Consultation Paper

10/21***

Financial Ombudsman Service and
Financial Services Authority

Consumer complaints:

The ombudsman award limit and changes to complaints-handling rules

September 2010

Financial Ombudsman Service

FSA
Financial Services Authority

Contents

The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by 31 December 2010.

Comments may be sent by electronic submission using the form on the FSA's website at:
(www.fsa.gov.uk/Pages/Library/Policy/CP/2010/cp10_21_response.shtml).

Alternatively, please send comments in writing to:

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List of acronyms used in this Consultation Paper

Compulsory Jurisdiction	(CJ)
Consultation Paper	(CP)
Cost Benefit Analysis	(CBA)
Discussion Paper	(DP)
Dispute Resolution: Complaints sourcebook	(DISP)
Financial Services and Markets Act 2000	(FSMA)
Office for National Statistics	(ONS)
Payment Protection Insurance	(PPI)
Professional Indemnity Insurance	(PII)
Senior Management Arrangements, Systems and Controls sourcebook	(SYSC)
Undertakings for Collective Investments in Transferable Securities	(UCITS)

1 Overview

1.1 In March 2010, we launched our Consumer Protection Strategy with the overall objectives of:

- making retail markets work better for consumers;
- avoiding the crystallisation of conduct risks that exceed our risk tolerance; and
- delivering credible deterrence and prompt and effective redress for consumers.

1.2 The government has indicated that the new Consumer Protection and Markets Authority will build on this strategy.[1] In this Consultation Paper (CP), we set out proposals in support of our strategy's third objective. Our proposals aim to ensure that:

- when a consumer complains to a firm, the firm endeavours 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').

1.3 This CP is part of wider work on the framework for consumer redress. Related initiatives include:

- a Discussion Paper (DP)[2] published earlier in 2010 on emerging risks and mass claims;
- 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[3] (and related supervisory work with other firms).

1 HM Treasury, *A new approach to financial regulation: judgement, focus and stability*, (July 2010). www.hm-treasury.gov.uk/consult_financial_regulation.htm.
2 DP10/1, *Consumer complaints*, (11 March 2010).
3 www.fsa.gov.uk/pages/Library/Communication/PR/2010/074.shtml.

Summary of proposals

1.4 We propose to increase the ombudsman service's award limit[4] from £100,000 to £150,000, effective for any complaint referred to the ombudsman service on or after 1 January 2012. This will prevent a decline in the consumer protection afforded by the award limit in real terms (it has not changed since the ombudsman service was created).

1.5 We also propose the following changes to the complaints handling rules:

- abolishing the two-stage complaints handling process;[5]
- requiring firms to identify a senior individual responsible for complaints handling; and
- setting out guidance on how firms can meet rules relating to root cause analysis[6] and taking account of ombudsman decisions and other guidance.[7]

1.6 Our overall objective in abolishing the two-stage process is to provide simple and straightforward messages for consumers and financial firms about how a fair complaints handling system should be operated. This consists of fairly and promptly resolving consumer complaints, with a clear and well sign-posted option for consumers to pursue their complaint with the ombudsman service if they are dissatisfied with the firm's response. In our view, complicated rules such as those describing the two-stage process can obstruct fair complaint handling. We have seen that inappropriate use of the two-stage process in a significant number of firms has contributed to poor outcomes for consumers.

1.7 Taken together, the changes set out above would improve how customers are treated when they complain to firms, and ultimately lead to increased consumer confidence in financial services, which is one of our key objectives. There would be costs to firms of changing their processes on both a one-off and ongoing basis, and there may be a short-term spike in the number of complaints going to the ombudsman service.

1.8 We propose to respond to answers received to a question we asked in DP10/1 by improving the clarity of the Dispute Resolution: Complaints (DISP) sourcebook.[8] We also propose some minor changes to anticipate the implementation of the UCITS IV[9] Directive.

1.9 Finally, we have been made aware by the ombudsman service that some individuals who may have been the victims of identity theft or mistaken identity cannot complain to the ombudsman service. We are seeking further evidence to better understand the nature and scale of this problem.

4 DISP 3.7.4R.
5 DISP 1.6.5R and 1.6.6R.
6 DISP 1.3.3R.
7 DISP 1.4.2G.
8 A full feedback statement on DP10/1 will be published in due course.
9 UCITS: Undertakings for Collective Investments in Transferable Securities.

Structure of the paper

1.10 This CP is structured as follows:

- Chapter 2 describes our proposals to increase the limit on awards made by the ombudsman service.
- Chapter 3 sets out proposed rule changes to firms' complaints handling processes.
- Chapter 4 sets out feedback on DP10/1 concerning DISP and our response, including some minor changes to the rules. It also includes the proposals for rule changes arising from the impending implementation of the UCITS IV directive.
- Chapter 5 sets out a request for evidence in relation to identity theft and mistaken identity.
- Chapter 6 is a consultation by the ombudsman service on changes to its rules for the consumer credit jurisdiction and voluntary jurisdiction, in the light of changes we propose in Chapters 2, 3 and 4.

1.11 There is no separate annex for the cost benefit analysis (CBA). Instead, we include a CBA on each of the proposals in each chapter.[10] Overall we expect our proposals to improve consumer confidence in financial services and these long-term benefits to outweigh the costs for firms. The annexes include a compatibility statement, a list of the questions in the CP, a breakdown of the firms that responded to our survey, and a list of respondents to DP10/1.

1.12 We have considered the equality issues that arise in our proposals. We believe that our proposals as set out do not give rise to discrimination. We would welcome any comments consultees may have on any equality issues they believe arise and will take these into consideration in concluding our assessment of the equality impact.

Who should read this paper?

1.13 The proposals will be of interest to consumers and consumer representatives. The proposals should be considered by all firms involved in retail financial services markets, where their customers are eligible to complain to the ombudsman service. To the extent set out in Chapter 6, the proposals should also be considered by any consumer credit licensees that are not firms, and by participants in the ombudsman service's voluntary jurisdiction. Relevant trade associations and compliance consultants will also wish to consider the proposals.

Next steps

1.14 This consultation will close on 31 December 2010. We intend to publish a Policy Statement, including made Handbook text if approved, in April 2011. Timing for the implementation of our proposals is set out in this CP.

10 Under FSMA, the ombudsman service is not required to undertake a CBA on the rules it makes.

2 Award limit

2.1 Under the Financial Services and Markets Act 2000 (FSMA), we are responsible for setting the monetary award limit for the Compulsory Jurisdiction (CJ) of the ombudsman service. In this chapter we propose to increase the award limit for CJ cases referred to the ombudsman service from 1 January 2012. Chapter 6 deals with the award limit in the consumer credit and voluntary jurisdictions of the ombudsman service, where the award limit is set by the ombudsman service with our approval.

Background

2.2 The ombudsman service was set up under FSMA to provide consumers with a free, independent service for resolving disputes with financial firms quickly and with minimum formality on the basis of what is fair and reasonable in the circumstances of each individual case. It acts as an alternative to the courts.

2.3 When FSMA came into force on 1 December 2001 (a date referred to as N2), the ombudsman service replaced several existing ombudsman and arbitration schemes for financial services customers. Under FSMA, a limit may be set on the ombudsman service's monetary awards.[11] At N2, we set a single limit of £100,000 for financial services consumers that fall within the ombudsman service's compulsory jurisdiction. The £100,000 limit reflected the position of most of the predecessor ombudsman schemes.

2.4 Under FSMA, the ombudsman service can recommend that firms should make a payment above the limit, where paying fair compensation would involve a larger amount.[12] Firms are not obliged to follow the ombudsman service's recommendation, although many do.

11 Sections 229 (5) and (6).
12 Section 229 (5).

Reasons for considering a change to the limit

2.5 We are proposing a change to the award limit for the CJ for several reasons:

- The protection afforded to consumers by the ombudsman service has declined in real terms. The current £100,000 limit has remained unchanged since the ombudsman service's establishment.[13] Five years ago, in CP05/15,[14] we proposed increasing the award limit. In light of the responses to the CP we did not make a change, but we committed to regularly reviewing the award limit. Also, since this CP, the implications of the award limit for the ombudsman service's power to make directions for redress calculation have been clarified.[15]
- Although some firms do pay awards in excess of £100,000, this is not visible to consumers. Customers are not, therefore, in a position to take this into account when deciding whether to pursue a complaint through the courts or the ombudsman service. They are also unable to influence firms' behaviour by choosing to take their business to those firms which pay more than £100,000. Increasing the limit will reduce the effect of this information asymmetry on consumers, as firms will be required to pay all awards up to £150,000: fewer consumers will therefore be affected by the limit.
- There is an incentive for firms to reject a complaint if the potential redress exceeds £100,000, in the knowledge that if consumers go to the ombudsman service they will only be eligible for redress of up to £100,000, and that this process will take some time to complete. Anecdotally, we are aware of a small number of firms that have denied redress to consumers with very large potential claims for this reason. Although we are able to and will take action against firms where we have evidence of such behaviour, increasing the award limit would reduce the incentive for firms not to pay fair redress.

