

sarah.raisin@esma.europa.eu  
joint-committee@eba.europa.eu

## **JC Complaints Handling CP 2013-03**

19th November 2013

Dear Sirs

The following response to your request for comment on CP2013-03 is provided in my capacity as a representative of Avantage Reply, a pan-European specialised risk and regulatory management consultancy firm.

The responses represent the collected views of our UK practice and provide a perspective from a viewpoint of UK firms and consumers.

For clarity, we have repeated the questions for consultation in *purple italic text*. Our responses are in standard black text.

We are happy to discuss any part of this response with you in more detail if required.

Yours faithfully

Will German

### **Avantage Reply**

5<sup>th</sup> Floor, Dukes House  
32-38 Dukes Place  
London EC3A 7LP – UK  
Phone: +44 (0) 207 709 4000  
Fax: +44 (0) 207 283 2402  
Mobile: +44 (0) 7825 169 633  
[w.german@reply.eu](mailto:w.german@reply.eu)  
[www.avantagereply.com](http://www.avantagereply.com)

**Question 1: Do you agree that complaints-handling is an opportunity for further supervisory convergence? Please also state the reasons for your answer.**

In the UK, handling complaints fairly and efficiently has long been viewed as an integral part of a firm's obligations to its customers. In addition, the insight provided by complaints analysis is considered an important barometer of how well the overall service provided by a firm is meeting customers' needs. We consider the convergence of standards in this area to be an important step towards creating a uniform cross border market for financial services in the EEA. Furthermore, we consider robust and uniform standards to be critical to enabling customers to purchase products and services from firms in other EEA territories. This consistency will help to provide consumers with confidence that they will receive the same level of protection as they would receive if they were to buy a product in their local market.

The guidelines proposed are broadly similar to existing UK requirements; however, we note that there are some minor differences in scope for the existing UK rules for different types of firms or firms conducting different types of business (for example, the UK requirements make distinctions between complaints from eligible complainants, complaints applicable to a firm's MiFID business and complaints received by payments service providers). We view the general convergence of requirements (including the convergence with the EIOPA complaints handling guidelines) as a positive step in enhancing consumer protection for customers of UK firms, for reducing the opportunities for regulatory arbitrage and for simplifying the regime overall.

An area for further consideration is potential opportunities for further convergence, beyond those set out in the consultation. Without discussion of the legislative changes required to facilitate the ability of the EBA, ESMA and EIOPA to drive further convergence, we see a potential benefit from consistent provision of independent ombudsman services, enhancing consumer protection.

**Question 2: Please comment on each of the guidelines, clearly indicating the number of the guideline (there are 7 guidelines) to which your comments relate.**

**Guideline 1 - Complaints management policy**

**Competent authorities should ensure that:**

- a) A 'complaints management policy' is put in place by firms. This policy should be defined and endorsed by the firm's senior management, who should also be responsible for its implementation and for monitoring compliance with it.**

The current UK requirements in this area are as follows:

- DISP 1.3.1 requires UK firms to maintain effective and transparent procedures for handling complaints and DISP 1.3.3B suggests (taking into account the nature, scale and complexity of a firm's business) reporting to a firm's senior personnel on recurring or systemic problems identified.
- In addition, DISP 1.3.7 requires a firm to appoint an individual to have responsibility for oversight of the firm's compliance with the rules for treating complaints fairly (i.e. DISP 1) and mandates that this individual must be carrying out an FCA Governing Function (DISP 1.3.7) at the firm or within the same group.

Whilst the current UK rules do not explicitly require firms' senior management to define, endorse, implement and monitor compliance with the complaints management policy; we consider this to be

implicit in the rules described above. In our experience, most UK firms have arrangements in place which are at least equivalent to the new guidelines and we would not expect any changes required to be material for UK firms.

***b) This 'complaints management policy' is set out in a (written) document e.g. as part of a 'general (fair) treatment policy'.***

***c) The 'complaints management policy' is made available to all relevant staff of the firm through an adequate internal channel.***

These are not explicit requirements of the current UK regime, but are considered good practice and we do not anticipate either part of this guideline being a material change for most UK firms.

### ***Guideline 2 - Complaints management function***

***Competent authorities should ensure that firms have a complaints management function which enables complaints to be investigated fairly and possible conflicts of interest to be identified and mitigated.***

As noted above, DISP 1.3.7 requires a firm to appoint an individual to have responsibility for oversight of the firm's compliance with the rules for treating complaints fairly (i.e. DISP 1). In addition, PRIN 8 requires firms to manage conflicts of interest fairly. It does not mandate that a complaints management function be established; however, in our experience, most UK firms have arrangements in place which are equivalent to the new guidelines and we would not expect this change to be material for UK firms.

### ***Guideline 3 - Registration***

***Competent authorities should ensure that firms register, internally, complaints in accordance with national timing requirements in an appropriate manner (for example, through a secure electronic register).***

DISP 1.9 requires UK firms to keep and maintain records of each complaint received and the measures taken to resolve it. We do not anticipate this requirement requiring any change for UK firms.

