



## Regulation & Compliance Factsheet:

# Identifying and Handling Regulated Complaints

Q4 2017

The Financial Conduct Authority (FCA) considers the way firms handle complaints to be a key indicator of their approach to treating customers fairly. A good complaints handling procedure that meets the requirements of the FCA rules is an indication of a positive approach to treating customers fairly, whereas a poor procedure is likely to give the FCA wider causes for concern about a firm. The aim of this factsheet is to help firms to handle complaints correctly in accordance with the requirements of the FCA Handbook.

### **Where do I find the detailed FCA rules on complaints handling?**

The detailed FCA rules governing how firms should handle complaints are contained in [section 1 of DISP](#) which is in the Redress section of the FCA Handbook.

### **What, according to the FCA, is a complaint?**

The definition of a complaint is contained in the Glossary to the FCA Handbook. A complaint is defined as:

*“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.”*

Complaints can be made orally or in writing and can be made by the complainant or by another person acting on their behalf, although if a complaint is being made by someone other than the customer firms would be entitled to ask for evidence that a third party has the customer’s authority to either make the complaint or handle it on their behalf.



## Continued...

You will see that there are certain key elements to satisfy before a complaint falls within the scope of the FCA rules, in particular:

1. There must be some sort of expression of dissatisfaction, however the complainant does not need to specifically state that they are making a complaint (though if in doubt you might ask the customer to confirm whether or not they wish to do so); and
2. The dissatisfaction must relate to the provision of or failure to provide a financial service ie it must relate to activities for which the firm is regulated by the FCA. This will primarily be credit broking though firms may also have other FCA permissions. Complaints about matters which are not regulated by the FCA, such as the sourcing and delivery of the vehicle or the provision of fleet management services, will not generally fall within the scope of DISP; and
3. The complainant must allege either:
  - a. That they have suffered a financial loss of any amount; or
  - b. That they have suffered “material” distress; or
  - c. That they have suffered “material” inconvenience.

“Material” is not defined for this purpose so, in the absence of any alleged financial loss, firms need to take a view based on the circumstances of the case as to whether any alleged distress or inconvenience is “material”.

Unless a complaint meets all three of the requirements above it does not fall within the scope of DISP.

There are grey areas. For example, the following complaints are generally unlikely to fall within the scope of the FCA rules for a lease broking firm as they do not relate to FCA regulated activities (although some might do so against the funder):

- A complaint about a delay in the delivery of a vehicle.
- A complaint that a vehicle is dirty on delivery or that there is some defect.
- A complaint about the quantum of repair costs at end of contract.

However, this can depend on how the complaint is positioned. For example, if the customer alleges that they would not have entered into the transaction, and thus would not have entered into the lease agreement, if they had known that the delivery might be delayed then this could bring the complaint within the scope of DISP.

The following types of complaints are likely to fall within the scope of DISP if the customer also alleges that they have suffered a financial loss, material distress or material inconvenience:

- Complaints about excess mileage charges.
- Complaints about delays in provision of finance quotes or documents.
- Complaints about the failure to include maintenance within the finance agreement.
- Complaints about the failure to provide finance.
- Complaints that deals advertised on a firm’s website are no longer available.

If in any case you are unsure whether or not a complaint falls within the scope of DISP it is recommended that you treat it as regulated.



## How to handle regulated complaints

If a complaint falls within the scope of the FCA rules then it must be handled in accordance with the procedures in DISP and you must also take account of the additional requirements in the BVRLA Code. These procedures can be summarised as follows:

1. The complaint must be acknowledged promptly and in writing. This can include by email where the complainant has chosen to communicate by this method. The BVRLA Code states that the acknowledgement must be issued within 5 working days. Along with the acknowledgement you must send a copy of your written complaints handling procedures.
2. The complaint must be fully and impartially investigated taking into account all available evidence, including other complaints of a similar nature and any relevant guidance or publications issued either by the FCA or the Financial Ombudsman. Whilst firms can offer ex gratia payments to settle complaints these cannot be offered as a substitute for a full investigation or for full redress if a complaint is upheld.
3. The BVRLA Code states that firms should aim to resolve disputes within 30 days. If disputes cannot be resolved then complainants must be advised of the availability of the BVRLA Conciliation Service.
4. Under the FCA DISP rules a firm must issue a Final Response within 8 weeks – see below.