Volume of cases in excess of £100,000

2.6 We surveyed 159 firms earlier this year and gathered evidence from the ombudsman service on the number of consumers affected, or potentially affected, by the current limit (see Annex 1). Our conclusion is that the overall number of cases is comparatively small, with concentrations in some areas.

2.7 Of 113,949 cases resolved by the ombudsman service in 2008/09, the ombudsman service estimates that 0.1% (121) involved redress of more than £100,000;[16] 6% of pensions cases, 3% of health insurance cases, and 2% of whole-of-life cases fall into this category.

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13 DISP 3.7.4R.

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

15 *Bunney vs Burns Anderson PLC*, [2007] EWHC 1240 (Ch). The Court's judgement was that a direction to calculate and pay a sum of money to the complainant, for the complainant's benefit, was a money award and so subject to the £100,000 award limit. Firms can choose voluntarily to pay full redress.

16 In many cases the ombudsman service's award requires the firm to calculate redress according to a formula that puts the complainant back in the position he or she would have been in but for the firm's error, but the firm is not required to report the result of the calculation to the ombudsman service. The figures stated here are therefore based on ombudsman service estimates of redress paid.

2.8 There were 85 responses to our survey. In total, the respondents paid redress to more than 65,000 consumers.[17] Of these, redress of more than £100,000 was paid in 16 cases: eight where the consumer did not go to the ombudsman service; five where they did; and three where the consumer initiated legal action. There were two further cases in the survey results where firms chose not to pay more than £100,000 following an ombudsman service decision, because of the award limit.

2.9 The small number of cases involved makes it difficult to extrapolate to the industry as a whole, but a reasonable conclusion is that it is unlikely that more than a few hundred consumers in any one year are involved in disputes with financial services firms that might result in redress in excess of the current ombudsman service award limit. But the consequences for those consumers can be significant.

Proposal

2.10 One consideration in determining an appropriate limit (or indeed whether there should be a limit at all) is the ombudsman service's role under FSMA. The ombudsman service was established to provide an informal, faster and cheaper alternative to the courts. Its decisions are only binding if accepted by the consumer. And while firms and consumers can ask for an ombudsman to review a decision made by an adjudicator, there is no external appeal mechanism.

2.11 If the award limit is set too high there could be increased pressure for the ombudsman service to become more like the courts – with consequent implications for formality, speed and cost. And firms might regard the risks of doing particular kinds of business as unacceptable and reduce their willingness to offer financial products and services that benefit consumers.

2.12 In pre-consultation, some firms suggested one way of mitigating the risk that the limit is 'too high', would be to change how the ombudsman service operates (i.e. so firms and consumers are both bound by its decisions, in contrast to the current situation where only firms are bound by decisions). However, this option would be a fundamental change to the nature of the ombudsman service from the perspective of consumers and firms, and would require amending primary legislation. We have not pursued it.

2.13 In favour of increasing the limit, we point out that the value of financial products (especially pensions and investments) can be high compared to a person's disposable income. This means that consumers, even where their claim is above the ombudsman service's limit, may not be able to meet the costs of pursuing the issue through the courts. In such circumstances, they are unlikely to obtain full redress.

17 We asked respondents to tell us the number of complainants to whom they paid redress in the last reporting year, and to break these respondents down into brackets by amount of redress paid, and whether or not the respondent took their case to the ombudsman service or took legal action. In relation to ombudsman service cases, we also asked whether they had declined to pay more than £100,000 to any complainants because of the ombudsman service award limit.

2.14 To some extent, the existence of solicitors who are willing to take cases on a contingent fee basis improves access to redress for consumers with cases that may exceed the award limit. But this relies on the solicitor being willing to accept a particular case. A key advantage of the ombudsman service to consumers is its accessibility – cases will always be considered unless the grounds for the consumer's complaint are clearly outside the ombudsman service's jurisdiction, the complaint is ineligible, should be dismissed or is frivolous or vexatious.

2.15 Our view is that on balance it would be appropriate to increase the ombudsman service's award limit to £150,000. This will ensure that more consumers than at present can access the ombudsman service to achieve quick and informal redress.

2.16 We have considered indexing the limit to inflation. We could not introduce an automatic link, but we could in principle consult each year on an inflationary increase (or decrease) to the limit. However, we consider that such regular changes would be challenging to communicate to consumers and give rise to periodic administration costs on firms. If we were to choose an amount which is exactly in line with inflation since 2001, it could range between £125,000 and £132,000 (as at January 2010, depending on the index used).[18]

2.17 We believe that our proposed increase to £150,000 strikes an appropriate balance between a limit that is currently below its 2001 level in real terms and one which for some time will be above this level in real terms (exactly how long will depend on future inflation). However, we would review the limit periodically, and adjust it as necessary, to ensure the balance is appropriate.

2.18 We propose to introduce the new limit for any complaint referred to the ombudsman on or after 1 January 2012: this should give firms time to make any necessary changes to information supplied to customers.

2.19 We further propose that the increased limit would apply irrespective of when the act or omission complained of occurred. We have considered whether and to what extent this may involve any unfairness to firms. We note that:

- Firms should not, in any event, have been operating under the assumption that their liability when dealing with complaints is capped at the current monetary limit of £100,000. The ombudsman service is an alternative to the courts, which are not subject to a limit on the remedy they may award. Firms may therefore be required to pay redress in excess of £100,000 where consumers take legal action.
- We have previously consulted on raising the award limit and, in light of this, committed to regularly reviewing it. In our view, it is therefore reasonable to assume that firms should be aware that the limit may change.
- We are undertaking a three month consultation on our proposal, followed by a transition period before any increase takes effect. This should give firms sufficient opportunity to prepare for the change, including making any amendments to Professional Indemnity Insurance (PII) cover.

18 Referencing the index to 2001 may be considered conservative given that most of the predecessor schemes already had an award limit of £100,000. The oldest of the predecessor schemes was the Insurance Ombudsman Scheme whose £100,000 limit was set in 1981.

- We propose the new award limit only applies to complaints referred to the ombudsman service from 1 January 2012, and not to complaints already being dealt with by the ombudsman service.

2.20 We believe there would not be significant unfairness to firms of applying an increased monetary limit to acts or omissions that had already occurred.

2.21 Draft Handbook text is set out in Appendix 1.

Cost benefit analysis (CBA)

2.22 When proposing new rules, we are obliged under section 155 of FSMA to publish a CBA. Its purpose is to provide an estimate of the economic costs and an analysis of the benefits of the proposed policies. The following paragraphs provide the CBA for the proposals in this chapter. For policy proposals in later chapters we have placed the relevant CBAs at the end of each chapter.

Benefits

2.23 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 increase in the ombudsman service limit is expected to benefit all consumers that have a valid dispute with a firm and are liable for redress between £100,000 and £150,000, whether they currently pursue a claim at the court or not.

2.24 At present there are a small number of customers who accept an ombudsman service decision and do not use the court process, and who do not receive all the redress they are entitled to. These consumers are expected to receive more appropriate and fairer redress. Given the small number of such cases, the aggregate benefits expected from our proposal are low, but the benefit for any particular consumer in this group may be significant. The data suggests that these are most likely to be consumers who complain about pensions or other investment-type products.

2.25 For consumers who currently pursue claims of up to £150,000 through the courts, but who may now decide to go to the ombudsman service instead, the amount of redress will remain the same (assuming the courts would arrive at the same decisions as to the amount of redress to be paid). However, consumers will incur a lower overall transaction cost[19] to obtain the same result. As noted above, our survey found three examples of consumers taking legal action to obtain redress in excess of £100,000, including two in the £100,001-£150,000 bracket.

19 We estimate that the cost of legal services to a consumer bringing a case involving compensation of £150,000 might be in the range £125,000-175,000, depending on the complexity of the case and the number of legal professionals and expert witnesses involved.

