



**DISPUTE
RESOLUTION &
COMPLAINTS
(DISP)**

Section 5 - REDRESS

1. Dispute Resolution and Complaints (DISP)

Access for consumers to mechanisms for dealing with complaints about financial services firms is a key part of the regulatory regime. The Act gives the FSA the power to make rules relating to the handling of complaints by firms/dealers and provides for the establishment of an independent dispute resolution scheme (the Financial Ombudsman Service) to resolve complaints about financial services firms quickly and with minimum formality. The body established to administer and operate this scheme (the "scheme operator") is the Financial Ombudsman Service Limited ("FOS Ltd.").

The firm must adopt the FCA's complaints procedures. It should ensure:

- a senior individual who carries out an FCA governing function is appointed to be responsible for complaints handling;
- there is a procedure and log in place;
- staff know where to find the complaints procedure and are aware of how a complaint should be escalated;
- staff understand the definition of a complaint;
- staff understand the complaints process including the logging of the complaint;
- there are appropriate management controls in place;
- it takes reasonable steps to handle complaints fairly, consistently and promptly;
- allows eligible complainants to make a complaint free of charge;
- trends, recurring or systemic problems are identified and remedied; and
- lessons are learnt from the results of complaints referred to FOS including:
 - relaying results of FOS referrals to individuals involved in handling complaints and including this in their training and development;
 - analysing trends in the results of referrals to the FOS and including this in training and development of individuals involved in handling complaints; and
 - analysing guidance produced by the FCA, other relevant regulators and the Financial Ombudsman Service and communicating it to the individuals dealing with complaints.

Firms do not have to restrict their complaint process to eligible complaints only.

A key to good complaint handling is keeping the process simple and ensuring you keep the various phases distinct. These phases are:

1. Identification.
2. Investigation.
3. Final response letter.
4. Closure.

An internal complaints procedure should be set up to provide for:

- receiving complaints;
- responding to complaints;
- the appropriate investigation of complaints; and
- notifying complainants of their right to go to the Financial Ombudsman Service where relevant.

When setting up their procedures a firm should take into account:

- the type of business it undertakes;
- its size and organisational structure;
- the nature and complexity of the complaints it is likely to receive; and
- the likely number of complaints it will receive and have to investigate.

A firm may, if it wishes, use a third party administrator for the purposes of handling complaints.

A firm must:

- refer eligible complainants in writing to the availability of its internal complaint handling procedures at, or immediately after, the point of sale;
- publish information of its internal complaint handling procedures, supply a copy free of charge on request to an eligible complainant, and supply a copy automatically to the complainant when it receives a complaint from an eligible complainant (unless the complaint is resolved by close of business on the next business day) i.e. at the acknowledgement stage. The information should cover at least:
 - how the firm fulfils its obligations to handle and seek to resolve complaints; and
 - that if the complaint is not resolved the complainant may be entitled to refer it to the Financial Ombudsman Service; and
- may display in each of its branches or sales offices to which eligible complainants have access a notice indicating that it is covered by the Financial Ombudsman Service.

Information on the complaints process may be set out in a leaflet and their availability may be referred to in contractual information.

1.1 Identification

1.1.1 Eligible complainant

An eligible complainant must be a person that is:

- a consumer;
- a micro enterprise (an EU term covering smaller businesses) – as long as they have an annual turnover of less than two million euros and fewer than ten employees.;
- a charity which has an annual income of less than £1million; or
- a trustee of a trust which has a net asset value of less than £1million.

1.1.2 Definition of a complaint

Defining a complaint is very difficult – it will depend on a number of objective and subjective factors. Under FCA rules the definition of a complaint is:

“A complaint is an expression of dissatisfaction, oral or written, justified or not, made by a complainant, involving an allegation of financial loss (or future financial loss), material distress or material inconvenience”.

A simple test is “did the customer sound cross?” If the answer is **yes** you have a complaint. The customer does, however, have to be dissatisfied with you. If they are dissatisfied with the insurer (e.g. for not having sent out policy documents or for not settling a claim) then the complaint needs to be referred to the insurer. You should, however, still keep a note of what has happened.

A firm should have a process in place to deal with all complaints however, the rest of this section deals with complaints that fall into the eligibility criteria in 1.1.1 above and the FCA definition of a complaint, i.e. those where the complaint involves an allegation that the complainant has suffered financial loss, material distress or material inconvenience.

