Chapter 3

Complaint handling procedures of the Financial Ombudsman Service

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3.1 Purpose, interpretation and application

Purpose

3.1.1 G The purpose of this chapter is to set out:

(1) the procedures of the *Financial Ombudsman Service* for investigating and determining *complaints*;

(2) the basis on which the *Ombudsman* makes decisions; and

(3) the awards which the *Ombudsman* can make.

Interpretation

3.1.2 R In this chapter, 'out of jurisdiction' means outside the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction* in accordance with ■ DISP 2.

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

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

Application

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

3.1.6 R This chapter applies to a *TP firm*. This *rule* demonstrates the contrary intention under ■ GEN 2.2.26R.

3.2 Jurisdiction

3.2.1	R	The *Ombudsman* will have regard to whether a *complaint* is out of jurisdiction.
3.2.2	R	Unless the *respondent* has already had eight weeks to consider the *complaint* (or for *EMD complaints* and *PSD complaints* the time specified by ■ DISP 2.8.1R(2A)) or issued a *final response* or *summary resolution communication*, the *Ombudsman* will refer the *complaint* to the *respondent* (except where ■ DISP 2.8.1R(4) applies).
3.2.2A	R	If the subject matter of a *complaint* falls to be dealt with by the *respondent* under a *consumer redress scheme*, and the time limits specified under the scheme for doing so have not yet expired, the *Ombudsman* will refer it to the *respondent* to be dealt with under the scheme (except where ■ DISP 2.8.1R(4) applies).
3.2.3	R	Where the *respondent* alleges that the *complaint* is out of jurisdiction, the *Ombudsman* will give both parties an opportunity to make representations before he decides.
3.2.4	R	Where the *Ombudsman* considers that the *complaint* may be out of jurisdiction, he will give the complainant an opportunity to make representations before he decides.
3.2.5	R	Where the *Ombudsman* then decides that the *complaint* is out of jurisdiction, he will give reasons for that decision to the complainant and inform the *respondent*.
3.2.6	R	Where the *Ombudsman* then decides that the *complaint* is not out of jurisdiction, he will inform the complainant and give reasons for that decision to the *respondent*.

3.3 Dismissal without consideration of the merits and test cases

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

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

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

3.3.3A G Under the *Claims Management Order* the *Ombudsman* may dismiss a *relevant claims management complaint*, if he considers that the complaint would have been dismissed under the rules of the *former scheme* or should be dismissed under the grounds for dismissal in ■ DISP 3.3.4R or ■ DISP 3.3.4AR. Where the *Ombudsman* is dealing with a *relevant new claims management complaint* the rules of the *former scheme* must be read as if they were subject to paragraph 13 of Schedule 3 of the *ADR Regulations*.

Grounds for dismissal

3.3.4 R The *Ombudsman* may dismiss a *complaint* referred to the *Financial Ombudsman Service* before 9 July 2015 without considering its merits if the *Ombudsman* considers that:

(1) the complainant has not suffered (or is unlikely to suffer) financial loss, material distress or material inconvenience; or

(2) the *complaint* is frivolous or vexatious; or

(3) the *complaint* clearly does not have any reasonable prospect of success; or

(4) the *respondent* has already made an offer of compensation (or a goodwill payment) which is:

(a) fair and reasonable in relation to the circumstances alleged by the complainant; and

(b) still open for acceptance; or

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

(a) the regulatory standards for the review of such transactions prevailing at the time of the review; or

(b) [deleted]

(c) any formal regulatory requirement, standard or guidance published by the *FCA* or other regulator in respect of that type of *complaint*;

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

(5A) the *respondent* has reviewed the subject matter of the *complaint* and issued a *redress determination* in accordance with the terms of a *consumer redress scheme*; or

(6) the subject matter of the *complaint* has previously been considered or excluded under the *Financial Ombudsman Service*, or a *former scheme* (unless material new evidence which the *Ombudsman* considers likely to affect the outcome has subsequently become available to the complainant); or