Costs to firms

2.26 We have estimated the additional redress to consumers if we extend the ombudsman service award limit and believe it to be minimal given the small number of cases involved. Assuming that 50 such meritorious cases went to the ombudsman service each year at an average of £125,000 redress, this would be a net cost to the industry of £1.25m in total. As some firms already voluntarily pay redress in excess of the current limit, the additional costs to firms may well be less than this: our overall assumption is that there are no more than a few hundred consumer disputes in any one year involving potential redress in excess of £100,000, so 50 cases of firms currently not paying full redress because of the ombudsman service award limit is perhaps an overestimate. Also, the cost of additional redress to consumers is a transfer from firms to consumers and as such does not affect the net benefit of the proposal.

2.27 If consumers who currently go to court go to the ombudsman service instead, there may be additional costs to the firms of considering these cases. The standard ombudsman service fee is £500 and our survey of firms found a wide range of costs for handling cases at the ombudsman service in addition to the fee (including the costs of gathering evidence, corresponding with the ombudsman service, etc). These varied from low tens to several thousands of pounds per complaint depending on firm type.

2.28 However, these additional ombudsman service costs will usually be lower than the legal fees currently incurred by firms in defending these claims in court, although firms may be able to recoup some or all of these legal costs from claimants in cases where the court does not uphold the claim. There may be other reasons why firms would prefer to have a case heard by the courts, such as the ability to present oral evidence as an automatic right, and the fact that court judgements act as precedents. There may also be a very small number of cases where the firm would have appealed a decision of the courts and won that appeal, which will now go to the ombudsman service where firms do not have the same rights of appeal. We do not anticipate the additional costs to industry of paying redress in such cases to be material relative to the cost of appeal.

2.29 We have had some indication from insurers that PII premiums may increase due to an increase to the ombudsman service award limit. We have not been able to quantify the size of any potential increase, and would welcome further evidence on this point. For some small firms where PII premiums are already relatively high as a proportion of total income, a material increase in PII premiums, if it occurs, may have a significant effect on the individual firm.

2.30 On current evidence we do not consider that the total impact on firms is likely to be significant. There is strong competition between PII providers, so we anticipate that this, and the small overall number of high value cases, will mitigate any significant impact on premiums.

2.31 Moreover, it is likely that some or all of the costs that firms face in paying redress (including legal or ombudsman service fees) will be passed on to their customers. As legal fees are expected to be higher than ombudsman service fees, more cases going to the ombudsman service as expected may lead to a more favourable

outcome for consumers overall, as more redress will be obtained at a lower overall transaction cost. However, this outcome will depend on the incremental value of redress paid in relation to the reduced transaction costs in the form of legal fees.

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 1 January 2010? If not, what analysis or evidence do you have that it should be higher or lower than the proposed amount?

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?

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?

3 Changes to complaint handling requirements

3.1 This chapter sets out our proposals to change the rules and guidance in the Dispute Resolution: Complaints sourcebook (DISP 1) about complaints handling by firms covered by the compulsory jurisdiction of the ombudsman service. This responds to the findings of our review of complaint handling in banking groups,[20] complaint file reviews and lessons learned from other supervisory work (e.g. our experience of looking at firms' handling of Payment Protection Insurance (PPI) complaints). Chapter 6 examines the ombudsman service's consumer credit and voluntary jurisdictions, where the ombudsman service sets the corresponding requirements with our approval.

3.2 The proposed changes are to:

- abolish the two-stage process for complaints handling;
- highlight the requirement on firms to take account of the ombudsman service's decisions and other material when resolving complaints;
- highlight the requirement on firms to undertake root cause analysis of the complaints they receive and to 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. With the exception of our proposed changes to the two-stage process, the other changes are intended to re-emphasise existing requirements or to codify good practice which already exists in many firms, so the impact on individual firms will vary.

3.4 Draft Handbook text is set out in Appendix 1.

20 *Review of complaint handling in banking groups*, FSA report, (April 2010). www.fsa.gov.uk/pubs/other/complaint_review.pdf

The two-stage process

3.5 The DISP rules allow firms, if they wish, to operate a two-stage complaints procedure when handling complaints.[21] Under these procedures, when a firm sends the complainant a written response within eight weeks of receiving a complaint, it does not have to provide a subsequent final response, unless the complainant indicates – within eight weeks – that he remains dissatisfied.

3.6 These arrangements have been in place since the beginning of FSA regulation. Noting that some firms already operated two-tier complaint handling procedures, CP49 stated: 'Appropriate arrangements for the escalation of complex complaints within a firm are a key part of an effective complaints procedure.' It added: 'They should not, however, mean that a complainant is unduly inconvenienced or has to wait longer to have his or her complaint resolved.'[22]

3.7 But the arrangements have also been subject to misuse. July 2007's 'Dear CEO' letter on handling complaints about unauthorised overdraft charges noted that some firms' practices were 'so protracted, incremental and iterative' that they did not comply with 'the requirement to have in place and operate appropriate and effective complaints handling procedures or to take reasonable steps to ensure that they handle complaints fairly, consistently and promptly.'[23] We also changed the rules, which came into effect in July 2008, to clarify that information about the ultimate availability of the ombudsman service should be 'set out prominently within the text' of the responses at the end of stage one, because we were concerned that some firms 'merely referred to the FOS [the ombudsman service] among much other detail in standard complaints leaflets enclosed alongside their responses, rather than on the face of the responses themselves.'[24]

3.8 However, the banks complaints handling review found that three out of five banks used the two-stage process in ways that could result in the unfair treatment of complainants.

3.9 We have also carried out complaint file reviews in 31 insurers, of which 13 used the two-stage process. Of the 13, seven were found to use the two-stage process poorly (i.e. with a poor outcome for complainants in more than 20% of cases), although the sample size was necessarily small due to the resource-intensive nature of doing file reviews to examine firms' compliance.

3.10 We have therefore concluded that, while some firms use the two-stage process appropriately, it is inherently prone to misuse, in particular because it effectively gives firms an incentive to deal with complaints to a lower than satisfactory standard at the first stage on the basis that only a relatively small number of consumers will take their complaint further and the firm then has a second chance to rectify any shortcomings in the original complaint handling.

21 DISP 1.6.5 R.
22 CP49, *Complaints Handling Arrangements*, FSA and FOS, (May 2000).
23 Dear CEO letter, *Handling complaints about unauthorised overdraft charges*, (27 July 2007).
24 PS08/3, *Dispute Resolution: the Complaints sourcebook*, FSA and FOS, (March 2008).

3.11 In discussion with firms and industry groups, it has been argued that the two-stage process provides an opportunity – through the initial response – to set out the firm's view of the complaint and its possible resolution. This then provides the complainant with a strong basis on which to come back to the firm with further information to clarify the picture. In the complaints review and other supervisory work, we did not find any evidence of the two-stage process being used in this way – customers who remained dissatisfied with the initial response did not tend to provide additional information when they came back at the second stage. However, we have had subsequent discussions with some firms who have argued that this does happen in more complex cases (e.g. when medical issues are in dispute).

3.12 As at present, firms will be free to approach complainants when considering their complaint if they need additional information to help resolve the complaint (within eight weeks), and this will not change. (Providing additional information should not be made a condition of considering a complaint.)

3.13 Therefore, we propose to abolish the two-stage process. The new rules will mean that the firm's first response will be its 'final response'. Complainants will then be given a clear message that they can escalate their complaint to the ombudsman service, and must do so within six months. We believe that this will lead to firms focusing their attention on providing responses to complaints at the first point of contact, and this should lead to a higher quality of decisions.

3.14 Some stakeholders have suggested that complainants may prefer to go back to the firm rather than going straight to the ombudsman service, either because they have more evidence to support their complaint, or because they believe the firm may produce a more rapid response. This choice already exists for consumers who receive a final response, and we do not wish to remove it, so we propose that rules in this area should remain unchanged.

3.15 The ombudsman service can consider a complaint if a respondent has already sent the complainant a 'final response' or if 'eight weeks have elapsed since the respondent received the complaint'.[25] These rules will remain in place. Once a final response has been given, the complainant has six months to take the complaint to the ombudsman service. The ombudsman service may waive the six-month time limit in exceptional circumstances.[26] But where a complainant does choose to go back to the firm with additional information, the firm should remind the consumer that the six month period has begun.

3.16 Some stakeholders also suggested that there should be different rules in place for handling complaints submitted through claims management companies, so firms could use the two-stage procedure to obtain additional information from the claims management company if the original complaint did not have sufficient information to undertake a full investigation.

25 DISP 2.8.1.
26 DISP 2.8.2 (3)R.

3.17 We are not persuaded of the need to use the DISP rules to discriminate between complainants who lodge their complaints themselves and those who make use of claims management companies. Firms should handle complaints on an impartial basis whether they come through a claims management company or directly from a consumer.

3.18 However, we do recognise that there are some specific issues about claims management companies, which is why the FSA, the ombudsman service and the Ministry of Justice will shortly publish a joint statement setting out our expectations.

