Consultation Paper

CP11/10*

Financial Ombudsman Service &

Financial Services Authority

Consumer complaints: The ombudsman award limit and changes to complaints-handling rules

Feedback to CP10/21, final rules and further consultation

May 2011

Contents

The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by 31 August 2011.

Comments may be sent by electronic submission using the form on the FSA's website at: www.fsa.gov.uk/Pages/Library/Policy/CP/2011/cp11_10_response.shtml.

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A confidential response may be requested from us under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Tribunal.

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

Acronyms used in this paper

CBA	Cost benefit analysis
CMCs	Claims management companies
CP	Consultation Paper
DISP	Dispute Resolution: Complaints sourcebook
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000
MI	Management information
PII	Professional Indemnity Insurance
PPI	Payment Protection Insurance
the ombudsman service	Financial Ombudsman Service

1 Overview

1.1 In CP10/21[1], we set out a number of proposals aimed at delivering credible deterrence and prompt and effective redress for consumers, through changes to our Dispute Resolution: Complaints (DISP) sourcebook. These proposals are designed to ensure that:

- when a consumer complains to a firm, the firm tries to resolve the complaint promptly and fairly; and
- where consumers are not satisfied with the firm's response, they can access the Financial Ombudsman Service (the ombudsman service).

1.2 Other recent initiatives in this area include:

- DP10/1[2], which discussed emerging risks and mass claims, and the feedback statement[3] to this;
- publication of firm-specific complaints data by the ombudsman service and the FSA; and
- a review of complaints handling in banking groups published in April 2010[4], which led to some of the firms being referred to enforcement[5] (and related supervisory work with other firms).

1.3 This paper contains our final policy, rules and guidance, and consults on a proposed change to the definition of 'eligible complainant' in response to feedback received to CP10/21.

1 CP10/21: *Consumer complaints: The ombudsman award limit and changes to complaints-handling rules*, (30 September 2010).
2 DP10/1: *Consumer complaints (emerging risks and mass claims), (*11 March 2010).
3 FS11/2: *Consumer complaints (emerging risks and mass claims): Feedback on DP10/1*, (28 March 2011).
4 *Review of complaint handling in banking groups*, (April 2010).
5 www.fsa.gov.uk/pubs/final/rbs_11jan11.pdf and www.fsa.gov.uk/pages/Library/Communication/PR/2011/045.shtml.

Increasing the ombudsman service award limit

1.4 We consulted on a proposal to increase the ombudsman service award limit[6] from £100,000 to £150,000, with an effective date of 1 January 2012. We made this proposal in order to prevent a decline in the consumer protection afforded by the award limit in real terms. The majority of respondents to our consultation agreed that an increase was justified. Therefore, we intend to proceed with it.

Changes to complaints-handling rules

1.5 We proposed a number of changes to the complaints-handling rules:

- abolishing the two-stage complaints-handling process[7];
- requiring firms to identify a senior individual responsible for complaints handling; and
- setting out guidance on how firms can meet existing requirements relating to root cause analysis[8] and taking account of ombudsman decisions and other guidance.

1.6 The majority of firms and trade associations that responded to the consultation opposed the abolition of the two-stage process because the evidence related mainly to banking groups and insurers and, in their view, the costs of abolition to firms would be excessive. However, consumer representatives and individual respondents strongly supported the proposed abolition. We have revised our cost benefit analysis as a result of the feedback received from firms and others. It remains our view that allowing a two-stage process has facilitated poor complaints handling by firms, and that we have sufficient evidence of inappropriate use of the two-stage process to justify its abolition. The change will take effect on 1 July 2012.

1.7 Our proposal to require firms to identify a senior individual responsible for complaints handling, and proposals for additional guidance in relation to root cause analysis and taking account of ombudsman decisions, were supported by the majority of respondents. They broadly reflect existing arrangements in many firms. We therefore intend to proceed with these proposals, although we have made some changes to the detail of the rules in the light of feedback received. These changes take effect on 1 September 2011, one month later than anticipated.

6 DISP 3.7.4R.
7 DISP 1.6.5R and 1.6.6R.
8 DISP 1.3.3R.

Minor changes to DISP

1.8 We proposed some minor changes to DISP based on responses to DP10/1 and in anticipation of the implementation of the UCITS[9] IV Directive. We are implementing most of these proposals unchanged. Those changes that relate to the implementation of UCITS take effect from 1 July 2011, and the others on 1 September 2011.

The consumer credit and voluntary jurisdictions

1.9 In CP10/21 the ombudsman service set out where it proposed to apply the DISP changes above in the consumer credit and voluntary jurisdictions, and where it proposed not to do so. Taking into account the feedback received, the ombudsman service has decided to proceed with its proposals.

Identity theft and mistaken identity

1.10 In CP10/21 we asked for further evidence as to the nature and scale of the problem faced by individuals who may have been the victims of identity theft or mistaken identity and who cannot currently bring a complaint to the ombudsman service. We believe that we have sufficient information about one aspect of this problem, where individuals cannot complain about the actions of a debt-owning business[10] in attempting to collect a debt, to be able to consult on changing the definition of eligible complainant in DISP. The details of the consultation are set out in further detail below, and we are asking for responses by 31 August 2011.

Final rules and cost benefit analysis

1.11 This PS contains our final rules in Appendix 1. We have also responded to feedback received on the cost benefit analysis (CBA). Comments on the CBA are dealt with in individual chapters in line with CP10/21.

Structure of this document

1.12 This document is structured as follows:

- Chapter 2 – Award limit
- Chapter 3 – Changes to complaints-handling requirements
- Chapter 4 – Minor changes to DISP

9 UCITS: *Undertakings for Collective Investments in Transferable Securities*.

10 In this paper, the term 'debt-owning business' refers to a business which pursues its own debt under a regulated consumer credit agreement or regulated consumer hire agreement ('original creditor firm') or to a business which buys such debts ('debt purchase firm').

- Chapter 5 – Amendments in the consumer credit and voluntary jurisdictions
- Chapter 6 – Identity theft and mistaken identity – consultation on a change to the definition of 'eligible complainant'
- Annex 1 – Compatibility statement
- Annex 2 – List of questions in this Consultation Paper
- Annex 3 – List of non-confidential respondents to CP 10/21
- Appendix 1 – Made rules (legal instrument)
- Appendix 2 – Draft Handbook text

Who should read this document?

1.13 This document will be of general interest to consumers and consumer representatives. It will also be of relevance to all firms involved in retail financial services markets, where their customers are eligible to complain to the ombudsman service. Chapter 5 will be of particular relevance to consumer credit licensees that are not FSA-regulated firms, and to participants in the ombudsman service's voluntary jurisdiction. Chapter 6 consults on an issue which will be of interest to consumers and their representatives, and to debt-owning firms which pursue these debts themselves, instead of or as well as making use of debt collection agencies. Relevant trade associations and compliance consultants may also find this document of interest.

Consumers

1.14 The overall objective of our complaints-handling work is that consumers should get prompt and effective redress when this is required. Improvements in complaints handling, including how firms learn from those complaints to make improvements in other areas of their businesses, should contribute to increased confidence in financial services.

Equality and diversity considerations

1.15 We have considered the likely equality and diversity impact of our proposals, including our proposed change to the definition of eligible complainant. Our view is that our proposals should not have a disproportionate impact on any group, and will be of benefit to all consumers. In developing our proposed requirement on firms to identify a senior individual as responsible for complaints handling, we took into account possible flexible working arrangements in firms.

Next steps

1.16 We expect firms to implement the necessary changes to their complaints-handling processes in line with the timing outlined in this paper. We will monitor this implementation through our supervisory activity.

1.17 The consultation for the questions contained in Chapter 6 closes on 31 August 2011. We intend to publish final rules and a feedback statement in a future Handbook Notice.

2

Award limit

Feedback and final policy

2.1 In CP10/21, we stated our intention to increase the ombudsman service award limit from £100,000 to £150,000, using our powers[11] under the Financial Services and Markets Act 2000 (FSMA).

2.2 The main reason for this proposal is that the protection afforded to consumers has declined in real terms since the ombudsman service's establishment in 2001. We acknowledged that the number of consumers affected by the existing limit is probably small, but that the consequences for the individuals concerned can be significant.

2.3 We note that in November 2010, the High Court found that a complainant cannot accept a determination of the ombudsman and then go on to take legal action in court for additional redress for the same loss against the firm concerned.[12] This ruling provides clarity for both firms and consumers, in that consumers will not be able to accept an ombudsman's award of up to £150,000 (under the new limit), and then go on to sue for any additional redress for the same loss. However, the ombudsman service can continue to recommend that firms pay in excess of the new limit[13], and firms can choose to do so.

Summary of responses to CP10/21

2.4 We asked:

> **Q1:** *Do you agree with our proposal to increase the ombudsman service's award limit for its compulsory jurisdiction, for any complaint referred to the ombudsman service on or after*

11 Sections 226 and 226A.
12 Andrews vs SBJ Benefit Consultants, [2010] EWHC 2875 (Ch).
13 FSMA Section 229 (5).

1 January 2012? If not, what analysis or evidence do you have that it should be higher or lower than the proposed amount?

2.5 We received 65 responses to this question from a variety of firms (both FSA-regulated firms and others), trade associations, consumer representatives, official bodies, individuals, and the Financial Services Consumer Panel. Of the respondents, 52, including the majority of firms and trade associations who responded, accepted our argument for an increase in the award limit to maintain consumer protection in real terms. Some of those who supported the proposal also made additional points:

- if the limit is to be increased then cases above a certain value ought to be subject to an automatic determination by an ombudsman, and/or an independent appeals process;
- the ombudsman service's decisions are sometimes difficult for firms to understand;
- the new limit would be significantly above the limit on compensation from the Financial Services Compensation Scheme (FSCS);
- the increased limit should only apply prospectively to acts or omissions from 1 January 2012; and
- the FSA should set out the circumstances in which we would consider further adjusting the limit in future.

2.6 Those respondents that did not support an increase in the award limit made the following points:

- consumers should not be encouraged to think that they can take no responsibility for their purchasing decisions, in the expectation that the ombudsman service will be there to provide compensation if they later reconsider;
- the courts are better equipped to consider cases involving large amounts, since they have more experience of doing so, and consumers can easily go to court at present;
- increasing the award limit may have an inflationary effect on all ombudsman service awards; and
- the FSA should look at alternatives to increasing the award limit, such as a mandatory warning to customers, either at the time of purchase, or subsequently.

