

Chapter 2

Jurisdiction of the Financial Ombudsman Service

2.3 To which activities does the Compulsory Jurisdiction apply?

Activities by firms

2.3.1

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The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:

- (1) *regulated activities* (other than *auction regulation bidding* and *administering a benchmark*);
- (1A) *payment services*;
- (1B) [deleted]
- (1C) *CBTL business*;
- (2) [deleted]
- (3) lending *money* secured by a charge on land;
- (4) lending *money* (excluding *restricted credit* where that is not a *credit-related regulated activity*);
- (5) paying *money* by a *plastic card* (excluding a *store card* where that is not a *credit-related regulated activity*);
- (6) providing ancillary banking services;
- (7) offering and/or issuing of *investments* by *ISPVs*;
- (8) giving *non-personal recommendation advice*;

or any ancillary activities, including advice, carried on by the *firm* in connection with them.

2.3.1A

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The *Ombudsman* can also consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by:

- (1) an *investment firm* authorised under the *UK* provisions which implemented *MiFID* when providing *investment services* or *ancillary services*;
- (2) a *CRD credit institution* when providing one or more *investment services*;

- (3) an *investment firm* authorised under the *UK* provisions which implemented *MiFID* or a *CRD credit institution* when selling *structured deposits* to *clients*, or advising *clients* on them;
- (4) a *collective portfolio management investment firm* when providing the activities permitted by the *UK* provisions which implemented article 6(3) of the *UCITS Directive*; and
- (5) a *collective portfolio management investment firm* when providing the activities permitted by the *UK* provisions which implemented article 6(4) of the *AIFMD*.

[Note: see article 1(1), 1(3) and 1(4) and article 75 of *MiFID*, and articles 1 and 26(5) of the *MiFID Org Regulation*]

2.3.1B

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For the purposes of **DISP 2.3.1AR**, the *Ombudsman* can consider a *complaint* about an act carried out by a *MiFID investment firm* that is preparatory to the provision of an *investment service* or *ancillary service* which is an integral part of such a service. This includes, for example, generic advice given by a *MiFID investment firm* to a *client* prior to, or in the course of, the provision of investment advice or another *investment service* or *ancillary service*.

[Note: recitals 15 and 16 of the *MiFID Org Regulation*]

Activities by firms and unauthorised persons subject to a former scheme

2.3.2

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The *Ombudsman* can also consider under the *Compulsory Jurisdiction*:

- (1) as a result of the *Ombudsman Transitional Order*, a *relevant existing complaint* or a *relevant new complaint* that relates to an act or omission by a *firm* or an *unauthorised person* which was subject to a *former scheme* immediately before *commencement*;
- (2) as a result of the *Mortgages and General Insurance Complaints Transitional Order*, a *relevant transitional complaint* that relates to an act or omission by a *firm* (or an *unauthorised person* that ceased to be a *firm* after the *relevant commencement date*) which was subject to a *former scheme* at the time of the act or omission; or
- (2A) as a result of the *Claims Management Order*, a *relevant claims management complaint* that relates to an act or omission by a *firm* or an *unauthorised person* which was subject to a *former scheme* at the time of the act or omission;
- (2B) as a result of the *Funeral Plans Order*, a *relevant transitional funeral plan complaint* that relates to an act or omission by a *firm* or *unauthorised person* which was subject to a *former scheme* at the time of the act or omission.

The *Ombudsman* may only consider a type of *complaint* referred to in (1) to (2B) if:

- (3) the act or omission occurred in the carrying on by that *firm* or *unauthorised person* of an activity to which that *former scheme* applied; and

- (4) the complainant is eligible and wishes to have the *complaint* dealt with by the *Ombudsman*.

Activities by firms and unauthorised persons previously subject to the Consumer Credit Jurisdiction

2.3.2-A

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In accordance with article 11 of the *Regulated Activities Amendment Order*, the *Ombudsman* can also consider under the *Compulsory Jurisdiction*:

- (1) a *relevant existing credit-related complaint* referred to the *Financial Ombudsman Service* before 1 April 2014 which was formerly being dealt with under the *Consumer Credit Jurisdiction*; and
- (2) a *relevant new credit-related complaint* referred to the *Financial Ombudsman Service* on or after 1 April 2014 which relates to an act or omission which took place before 1 April 2014;

provided that:

- (a) the *complaint* could have been dealt with under the *Consumer Credit Jurisdiction* (disregarding whether the complainant would have been eligible under rules made for the purposes of the *Consumer Credit Jurisdiction* and whether the complaint would have fallen within a description specified in those rules) but for the repeal of section 226A of the *Act*; and
- (b) the complainant is eligible and wishes to have the *complaint* dealt with under the *Financial Ombudsman Service*.