3.19 In and of itself, we do not argue that a change to process will lead to better outcomes for consumers. But our proposal to abolish the two-stage process will incentivise firms to resolve complaints more effectively at the first stage, by investing appropriately in systems and staff at the first point of contact. As we set out above, complainants continue to have the power to either go back to the firm if they remain dissatisfied or to go to the ombudsman service. The extent to which complainants do go back to the firm seems likely to depend on how the firm has considered the initial complaint. In our view, if complainants believe that their complaint has been handled fairly, they may be more willing to go back to the firm if they remain dissatisfied. If they have doubts about the extent to which the firm investigated the complaint competently, diligently and impartially, and assessed it fairly, consistently and promptly, they may be more inclined to go to the ombudsman service.

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

Taking account of ombudsman decisions

3.20 The complaints resolution rules require firms to assess complaints 'fairly, consistently and promptly' taking into account 'all relevant factors' – which may include 'relevant guidance published by the FSA, other relevant regulators, the Financial Ombudsman Service or former schemes' and 'appropriate analysis of decisions by the Financial Ombudsman Service concerning similar complaints received by the respondent.'[27]

3.21 The complaints handling review found that some firms did not have systems in place to enable complaints handlers to access the information they would need to take proper account of these various factors. Furthermore, for some firms there was no evidence that they appropriately analysed decisions by the ombudsman service concerning similar complaints.

3.22 This requirement is not intended to mean that firms should treat every decision by the ombudsman service as a binding precedent, but rather that they should have arrangements in place to determine patterns of ombudsman decisions relating to their own firm as well as other material published by us, the ombudsman service and other relevant regulators.

27 DISP 1.4.2 G (3) and (4).

3.23 The ombudsman service will continue to encourage scrutiny of what it does through its continuing commitment to transparency and openness – by expanding further the extensive range of information and data it makes available about its approach and the outcome of its work.[28]

3.24 We propose to include additional guidance within DISP to set out the types of management processes we would expect firms to operate in order to comply with the complaints resolution rules. The proposed processes are as follows:

- ombudsman decisions are fed back to the individual complaint handlers and used in their training and development;
- ombudsman decisions are summarised, analysed and communicated to complaint handling units;
- there is a process to analyse guidance produced by us and other regulators and to communicate it to complaint handling units; and
- there is a process to analyse guidance produced by the ombudsman service and to communicate it to complaint handling units.

3.25 In pre-consultation, some stakeholders asked for clarity about whether all decisions by the ombudsman service should be included in this analysis, or only decisions made by ombudsmen themselves (as opposed to adjudicators). The guidance makes it clear that the feedback to complaints handlers relates to ombudsman determinations (proposed new DISP 1.3.2A G (1) and (2)), while the requirement to analyse guidance (proposed new DISP 1.3.2A G (3)) relates to the published ombudsman service guidance which informs decisions made by both ombudsmen and adjudicators.

3.26 We recognise that firms vary greatly in size and in the number of complaints they handle each year, so we will not expect every firm to follow the guidance in the same way, but rather that they should follow it in the way best suited to their own specific circumstances.

3.27 We anticipate that this guidance will assist firms in operating their own management processes so that any relevant learning points from the ombudsman service's decisions or published material are readily identified and cascaded to complaints handlers throughout the business.

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?

28 *Corporate plan and 2010/2011 budget*, Financial Ombudsman Service, (January 2010).

Root cause analysis

3.28 The complaints handling rules require firms to identify and remedy any recurring or systemic problems revealed by their complaints handling operation. They also suggest that firms should have regard to Principle 6 (Customers' interests) when they identify problems, root causes or compliance failures and consider whether they ought to act on their '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.'[29]

3.29 We found mixed results in the complaints handling review. Banking groups varied in the extent and quantity of root cause analysis undertaken. Banks that undertook root cause analysis could proactively identify issues and act before they became more widespread. We believe that effective root cause analysis will be beneficial to firms and consumers in the longer term, as the costs of problems that are not identified early on but which later turn out to be widespread can be very high.

3.30 We therefore propose additional guidance within DISP to set out what management processes we would expect firms to undertake to meet their obligations under the complaints handling rules. The proposed processes include collecting and analysing management information on root causes, assessing the priority of different root causes and deciding how to correct them, including how to deal with customers who have not complained.

3.31 This approach builds on the new guidance included for PPI complaints in PS10/12.[30] DISP Appendix 3.4.3 G sets out the following guidance concerning PPI contracts:

'Where a *firm* identifies (from its *complaints* or otherwise) recurring or systemic problems in its sales practices for a particular type of *payment protection contract*, either for its sales in general or for those from a particular location or sales channel, 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.'

29 DISP 1.3.3 R to 1.3.5 G.

30 PS10/12, *The assessment and redress of PPI complaints*, (August 2010).

3.32 We recognise that this new guidance is specific to PPI, so we propose guidance that will apply to the root cause analysis of all types of complaint. As we made clear in PS10/12, this is not a new requirement, but simply a restatement of requirements that have been in force for many years.[31]

3.33 We recognise that the extent to which firms can or should develop systems to meet these requirements will vary depending on the size of the firm, so the proposed guidance makes this explicit. The guidance also clarifies that we do not expect firms to undertake root cause analysis on every complaint received.

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?

Senior management oversight of complaint handling

3.34 We expect firms to have management structures in place to ensure complaint handling is given appropriate priority within the firm.

3.35 The complaints handling review found that where firms did not have a clearly identified and sufficiently senior individual responsible for complaints handling, then outcomes tended to be worse for consumers. The ombudsman service's view is also that firms with a senior individual responsible for complaints handling generally have better complaints handling outcomes. Therefore, we propose to require all firms to allocate overall responsibility for complaints handling to a nominated senior individual within a firm.

3.36 We have considered a number of alternative options:

(a) making the handling and resolution of complaints a 'controlled function'. We believe this would be a disproportionate response;

(b) reminding firms of their obligations in the Senior Management Arrangements, Systems and Controls sourcebook (SYSC), especially SYSC 4.1 (general requirements) and SYSC 4.3 (responsibility of senior personnel). Although this would underline to firms the importance of integrating complaints management into their overall management structure and give us a stronger basis for questioning the arrangements they have in place, it would not provide the degree of personal accountability we think is required;

(c) allocating responsibility generally to a firm's senior management. We believe that this leaves too much scope to diffuse responsibility.

3.37 Under our preferred option we propose the person should be someone who undertakes a governing function within the firm.[32] Although this does not require

31 See Chapter 2, part (d).

32 A 'governing function' is one of the controlled functions 1-6 in SUP 10.4.5 (i.e. director function, non-executive director function, chief executive function, partner function, director of unincorporated association function, small friendly society function).

them to be a director, in many cases this is likely to be the case. It will also ensure that someone of sufficient seniority within a firm is responsible for reviewing its complaint handling processes.

3.38 We do not propose that firms should notify us of the name of the nominated individual, but they should be able to provide us or the ombudsman service with this information on request, and the nominated individual should be able to answer questions about the firm's complaint management practices.

3.39 Our proposal will apply to firms of all sizes. To recognise the fact that complaint handling responsibilities sometimes span several different firms within a group, we propose that firms meet this requirement where appropriate by nominating someone who holds a governing function in another firm within the same group. We believe this is a pragmatic approach assisting consistent complaint handling outcomes across large entities.

3.40 Firms that do not conduct business with eligible complainants, and have no reasonable likelihood of doing so, can claim exemption from the ombudsman service funding rules and from the complaints handling rules in DISP 1.[33] Firms which have made this notification will not be subject to the requirement to nominate an individual with responsibility for complaints handling.

3.41 We will draw our proposal to the attention of the European Commission to clarify whether our proposal may require a notification to the Commission under Article 4 of the Markets in Financial Instruments Directive.

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

Timing of implementation

3.42 In setting the timetable to implement these changes, we have sought to balance the need to improve complaints handling within some firms against the practical implications for firms of making changes to their systems and controls to comply with the new rules and guidance. We therefore propose the following dates for implementation:

- **1 August 2011**: the new guidance relating to taking account of ombudsman decisions and root cause analysis would come into force;
- **1 August 2011**: the new rule requiring firms to nominate an individual with responsibility for complaints handling would come into force; and
- **1 July 2012**: the rules abolishing the two-stage process would come into force. This is because some firms will need time to change their complaints management systems to operate a one-stage complaints handling procedure. Our proposals would allow over a year for this transition. Given this timetable, we do not propose any transitional provisions, except on the complaints reporting rules.