Our response:

We are implementing our proposal as set out in CP10/21, effective 1 January 2012.

The award limit and the ombudsman service's procedures

Our main reason for increasing the award limit is to maintain the degree of consumer protection afforded by the ombudsman service in real terms. We also stated in CP10/21 that we accept that there should be some limit on awards to reflect the fact that the ombudsman service was established to provide an informal, faster and cheaper alternative to the courts. We are confident that the ombudsman service is equipped to handle high-value cases. We do not accept that increasing the award limit implies that an external appeals process is necessary, and in any event this would require primary legislation. Lastly, firms already have the option of referring an adjudicator's decision to an ombudsman, so we see no need to make this mandatory depending on the value of possible redress. It is up to firms to refer cases to an ombudsman where they do not agree with an adjudicator's view, and the amount at stake is not necessarily a relevant factor in this. We have considered whether or not an increase in the award limit will lead consumers to take less responsibility for their financial decisions and concluded that such an outcome is unlikely. We could find no evidence that consumers are generally aware of the award limit at the time they purchase a financial product.

The award limit and the Financial Services Compensation Scheme (FSCS) compensation limits

The new award limit will be significantly higher than FSCS compensation limits in certain activities, and lower in others. However, there is a key difference between the two schemes; the FSCS acts as a backstop, which requires live firms to pay compensation for failed firms, whereas the ombudsman service requires live firms to pay compensation to their own customers.

Retrospective application to acts or omissions

We set out in detail in CP10/21[14] our view that it would not be unfair to firms to apply the new award limit to all complaints referred to the ombudsman service on or after 1 January 2012, irrespective of when the act or omission complained of occurred. We do not accept that firms should have been operating under the assumption that the award limit represented a cap on their liability, and that it should have had any influence on their treatment of customers.

Further changes to the award limit in future

We stated in CP10/21 that we have rejected the idea of an annual review of the award limit due to the administrative costs to firms and the risk that this would create confusion for consumers. We also stated that we will review the limit periodically, and adjust it as necessary, to keep it broadly in line with inflation.

14 See CP10/21, para.2.19 (page 11).

We note that introducing the limit of £150,000 in January 2012 will put the limit above its 2001 level in real terms for a few years (assuming inflation is broadly in line with recent trends). Firms can, therefore, be confident on that basis that a further review is not imminent unless the inflation rate changes significantly from current levels.

Possible inflationary effect on all ombudsman service awards

In practice ombudsman service awards are not made with reference to the award limit, but to other benchmarks. There is no reason to think that this will change.

Alternatives to increasing the award limit

The alternative proposed is that firms should be required to tell customers when they are in a position such that the award limit would apply if they complained to the ombudsman service about a particular firm, either at the time of purchase or subsequently. This is not in our view a workable alternative to increasing the award limit because in many cases the amount of redress a customer might be eligible for would not be obvious to a firm until a complaint is made. This is especially true of long-term products such as pensions and investments. In any case, where firms determine as part of their own handling of a complaint that redress should be paid, then there is no limit on the value of that redress. As we pointed out in CP10/21, firms should not be operating under the assumption that their liability when dealing with complaints is capped at the ombudsman service award limit.

2.7 We then asked:

> **Q2:** *Do you have any comment on our cost benefit analysis (CBA) in relation to this proposal? Do you have any analysis or evidence that supports, contradicts or otherwise relates to this CBA?*

2.8 We received 13 responses to this question, summarised as follows:

- firms currently employ external legal advisers when dealing with high-value cases at the ombudsman service, so the difference in handling costs for firms between the courts and the ombudsman service may not be as large as assumed. The use of such external advisers may increase in future, when the limit is increased;
- the proposed increase is regressive as the costs of redress will be passed on to all consumers, whereas most of the cases concerned will involve relatively wealthy consumers. The change will also be to the benefit of 'richer consumers' as they will be able to get redress at a lower cost;
- the increase will make no difference for some firms, as they already pay more than £100,000 where this would be fair redress;

- it is a clear benefit of the proposal that more consumers should be able to obtain fair redress at a lower cost than at present; and
- the very small number of cases does not justify the increase, and the number of cases would appear to have reduced since 2005, when the FSA published CP05/15.[15]

Our response

We have considered the additional information provided in relation to legal costs and the view that there may not always be a large disparity between firms' costs for ombudsman service cases and court cases of equivalent value (although if the case went to a court hearing, the costs would presumably be higher because of the fees charged by counsel to appear). It remains the case that the ombudsman service is a cheaper route for consumers.[16]

While it is true that consumers in general meet the costs of redress paid to those who bring a complaint to the ombudsman service, it is not necessarily the case that those with large amounts of possible redress at stake are wealthy. For example, high-value general insurance cases might be brought by individuals at any point on the income or wealth distribution. In any case, we are seeking to ensure fair treatment for all consumers.

We acknowledged in CP10/21 that the number of cases involving possible redress in excess of £100,000 is small. Our principal argument for an increase is not based on any change in the number of such cases over time, but on the fact that the degree of consumer protection afforded to consumers by the ombudsman service has declined in real terms.[17]

2.9 We asked a specific question about the likely impact of the increased award limit on professional indemnity insurance (PII) premiums:

> **Q3:** *Do you have any analysis or evidence to present in relation to how the costs of Professional Indemnity Insurance (PII) might change if the ombudsman service award limit is raised to £150,000?*

2.10 We received 21 responses to this question from a variety of firms, trade associations and individuals. Of the respondents, 11 were of the view that PII premiums might increase (although one of these said that they would only increase for those firms with a history of poor conduct), while 10 said they would probably not increase (and some of these respondents had discussed the issue with their insurers). More detailed comments received included:

15 CP05/15: *Review of compensation scheme and ombudsman service award limits and miscellaneous amendments to the Compensation sourcebook*, (December 2005).

16 CP10/21 para 2.5.

17 CP10/21 para 2.25.

- an insurer stated that premiums should not increase for the cover it sells to insurance intermediaries because of the change in the award limit. This is because it sets prices based on incurred costs rather than the level of the maximum award. This insurer also stated that its current practice is to reserve on the basis of the maximum possible cost of the claim, because complainants are entitled to reject an ombudsman service determination and pursue their complaint through the courts;
- some larger firms said that they did not expect an impact on their own premiums, with one stating that its excess on claims was above the proposed new limit, and another expressing the view that there may, however, be an impact on premiums for smaller firms;
- one respondent said that other factors, such as more intensive supervision by the FSA and increased emphasis on the importance of complaints handling, would have a greater effect on premiums than an increase in the award limit; and
- a trade association said that it had consulted PII providers, but had been unable to ascertain whether or not premiums would increase. One provider took the view that it currently experienced difficulties in determining premiums because of the inconsistency of the ombudsman service's 'fair and reasonable' basis for decisions. They felt this difficulty may be exacerbated when the award limit is higher, as the range of possible results will be increased. The trade association also stated that reporting limits (i.e. the level above which possible claims must be notified) and excess levels may also increase as a result of the increased award limit, although it was not clear why this might be the case.

Our response

On balance, we believe that the responses received do not point to an increase in PII premiums for firms as a result of the increase to the award limit. The most detailed response received on this question, from an insurer (as summarised above), made it clear that it does not price its policies on the basis of the level of the award limit, but on the basis of incurred costs. Given the very small number of cases where redress is in excess of the current limit, it remains our view that the total impact on firms is not likely to be significant.[18] Other responses expressed the view that premiums would be likely to increase, but did not present any evidence as to why this would be the case. Some respondents said that we should gather more evidence before taking a decision: our aim in including a specific question in the consultation paper was to give an opportunity to respondents to provide evidence that contradicted our arguments, and we have not seen any such evidence.

18 CP10/21, para.2.30.

3

Changes to complaints-handling requirements

Feedback and final policy

3.1 In CP10/21, we set out a number of proposed changes to our rules and guidance about complaints handling by firms covered by the compulsory jurisdiction. These proposals were made in response to the findings of our review of complaints handling in major banking groups, complaint file reviews, and lessons learnt from other supervisory work (e.g. our experience of looking at firms' handling of Payment Protection Insurance (PPI) complaints).

3.2 The proposed changes were to:

- abolish the two-stage process for complaints handling;
- provide detailed guidance on the procedures firms should have in place to take account of the ombudsman service's decisions and other guidance when resolving complaints;
- restate our guidance on the requirement on firms to undertake root cause analysis of the complaints they receive and take action as appropriate; and
- require firms to nominate a senior individual to have responsibility for the complaints-handling function within the firm.

3.3 Taken together, these proposals are intended to improve complaints handling across the financial services industry, with resulting improvements to consumer confidence.

Summary of responses to CP10/21

3.4 We asked:

> **Q4:** *Do you agree with our proposal to remove the two-stage process for complaints handling?*

3.5 We received 65 responses to this question, from a variety of firms (both FSA-regulated firms and others), trade associations, consumer representatives, official bodies, individuals, and the Financial Services Consumer Panel. Of the respondents, 37 (mainly firms and trade associations) did not support our proposal, while 28 respondents (mainly consumer representatives and individuals, but also some firms) did support our proposal.

3.6 The main reason for objecting to the removal of the two-stage process was that there would be an increase in referrals to the ombudsman service, which would lead to increased costs for firms and ultimately all consumers.

3.7 Some respondents said that our cost benefit analysis had underestimated the likely increase in referrals. Others said that since the evidence we had of poor use of the two-stage process related to banks and insurers, it was unfair to remove the process for other types of firms and/or for those banks and insurers who did not use the process poorly. Some of these respondents also suggested that enforcement action against those firms using the process poorly would be a better response. A number of respondents also said that the activities of some claims management companies meant that the removal of the two-stage process would exacerbate the problem of non-meritorious cases being referred to the ombudsman service.

3.8 A number of respondents argued that the two-stage process is beneficial to consumers, in that the firm can use the first stage to set out their understanding of the complaint, and the consumer can then come back to the firm with further information that may not have formed part of the original complaint. Firms said that this was especially helpful where complaints were about complex issues, or involved multiple parties.

3.9 Some respondents also said that their business model currently favours a two-stage approach to complaints handling, in that a third party will generally handle stage one of a complaint as part of arrangements to handle claims, with the customer then being able to take the complaint to the firm for a final response if they remain dissatisfied.