(7) the subject matter of the *complaint* has been dealt with, or is being dealt with, by a comparable independent complaints scheme or dispute-resolution process; or

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

(9) the subject matter of the *complaint* is the subject of current court proceedings, unless proceedings are stayed or sisted (by agreement of all parties, or order of the court) so that the matter may be considered by the *Financial Ombudsman Service*; or

(10) it would be more suitable for the subject matter of the *complaint* to be dealt with by a court, arbitration or another complaints scheme; or

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

(12) it is a *complaint* about employment matters from an employee or employees of a *respondent*; or

(13) it is a *complaint* about investment performance; or

(14) it is a *complaint* about a *respondent's* decision when exercising a discretion under a will or private trust; or

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

(16) it is a *complaint* which:

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

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

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

(16A) it is a *complaint* about a pure landlord and tenant issue arising out of a *regulated sale and rent back agreement*; or

(17) there are other compelling reasons why it is inappropriate for the *complaint* to be dealt with under the *Financial Ombudsman Service*.

3.3.4A R The *Ombudsman* may dismiss a *complaint* referred to the *Financial Ombudsman Service* on or after 9 July 2015 without considering its merits if the *Ombudsman* considers that:

(1) the *complaint* is frivolous or vexatious; or

(2) the subject matter of the *complaint* has been dealt with, or is being dealt with, by a comparable *ADR entity*; or

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

(4) the subject matter of the *complaint* is the subject of current court proceedings, unless proceedings are stayed or sisted (by agreement of all parties, or order of the court) so that the matter may be considered by the *Financial Ombudsman Service*; or

(5) dealing with such a type of *complaint* would otherwise seriously impair the effective operation of the *Financial Ombudsman Service*.

3.3.4B G Examples of a type of *complaint* that would otherwise seriously impair the effective operation of the *Financial Ombudsman Service* may include:

(1) where it would be more suitable for the *complaint* to be dealt with by a court or a comparable *ADR entity*; or

(2) where the subject matter of the *complaint* has already been dealt with by a comparable dispute resolution scheme; or

(3) where the subject matter of the complaint has previously been considered or excluded under the *Financial Ombudsman Service* (unless material new evidence which the *Ombudsman* considers likely to affect the outcome has subsequently become available to the complainant); or

(4) it is a *complaint* which:

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

(b) has been referred without the consent of the other *eligible complainant* or complainants,

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

3.3.5 R [deleted]

3.3.6 G [deleted]

3.4 Referring a complaint to another complaints scheme or court

3.4.1 R The *Ombudsman* may refer a *complaint* to another complaints scheme where:

(1) he considers that it would be more suitable for the matter to be determined by that scheme; and

(2) the complainant consents to the referral.

Test cases

3.4.2 R The *Ombudsman* may, with the complainant's consent, cease to consider the merits of a *complaint* so that it may be referred to a court to consider as a test case, if:

(1) before the *Ombudsman* has made a determination, they have received in writing from the *respondent*:

(a) a detailed statement of how and why, in the *respondent's* opinion, the *complaint* raises an important or novel point of law with significant consequences; and

(b) an undertaking in favour of the complainant that, if the complainant or the *respondent* commences court proceedings against the other in respect of the *complaint* in any court in the *United Kingdom* within six *months* of the *complaint* being dismissed, the *respondent* will:

(i) pay the complainant's reasonable costs and disbursements (to be assessed, if not agreed, on an indemnity basis) in connection with the proceedings at first instance and any subsequent appeal proceedings brought by the *respondent*; and

(ii) make interim payments on account of such costs if and to the extent that it appears reasonable to do so; and

(2) the *Ombudsman* considers that the *complaint*:

(a) raises an important or novel point of law, which has important consequences; and

would more suitably be dealt with by a court as a test case.