33 See DISP 1.1.12 R. The notification should be made in writing using the form on the FSA website at: www.fsa.gov.uk/pages/Doing/Regulated/Fees/PDF/fos_notice.pdf

These will allow firms with reporting periods ending on or after 1 July 2012 to include complaints closed under the two-stage process before that date.

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

Cost benefit analysis[34]

Benefits

3.43 The review of the complaints handling practices of banking groups, file reviews of the complaints handling of some insurers, and more general supervisory experience indicates that the existing DISP rules on complaints handling are not fully delivering the consumer protection-related benefits originally anticipated.

3.44 The rules in DISP aim at protecting consumers against the consequences of mis-selling or misadministration that may occur because of information asymmetries between firms and consumers. They primarily contribute to our consumer protection objective, thereby also improving market confidence.

3.45 The proposed changes to our rules aim at rectifying the regulatory failures evidenced by widespread poor practice among large firms.

3.46 The overall benefits of these proposals cannot be quantified separately. Abolishing the two-stage process will potentially raise the cost to firms of rejecting meritorious complaints. The more detailed guidance on root cause analysis and taking account of ombudsman decisions, together with the requirement to identify a single senior individual with responsibility for complaints handling, are hoped to improve the standard of complaints handling. The intended benefits of our proposals fall into three main categories:

(a) The amount of additional redress that we estimate will be paid to consumers as a result of improved complaint handling at the firm level is in the range of £57m to £85m per annum, assuming that the proportion of complaints upheld by firms increases by between 10% and 15%.[35]

(b) Additional redress provided to consumers as a result of additional complaints going to the ombudsman service – we estimate this at between £2m and £6m, assuming 5-10% additional complaints going to the ombudsman service.[36]

(c) In some cases, firms will make a payment to consumers who have not complained, but who have suffered a loss for the same reasons as consumers who have complained. We cannot provide an estimate for the value of this transfer to

34 See paragraph 2.22 above for the requirement under section 155 of FSMA.

35 Using an average cost of redress per complaint of roughly £400 (see below) and a total number of upheld complaints of around 1.4m (from 2009 data).

36 Assuming that the average amount of redress achieved through the FOS and through firms' own complaints handling procedures is equal. (Calculated by dividing the total annual redress paid by firms in 2009 by the total number of complaints which obtained redress. The average redress payment thus calculated is approximately £400.)

consumers, as it will depend on an individual firm's mix of business, sales practices and the number of complaints it receives. These issues will determine whether root cause analysis will identify problems which need remedying.[37]

(d) Over time we expect the amount of redress paid (as in (a) and (b) above) to reduce and other benefits of the proposals to increase proportionately. In particular, root cause analysis and increased senior management oversight may help improve product design and sales practices as firms learn from the issues identified through root cause analysis, championed as necessary by the nominated senior individual with responsibility for complaints handling. Increased administrative and redress costs are expected to provide further incentives in this area.

3.47 There are expected to be benefits for us in terms of improving the efficiency and effectiveness of our supervisory work. Being able to refer to a named responsible senior individual quickly will save supervisory time and incentivise more effective engagement between us and firms, thereby enhancing the effectiveness and efficiency of our supervisory function.

3.48 Since the evidence of regulatory failure relates mostly to larger firms and the costs of the proposals affect all firms, benefits will largely flow from the effect the proposals have on large firms. Whether the benefits will materialise will also depend on our monitoring and enforcement. Our focus on intensive supervision provides some assurance in this area.

Costs of removing the two-stage process

3.49 In addition to the cost of the transfer from firms to consumers set out above, removing the two-stage process may have one-off and ongoing administrative costs to firms currently operating a two-stage process. Of the 46 respondents to our survey that used the two-stage process, 15 anticipated ongoing cost increases.

3.50 We have not been able to calculate an aggregate estimate of the one-off administrative costs to industry due to the low number of responses to this question. However, three respondents to our survey indicated information technology costs of between £10,000 and £100,000, five indicated staff training costs of between £3,000 and £300,000, and three others indicated staff recruitment costs of between £10,000 and £700,000. In all cases the largest number is for a very large banking group.

3.51 Ongoing administrative costs include the costs of improved complaints handling and the cost of an increased number of complaints going to the ombudsman service. We estimate the ongoing costs relating to increased referrals to the ombudsman service to be around £7m based on a 5% increase in complaints to the ombudsman service.[38]

37 The recent PPI policy statement estimated total costs of between £1bn and £3bn for consumers who had been mis-sold, but would not receive redress without the measures outlined in that policy statement. However, this should not necessarily be taken as being indicative of likely future costs.

38 This figure was calculated by multiplying the ombudsman case fee (£500) plus a weighted average cost (weighted by number of complaints) to the firm of handling a complaint that is with the ombudsman (roughly £300) by 8,316, which is 5% of the total ombudsman caseload in 2009-10 (166,321 cases).

3.52 Administrative costs from improved complaints handling may arise as firms who have used the two-stage process will now have to provide a final response earlier and to more customers (as customers will not be excluded if they do not revert to the firm in a second stage as before). According to firms, these costs will arise from a mix of increased training, recruitment, using legal and other services and the increased involvement of senior management in complaint handling.

3.53 Our estimate of the range of ongoing costs that firms will incur is between £17m and £42m per annum. This range is wide because only a small number (13) of firms responding to our survey provided an estimate for the increase in costs they would anticipate, and some of these estimates included other costs such as the cost of paying increased redress.

3.54 We have estimated the cost to all firms in the industry on the basis of the average cost per complaint provided by firms in the survey, applied to all firms who received at least one complaint in the period 2006-9 and depending on their size.[39] We have then adjusted the results to account for the proportion of firms in each size bracket not using the two-stage process and again for those currently using the two-stage process but not incurring a cost of switching.[40]

3.55 These estimates can be broken down by firm size as follows:

- for small firms, roughly £2m-£6m in total, or £600-£2,000 per affected firm;
- for medium firms, roughly £6m-£16m in total, or £13,000-£37,000 per affected firm; and
- for large firms, roughly £9-20m in total, or £500,000-£1m per affected firm.

3.56 There may also be an increase in the costs of PII premiums, in response to the increase in the number of cases going to the ombudsman service. Insurers have indicated this may be the case, but we have been unable to quantify the potential increase. We would welcome any further evidence on this point.

3.57 A small number of firms have also argued that there may also be an additional cost if firms decide to settle with consumers even where complaints are non-meritorious to avoid the administrative costs associated with the ombudsman service. We have not received any clear evidence on this nor any estimate of how widespread such a practice might be. As a result we have not included it in our analysis of cost.

39 Firms have been classified by number of staff to account for the fact that larger firms tend to have higher numbers of complaints, and lower average cost of handling. Small firms are firms with less than 50 employees, medium firms are firms with from 50 to 9,999 employees and large firms are firms with 10,000 employees and over. For those firms where we do not hold staff data we have used the number of complaints as a proxy for firm size. We have not used the standard classification of firm size as it seemed from our data that the average handling cost per complaint was materially different for very large firms. Hence we have changed the employee threshold defining large firms from '250 and above' to '10,000 and above' to analyse the impact of the proposal to abolish the two-stage process.

40 54% of firms responding to our survey used the two-stage process, and of those 67% declared that they will not face an increase in ongoing administration costs.

Root cause analysis and taking account of ombudsman service decisions

3.58 We surveyed firms on the extent to which they already had in place the various management processes that we are proposing to include in new guidance. In our survey, this was broken down into thirteen questions reflecting processes or part-processes which are now contained in our proposed guidance. Of 85 respondents, about half stated they had all 13 processes or part-processes in place, about a fifth had 11-12 in place, and another fifth six to ten. No firms responded saying they had no processes in place. Smaller firms with fewer complaints tended to have fewer processes in place than large firms. This also suggests that the costs to firms will be lower if the guidance is implemented in a proportionate way as suggested in paragraph 3.33 above.

3.59 Nevertheless there may be costs to firms if they have a significant number of complaints while not having the relevant processes in place. This may include additional transfers to consumers if the processes lead firms to provide redress or settle in a greater number of cases. Relevant estimates have been provided in the benefits section above.

3.60 Only a small number of respondents provided data on the costs of undertaking root cause analysis or taking account of the ombudsman's decisions where they were not currently doing so. Where they did, the range of one-off costs was from the low hundreds to tens of thousands. The ongoing annual costs also ranged from hundreds to tens of thousands depending on firm size.

3.61 As most firms appear to already meet most or all of our requirements, which in any case will be implemented proportionately as per our draft guidance, we do not anticipate that the total costs to industry will be significant.