3.10 In support of our proposal, some respondents said that removing the two-stage process would bring clear benefits to consumers in terms of better complaints handling by firms and fairer treatment. One respondent's view was that the process itself was not consistent with Principle 6 (Customers' interests). Another respondent said that the standard of complaints handling was reflective of a firm's overall culture rather than being simply about rules and procedures, but that where complaints handling and culture were poor, it was clearly in consumers' interests that the two-stage process should be abolished, as this would allow consumers faster and easier access to the ombudsman service.

Our response:

We are implementing our proposal as set out in CP10/21.

Cost benefit analysis

We summarise responses and provide feedback on this issue under Q9 below.

Evidential basis for our proposals

As we set out in CP10/21, the evidence we have of poor use of the two-stage process relates mainly to banks and insurers. However, it remains our view that the process is inherently prone to misuse, although not all firms using the two-stage process do so in a way that leads to consumer detriment. We did not receive any responses that provided a good argument for retaining the two-stage process on the basis of any benefits for consumers. In fact, the feedback received supports our concerns that consumers do not pursue complaints after the first stage, partly because they remain unclear about their right to refer their complaint to the ombudsman service.

We do not regard enforcement action as a solution to the problems we have encountered with misuse of the two-stage process as: i) our evidence suggests that roughly half of large firms may be using it in ways that may lead to significant consumer detriment, which means that enforcement action is unlikely to be an efficient use of our resources; and ii) it is our view that the process is inherently prone to abuse. We also note that we have raised concerns about the misuse of the two-stage process in the past[19], but this does not appear to have produced the desired change in large firms' behaviour.

Claims management companies (CMCs)

Many firms hold concerns about how some CMCs may present complaints. In response we will issue a joint statement with the Claims Management Regulator, the ombudsman service and the FSCS shortly. We are clear that firms are required to handle complaints according to our DISP rules, whatever the source of the complaint. However, firms should also be clear that our complaints rules only apply in relation to a product or service that they have provided or failed to provide.[20]

Communication with customers as part of handling a complaint, and following a final response

As we said in CP10/21, it is not our intention that firms should be prohibited from communicating with customers in order to gather further information to respond properly to a complaint. It is also not our intention that customers should not be able to come back to a firm having received a final response, should they choose to do so.

19 For example, Dear CEO Letter, *Handling complaints about unauthorised overdraft charges*, (27 July 2007).
20 See PS10/12:*The assessment and redress of Payment Protection Insurance complaints.*

We therefore do not accept that the existence of a two-stage process helps consumers explain their complaint to firms. Following the abolition of the two-stage process, the onus will be on firms to investigate complaints properly, rather than it being incumbent on customers to come back to firms if they are dissatisfied. We have made an addition to our rules at DISP 1.4.1R to make it clear that, where necessary, firms should request more information from a complainant in order to handle a complaint properly.

Business models

It is not our view that the abolition of the two-stage process precludes business models where claims handling or other functions are outsourced to a third party, or where intermediaries handle such functions as part of contractual relationships with provider firms. However, where such a relationship includes complaints handling, firms will need to decide between devolving responsibility for issuing a final response to another firm or handling complaints themselves. (It may be that the option they choose will vary depending on the type of complaint).

3.11 We asked:

Q5: *Do you agree with our proposal for additional guidance on the processes that firms should have in place to take account of ombudsman service decisions and other relevant material?*

3.12 We received 64 responses to this question, from a variety of firms, trade associations, consumer representatives, the Financial Services Consumer Panel, and individuals. Of the respondents, 51 supported our proposed additional guidance, although some had reservations described in more detail below, with 11 respondents opposing it and two giving a response which was not clear.

3.13 Reservations included:

- a concern about the consistency of the ombudsman service's approach to considering complaints, and the implications of this for our guidance for firms to take account of ombudsman determinations;
- a concern that the ombudsman service should not become a rule-making or precedent-setting body;
- a view that the ombudsman service needed to do more to help firms, by making information more accessible and the reasons for determinations more transparent; and
- support for the application of the guidance only to ombudsman determinations, as proposed.

3.14 Reasons for opposing our proposed guidance included:

- a view from a number of respondents that the ombudsman service did not have a sufficiently good understanding of their particular business or product;
- a view that the ombudsman service's decisions were often unfair;
- a concern about the proportionality of the guidance for smaller firms; and
- one respondent expressed the view that this guidance should not be included in DISP, but should be published as separate guidance by the FSA, so as not to increase the length of the Handbook. This respondent noted that most firms do not have any complaints referred to the ombudsman service, and that the guidance was therefore irrelevant for them.

Our response

We are implementing our proposal as set out in CP10/21, effective 1 September 2011.

Because firms only see ombudsman determinations in their own cases, they have asked the ombudsman service to publish more about its normal approach to particular situations, based on decisions that it has made in past cases. In response to that the ombudsman service had, by November 2010, published content on its online technical resource covering more than 90% of its caseload. This helps firms, when considering complaints themselves, to judge what complaints the ombudsman is likely to uphold.

Our guidance supports the existing requirement set out in DISP 1.3.1R that firms must have effective procedures for handling complaints. It also supplements our guidance in DISP 1.4.2G that firms should take account of ombudsman service decisions and guidance in assessing a complaint. We believe that the guidance will help firms operate management processes so that relevant learning from ombudsman determinations and published material are identified and cascaded to complaints handlers.

The guidance states that firms should have procedures in place, taking into account the nature, scale and complexity of their business. It follows that we would not expect a small firm which handles few complaints to have elaborate or expensive systems and procedures in place to take account of ombudsman service decisions and guidance.

3.15 In relation to root cause analysis, we asked:

> **Q6:** *Do you agree with our proposals for additional guidance on root cause analysis and the processes that firms should have in place to undertake it?*

3.16 We received 62 responses to this question, from a variety of firms, trade associations, consumer representatives, and individuals. 54 respondents supported our proposed guidance and eight opposed it. However, of the respondents who supported the proposal, some raised reservations including:

- how firms should implement root cause analysis (draft DISP 1.3.3AG) in regard to non-complainants (draft DISP 1.3.6G);
- the extent to which the guidance was imposing a consumer redress scheme along the lines of s.404 of FSMA through the 'back door';
- that it was disproportionate to introduce this guidance for all complaints, when it was originally developed to guide firms in handling complaints about payment protection insurance (PPI); and
- whether it was practical for firms to operate in this way in the absence of close liaison with the FSA.

3.17 A number of respondents expressed support for the proposed guidance provided that it was implemented proportionately for small firms.

3.18 Those respondents that opposed our proposed guidance did so mainly for the reasons noted above and because they believed that firms would never choose to provide redress to non-complainants without being forced to do so by the FSA. Some respondents also noted that firms' relationships with their professional indemnity insurers would hamper the effective implementation of our proposed guidance, since insurers would not support firms in performing root cause analysis that might then lead to increased redress payments. One respondent said that our proposed guidance was merely a statement of existing practice, and therefore unnecessary; another respondent said that since the proposed guidance on non-complainants did not actually relate to complaints, it should not be located in DISP, but should be in the SYSC part of the Handbook.

Our response

We are implementing our proposals as set out in CP10/21, effective 1 September 2011.

As we said in CP10/21, it is our view that our proposed guidance in relation to non-complainants is a restatement of existing guidance (DISP 1.3.5G). The

guidance makes clear that we would expect any redress or remediation to be appropriate and proportionate given the circumstances of the particular case.

Issues in relation to the cost benefit analysis of our proposals are discussed below under Q9.

3.19 Our next question was:

> **Q7:** *Do you agree with our proposals on senior management responsibility?*

3.20 We received 64 responses to this question, from a variety of firms, trade associations, consumer representatives, individuals and the Financial Services Consumer Panel. Of these, 59 respondents supported the principle of our proposal (though some had reservations about the detail, discussed below) and five opposed it.

3.21 Some respondents said that they supported the idea of a senior individual being responsible for complaints handling, but asked whether we might extend the proposed definition beyond individuals holding a 'governing function' to those holding a 'significant influence function', as defined in SUP 10.4.5R. Other respondents asked for more clarity as to how the requirement would work in group structures, while others said that we should be mindful of the difficulties faced by small firms, where a single individual may already perform a number of functions.

3.22 Other respondents asked for clarification as to what action the FSA might take against an individual who did not carry out his duties in relation to complaints handling in a satisfactory way. Some respondents said that our proposals did not go far enough, and that firms should be required to notify the FSA and the ombudsman service of the name of the responsible person, and publish this information on their website.

3.23 One respondent questioned whether the cost benefit analysis of this proposal was realistic in stating that the average time spent by the relevant individual on oversight of complaints handling would be two hours per month.

3.24 Those respondents who opposed our proposal did so because:

- most firms are already compliant with it, and it was therefore an unnecessary and disproportionate requirement;
- the required level was too senior;
- the evidence of benefits was not sufficient; and
- going beyond the requirements of MIFID and making an Article IV notification to the European Commission in order to impose this additional requirement would be excessive.

Our response

We are implementing our proposal as set out in CP10/21, effective 1 September 2011.

The existence of a single point of contact at the firm for complaints handling will help us in our supervisory activity. We also believe that requiring the individual to hold a governing function, as opposed to another type of controlled function, will mean that they will have the necessary degree of influence within the firm to, if required:

- ensure that sufficient resources are allocated to the complaints-handling function; and
- exert pressure on other parts of the business to take appropriate action where failures elsewhere are leading to complaints.

We are not convinced that individuals holding a significant influence function in general, or, more specifically CF10 (compliance oversight function) or CF29 (significant management function), will always be able to exert this kind of influence. Our complaints-handling review in major banking groups found that where a senior individual was responsible for complaints handling, then the result for consumers was typically better.

The rule does not require the individual concerned to be involved in the day-to-day management of complaints handling (although this may be the case in practice in small firms). However, as the rule states, the individual should be responsible for oversight of the firm's compliance with DISP. This may include:

- Reviewing the firm's management information (MI) in relation to complaints and assessing whether it is fit for purpose. Specifically, the MI should be robust and detailed enough to allow meaningful root cause analysis to be carried out, in accordance with the requirements of our rules,[21] and to enable the firm to be sure that it is treating its customers fairly.
- Reviewing MI and assessing whether appropriate actions are taken in response to the results of root cause analysis.[22]

Our proposed rule allows firms in groups some flexibility in deciding who to appoint. Provided that the individual holds a governing function in the firm, or a firm within the same group, then they may be appointed to this role. This means that where a group has a shared complaints-handling function, one individual can be responsible for complaints handling for all the firms in the group. But where firms in a group have their own separate complaints-handling functions, then responsibility can be held by a suitably senior person in each of those firms. It may be that in some groups a combination of these scenarios will exist.

