2.1.1 G_{/1} This appendix sets out the approach and standards which *firms* should use when investigating complaints relating to the sale of endowment *policies* for the purposes of achieving capital repayment of a mortgage. It is not intended to be comprehensive. It is primarily concerned with the assessment of whether the complainant may have suffered financial loss, and if so, how much that loss is, and therefore what amount a *firm* should consider offering by way of fair and appropriate compensation in circumstances where the *firm's* investigation of a complaint reveals:

- (1) the complainant has received negligent *advice on investments*; and
- (2) if this advice had not been negligent, either:
 - (a) the complainant would be unlikely to have acquired the endowment policy but instead would have taken out the same amount of loan on a repayment basis; or
 - (b) the complainant would have acquired an endowment mortgage for a shorter term.

2.1.2 G_{/1} There will also be cases where a *firm* will conclude after investigation that, notwithstanding its own failure to give compliant and proper advice, the complainant would nevertheless have proceeded with the endowment policy as sold, in which case no compensation will be due.

2.1.3 G_{/1} This appendix only addresses how *firms* should approach the assessment of loss and compensation where negligence on the part of the *firm* is established.

2.1.4 G_{/1} This appendix is relevant both to the obligations arising under the complaints handling *rules* contained in *DISP* 1.2 and to the *FSA's* approach to the supervision of *firms*.

2.1.5 G_{/1} This appendix is also relevant to complaints which the *Ombudsman* may investigate under the *Compulsory Jurisdiction* or *Voluntary Jurisdiction* of the *Financial Ombudsman Service* established under Part XVI of the *Act* (The *Ombudsman Scheme*).

2.1.6 G_{/1} Before proceeding to assess the extent of a complainant's financial loss, a *firm* will usually have completed the following stages:

- (1) gathering all relevant facts and information;

- (2) making a fair and objective assessment whether it has failed to comply with a relevant duty owed to the complainant; and
- (3) assessing whether any failure of duty by it was in the circumstances a material failure in the sense that if it had not occurred the complainant would have been likely to have acted differently.

2.1.7 G /1 If it is concluded that the complainant would have acted differently, the *firm* should proceed to assess any direct or consequential loss.

2.1.8 G /1 Nothing in this appendix relieves *firms* of the obligation to consider the particular facts and circumstances of each complaint and to consider whether the assessment of loss and compensation should, in the light of those facts and circumstances, be carried out on a different basis. If, however, the facts and circumstances make it appropriate to do so, the *FSA's* expectation is that *firms* will apply the approach and standards set out in this appendix, and where they do not, the *FSA* is likely to require them to demonstrate the adequacy and completeness of their alternative approach.

2.2 The standard approach to redress

2.2.1 G /1 If there has been a failure to give compliant and proper advice, or some other breach of the duty of care, the basic objective of redress is to put the complainant, so far as is possible, in the position he would have been in if the inappropriate advice had not been given, or the other breach had not occurred. In many cases, although it must be a matter for inquiry and assessment in each individual case, this position is likely to have resulted in the complainant taking a repayment mortgage with accompanying life cover, and this is the assumption which underpins the standard approach to redress.

2.2.2 G /1 Unless the contrary is demonstrated, it should be assumed that the complainant could have afforded the mortgage on a repayment basis.

2.2.3 G /1 The measure of any financial loss suffered by the complainant will be arrived at by:

- (1) comparing the complainant's current capital position with the position he would have been in had the loan been a standard repayment mortgage as at the date the *firm* decides to regard the complaint as justified; and
- (2) comparing the cost of the complainant's actual monthly outgoings and those he would have made had his loan been on a standard repayment basis as at the date the *firm* decides to regard the complaint as justified.

2.2.4 G /1 In some cases other factors may be included in the overall calculation, for example, if mortgage arrangement fees were waived by agreement on the occasion of the endowment *policy* being taken out.

2.2.5 G /1 If, on comparing the complainant's current endowment position with the repayment alternative, the *surrender value* of the endowment *policy* exceeds the amount of the capital which the complainant would have repaid through the repayment method, then, at the point of the assessment, the complainant has suffered no capital loss (but the complainant may suffer some compensatable consequential loss associated

with changing the mortgage arrangements to the repayment basis, see *DISP* App 2.3). Conversely, if the capital which would have been repaid on the repayment basis exceeds the *surrender value*, there is a capital loss represented by the difference between the two amounts.

- 2.2.6** G_{/1} If the complainant's endowment mortgage outgoings exceed the equivalent cost for the repayment method, the complainant should be compensated for the higher payments in addition to any loss on the *surrender value* and capital repaid comparison. This means, for example, that if the endowment arrangement has been more expensive, this may result in compensatable loss even though the capital repayment against surrender comparison may be favourable to the endowment.
- 2.2.7** G_{/1} If the total cost of the outgoings for the endowment calculation is less than that for the repayment calculation, the "savings" should be brought into account in assessing any overall loss unless it is unreasonable to do so.
- 2.2.8** G_{/1} It is unlikely to be reasonable to bring "savings" into account in circumstances where, at the time of the sale of the *policy*:
- (1) the complainant was advised or informed orally or in writing that he would have lower outgoings than would be the case under a repayment mortgage, whether or not the difference was quantified; and
 - (2) the complainant has dissipated those "savings" on the strength of this advice or information.
- 2.2.9** G_{/1} The circumstances in which it may be appropriate to take some or all of the "savings" into account are those where, subject to *DISP* App 2.2.7G, the complainant is of "sufficient means" so that it is reasonable for a *firm* to assume that the "savings" have contributed to those means.
- 2.2.10** G_{/1} Where it is otherwise reasonable for "savings" to be brought into account, determining whether or not a complainant is of sufficient means and, if so, to what extent the "savings" are to be brought into account, will have to be based on the facts of each individual case. It will be appropriate to require the complainant to provide adequate information to assist the *firm* in this task. Matters to be taken into account in this assessment may include:
- (1) the length of the remaining mortgage term;
 - (2) the complainant's current and prospective resources;
 - (3) the amount of the capital shortfall in proportion to the endowment outgoings balance.
- 2.2.11** G_{/1} Firms may adopt streamlined processes to assist them in individual assessments of "sufficient means", but will have to satisfy themselves that the complainant's position is nevertheless protected. Firms will need to ensure that the complainant is given an opportunity to make an informed choice whether to accept the streamlined process, that the process itself is transparent, and that the firm is satisfied that the outcome would be fair to complainants.
- 2.2.12** G_{/1} If a *firm* intends to make a deduction for all or any part of the lower endowment outgoings, the *firm* should explain clearly to the complainant in writing both how the "sufficient means" test has been satisfied, including details of the information taken into account in reaching the decision, and how the deduction has been arrived at. The letter should further inform the complainant that if he is unhappy with the

proposal to make a deduction, either in principle or as to the amount, he should give his reasons to the *firm*.