Senior management oversight of complaint handling

3.62 Our survey of firms asked whether firms had a single individual responsible for complaints handling, and whether that individual held a post at director-level or equivalent.[41] We received 85 responses, which are summarised in the table below.

Table 3.1: Survey responses on senior management oversight

Responses	Proportion
Respondents stating that a single individual is responsible for complaints handling	90%
Respondents stating that this individual does **not** hold a director function or similar	26%
Respondents stating that responsibility is shared among a number of individuals	10%
Respondents stating that these individuals do **not** hold a director function or similar	33%

3.63 As the results show, 90% of firms that responded to our survey had a single individual responsible for complaint handling and roughly 70% of these individuals held a director role or equivalent role within the firm.

41 We asked whether the individual held one of the following: Director function, Non-executive director function, Chief Executive function, Partner function, Director of unincorporated association function, Small Friendly Society function.

3.64 There will be some costs to firms who do not currently meet our proposed requirements: where there is not an individual of director-level or equivalent seniority responsible for complaints handling, firms may face some one-off costs in rearranging internal processes to enable an appropriate individual to assume this role, and some ongoing opportunity cost in terms of the time the individual will divert to performing the function.

3.65 We have assumed where there is not currently a nominated executive of sufficient seniority, the newly nominated individual will spend two hours[42] a month meeting other staff within the organisation, reviewing reports about the firm's complaints handling processes and communicating with other senior managers as necessary.

3.66 We estimate an average annual cost for this level of involvement of approximately £3,000 per year per affected firm.[43] These costs would only be incurred by firms that did not currently have a nominated senior individual responsible for complaints handling. Given that only firms with complaints will have material costs associated with our requirement, our estimate of the maximum total cost to industry is based on an assumption that one-third of the roughly 4,000 firms that receive complaints each year do not currently meet our proposed requirements, and that each firm will incur an average cost of £3,000. The total cost will therefore be roughly £4m per annum.

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?

42 This figure is intended to be indicative, and not taken as an FSA view of the time required at all firms. The actual time taken will vary from firm to firm, depending on the size of the firm and the number of complaints it receives.

43 Using 2009 Office for National Statistics (ONS) data on hourly wages for a chief executive or director (at the 80th percentile), plus 50% to adjust for overhead costs. (www.statistics.gov.uk/StatBase/Product.asp?vlnk=15313) Costs for some firms will be in excess of the average figure stated, but the total industry cost stated is in our view a reasonable maximum given that the vast majority of firms are small and will have lower costs.

4 Other changes to DISP

4.1 This chapter reports on the responses received to the questions about the complaints handling rules included in DP10/1: *Consumer complaints (emerging risks and mass claims)*, published in March 2010, and proposes minor changes to the Handbook based on the suggestions made. A list of respondents is provided at Annex 4. Feedback on other aspects of the DP will be published separately in due course.

4.2 The chapter also proposes changes to the Dispute Resolution: Complaints (DISP) sourcebook to prepare for the implementation of the UCITS IV directive,[44] which we believe will have no material effect on firms' existing complaint handling practices.

4.3 Draft Handbook text is provided in Appendix 1.

Proposals arising from DP10/1

4.4 In DP10/1 we asked:

> Do you have any analysis or evidence which suggests that the effectiveness of Chapter 1 of DISP could be improved? If so, which elements might be reviewed?

4.5 We received 25 responses to the DP, of which 19 responded to this question.

General points

4.6 There was no consensus on the effectiveness of Chapter 1 of DISP or what aspects of it ought to be improved. Some respondents suggested that it was inappropriate to impose the same complaint handling rules on all types and sizes of financial services firms. Specifically, there was a view that the lessons from the review of complaint handling in banking groups did not necessarily apply to all firms. Other respondents welcomed our decision not to undertake a fundamental review of the DISP rules.

44 Directive 2009/65/EC. UCITS: Undertakings for Collective Investments in Transferable Securities.

Clarity of DISP

4.7 Some respondents suggested that aspects of DISP lacked clarity. Of these, two trade associations and two firms felt there needed to be greater clarity around the meaning of 'material' in the definition of 'complaint' in the glossary.

4.8 One respondent felt it would be beneficial to redraft the 'purpose and application' section of DISP into a 'scope' section to define which parts of DISP apply to specific types of firm. The same respondent also suggested redrafting DISP to follow the complaints handling processes that firms follow.

4.9 Two respondents thought that some of the glossary definitions relevant to DISP, such as 'complaint' and 'final response', should be moved into the DISP chapter of the Handbook.

Our response: Our position on 'financial loss, material distress or material inconvenience' has not changed since Policy Statement 32, published in December 2000,[45] when we said:

'We have given careful thought to whether it is appropriate to define the term "material", but have concluded that this must depend on the circumstances of a particular case. We have also considered whether it would be preferable to drop the reference to "material", but we believe that this would impose an unnecessary additional burden on firms – and also, in turn, on the FOS [the ombudsman service]. In practice, we do not think firms will have difficulty in applying this test. Where the complainant is alleging financial loss, it will be clear that the complaint is caught by these requirements. It is only in cases where a complainant is alleging distress or inconvenience, but no financial loss as such, that a judgement will have to be made as to whether this is material (i.e. significant and relevant) or not.'

We recognise the calls to increase the clarity of DISP. We therefore propose to include new guidance in DISP 1 to provide more information about the definition of a complaint and how the rules work in relation to the jurisdiction of the ombudsman service. We also propose to move the substance of the requirements for a 'final response' from the glossary into the main body of the rules.

Communication with complainants

4.10 One respondent felt that the meaning of 'prompt written acknowledgement' under the complaint time limit rules should be either clarified or prescribed (e.g. with 'no more than five working days').[46] Another suggested that each DISP rule could be followed with a statement about the purpose of that rule.

4.11 Some respondents raised concerns about the medium in which DISP requires firms to communicate with complainants. They suggested removing 'written acknowledgement' to give firms more flexibility in the way they handle complaints. Telephone communication was proposed as a more effective medium as it allows consumers to be directly involved in complaint resolution.

45 PS32, *Complaints handling arrangements: Response on CP49*, A joint Policy Statement between the FSA and Financial Ombudsman Service, (December 2000).

46 DISP 1.6.1(1) R.

Our response: The five-day requirement for acknowledging a complaint was removed in November 2007, and replaced with 'prompt'. Most firms welcomed the removal of this time limit and the increased flexibility that would result, although some said they would leave the five-day limit in their systems anyway. Other respondents, including consumer stakeholders, did not support the change, seeing the limit as a consumer protection measure.

We do not propose to provide additional guidance on what is meant by 'prompt', as this would reverse the decision of less than three years ago, which was welcomed by the majority of firms. When considering their own arrangements, firms will be aware that the limit used to be specified at five days, but should also bear in mind that a faster acknowledgement may be appropriate in some circumstances.

We recognise the value of alternative methods of communication with consumers. Nothing in the existing rules prevents firms from telephoning their customers to discuss their complaints and seeking to resolve them. However, we continue to believe that there is value in retaining the requirement to provide acknowledgements in writing, so customers are reassured that their complaint has been received. It is also important for the final response to be provided in writing (even if the substance has already been agreed by telephone) so complainants have the opportunity to review the information provided and consider their next steps.

Two-stage process

4.12 Several respondents commented on the two-stage process. Some were in favour of retaining it, with two commenting that consumers often bring back extra information at stage two, while under a one-stage system the complaint would unnecessarily move to the ombudsman service, increasing its workload. One industry group suggested that the extra costs of changing to a one-stage system would not be proportionate to the benefits it would deliver to consumers.

4.13 Three respondents favoured removing the two-stage process. One suggested that two-stage processes disempowered staff working at stage one, while another suggested effective training would negate the need for two stages.

Our response: We have noted stakeholders' responses and have drawn on them in developing our proposals in Chapter 3.

Other suggestions

4.14 One respondent sought to understand how our 'intensive supervision' had an impact on complaint handling by firms.

4.15 One respondent believed that both we and the ombudsman service acted retrospectively and were not judging products against the period when they were sold. Another felt that consumers should be able to go to the UK ombudsman service with complaints about any financial service or product sold within the UK, regardless of a firm's origins.

4.16 Two respondents suggested that developing a dedicated complaints handling section in our website would help firms' complaints handling.

Our response

Our focus on 'intensive supervision' includes examining firms' complaints handling, as part of the normal supervisory process. Firms should expect supervisors to ask questions about their complaint handling processes and we may follow up on the complaints data that firms have reported to us (and in some cases, published).