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

(1) whether the point of law is central to the outcome of the dispute;

(2) how important or novel the point of law is in the context of the dispute;

(3) the significance of the consequences of the dispute for the business of the *respondent* (or respondents in that sector) or for its (or their) customers;

(4) the amount at stake in the dispute;

the remedies that a court could impose;

(6) any representations made by the *respondent* or the complainant; and

(7) the stage already reached in consideration of the dispute.

3.5 Resolution of complaints by the Ombudsman

3.5.1 R The *Ombudsman* will attempt to resolve *complaints* at the earliest possible stage and by whatever means appear to him to be most appropriate, including mediation or investigation.

3.5.2 G The *Ombudsman* may inform the complainant that it might be appropriate to complain against some other *respondent*.

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

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

(1) ensure both parties have been given an opportunity of making representations;

(2) send both parties a provisional assessment, setting out his reasons and a time limit within which either party must respond; and

(3) if either party indicates disagreement with the provisional assessment within that time limit, proceed to determination.

Hearings

3.5.5 R If the *Ombudsman* considers that the *complaint* can be fairly determined without convening a hearing, he will determine the *complaint*. If not, he will invite the parties to take part in a hearing. A hearing may be held by any means which the *Ombudsman* considers appropriate in the circumstances, including by telephone. No hearing will be held after the *Ombudsman* has determined the *complaint*.

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

(1) the issues he wishes to raise; and

(2) (if appropriate) any reasons why he considers the hearing should be in private;

so that the *Ombudsman* may consider whether:

(3) the issues are material;

(4) a hearing should take place; and

(5) any hearing should be held in public or private.

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

Evidence

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

(1) the issues on which evidence is required;

(2) the extent to which evidence should be oral or written; and

(3) the way in which evidence should be presented.

3.5.9 R The *Ombudsman* may:

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

(2) accept information in confidence (so that only an edited version, summary or description is disclosed to the other party) where he considers it appropriate;

(3) reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested; and

(4) treat the *complaint* as withdrawn and cease to consider the merits if a complainant fails to supply requested information.

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

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

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

Procedural time limits

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

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

(1) proceed with consideration of the *complaint*; and

(2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.

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

(1) proceed with consideration of the *complaint*; or

(2) treat the *complaint* as withdrawn and cease to consider the merits.

3.6 Determination by the Ombudsman

Fair and reasonable

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

3.6.2 G Section 228 of the *Act* sets the 'fair and reasonable' test for the *Compulsory Jurisdiction* (other than in relation to a "relevant complaint" within the meaning of section 404B(3) of the *Act*) and ■ DISP 3.6.1 R extends it to the *Voluntary Jurisdiction*.

3.6.3 G Where a complainant makes *complaints* against more than one *respondent* in respect of connected circumstances, the *Ombudsman* may determine that the *respondents* must contribute towards the overall award in the proportion that the *Ombudsman* considers appropriate.

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

(1) relevant:

(a) law and regulations;

(b) regulators' rules, guidance and standards;

(c) codes of practice; and

(2) (where appropriate) what he considers to have been good industry practice at the relevant time.

3.6.5 G (1) Where the *Ombudsman* is determining what is fair and reasonable in all the circumstances of a *relevant new complaint*, a *relevant transitional complaint*, or a *relevant new claims management complaint*, the *Ombudsman Transitional Order*, the *Mortgage and General Insurance Complaints Transitional Order* and the *Claims Management Order* make provision for the *Ombudsman* to take into account what determination the *former Ombudsman* might have been expected to reach in relation to an equivalent complaint dealt with under the *former scheme* in question immediately before the relevant order came into effect.

(2) Where the *Ombudsman* is determining what is fair and reasonable in all the circumstances of a *relevant transitional funeral plan complaint*, the *Funeral Plans Order* makes provision for the *Ombudsman* to take

into account what determination the *Funeral Planning Authority* might have been expected to reach in relation to an equivalent complaint dealt with under the *former scheme*.