2.2.13 G_{/1} If a complainant puts forward a case that it would be unreasonable for a deduction to be made, the *firm* should reach a fair and objective determination on the facts of all relevant matters including those set out at *DISP* App 2.2.8G and *DISP* App 2.2.9G.

2.2.14 G_{/1} In recognition that *firms* may not wish, for practical reasons, to make individual assessments of “sufficient means”, *firms* may decide not to seek to bring into account any benefit to the complainant in assessing overall compensation.

2.2.15 G_{/1} It would not be unreasonable if a *firm* providing redress in these circumstances were to frame its offer of redress on the assumption that the complainant will agree to surrender the *policy*. However, *firms* should bear in mind that there may be circumstances where it is appropriate for the complainant to retain the *policy*, for example, where it is being retained as a savings vehicle.

2.2.16 G_{/1} If a complainant becomes aware that he has taken out the endowment *policy* on the basis of unsuitable advice and inadequate information, he should if necessary, after taking appropriate advice, take reasonable steps to limit his loss, and may in any subsequent *claim* be unable to recover for losses which are avoidable. The complainant may have to show that he has not delayed unreasonably since becoming aware of his loss. The reasonable costs and expenses the complainant may have incurred in limiting his loss are to be taken into account in assessing his compensation. These costs and expenses are likely to include the complainant taking advice on whether he should convert from an endowment to a repayment mortgage and incurring expenses in doing so, see *DISP* App 2.3.

2.2.17 G_{/1} The standard approach to redress can be illustrated by the following examples, which show how redress would be calculated in certain hypothetical but typical scenarios. (Because the examples are illustrative, round numbers have been used for “established facts” in each example. The payments should be taken as being made monthly: *firms* should not approximate by assuming that payments are made annually. If the complainant has benefited from MIRAS, the calculations should allow for the effect of MIRAS both on the endowment mortgage and the repayment comparison.)

2.2.18 G_{/1} Table Table of examples of typical redress calculations

Example 1	Capital shortfall and higher endowment outgoings
Example 2	Capital shortfall partially offset by lower endowment mortgage outgoings
Example 3	Capital shortfall more than offset by lower endowment mortgage outgoings
Example 4	Capital surplus more than offset by higher endowment mortgage outgoings
Example 5	Capital surplus partially offset by higher endowment mortgage outgoings
Example 6	Capital surplus and lower endowment mortgage outgoings
Example 7	Low start endowment mortgage

2.2.19 G Table Example 1

EXAMPLE 1	
Capital shortfall and higher endowment mortgage outgoings	
<u>Background</u>	
Capital sum of £50,000	
25 year endowment <i>policy</i>	
Duration to date: 5 years	
Endowment <i>premium</i> per month: £75	
<u>Established facts</u>	
Endowment <i>surrender value</i>:	£3,200
Capital repaid under equivalent repayment mortgage:	£4,200
<i>Surrender value</i> less capital repaid:	(£1,000)
Cost of converting from endowment mortgage to repayment mortgage:	(£200)
<u>Total outgoings to date</u>	
Equivalent repayment mortgage (capital + interest + DTA life cover):	£21,950
Endowment mortgage (endowment <i>premium</i> + interest):	£22,250
Difference in outgoings (repayment – endowment):	(£300)
<u>Basis of compensation</u>	
In this example, the complainant has suffered loss because the <i>surrender value</i> of the endowment is less than the capital repaid and also because of the higher total outgoings to date of the endowment mortgage relative to the repayment mortgage. The two losses and the conversion cost are therefore added together in order to calculate the redress.	
<u>Redress</u>	
Loss from <i>surrender value</i> less capital repaid:	(£1,000)
Loss from total extra outgoings under endowment mortgage:	(£300)
Cost of converting to repayment mortgage:	(£200)
Total loss:	(£1,500)
Therefore total redress is:	£1,500

2.2.20

G

Table Example 2

/1

EXAMPLE 2	
Capital shortfall partially offset by lower endowment mortgage outgoings	
<u>Background</u>	

EXAMPLE 2	
Capital sum of £50,000	
25 year endowment <i>policy</i>	
Duration to date: 5 years	
Endowment <i>premium</i> per month: £60	
<u>Established facts</u>	
Endowment <i>surrender value</i> :	£2,500
Capital repaid under equivalent repayment mortgage	£4,200
<i>Surrender value</i> less capital repaid under equivalent repayment mortgage:	(£1,700)
Cost of converting from endowment mortgage to repayment mortgage	(£300)
<u>Total outgoings to date:</u>	
Repayment mortgage (capital + interest + DTA life cover):	£21,950
Endowment mortgage (endowment <i>premium</i> + interest):	£21,350
Difference in outgoings (repayment – endowment):	£600
<u>Basis of Compensation</u>	
In this example, the complainant has suffered loss because the <i>surrender value</i> of the endowment is less than the capital repaid but has gained from the lower outgoings of the endowment mortgage to date. In calculating the redress the gain may be offset against the loss unless the complainant's particular circumstances are such that it would be unreasonable to take account of the gain.	
Redress if it is not unreasonable to take account of the whole of the gain from lower outgoings	
Loss from <i>surrender value</i> less capital repaid:	(£1,700)
Gain from total lower outgoings under endowment mortgage:	£600
Cost of converting to repayment mortgage:	(£300)
Net loss:	(£1,400)
Therefore total redress is:	£1,400
Redress if it is unreasonable to take account of gain from lower outgoings	
Loss from <i>surrender value</i> less capital repaid:	(£1,700)
Gain from total lower outgoings under endowment mortgage:	Ignored*
Cost of converting to repayment mortgage:	(£300)
Net loss taken into account:	(£2,000)

EXAMPLE 2	
Therefore total redress is:	£2,000
* In this example, and also in Examples 3, 7, 8 and 9, the complainant's circumstances are assumed to be such as to make it unreasonable to take account of <i>any</i> of the gain from lower outgoings.	