21 DISP 1.3.3R and DISP 1.3.3BG.
22 DISP 1.3.3R and DISP 1.3.3BG.

We appreciate that in small firms a single individual may be expected to perform a number of functions. However, we do not consider that our proposal will lead to an unacceptable burden on small firms, since it seems likely that in these firms individuals holding a governing function are already involved in oversight of complaints handling or in some cases in actually responding to complaints.

We are not making an explicit link between the role an individual performs in overseeing a firm's complaints handling and that person's controlled function, and by extension that person's compliance with our Statements of Principle for Approved Persons.[23] It is therefore not our intention at the present time that an individual would be subject to enforcement action for a failure to provide adequate oversight of a firm's compliance with DISP. This does not change our requirement on firms themselves to treat customers fairly and comply with DISP.

We are not requiring firms to notify the FSA or the ombudsman service of the name of the responsible person, since to maintain a list of these individuals would involve significant costs for us. But firms should be able to tell us, or the ombudsman service, the name of the individual on request.[24]

We do not believe that a MIFID Article IV notification is excessive, given the important objective of improving complaints handling and increasing confidence in financial services more generally.

The cost benefit analysis of our proposals is discussed under Q9 below.

3.25 We asked:

Q8: *Do you have any comments on the proposed implementation dates for these proposals?*

3.26 A number of respondents agreed with the proposed timescale for the implementation of our proposals. However, some respondents, particularly consumer representatives, said that the timescale was too generous in relation to the abolition of the two-stage process in particular. But others also said that the proposed timescale was not long enough for abolishing the two-stage process, and that changes in relation to other proposals would take longer than proposed (for example, three months for root cause analysis).

Our response

We are implementing our proposals on the timescale proposed in CP10/21, with the exception of those proposals which were to be made effective on 1 August 2011. As our final rules are being published slightly later than

23 APER 2.
24 As per new guidance DISP 1.3.8G.

anticipated, we have decided to make these rules effective from 1 September 2011, which allows firms three months to implement them, as originally proposed.

While some respondents said that our proposed timescales are too short, other respondents, including from industry, agreed that they are appropriate. We have not received any evidence that implementation on these timescales will cause significant difficulties for firms. The abolition of the two-stage process, which may involve systems changes for those firms that currently use it, will take effect in July 2012 – more than a year after publication of our final rules.

3.27 Lastly, we asked:

> **Q9:** *Do you have any comment on our cost benefit analysis (CBA) in relation to these proposals? Do you have any analysis or evidence that supports, contradicts or otherwise relates to this CBA?*

3.28 We received 24 responses to this question, from a combination of firms, trade associations, and consumer representatives. As noted above, some responses to earlier questions also contained comments on costs and benefits, and we address all of these below.

3.29 The most common response received to this question was that the CBA had underestimated the likely increase in complaints referred to the ombudsman service as a result of the abolition of the two-stage process. Although a number of respondents made this comment, very few provided an alternative estimate. Of those that did, the estimates were between 20-30%, compared with our CBA estimate of 5%. However, follow-up discussions with the respondents did not identify a robust source for these estimates.

3.30 Some respondents also questioned our assumption that any increase would be of a short-term nature, with some suggesting that it would be permanent.

3.31 A small number of respondents also commented on the change in administrative costs that firms would face as a result of the abolition of the two-stage process. Again, although firms commented that the costs in the CBA appeared to be underestimated, very few provided a figure. One large firm stated that, in contrast with our estimate of additional ongoing costs for large firms of £500,000 to £1m per annum, their own costs would be closer to £2m. However, follow-up discussions with this firm showed that this estimate included a significant amount of one-off costs.

3.32 Some respondents noted that in our CBA the benefits of the policy appeared to be outweighed by the costs, in that the redress paid to consumers as a result of increased referrals to the ombudsman service was less than the administrative costs to firms of handling these complaints.

3.33 A trade association representing smaller firms said that there should not be any significant increase in costs for its members as a result of our proposed changes. A consumer representative organisation commented that we appeared not to have taken account of the benefits to consumers of what may be on average a quicker complaints-handling process in future, in terms of time saved communicating with firms.

3.34 Some respondents commented that some firms may pay redress to consumers even where complaints are non-meritorious, in order to avoid the costs of a referral to the ombudsman service, and that this practice would probably become more prevalent following the abolition of the two-stage process.

3.35 One respondent stated that improvements in complaints handling were more likely to arise because of factors other than the proposals consulted on, such as more intensive supervision by the FSA and increased publicity relating to complaints data publication.

Our response

We have updated the CBA of our proposals as set out in more detail below.

Increase in referrals to the ombudsman service

We recognise that any estimates (whether our own or those provided by firms) of any increased referrals to the ombudsman service are subject to significant uncertainty. Our own estimate, of a 5% increase, was based on a comparison between firms using the two-stage process and those not using it currently: the latter group typically has 5% more referrals to the ombudsman service. But we recognise that our analysis is based on a small sample and no such comparison will ever be perfect.

Recognising this uncertainty, we have updated our CBA to include costs and redress resulting from a range of possible additional future referrals of between 5% and 30%. The results of this are set out below.

We still consider that such an increase will not be permanent, provided that firms make improvements to complaints handling and other processes (for example, sales processes and product design) as a result of our proposals, in particular, in relation to senior management oversight and root cause analysis.

We have seen good examples of firms making significant improvements to complaints handling to the benefit of consumers, so it is clear that this is possible where firms decide to make it a priority. Our proposals, together with other actions such as more intensive supervision and complaints data publication, will increase the incentive for firms to take action in this area.

Increase in other costs to firms

As noted above, we received some responses which seemed to indicate that we had underestimated other costs to firms (staff training, systems changes,

etc) as a result of the abolition of the two-stage process. But following further discussion with these respondents we have concluded that our original estimates are not in fact out of line with those of firms, because the estimates provided in responses tended to include the costs of increased referrals to the ombudsman or one-off costs. We have not, therefore, revised this part of our CBA.

The balance of costs to firms and redress payments to consumers

Our CBA made clear that our estimate of the administrative costs to firms of an increase in referrals to the ombudsman service exceeded our estimate of the additional redress that would be paid to consumers. However, we have since received data from the ombudsman service that indicates that it is likely that our CBA significantly underestimated the redress that would be paid. The impact of this new information on the CBA is set out below.

Benefits to consumers of time saved

It is likely that some customers who have had to complain in two stages previously may save some time under the new rules, and that this will – together with the other impacts of the new rules such as increased redress – contribute to increased consumer confidence in complaints handling and financial services in general.

Redress payments for non-meritorious complaints

CP10/21 acknowledged that firms might make payments to complainants, even where they do not accept that a complaint has merit, in order to avoid the possibility of a referral to the ombudsman service and the costs involved in this. However, we did not include a possible increase in such payments in our CBA because we had not received clear evidence on the extent of such a practice.[25]

Subsequently, we have obtained some data from one trade association and also had some further discussions with some firms. This suggests that although the practice does exist, it is unlikely to be prevalent. We also note that some firms have told us that they deliberately do not make a payment to a consumer in order to avoid the costs of an ombudsman referral, as this would encourage consumers to attempt to gain money from firms based on the threat of ombudsman referrals.

We have not received any convincing arguments as to why the abolition of the two-stage process will lead to an increase in such payments, or in consumer attempts to obtain them.

Costs of redress to non-complainants

As noted under Q6 above, some respondents questioned why we had not provided an estimate of the possible costs to firms of providing redress to non-complainants, as per our proposed guidance. We did refer to the amount of redress that might be paid to non-complainants in cases of PPI mis-selling, but

25 CP10/21 para 3.57.

we stated that this was not necessarily indicative of the amount that might be involved in future cases. Because there is no way of reliably predicting the scale of future cases of widespread detriment, we are unable to provide any meaningful estimate of costs or benefits for this particular proposal.

Time allocated to complaints handling by the responsible senior individual

As noted under Q7 above, one respondent questioned whether two hours per month was enough time to provide effective oversight of complaints handling. As we made clear in CP10/21, this was our estimate of the average figure for all firms: many firms receive very few or no complaints, so the responsible individual will in practice not have to dedicate much time to the role. As we said in CP10/21, the two hour figure is not to be taken as the FSA view of the time required at all firms. Where firms have significant numbers of complaints, we would anticipate that the individual may need to spend more time carrying out the role. We also noted that 90% of firms that responded to our survey already had a single individual responsible for complaints handling, and roughly 70% of these individuals held a director role or equivalent.[26] We have not received any evidence that shows we have underestimated the costs of this proposal.

Revised cost benefit analysis

3.36 In the following section we provide the updated results of the cost benefit analysis in response to comments received and new data becoming available from the ombudsman service.

Benefits

3.37 In CP10/21, we noted that the overall benefits of abolishing the two-stage process cannot be meaningfully quantified. Also, they cannot be analysed separately from the benefits of the other proposals, namely new guidance on root cause analysis and taking account of ombudsman decisions and a new rule on senior management oversight.

3.38 Overall, the changes to our rules aim to rectify a situation where the market and existing regulation have not provided the appropriate level of protection to all consumers, as evidenced by widespread poor practice among large firms.[27] The aim of these proposals is to increase consumer confidence.

26 CP10/21, para.3.63.
27 CP10/21, para.3.45

3.39 The perception of a fairer process by consumers has been shown to lead to greater consumer satisfaction and in turn increased market participation and customer loyalty.[28] Conversely, poor complaints handling on a large scale can lead to poor publicity and a general distrust of financial services firms, reducing consumer confidence in the sector more generally.

3.40 While it is possible to provide an estimate of the likely increase in redress as a result of the policy change (see below), it is not possible to put a value on the likely impact on market confidence as a result of better complaints handling in general, or redress in particular. In its study on the consumer benefits[29] of the OFT's work, the OFT suggests that the benefits include "creating a level playing field, more satisfied customers and increased confidence in the sector". In addition, if inefficient competition drives down the standards of customer service for the entire sector, sector-wide reputational effects can be amplified. That in turn can lead to suboptimal market participation by consumers and reduced revenues for the sector overall.[30]

Costs

3.41 As noted above, we have received new information from the ombudsman service in relation to redress paid to consumers as a result of ombudsman service decisions. We have also decided, based on feedback received, to provide a range of costs for different increases in referrals to the ombudsman service as a result of the abolition of the two-stage complaints-handling process.