### ***Guideline 4 - Reporting***

***Competent authorities should ensure that firms provide information on complaints and complaints-handling to the competent authorities or ombudsman. This data should cover the number of complaints received, differentiated according to their national criteria or own criteria, where relevant.***

DISP 1.10 sets out the requirements for UK firms to report complaints from eligible complainants to the FCA. The guidelines apply to all complainants so, depending upon the implementation stance taken by the FCA, it is possible that a slightly wider definition of which complaints should be reported will be required. Although this is a minor change and will not affect the vast majority of complaints, it may require system changes to implement and so could represent a material cost to UK firms. Given the low materiality of non-eligible complainants in terms of overall complaint numbers, we would suggest that the reporting requirement should be worded with sufficient

flexibility to allow the UK's competent authorities to adopt a proportionate implementation in this area.

### ***Guideline 5 - Internal follow-up of complaints-handling***

***Competent authorities should ensure that firms analyse, on an on-going basis, complaints-handling data, to ensure that they identify and address any recurring or systemic problems, and potential legal and operational risks, for example, by:***

***a) Analysing the causes of individual complaints so as to identify root causes common to types of complaint;***

***b) Considering whether such root causes may also affect other processes or products, including those not directly complained of; and***

***c) Correcting, where reasonable to do so, such root causes.***

DISP 1.3.3 – DISP 1.3.4 set out the current UK requirements for root cause analysis of complaints. We consider these to be equivalent to Guideline 5 and so there would be no change required for UK firms.

### ***Guideline 6 – Provision of information***

***Competent authorities should ensure that firms:***

***a) On request or when acknowledging receipt of a complaint, provide written information regarding their complaints-handling process.***

***b) Publish details of their complaints-handling process in an easily accessible manner, for example, in brochures, pamphlets, contractual documents or via the firm's website.***

***c) Provide clear, accurate and up-to-date information about the complaints-handling process, which includes:***

***(i) details of how to complain (e.g. the type of information to be provided by the complainant, the identity and contact details of the person or department to whom the complaint should be directed);***

***(ii) the process that will be followed when handling a complaint (e.g. when the complaint will be acknowledged, indicative handling timelines, the availability of a competent authority, an ombudsman or alternative dispute resolution (ADR) mechanism, etc.).***

***d) Keep the complainant informed about further handling of the complaint.***

DISP 1.2 sets out the requirements for the current UK consumer awareness rules. As above these requirements only apply to eligible complainants so minor changes may be required by UK firms to extend their existing processes and procedures to all firms. In our experience though, in this respect, most UK firms do not seek to differentiate between eligible and non-eligible complainants.

DISP 1.6 sets out additional requirements for time limits for dealing with complaints and the requirement to keep the complainant informed of the progress with resolving the complaint. In this respect the current UK requirements are equivalent to Guideline 6 and there would be no change required for UK firms.

### ***Guideline 7 - Procedures for responding to complaints***

#### ***Competent authorities should ensure that firms:***

##### ***a) Seek to gather and investigate all relevant evidence and information regarding the complaint.***

DISP 1.4 sets out the current UK requirements for Complaints resolution. We consider these to be equivalent to Guideline 7a and so there would be no change required for UK firms.

##### ***b) Communicate in plain language, which is clearly understood.***

PRIN 7 sets out the current UK requirement for firms to communicate with customers in a way that is clear fair and not misleading. We consider this to be equivalent to Guideline 7b and so there would be no change required for UK firms.

##### ***c) Provide a response without any unnecessary delay or at least within the time limits set at national level. When an answer cannot be provided within the expected time limits, the firm should inform the complainant about the causes of the delay and indicate when the firm's investigation is likely to be completed.***

As noted above, DISP 1.6 sets out requirements for the time limits for dealing with complaints and the requirement to keep the complainant informed of the progress with resolving the complaint. In this respect the current UK requirements are equivalent to Guideline 7c and there would be no change required for UK firms.

##### ***d) When providing a final decision that does not fully satisfy the complainant's demand (or any final decision, where national rules require it), include a thorough explanation of the firm's position on the complaint and set out the complainant's option to maintain the complaint e.g. the availability of an ombudsman, ADR mechanism, national competent authorities, etc. Such decision should be provided in writing where national rules require it.***

DISP 1.4.1 (4) sets out the current UK requirements for firms to explain their decision. DISP 1.2.3 sets out the current UK requirement to inform eligible complainants of the availability of the Financial Ombudsman Service (FOS) on acknowledgement of a complaint. There is no requirement to notify customers of the availability of the FOS on rejection of their complaint. Many firms seek to a) combine acknowledgement of complaints with resolution where possible or b) already include the option of referring a complaint to FOS in their final responses to customers but others may not do so. Incorporating this requirement would be a relatively minor process change for firms, but it is likely that it would result in an increase in referrals to the FOS which might consequently require an increase in funding.

### ***Question 3: Do you agree with the analysis of the cost and benefit impact of the proposals?***

From a UK firms' perspective, the requirements are largely already met through existing requirements and so we consider the direct costs and benefits to be small. There is a benefit for UK consumers in allowing them to access the wider cross border market for products and services with a greater degree of confidence as a result of the enhanced consumer protection that these guidelines will provide when dealing with non-UK firms.

We are unable to comment on the costs and benefits for non-UK firms beyond agreeing that the cost benefit analysis seems intuitively correct.

***Question 4: Please provide any evidence or data that would further inform the analysis of the likely cost and benefit impacts of the proposals.***

We are unable to share our clients' data to assist with this question.

As noted above, we are very happy to discuss any part of this response with the EBA if required.