2.2.21

G

Table Example 3

/1

EXAMPLE 3	
Capital shortfall more than offset by lower endowment mortgage outgoings	
<u>Background</u>	
Capital sum of £50,000	
25 year endowment <i>policy</i>	
Duration to date: 8 years	
Endowment <i>premium</i> per month: £65	
<u>Established facts</u>	
Endowment <i>surrender value</i> :	£7,300
Capital repaid under equivalent repayment mortgage:	£7,600
<i>Surrender value</i> less capital repaid:	(£300)
Cost of converting from endowment mortgage to repayment mortgage:	(£200)
<u>Total outgoings to date</u>	
Repayment mortgage (capital + interest + DTA life cover):	£34,510
Endowment mortgage (endowment <i>premium</i> + interest):	£33,990
Difference in outgoings (repayment – endowment):	£520
<u>Basis of Compensation</u>	
In this example, the complainant has suffered loss because the surrender value of the endowment is less than the capital repaid but has gained from the lower total outgoings of the endowment mortgage. In calculating redress the gain may be offset against the loss unless the complainant's particular circumstances are such that it would be unreasonable to take account of the gain.	
Redress if it is not unreasonable to take account of the whole of the gain from lower outgoings	
Loss from <i>surrender value</i> less capital repaid:	(£300)
Gain from total lower outgoings under endowment mortgage:	£520
Cost of converting to repayment mortgage:	(£200)
Net gain:	£20
Therefore, there has been no loss and no redress is payable.	
Redress if it is unreasonable to take account of gain from lower outgoings	

EXAMPLE 3	
Loss from <i>surrender value</i> less capital repaid:	(£300)
Gain from total lower outgoings under endowment mortgage:	Ignored
Cost of converting to repayment mortgage:	(£200)
Net loss taken into account:	(£500)
Therefore total redress is:	£500

2.2.22

G

Table Example 4

/1

EXAMPLE 4	
Capital surplus more than offset by higher endowment mortgage outgoings	
<u>Background</u>	
Capital sum of £50,000	
25 year endowment <i>policy</i>	
Duration to date: 8 years	
Endowment <i>premium per month</i> : £75	
<u>Established facts</u>	
Endowment <i>surrender value</i> :	£7,800
Capital repaid under equivalent repayment mortgage:	£7,600
<i>Surrender value</i> less capital repaid:	£200
Cost of converting from endowment mortgage to repayment mortgage:	(£250)
<u>Total outgoings to date</u>	
Repayment mortgage (capital + interest + DTA life cover):	£34,510
Endowment mortgage (endowment <i>premium</i> + interest):	£34,950
Difference in outgoings (repayment – endowment):	(£440)
<u>Basis of compensation</u>	
In this example, the complainant has suffered loss because of the higher total outgoings to date of the endowment mortgage but has gained because the <i>surrender value</i> of the endowment is greater than the capital repaid. Since the sum of the loss and the conversion cost is greater than the gain, the redress is calculated as the difference between the two.	
<u>Redress</u>	
Gain from <i>surrender value</i> less capital repaid:	£200
Loss from total extra outgoings under endowment mortgage:	(£440)
Cost of converting to repayment mortgage:	(£250)

EXAMPLE 4	
Net loss:	(£490)
Therefore total redress is:	£490

2.2.23

G

Table Example 5

/1

EXAMPLE 5	
Capital surplus partially offset by higher endowment mortgage outgoings	
<u>Background</u>	
Capital sum of £50,000	
25 year endowment <i>policy</i>	
Duration to date: 10 years	
Endowment <i>premium</i> per month: £75	
<u>Established facts</u>	
Endowment <i>surrender value</i> :	£11,800
Capital repaid under equivalent repayment mortgage:	£9,700
<i>Surrender value</i> less capital repaid:	£2,100
Cost of converting from endowment mortgage to repayment mortgage:	(£300)
<u>Total outgoings to date</u>	
Repayment mortgage (capital + interest + DTA life cover):	£46,800
Endowment mortgage (endowment <i>premium</i> + interest):	£47,500
Difference in outgoings (repayment – endowment):	(£700)
<u>Basis of compensation</u>	
In this example, the complainant has suffered loss because of the higher total outgoings to date of the endowment mortgage relative to the repayment mortgage. However the sum of this and the conversion cost is less than the complainant's gain from the difference between the <i>surrender value</i> of the endowment and the capital repaid. Thus no redress is payable.	
<u>Redress</u>	
Gain from <i>surrender value</i> less capital repaid:	£2,100
Loss from total extra outgoings under endowment mortgage:	(£700)
Cost of converting to repayment mortgage:	(£300)
Net gain:	£1,100
Therefore there has been no loss and no redress is payable.	

2.2.24

G

Table Example 6

/1

Example 6	
Capital surplus and lower endowment mortgage outgoings	
<u>Background</u>	
Capital sum of £50,000	
25 year endowment <i>policy</i>	
Duration to date: 10 years	
Endowment <i>premium</i> per month: £65	
<u>Established facts</u>	
Endowment <i>surrender value</i> :	£10,100
Capital repaid under equivalent repayment mortgage:	£9,700
<i>Surrender value</i> less capital repaid:	£400
Cost of converting from endowment mortgage to repayment mortgage:	(£200)
<u>Total outgoings to date</u>	
Repayment mortgage (capital + interest + DTA life cover):	£46,800
Endowment mortgage (endowment <i>premium</i> + interest):	£46,300
Difference in outgoings (repayment – endowment):	£500
<u>Basis of compensation</u>	
In this example, the complainant has gained both because the <i>surrender value</i> of the endowment is greater than the capital repaid and because of the lower total outgoings of the endowment mortgage. These gains are larger than the cost of converting to a repayment mortgage. Thus no further action is necessary.	
<u>Redress</u>	
As there has been no loss, no redress is payable.	

2.2.25



Table Example 7

/1

Example 7	
Low start endowment mortgage	
<u>Background</u>	
Capital sum of £50,000	
25 year endowment <i>policy</i>	
Duration to date: 10 years	
Endowment <i>premium</i> per month: starting at £35 in first year, increasing by 20% simple on each <i>policy</i> anniversary, reaching £70 after five years and then remaining at that level.	
<u>Established facts:</u>	
Endowment <i>surrender value</i> :	£8,200
Capital repaid under equivalent repayment mortgage::	£9,700

Example 7	
<i>Surrender value</i> less capital repaid:	(£1,500)
Cost of converting from endowment mortgage to repayment mortgage:	(£250)
<u>Total outgoings to date</u>	
Repayment mortgage (capital + interest + DTA life cover):	£46,800
Endowment mortgage (endowment <i>premium</i> + interest):	£45,640
Difference in outgoings (repayment minus endowment):	£1,160
Of this difference in outgoings, £800 arose in the five year period when the complainant was paying a low endowment <i>premium</i> .	
<u>Basis of compensation</u>	
<p>In this example, the complainant has suffered loss because the <i>surrender value</i> of the endowment is less than the capital repaid but has gained from the lower total outgoings of the endowment mortgage. As in Example 3, in calculating redress the whole of the gain should be offset against the loss unless the complainant's particular circumstances are such that it would be unreasonable to do so. However, unlike Example 3, in a low start endowment mortgage the complainant may have chosen to pay a lower than usual <i>premium</i> in the early years (this would need to be established on the facts of the case). Where it has been established that the complainant chose to make lower payments, even if it is unreasonable to take account of the whole of the gain from total outgoings, the gain from paying a lower <i>premium</i> during the low start period is normally taken into account. In such cases the redress is calculated as the capital loss plus the conversion cost minus the total amount by which repayment mortgage outgoings would have exceeded the actual low start endowment mortgage outgoings during the five year low start period.</p>	
Redress if it is not unreasonable to take account of the whole of the gain from lower outgoings	
Loss from <i>surrender value</i> less capital repaid:	(£1,500)
Gain from total lower outgoings under endowment mortgage:	£1,160
Cost of converting to repayment mortgage:	(£250)
Net loss:	(£590)
Therefore total redress is:	£590
Redress if it is unreasonable to take account of gain from lower outgoings	
Loss from <i>surrender value</i> less capital repaid:	(£1,500)
Gain from total lower outgoings during low start period of endowment mortgage:	£800
Cost of converting to repayment mortgage:	(£250)
Net loss taken into account:	(£950)
Therefore total redress is:	£950