A company should have a process in place for:

- receiving complaints;
- responding to complaints;
- the appropriate investigation of complaints; and
- notifying complainants of their right to go the Financial Ombudsman Service where relevant.

This should cover all types of complaints; however the rules regarding the various deadlines, recording and reporting only apply to hard complaints.

1.2 Investigation

A firm must ensure:

1. complaints can be made by any reasonable means;
2. complaints are handled promptly and thoroughly;
3. the complaint is investigated competently, diligently and impartially and by an employee of sufficient competence who, where appropriate, was not directly involved in the matter which is the subject of the complaint (this may not be practical in a very small firm);
4. the person charged with responding to complaints has the authority to settle complaints (including the offering of redress where appropriate) or to have ready access to someone who has the necessary authority;
5. they assess fairly, consistently and promptly:
 - a. the subject matter of the complaint;
 - b. whether it should be upheld;
 - c. what remedial action and/or redress may be appropriate; and
 - d. if appropriate, whether it has reasonable grounds to be satisfied that another firm or person is either solely or jointly responsible for the matter alleged in the complaint, (for example the insurer or another broker);
6. responses to complaints address adequately the subject matter of the complaint and, where a complaint is upheld, offer appropriate redress;
7. reasonable steps are taken to remedy any specific problem identified by a complaint. Firms should not limit their investigation of a complaint to its precise terms. If during the investigation other problems emerge, these should be investigated and rectified; and
8. that it rectifies any systematic or recurring problems. This can be achieved by:
 - a. analysing the causes of individual complaints so as to identify root causes common to the type of complaint;
 - b. considers whether such root causes affect other processes or products including those not directly complained of; and
 - c. correcting, where reasonable to do so, those root causes.

The investigation should focus on:

- finding out what happened which may require obtaining additional information as appropriate;
- why it happened;
- why (in an ideal world) it will not happen again;
- how much, if any, compensation is payable.

When a firm identifies problems, root causes or compliance failures it should consider whether it ought to take action with regard to other customers who might have been affected but who have not complained. This should include:

- ascertaining the scope and severity of the consumer detriment that might have arisen; and
- 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.

The following factors may be relevant in the investigation of the complaint:

- all the evidence available and the particular circumstances of the complaint;
- similarities with other complaints received;
- relevant guidance published by the FCA or FOS; and
- appropriate analysis of decisions made by the FOS concerning similar complaints that the firm has received.

1.3 Resolving complaints

The firm should aim to resolve complaints at the earliest opportunity and therefore minimising the number of unresolved complaints which are referred to the FOS.

A firm should:

- offer redress or remedial action when it decides this is appropriate;
- explain to the complainant, in a fair, clear and not misleading manner, its assessment of the complaint, its decision on it and any offer of redress or remedial action;
- comply promptly with any offer of remedial action or redress; and
- where a complaint is referred to FOS co-operate fully with FOS and comply promptly with any settlements or awards made by it.

1.3.1 Complaints resolved by close of business the next day

If the firm is able to deal with a complaint by close of business the next day then they will not have to:

- observe the FCA time limit rules set out in sections 1.4;
- comply with the forwarding rules – set out in section 1.7 below;
- report the complaints to the FCA as part of their RMAR; or
- comply with the record rules – set out in section 1.9 below.

You still have to investigate and resolve the complaint as set out in section 1.2 and 1.3 above.

If the complaint is received on a non-business day or after close of business that day then it will be deemed as being received on the next business day.

The complaint will be deemed as being resolved where the complainant has indicated acceptance of the firm's response. This does not need to be in writing, therefore if you are able to resolve complaints over the telephone by close of play on the day after the complaint was received this would suffice.

1.4 Timescales for dealing with complaints

1.4.1 Written acknowledgement

- A firm must send a prompt written acknowledgement, providing early reassurance that it has received the complaint and is dealing with it.
- The acknowledgement should give the name or job title of the individual handling the complaint for the firm (together with details of the firm's internal complaint handling procedures).
- If the firm is able to it may combine its acknowledgement of the complaint with the final response.
- For oral complaints the acknowledgement should include the firm's understanding of the complaint and invite the client to tell them whether they have understood it. This disciplines staff to keep careful notes of telephone conversations with dissatisfied customers.
- A firm should aim to resolve complaints at the earliest possible stage and should keep the complainant informed of progress and measures being taken to resolve the complaint.