Consumer redress schemes

3.6.5A G As a result of section 404B of the *Act*, if the subject matter of a *complaint* falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, the *Ombudsman* will determine the *complaint* by reference to what, in the opinion of the *Ombudsman*, the *redress determination* under the *consumer redress scheme* should be or should have been, unless the complainant and the *respondent* agree that the *complaint* should not be dealt with in accordance with the *consumer redress scheme*.

The Ombudsman's determination

3.6.6 R When the *Ombudsman* has determined a *complaint*:

(1) the *Ombudsman* will give both parties a signed written statement of the determination, giving the reasons for it;

(2) the statement will require the complainant to notify the *Ombudsman* , before the date specified in the statement, whether he accepts or rejects the determination;

(3) if the complainant notifies the *Ombudsman* that he accepts the determination within that time limit, it is final and binding on both parties;

(4) subject to paragraph (4A), if the complainant does not notify the *Ombudsman* that he accepts the determination within that time limit, the complainant will be treated as having rejected the determination, and neither party will be bound by it;

(4A) the complainant is not to be treated as having rejected the determination under paragraph (4) if all the following conditions are met:

(a) the complainant notifies the *Ombudsman* after the specified date of the complainant's acceptance of the determination;

(b) the complainant has not previously notified the *Ombudsman* of the complainant's rejection of the determination;

(c) in the view of the *Ombudsman*, the failure to comply with the time limit for acceptance was as a result of exceptional circumstances;

(5) the *Ombudsman* will notify the *respondent* of the outcome and, if the complainant is treated as having rejected the determination under paragraph (4), the effect of paragraph (4A).

3.6.7 R (1) An *Ombudsman* may correct any clerical mistake in the written statement of an *Ombudsman's* determination, whether or not the determination has already been accepted or rejected.

(2) Any failure to comply with any provisions of the procedural rules made by the *FOS Ltd* does not of itself render an *Ombudsman's* determination void.

Reports of determinations

3.6.8 G

(1) The *FOS Ltd* will publish a report of any *Ombudsman's* determination, save that if the *Ombudsman* who made the determination informs the *FOS Ltd* that, in the *Ombudsman's* opinion, it is inappropriate to publish a report of that determination (or any part of it), the *FOS Ltd* will not publish a report of that determination (or that part, as appropriate).

(2) Unless the complainant agrees, a report will not include the name of the complainant, or particulars which (in the opinion of the *FOS Ltd*) are likely to identify the complainant.

(3) The *FOS Ltd* may charge a reasonable fee for providing a copy of a report.

3.7 Awards by the Ombudsman

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

(1) a money award against the *respondent*; or

(2) an interest award against the *respondent*; or

(3) a costs award against the *respondent*; or

(4) a direction to the *respondent*.

Money awards

3.7.2 R Except in relation to a "relevant complaint" within the meaning of section 404B(3) of the *Act*, a money award may be such amount as the *Ombudsman* considers to be fair compensation for one or more of the following:

(1) financial loss (including consequential or prospective loss); or

(2) pain and suffering; or

(3) damage to reputation; or

(4) distress or inconvenience;

whether or not a court would award compensation.

3.7.2A G In relation to a "relevant complaint" within the meaning of section 404B(3) of the *Act*, a money award is a payment of such amount as the *Ombudsman* determines that a *respondent* should make (or should have made) to a complainant under the scheme.

3.7.2B G A money award under ■ DISP 3.7.2A G may specify the date by which the amount awarded is to be paid.

3.7.3 G (1) Where the *Ombudsman* is determining what amount (if any) constitutes fair compensation as a money award in relation to a *relevant new complaint*, a *relevant transitional complaint*, or a *relevant new claims management complaint*, the *Ombudsman Transitional Order*, the *Mortgages and General Insurance Complaints Transitional Order*, and the *Claims Management Order* make provision

for the *Ombudsman* to take into account what amount (if any) might have been expected to be awarded by way of compensation in relation to an equivalent complaint dealt with under the *former scheme* in question immediately before the relevant order came into effect.