Interest rates

- 2.2.26** G_{/1} In fixing a repayment comparator, it would be appropriate to have regard to the repayment quotation actually provided at the time of sale. If more than one repayment quotation was obtained, the comparison should be with the quotation which approximates most closely to the terms of the endowment mortgage actually taken. If a repayment quotation was not provided, or is not now available, it should be assumed that the interest rate for the repayment comparison is the same as that of the mortgage endowment arrangements. *Firms* will then need to replicate interest rate changes throughout the lifetime of the comparator mortgage.

Life cover

- 2.2.27** G_{/1} Unless after due inquiry there is clear evidence that the complainant with a mortgage endowment had no foreseeable need for life cover at the time the endowment arrangements were concluded, in the overall comparison between a repayment mortgage and an endowment mortgage the monthly outgoings under the repayment will include the premium for the decreasing term assurance that would have been required. This adjustment for the cost of life cover is only to be made if the *firm* is undertaking a comparison of monthly outgoings. It is not appropriate to deduct the cost of life cover from the capital loss calculation, as this would constitute double counting.
- 2.2.28** G_{/1} If a deduction is to be attributed to the provision of life cover, the appropriate approach is to assume that the complainant took out the insurance quoted in the alternative repayment quotation provided at the time of the sale. If the quotation is not available, the deduction should be at the rates that would have been quoted at the time.

2.3 Remortgaging

- 2.3.1** G_{/1} As already noted, the basic objective of redress is to put the complainant, so far as is possible, in the position he would have been in if the inappropriate advice or other breach had not occurred: for their part, the complainants should take such reasonable steps as they can to limit loss once they are informed of the position they are in because of the failure of advice at the time of sale.
- 2.3.2** G_{/1} In practice, it is likely to be appropriate for a complainant whose complaint has been upheld to convert to a repayment mortgage, whether or not there is financial loss to date. It will normally be possible for complainants to do so without incurring unreasonable cost. Conversion will of course mean that the complainant no longer has a *policy*.
- 2.3.3** G_{/1} *Firms* should therefore in the case of upheld complaints inform complainants that it is likely to be appropriate and necessary for them to convert to a repayment arrangement.
- 2.3.4** G_{/1} *Firms* should make it clear that they will bear the costs of conversion if the rearrangement is made with the existing lender and to the equivalent repayment mortgage. If a complainant is not willing to rearrange with the existing lender, then

the costs to be paid by the *firm* should normally be limited to those which would have been payable had the rearrangement been made with the existing lender and to the equivalent repayment mortgage. If it is not possible to rearrange with the existing lender, for example, if the lender has a closed book, the *firm* should pay all costs which are not unreasonable in completing the rearrangement with an alternative provider. Such costs might include an administration fee for changing the existing arrangement, redemption penalty, arrangement fee for the new mortgage and the reasonable cost of further advice if necessary.

2.3.5 G_{/1} If the “new” mortgage is, in fact, arranged at a lower interest rate than the existing loan, the benefit to the complainant should usually be disregarded, as it is always open to complainants to change their underlying mortgage arrangements at any time.

2.3.6 G_{/1} If the “new” mortgage is arranged at a higher interest rate than the existing loan, the increased payment should not normally be taken into account in calculating any payment to be made to the complainant.

2.3.7 G_{/1} If the complainant takes the opportunity to increase his loan on the occasion of the remortgage, the expenses which a *firm* pays by way of compensation should be paid by reference to the capital sum due under the “old” loan.

2.3.8 G_{/1} As stated, one aspect of the conversion process is the disposal of the endowment *policy*. The standard approach to assessing loss requires *firms* to calculate loss using the *surrender value*. However, once loss is established on this basis and *firms* move to deal with redress, they may wish to consider whether there is a role for the *policy*’s “market value” within the traded endowment *policy* (TEP) market.

2.3.9 G_{/1} A *firm* may arrange the sale of the endowment *policy* on the traded endowment market, provided the full implications of such a course of action are explained to the complainant and his express consent is obtained for the firm to arrange the sale. This includes informing the investor that he will continue to be the life assured under the *policy*. The complainant should be informed that such an arrangement may reduce or eliminate the amount of redress actually borne by the *firm*, but not so as to affect the amount of redress he receives.

2.3.10 G_{/1} In the event that a complainant is willing to pursue this option, a *firm* should first have assessed the complainant’s loss using the approach set out in this appendix, and the minimum amount the complainant should receive under such a sale arrangement is the sum representing the position the complainant should have been in under this appendix together with the reimbursement of remortgaging costs. In order to ensure the process does not delay the provision of redress, the *firm* must pay this minimum sum immediately the complainant agrees to the sale arrangement. To the extent that the net amount realised by the sale of the *policy* on the traded endowment market exceeds the total redress due to the complainant, this greater sum is to be paid to the complainant on completion of the sale. If the amount realised by the sale of the *policy* on the traded endowment market is less than the total redress due to the complainant, the *firm* will be responsible for the amount of the shortfall.

2.3.11 G_{/1} Table Example of assessment set out at 2.3.10

The following example illustrates the position:

Surrender value	£10,000	TEP value	£16,000
Loss calculated by standard approach	£5,000		

Remortgaging costs	£300		
Total	<u>£15,300</u>		
Complainant receives £16,000 all ultimately funded from the TEP sale.			
Surrender value	£10,000	TEP value	£13,000
Redress calculated by standard approach	£5,000		
Remortgaging costs	£300		
Total	<u>£15,300</u>		
Complainant receives £15,300, £13,000 ultimately funded from the TEP sale and £2,300 ultimately funded from the <i>firm</i> .			