Activities by payment service providers

2.3.2A

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The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *payment service provider* in carrying on:

- (1) *payment services*; or
- (2) *credit-related regulated activities*;

or any ancillary activities, including advice, carried on by the *payment service provider* in connection with them.

Activities by electronic money issuers

2.3.2B

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The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by an *electronic money issuer* in carrying on:

- (1) issuance of *electronic money*; or
- (2) *credit-related regulated activities*;

or any ancillary activities, including advice, carried on by the *electronic money issuer* in connection with them.

Activities by CBTL firms

2.3.2BA **R** The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *CBTL firm* in carrying on *CBTL business* or any ancillary activities, including advice, carried on by the *CBTL firm* in connection with its *CBTL business*.

Consumer redress schemes

2.3.2C **G** As a result of section 404B(11) of the *Act*, the *Ombudsman* can also consider under the *Compulsory Jurisdiction* a *complaint* from a complainant who:

- (1) is not satisfied with a *redress determination* made by a *respondent* under a *consumer redress scheme*; or
- (2) considers that a *respondent* has failed to make a *redress determination* in accordance with a *consumer redress scheme*.

Activities by designated credit reference agencies

2.3.2D **R** The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *designated credit reference agency* in carrying on:

- (1) the activity of providing *credit information* under the *Small and Medium Sized Business (Credit Information) Regulations*; or
- (2) any ancillary activities, including advice, carried on by the *designated credit reference agency* in connection with the activity in (1).

Activities by designated finance platforms

2.3.2E **R** The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *designated finance platform* in carrying on:

- (1) the activity of providing *specified information* under the *Small and Medium Sized Business (Finance Platforms) Regulations*; or
- (2) any ancillary activities, including advice, carried on by the *designated finance platform* in connection with the activity in (1).

General

2.3.3 **G** *Complaints* about acts or omissions include those in respect of activities for which the *firm, payment service provider, electronic money issuer, CBTL firm, designated credit reference agency* or *designated finance platform* is responsible (including business of any *appointed representative* or *agent* for which the *firm, payment institution, electronic money institution, designated credit reference agency* or *designated finance platform* has accepted responsibility).

2.3.4 **R** A *complaint* about an *authorised professional firm* cannot be handled under the *Compulsory Jurisdiction* of the *Financial Ombudsman Service* if it relates

solely to a *non-mainstream regulated activity* and can be handled by a *designated professional body*.

2.3.5

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The *Compulsory Jurisdiction* includes *complaints* about the UK end of 'one leg' *payment services* transactions, i.e. services provided from UK establishments that also involve a payment service provider located outside the EEA. The *Compulsory Jurisdiction* also includes *complaints* about *payment services* irrespective of the currency of the transaction.

2.3.6

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Schedule 6A to the *Act* sets out a procedure to enable the *FCA* to cancel or vary the *Part 4A permission* of a *person* who, it appears to the *FCA*, is not carrying on the *regulated activity* to which the *Part 4A permission* relates. In some cases, this may result in the *person* no longer being a *respondent* following cancellation of all their *Part 4A permissions*. Paragraph 5 of Schedule 6A to the *Act* sets out a procedure for the subsequent annulment of the decision to cancel or vary the *person's Part 4A permission* in specified circumstances where the *FCA* is satisfied that it is just and reasonable to do so. Where the *FCA* grants an application for annulment, either with conditions or unconditionally, paragraph 6 of Schedule 6A to the *Act* sets out its effect, which includes that the cancellation or variation of the *Part 4A permission* is treated as if it had never taken place. As a result of the effect of the annulment, the *person* may therefore be a *respondent* for the purposes of any *complaints* which arise during the period in which the *person's Part 4A permission* was cancelled or varied.