

Chapter 1

Treating complainants fairly

1.1A Complaints handling requirements for MiFID complaints

Application: Who? What?

- 1.1A.1

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This section:

 - (1) applies to the *MiFID complaints* of a *MiFID investment firm* and does not apply to *complaints* that are not *MiFID complaints*;
 - (2) also applies to the *MiFID complaints* of a *third country investment firm* received from a *retail client* or an *elective professional client* but does not apply to *complaints* that are not *MiFID complaints*; and
 - (3) applies certain other provisions in ■ DISP 1 to such complaints.
- 1.1A.2

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For the *MiFID complaints* of a *third country investment firm*, the provisions marked “UK” shall apply as rules.
- 1.1A.3

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A *MiFID complaint* is, amongst other things, a complaint to which article 26 of the *MiFID Org Regulation* applies, being a complaint about:

 - (1) the provision of *investment services* or *ancillary services* to a *client* by an *investment firm*;
 - (2) the provision of one or more *investment services* to a *client* by a *CRD credit institution*;
 - (3) selling *structured deposits* to *clients*, or advising clients on them, where the sale or advice is provided by an *investment firm* or a *CRD credit institution*;
 - (4) the activities permitted by the *UK* provisions which implemented article 6(3) of the *UCITS Directive* when carried on by a *collective portfolio management investment firm*; and
 - (5) the activities permitted by the *UK* provisions which implemented article 6(4) of the *AIFMD* when carried on by a *collective portfolio management investment firm*.

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

1.1A.4	G	<p>A <i>MiFID complaint</i> is also a complaint about the <i>equivalent business of a third country investment firm</i>.</p> <p>[Note: see articles 39 and 41 of <i>MiFID</i>]</p>
1.1A.5	G	<p>In contrast to the other provisions in ■ DISP 1 which generally apply to <i>complaints from eligible complainants</i>, subject to ■ DISP 1.1A.6R:</p> <p>(1) the obligations in this section that apply to the <i>MiFID complaints of MiFID investment firms</i>, apply to complaints from “clients” as defined in the <i>UK provisions</i> which implemented <i>MiFID</i> (which includes <i>retail clients, professional clients</i> and (in relation to <i>eligible counterparty business</i>) <i>eligible counterparties</i>; and</p> <p>(2) the obligations in this section that apply to the <i>MiFID complaints of third country investment firms</i>, apply to complaints from <i>retail clients</i> and <i>elective professional clients</i>.</p> <p>[Note: see recital (103) and article 4(1)(9) of <i>MiFID</i> for the definition of “client”]</p>
1.1A.6	R	<p>(1) Only the provisions in this section marked “UK” and ■ DISP 1.1A.39R apply to a <i>MiFID complaint</i> received from a <i>retail client, professional client</i> or an <i>eligible counterparty</i> that is not an <i>eligible complainant</i>.</p> <p>(2) But where the <i>retail client, professional client</i> or <i>eligible counterparty</i> is also an <i>eligible complainant</i>, all of the provisions in this section apply.</p> <p>Application: Where?.....</p>
1.1A.7	R	<p>The table below sets out how ■ DISP 1.1A applies to <i>MiFID complaints</i> relating to:</p> <p>the activities of a <i>MiFID investment firm</i> carried on from an establishment in the <i>United Kingdom</i>; and</p> <p>the <i>equivalent business of a third country investment firm</i> where the complaint is received from a <i>retail client</i> or an <i>elective professional client</i>.</p> <p>[deleted]</p> <p>[deleted]</p> <p>Table: Application of DISP 1.1A to the MiFID business of firms in the UK, and the equivalent business of third country investment firms</p>

(1) Provision	(2) Provision applies to the MiFID business of a firm carried on from an establishment in the UK?	(3) Provision applies to the equivalent third country business of a third country investment firm where the complaint is received from a retail client or an elective professional client?
1.1A.10UK	Yes	Yes
1.1A.11R	Yes	Yes
1.1A.12UK	Yes	Yes
1.1A.13UK	Yes	Yes
1.1A.14G	Yes	Yes
1.1A.15G	Yes	Yes
1.1A.16UK	Yes	Yes
1.1A.17UK	Yes	Yes
1.1A.18UK	Yes	Yes
1.1A.19G	Yes	Yes
1.1A.20R	Yes	Yes
1.1A.21G	Yes	Yes
1.1A.22R	Yes	Yes
1.1A.23R	Yes	Yes
1.1A.24UK	Yes	Yes
1.1A.25UK	Yes	Yes
1.1A.26R	Yes	Yes
1.1A.27G	Yes	Yes
1.1A.28R	Yes	Yes
1.1A.29UK	Yes	Yes
1.1A.30UK	Yes	Yes
1.1A.31R	Yes	Yes
1.1A.32G	Yes	Yes
1.1A.33G	Yes	Yes
1.1A.34G	Yes	Yes
1.1A.35R	Yes	Yes
1.1A.36R	Yes	Yes
1.1A.37UK	Yes	Yes
1.1A.38UK	Yes	Yes
1.1A.39R	Yes	Yes
1.1A.40R	Yes	Yes
1.1A.41G	Yes	Yes
1.1A.42R	No	No