3.42 The updated administrative costs of our proposals to firms are estimated at £24m-£82m a year, as follows:

- Additional ongoing administrative costs to firms as a result of the abolition of the two-stage process. Estimated to be between £17m-£42m in aggregate.[31] No change from CP10/21.

28 Schneider, B. and David E. Bowen (1999), *Understanding customer delight and outrage*, Sloan Management Review, MIT, October; Maxham, James III and Richard G. Netemeyer (2002), *Modelling customer perceptions of complaint handling over time: the effects of perceived justice on satisfaction and intent*. Journal of Retailing 78, pp. 239-252.

29 OFT (2010), Positive Impact 09/10, para. 3.11.

30 Llewellyn, David (1999), *The Economic Rationale for Financial Regulation*, FSA, Occasional Paper No.1. The paper refers to the lemons problem: where potential consumers cannot tell a good from a bad product they might not buy at all. As a result, consumer protection, including better complaints handling, can reduce the cost of the risk to a consumer of buying a poor or inappropriate product. This in turn, can increase consumer participation in financial markets. See also: OECD Recommendation on Consumer Dispute Resolution and Redress (2007).

31 One-off costs estimated at £0-£700,000 per firm, depending on firm size. We were not able to estimate an aggregate figure due to the low number of survey responses to this question.

- Additional administrative costs to firms, as a result of an increase in referrals to the ombudsman service:[32]

Increase in referrals	5%	10%	20%	30%
Administrative costs to firms[32]	£6.7m	£13.3m	£26.6m	£39.9m

3.44 We also estimate additional redress paid, which is a transfer from firms to consumers[33], at £66m-£137m a year:

- We estimated that additional redress through firms' internal processes was likely to amount to £57m-£85m a year, assuming a 10-15% increase in the proportion of complaints upheld by firms. This estimate has also not changed.
- Additional redress as a result of an increase in referrals to the ombudsman service:[34]

Increase in referrals	5%	10%	20%	30%
Redress to consumers[34]	£8.7m	£17.3m	£34.6m	£52.0m

3.45 It is our view that the same benefits for consumers could not be obtained at a lower cost by a process of ongoing review and enforcement action by us, given the evidence we have of widespread problems with firms' use of the two-stage process. An approach of increased enforcement action would be cost-effective only if the problems we have observed were not widespread.

3.46 There are no updates to any of the other costs set out in CP10/21.

32 £500 ombudsman service fee plus £300 estimated average firm-side administration cost of dealing with the complaint while at the ombudsman service.

33 And this cost is likely to be passed on to the average consumer.

34 Based on average redress per complaint at the ombudsman service of around £1,000, compared with an assumption in CP10/21 of £400 per complaint.

4

Other changes to DISP

4.1 In CP10/21 we proposed some minor changes to DISP, as follows:

- in response to feedback received to DP10/1, we proposed to provide more information about the definition of a complaint, and the requirements for a final response, within the rules, whereas they are currently found in the Glossary;
- clarification that DISP does not apply to complaints about the administration of an occupational pension scheme, as this is not a regulated activity, and that such complaints should be referred to the Pensions Advisory Service rather than the Financial Ombudsman Service; and
- changes to make clear that information about a firm's complaints-handling procedures must be provided free of charge, and that the procedures themselves must be free of charge for complainants. These changes were required as part of the implementation of the UCITS IV Directive, and reflect existing practice in the UK.

4.2 We asked:

> **Q10:** *Do you agree with the proposed changes to the presentation of the DISP rules?*
>
> **Q11:** *Do you agree with the proposed rules to clarify that complaints can be made free of charge, and that summary details about firms' complaints procedures should be made available free of charge?*

4.3 We received 41 responses to question 10 and 49 responses to question 11 from a variety of firms, consumer representatives, trade associations, the Financial Services Consumer Panel, and individuals. Most respondents supported our proposed changes, but some significant objections were raised and there were some issues that require clarification.

4.4 A small number of respondents said that they objected to our proposed inclusion of guidance on what constitutes a complaint, and in particular to our use of the phrase 'in general' in the draft guidance.

4.5 One respondent asked if we could clarify the situation in relation to the sales and marketing of occupational pension schemes, and where consumers should make complaints about such activities.

4.6 While accepting that our proposed changes to reflect the UCITS IV Directive are in line with the status quo in the UK, some respondents asked whether we would consider adding guidance to DISP to reflect our view that a free complaints-handling process does not require the provision of a freephone number or postage-paid envelopes. One respondent accepted the proposal, provided that there was no requirement to actively communicate the fact that complaints handling and information about a firm's complaints-handling process are free.

4.7 Some respondents commented that firms should be able to charge a fee for 'frivolous complaints', or complaints made using claims management companies (CMCs). One respondent said that more should be done to make clear that the ombudsman service is free for eligible complainants, whereas the use of CMCs is not.

Our response

We are implementing our proposals as set out in CP10/21, with the exception of proposed guidance on the definition of a complaint. We will implement those proposals relating to the requirements of UCITS IV from 1 July 2011, and the other proposals from 1 September 2011.

Guidance on what constitutes a complaint

We examined our proposal again, in the light of feedback received, and could find no easy way of redrafting the guidance to remove the term 'in general'. We are therefore reverting to the current position, which is that complaint is a defined term in the Glossary, but guidance on the definition is not contained in DISP. The definition of 'final response' is removed from the Glossary and added to DISP as proposed.

Occupational pension schemes

Complaints about the administration of an occupational pension scheme should be referred to the Pensions Advisory Service. Complaints about the sales and marketing of such schemes should be referred to the ombudsman service. We do not propose to make any further addition to the guidance since it is intended to set out what is not covered by the DISP sourcebook, not what is.

Complaints handling and information about complaints-handling procedures

We do not propose to include detail in DISP in relation to the provision of freephone numbers and prepaid envelopes. As stated in CP10/21, we do not require firms to provide these things, although they may choose to do so for commercial reasons. It is the intention of our rules that complaints handling itself and information about complaints handling should be free of charge. There is also no requirement to amend any published material to make clear that complaints handling is free of charge (although, again, firms may choose to do so if they think their customers would benefit – please see below, in relation to CMCs).

Charging a fee for 'frivolous complaints' or complaints referred by CMCs

We regard free of charge complaints handling to be an important and established part of consumer protection.

Communications to consumers regarding CMCs

We will issue a joint statement with the Claims Management Regulator, the ombudsman service and the FSCS shortly. This will make clear that CMCs may charge a fee for handling the referral of a complaint to the ombudsman service and the issues consumers should consider when choosing to use a CMC.

5

Amendments in the consumer credit and voluntary jurisdictions

5.1 Previous chapters have set out how the FSA has decided to make changes to DISP, to apply to firms in the ombudsman service's compulsory jurisdiction. In CP10/21 the ombudsman service set out where it proposed to apply these DISP changes to licensees in its consumer credit jurisdiction and to participants in its voluntary jurisdiction, and where it proposed not to do so.

5.2 In order to maintain a consistent business model, the ombudsman service proposed that the following DISP changes be applied equally in the consumer credit and voluntary jurisdictions:

- increasing the award limit from £100,000 to £150,000 (DISP 3.7.4R and TP28);
- abolishing the two-stage process for complaints handling (DISP 1.6.2R, 1.6.3G, 1.6.5R, 1.6.6R, 1.6.6AG and 1.6.7G);
- highlighting the requirement to take account of the ombudsman service's decisions and other material when resolving complaints (DISP 1.3.2AG and 1.4.2G);
- improving the clarity of DISP following feedback received to DP10/1 (Glossary definition of 'final response' and DISP 1.1.2AG); and
- clarifying that complaints to financial businesses covered by all three jurisdictions can be made free of charge (DISP 1.2.1R and 1.3.1AR).

5.3 The ombudsman service proposed that the following DISP changes should not be applied in the consumer credit and voluntary jurisdictions, as the changes would build on the FSA's systems and controls rules for firms and could be disproportionate given that only 2% of the service's caseload comes from businesses in these jurisdictions:

- highlighting the requirement to undertake root cause analysis of complaints and take action as appropriate (DISP 1.3.3BG, 1.3.5G, 1.3.6G and 1.9.2G); and
- introducing a requirement to nominate a senior individual to be responsible for the complaints-handling function (DISP 1.3.7R and 1.3.8G).

5.4 The ombudsman service also proposed that the following DISP changes should not be applied in the consumer credit and voluntary jurisdictions, as the existing provisions being changed applied only to firms in the compulsory jurisdiction:

- changes to the complaints reporting rules consequential to the abolition of the two-stage process (DISP 1.10.3G, 1.10.7R, 1.10.8G, 1 Annex 1R and TP29);
- root cause analysis in relation to MiFID business (DISP 1.3.4G); and
- guidance to improve the clarity of DISP rules (DISP 1.1.9G and 1.1.9AG).

5.5 The ombudsman service proposed that the DISP changes in the consumer credit and voluntary jurisdictions should take effect at the same time as the FSA proposed in the compulsory jurisdiction.

5.6 We asked:

> **Q13:** *Do you agree with the ombudsman service's proposals for applying the DISP changes in the consumer credit and voluntary jurisdictions?*

5.7 Of those who responded on this question, the vast majority agreed with the ombudsman service's proposals. However, one trade association, two consumer organisations and one public body thought that the DISP changes referred to in paragraph 5.3 (guidance on root cause analysis and requirement to nominate a senior individual) should apply in the consumer credit and voluntary jurisdictions. Their view was that similar complaints-handling issues could arise in both those jurisdictions and in the compulsory jurisdiction, and so the same standards should apply.

Our response

The ombudsman service is implementing its proposals as consulted upon in CP10/21, with the exception of the proposed guidance in DISP 1.1.2AG (where it is following the FSA's decision not to enact this).

In CP10/21 the ombudsman service noted that applying the DISP changes outlined in paragraph 5.3 to around 100,000 consumer credit licensees and voluntary jurisdiction participants could be disproportionate, given that 98% of the service's caseload comes from around 21,000 firms covered by the compulsory jurisdiction. Respondents to the consultation have not provided any evidence to show that applying these changes would be proportionate.