2.4 Policy reconstruction

- 2.4.1** G ^{/1} This section of this appendix is primarily concerned with circumstances where the term of the mortgage and associated endowment *policy* extend beyond the individual complainant's normal retirement age in circumstances where the *firm* regards a complaint as justified because the arrangement is not affordable in retirement; and this could have, and should have, been foreseen at the time of the advice.
- 2.4.2** G ^{/1} Two sets of circumstances are examined at *DISP* App 2.4.3G to *DISP* App 2.4.13G. Although these are considered in isolation, *firms* should, as part of their investigation of all of the factors involved in the complaint, consider whether either set of circumstances should be considered in conjunction with those factors examined at *DISP* App 2.2G.

Case 1

- 2.4.3** G ^{/1} If on enquiry it is found that no proper assessment of the complainant's post-retirement means had been undertaken at the time of *sale*, but if the likelihood had been that the complainant would have borrowed the same amount over a shorter term (up to retirement) using an endowment *policy* as a repayment vehicle, then an appropriate form of redress would be for the *policy* to be reconstructed with a shorter term.
- 2.4.4** G ^{/1} Redress should in most cases be provided by meeting the cost of rearranging the *policy*, by way of a lump sum payment into the *policy* in respect of the higher rate of *premium* due from its inception. It may be appropriate in individual cases to take account of the lower *premiums* that the complainant will have paid to date. The *guidance* in *DISP* App 2.2, as to the circumstances in which this will be appropriate, will be relevant here.

- 2.4.5 G_{/1} If the *policy* extends beyond retirement age and the complainant is already retired, the *policy* should be reconstructed to a maturity date as at the accepted retirement date, with the *policy* proceeds becoming immediately payable. The costs are to be borne by the *firm*, subject to any lower outgoings adjustment.
- 2.4.6 G_{/1} *Firms* should consider whether the reconstruction would have tax implications for complainants (see *DISP* App 2.5.8G and *DISP* App 2.5.9G).
- 2.4.7 G_{/1} The reconstruction process deals with the situation to the date the *policy* is reconstructed. The complainant will generally be responsible for paying the increased *premiums* for the remaining term.
- 2.4.8 G_{/1} At the time the complainant is advised of the revised *premium*, he should as a matter of good practice be provided with a reprojection based on the prevailing *projection* rates, which will allow him to address any projected shortfall.
- 2.4.9 G_{/1} If it is not possible for a *firm* to reconstruct a *policy*, then it should offer the investor equivalent redress, for example, by paying a cash lump sum equivalent to the amount that would have been credited to a reconstructed *policy*.

Case 2

- 2.4.10 G_{/1} If a loan extending into retirement was on any basis not affordable, whether or not it is reconstructed to the retirement date, *firms* will need to consider whether, if proper advice had been given, the loan would have been taken out at all and, if not, consider what arrangements might now need to be made in order to reduce the amount of the complainant's borrowings.

Mismatched loans and policy terms

- 2.4.11 G_{/1} If a complaint is regarded as justified by the *firm* on the basis that the endowment *policy* maturity date extends beyond the mortgage term expiry date and the *firm* is responsible for this situation, the *policy* should be reconstructed so that it matures at the expiry of the mortgage term.
- 2.4.12 G_{/1} In these circumstances the *guidance* given elsewhere in *DISP* App 2.4 will apply as appropriate.

Examples

- 2.4.13 G_{/1} The following examples illustrate the approach to redress as described in this section.

- 2.4.14 G_{/1} Table Example 8

EXAMPLE 8

Term extends beyond retirement age and *policy* reconstruction

Background

45 year old male non-smoker, having taken out a £50,000 loan in 1998 for a term of 25 years. Unsuitable sale identified on the grounds of affordability and complaint raised on 12th *policy* anniversary.

It has always been the intention of the complainant to retire at State retirement age 65.

Term from date of sale to retirement is 20 years and the maturity date of the mortgage is 5 years after retirement.

Established facts

Established <i>premium</i> paid by investor on <i>policy</i> of original term (25 years):	£81.20
<i>Premium</i> that would have been payable on <i>policy</i> with term from <i>sale</i> to retirement (20 years):	£111.20
Actual <i>policy</i> value at time complaint assessed:	£12,500
Value of an equivalent 20-year <i>policy</i> at time complaint assessed:	£21,300
Difference in <i>policy</i> values at time complaint assessed:	£8,800
Difference in outgoings (20 year <i>policy</i> – 25 year <i>policy</i>):	£4,320

Basis of compensation

The *policy* is reconstructed as if it had been set up originally on a term to mature at retirement age, in this example, a term of 20 years. The difference in the current value of the *policy* actually *sold* to the complainant and the current value of the reconstructed *policy*, as if the *premium* on the reconstructed *policy* had been paid from outset, is calculated. The complainant has gained from lower outgoings (lower *premiums*) of the actual endowment *policy* to date. In calculating the redress, the gain may be offset against the loss unless the complainant’s particular circumstances are such that it would be unreasonable to take account of the gain.

Redress generally if it is not unreasonable to take account of the whole of the gain from lower outgoings

Loss from current value of reconstructed <i>policy</i> less current value of actual <i>policy</i> :	(£8,800)
Gain from total lower outgoings under actual <i>policy</i> :	<u>£4,320</u>
Net loss:	(£4,480)
Therefore total redress is:	£4,480

Redress if it is unreasonable to take account of gain from lower outgoings	
Loss from current value of reconstructed <i>policy</i> less current value of actual <i>policy</i> :	(£8,800)
Gain from total lower outgoings under actual <i>policy</i> :	<i>Ignored</i>
Therefore total redress is:	<u>£8,800</u>
<u>Additional Information</u>	
<p>If the <i>policy</i> is capable of reconstruction, the complainant must now fund the higher <i>premiums</i> himself for the remainder of the term of the shortened <i>policy</i> until maturity. In this example the higher <i>premium</i> could be £111.20. However the <i>firm</i> should provide the complainant with a reprojection letter based on the reconstructed <i>policy</i> such that the actual monthly payment required to achieve the target sum could be even higher, say £130. The reprojection letter should set out the range of options facing the complainant to deal with the projected shortfall, if any.</p>	

2.4.15



Table Example 9

/1

EXAMPLE 9	
Term extends beyond retirement age: example of failure to explain investment risks	
<u>Background</u>	

EXAMPLE 9

45 year old male non-smoker, having taken out a £50,000 loan in 1998 for a term of 25 years. Unsuitable sale identified on the grounds of affordability and complaint raised on 12th anniversary.

It has always been the intention of the complainant to retire at state retirement age 65.

Term from date of sale to retirement is 20 years and the maturity date of the mortgage is five years after retirement.

In addition, an endowment does not meet the complainant's attitude to investment risk and a repayment mortgage would have been taken out if properly advised.

