

DISP 1 Scope of Application

1.1 General Rule and Definition

1.1.1R Except where DISP states otherwise, DISP covers all and only complaints that can be submitted to the Financial Ombudsman Service.

1.1.2R A complaint falling within DISP is referred to here as a DISP complaint. DISP complainant and DISP respondent refer to complainants and respondents in relation to DISP complaints and those persons legal or natural capable of becoming complainants and respondents in relation to DISP complaints. DISP activity or activities refer to acts or omissions which are capable of forming the subject matter of a DISP complaint.

1.2 What is a DISP complaint?

1.2.1R(1) A DISP complaint is

- an expression of dissatisfaction made
- orally or in writing [or by any other reasonable means]
- by or on behalf of a complainant [whether justified or not]
- arising out of or relating to a DISP activity of the respondent or any other respondent with whom the respondent to whom the complaint is initially communicated has some connection in marketing or providing financial services or products,
- so long as it falls within the jurisdiction of the Financial Ombudsman Service.

(2) A DISP complaint includes any matter identified during the course of the investigation of a complaint by the Respondent that the Complainant should or would have been well advised to have raised in his complaint.

Explanatory note: The items in parenthesis should be obvious and could either be deleted or reduced to guidance.

1.3 What firms are covered?

1.3.1(1)R Possible DISP Respondents are:

- (a) authorised firms carrying on regulated activities [or anyone acting on their behalf],
- (b) persons covered by the Consumer Credit Jurisdiction (licensees); and
- (c) persons who have opted in to the Voluntary Jurisdiction (VJ participants).

(d) former firms or businesses in respect of complaints about acts or omissions which occurred at the time when they were authorised or for which they were previously subject to a former scheme

(e) former licensees in respect of complaints about acts or omissions which occurred at the time when they were licensees, provided the complaint falls within a description specified in the consumer credit rules in force at the time of the act or omission.

(f) Members of the Society of Lloyd's and their managing or general agents

Explanatory note: In our opinion, it would be better if the Society of Lloyd's was not a DISP Respondent and members acting through their managing or general agents could refer the customer directly to FOS without having to go through the Lloyd's Complaints Procedure. The separate but similar regime for credit unions in CRED 17 is abolished here. There is no particular justification for it.

1.3.2R DISP does not apply to:

(a) a UCITS qualifier

(b) a professional firm unless it is authorised

[c) an authorised professional firm as regards its non-mainstream business.]

Explanatory note: (2)(c) reflects the current rulebook provision. We do not have any faith in the ability of professional bodies to handle complaints effectively in the absence of a proper Ombudsman procedure. So, we would rather this was deleted.

1.3.3(1)R A firm falling within the Compulsory Jurisdiction which does not conduct business with DISP complainants and has no reasonable likelihood of doing so, can, by written notification to the FSA, claim exemption from the rules relating to the funding of the Financial Ombudsman Service, and from the remainder of this chapter.

1.3.3(2)R Notwithstanding (1), the DISP complaints handling rules and complaints record rule will continue to apply in respect of complaints concerning MiFID business.

1.3.3(3)R The exemption under this rules takes effect from the date on which the written notice is received by the FSA and will cease to apply when the conditions relating to the exemption no longer apply.

1.4 What complaints are covered?

Subject-matter of the complaint

1.4.1R Complaints arising out of or in respect of the following activities ("DISP activities") come within this chapter unless otherwise excluded:

(1) regulated activities;

(2) consumer credit activities;

- (3) lending money secured by a charge on land;
- (4) lending money (excluding restricted credit where that is not a consumer credit activity);
- (5) paying money by a plastic card (excluding a store card where that is not a consumer credit activity);
- (6) providing ancillary banking services; or any ancillary activities, including advice, carried on by the firm in connection with them, such as the provision and operation of cash machines, foreign currency exchange, safe deposit boxes and account aggregation services (services where details of accounts held with different financial service providers can be accessed by a single password).

1.4.2R A DISP activity includes:

- (1) offering, providing or failing to provide a service in relation to an activity;
- (2) administering or failing to administer a service in relation to an activity; and
- (3) the manner in which a respondent has administered its business,

1.4.3R A complaint comes within DISP by virtue of the Consumer Credit Jurisdiction if:

- (1) it is not covered by the Compulsory Jurisdiction; and
- (2) it relates to an act or omission by a licensee in carrying on:
 - (a) one or more consumer credit activities; or
 - (b) any ancillary activities, including advice, carried on by the licensee in connection with them.

1.4.4R A complaint comes within DISP by virtue of the voluntary jurisdiction if:

- (1) it is not covered by the Compulsory Jurisdiction or the Consumer Credit Jurisdiction; and
- (2) it relates to an act or omission by a VJ participant in carrying on one or more of the following activities:
 - (a) an activity [carried on after 28 April 1988] stipulated by agreement between the Financial Ombudsman Service and the respondent concerned; or is
 - (b) National Savings and Investments' business.

Explanatory Note: (2)(a) reflects the current position. Since the voluntary jurisdiction is essentially a creature of contract, there is no particular reason why it should be restricted in the way indicated. It should be up to FOS to negotiate whatever terms it wants here.

1.4.5R The following cases are excluded from DISP except that FOS may accept jurisdiction over the complaint and consequently in that situation those DISP provisions relating to the Financial Ombudsman Service will apply :

- (1) the subject matter of the complaint has previously been considered or excluded under the Financial Ombudsman Service, or a former scheme or
- (2) the subject matter of the complaint has been dealt with, or is being dealt with, by a comparable independent complaints

scheme or dispute-resolution process; or

(3) the subject matter of the complaint has been the subject of court proceedings where there has been a decision on the merits; or

(4) the subject matter of the complaint is the subject of current court proceedings, unless proceedings have been stayed or sisted (by agreement of all parties, or order of the court);

(5) the firm has made an offer with respect to the complaint which the complainant has accepted in a legally binding agreement in full and final settlement of the complaint and the complaint does not concern any challenge to the legal validity of the agreement.

Explanatory Note: The first four items here are possible grounds for exclusion from FOS's jurisdiction under what is currently DISP 3.3.1R. However, it would make more sense if these types of complaints were also excluded from DISP as a whole. Sub-paragraph (5) is not mentioned in DISP at all and we think probably should be a ground for exclusion from DISP. In practice, unless there is a question about the validity of a settlement agreement, (in which case the exclusion does not apply), FOS throws these cases out automatically.