1.4.2 Final response or eight week holding letter

A firm must, by the end of eight weeks after its receipt of a complaint, send the complainant either:

1. a final written response; or
2. a written response which:
 - a. explains that the firm is still not in a position to make a final response and indicates when it expects to be able to provide a final response; and
 - b. informs the complainant that he may refer the complaint to the Financial Ombudsman Service if he is dissatisfied with the delay and encloses a copy of the Financial Ombudsman Service's explanatory leaflet.

1.5 The final response

When a firm sends a complainant its final written response, this response must:

- address adequately the subject matter of the complaint including either:
 - accepting the complaint, stating the remedial actions to be taken including redress where appropriate or;
 - offering remedial actions or redress but not accepting the complaint; or
 - rejecting the complaint and stating the reasons;
- inform the complainant that he may refer the complaint to the Financial Ombudsman Service if he is dissatisfied with the final response and that he must do so within six months; and
- enclose a copy of the Financial Ombudsman Service's explanatory leaflet (unless it has already done so).

The style should be persuasive and friendly. Start by thanking the client.

Set the scene - summarise the complaint briefly.

Set out the relevant facts - in a narrative form with as little comment as possible. This is important as:

- it shows you have foundation to your argument;
- if there is a mistake the customer can point it out quickly to enable the case to be resolved quicker;
- anybody outside your firm viewing the case can see quickly what has happened.

Present your analysis – whether the complaint is justified based on the facts which should then lead you to whether or not you will be upholding the complaint.

Discharge of Liability

In most instances a final response letter will include the following statement:

“the offer is made in full and final settlement of all claims now or in the future that you may make against (name of firm) and all companies and individuals associated with or arising out of relating to your complaint (or sale of XYZ product).”

Referral to FOS

Firms should give the full name and address and telephone number of the organisation and include an FOS leaflet. It helps to refer to this leaflet in the letter.

Sign off

Try to end on a positive note either "I look forward to hearing from you" or "I am sorry we are unable to help you any further".

1.6 Closing the case

1.6.1 Dealing with correspondence after the final response

If the client writes back to disagree the firm should review to see if the client is providing factual information which may alter the decision such as correcting a factual error. Similarly the client may require clarification on a point.

After this, however, it is vital that the firm stops correspondence with the client. You may wish to send a standard letter after a suitable delay enclosing a copy of the final response and indicating that this is the company's decision and that customer may refer it to FOS (within 6 months) but that the matter is now closed and no further correspondence can be entered into.

If an offer has been made then it should be left open and a paragraph to this effect included in the standard letter.

1.6.2 When is a complaint deemed as closed?

A complaint is deemed as closed where:

- the firm has sent a final response; or
- the complainant has indicated in writing acceptance of a firm's earlier response.

1.7 Referrals to third parties

If you have reasonable grounds to be satisfied that another firm e.g. an insurer, may be solely responsible for the fault alleged in a complaint then you may refer the complaint to that other firm, but if you do so you must:

- refer the complaint promptly from the date on which you became satisfied that the other firm may be responsible for the subject matter of the complaint;
- make the referral using a durable medium; and
- inform the complainant of the referral by way of a final response letter including:
 - why the referral has been made; and
 - the other firm's contact details.

If you have reasonable grounds to be satisfied that another firm may be jointly responsible for the fault alleged in a complaint, you may refer the complaint to that other firm but if you do you must:

- refer the complaint promptly from the date on which you became satisfied that such other firm may be jointly responsible for the subject matter of the complaint;
- make the referral on a durable medium;
- at the same time inform the complainant of the referral and include the other firm's contact details; and
- comply with the FCA obligations as to the investigation of that part of the complaint that is your responsibility and, as soon as possible, inform the complainant of the outcome by a final response.

Where a complaint has been referred to you from another party, the timescales for dealing with the complaint start from the day **you** receive the complaint from the third party, **not** the date the complaint was originally received.

1.8 Time limits for referring complaints to the FOS

The Ombudsman can only consider a complaint if:

- the firm has already sent the complainant its final response; or
- eight weeks have elapsed since the firm received the complaint.

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

- more than six months after the date on which the firm sent the complainant its final response; or
- more than:
 - six years after the event complained of; or (if later)
 - three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint.

1.8.1 Complaints received outside the time limits set for referral to the FOS

If a complaint is received which is outside the time limits for referral to the FOS then the firm may reject the complaint without considering the merits but must explain this to the complainant and inform them that the FOS may waive the time limits in exceptional circumstances.

1.9 Record keeping

The firm should keep the following records for a minimum of 3 years from the date of the receipt of the complaint:

1. the name of the complainant;
2. the substance of the complaint;
3. the measures taken to resolve the complaint; and
4. any correspondence between the firm and the complainant including details of any redress offered.

