

**DISPUTE RESOLUTION: COMPLAINTS (AMENDMENT NO 5)  
INSTRUMENT 2013**

**Powers exercised by the Financial Ombudsman Service**

A. The Financial Ombudsman Service Limited makes this Instrument making and amending:

- (1) the rules relating to complaints handling procedures of the Financial Ombudsman Service; and
- (2) the standard terms for Voluntary Jurisdiction participants;

in the 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: procedure for complaints etc.) of Schedule 17; and
- (f) paragraph 18 (Terms of reference to the scheme) of Schedule 17.

B. The making (and amendment) of rules and standard terms by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority.

**Powers exercised by the Financial Conduct Authority**

C. The Authority has, in accordance with Article 5 of the Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013 (SI 2013/161) (the “Designation Order”), appointed persons to exercise functions referred to in Article 5(1) of the Designation Order, which include functions of the Financial Conduct Authority exercisable before 1 April 2013.

D. By virtue of Article 5(3)(a) of the Designation Order the persons appointed may discharge the relevant functions as if they were the governing body of the Financial Conduct Authority.

E. Section 39 of the Financial Services Act 2012 has been commenced for the purpose of, amongst other things, making (and amending) rules and standard terms.

F. The persons appointed pursuant to Article 5 of the Designation Order approve and consent to the making and amendment of the rules and standard terms that are made and amended by the Financial Ombudsman Service Limited under this Instrument pursuant to the following powers of the Act:

- (a) section 226A (Consumer credit jurisdiction);
- (b) section 227 (Voluntary jurisdiction);

- (c) paragraph 14 (The scheme operator's rules) of Schedule 17 to the Act; and
- (d) paragraph 18 (Terms of reference to the scheme) of Schedule 17 to the Act.

### **Commencement**

G. This Instrument comes into force on 1 April 2013.

### **Amendments to the Handbook**

H. The Dispute Resolution: Complaints sourcebook (DISP) is amended by the Board of the Financial Ombudsman Service in accordance with the Annex to this Instrument.

### **Citation**

I. This Instrument may be cited as the Dispute Resolution: Complaints (Amendment No 5) Instrument 2013.

### **By order of the Board of the Financial Ombudsman Service Limited**

20 March 2013

**Approved and consented to by the persons appointed under Article 5 of the Designation Order to discharge specified functions of the Financial Conduct Authority as if they were its governing body**

19 March 2013

## Annex

### Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

#### 3.6 Determination by the Ombudsman

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The Ombudsman's determination

- 3.6.6 R When the ~~Ombudsman~~ 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* ~~in writing~~, 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; ~~and~~
- (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.