1.4.6R The following cases are excluded from DISP

(1) the complaint is about the legitimate exercise of a respondent's commercial judgment; or

(2) the complaint is exclusively about employment matters

Note: These cases fall again within DISP 3.3.1. It makes no sense to include these cases within DISP. Indeed, it is doubtful whether (2) comes within DISP anyway. There must, though, be two caveats here. First, sub-paragraph (1) does not exclude complaints about "illegitimate" exercises of commercial judgement, such as illegitimate discrimination on the grounds of age, disability, religion or sexual orientation.

It should be apparent but for the sake of clarity, one should note that the word "exclusively" in sub-paragraph (2) should make it clear that complaints about staff sales do not fall within this exclusion. These involves staff advised to think or poorly trained into thinking that a transaction concerned is suitable when it is not.

Territorial scope

1.4.7R(1) DISP applies to a firm in respect of complaints concerning activities carried on from an establishment maintained by it or its appointed representative in the United Kingdom.

(2) For complaints relating to the MiFID business of a firm, DISP rules

(a) apply to complaints from retail clients

(b) also apply in respect of activities carried on from a branch of a UK firm in another EEA State; and

(c) do not apply in respect of activities carried on from a branch of an EEA firm in the United Kingdom.

(3) The Consumer Credit Jurisdiction covers only complaints about the activities of a licensee carried on from an establishment in the United Kingdom.

(4) The Voluntary Jurisdiction covers only complaints to the extent that this is covered by an agreement between the FOS and the firm.

1.4.8G DISP

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

1.4.9G A complaint can be dealt with under the Financial Ombudsman Service regardless of whether the complainant lives or is based in the United Kingdom.

1.5 DISP complainants

1.5.1R(1) A DISP complainant must be a person that is either:

- (a) a private individual;
- (b) a business, which has a group annual turnover of less than £1 million at the time the complainant refers the complaint to the respondent;
- (c) a charity which has an annual income of less than £1 million at the time the complainant refers the complaint to the respondent; or
- (d) a trustee of a trust which has a net asset value of less than £1 million at the time the complainant refers the complaint to the respondent.

1.5.2G A business includes a sole trader, a company, an unincorporated body and a partnership carrying on any trade or profession. A subsidiary of a corporate group will be a DISP complainant only where the corporate group as a whole meets the turnover test.

1.5.3G If a respondent is in doubt about the eligibility of a business, charity or trust, it should treat the complainant as if it were eligible. If the complaint is referred to the Financial Ombudsman Service, the Ombudsman will determine eligibility by reference to appropriate evidence, such as audited accounts or VAT returns.

1.5.4 R (1) A complaint may only be dealt with under the Financial Ombudsman Service if it is brought by [or on behalf of] a DISP complainant, subject to (2).
(2) R A complaint may be brought on behalf of a DISP complainant (or the estate of a deceased person who would have been a DISP complainant had he been still alive) by a person authorised by the DISP complainant or the law.

Explanatory note: The text in parenthesis should be obvious and could therefore be deleted or reduced to guidance. Sub-paragraph (2) constitutes a clarification of the current rule.

1.5.5G It is immaterial whether the person authorised to act on behalf of an eligible complainant is himself capable of being a DISP complainant.

1.5.6 R To be a DISP complainant a person must also have a complaint which arises from or relates to at least one of the following relationships with the respondent:

- (1) the complainant is (or was) a customer of the respondent;
- (2) the complainant is (or was) a potential customer of the respondent;
- (3) the complainant is (or was) an indirect customer of the respondent.

1.5.7R An indirect customer is one of the following:

- (1) the holder, or the beneficial owner, of units in a collective investment scheme and the respondent is the operator or depositary of the scheme;
- (2) a beneficiary of, or has a beneficial interest in, a personal pension scheme or stakeholder pension scheme;
- (3) a person for whose benefit a contract of insurance was taken out or was intended to be taken out with or through the respondent;
- (4) a person on whom the legal right to benefit from a claim against the respondent under a contract of insurance has been devolved by contract, assignment, subrogation or legislation (save the European Community (Rights against Insurers) Regulations 2002 and not a third party with respect to a motor insurance policy);
- (5) a person who relied in the course of his business on a cheque guarantee card issued by the respondent;
- (6) the true owner or the person entitled to immediate possession of a cheque or other bill of exchange, or of the funds it represents, collected by the respondent for someone else's account;
- (7) the recipient of a banker's reference given by the respondent;
- (8) a person who gave the respondent a guarantee or security for:
 - (i) a mortgage;
 - (ii) a loan;
 - (iii) an actual or prospective regulated consumer credit agreement;
 - (iv) an actual or prospective regulated consumer hire agreement; or
 - (v) any linked transaction as defined in the Consumer Credit Act 1974 (as amended);
- (9) a person about whom information relevant to his financial standing is or was held by the respondent in operating a credit reference agency as defined by section 145(8) of the Consumer Credit Act 1974 (as amended);
- (10) a person from whom the respondent has sought to recover payment under a regulated consumer credit agreement or regulated consumer hire agreement in carrying on debt collecting as defined by section 145 (7) of the Consumer Credit Act (1974) (as amended); or

(11) the complainant is a beneficiary under a trust or estate of which the respondent is trustee or personal representative.

1.5.8G DISP 1.5.7R (2) includes, for example, employees covered by a group permanent health policy taken out by an employer, which provides in the insurance contract that the policy was taken out for the benefit of the employee.

1.5.9R In the Compulsory Jurisdiction, under the Ombudsman Transitional Order and the Mortgages and General Insurance Complaints Transitional Order, where a complainant:

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

if the Ombudsman considers it appropriate, he may treat the complainant as a DISP complainant and DISP will apply to the complaint from that time onwards.

1.5.10R(1) In the Compulsory Jurisdiction, in relation to relevant new complaints under the Ombudsman Transitional Order and relevant transitional complaints under the Mortgages and General Insurance Complaints Transitional Order:

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

Exceptions

1.5.11R The following are not DISP complainants:
(in the Compulsory Jurisdiction) a complainant who was:

- (1) a professional client; or an eligible counterparty in relation to the firm and activity in question at the time of the act or omission which is the subject of the complaint; and
- (2) (in the Consumer Credit Jurisdiction):
 - (a) a body corporate;
 - (b) a partnership consisting of more than three persons;
 - (c) a partnership all of whose members are bodies corporate; or
 - (d) an unincorporated body which consists entirely of bodies corporate.
- [(3) (in all jurisdictions) a firm, licensee or VJ participant whose complaint relates in any way to an activity which:
 - (a) the firm itself has permission to carry on; or
 - (b) the licensee or VJ participant itself conducts;and which is subject to the Compulsory Jurisdiction, the Consumer Credit Jurisdiction or the Voluntary Jurisdiction.]