6

Identity theft and mistaken identity: consultation on a change to the definition of 'eligible complainant'

Feedback

6.1 In CP 10/21 we set out circumstances where some people may be experiencing detriment because of identity theft or mistaken identity and are unable to complain to the ombudsman service.

6.2 Our ability to ascertain the size of the problem is hampered because firms are only required to record eligible complaints. And because these complaints are ineligible, individuals do not have referral rights to the ombudsman service, meaning it is not in a position to record the number of potential complainants.

6.3 We asked:

> **Q12:** *Do you have any evidence of the number of persons suffering detriment (and the size of the detriment) due to identity theft or mistaken identity, who are unable to complain?*

6.4 We received nine responses to this question, the majority of which came from consumer groups and trade associations. No one provided us with the information we had asked for, but some gave anecdotal evidence.

6.5 Two respondents and the Financial Services Consumer Panel supported our investigation into this issue.

6.6 The Citizens Advice Bureau provided anecdotal evidence from cases they had seen where people had been pursued for debts they did not owe. The victims were both male and female, were aged between 23 and 79 years, and were pursued for debts ranging from £205 to £58,000.

6.7 One firm stated that they would invoke their complaints-handling process for any expression of dissatisfaction, regardless of whether the complainant was strictly eligible.

6.8 One respondent estimated that they receive around 10 complaints a year where identity theft or mistaken identity has led to an individual being pursued to pay arrears relating to a loan they did not take out. This had led them to believe that the problem is not widespread.

6.9 The OFT responded that they were aware that mis-tracing is a widespread problem and that approximately 20% of the complaints they received last year about debt collecting related to disputed debts. The OFT noted that, while victims of identity theft and mistaken identity may bring a complaint to the ombudsman service if they are pursued by a debt collector for a debt owed under a regulated consumer credit agreement or a regulated consumer hire agreement, victims cannot refer a complaint to the ombudsman service if they are pursued by a debt-owning business for the same types of debts. They stated that it is inequitable for a situation to exist where two would-be complainants are being caused distress and inconvenience by the same misconduct – but only one is eligible to raise a complaint with the ombudsman service because of the type of firm they are being pursued by. They suggested an amendment to the definition of eligible complainant.

6.10 Lastly, one respondent provided anecdotal evidence about consumers where identity theft or mistaken identity has led to them obtaining a (wrongly) impaired credit rating. This was because the original debt-owning business had passed adverse information about the consumer to a credit reference agency, potentially leading to impaired, or less affordable, access to borrowing and financial products.

Our response

We received no real evidence to indicate the scale of the problem of victims of identity theft or mistaken identity being unable to complain to the ombudsman service.[35] However, we agree with the OFT that the current situation is inequitable for consumers. On the basis of addressing this inequity we are proposing to amend the scope of eligible complainant. Further details are set out later in this chapter.

35 However, a recent court case illustrates the kind of problem faced by individuals in this position. See Goff v Financial Ombudsman Service [2011] EWHC 1112 (Admin).

We recognise the potential detriment caused by inaccurate information being placed on a consumer's credit record. Consumers can already complain to the ombudsman service about information held by a credit reference agency licensed by the OFT. But they cannot complain about the underlying business that provided that information. We have considered extending the jurisdiction of the ombudsman service to address this, but it will not always be apparent who has provided the inaccurate information. We are also conscious that it is not only financial services firms that contribute to a consumer's credit record, but also, for example, utility companies and local authorities. We have not, therefore, taken forward proposals in this area.

Consultation

6.11 This is a joint consultation with the ombudsman service, as the businesses likely to be affected by the proposed amendment are both FSA-authorised firms and consumer credit licensees and so are covered by the compulsory jurisdiction and by the consumer credit and voluntary jurisdictions.

6.12 As set out in our response above, we consider it inequitable that a consumer who is wrongly pursued by a debt collector can complain to the ombudsman service, whereas a consumer who is wrongly pursued by a debt-owning business cannot complain to the ombudsman service about the actions taken by the firm in seeking to recover payment.

6.13 This is because where a business employs a debt collector, covered by the Consumer Credit Act 1974, to recover a payment under a regulated consumer credit agreement or a regulated consumer hire agreement, the person pursued for the debt is an eligible complainant according to our rules.[36]

6.14 However, where the business is seeking to recover its own debt under these agreements, the person is ineligible to complain to the ombudsman service. This is because the Consumer Credit Act excludes from its definition of debt-collecting any steps taken by the creditor or owner to recover its own debt.

6.15 In addition, businesses need only apply our complaints-handling rules (DISP) to complaints from eligible complainants. Therefore, a debt-owning business does not have to deal with a complaint in accordance with DISP if it is made by a consumer who was never a customer (or potential customer) of the business and is wrongly pursued as the consumer is not an eligible complainant.

36 DISP 2.7.6 R.

6.16 This constitutes a gap in the regulatory policy on complaints handling. To address it, we propose to amend the definition of eligible complainant in DISP 2.7.6 R to include consumers who are wrongly pursued for a debt they did not effect by a debt-owning business.

6.17 We do not intend to extend the scope of the eligible complainant definition to include consumers who are wrongly pursued for debts in respect of regulated mortgage contracts. This problem was not addressed by respondents to our initial consultation and we have no evidence to support taking it forward.

6.18 We would welcome any feedback on whether our proposed rule is drafted effectively in order to address the issues identified above, and – in particular – whether it unnecessarily extends or restricts the scope of eligible complainant given our stated policy intention.

Q1: Do you agree that we amend the definition of 'eligible complainant' (as set out in Appendix 2) to allow consumers who are wrongly pursued for a debt by a debt owning firm to complain to the ombudsman service?

Cost benefit analysis

6.19 There are two groups of debt-owning businesses this amendment will affect: FSA-authorised firms who pursue their own debt under regulated consumer credit agreements and regulated consumer hire agreements (referred to below as 'authorised original creditor firms') and consumer credit licensees who also pursue their own debt and who buy debt ('debt purchase firms'). This cost benefit analysis does not include the impact on consumer credit licensees which are not also FSA-authorised firms because the rules in this respect will be made by the ombudsman service.

6.20 In order to assess the likely magnitude of the effect of the amendment on both consumers and authorised original creditor firms we have tried to obtain an estimate of the relative proportion of debt collected by authorised original creditor firms. Following discussions with industry we found that such estimates are not readily available. However, we have estimated the costs and benefits of our proposal based on a high level estimate of the percentage of debt collected by authorised original creditor firms ranging from 10% to 50% of total outstanding debt. This is based on our understanding of how the debt recovery process typically works[37], and we would welcome any evidence which provides a more precise estimate of this proportion.

37 There are traditionally several stages in the debt recovery process. Firms first make attempts to collect their debt in-house before using a series of debt collection agencies. This is referred to as primary, secondary and if necessary tertiary placement. Debt may then be sold on, usually after one or two placements. The vast majority of financial services firms involved in consumer credit use an external debt collection agency or sell their debt to a debt purchaser, but not before having made attempts to collect it in-house first.

Benefits

6.21 Our proposed amendment to the definition of eligible complainant will result in complaints about the actions of authorised original creditor firms in seeking to recover payment from consumers who are not the rightful debtor being considered by the ombudsman service. In addition, these complaints will now fall within the scope of DISP. To the extent that they are not already handled in accordance with DISP, this will improve standards of complaint handling in identity theft and mistaken identity related cases.

6.22 Those individuals who are chased for a debt which they do not owe will benefit from additional redress from authorised original creditor firms (as a result of improved complaints handling) and the ombudsman service (as a result of these complaints now falling within the ombudsman service jurisdiction). We are unable to estimate the amount of additional redress that will be paid to consumers as a result of improved complaint handling at the firm level as we are unaware of how these firms currently deal with such complaints. One respondent to the original consultation stated that these complaints are dealt with in the same way as complaints from eligible complainants, however, we are unaware of the approach taken across the industry.

6.23 Given the lack of data we are only able to provide a relatively wide range of likely additional redress to consumers as a result of additional complaints going to the ombudsman service. This range, from £7,000 to £62,000[38], is based on the assumption that the average redress that will be achieved through the ombudsman service in relation to complaints about original creditor firms is the same as average redress currently achieved through the ombudsman service in relation to complaints about debt collectors, which is £116.

6.24 We also anticipate that our proposed amendment will mean consumers no longer feel they have no other option but to pay a debt they do not owe to stop the firm from chasing them.[39]

6.25 Providing consumers from whom firms have wrongfully sought to recover payment with access to prompt and effective redress when things go wrong will aid in meeting our statutory objective of consumer protection and will contribute to improved consumer confidence in financial services.

38 This figure was calculated by multiplying the number of complaints about original creditor firms that are estimated will be upheld by the ombudsman service with the average amount of redress we expect to be awarded by the ombudsman in these cases (£116). The number of complaints about original creditor firms that it is estimated will be upheld by the ombudsman service ranges from 60 to 540. This assumes that the ombudsman service uphold rate of 40% for complaints about debt collectors also applies to original creditor firms. It also assumes that the proportion of complaints handled by original creditor firms ranges between 10% and 50% of the total (with between 45% and 25% being collected by debt collectors, and the same proportion by debt purchasers).

39 We have received anecdotal evidence of this from the Citizens Advice Bureau. It should be noted that consumers who are wrongly pursued for a debt they do not owe can currently complain to the Information Commissioner's Office (ICO) although the ICO can only give directions to firms and cannot provide redress to consumers.

Costs

6.26 As set out above, we have been unable to quantify the costs to authorised original creditor firms of increased redress paid to consumers. In addition to the costs of redress, the amendment to the definition of eligible complainant may also have one-off and ongoing administrative costs to firms associated with having to comply with DISP with respect to complaints about their actions in seeking to recover payment, and having these complaints considered by the ombudsman.

6.27 We anticipate the one-off and ongoing administrative costs to these firms to be less than minimal for the reasons set out below.

6.28 Original creditor firms already have to comply with DISP when dealing with complaints from eligible complainants, and hence should already have DISP compliant systems and controls in place. As a result we do not anticipate that there will be higher than minimal one-off costs in complying with our rules. Similarly, we expect that the ongoing administrative costs to firms of handling the complaints of a marginal additional number of complainants in accordance with DISP will be negligible.

6.29 The ongoing administrative costs resulting from additional complaints which can now be referred to the ombudsman service are estimated to range between £120,000 and £1m across the industry in total.[40] This includes the costs of handling both meritorious and non-meritorious complaints.

