

Chapter 2

Jurisdiction of the Financial Ombudsman Service

2.7 Is the complainant eligible?

2.7.1 **R** A *complaint* may only be dealt with under the *Financial Ombudsman Service* if it is brought by or on behalf of an *eligible complainant*.

2.7.2 **R** A *complaint* may be brought on behalf of an *eligible complainant* (or a deceased *person* who would have been an *eligible complainant*) by a *person* authorised by the *eligible complainant* or authorised by law. It is immaterial whether the *person* authorised to act on behalf of an *eligible complainant* is himself an *eligible complainant*.

Eligible complainants

2.7.3 **R** An *eligible complainant* must be a *person* that is:

- (1) a *consumer*; or
- (2) a *micro-enterprise* ;
 - (a) in relation to a *complaint* relating wholly or partly to *payment services*, either at the time of the conclusion of the *payment service contract* or at the time the complainant refers the *complaint* to the *respondent*; or
 - (b) otherwise, at the time the complainant refers the *complaint* to the *respondent*; or
- (3) a charity which has an annual income of less than £6.5 million at the time the complainant refers the *complaint* to the *respondent*; or
- (4) a trustee of a trust which has a net asset value of less than £5 million at the time the complainant refers the *complaint* to the *respondent*; or
- (5) (in relation to *CBTL business*) a *CBTL consumer*; or
- (6) a *small business* at the time the complainant refers the *complaint* to the *respondent*; or
- (7) a *guarantor*.

2.7.4 **G** In determining whether an *enterprise* meets the tests for being a *micro-enterprise* or a *small business*, account should be taken of the *enterprise's* 'partner enterprises' or 'linked enterprises' (as those terms are defined in the *Micro-enterprise Recommendation*). For example, where a parent company

holds a majority shareholding in a *complainant*, if the parent company does not meet the tests for being a *micro-enterprise* or a *small business* then neither will the *complainant*.

[**Note:** articles 1 and 3 to 6 of the Annex to the *Micro-enterprise Recommendation*].

2.7.5 **G** If a *respondent* is in doubt about the eligibility of a business, charity or trust, it should treat the complainant as if it were eligible. If the *complaint* is referred to the *Financial Ombudsman Service*, the *Ombudsman* will determine eligibility by reference to appropriate evidence, such as audited accounts or VAT returns.

2.7.5A **R** A *guarantor* shall be an *eligible complainant* only to the extent that their *complaint* arises from matters relevant to the relationship with the *respondent* referred to in **DISP 2.7.6R(10)**.

2.7.6 **R** To be an *eligible complainant* a *person* must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

- (1) the complainant is (or was) a customer, *payment service user* or electronic money holder of the *respondent*;
- (2) the complainant is (or was) a potential customer, *payment service user* or electronic money holder of the *respondent*;
- (2A) the complainant is (or was) a *payer* in a *payment transaction* in relation to which the *respondent* is (or was) the *payee's payment service provider*, provided the *complaint* relates to the *respondent's* obligations under regulation 90(3) of the *Payment Services Regulations*;
- (2B) the complainant is a *person* that has transferred funds as a result of an alleged *authorised push payment fraud* and both:
 - (a) the *respondent* is (or was) involved in the transfer of the funds; and
 - (b) the *complaint* is not a *PSD complaint*;
- (3) the complainant is the holder, or the beneficial owner, of *units* in a *collective investment scheme* and the *respondent* is:
 - (a) the *operator* of a *scheme*; or
 - (b) the *depository* of an *authorised fund*; or
 - (c) the *depository* of a *charity AIF*; or
 - (d) the *depository* of an *LTIF*;
- (3A) the complainant is the holder, or the beneficial owner, of *units* or *shares* in an *AIF* that is not a *collective investment scheme* where the *respondent* is:
 - (a) the *AIFM* of an *unauthorised AIF* (other than a *body corporate*); or

- (b) the *AIFM* or *depository* of a *LTIF* (other than a *body corporate*); or
- (c) the *AIFM* or *depository* of a *charity AIF* (other than a *body corporate*);
- (4) the complainant is a beneficiary of, or has a beneficial interest in, a *personal pension scheme* or *stakeholder pension scheme*;
- (5) the complainant is a *person* for whose benefit a *contract of insurance* was taken out or was intended to be taken out with or through the *respondent*;
- (6) the complainant is a *person* on whom the legal right to benefit from a claim against the *respondent* under a *contract of insurance* has been devolved by contract, assignment, subrogation or legislation (save the European Community (Rights against Insurers) Regulations 2002);
- (7) the complainant relied in the course of his business on a cheque guarantee card issued by the *respondent*;
- (8) the complainant is the true owner or the *person* entitled to immediate possession of a cheque or other bill of exchange, or of the funds it represents, collected by the *respondent* for someone else's account;
- (9) the complainant is the recipient of a banker's reference given by the *respondent*;
- (10) the complainant gave the *respondent* a guarantee or security for:
 - (a) a mortgage;
 - (b) a loan;
 - (c) an actual or prospective *regulated credit agreement*;
 - (d) an actual or prospective *regulated consumer hire agreement*; or
 - (e) any linked transaction as defined in the Consumer Credit Act 1974 (as amended);
- (11) the complainant is a *person* about whom information relevant to his financial standing is or was held by the *respondent* in *providing credit references*;
- (11A) the complainant is a *person* about whom information relevant to his financial standing is or was held by the *respondent* in *providing credit information*;
- (11B) the complainant is a *person* about whom *specified information* was provided to a *person* in relation to a *finance application*;
- (12) the complainant is a *person*:
 - (a) from whom the *respondent* has sought to recover payment under a *credit agreement* or *consumer hire agreement* (whether or not the *respondent* is a party to the agreement); or
 - (b) in relation to whom the *respondent* has sought to perform duties, or exercise or enforce rights, on behalf of the creditor or

owner, under *acredit agreement* or *consumer hire agreement* in carrying on *debt administration*;