Explanatory note: The parenthesis contains the current rule which we consider to be inappropriate. There is no reason why a regulated firm should not make a complaint relating to its regulated business to FOS so long as it fulfils the other conditions of DISP. Indeed, the way the current rule operates deprives small businessmen of their right to use FOS every time that the scope of regulation and FOS expands.

1.5.12R For complaints relating to the MiFID business of a firm, the complaints handling rules and the complaints recording rules do not apply to complaints from DISP complainants who are not retail clients;

1.5.13R A person who is not otherwise a DISP complainant becomes one, purely for the purposes of the requirement in the Insurance Mediation Directive that an insurance intermediary, that is not also an insurer, must have in place and operate appropriate and effective procedures for registering and responding to complaints.

1.6 Timing of events covered

1.6.1R(1) DISP covers complaints arising out of or relating to regulated activities after they became regulated activities and Consumer Credit Act activities covered by DISP after 1st June 2007 or the date on which the firm became a Consumer Credit licensee if later.

(2) DISP also covers complaints arising out of relating to events that were then or at any time subsequently subject to a former scheme in relation to the respondent including its voluntary jurisdiction.

(3) DISP complaints coming within the Consumer Credit Jurisdiction must relate to events that occurred when the respondent was a consumer credit licensee.

(4) DISP complaints within the voluntary jurisdiction may include complaints against voluntary jurisdiction participants arising out of relating to events that occurred before the respondent joined the voluntary jurisdiction as agreed between the firm and the Financial Ombudsman Service.

(5) If a respondent receives a complaint which it reasonably believes is outside the time limits for referral to the Financial Ombudsman Service, it may reject the complaint without considering the merits, but must explain this to the complainant in a final response in accordance and indicate that the Ombudsman may waive the time limits in exceptional circumstances.

(6) In the circumstances described in (5), the Financial Ombudsman Service may waive the time limits in exceptional circumstances and in so doing will render the complaint from the time onwards subject to DISP. It may also request the firm to issue a final response in relation to the complaint in line with its decision on jurisdiction.

[(7) A complaint about pre-commencement investment business which was regulated by a recognised professional body will be handled under the arrangements of that professional body and is outside the scope of this sourcebook.]

Explanatory note. The text in parenthesis reflects the current rulebook. With our views on the appropriateness of professional bodies' complaint handling arrangements, we would prefer that this last paragraph was repealed along with the relevant statutory instrument on which it is based.

2 The complaints procedure

2.1 The need to have a complaints procedure

2.1.1R DISP Respondents and branches of UK firms in other EEA states must establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints made to them by DISP complainants and to keep a record of each complaint and the measures taken for its resolution.

[Note: article 10 of the MiFID implementing Directive]

2.1.2R An insurance intermediary, that is not also an insurer, must have in place and operate appropriate and effective procedures for registering and responding to complaints from a person who is not a DISP complainant.

[Note: article 10 of the Insurance Mediation Directive]

2.2 Notification of contact point for complainants

2.2.1R For the purpose of inclusion in the public record maintained by the FSA, a firm must:

- (1) provide the FSA, at the time of its authorisation, with details of a single contact point within the firm for complainants; and
- (2) notify the FSA of any subsequent change in those details when convenient and, at the latest, in the firm's next report under the complaints reporting rules.

2.3 Advance disclosure of the complaints procedure

DISP 2.3.1R DISP respondents must

- (1) publish summary details of their complaints procedures
 - (2) tell a customer who is a potential DISP complainant in writing of their availability in good time before the conclusion of any contract between the customer and the Respondent or another regulated firm in connection with any DISP activities
 - (3) provide such summary details in writing to DISP or potential DISP complainants on request:
 - (4) include such details in any client agreement or terms of business.
- Compliance with DISP 2.3.1(4) will be deemed compliance with sub-paragraph (2).

2.3.2G The summary details should cover at least:

- (1) how the customer can complain to the firm and
- (2) the fact that, if the complaint is not resolved to the complainant's satisfaction, he may be entitled to refer the matter to the Financial Ombudsman Service.

Note: The existing requirement to cover how the respondent fulfils its obligation to handle and seek to resolve complaints produces summary details which are almost meaningless on the subject.

[2.3.3G Respondents may display or reproduce the Financial Ombudsman Service logo (under licence) in:

- (1) branches and sales offices to which eligible complainants have access; or
- (2) marketing literature or correspondence directed at eligible complainants.]

[2.3.4G These procedures should:

- (1) allow complaints to be made by any reasonable means; and
- (2) recognise complaints as requiring resolution.]

Note: In our opinion, these provisions serve no useful purpose and should be deleted.

2.4 Identification

2.4.1R On receiving a DISP complaint, a DISP respondent shall

- 1) record the complaint

2) acknowledge it promptly in writing enclosing or including

- the summary of the complaints procedures and
- the contact details of someone within the firm who will act as a point of contact within the firm for the future handling of the complaint unless and until another person's contact details are supplied to the complainant for this purpose.

2.4.2G A complaint would not normally be regarded as having been promptly acknowledged if this is not done by the end of the fifth working day following receipt of the complaint.

2.5 Forwarding of complaints

2.5.1R On receiving a DISP complaint, a Respondent must promptly forward it or any part of it to another firm or person if it reasonably believes that the other firm or person is wholly responsible for any loss or distress or inconvenience that may have been suffered by the complainant in connection with the subject-matter of the complaint or the part concerned.

2.5.2R On receiving a DISP complaint, a Respondent may forward it or any part of it to another firm if it reasonably believes that the other firm may be partly responsible for any loss or distress or inconvenience that may have been suffered by the complainant in connection with the subject-matter of the complaint.

2.5.3R Where a referral has been made, any firm to which the complaint has been forwarded must treat it as having been received from a DISP complainant when it receives the referral.

2.5.4R When forwarding a complaint to another firm or person or promptly thereafter, the DISP respondent who forwarded the complaint must inform the complainant, in a final response when the forwarding has taken place under 2.5.1R and in a letter otherwise, why the complaint has been forwarded by it to the other respondent, and of the other respondent's contact details.

2.5.5G Nothing here removes the duty of any firm who has received a complaint either directly from the Complainant or as a result of another firm forwarding it to comply with these rules.

2.6 Investigation

2.6.1R A DISP respondent must investigate the complaint competently [, diligently] and, as far as practicable, impartially.

Note: the word in parenthesis adds nothing and should, therefore, be deleted.