6.30 Firms may recover this cost by increasing the price they charge all consumers for credit. We think that such an effect is unlikely to be significant given that the overall anticipated rise in costs to firms is expected to be small.

6.31 Based on the analysis above, we consider that extending the definition of eligible complainant as proposed is likely to be net beneficial.

Q2: Do you have any comment on our cost benefit analysis (CBA) in relation to this proposal? Do you have any analysis or evidence that supports, contradicts or otherwise relates to this CBA?

40 This figure was calculated by multiplying the ombudsman case fee (£500) plus a weighted average cost to the firm of handling a complaint that is with the ombudsman (£300) by the estimated number of complaints about original creditor firms that we expect will be referred to the ombudsman which ranges from 150 to 1350 as set out above.

Annex 1:
Compatibility statement

Introduction

1. We do not consider that we need to make any significant changes to the information contained in the compatibility statement included in CP10/21 with respect to the proposals in that CP, which are made final in this document. In view of the comments received and the further information obtained, we have updated the cost benefit analysis in Chapter 3, but it is still our view that the benefits of the proposals are proportionate to the costs and that our proposals are the most appropriate way of meeting our statutory objectives.

2. The remainder of this annex explains our reasons for concluding that the proposal and draft rule in this Consultation Paper (CP) are compatible with our general duties under section 2 of the Financial Services and Markets Act 2000 (FSMA) and with the regulatory objectives set out in sections 3 to 6. Sections 155 and 157 of FSMA require us to make this statement.

Compatibility with our statutory objectives

3. This proposal mainly contributes to our statutory objective of consumer protection. By improving consumer protection this may also increase consumer participation and confidence in financial markets. We do not expect this proposal to contribute materially to our other objectives.

4. Complaints-handling rules and the ombudsman service protect consumers against the consequences of any mis-selling or misadministration that may occur because of information asymmetries between firms and consumers. An extension of the definition of eligible complainant to more individuals will ensure that this protection is provided to more people who may have a legitimate complaint about the actions of a firm in seeking to collect a debt, and remove an arbitrary distinction between individuals pursued by debt collection agencies and those pursued by a firm chasing its own debt.

Compatibility with the principles of good regulation

5. Section 2(3) of FSMA requires that, in carrying out our general functions, we must have regard to the principles of good regulation. Of these, our proposed amendment relates to the principles of efficiency and economy, proportionality, innovation, and competition.

6. With regard to efficiency and economy, our proposal will not require using significant FSA resources at the current time.

7. We have had regard to the proportionality of the proposal by carefully weighing the cost of the proposal against the benefits (where relevant). Informed by our CBA, we consider that the overall benefits of the proposal are proportionate to the costs. We do not believe that the costs of our proposal for any size or type of firm will be disproportionate.

8. We do not anticipate that our proposal will materially affect innovation in financial services.

9. Regarding the need to minimise adverse effects of policy proposals on competition, we have considered the issue, but have not found any evidence that our proposal might lead a significant number of firms to exit the market. As a result, we do not consider that our proposal will have an adverse effect on competition.

Why our proposals are most appropriate for the purpose of meeting our statutory objectives

10. In developing our proposal, we have taken steps to engage extensively with a wide range of industry practitioners and other interested parties, including consumer representatives. We believe that our proposal is appropriate to deliver the objective of providing effective redress to consumers.

Annex 2:

List of questions in this Consultation Paper

Q1: Do you agree that we amend the definition of 'eligible complainant' (as set out in Appendix 2) to allow consumers who are wrongly pursued for a debt by a debt owning firm to complain to the ombudsman service?

Q2: Do you have any comment on our cost benefit analysis (CBA) in relation to this proposal? Do you have any analysis or evidence that supports, contradicts or otherwise relates to this CBA?

Annex 3:

List of non-confidential respondents to CP10/21

In addition to those listed below, eight respondents wanted their responses to be confidential.

1st Policy Company

ABCUL

ABI

Adam Samuel

Aegon

AIFA

Alan Reid

APCIMS

Avantia

Aviva

AXA UK

BBA

BIBA

BSA

Canada Life

Cardif Pinnacle

Citizens Advice

CMC Markets

CML

Collins Stewart

Compliance Matters Ltd

Consumer Council (NI)

Consumer Focus

Co-operative Financial Services

Crashcare

Cumberland Building Society

D Moriarty

DAS

David Severn Consulting

Debtwise

Dispusolve

Fidelity Investment Managers

Financial Services Consumer Panel

FLA

Flitwick Motorcycles

FOA

Genworth Financial

Hargreaves Lansdown

Heath Lambert

HSBC Merchant Services LLP

IIB

ILAG

International Financial Data Services

Leeds Building Society

LV=

Medicash Health Benefit Limited

OFT

Paul Grenet

Philip J Milton and Company PLC

Phoenix Group

Prudential

RSA

SAS

Simply Health

Skipton Building Society

The Share Centre Ltd

Threadneedle

UK Cards

Unum

West Bromwich Building Society

Westfield Health

Which?

Yorkshire Building Society

Zurich Financial Services Group

Appendix 1

Made rules (legal instrument)

FOS 2011/3
FSA 2011/33

DISPUTE RESOLUTION: COMPLAINTS (AMENDMENT NO 3) INSTRUMENT 2011

Powers exercised by the Financial Ombudsman Service Limited

A. The Financial Ombudsman Service Limited makes:

(1) the rule in Annex A of this instrument for firms relating to the Compulsory Jurisdiction;

(2) the rules and guidance in Annex A and Parts 1, 2A, 3 and 4A of Annex B of this instrument for licensees relating to the Consumer Credit Jurisdiction; and

(3) the standard terms and guidance in Annex A and Parts 1, 2A, 3 and 4A of Annex B to this instrument for VJ participants relating to the Voluntary Jurisdiction;

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

(a) section 226A (Consumer credit jurisdiction);
(b) section 227 (Voluntary jurisdiction);
(c) section 229 (Awards);
(d) paragraph 8 (Guidance) of Schedule 17;
(e) paragraph 14 (The scheme operator's rules) of Schedule 17;
(f) paragraph 16B (Consumer credit jurisdiction: Procedure for complaints etc) of Schedule 17; and
(g) paragraph 18 (Terms of reference to the scheme) of Schedule 17.

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

Powers exercised by the Financial Services Authority

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

(1) section 138 (General rule-making power);
(2) section 156 (General supplementary powers);
(3) section 157(1) (Guidance);
(4) section 226 (Compulsory jurisdiction);
(5) section 229 (Awards); and
(6) paragraph 13 (Authority's procedural rules) of Schedule 17.

D. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

E. This instrument comes into force as follows:

(1) Part 1 of Annex B comes into force on 1 July 2011;
(2) Annex A and Parts 2A and 2B of Annex B come into force on 1 September 2011;
(3) Part 3 of Annex B comes into force on 1 January 2012; and
(4) Parts 4A and 4B of Annex B come into force on 1 July 2012.

Amendments to the Handbook

F. The Glossary of definitions is amended in accordance with Annex A to this instrument.

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

Citation

H. This instrument may be cited as the Dispute Resolution: Complaints (Amendment No 3) Instrument 2011.

By order of the Board of the Financial Ombudsman Service Limited
10 May 2011

By order of the Board of the Financial Services Authority
26 May 2011

Annex A

Amendments to the Glossary of definitions

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

Comes into force on 1 September 2011

final response ….

(2) ~~(in *DISP*) a written response from a *respondent* which:~~

~~(a) accepts the *complaint* and, where appropriate, offers redress or remedial action; or~~

~~(b) offers redress or remedial action without accepting the *complaint*; or~~

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

~~and which:~~

~~(d) encloses a copy of the *Financial Ombudsman Service's* standard explanatory leaflet; and~~

~~(e) informs the complainant that if he remains dissatisfied with the *respondent*'s response, he may now refer his *complaint* to the *Financial Ombudsman Service* and must do so within six months.~~ [deleted]

(3) (in *DISP*) has the meaning given in *DISP* 1.6.2R(1).

Annex B

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

Part 1: Comes into force on 1 July 2011

…

1.2.1 R To aid consumer awareness of the protections offered by the provisions in this chapter, *respondents* must:

(1) publish appropriate ~~summary details of~~ information regarding their internal ~~process~~ procedures for ~~dealing with~~ the reasonable and prompt handling of *complaints* ~~promptly and fairly~~;

(2) refer *eligible complainants* to the availability of ~~these summary details~~ this information:

(a) in relation to a *payment service*, in the information on out-of-court complaint and redress procedures required to be provided or made available under regulations 36(2)(e) (Information required prior to the conclusion of a single payment service contract) or 40 (Prior general information for framework contracts) of the *Payment Services Regulations*; or

(b) otherwise, in writing at, or immediately after, the point of sale; and

(3) provide such ~~summary details~~ information in writing and free of charge to *eligible complainants*:

…

…

1.3.1A R These procedures must ensure that a *complaint* may be made free of charge.

…

Part 2A: Comes into force on 1 September 2011

…

1.3.2A G These procedures should, taking into account the nature, scale and complexity of the *respondent's* business, ensure that lessons learned as a result of determinations by the *Ombudsman* are effectively applied in future *complaint* handling, for example by:

(1) relaying a determination by the *Ombudsman* to the individuals in the *respondent* who handled the *complaint* and using it in their training and development;

(2) analysing any patterns in determinations by the *Ombudsman* concerning *complaint*s received by the *respondent* and using this in training and development of the individuals dealing with *complaints* in the *respondent*; and

(3) analysing guidance produced by the *FSA*, other relevant regulators and the *Financial Ombudsman Service* and communicating it to the individuals dealing with *complaints* in the *respondent*.

…

1.4.1 R Once a *complaint* has been received by a *respondent*, it must:

(1) investigate the *complaint* competently, diligently and impartially, obtaining additional information as necessary;

...

1.4.2 G Factors that may be relevant in the assessment of a *complaint* under *DISP* 1.4.1R(2)~~,~~ include the following:

…

(4) appropriate analysis of decisions by the *Financial Ombudsman Service* concerning similar *complaints* received by the *respondent* (procedures for which are described in *DISP* 1.3.2AG).