(13) the complainant is a beneficiary under a trust or estate of which the *respondent* is trustee or personal representative;

(14) (where the *respondent* is a *dormant asset fund operator*) the complainant is (or was) a customer of a *bank* or *building society* which transferred any *balance* from a *dormant asset* to the *respondent*;

(14A) (where the *respondent* is a *dormant asset fund operator*) subject to ■ DISP 2.7.6AR, the complainant is (or was) a *person* to whom the proceeds of a *long-term insurance contract* were payable by an *insurer*, but which instead were transferred by the *insurer* to the *respondent*;

(14B) (where the *respondent* is a *dormant asset fund operator*) subject to ■ DISP 2.7.6BR, the complainant is (or was) a *member* of a *personal pension scheme* which transferred any eligible pension benefits due to the complainant to the *respondent*;

(15) the complainant is either a *borrower* or a *lender* under a *P2P agreement* and the *respondent* is the *operator of an electronic system in relation to lending*.

(16) the complainant is a *client* (where the *respondent* is an *ISPV*).

(17) the complainant is a *customer* of the *respondent* in relation to *regulated claims management activity*.

2.7.6A **R** ■ DISP 2.7.6R (14A) does not include proceeds of a *contract of insurance* held in a *lifetime ISA* if their transfer to a *dormant asset fund operator* resulted in (or would result in) liability to pay a *lifetime ISA government withdrawal charge*.

2.7.6B **R** Benefits under a *personal pension scheme* in ■ DISP 2.7.6R(14B) are excluded from being 'eligible pension benefits' if (or to the extent that) they are provided from sums invested in a *with-profits fund*.

2.7.7 **G**

(1) ■ DISP 2.7.6R (5) and ■ DISP 2.7.6R (6) include, for example, employees covered by a group permanent health policy taken out by an employer, which provides in the insurance contract that the policy was taken out for the benefit of the employee.

(2) ■ DISP 2.7.6R(2B) includes any *complaint* that the *respondent* did not do enough to prevent, or respond to, an alleged *authorised push payment fraud*.

2.7.7A **R** In addition, an individual is an *eligible complainant* if:

(1) they have been identified by the *respondent* as a *politically exposed person*, a *family member of a politically exposed person*, or a *known close associate of a politically exposed person*; and

2.7.8

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In the *Compulsory Jurisdiction*, under the *Ombudsman Transitional Order*, the *Mortgages and General Insurance Complaints Transitional Order*, *Claims Management Order* and the *Funeral Plans Order*, where a complainant:

(1) wishes to have a *relevant new complaint*, a *relevant transitional complaint* a *relevant new claims management complaint*, or a *relevant transitional funeral plan complaint* dealt with by the *Ombudsman*; and

(2) is not otherwise eligible; but

(3) would have been entitled to refer an equivalent *complaint* to the *former scheme* in question immediately before the relevant order came into effect;

if the *Ombudsman* considers it appropriate, he may treat the complainant as an *eligible complainant*.

Exceptions

2.7.9

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The following are not *eligible complainants*:

(1) (in all jurisdictions) a *firm*, *payment service provider*, *electronic money issuer*, *CBTL firm*, *designated credit reference agency*, *designated finance platform* or *VJ participant* whose *complaint* relates in any way to an activity which:

(a) the *firm* itself has *permission* to carry on; or

(ab) the *firm*, *payment service provider*, *electronic money issuer*, *CBTL firm*, *designated credit reference agency* or *designated finance platform* itself is entitled to carry on under the *Payment Services Regulations*, the *Electronic Money Regulations*, the *MCD Order*, the *Small and Medium Sized Business (Credit Information) Regulations* or the *Small and Medium Sized Business (Finance Platforms) Regulations*; or

(b) the *VJ participant* itself conducts;

and which is subject to the *Compulsory Jurisdiction* or the *Voluntary Jurisdiction*;

(2) (in the *Compulsory Jurisdiction*) a complainant, other than a trustee of a *pension scheme* trust, who was:

(a) a *professional client*; or

(b) an *eligible counterparty*;

in relation to the *firm* and activity in question at the time of the act or omission which is the subject of the *complaint*.

(3) [deleted]

2.7.9A **R** ■ DISP 2.7.9 R (1) and ■ DISP 2.7.9 R (2) do not apply to a complainant who is a *consumer* in relation to the activity to which the *complaint* relates.

2.7.10 **G** In the *Compulsory Jurisdiction*, in relation to *relevant new complaints* under the *Ombudsman Transitional Order* and *relevant transitional complaints* under the *Mortgages and General Insurance Complaints Transitional Order*:

- (1) where the *former scheme* in question is the *Insurance Ombudsman Scheme*, a complainant is not to be treated as an *eligible complainant* unless:
 - (a) he is an individual; and
 - (b) the *relevant new complaint* does not concern aspects of a policy relating to a business or trade carried on by him;
- (2) where the *former scheme* in question is the *GISC facility*, a complainant is not to be treated as an *eligible complainant* unless:
 - (a) he is an individual; and
 - (b) he is acting otherwise than solely for the purposes of his business; and
- (3) where the *former scheme* in question is the *MCAS scheme*, a complainant is not to be treated as an *eligible complainant* if:
 - (a) the *relevant transitional complaint* does not relate to a breach of the Mortgage Code published by the Council of Mortgage Lenders;
 - (b) the *complaint* concerns physical injury, illness, nervous shock or their consequences; or
 - (c) the complainant is claiming a sum of money that exceeds £100,000.