2.6.2G The complaint must be construed as including any matters which the firm is or becomes aware at any time the complainant should have raised in his complaint.

2.6.3G To the extent practicable, a complaints investigator or decision maker should not be a person about whom the complaint is being made and should be independent of the team or group to whose conduct the complaint relates. For example, it would not be appropriate for a member of the claims team of an insurer to investigate a complaint about a claims matter where competent individuals from other departments or teams are available to perform this task. Competence involves judgement of a reasonable quality and reasonable speed.

2.6.4R The firm must ensure that the complainant is kept regularly informed of the progress of the investigation of the complaint and any other matters relating to it.

2.6.5R The respondent must, by the end of eight weeks after its receipt of the complaint, send the complainant:

- (1) a final response; or
- (2) a written response which:
 - (a) explains that it is not in a position to make a final response and indicates in general terms when it expects to be able to provide one;
 - (b) informs the complainant that he may now refer the complaint to the Financial Ombudsman Service; and
 - (c) encloses a copy of the Financial Ombudsman Service standard explanatory leaflet.

2.7 Responding to the complaint

Form

2.7.1R A final response must deal with the points raised by the complaint and its investigation and inform the complainant of his right to refer his complaint to the Financial Ombudsman Service if and to the extent that that organization will have jurisdiction over the case.

2.7.2R The final response, with respect to a complaint that can be referred to the Financial Ombudsman Service, must give the address and telephone number of the Financial Ombudsman Service and include a warning that the complaint must be referred to the Financial Ombudsman Service within six months of the receipt of the letter or the Ombudsman may be unable to deal with the case.

2.7.3R Together with the final response, the firm must provide the Financial Ombudsman Service's standard explanatory leaflet.

2.7.4R If a firm wishes to argue subsequently that the Financial Ombudsman Service does not have jurisdiction over the case, it must indicate this in body of the Final Response letter or it may lose the right to raise this point subsequently.

2.7.5G If the firm is in any doubt as to whether the Financial Ombudsman Service would have jurisdiction over the complaint, it must inform the complainant of his possible right to refer the matter to the Financial Ombudsman Service while reserving its right to argue that the Service does not have jurisdiction.

2.7.6G Firms should refer to the leaflet in the body of the final response letter. It will be presumed in the absence of evidence to the contrary that a final response is received the day after it has been sent by first class mail to the complainant and received the following day.

2.7.7R A firm must not do anything to impede or discourage a complainant from referring a complaint to the Financial Ombudsman Service or making or pursuing the complaint to the firm itself.

Substance

2.7.8R A DISP respondent must

- (1) assess fairly, consistently and promptly:
 - (a) any points raised by the complaint and/or its investigation
 - (b) whether the complaint should be upheld in full or in part;
 - (c) what remedial action or redress (or both) may be appropriate;
 - [(d) if relevant, whether it has reasonable grounds to be satisfied that another respondent may be solely or jointly responsible for any loss, distress or inconvenience caused by the matter which gave rise to the complaint.] and
- (2) offer redress or remedial action when it is appropriate; and
- (3) explain in a final response to the complainant promptly and clearly its assessment of the complaint under (1)(a) to (c).

Note: the parenthesis covers material already encompassed in (a) to (c).

2.7.9G Factors that may be relevant in the assessment of a complaint include the following:

- the law
- any relevant rules and guidance published by the FSA and other relevant regulators, the Financial Ombudsman Service or former schemes
- Statements of good practice and FSA-approved guidance
- what is fair and reasonable in all the circumstances

2.7.10G DISP App 1 contains guidance to respondents on the approach to assessing financial loss and appropriate redress where a respondent upholds a

complaint concerning the sale of an endowment policy for the purposes of repaying a mortgage.

If a respondent receives a complaint which is outside the time limits for referral to the Financial Ombudsman Service, it may reject the complaint without considering the merits, but must explain this to the complainant in a final response and indicate that the Ombudsman may waive the time limits [in exceptional circumstances].

Note: The use of “exceptional circumstances” seems to fetter the Ombudsman’s discretion unnecessarily.

2.8 Complying with accepted offers

2.8.1R A Respondent must comply promptly with any offer of remedial action or redress accepted by the complainant.

2.8.2G A Respondent should consider whether its obligations under Principle 6 do not require it to pay compensation, take remedial action or implement redress without waiting for an offer to be accepted by the complainant.

[Dealing with the Financial Ombudsman Service

Where a complaint against a respondent is referred to the Financial Ombudsman Service, the respondent must cooperate fully with the Financial Ombudsman Service and comply promptly with any settlements or awards made by it.]

Note: This does not belong here but in DISP 3.

[Complaints resolved by close of the next business day

The following rules do not apply to a complaint that is resolved by a respondent by close of business on the business day following its receipt:

- (1) the complaints time limit rules;
- (2) the complaints forwarding rules;
- (3) the complaints reporting rules; and
- (4) the complaints record rule, if the complaint does not relate to MiFID business.

Complaints falling within this section are still subject to the complaint resolution rules.

For the purposes of this section:

- (1) a complaint received on any day other than a business day, or after close of business on a business day, may be treated as received on the next business day; and

(2) a complaint is resolved where the complainant has indicated acceptance of a response from the respondent, with neither the response nor acceptance having to be in writing]

Note: We agreed that this provision is inappropriate because of its tendency to encourage firms to rush the investigation of complaints and to lose the management information about these cases. Equally, removing these cases from the complaints reporting rules was likely to deprive the FSA of a considerable amount of relevant data.

[Respondents with **two-stage** complaints procedures

If, within eight weeks of receiving a complaint, the respondent sends the complainant a written response which:

- (1) offers redress or remedial action (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 respondent if he remains dissatisfied;
 - (3) refers to the ultimate availability of the Financial Ombudsman Service if he remains dissatisfied with the respondent's response; and
 - (4) indicates it will regard the complaint as closed if it does not receive a reply within eight weeks of the complainant's receipt of the response;
- the respondent is not obliged to continue to comply with DISP 1.6.2 R unless the complainant indicates that he remains dissatisfied, in which case, the obligation to comply with DISP 1.6.2 R resumes.

If the complainant takes more than a week to reply to a written response of the kind described in DISP 1.6.5 R, the additional time in excess of a week will not count for the purposes of the time limits in DISP 1.6.2 R or the complaints reporting rules.]

Note: We agreed that this provision should be abolished. As the FSA's recent investigation of bank complaint handling has shown, two-tier procedures are well-known to have an attritional effect on complainants and to encourage staff to reject complaints unless and until they are escalated to the final tier.