## The final response (including dissatisfied customers & unresolved cases)

Complaints must be resolved at the earliest opportunity and firms have a maximum of **8 weeks** under the FCA rules to send a final response to the customer. There are detailed requirements for the final response which are summarised as follows:

1. The final response must be in writing though this can be by email where the complainant has accepted this as a means of communication;
2. The final response should summarise the outcome of the investigations;
3. The final response must either:
  - a. Accept the complaint and, where appropriate, offer redress or remedial action; or
  - b. Offer redress or remedial action without accepting the complaint (ie an ex gratia settlement); or
  - c. Reject the complaint and explain the reasons for doing so; or
  - d. If the firm has not been able to conclude its investigations, explain why not and when it expects to do so.
4. The response must advise the complainant that if they **remain dissatisfied (or if the investigation has not been completed)** they may now **refer their complaint to either**:
  - a. **BVRLA conciliation service** (who provide an alternative dispute resolution service to members and their customers)
    - Further information is available via the [BVRLA Leasing Broker Code of Conduct](#); or
  - b. **Financial Ombudsman Service (FOS)**:
    - Provide customer with details of the [FOS](#) website address and enclose a copy of the Ombudsman leaflet “Your Complaint and the Ombudsman”; and
    - The written response must include the appropriate standard wording from [DISP 1 Annex 3R](#). In most cases the relevant wording will be:

*“You have the right to refer your complaint to the Financial Ombudsman Service, free of charge – but you must do so within six months of the date of this letter. If you do not refer your complaint in time, the Ombudsman will not have our permission to consider your complaint and so will only be able to do so in very limited circumstances. For example, if the Ombudsman believes that the delay was as a result of exceptional circumstances.”*



## Complaints resolved within 3 working days

If a complaint is resolved to the satisfaction of the complainant by the close of the third business day after receipt firms may, if they wish, follow an alternative process provided the complainant has verbally indicated their acceptance of the response from the firm. As an alternative to issuing a formal acknowledgement and a final response firms may issue a “Summary Resolution Communication”.

This is a written communication which:

1. Refers to the fact that the complainant has made a complaint and that the firm now considers this complaint resolved;
2. Tells the complainant that if they subsequently decide that they are not satisfied they may be able to refer their complaint to the Financial Ombudsman Service (FOS); and
3. Includes the appropriate wording from DISP 1 Annex 3R (see above); and
4. Provides the FOS website address and advises the complainant of the availability of further information on their website.

## Complaints forwarding

If firms receive complaints which they reasonably believe relate to matters for which another party is solely or jointly responsible they may forward the complaint or the relevant part of it to that third party provided they:

1. Do so promptly; and
2. Inform the complainant promptly in a final response (see above) of why the complaint has been forwarded and of the third party’s contact details; and
3. Where the firm is jointly responsible it continues to investigate and respond to those elements for which it remains responsible in accordance with the FCA rules.

For example, a complaint is received about a fault with a vehicle and the customer would like to reject the vehicle. It is reasonable for this to be forwarded to the funder for them to deal with.

## Other requirements

This factsheet summarises the principal requirements for the identification and handling of complaints that fall within the scope of the FCA DISP rules. Firms must also:

1. Be aware of the requirements to keep appropriate records of all complaints.
2. Be aware of the requirements to undertake root cause analysis (RCA) and to identify and remedy recurring or systemic problems.
3. Be aware of the requirements to publish details of their complaints handling procedures and of the availability of the Financial Ombudsman Service.
4. Be aware of the requirement to collect appropriate management information.
5. Be aware of the FCA’s requirements for the reporting of complaints data.

We will now review some of these areas in more detail.

Note: Further information regarding complaints is available at [FOS guidance for businesses](#)



## Keep a record of all complaints (complaints register)

A firm should have an up-to-date register of all complaints detailing the following type of information (see example across):

- Customer and account details
- Nature of the complaint by category
- Date received
- Whether is a regulated complaint
- Who is handling the complaint
- Who the complaint is against
- Date complaint acknowledged
- Date final response was sent
- Whether complaint was upheld
- Details of any compensation offered.
- Whether outcome accepted
- If case was referred to BVRLA/ FOS
- If referred, the outcome
- Date complaint closed

## Firms should undertake Root Cause Analysis (RCA)

A firm should conduct a RCA for each complaint as outlined on page four. Example: If a firm receives a disproportionate number of complaints that customers were not aware of potential excess mileage or fair wear and tear charges; then they should consider amending their 'initial sales' process and 'end of lease' process to give more information to the customer about these.