Established facts

<i>Surrender value</i> (on the 25 year <i>policy</i>) at time complaint assessed:	£12,500
Capital repaid under repayment mortgage of term to retirement date (20 years):	£21,000
<i>Surrender value</i> less capital repaid:	(£8,500)
Difference in outgoings (repayment – endowment):	£5,400
Cost of converting from endowment mortgage to repayment mortgage:	£200

Basis of compensation:

The *surrender value* of the (25 year term) endowment *policy* is compared to the capital that would have been repaid to date under a repayment mortgage arranged to repay the loan at retirement age, in this example, a repayment mortgage for a term of 20 years. The complainant has gained from lower outgoings of the endowment mortgage to date. In calculating the redress, the gain may be offset against the loss unless the complainant's particular circumstances are such that it would be unreasonable to take account of the gain. The conversion costs are also taken into account in calculating the redress.

Redress generally

Loss from <i>surrender value</i> less capital repaid:	(£8,500)
---	----------

EXAMPLE 9	
Gain from total lower outgoings under endowment mortgage:	£5,400
Cost of converting to a repayment mortgage:	(£200)
Net loss:	(£3,300)
Therefore total redress is:	<u>£3,300</u>
Redress if it is unreasonable to take account of gain from lower outgoings	
Loss from <i>surrender value</i> less capital repaid:	(£8,500)
Gain from total lower outgoings under endowment mortgage:	<i>Ignored</i>
Cost of converting to a repayment mortgage:	(£8,700)
Therefore total redress is:	<u>£8,700</u>

2.5 Additional considerations

Introduction

- 2.5.1 G_{/1} This section addresses two issues which may be relevant to the standard redress for unsuitability cases, as well as some post-retirement cases upheld on the grounds of affordability.

Continuing life cover and other policy benefits

- 2.5.2 G_{/1} *Firms* will need to consider the importance for many complainants of having life assurance in place to ensure a mortgage is paid off in the event of death.
- 2.5.3 G_{/1} If a complaint is upheld and the *policy* is to be surrendered as part of the settlement, the *firm* should remind the complainant in writing that the life cover within the endowment will be terminated and that it may therefore be appropriate to take advice about the merits or otherwise of taking out a stand-alone *life policy* in substitution.
- 2.5.4 G_{/1} If a need for life assurance at inception has been established so that a deduction representing its cost has been made from the redress payable under *DISP* App 2.2.4G, the *firm* should advise the complainant that the *firm* would be responsible for paying any *premium* for an appropriate replacement *policy* which exceeds that used for calculating the deduction or alternatively will, where possible, provide the

cover itself at that cost. If it is not possible for the *firm* to provide the cover itself at the original cost, it may choose to discharge that obligation by the payment of an appropriate lump sum. Any such amount should enable the complainant to effect the cover at the original cost, with no additional cost in respect of increased age or deterioration in health. This option may be particularly relevant if the *firm* against which the complaint has been made is an independent intermediary which cannot itself provide the cover, although it may be possible for such a *firm* to arrange for the product provider to offer cover to the complainant at the original *premium* on payment by the independent intermediary of an appropriate lump sum to meet any increased cost.

2.5.5 G_{/1} *Firms* will not be responsible for any increased costs resulting from the complainant choosing another *product provider* or for increased *premiums* charged by another provider chosen by the complainant in respect of the risk now presented, for example, higher *premiums* charged by the other provider due to deterioration in health, unless the original *product provider* no longer writes new business and is unable to offer revised life cover on a decreasing term assurance basis.

2.5.6 G_{/1} There can be exceptional circumstances where, in order to retain suitable life cover, the endowment *policy* has to be retained and any additional costs will be the responsibility of the *firm* that sold the endowment *policy*.

2.5.7 G_{/1} The same considerations will apply to the establishment of the need for other *policy* benefits including critical illness cover, disability cover and waiver of *premium*.

Taxation

2.5.8 G_{/1} *Firms* will need to consider the likely taxation implications for complainants if *policies* are surrendered or reconstructed, or any form of underpinning or guarantee is given.

2.5.9 G_{/1} If there is potential tax liability for the complainant, it will be appropriate for *firms* to undertake in writing to the complainant to reimburse any tax payable, or which becomes payable, and make payment on production of appropriate evidence of the liability and payment having been made.

"Underpinning"

2.5.10 G_{/1} *Firms* proposing to offer arrangements involving some form of minimum underpinning or "guarantee" should discuss their proposals with the *FSA* and the Inland Revenue at the earliest possible opportunity (see *DISP* App 2.5.8G). The *FSA* will need to be satisfied that these proposals provide complainants with redress which is at least commensurate with the standard approaches contained in this appendix.

Reference to the guidance in firms' complaints settlement letters

2.5.11 G_{/1} One of the reasons for introducing the *guidance* in this appendix is to seek a reduction in the number of complaints which are referred to the *Financial Ombudsman Service*. If a *firm* writes to the complainant proposing terms for settlement which are in accordance with this appendix, the letter may include a statement that the calculation of loss and redress accords with the *FSA guidance*,

but should not imply that this extends to the assessment of whether or not the complaint should be upheld. *Firms* should point out that if the complainant remains dissatisfied, he may refer the complaint to the *Financial Ombudsman Service*.

2.5.12

G

^{/1}

A statement under *DISP* App 2.5.11G should not give the impression that the proposed terms of settlement have been expressly endorsed by either the *FSA* or the *Financial Ombudsman Service*.

FOS industry-blocks: comparison of CP74 proposals and revised proposals

CP74 FOS industry-blocks	New/revised FOS industry-blocks
1. Deposit-takers and lenders (including credit unions)	1. Deposit acceptors, mortgage lenders and administrators (excluding firms in block 14)
2. Insurance activities subject to prudential regulation only + Lloyd's Managing Agents + Society of Lloyds	2. Firms that undertake insurance activities subject to prudential regulation only (excluding firms in blocks 13 and 15)
3. Insurance activities subject to both prudential and conduct of business regulation (long term life insurers)	3. Society of Lloyds
4. Fund managers (including holding client money/assets and not holding client money/assets)	4. Firms that undertake insurance activities subject to both prudential and conduct of business regulation (long term life insurers) (excluding firms in block 15)
5. Unit trust managers/OEIC authorised corporate directors	5. Fund managers (including those holding client money/assets and not holding client money/assets)
6. Trustees of collective investment schemes/OEIC depositaries	6. Operators, Trustees and Depositaries of collective investment schemes
7. Dealers as principal	7. Dealers as principal
8. Stockbrokers and corporate finance advisers (FSA fee blocks A12, A13 and A15)	8. Advisory arrangers, dealers or brokers holding and controlling client money and/or assets
9. Brokers, including independent financial advisers (FSA fee block A14)	9. Advisory arrangers, dealers or brokers not holding and controlling client money and/or assets
10. Advisers only	10. Corporate finance advisers
	11. Execution-only arrangers, dealers or brokers
	12. Advisers only
	13. Cash plan health providers
	14. Credit Unions
	15. Friendly Societies whose tax exempt business represents 95% or more of their total relevant business