2.9 Learning from complaints

2.9.1R A respondent must put in place appropriate management controls and take reasonable steps to ensure that in handling complaints it identifies and remedies any problems arising or emerging from them.

2.9.2G Respondents should fulfil this requirement by

- (1) analysing the causes of individual complaints so as to identify the root causes of the complaint or a number of different complaints received by the firm;
- (2) considering whether such causes may also affect other processes or products, including those not directly complained of; and

(3) correcting, where reasonable to do so, such matters including offering compensation to customers including the complainant regardless of whether they have complained about the matter or at all.

2.9.3G If a Respondent becomes aware of a problem that may not be isolated and may reflect a broader weakness in the firms' systems, controls or personnel, it should seek out other examples of similar issues within the firm that may need to be investigated and compensate customers who have lost out as a result regardless of whether they have complained about the matter in the past.

2.9.4G A Respondent should use the information it gains from dealing with complaints to help it, and in particular its senior management, to monitor the adequacy and effectiveness of the measures and procedures that it has put in place in order to detect and minimise any risk of compliance failures (SYSC 6.1).

2.9.5R If the investigation of a complaint reveals that one or more individuals may have acted in a morally culpable or grossly negligent fashion, the firm shall, after giving the individual or individuals the opportunity to make representations, reach a conclusion on this issue and note any finding of moral culpability or gross negligence on the personnel records of the individual or individuals concerned. Such a finding will constitute "a complaint upheld against the individual or individuals concerned" even if the firm ultimately does not conclude that the complainant should receive compensation.

2.9.6G The purpose of 2.9.5R is to ensure that complaints are noted as being upheld against individuals who have behaved in a morally reprehensible or grossly careless way. They should not be noted as upheld against an individual where his following of company procedures or instructions has resulted in the complaint being made and upheld. Equally, a complaint is not to be noted as being upheld against an individual if it has resulted from an act of momentary inadvertence or relatively minor carelessness however grave the consequences.

[Speed and quality of response

G When assessing a respondent's response to a complaint, the FSA may have regard to a number of factors, including, the quality of response, as against the complaints resolution rules, as well as the speed with which it was made.]

Note: it was agreed that this should be abolished because it states the obvious and is superfluous.

2.10 Records

2.10.1R A firm, including, in the case of MiFID business, a branch of a UK firm in another EEA state, must keep a record of each complaint received and the measures taken for its resolution, and retain that record for:

(1) at least five years where the complaint relates to MiFID business; and

(2) three years for all other complaints;
from the date the complaint was received.

[Note: article 10 of the MiFID implementing Directive]

2.11 Complaints reporting

2.11.1R Twice a year a firm must provide the FSA with a complete report concerning complaints received from eligible complainants. The report must be set out in the format in DISP 2 Ann 1R.

2.11.2R DISP 2 Annex 1 R requires (for the relevant reporting period) firms to report information about:

- (1) the total number of complaints received by the firm, broken down according to the categories and generic product types described in DISP 2 Annex 2 R which are relevant to the firm;
- (2) the total number of complaints 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;
- (3) the total number of complaints:
 - (a) upheld in part or in full by the firm in the reporting period;
 - (b) that the firm knows have been referred to, and accepted by, the Financial Ombudsman Service in the reporting period;
 - (c) outstanding at the beginning of the reporting period; and
 - (d) outstanding at the end of the reporting period; and
- (4) the total amount of redress paid in respect of complaints during the reporting period.

2.11.3G For the purpose of DISP 2.11.2R, when completing the return, the firm should take into account the following matters.

- (1) If 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.
- (2) A firm should report any complaint to which it has given a final response which upholds the complaint, even if any redress offered is disputed by the complainant. Where a complaint is upheld in part, a firm should treat the whole complaint as upheld for reporting purposes. However, where a firm rejects a complaint, yet chooses to make a goodwill payment to the complainant, the complaint should be recorded as 'rejected'.
- (3) If a firm reports on the amount of redress paid, redress should be interpreted to include an amount paid, or cost borne, by the firm, where a cash value can be readily identified, and should include:
 - (a) amounts paid for distress and inconvenience;
 - (b) a free transfer out to another provider which transfer would normally be paid for;

- (c) goodwill payments and goodwill gestures;
- (d) interest on delayed settlements;
- (e) waiver of an excess on an insurance policy; and
- (f) payments to put the consumer back into the position the consumer should have been in had the act or omission not occurred.

[(4) If a firm reports on the amount of redress paid, the redress should not, however, include repayments or refunds of premiums which had been taken in error (for example where a firm had been taking, by direct debit, twice the actual premium amount due under a policy). The refund of the overcharge would not count as redress. Any interest paid would be regarded as redress.]

Note: It is unclear why the item in parenthesis should not be included.

2.11.4R The relevant reporting periods are:

- (1) the six months immediately following a firm's accounting reference date; and
- (2) the six months immediately preceding a firm's accounting reference date.

2.11.5R (1) Reports are to be submitted to the FSA within 30 business days of the end of the relevant reporting periods through, and in the electronic format specified in, the FSA Complaints Reporting System or the appropriate section of the FSA website.

(2) If a firm is unable to submit a report in electronic format because of a systems failure of any kind, the firm must notify the FSA, in writing and without delay, of that systems failure.

2.11.6R A closed complaint is a complaint where:

- (1) the firm has sent a final response which has either been accepted or to which no reply has been received within one month.
- (2) where a reference to the Financial Ombudsman Service has been terminated either by

- an award that has been honoured by the Respondent
- an award rejected by the complainant or
- an Ombudsman's decision rejecting the complaint in full or declining jurisdiction over it
- any other event.

2.11.7G Even where the Complainant has withdrawn the complaint, the Respondent should write a final response in accordance with these rules.

Note. The definition of complaint adopted here is the broad one set out in DISP 1. This would require the reporting of complaints that are currently regarded as "non-reportable" on the basis that they do not allege a financial loss or material distress or inconvenience or they have been resolved by the firm by the end of the next business day. We consider that these two exclusion result in the FSA

receiving seriously defective complaints data, irrespective of the difficulty of ensuring that all firms apply these two exclusions from reporting in a consistent and accurate way.

2.12 The Society of Lloyd's

2.12.1R A member of the Society must comply with these rules and the Lloyd's complaint procedures, so that, taken as a whole, the requirements of this sourcebook are met.

2.12.2R The Society must take reasonable steps to ensure that complaints by policyholders against members of the Society are dealt with under the Lloyd's complaint procedures which are up-to-date and appropriate for this purpose.

