

CONSUMER REDRESS SCHEMES INSTRUMENT 2011

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes the rules and gives the guidance in Annex A and Part 2 of Annex C to this instrument in the exercise of the following powers and related provisions of the Financial Services and Markets Act 2000 (“the Act”):
- (1) paragraph 8 (Guidance) of Schedule 17; and
 - (2) paragraph 14 (The scheme operator’s rules) of Schedule 17.
- B. The making of these rules and the giving of this guidance 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 gives the guidance in Annex A, Annex B, Part 1 of Annex C, Annex D and Annex E to this instrument in the exercise of the following powers and related provisions of the Act:
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers);
 - (3) section 157(1) (Guidance);
 - (4) section 210(1) (Statements of policy);
 - (5) section 213 (The compensation scheme);
 - (6) section 214 (General);
 - (7) section 226 (Compulsory jurisdiction);
 - (8) section 395(5) (The Authority’s procedures); and
 - (9) paragraph 13 (Authority’s procedural rules) of Schedule 17 (The Ombudsman Scheme).
- D. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- E. This instrument comes into force on 1 August 2011.

Amendments to the Handbook

- F. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Decision Procedure and Penalties manual (DEPP)	Annex B
Dispute Resolution: Complaints sourcebook (DISP)	Annex C

Compensation sourcebook (COMP)	Annex D
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Material outside the Handbook

- G. The Enforcement Guide (EG) is amended in accordance with Annex E to this instrument.

Citation

- H. This instrument may be cited as the Consumer Redress Schemes Instrument 2011.

By order of the Board of the Financial Ombudsman Service Limited
20 July 2011

By order of the Board of the Financial Services Authority
28 July 2011

Annex A

Amendments to the Glossary of definitions

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

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

consumer redress scheme a scheme imposed:

- (a) by *rules* on *authorised persons*, *payment service providers* or *electronic money issuers* under section 404 (Consumer redress schemes) of the *Act*; or
- (b) on a particular *firm* by a *requirement* imposed on its *permission*, or on a particular *payment service provider* or *electronic money issuer* by a *requirement* imposed on its *authorisation*, as envisaged by section 404F(7) of the *Act* but only to the extent that section 404B of the *Act* is engaged by the scheme.

redress determination a written communication from a *respondent* under a *consumer redress scheme* which:

- (a) sets out the results of the *respondent's* determination under the scheme;
- (b) encloses a copy of the *Financial Ombudsman Service's* standard explanatory leaflet; and
- (c) informs the complainant that if he is dissatisfied, he may now make a *complaint* to the *Financial Ombudsman Service* and must do so within *six months*.

Amend the following definitions as shown.

chargeable case any *complaint* referred to the *Financial Ombudsman Service*, except where:

- (a) the *Ombudsman* considers it apparent from the *complaint*, when it is received, and from any *final response* or *redress determination* which has been issued by the *firm* or *licensee*, that the *complaint* should not proceed because:

...

...

complaint

- (1) ...
- (2) (in *DISP*, except *DISP* 1.1 and the *complaints handling rules* and the *complaints record rule* in relation to *MiFID business*) 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 or a redress determination, which:

...
- (3) (in *DISP* 1.1, the complaints awareness rules only in relation to *collective portfolio management* and the *complaints handling rules* and the *complaints record rule* only in relation to *MiFID business* and *collective portfolio management*) 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 or a redress determination, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.

...

Annex B

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

...

Section of the Act	Description	Handbook reference	Decision maker
...			
207(1)/ 208(1)	when, in respect of an <i>authorised person</i> , the <i>FSA</i> is proposing or deciding to publish a statement (under section 205) or impose a financial penalty (under section 206) or suspend a <i>permission</i> or impose a restriction in relation to the carrying on of a <i>regulated activity</i> (under section 206A). <u>This applies in respect of an <i>authorised person</i>, or an <i>unauthorised person</i> to whom section 404C applies.*</u>		<i>RDC</i>

Annex C

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

Part 1 Provisions made by the Financial Services Authority

1.1 Purpose and application

...

Consumer redress schemes

1.1.11A R Where the subject matter of a *complaint* falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, the *complaints resolution rules*, the *complaints time limits rules*, the *complaints record rule* and the *complaints reporting rules* do not apply.

...

2.3 To which activities does the Compulsory Jurisdiction apply?

...

Consumer redress schemes

2.3.2C G As a result of section 404B(11) of the *Act*, the *Ombudsman* can also consider under the *Compulsory Jurisdiction* a *complaint* from a complainant who:

(1) is not satisfied with a *redress determination* made by a *respondent* under a *consumer redress scheme*; or

(2) considers that a *respondent* has failed to make a *redress determination* in accordance with a *consumer redress scheme*.

...

2.8 Was the complaint referred to the Financial Ombudsman Service in time?

2.8.1 R The *Ombudsman* can only consider a *complaint* if:

(1) the *respondent* has already sent the complainant its *final response*; or

(2) eight weeks have elapsed since the *respondent* received the *complaint*; or

(3) in relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*:

(a) the *respondent* has already sent the complainant its *redress determination* under the scheme; or

(b) the *respondent* has failed to send a *redress determination* in accordance with the time limits specified under the scheme.

