



Key changes to complaints handling/reporting for FCA Authorised firms and Implementation of the Alternative Dispute Resolution (ADR) Directive

Introduction

The FCA and the Financial Ombudsman Service (FOS) consulted on changes to the Complaints Sourcebook (DISP) for transposition of the Alternative Dispute Resolution (ADR) Directive and to improve complaints handling. The final rules for ADR Directive related changes were published earlier this year in a Handbook Notice, however final rules for the other changes have yet to be published.

The purpose of the ADR Directive is to give consumers and traders access to out-of-court schemes to help settle contractual disputes arising out of the sale/supply of goods or services. The Directive applies to other industries as well as financial services.

Links to the relevant Consultation Paper and Handbook Notice are provided below, along with a key-point summary of both sets of changes.

[Consultation Paper - CP14/30](#)

[Handbook Notice 21](#)

Proposed changes to Complaints Handling and Reporting: Key messages

- Changes to complaints handling:
 - Extension of timeframe for the handling of informal complaints to 3 business days from receipt;
 - Requirement to send a written communication to all complainants whose complaints are handled within the three business-day period covering certain points, including their right to refer the matter to FOS immediately; and
 - Firms to report and publish (where required) information on all complaints received – this change is likely to come into force a year after the policy statement is released to allow sufficient time for firms and the FCA to make systems changes.
- Changes to the complaints return, which firms have been using in its current format since August 2009:
 - New fields and metrics;
 - New categories – such as ‘inappropriate sales techniques’, ‘product performance/features’, ‘general administration/customer service’, and ‘other’;
 - Reporting timeframes amended to ‘within 3 days’ and ‘between 4 days to 8 weeks’;
 - Simplified table for firms with fewer than 500 complaints; and



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- Additional fields in complaints publication template (for firms that receive over 500 complaints in 6 months).
 - The FCA plans to limit the cost of post-contractual calls to financial services firms to that of a basic-rate call and also proposes changes to the FOS's annual report.

Implementation of the Alternative Dispute Resolution (ADR) Directive: Key messages

- The FCA will act as the competent authority in respect of the FOS, which means its oversight responsibilities will increase.
- The main changes for firms are as follows:
 - FOS will be able to deal with a complaint before the complainant has contacted the firm, as long as both parties consent. If the firm consents, the firm will still need to comply with the rules in DISP 1, e.g. send a final, or other, response within the 8-week period, etc.;
 - The 3 and 6-year time limits would remain with the firm being required to submit to the FOS jurisdiction within these periods, but outside of these timeframes it would be voluntary, except in limited circumstances;
 - The 6-month timeframe for referral to the FOS will remain but firms can consent to the FOS taking a complaint where it is referred after this period;
 - Where a firm consents for a complaint to be reviewed by the FOS it cannot withdraw this consent at a later date;
 - Requirement for firms to provide information about the FOS on its website, in its general Ts and Cs and where a dispute between the firm and consumer cannot be settled;
 - Firms will also need to inform customers whether or not they will consent to the FOS looking at a complaint using prescribed wording.
- Definition of complainant:
 - The amended definition includes natural persons who are acting for purposes wholly or mainly outside their trade, business, craft or profession.
 - This change means professional clients and eligible counterparties, could be eligible complainants. Therefore, firms will need to review and update documentation and websites to comply with the information requirements regarding FOS.
 - They will also need to establish complaints handling procedures that are compliant with DISP, be able to provide such information in writing, and hold a supply of FOS explanatory leaflets to send alongside final, or other, responses.
 - Where applicable, firms may need to amend their FOS exempt status in relation to annual regulatory fees and levies.
- The instances where the FOS can dismiss a complaint are reduced. For example, 'legitimate exercise of a firm's commercial judgment' as a reason for FOS to dismiss a complaint is being removed.



Next steps

Implementation of the ADR Directive into UK legislation is required by 9th July 2015. Therefore, every firm across the UK's financial services industry will be required to comply with the requirements from 9th July 2015 but only to complaints received on and after that date.

A Policy Statement concerning the improvements to complaints handling and reporting will be issued in the summer of 2015.

Firms should start to familiarise themselves with the changes to DISP to ensure they're able to comply by the relevant dates.

This note is intended as a summary only. It is not full and/or firm specific advice and it is the responsibility of each regulated firm to ensure they fully consider relevant FCA publications.

For further information, please contact Gem Compliance Consulting Ltd.