2.12.3R(1) A notification claiming exemption from the complaints reporting rules and the rules relating to the funding of the Financial Ombudsman Service must be given to the FSA by the Society or the member's agent on behalf of any member eligible for an exemption.

(2) The Society or the member's agent must notify the FSA if the conditions relating to such an exemption no longer apply to a member who is exempt.

2.12.4R The report to be sent to the FSA under the complaints reporting rules must be provided by the Society and must cover all complaints by policyholders against members falling within the scope of the complaints reporting rules.

2.12.5G Each member of the Society is individually subject to the rules in this chapter as a result of the insurance market direction given in DISP 2.5.4 D under section 316 of the Act (Direction by Authority). It will normally comply with these rules by instructing its managing or general agents to act on its behalf as regards the handling of complaints.

2.12.7R A DISP Complainant may refer his complaint to the Financial Ombudsman Service in the same way as he would be able to if his complaint was against a firm without having to refer his complaint first to the Lloyd's Complaints Department.

2.12.8G Certain of the obligations under this chapter, for example the obligation to report on complaints received and the obligation to pay fees under the rules relating to the funding of the Financial Ombudsman Service (FEES 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

Note: We agreed that the traditional role of the Lloyd's Complaints Department was something of an anachronism. There should be no need for customers to have to refer their complaints to that entity although if they wished to do so and the Society of Lloyd's wished to continue to offer the facility, there was no reason

why this should not be permitted. In practice, this would involve the re-drafting of the Lloyd's complaint rules. These are in any event considerably out of date and in need of attention.

It will be observed that the material currently in DISP 1.11.10R relating to complaints which cannot be referred to FOS and which fall outside our DISP 1 definition of complaint anyway should not form part of DISP. If it is thought appropriate to maintain these rules, they should be kept as part of the Lloyd's handbook since they relate to obligations placed on the Society to maintain appropriate dispute resolution processes.

2.13 Section 150 rights of action

2.13.1R A contravention of DISP gives rise to a right of action by a private person under section 150 of the Act (Actions for damages).

Note: This reverses the current position. In practice, the implications of this are likely to be minor with one exception. Where FOS makes a recommendation to a firm that it should pay a sum in excess of £100,000, the customer cannot accept the award without giving up their right to pursue the complaint further. Giving the customer a right to sue for breach of the complaint rules could avoid this problem on the basis that breach of the obligation to award appropriate compensation would give rise to a separate cause of action.

3 Complaint handling procedures of the Financial Ombudsman Service

Introductory or general matters

3.1 Delegation of the Ombudsman's powers

3.1.1R The Ombudsman may designate members of the staff of FOS Ltd to exercise any of the powers of the Ombudsman relating to the consideration of a complaint apart from the power to determine a complaint; or

3.1.2R In DISP 2 to DISP 4 any reference to "the Ombudsman" includes a reference to any member of the staff of FOS Ltd to whom the exercise of any of the powers of the Ombudsman has been delegated.

3.2 Procedure generally

3.2.1R The Ombudsman will resolve complaints and issues relating to his jurisdiction by whatever means and in accordance with whatever procedure and in reliance on the evidence that he considers appropriate. This is subject only to the requirement that he gives each party a reasonable opportunity to present his case.

Note: This involves compressing a number of provisions in DISP 3 to reflect the reality that FOS can operate using whatever procedures it wants subject only to the legal requirement of fairness.

3.2.2R An ombudsman may give such directions as to the presentation of evidence and submissions as he considers necessary to resolve the complaint including requiring any party—

(a) to provide specified information or information of a specified description; or

(b) to produce specified documents or documents of a specified description.

the production of which the ombudsman considers necessary for the determination of the complaint.

Note: This reflects the position under FSMA.

3.2.3R Where a complaint against a respondent is referred to the Financial Ombudsman Service, the respondent must cooperate fully with the Financial Ombudsman Service and comply promptly with any settlements or awards made by it.

Note: This provision has been moved to DISP 3 to reflect the fact that this section of the rulebook concerns cases referred to FOS and the process there.

Other Procedural matters

3.3.1 R Where the respondent is a partnership (or former partnership), it is sufficient for the Ombudsman to communicate with one partner (or former partner).

3.3.2 R Unless the respondent has already had eight weeks to consider the complaint or issued a final response, the Ombudsman will refer the complaint to the respondent. If the complaint has not already been communicated to the respondent, the Ombudsman will be acting on behalf of the complainant in communicating the complaint for the purposes of DISP 1 and 2.

3.3.3 G The Ombudsman may inform the complainant that a related complaint could have been brought against some other respondent.

3.3.4 G The Ombudsman Transitional Order requires the Financial Ombudsman Service to complete the handling of relevant existing complaints, in a significant number of respects, in accordance with the requirements of the relevant former scheme rather than in accordance with the requirements of this chapter.

3.3.5G The Financial Ombudsman Service will use reasonable efforts to ensure that all partners or former partners have the existence of complaints and other procedural matters brought to their attention.

Note: It was thought that FOS probably does try to ensure that all former partners are told of complaints. Nevertheless, it seemed sensible to enshrine this in some guidance without changing the legal rule, set out in 3.3.1R.

Jurisdiction

3.4 Time-limits for bringing a complaint

3.4.1R A complainant must bring a complaint to the Financial Ombudsman Service within 6 months of receiving a final response in relation to his complaint and each of the issues raised in it.

3.4.2G A letter posted first class is deemed to have been received within 24 hours of its date unless the complainant can show otherwise, notably by reference to the postmark on the letter.

Note: This changes the current rule which starts time running from the date of the letter. This is bizarre when the date of receipt creates the ability to refer the case to FOS not its dating. At least one bank never posts anything within 24 hours of its date.

3.4.2R A complainant must make his complaint to the respondent within either
(a) six years of the event complained about or
(b) three years from when he knew or should have known that he had cause to complain

3.4.3G A complainant will not be assumed to have known that he had cause to complain unless he was aware both that he is entitled to succeed in his complaint and that the matter concerned has caused him a financial loss.

Note: 3.4.3G represents the correct position. A customer does not have cause to complain unless he has both been “wronged” and suffered a loss or material distress or inconvenience. In practice, nobody can judge when distress or inconvenience rises to the level of materiality. The need for this change appears from the way in which a customer with a subsidised mortgage who has received numerous warnings about his endowment may have suffered no loss.

3.4.4R The Ombudsman may extend any of the time-limits in DISP 3.4.1R and 3.4.2R.

Note: We have removed the reference to exceptional circumstances. In practice, FOS will not be looking to enlarge its jurisdiction automatically. However, the search for exceptionality seems to miss the point and result on esoteric and pointless arguments.