## Collate accurate and insightful management information to allow oversight

The complaints register and RCA should form part of a compliance management information suite alongside other relevant data to enable senior management to effectively manage the risks in the business. Other relevant data may include: KPI's (persistence, declines and cancellation rates); Customer feedback; Sale file review scores; Performance management reviews, Product/funder volumes and %'s, etc.

This enables complaints (and wider compliance issues) to be regularly reviewed at board/ senior management level, with the resulting actions and responsibilities recorded. For example: i) Change to a process; ii) Additional training requirement; iii) Disciplinary issue; iv) Assess if other customers who have not complained may be affected by the same issue, need to be identified, and where appropriate, provided with redress.

Dealing quickly and positively with complaints to prevent the reoccurrence of similar incidents evidences a firm's commitment to 'treat customers fairly' and a desire to improve service standards.

## FCA reporting requirements

Firms are required to record and report all complaints (including those handled by the close of three business days after the firm receives them);

- A firm must accurately report its complaint data to the FCA as part of its [GABRIEL](#) return. If a firm does not adhere to the strict time limits they will be charged an administrative fee of £250.
- Not submitting the information required may result in the FCA taking enforcement action, which can mean a firm loses its permission to carry out regulated activities.
- Note: A firm must notify the FCA immediately if it becomes aware that a matter could have significant adverse impact on its reputation or which could result in serious detriment to a customer. [FCA Complaint Reporting Rules](#)

COMPLAINTS REGISTER

Customer Name	Case Referen ce	Complaint Category	FCA Regulated?	Date Acknowledged	Complaint Handler	Final Response Due Date	Final Response Issued Date	Outcome	Referred to FOS date	FOS Decision	Unresolved complaint reported to BVRLA	Date reported to BVRLA	Compensation Paid?	Compensation Amount (£)	notes
Harry Kane	VL0003	Delivery Delay	No	11/01/2017	David Jones	07/03/2017	05/03/2017	Rejected	N/A	Complaint Upheld	Yes	06/03/2017	Yes	£525	
Gareth Edwards	VL0004	Admin Error	Yes	10/02/2017	David Davies	07/04/2017	07/04/2017	Rejected	10/04/2017		N/A		Yes	£250	
Jane Smith	VL0005	Bad Advice	Yes	20/02/2017	Emma Smith	17/04/2017	07/04/2017	Ex Gratia Payment	N/A		N/A		No	-	
Terry Griffiths	VL0006	Vehicle Condition	No	03/03/2017	Jose Conte	28/04/2017	20/04/2017	Ex Gratia Payment	N/A		N/A		Yes	£25	



# FCA 'Dear CEO letter' – Action required

FCA recently conducted a review of how firms deal with complaints. In September 2017 they published a four page open letter to CEO's of all consumer credit firms, their key findings were:

- A failure to provide customers with information about the Financial Ombudsman, including the right to refer complaints to FOS.
- A failure to provide a clear explanation of the outcome of complaints to customers and failure to provide FCA prescribed information in final responses.
- A lack of "root cause analysis and MI together with inaccurate complaints capture.
- The use of "ex gratia" payments rather than proper investigation of complaints.

**ACTION:** In light of this FCA letter *all Consumer Credit firms* are required to review their complaint handling procedures and evidence in detail how and when this review took place. Whilst the FCA do not require firms to notify them that it has been completed, they reserve the right to request this information at a later date and if serious failings were found, may refer firms to their Enforcement division.

## Extracts from 'Dear CEO letter'

Dear CEO,



### Consumer Credit firms handling of complaints

I am writing to you as a CEO of a firm that engages in consumer credit activities.

We recently undertook a review of how consumer credit firms approach and deal with customer complaints. We reviewed data, final response letters and website information on complaints from a range of consumer credit firms. While we found examples of good practice to the benefits of consumers we also found material non-compliance and other concerning practices.

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Furthermore, firms' attitudes to complaints are a strong indicator of their culture and whether they have customers at the heart of their business. Those firms that care about their customers and want to do better recognise a complaint or an opportunity to identify and rectify failings and strengthen relationships with their customers. Conversely, those firms that consider complaints as a nuisance and do not take them sufficiently serious are unlikely to have a culture that leads to positive customer outcomes.

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The four page 'Dear CEO' letter is available [here](#):

Yours faithfully,

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Director of Supervision – Retail and Authorisation

For questions on the factsheet content

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