…

Final or other response within eight weeks

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

(1) ~~a *final response*~~ a 'final response', being a written response from the *respondent* which:

(a) accepts the *complaint* and, where appropriate, offers redress or remedial action; or

(b) offers redress or remedial action without accepting the *complaint*; or

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

and which:

(d) encloses a copy of the *Financial Ombudsman Service's* standard explanatory leaflet; and

(e) informs the complainant that if he remains dissatisfied with the *respondent's* response, he may now refer his *complaint* to the *Financial Ombudsman Service* and must do so within six months; or

(2) …

1.6.3 G ~~*Respondents* are not obliged to comply with the requirements in *DISP* 1.6.2R where they are able to rely on any of the following *rules*:~~

~~(1) the complainant's written acceptance *rule* (*DISP* 1.6.4R);~~

~~(2) the *rules* for *respondents* with two-stage *complaints* procedures (*DISP* 1.6.5R); or~~

~~(3) the complaints forwarding *rules* (*DISP* 1.7).~~ [deleted]

Part 2B: Comes into force on 1 September 2011

1.1.9 G ~~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.~~ [deleted]

1.1.9A G The scope of this sourcebook does not include:

(1) a *complaint* about pre-*commencement* investment business which was regulated by a *recognised professional body* (those *complaints* will be handled under the arrangements of that professional body); or

(2) a *complaint* about the administration of an *occupational pension scheme*, because this is not a *regulated activity* (*firms* should refer complainants to the Pensions Advisory Service rather than to the *Financial Ombudsman Service*).

…

1.3.3B G The processes that a *firm* should have in place in order to comply with *DISP* 1.3.3R may include, taking into account the nature, scale and complexity of the *firm's* business including, in particular, the number of *complaints* the *firm* receives:

(1) the collection of management information on the causes of *complaints* and the products and services *complaints* relate to, including information about *complaints* that are resolved by the *firm* by close of business on the *business day* following its receipt;

(2) a process to identify the root causes of *complaints* (*DISP* 1.3.3R(1));

(3) a process to prioritise dealing with the root causes of *complaints*;

(4) a process to consider whether the root causes identified may affect other processes or products (*DISP* 1.3.3R(2));

(5) a process for deciding whether root causes discovered should be corrected and how this should be done (*DISP* 1.3.3R(3));

(6) regular reporting to the *senior personnel* where information on recurring or systemic problems may be needed for them to play their part in identifying, measuring, managing and controlling risks of regulatory concern; and

(7) keeping records of analysis and decisions taken by *senior personnel* in response to management information on the root causes of *complaints*.

1.3.4 G ~~A *firm* should use the information it gains from dealing with *complaints* that relate to *MiFID business* in accordance with this chapter to inform its compliance with its obligations to monitor the adequacy and effectiveness of its measures and procedures to detect and minimise any risk of compliance failures (*SYSC* 6.1).~~ In respect of *complaints* that relate to *MiFID business*, a *firm* should put in place appropriate management controls and take reasonable steps, in the same way as for *complaints* that do not relate to *MiFID business* (see *DISP* 1.3.3R and *DISP* 1.3.3BG), in order to detect and minimise any risk of compliance failures (*SYSC* 6.1) and to comply with *Principle* 6 (Customers' interests).

1.3.5 G ~~A *firm* should have regard to *Principle* 6 (Customers' interests) when it identifies problems, root causes or compliance failures and consider whether it ought to act on its own initiative with regard to the position of *customers* who may have suffered detriment from, or been potentially disadvantaged by such factors, but who have not complained.~~ [deleted]

1.3.6 G Where a *firm* identifies (from its *complaints* or otherwise) recurring or systemic problems in its provision of, or failure to provide, a financial service, it should (in accordance with *Principle* 6 (Customers' interests) and to the extent that it applies) consider whether it ought to act with regard to the position of *customers* who may have suffered detriment from, or been potentially disadvantaged by, such problems but who have not complained and, if so, take appropriate and proportionate measures to ensure that those *customers* are given appropriate redress or a proper opportunity to obtain it. In particular, the *firm* should:

(1) ascertain the scope and severity of the consumer detriment that might have arisen; and

(2) consider whether it is fair and reasonable for the *firm* to undertake proactively a redress or remediation exercise, which may include contacting *customers* who have not complained.

1.3.7 R (1) A *firm* must appoint an individual at the *firm*, or in the same *group* as the *firm*, to have responsibility for oversight of the *firm's* compliance with *DISP* 1.

(2) The individual appointed must be carrying out a *governing function* at the *firm* or in the same *group* as the *firm*.

1.3.8 G *Firms* are not required to notify the name of the individual to the *FSA* or the *Financial Ombudsman Service* but would be expected to do so promptly on request. There is no bar on a *firm* appointing different individuals to have the responsibility at different times where this is to accommodate part-time or flexible working.

…

1.9.2 G The records of the measures taken for resolution of *complaints* may be used to assist with the collection of management information pursuant to *DISP* 1.3.3BG(1) and regular reporting to the *senior personnel* pursuant to *DISP* 1.3.3BG(6).

Part 3: Comes into force on 1 January 2012

3.7.4 R The maximum money award which the *Ombudsman* may make is ~~£100,000~~ £150,000.

TP Transitional provision

(1)	(2) Material provision to which transitional	(3)	(4) Transitional provision	(5) Transitional provision: dates	(6) Handbook provision: coming

	provision applies			in force	into force
…					
28	*DISP* 3.7.4R	R	For a *complaint* referred to the *Financial Ombudsman Service* before 1 January 2012 the maximum money award which the *Ombudsman* may make is £100,000.	From 1 January 2012	1 January 2012

Part 4A: Comes into force on 1 July 2012

~~Respondents with two-stage complaints procedures~~

1.6.5 R ~~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.~~

~~the *respondent* is not obliged to continue to comply with *DISP* 1.6.2R unless the complainant indicates that he remains dissatisfied, in which case, the obligation to comply with *DISP* 1.6.2R resumes.~~ [deleted]

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

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

…

1.6.7 G It is expected that within eight weeks of their receipt, almost all *complaints* to a *respondent* will have been substantively addressed by it through a *final response* or response as described in *DISP* 1.6.4R ~~or *DISP* 1.6.5R~~.

Part 4B: Comes into force on 1 July 2012

1.10.3 G For the purpose of *DISP* 1.10.2R, when completing the return, the *firm* should take into account the following matters.

(1) …

(2) Under *DISP* 1.10.2R(3)(a), a *firm* should report any *complaint* to which it has given a response which upholds the *complaint*, even if any redress offered is disputed by the complainant. For this purpose, 'response' includes a response under the complainant's written acceptance *rule* (*DISP* 1.6.4R)~~, the two stage *complaints* procedures *rule* (*DISP* 1.6.5R) (unless a *final response* was sent later)~~ and a *final response*. Where a *complaint* is upheld in part or where the *firm* does not have enough information to make a decision yet chooses to make a goodwill payment to the complainant, a *firm* should treat the *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) …

…

1.10.7 R A closed *complaint* is a *complaint* where:

(1) the *firm* has sent a *final response*; or

(2) the complainant has indicated in writing acceptance of the *firm's* earlier response under *DISP* 1.6.4R ~~; or~~.

~~(3) for a *firm* which operates a two-stage *complaints* procedure, the complainant has not indicated that he remains dissatisfied within eight weeks of the response sent by the *firm* under *DISP* 1.6.5R.~~

…

1.10.8 G ~~If a *complaint* is reported as closed under *DISP* 1.10.2R(2) because the complainant has not replied to the *firm* within eight weeks of a written response which meets the requirements in *DISP* 1.6.5R, 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* 1.10.2R(2).~~ [deleted]

…

1 Annex 1R Illustration of the reporting requirements, referred to in DISP 1.10.1R

Complaints Return (DISP 1 Ann 1R)

…

NOTES ON THE COMPLETION OF THIS RETURN

…

~~**Complaints opened**~~

~~*Firms* operating the two-stage process (*DISP* 1.6.5R) may decide to re-open a closed *complaint* after more than eight weeks from the complainant's receipt of its non-final response where the complainant has indicated he remains dissatisfied. These re-opened *complaints* should be reported in this return as new *complaints*.~~

TP Transitional provisions

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
…					
29	*DISP* 1.10.2R and *DISP* 1 Annex 1R	R	Where a *firm* reports information on any *complaints* closed under a two-stage procedure before 1 July 2012, the *rules* and *guidance* in *DISP* 1.6.6R, *DISP* 1.10.3G(2), *DISP* 1.10.7R(3) and *DISP* 1.10.8R and *DISP* 1 Annex 1R apply as they stood on 30 June 2012.	1 July 2012 to 31 December 2012	1 August 2009

Appendix 2

Draft Handbook text

DISPUTE RESOLUTION: COMPLAINTS (AMENDMENT NO X) INSTRUMENT 2011

Powers exercised by the Financial Ombudsman Service Limited

A. The Financial Ombudsman Service Limited makes the rules in the Annex to this instrument for licensees relating to the Consumer Credit Jurisdiction and for VJ participants relating to the Voluntary Jurisdiction in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(1) section 226A (Consumer credit jurisdiction); and
(2) section 227 (Voluntary jurisdiction).

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

Powers exercised by the Financial Services Authority

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

(1) section 138 (General rule-making power);
(2) section 156 (General supplementary powers); and
(3) section 226 (Compulsory jurisdiction).

D. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

E. This instrument comes into force on [1 January 2012].

Amendments to the Handbook

F. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with the Annex to this instrument.

Citation

G. This instrument may be cited as the Dispute Resolution: Complaints (Amendment No X) Instrument 2011.

By order of the Board of the Financial Ombudsman Service Limited
[ ] 2011

By order of the Board of the Financial Services Authority
[ ] 2011

Annex

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

2.7.6 R To be an *eligible complainant* a *person* must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

…

(12) the complainant is a *person*:

(a) from whom the *respondent* has sought to recover payment under a *regulated consumer credit agreement* or *regulated consumer hire agreement* (whether or not the *respondent* is a party to the agreement) ~~in carrying on debt-collecting as defined by section 145(7) of the Consumer Credit Act (1974) (as amended)~~; or

…

…

TP 1 Transitional provisions

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
…					
29	The amendments to *DISP* 2.7.6R(12) effected by [Dispute Resolution: Complaints (Amendment No X) Instrument 2011].	R	The amendments referred to in column (2) do not affect who is an *eligible complainant* for the purpose of *DISP* 2.7.6R (12)(a) in respect of complaints that relate to acts or omissions that occurred before [1 January 2012].	From [1 January 2012]	[1 January 2012]

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