Decision on jurisdiction

3.4.5 R Where either party alleges or the Ombudsman considers, without either party raising the point, that the complaint may be out of jurisdiction or that the Financial Ombudsman Service should not exercise jurisdiction, the Ombudsman will give both parties an opportunity to make representations before he decides.

3.4.6R Where the Ombudsman decides that the complaint is out of Jurisdiction or that it is not out of jurisdiction or that he should or should not exercise jurisdiction when this has been raised by either party or himself, he will give reasons for that decision to the parties.

Note: This again compresses a number of provisions into two more succinct rules. There is no reason why the Ombudsman should not hear from all parties and give his decision to them.

3.5 Dismissal without consideration of the merits and test cases

Grounds for dismissal

3.5.1R Mandatory grounds

The Ombudsman will dismiss a complaint without considering its merits if he considers that either:

- (1) the complaint clearly is frivolous, vexatious or does not have any reasonable prospect of success
- (2) it is a complaint about the legitimate exercise of a respondent's commercial judgment
- (3) it would be more suitable for the subject matter of the complaint to be dealt with by a court, arbitration or another complaints scheme;
- (4) there are other compelling reasons why it is inappropriate for the complaint to be dealt with under the Financial Ombudsman Service.

Note: The old 3.3.1(1) has been split into mandatory and discretionary dismissal. Currently, the rule does not make sense in that the Ombudsman will dismiss certain complaints if he considers that they fall into certain categories. The catch-all in (4) also renders it unnecessary to cover the case where a complaint would be better handled by another body. Complaints exclusively about employment matters do not fall within DISP anyway. The categories of useless cases have been consolidated. Having said that, it was felt necessary to keep frivolous and vexatious on the basis that such a complaint could have a chance of success although one doubts it.

3.5.2R Discretionary grounds

The Ombudsman may dismiss a complaint without considering its merits if he considers that either:

- (1) the complaint has been the subject of a legally valid settlement agreement.
- (2) the subject matter of the complaint has previously been considered or excluded under the Financial Ombudsman Service, or a former scheme (unless

material new evidence which the Ombudsman considers likely to affect the outcome has subsequently become available to the complainant);

(3) the subject matter of the complaint has been dealt with, or is being dealt with, by a court or comparable independent complaints scheme or dispute-resolution process unless proceedings have been stayed or sisted (by agreement of all parties, or order of the court)

(4) it is a complaint which:

(a) involves (or might involve) more than one complainant; and

(b) has been referred without the consent of the other complainant or complainants;

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

(5) the respondent has reviewed the subject matter of the complaint in accordance with:

(a) the terms of a scheme order under section 404 of the Act (Schemes for reviewing past business); or

(b) the Pensions and FSAVC Reviews (including, if appropriate, making an offer of redress to the complainant), unless he considers that they did not address the particular circumstances of the case;

(6) it is a complaint about investment performance which does not raise the question of whether that performance was either negligent or in breach of any contractual obligation owed by the respondent to the complainant; or

(7) it is a complaint about a respondent's decision when exercising a discretion under a will or private trust.

(8) it is a complaint about a respondent's failure to consult beneficiaries before exercising a discretion under a will or private trust, where there is no legal obligation to consult; or

Note: Sub-paragraph (1) is a new addition which reflects the old IOB Terms of Reference and is helpful. The reasons for the stay or sisting of the court proceedings are irrelevant. So, that has been deleted.

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

Test cases

3.5.4 R The Ombudsman may dismiss a complaint without considering its merits, so that a court may consider it as a test case, if:

(1) before he has made a determination, he has received in writing from the respondent:

- (a) a detailed statement of how and why, in the respondent's opinion, the complaint raises an important or novel point of law with significant consequences; and
 - (b) an undertaking in favour of the complainant that, if the complainant or the respondent commences court proceedings against the other in respect of the complaint in any court in the United Kingdom within six months of the complaint being dismissed, the respondent will: pay the complainant's reasonable costs and disbursements (to be assessed if not agreed on an indemnity basis) in connection with the proceedings; and make interim payments on account of such costs if and to the extent that it appears reasonable to do so; and
- (2) the Ombudsman considers that the complaint:
- (a) raises an important or novel point of law that is likely to be decisive to the outcome of the complaint, which has important consequences; and
 - (b) would more suitably be dealt with by a court as a test case.

3.5.5 G Factors the Ombudsman may take into account in considering whether to dismiss a complaint so that it may be the subject of a test case in court include (but are not limited to):

- (1) the significance of the consequences of the dispute for the business of the respondent (or respondents in that sector) or for its (or their) customers;
- (2) the remedies that a court could impose;
- (3) the stage already reached in consideration of the dispute.

Note: This has been shortened and probably could be made even briefer.

Resolution of complaints by the Ombudsman

Connected cases

3.5.3 R Where two or more complaints relate to connected circumstances, the Ombudsman may investigate them together, but will issue separate provisional assessments and determinations in respect of each respondent.

3.5.4 R If the Ombudsman decides that an investigation is necessary, he will then:

- (1) send both parties a provisional assessment, setting out his reasons and a time limit within which either party must respond; and
- (2) if either party indicates disagreement with the provisional assessment within that time limit, proceed to determination.

Hearings

3.5.5 R If the Ombudsman does not consider that the complaint can be fairly determined without convening a hearing, he will invite the parties to take part in a hearing. A hearing may be held by any means which the Ombudsman considers appropriate, including by telephone.

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

- (1) the issues he wishes to raise; and
- (2) any other matters relating to the way in which the hearing should be held, notably whether it should be in private

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

Evidence

3.5.8 R The Ombudsman may

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

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

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

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

Procedural time limits

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

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

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

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

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

3.6 Determination by the Ombudsman of what is fair and reasonable

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

3.6.2 G Where a complainant makes complaints against more than one respondent in respect of connected circumstances, the Ombudsman may determine that the respondents must contribute towards the overall award in the proportion that the Ombudsman considers appropriate and make directions as to the behaviour of the parties in the event that one of them has failed to comply with an award or any directions.

3.6.3 R In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account:

- (1) relevant:
 - (a) law and regulations;
 - (b) regulators' rules, guidance and standards;
 - (c) codes of practice; and
- (2) what he considers to have been good industry practice at the relevant time.

3.6.4 G Where the Ombudsman is determining what is fair and reasonable in all the circumstances of a relevant new complaint or a relevant transitional complaint, the Ombudsman Transitional Order and the Mortgage and General Insurance Complaints Transitional Order require him to take into account what determination the former Ombudsman might have been expected to reach in relation to an equivalent complaint dealt with under the former scheme in question immediately before the relevant transitional order came into effect.