Comparison of FOS industry-blocks and FSA fee-blocks

FOS Division	FOS Industry Block + Business Activity	Tariff Base for FOS	FSA Fee Block + Activity Grouping	Tariff Base(s) for FSA
Banking & Loans	1 – Deposit acceptors, Mortgage lenders and administrators (excluding firms in block 14)	Number of accounts relevant to the activities in DISP 2.6.1R	A1 – deposit acceptors including credit unions	Modified eligible liabilities
			A2 – Mortgage lenders and administrators	Outstanding – for proposal in CP111
Insurance	2 – Firms that undertake insurance activities subject to prudential regulation only. (excluding firms in blocks 13 & 15)	Relevant annual gross premium income	A3 – insurance activities subject to prudential regulation only	Gross premium income
			3 – Society of Lloyds	N/A
				A5 – Managing Agents at Lloyds A6 – Society of Lloyd’s
Investments	4 – Firms that undertake insurance activities subject to both prudential and conduct of business regulation (long term life insurers) (excluding firms in block 15)	Relevant adjusted annual gross premium income	A4 – insurance activities subject to both prudential and conduct of business regulation	Adjusted gross premium income.
			5 – Fund managers (including those holding client money/assets and not holding client money/assets)	A7 – Fund managers – holding client money and/or assets
		A8 – Fund managers – not holding either client money and/or assets		Funds under Management

FOS Division	FOS Industry Block + Business Activity	Tariff Base for FOS	FSA Fee Block + Activity Grouping	Tariff Base(s) for FSA
	6 – Operators, Trustees and Depositories of collective investment schemes	Relevant annual gross income	A9 – Operators, Trustees and Depositories of collective investment schemes	Gross income
	7 – Dealers as Principal	Number of traders	A10 – Dealing as principal	Number of traders
	8 – Advisory arrangers, dealers, or Brokers holding and controlling client money and/or assets	Number of relevant approved persons (Controlled functions 21,22,24,25,26)	A12 – Advisory arrangers, dealers, or Brokers holding and controlling client money and/or assets	Number of approved persons (Controlled functions 21,22,24,25,26)
	9 – Advisory arrangers, dealers, or Brokers not holding and controlling client money and/or assets	Number of relevant approved persons (Controlled functions 21,22,24,25,26)	A13 – Advisory arrangers, dealers, or Brokers not holding and controlling client money and/or assets	Number of approved persons (Controlled functions 21,22,24,25,26)
	10 – Corporate Finance advisers	Number of relevant approved persons (Controlled function 23)	A14 – Corporate Finance Advisers	Number of relevant approved persons (Controlled function 23)
	11 – Execution-only arrangers, dealers or brokers	Relevant annual commission or fee income	A11 – Execution-only arrangers, dealers or brokers	Commission or fee income
	12 – Advisers only	Number of relevant approved persons (Controlled functions 21,22,24,25)	A15 – Advisory only	Number of approved persons (Controlled functions 21,22,24,25)
Insurance	13 – Cash plan health providers	Flat fee	Not applicable	Not applicable
Banking & Loans	14 – Credit Unions	Gross assets	Not applicable	Not applicable
Investments	15 – Friendly societies whose tax exempt business represents 95% or more of their total relevant business	Relevant annual gross premium	Not applicable	Not applicable

Glossary

<i>Annual budget</i>	the annual budgeted costs of operating the <i>Financial Ombudsman Service</i> .
<i>Banking Ombudsman scheme</i>	the <i>former scheme</i> set up, on a voluntary basis, to handle complaints against those banks which subscribed to it.
<i>Building Societies Ombudsman scheme</i>	the <i>former scheme</i> set up and recognised under the Building Societies Act 1986 to handle complaints about <i>building societies</i> .
<i>Compulsory Jurisdiction</i>	the jurisdiction of the <i>Financial Ombudsman Service</i> to which <i>firms</i> (and certain <i>unauthorised persons</i> as a result of the <i>Ombudsman Transitional Order</i>) are compulsorily subject.
<i>chargeable case</i>	<p>any complaint referred to the <i>Financial Ombudsman Service</i>, apart from those where the <i>Ombudsman</i> considers it apparent from the complaint received, and from any <i>final response</i> which has been issued by the <i>firm</i>, that the complaint should not proceed because:</p> <ul style="list-style-type: none">(a) the complainant is not an <i>eligible complainant</i> in accordance with <i>DISP 2</i>; orb) the complaint does not fall within the jurisdiction of the <i>Financial Ombudsman Service</i> (as described in <i>DISP 2</i>); or(c) the <i>Ombudsman</i> considers that the complaint should be dismissed without consideration of

its merits under *DISP* 3.3 (Dismissal of complaints without consideration of the merits); or

- (d) the Ombudsman considers, at any stage, that the complaint should be dismissed under *DISP* 3.3.1R(2) on the grounds that it is frivolous or vexatious.

final response

a written response from the *firm* which:

- (a) accepts the complaint, and, where appropriate, offers redress; or
- (b) offers redress without accepting the complaint; or
- (c) rejects the complaint and gives reasons for doing so;

and which informs the complainant that if he remains dissatisfied with the *firm's* response, he may now refer his complaint to the *Financial Ombudsman Service* and must do so within six months.

former scheme

any of the following:

- (a) the *Banking Ombudsman scheme*;
- (b) the *Building Societies Ombudsman scheme*;
- (c) the *FSA scheme*;
- (d) the *IMRO scheme*;
- (e) the *Insurance Ombudsman scheme*;
- (f) the *Personal Insurance Arbitration Service*;
- (g) the *PIA Ombudsman scheme*;
- (h) the *SFA scheme*.

former Ombudsman

an ombudsman, arbitrator or independent investigator appointed under a *former scheme*

FSA scheme

the *former scheme* operated by the *FSA* under paragraph 4 of Schedule 7 to the Financial Services Act 1986 for the investigation of complaints arising out of the conduct of investment business.

general levy

(in *DISP*) the annual fee raised from a *firm* under the *rules* to fund a part agreed between the *Financial*

Ombudsman Service and the FSA of the *Financial Ombudsman Service's annual budget*.