Consumers are able to go to the UK ombudsman service with complaints about financial services or products provided in or from the UK by any firm authorised in the UK or which operates from a branch in the UK, even if foreign-owned. In addition, some European Economic Area firms selling services to UK consumers on a distance basis may choose to join the voluntary jurisdiction of the ombudsman service.

Finally, in order to make it easier for firms to identify and access relevant information about complaints handling, we will consider how best to make information about complaints handling more readily available on our website.

In light of the responses received above, we propose to amend the rules in DISP 1 in two areas:

(a) we propose to provide additional guidance on the definition of a complaint, and the factors to take into account in considering whether a complaint falls within the jurisdiction of the ombudsman service; and

(b) we propose to set out the requirements for a 'final response' in DISP 1, rather than in the glossary.

These changes should make the requirements clearer, but will not represent any new requirements on firms. We are proposing that the changes would come into force on 1 August 2011.

Q10: Do you agree with the proposed changes to the presentation of the DISP rules?

Changes arising from the UCITS IV Directive

4.17 The UCITS IV[47] directive must be implemented by 1 July 2011. We will consult on the necessary changes to the rules in due course. This will include some changes to DISP specific to UCITS. However, there are two changes arising from the directive which we propose to enact through a more general change to the DISP rules.

4.18 The Level 2 implementing directive[48] contains the following provisions in article 6:

1. Member states shall require management companies to establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from investors.

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

48 Directive 2010/43/EU.

2. Member states shall require management companies to ensure that each complaint and the measures taken for its resolution are recorded.

3. Investors shall be able to file complaints free of charge. The information regarding procedures referred to in paragraph 1 shall be made available to investors free of charge.

4.19 Paragraphs 1 and 2 of this article are already covered by the existing DISP rules, but, in order to comply with the implementing directive, the rules need to be amended to reflect paragraph 3, despite the fact that we already expect firms to allow complainants to file their complaints and provide information on their complaints procedures free of change.

4.20 We could amend DISP to clarify that these requirements apply only to complaints about UCITS products. But this approach would raise immediate questions about the status of non-UCITS complaints.

4.21 We are therefore consulting on new rules covering all firms to clarify that complaints can be made free of charge and that information about firms' complaint handling procedures should be made available free of charge. In proposing these new rules, we are not suggesting that firms have to ensure that consumers avoid all costs in lodging complaints (for example, we do not require firms to provide freephone numbers or prepaid envelopes, although they may choose to do so for commercial reasons). But we expect firms to allow complaints to be made 'by any reasonable means' and the new rules will clarify that firms cannot levy charges for lodging complaints or for providing information about their complaint handling procedures.

4.22 The new rules would come into force on 1 July 2011, to coincide with the implementation of the UCITS IV directive.

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?

4.23 Section 155 of FSMA requires us to publish a CBA of the implications of the proposed amendments. The requirement does not apply if there will be no increase in costs or if any increase in costs will be of minimal significance.

4.24 The changes proposed in this chapter are intended to clarify or reword requirements that are already in place under the dispute resolution rules, or which arise from firms' existing obligations under Principle 6 to treat customers fairly. In our view, there will be no increase in costs to firms arising from these changes, or if there is any increase it will be of only minimal significance (for example, where firms need to update their internal training material to reflect the revised wording of the rules). We have not therefore prepared a CBA in respect of these changes.

5 Identity theft and mistaken identity

5.1 The ombudsman service has made us aware that in some circumstances some people may be experiencing detriment because of identity theft or mistaken identity and are unable to complain. The situation arises where a debt-owning firm is pursuing the wrong person because a loan has fraudulently been taken out in their name (identity theft) or the debt-owning firm, or a tracing agency acting on its behalf, has mistaken the person for the borrower (mistaken identity). This concern is against the backdrop of increasing levels of identity fraud, with CIFAS, the UK's fraud prevention service, reporting a 14% increase in identity fraud for the first six months of 2010, compared with the same period in 2009.[49]

5.2 In both cases, the ombudsman service reports that consumers have often complained that the debt-owning firm wrongly continued to hold the person liable for the loan, after the true position should have become clear. The nature of the potential detriment includes distress and inconvenience and potentially consequential losses (e.g. where an impaired credit history affects the person's ability to take out a loan).

Complainant eligibility

5.3 Under the Dispute Resolution: Complaints sourcebook (DISP) 2.7.6 R, whether a person who is being incorrectly pursued for a loan because of a mistaken or stolen identity is able to complain depends on who is seeking to recover the loan and the type of the loan.

5.4 Where a firm employs a debt collector, covered by the Consumer Credit Act 1974, to recover a payment under a regulated consumer credit agreement, the person is able to complain to the ombudsman service about the actions of the debt collector. [50]

49 www.cifas.org.uk/default.asp?edit_id=1031-57.

50 '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* in carrying on debt-collecting as defined by section 145(7) of the Consumer Credit Act (1974) (as amended).'

5.5 But where the firm is seeking to recover its own debt, the person is ineligible to complain. This is because the Consumer Credit Act excludes debt collection and debt administration by the owner or creditor.

5.6 Under DISP, a person can complain where they are a potential customer of a firm.[51] But this does not provide protection for persons who are being pursued by a firm and who had no intention of entering into a customer relationship with that firm.

5.7 In addition, where a debt collector is seeking to recover a debt in respect of a regulated mortgage contract, the person cannot complain. This is because DISP 2.7.6 R (12) (a) only deals with the recovery of payments under a 'regulated consumer credit agreement' (which does not cover regulated mortgage contracts).

5.8 The ombudsman service believes that problems also arise where identity theft or mistaken identity lead to a (wrongly) impaired credit rating for the affected consumer – where the original debt-owning firm has passed adverse information about the consumer to a credit reference agency. The consequences of this can include impaired, or less affordable, access to borrowing and to financial products from other firms. When this happens, the ombudsman service has usually found that the credit reference agency and the other firms have acted in good faith on the information received, with the result that they would not be liable for redress to the consumer for consequential loss or for distress and inconvenience. However the consumer would not be eligible to complain to the ombudsman service about the actions of the original debt-owning firm in order to seek redress from them.

Scale of the problem

5.9 We are seeking further evidence on the number of consumers experiencing detriment because of identity theft or mistaken identity and who are unable to complain.

5.10 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, firms are not required to provide referral rights to the ombudsman service, meaning it is not in a position to record the number of potential complainants.

5.11 We will consult separately on any rule changes in this area. Any proposals will be subject to market failure and cost benefit analysis.

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?

51 DISP 2.7.6 (1) R.

6 Amendments in the consumer credit and voluntary jurisdictions

6.1 Previous chapters have discussed the FSA's proposed changes to the complaint-handling rules in the Dispute Resolution: Complaints (DISP) sourcebook, which apply to firms covered by the ombudsman service's compulsory jurisdiction. This chapter discusses proposals by the ombudsman service to apply most of these proposals to licensees covered by its consumer credit jurisdiction and to participants in its voluntary jurisdiction.

6.2 DISP rules in respect of the consumer credit and voluntary jurisdictions are made by the ombudsman service and approved by the FSA. Previous ombudsman service practice has been, wherever possible, to apply the DISP rules consistently across all three jurisdictions to maintain a consistent business model, subject to any proportionality considerations. This helps to increase efficiency (and reduce the cost which is charged to businesses) and to facilitate explanations to consumers (who are unlikely to know which jurisdiction covers the particular financial business they are dealing with).

Proposals

6.3 To maintain a consistent business model, the ombudsman service proposes 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 3.7.4 R and transitional provisions);
- abolishing the two-stage process for complaint handling (DISP 1.6.2 R, 1.6.3 G, 1.6.5 R, 1.6.6 R, 1.6.6A G, 1.6.7 G);
- highlighting the requirement to take account of the ombudsman service's decisions and other material when resolving complaints (DISP 1.3.2A G, 1.4.2 G);
- improving the clarity of DISP following feedback received to DP10/1 (Glossary definition of 'final response', DISP 1.1.2A G); and
- clarifying that complaints to financial businesses covered by all three jurisdictions can be made free of charge (DISP 1.2.1R and 1.3.1A R).

6.4 The ombudsman service proposes that the following DISP changes should not be applied in the consumer credit and voluntary jurisdictions:

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

6.5 These changes build on the FSA's systems and controls rules for firms. Applying these to around 100,000 consumer credit licensees and voluntary jurisdiction participants could be disproportionate, as 98% of the ombudsman service's caseload comes from around 21,000 firms covered by the compulsory jurisdiction.