In addition, firms need regularly to report information regarding complaints to the FCA. More information regarding this can be found in Section 4: Regulatory Processes, Chapter 2: Supervision (SUP).

1.10 Payment Protection Complaints

The FCA has detailed specific guidance with respect to complaints in relation to payment protection contracts.

1.10.1 Assessment

- The firm should consider, in the light of all the information provided by the complainant and otherwise already held by or available to the firm, whether there was a breach or failing by the firm. In doing this they should seek to clarify the nature of the complaint, contacting the complainant directly if necessary to fully understand;
- during assessment, should the firm find evidence of a failing that has not been raised in the original complaint, it should consider these aspects as if they were part of it;
- where complaints raise issues that may relate to the original sale or a subsequently rejected claim, the firm should consider whether the issues relate to both the sale and the claim. This is irrespective of the main focus of the complaint;
- the firm should take into account any information it already holds about the sale and consider other issues that may be relevant to the sale identified by the firm; and
- the firm should consider all of its sales of payment protection contracts to the complainant in respect of re-financed loans that were rolled up into the loan covered by the payment protection contract that is the subject of the complaint. The firm should consider the cumulative financial impact on the complainant of any previous breaches or failings in those sales.

1.10.2 Considering Evidence

- The firm should assess the complaint fairly, giving appropriate weight and balanced consideration to all available evidence, though it is not expected automatically to assume that there has been a breach or failing;
- the firm should not rely solely on the detail within the wording of a policy's terms and conditions to reject what a complainant recalls was said during the sale;
- oral evidence may be sufficient evidence and should not be dismissed on the basis that it is not supported by documentary proof.
- where the complainant's account of events conflicts with the firm's own records or leaves doubt, the firm should assess the reliability of the complainant's account fairly. All reasonable efforts should be taken to clarify areas of uncertainty before making any findings against the complainant;
- complaints should not be rejected solely on the grounds that the complainant signed documents in relation to the purchase of the policy or because the complainant did not cancel the policy;

- a successful claim by the complainant is not, in itself, sufficient evidence that the complainant had a need for the policy or understood its terms or would have bought it regardless of any breach or failing by the firm;
- the firm should not draw a negative inference from a complainant not having kept documentation relating to the purchase of the policy for any particular period of time;
- more weight should be given to any specific evidence of what happened during the sale than to more general evidence as to selling practices at the time e.g. training manuals;
- the firm should consider the available evidence and assess whether or not it gave advice or made a recommendation (explicitly or implicitly) to the complainant;
- the firm should consider in all situations whether its communication with the complainant was fair, clear and not misleading and with due regard to the complainant's information needs:
 - Did it take into account any evidence of limited financial capability or understanding on the part of the complainant?;
 - what were the complainant's objectives and intentions at the time of the sale?;
 - was the documentation provided to the complainant sufficiently clear, concise and presented fairly?;
 - for primarily oral sales, did the firm provide an oral explanation of the main characteristics of the policy and give the complainant time to read and consider it?;
 - is there any evidence about the tone and pace of oral communication?; and
 - was any extra explanation or information given by the firm in response to questions raised?
- complaints should not be rejected solely because the complainant has held a payment protection contract previously.

Firms are required to have appropriate management controls in place and to take reasonable steps to ensure that in handling complaints, recurring or systemic problems are identified. Where issues are found, they should consider whether the problems were likely to have contributed to a breach or failing in the individual case. If issues are found in relation to a particular payment protection contract, the firm should consider whether it ought to take a proactive approach to giving customers who have not yet complained the opportunity to obtain appropriate redress.

1.10.3 Effect of the breach (DISP App 3.6)

Where the firm concludes there was a breach or failing, it should consider whether the complainant would have purchased the policy in the absence of the failing.