The Ombudsman's determination

3.6.6 R When the Ombudsman has determined a complaint:

- (1) the Ombudsman will give both parties a signed written statement of the determination, giving the reasons for it;
- (2) the statement will require the complainant to notify the Ombudsman in writing, before the date specified in the statement, whether he accepts or rejects the determination;
- (3) if the complainant notifies the Ombudsman that he accepts the determination within that time limit, it is final and binding on both parties;
- (4) if the complainant does not notify the Ombudsman that he accepts the determination within that time limit, the complainant will be treated as having rejected the determination, and neither party will be bound by it generally; and
- (5) the Ombudsman will notify the respondent of the outcome.

3.7 Awards by the Ombudsman

3.7.1 R Where a complaint is determined in favour of the complainant, the Ombudsman's determination may include one or more of the following:

- (1) a money award against the respondent; or
- (2) an interest award against the respondent; or
- (3) a costs award against the respondent; or

(4) a direction to the respondent.

Money Awards

3.7.2 R A money award may be such amount as the Ombudsman considers to be fair compensation for one or more of the following:

- (1) financial loss (including consequential or prospective loss); or
- (2) pain and suffering; or
- (3) damage to reputation; or
- (4) distress or inconvenience;

whether or not a court would award compensation.

3.7.3 G Where the Ombudsman is determining what amount (if any) constitutes fair compensation as a money award in relation to a relevant new complaint or a relevant transitional complaint, the Ombudsman Transitional Order and the Mortgage and General Insurance Complaints Transitional Order require him to take into account what amount (if any) might have been expected to be awarded by way of compensation in relation to an equivalent complaint dealt with under the former scheme in question immediately before the relevant transitional order came into effect.

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

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

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

3.7.6 G If the Ombudsman considers that fair compensation requires payment of a larger amount, he may recommend that the respondent pays the complainant the balance. Principle 6 would normally require a firm to honour such a recommendation.

Note: There is a well-known problem with FSMA that a customer loses the right to sue for the recommended amount over £100,000 if he accepts the Ombudsman's decision. The last sentence was added in to try to mitigate that. Ultimately, though, an amendment to the statute is urgently needed.

Interest awards

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

Costs awards

3.7.8 R A costs award may:

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

Directions

3.7.9 R A direction may require the respondent to take such steps in relation to the complainant as the Ombudsman considers just and appropriate (whether or not a court could order those steps to be taken). Such a direction should not require a respondent to make a payment for the benefit of the complainant in excess of the maximum money award.

Note: This is required to comply with the Bunney case which the current rules and proposals do not.

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

3.7.11 R A respondent must comply promptly with:

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

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

3.8 Dealing with information

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

3.8.2 R This does not prevent the Ombudsman disclosing information:

- (1) to the extent that he is required or authorised to do so by law; or
- (2) to the parties to the complaint; or
- (3) in his determination; or
- (4) at a hearing in connection with the complaint.

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

4 Standard terms for the Voluntary Jurisdiction (VJ)

4.1R A VJ participant is subject to these standard terms, which may be

amended or supplemented by the Financial Ombudsman Service with the approval of the FSA.

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

4.1.2 R The Financial Ombudsman Service will publish

(1) a list of any Standard Terms not referred to here and

(2) a list of the criteria which complaints must meet in order to be referred to with respect to the different types of complaints which respondents may agree to submit to the voluntary jurisdiction.

Application of DISP 1 to DISP 3

4.2R DISP 1-3 apart from the rules relating to complaints reporting and recording apply to VJ participants as part of the standard terms, except where the context or other parts of DISP 4 requires otherwise.

Note: Again, the provision has been compressed although it means the same thing.

Determinations and awards

4.2.1 R The Ombudsman has the same powers to make determinations and awards under the Voluntary Jurisdiction as he has under the Compulsory Jurisdiction. He may also direct that the acceptance of an award by the complainant will not bind the complainant to the extent that the Ombudsman has recommended a further payment or action to be done.

Note: The last sentence attempts to cure the problem of the complainant having to accept as binding a £100,000 award even though the Ombudsman recommends a higher compensation amount.

4.2.2 R If the complainant accepts the Ombudsman's determination within the time limit specified by the Ombudsman, the determination will be binding on the VJ Participant and may be enforced in court by the complainant.

Fees

4.3 R The following rules in FEES apply to VJ participants as part of the standard terms, but substituting 'VJ participant' for 'firm':

(1) FEES 2.2.1R and 2.2.2G (late payment) but substituting 'FOS Ltd' for 'the FSA';

(2) FEES 2.3.1R and 2.3.2R (remission of fees);

(3) FEES 4.2.6R(1)(b) (periodic fees);

(4) FEES 5.3.6R (general levy) but substituting:

(a) 'Voluntary Jurisdiction' for 'Compulsory Jurisdiction'; and

(b) 'FOS Ltd' for 'the FSA';

(5) FEES 5.3.8R (calculation of general levy) but substituting 'part 4'

for 'part 2';

(6) FEES 5.4.1R (information) but substituting:

(a) 'FOS Ltd' for 'the FSA'; and

(b) 'part 4' for 'part 2'

(7) FEES 5.5.1R (standard case fee) but substituting 'part 4' for 'part 3';

(8) FEES 5.5.6R (special case fee);

(9) FEES 5.5.15R (case fee exemption);

(10) FEES 5.7.1R, 5.7.2R to 5.7.4R (payment) but substituting, in FEES 5.7.1R, 'FOS Ltd' for 'the FSA';

(11) FEES 5.8.1R (joining the Financial Ombudsman Service); and

(12) FEES 5 Annex 1R (fees payable).

Withdrawal from participation

4.4 R A VJ participant may not withdraw from the Voluntary Jurisdiction unless:

(1) the VJ participant has submitted to FOS Ltd a written plan for:

(a) notifying its existing customers of its intention to withdraw; and

(b) handling complaints against it before its withdrawal;

(2) the VJ participant has paid the general levy for the year in which it withdraws and any other fees payable; and

(3) FOS Ltd has approved in writing both the VJ Participant's plan and the date of withdrawal (which must be at least six months from the date of the approval of the plan).

Exemption from liability

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

(1) FOS Ltd;

(2) any member of its governing body;

(3) any member of its staff;

(4) any person acting as an Ombudsman for the purposes of the Financial Ombudsman Service;

except where:

(5) the act or omission is shown to have been in bad faith; or

(6) it would prevent an award of damages being made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.