6.6 The ombudsman service also proposes not to apply the following DISP changes in the consumer credit and voluntary jurisdictions, as the existing provisions being changed only apply to firms covered by the compulsory jurisdiction:

- changes to the complaints reporting rules consequential to the abolition of the two-stage process, as these rules apply only to firms (DISP 1.10.3 G, 1.10.7 R and 1.10.8 G); and
- guidance to improve the clarity of DISP rules that apply only to firms (DISP 1.1.9 G and 1.1.9A G).

Timing

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

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

Annex 1

Survey respondents

1. The table below provides a breakdown by sector of firms that received, and responded, to our survey to collect information to inform the Cost Benefit Analysis (CBA) set out in Chapters 2 and 3.

Table A1.1: survey of firms to inform CBA

Sector	Sample	Responses	Respondents using two-stage complaints handling process	Population (number of firms submitting complaints return H2 2009)
Advising, arranging and dealing as agent	89	45	28	12,481
Custodians	6	3	1	133
Deposit takers	22	10	6	288
Insurance firms	26	15	5	469
Investment managers	8	6	4	521
Mortgage lenders	5	4	2	118
Professional entities	2	2	0	311
Trading, clearing and settlement systems	1	-	-	4
Total	159	85	46	14,345
Note that 87 of the 159 firms sent the survey were covered by 85 responses, as some responses were on a group basis.				

2. In designing the sample for our survey, we considered the need to:

   - have a sample which was both broadly representative, but also of a small enough size to allow individual results to be considered and followed up with firms where necessary, without requiring a significant resource outlay by us; and

- take account of the fact that, although large firms account for most of the complaints received by the ombudsman service, changes to our complaint handling rules affect all firms, and most FSA-regulated firms are small.

3. Therefore, our survey sought to strike a balance between being representative of the industry as a whole (which would imply more small firms than are actually contained in the sample) and being representative of firms which receive the most complaints (which would imply more large firms in the sample).

4. Given these criteria, we first determined the number of firms required in each category as listed above, and then randomly selected firms within each type to receive the survey. Our sampling process also attempted to ensure that to the greatest extent possible and where relevant, we chose representatives of small, medium and large firms within each sector.

Compatibility statement

Introduction

1. This annex explains our reasons for concluding that the proposals and draft rules 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

2. These proposals mainly contribute 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 these proposals to contribute materially to our other objectives.

3. 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 increase in the ombudsman service award limit is expected to benefit all consumers that have a valid dispute with a firm and are liable for redress between £100,000 and £150,000, whether they currently pursue a claim at the court or not.

4. The proposed changes to our complaints handling requirements aim at rectifying the regulatory failures evidenced by widespread poor practice among large firms. Abolishing the two-stage process is hoped to increase the number of meritorious complaints obtaining redress. The more detailed guidance on root cause analysis and taking account of ombudsman decisions, together with the requirement to identify a single senior individual with responsibility for complaints handling, are expected to contribute to consumer protection by improving the standard of complaints handling.

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 amendments relate to the principles of efficiency and economy, role of management, proportionality, innovation, and competition.

6. With regard to efficiency and economy, our proposals will not require using significant FSA resources at the current time. The nomination of a senior individual with responsibility for complaints handling in firms should facilitate more effective compliance monitoring by the FSA.

7. Regarding the role of management, our proposal to ensure that a senior individual has overall responsibility for complaints handling is designed to secure an adequate but proportionate level of regulatory intervention increasing senior management accountability.

8. We have had regard to the proportionality of the proposals by carefully weighing the cost of the proposals against the benefits (where relevant). The cost benefit analysis suggests that the benefits are proportionate to the costs.

9. We do not anticipate that our proposals will materially affect innovation in financial services.

10. 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 proposals might lead a significant number of firms to exit the market. As a result, we do not consider that our proposals will have an adverse effect on competition.

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

11. In developing our proposals, we have taken steps to engage extensively with a wide range of industry practitioners and other interested parties, including consumer representatives. In addition to our survey of firms we have held further discussions with trade associations and firms in order to understand the impact our proposals might have. These discussions are reflected in this CP.

12. We believe that, given the need to maintain the level of consumer protection provided by the ombudsman service, and to address problems we have found with firms' handling of customer complaints, our proposals are the most appropriate way forward.

Annex 3

List of questions in this Consultation Paper

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

Q2: Do you have any comment on our Cost Benefit Analysis (CBA) in relation to the proposal to increase the award limit? Do you have any analysis or evidence that supports, contradicts or otherwise relates to this CBA?

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?

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

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?

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?

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

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

Q9: Do you have any comment on our Cost Benefit Analysis (CBA) in relation to our proposed changes to complaints handling rules and guidance? Do you have any analysis or evidence that supports, contradicts or otherwise relates to this CBA?

Q10: Do you agree with the proposed changes to the presentation of the DISP rules?

Q11: Do you agree with the proposed additions to the rules to clarify that complaints can be made free of charge, and that summary details about firms' complaints processes should be made available free of charge?

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?

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

Annex 4

List of respondents to DP10/1

Aneeta Marde

Adam Samuel

Gary Urquhart

Association of British Insurers

Association of Financial Mutuals

Association of Private Client Investment Managers and Stockbrokers

British Bankers' Association

The Building Societies Association

BUPA

Canada Life Ltd

Car Giant

Consumer Focus

Financial Services Consumer Panel

Investment And Life Assurance Group Limited

Liverpool Victoria

Lloyds Banking Group (Life, Pensions & Investments)

Nationwide Building Society

Prudential plc

The Royal Bank of Scotland Group plc

Zurich Financial Services Group

Appendix 1

Draft Handbook text

DISPUTE RESOLUTION: COMPLAINTS SOURCEBOOK (AMENDMENT) INSTRUMENT 2010

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) paragraph 8 (Guidance) of Schedule 17;
(d) paragraph 14 (The scheme operator's rules) of Schedule 17;
(e) paragraph 16B (Consumer credit jurisdiction) of Schedule 17; and
(f) paragraph 18 (Terms of reference to the scheme) of Schedule 17.

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

Powers exercised by the Financial Services Authority

C. The Financial Services Authority makes the rules and guidance in this instrument for firms relating to the Compulsory Jurisdiction in the exercise of the powers and related provisions in or under the following sections of 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); and
(5) 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.

E. The Financial Services Authority consents to and approves the rules and guidance made by the Financial Ombudsman Service Limited.

Commencement

F. 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 August 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

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

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

Citation

I. This instrument may be cited as the Dispute Resolution: Complaints Sourcebook (Amendment) Instrument 2010.

By order of the Board of the Financial Ombudsman Service Limited

[ ] 2010

By order of the Board of the Financial Services Authority

[ ] 2010

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 August 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 ~~summary details of~~ appropriate 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 against the *respondent* free of charge.

…

Part 2A: Comes into force on 1 August 2011

1.1.2A G (1) The detailed definition of a *complaint* is given in the *Glossary*. The following is a summary of its meaning in this sourcebook.

(2) A *complaint* is any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *person* about the provision of, or failure to provide, a financial service, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience, subject to the following:

(a) in general, for an expression of dissatisfaction to be a *complaint* it must also be within the scope of one of the three jurisdictions of the *Financial Ombudsman Service* (as set out in *DISP* 2.2.1G) and this depends on:

(i) the type of activity to which the complaint relates (see *DISP* 2.3, 2.4 and 2.5);

(ii) the place where the activity to which the complaint relates was carried on (see *DISP* 2.6);

(iii) whether the complainant is eligible (see *DISP* 2.7); and

(iv) when the event complained of occurred (see *DISP* 2.8.2R, and also *DISP* 1.8 where time limits have been exceeded); and

(b) there is an exception in relation to *MiFID business* in that, in this section (*DISP* 1.1), the *complaints handling rules* and the *complaints record rule*, expressions of dissatisfaction are to be treated as *complaints*, regardless of whether they fall within the jurisdiction of the *Financial Ombudsman Service*. However, for those rules there are other limitations, for example that they apply only to *complaints* from *retail clients* (see *DISP* 1.1.3R).

(3) A *complaint* includes part of a *complaint*.

…

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*.

…

1.4.2 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* 1.6.5 R); or~~

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

Part 2B: Comes into force on 1 August 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* (such *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*).

…

1.3.3A 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:

(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* 1.3.3AG) in order to detect and minimise any risk of compliance failures (*SYSC* 6.1) and in complying with *Principle 6* (Customer's 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*.

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 provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming 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~~ that ~~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* 1.6.2 R unless the complainant indicates that he remains dissatisfied, in which case, the obligation to comply with *DISP* 1.6.2 R 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* 1.6.5 R, the additional time in excess of a week will not count for the purposes of the time limits in *DISP* 1.6.2 R or the complaints reporting rules.~~ [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 1.6.5 R.~~ [deleted]

…

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 prior to 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

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