<i>Independent Investigator</i>	the <i>former Ombudsman</i> under the <i>FSA scheme</i> .
<i>IMRO scheme</i>	the <i>former scheme</i> set up by <i>IMRO</i> under the <i>Financial Services Act 1986</i> and the <i>Investment Ombudsman Memorandum</i> to handle complaints against member of <i>IMRO</i> .
<i>industry-block</i>	(in <i>DISP</i>) a grouping of <i>firms</i> by common business activity for the purposes of calculating the <i>general levy</i> .
<i>Insurance Ombudsman scheme</i>	the <i>former scheme</i> set up, on a voluntary basis, to handle complaints against those insurance companies which subscribed to it.
<i>Investment Ombudsman</i>	the <i>former Ombudsman</i> under the <i>IMRO scheme</i>
<i>Ombudsman Transitional Order</i>	the <i>Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001 (SI 2001/2326)</i> .
<i>Personal Insurance Arbitration Service</i>	the <i>former scheme set up</i> on a voluntary basis and run by the <i>Chartered Institute of Arbitrators</i> to handle complaints against those insurance companies which subscribed to it.
<i>PIA Ombudsman scheme</i>	the <i>former scheme</i> set up by <i>PIA</i> under the <i>Financial Services Act 1986</i> and operated by the <i>PIA Ombudsman Bureau Ltd</i> to handle complaints against members of the <i>PIA</i> .
<i>relevant business</i>	(in <i>DISP</i>) that part of a <i>firm's</i> business which it conducts with private individuals and which is subject to the jurisdiction of the <i>Financial Ombudsman Service</i> as provided for under <i>DISP 2.6 (To which activities do the rules apply?)</i> , measured by reference to the appropriate tariff-base for each <i>industry-block</i> .
<i>relevant complaint</i>	<ol style="list-style-type: none">(1) (in <i>DISP</i>) a <i>relevant existing complaint</i> or a <i>relevant new complaint</i>.(2) (in <i>REC</i>) (as defined in section 299(2) of the <i>Act (Complaints about recognised bodies)</i>) a complaint which the <i>FSA</i> considers is relevant

to the question of whether a *recognised body* should remain a *recognised body*.

relevant existing complaint

(in accordance with the *Ombudsman Transitional Order*) a complaint which:

- (a) was referred to a *former scheme* at any time before *commencement*, by a person who was at that time entitled, under the terms of the *former scheme*, to refer such a complaint (whether described in that scheme as the making of a complaint, the referral of a dispute, the submission of a claim, or otherwise); and
- (b) has not, before *commencement*, been rejected, withdrawn, settled or determined by *the former ombudsman* (whether by a substantive decision, or by closure of the case without a substantive decision).

relevant new complaint

(in accordance with the *Ombudsman Transitional Order*) a complaint referred to the *Financial Ombudsman Service* after *commencement* which relates to an act or omission occurring before *commencement* if:

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

For the purposes of (c), where the complainant is not eligible in accordance with *DISP 2* (Jurisdiction of the Financial Ombudsman Service), an *Ombudsman* may, nonetheless, if he considers it appropriate, treat the complainant as eligible if he would have been entitled to refer an equivalent complaint to the *former scheme* in question immediately before *commencement*.

<i>SFA Complaints Bureau</i>	the first stage of the <i>SFA scheme</i> which aimed to resolve complaints by conciliation.
<i>SFA Consumer Arbitration Scheme</i>	the second stage of the <i>SFA scheme</i> , which determined complaints by means of arbitration.
<i>SFA scheme</i>	the <i>former scheme</i> (including the <i>SFA Complaints Bureau</i> and the <i>SFA Consumer Arbitration Scheme</i>) set up by the <i>SFA</i> to handle complaints against members of the <i>SFA</i> under the Financial Services Act 1986.

List of CP74 respondents

AMP (UK) Plc

Association of British Insurers

Association of Friendly Societies

Association of Independent Financial Advisers

Association of Private Client Investment Managers & Stockbrokers

Association of Solicitor Investment Managers

Association of Unit Trusts and Investment Funds

AXA Insurance

Birmingham Hospital Saturday Fund Ltd

Brian D Thomas Financial Planning Services Ltd

British Bankers' Association

British Health Care Association

British Venture Capital Association

Brooks Homes (Southern) Ltd

Bruce & Partners Harpenden

Building Societies Association

BUPA

Council of Mortgage Lenders

Cripps Harries Hall

David Martinson

Deposit and Trustee Association

Dunfermline Building Society
Fidelity Investments
Financial Solutions 2000
Friendly Societies Commission
Friends Provident Life Office
Fund Managers Association
Groupama Insurances
Healthsure Group Ltd
HSBC Holdings Plc
Institute of Chartered Accountants in England and Wales
Institute of Credit Management
Insurance Ombudsman Bureau
John K Miln & Co Ltd
Liverpool Victoria Friendly Society Ltd
Lloyd's Motor Underwriters Association
Lloyds
Lloyds TSB
London Investment Banking Association
London Midland & Scottish Railway Running Dept Insurance Society
London Society of Chartered Accountants
Lynbrook Financial Management Ltd
Medicash
Misys IFA Services Plc
Nationwide Building Society
Northern Rock
Norwich Union Life
Perpetual Investment Management Services Ltd
Provincial Hospital Services Association
Quilter & Co Ltd

Royal Bank of Scotland
Sir David Yardley
Society of Pension Consultants (SPC)
Solicitors for Independent Financial Advice Ltd
The Abbey National Group
The Cooperative Bank
The Equitable Life Assurance Society
The Law Society of Scotland
The Share Centre Ltd
Virgin Direct
Yorkshire Building Society

Type of respondent	Number
Banks and building societies	10
Cashplan healthcare providers	10
Existing and Former Ombudsmen	2
Friendly Societies	2
Trade Associations	18
General insurance companies	3
SFA member firms	2
IMRO member firms	2
Independent financial advisers	7
Independent financial advisers	7
Non FS Act regulators	2
Professional firms	1
Recognised professional bodies	1
Miscellaneous	0
Total	60

List of CP99 respondents

Abbey Life

Abbey National Plc

AMP UK Financial Services

Association of British Insurers

Barclays Bank Plc

Bristol & West Plc

Britannia Building Society

Britannic Plc

British Bankers' Association

Brooks Homes (Southern) Ltd

Building Societies Association

CGNU Plc

Egg Plc

Fidelity Investments

Friends Provident

Halifax Plc

Handsworth Breakthrough Credit Union Ltd

ICL

Institute of Chartered Accountants in England and Wales

Investment and Life Assurance Group

Killick and Co

Legal & General Insurance

Lloyds TSB

London Investment Banking Association

MBNA Europe Bank Ltd

Perpetual Investment Management Services Ltd

Remedy Corporation

Royal & Sun Alliance

Royal Bank of Scotland Plc

Scottish Equitable Plc

Standard Life Assurance Company

Swiss Life (UK) Plc

The Associates

WPA Healthcare

Type of respondent	Number
Banks and building societies	10
Cashplan healthcare providers	0
Existing and Former Ombudsmen	0
Friendly Societies	0
Trade Associations	4
General insurance companies	2
SFA member firms	1
IMRO member firms	2
Independent financial advisers	1
Life Offices	9
Non FS Act regulators	0
Professional firms	0
Recognised professional bodies	1
Miscellaneous	4
Total	34