2.8.2 R The *Ombudsman* cannot consider a *complaint* if the complainant refers it to the *Financial Ombudsman Service*:

(1) more than six *months* after the date on which the *respondent* sent the complainant its *final response* or *redress determination*; or

...

...

Reviews of past business

2.8.5 R The six-year and the three-year time limits do not apply where:

(1) ~~the time limit has been extended under a scheme for review of past business approved by the Treasury under section 404 of the Act (Schemes for reviewing past business); or [deleted]~~

(2) ...

...

3.7 Awards by the Ombudsman

...

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 *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*.

TP 1.1 Transitional Provisions Table

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

				force	force
...					
<u>27A</u>	<u>Amendments to <i>DISP</i> made in the Consumer Redress Schemes Instrument 2011</u>		<u>The amendments do not apply in relation to any <i>consumer redress scheme</i> imposed before the instrument came into force on a particular <i>firm</i>, or on a particular <i>payment service provider</i> or <i>electronic money issuer</i>, as envisaged by section 404F(7) of the <i>Act</i>.</u>	<u>From 1 August 2011 indefinitely</u>	<u>1 August 2011</u>

Part 2 Provisions made by the Financial Ombudsman Service

3.2 Jurisdiction

...

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.

...

3.3 Dismissal without consideration of the merits and test cases

...

Grounds for dismissal

3.3.4 R The *Ombudsman* may dismiss a *complaint* without considering its merits if he considers that:

...

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

(a) ...

- (b) ~~the terms of a scheme order under section 404 of the Act (Schemes for reviewing past business); or [deleted]~~
- (c) any formal regulatory requirement, standard or guidance published by the *FSA* 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

...

...

3.6 Determination by the Ombudsman

Fair and reasonable

...

- 3.6.2 G Section 228 of the *Act* sets the ‘fair and reasonable’ test for the *Compulsory Jurisdiction* (other than in relation to *consumer redress schemes*) and the *Consumer Credit Jurisdiction* and *DISP* 3.6.1R extends it to the *Voluntary Jurisdiction*.

...

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.

...

3.7 Awards by the Ombudsman

...

Money awards

3.7.2 R Except in relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, a money award may be such amount as the *Ombudsman* considers to be fair compensation for one or more of the following:

...

3.7.2A G In relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, 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* 3.7.2AG may specify the date by which the amount awarded is to be paid.

...

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 *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*.

...

Interest awards

3.7.8 R Except in relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, an ~~A~~ 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* 3.7.2AG 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.

...

Directions

3.7.11 R Except in relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, a direction may require the ~~respondent~~ *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 *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, 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.

Annex D

Amendments to the Compensation sourcebook (COMP)

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

8.2 Rejection of application for compensation

...

8.2.3 R The *FSCS* must reject an application for compensation if:

...

(1) the *FSCS* considers that a civil claim in respect of the liability would have been defeated by a defence of limitation at the earlier of:

(a) the date on which the *relevant person* is determined to be *in default*; and

(b) the date on which the claimant first indicates in writing that he may have a claim against the *relevant person*;

unless *COMP* 8.2.4R or *COMP* 8.2.4AR applies; or

(2) ...

...

8.2.4A R For a *claim* which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, the *FSCS* must disregard a defence of limitation which became available after the scheme was made or imposed.

...

12.4 The compensation calculation

...

Consumer redress schemes

12.4.22 R For a *claim* which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, the *FSCS* must apply the scheme in:

(1) assessing whether a *relevant person* has complied with the relevant regulatory requirements;

(2) assessing whether non-compliance has caused the claimant loss; and

(3) calculating the compensation due (where the *FSCS* may rely on calculations made by the *FSA* or other competent persons acting on the *FSA*'s behalf or authorised to make them under the scheme);

unless the *FSCS* considers that departure from the scheme is essential in order to provide the claimant with fair compensation.

Annex E

Amendments to the Enforcement Guide (EG)

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

1.2 In the areas set out below, the *Act* expressly requires the FSA to prepare and publish statements of policy or procedure on the exercise of its enforcement and investigation powers and in relation to the giving of *statutory notices*:

...

(1A) sections 69 and 210 require the FSA to publish statements of policy on the imposition of financial penalties, suspensions or restrictions on *firms*, ~~and approved persons~~ and unauthorised persons to whom section 404C applies, the amount of financial penalties imposed, and the period for which suspensions or restrictions are to have effect;

...

7.2 The FSA has the following powers to impose a financial penalty and to publish a *public censure*.

(1) It may publish a statement:

...

(f) against a *firm*, or an unauthorised person to whom section 404C applies, under section 205 of the *Act*.

(2) It may impose a financial penalty:

...

(d) on a *firm*, or an unauthorised person to whom section 404C applies, under section 206 of the *Act*.