(2) Where the *Ombudsman* is determining what amount (if any) constitutes fair compensation as a money award in relation to a *relevant transitional funeral plan complaint*, the *Funeral Plans Order* makes provision for the *Ombudsman* to take into account what amount, if any, the *Funeral Planning Authority* might have been expected to award by way of compensation in relation to an equivalent complaint dealt with under the *former scheme*.

3.7.4 R

(1) The maximum money award which the *Ombudsman* may make is:

(a) £350,000 for a *complaint* concerning an act or omission which occurred on or after 1 April 2019; and

(b) £160,000 for a *complaint* concerning an act or omission which occurred before 1 April 2019.

(2) On 1 April each year, for *complaints* referred to the *Financial Ombudsman Service* on or after this date up to and including 31 March in the following year, the amounts in (1)(a) and (b) are adjusted by:

(a) applying the percentage increase in *CPI* between January 2019 and January of that year; and

(b) rounding down to the nearest £5,000.

[**Note:** The maximum money award which the *Ombudsman* may make is set out in the table below. This Note will be updated before any new limit takes effect.

date complaint referred	**date of act or omission**	
	before 1 April 2019	on or after 1 April 2019
before 1 January 2012	£100,000	n/a
before 1 April 2019 but on or after 1 January 2012	£150,000	n/a
on or after 1 April 2019	£160,000	£350,000
on or after 1 April 2020	£160,000	£355,000
on or after 1 April 2022	£170,000	£375,000
on or after 1 April 2023	£190,000	£415,000
on or after 1 April 2024	£195,000	£430,000

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3.7.4A G

The effect of section 404B(5) of the *Act* is that the maximum award which the *Ombudsman* may make also applies in relation to a "relevant complaint" within the meaning of section 404B(3) of the *Act*.

3.7.5 G

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

(1) any interest awarded on the amount payable under a money award;

(2) any costs awarded; and

(3) any interest awarded on costs.

3.7.6 G If the *Ombudsman* considers that fair compensation requires payment of a larger amount, he may recommend that the *respondent* pays the complainant the balance. The effect of section 404B(6) of the *Act* is that this is also the case in relation to a "relevant complaint" within the meaning of section 404B(3) of the *Act*.

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

Interest awards

3.7.8 R Except in relation to a "relevant complaint" within the meaning of section 404B(3) of the *Act*, an interest award may provide for the amount payable under the money award to bear interest at a rate and as from a date specified in the award.

3.7.8A G A money award under ■ DISP 3.7.2A G may provide for interest to be payable, at a rate specified in the award, on any amount which is not paid by the date specified in the award.

Costs awards

3.7.9 R A costs award may:

(1) be such amount as the Ombudsman considers to be fair, to cover some or all of the costs which were reasonably incurred by the complainant in respect of the complaint; and

(2) include interest on that amount at a rate and as from a date specified in the award.

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

Directions

3.7.11 R Except in relation to a "relevant complaint" within the meaning of section 404B(3) of the *Act*, a direction may require the *respondent* to take such steps in relation to the complainant as the *Ombudsman* considers just and appropriate (whether or not a court could order those steps to be taken).

3.7.11A G In relation to a "relevant complaint" within the meaning of section 404B(3) of the *Act*, a direction may require the *respondent* to take such action as the *Ombudsman* determines the *respondent* should take (or should have taken) under the scheme.

Complying with awards and settlements

3.7.12 R A *respondent* must comply promptly with:

(1) any award or direction made by the *Ombudsman*; and

(2) any settlement which it agrees at an earlier stage of the procedures.

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

3.8 Dealing with information

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

3.8.2B R This does not prevent the *Ombudsman* disclosing information:

(1) to the extent that he is required or authorised to do so by law; or

(2) to the parties to the *complaint*; or

(3) in his determination; or

(4) at a hearing in connection with the *complaint*.

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

3.9 Delegation of the Ombudsman's powers

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

(1) determine a *complaint*; or

(2) authorise the disclosure of information to the *FCA* or any other body exercising regulatory or statutory functions.

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