In particular, firms might consider if there is evidence (including, but not limited to) that the firm:

- pressured the complainant into purchasing the contract; or
- did not disclose to the complainant, in a clear manner and in good time that the policy was optional; or
- made the sale without the complainant's explicit agreement to purchase policy; or
- did not disclose to the complainant, in a clear manner and in good time, the significant exclusions and limitations, i.e. those that would tend to affect the decisions as to whether to buy a policy; or
- did not, for an advised sale (including where the firm gave advice in a non-advised sales process) take reasonable care to ensure that the policy was suitable for the complainant's demands and needs taking into account all relevant factors, including level of cover, cost, and relevant exclusions, excesses, limitations and conditions; or
- did not take reasonable steps to ensure the complainant only bought a policy for which he was eligible to claim benefits; or
- found, while arranging the policy that parts of the cover did not apply but did not disclose this to the customer clearly and in good time; or
- did not disclose to the complainant, clearly and before the sale was concluded, key information in relation to costs such as:
 - a. the total (not just monthly) cost of the policy separately from any other prices (or the basis for calculating it so that the complainant could verify it); or
 - b. for single premium contracts:
 - c. that the premium would be added to the amount provided under the credit agreement, that interest would be payable on the premium and the amount of that interest; or
 - d. (if applicable) that the term of the cover was shorter than the term of the credit agreement and the consequences of that mismatch; or
 - e. that the complainant would not receive a pro-rata refund if the complainant were to repay or refinance the loan or otherwise cancel the single premium policy after the cooling-off period. In this instance the firm should have taken reasonable steps to establish whether there was a prospect that the complainant would repay or refinance the loan before the end of the term.
- provided misleading or inaccurate information about the policy to the complainant; and
- sold the complainant a policy where the total cost of the policy (including any interest paid on the premium) would exceed the benefits payable under the policy (other than benefits payable under life cover).

1.10.4 Redress

There are a number of approaches to redress dependent on the policy, but in general terms:

- Where the firm concludes in accordance with DISP App 3.6 that the complainant would still have bought the payment protection contract he bought, no redress will be due to the complainant in respect of the identified breach or failing, subject to DISP App 3.7.6 E;
- Where the firm concludes that the complainant would not have bought the policy he bought, and the firm is not using an alternative approach to redress, the firm should, as far as practicable, put the complainant in the position he would have been if he had not bought any payment protection contract;
- In such cases the firm should pay to the complainant a sum equal to the total amount paid by the complainant in respect of the contract including historic interest where relevant (plus simple interest on that amount) subject to any rebates paid before the contract ran to its full term (the value of which may be deducted if applicable).

Please refer to the sourcebook for further detail on approaches to redress e.g. in relation to single premium policies (DISP App 3.7)

<http://fshandbook.info/FS/html/FCA/DISP/App/3/7>

2. Compensation (COMP)

The scope of the Financial Services Compensation Scheme has been extended to cover general insurance. A separate sub scheme has been set up to cover this activity.

A person will be eligible if the claim is:

- a claim under a protected contract of insurance; or
- a claim in connection with protected non-investment general insurance.

The compensation limit for general insurance where an intermediary fails will be the same as for protected contracts and is:

Type of insurance	Level of cover	Maximum payment
Compulsory	100% of claim	Unlimited
All other types	100% of first £2000 and 90% of remainder	Unlimited

3. Complaints against the FCA

The FCA is required to maintain a complaints scheme for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of its functions under the Act (other than its legislative functions).

The FCA is required to appoint an independent person as Complaints Commissioner to be responsible for the conduct of investigations in accordance with the complaints scheme.

There are 2 stages to the complaints scheme. In the first stage, the FCA itself will investigate any complaint that meets the requirements of the complaints scheme and take whatever action to resolve the matter it thinks appropriate. It may decide that the complaint can be handled locally to allow the area of the FCA most closely connected with the matter to respond properly. If this is not appropriate, the complaint will be dealt with under either:

- The Main Scheme for complaints about matters arising on or after 1 April 2013; or
- The Transitional Scheme for complaints against the FSA for matters that arose between 1 December 2001 and 31 March 2013.

A complaint will normally only proceed to the second stage if the complainant is dissatisfied with the FCA's determination of his complaint or how it has been handled. The second stage consists of investigation of the complaint by the Complaints Commissioner. Referral to the Commissioner should usually be made within three months of the date of the FCA's final decision at Stage 1. Any referral outside the three month time limit may still be considered by the Complaints Commissioner where there are adequate reasons for the delay. The Complaints Commissioner will decide whether the complaint is well founded, and where applicable, recommend steps to remedy the matter.

The complaints scheme covers complaints about the way in which the FCA has acted or omitted to act, including complaints alleging:

- (a) mistakes and lack of care;
- (b) unreasonable delay;
- (c) unprofessional behaviour;
- (d) bias; and
- (e) lack of integrity.

The complaints scheme does not cover complaints about the actions, or inactions of the Financial Ombudsman Service, the Financial Services Compensation Scheme or the Money Advice Service.