(1) Provision	(2) Provision applies to the MiFID business of a firm carried on from an establishment in the UK?	(3) Provision applies to the equivalent third country business of a third country investment firm where the complaint is received from a retail client or an elective professional client?
Notes		
(1) [deleted]		
(2) This table should be read in conjunction with the <i>rules</i> and <i>guidance</i> in DISP 1.1A.1R to DISP 1.1A.6R.		

Interpretation of this section

1.1A.8 G This section contains a number of provisions marked with the status letters "UK", which have been selectively reproduced from the *MiFID Org Regulation*.

1.1A.9 G References in column (1) to a word or phrase used in those provisions marked "UK" have the meaning indicated in column (2) of the table below:

(1)	(2)
"complaint"	<i>MiFID complaint</i>
"investment firm" and "firm"	<i>MiFID investment firm</i>

[Note: for the definition of "client" see recital (103) and article 4(1)(9) of *MiFID*]

Consumer awareness

1.1A.10 UK Investment firms shall publish the details of the process to be followed when handling a complaint. Such details shall include information about the complaints management policy and the contact details of the complaints management function. This information shall be provided to clients or potential clients, on request, or when acknowledging a complaint.

[Note: article 26(2) of the *MiFID Org Regulation*]

1.1A.11 R A *MiFID investment firm* must provide information to *eligible complainants*, in a clear, comprehensible and easily accessible way, about the *Financial Ombudsman Service* (including the *Financial Ombudsman Service's* website address):

- (1) on its website, where one exists; and
- (2) if applicable, in the general conditions of its contracts with *eligible complainants*.

[Note: subject to a few minor changes reflecting its amended application, this provision replicates ■ DISP 1.2.1R(4)]

[Note: article 13(2) of the *ADR Directive*, article 14(1) of the *ODR Regulation*, and regulation 19 of the *ADR Regulations*]

Complaints handling.....

1.1A.12 UK Investment firms shall establish, implement and maintain effective and transparent complaints management policies and procedures for the prompt handling of clients’ or potential clients’ complaints.

[Note: first paragraph, article 26(1) of the *MiFID Org Regulation*]

1.1A.13 UK The complaints management policy shall provide clear, accurate and up-to-date information about the complaints-handling process. This policy shall be endorsed by the firm’s management body.

[Note: second paragraph, article 26(1) of the *MiFID Org Regulation*]

1.1A.14 EU The complaints management policy should be set out in a written document e.g. as part of a general fair treatment policy. It should be made available to all relevant staff of the *firm* through appropriate internal channels.

[Note: guideline 1(b) and (c) of the Joint Committee Final Report on guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors, 27 May 2014, JC 2014 43.]

1.1A.15 EU The *firm’s* senior management should be responsible for the implementation of the the Joint Committee Final Report on guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors, 27 May 2014, JC 2014 43.

[Note: guideline 1(b) and (c) of the Joint Committee Final Report on guidelines for complaints-handling for the securities (*ESMA*) and banking (*EBA*) sectors, 27 May 2014, JC 2014 43.]

1.1A.16 UK Investment firms shall enable clients and potential clients to submit complaints free of charge.

[Note: article 26(2) of the *MiFID Org Regulation*]

1.1A.17 UK Investment firms shall establish a complaints management function responsible for the investigation of complaints. This function may be carried out by the compliance function.

[Note: article 26(3) of the *MiFID Org Regulation*]

1.1A.18 UK Investment firms’ compliance function shall analyse complaints and complaints-handling data to ensure that they identify and address any risks or issues.

[Note: article 26(7) of the *MiFID Org Regulation*]

1.1A.19 **G** *MiFID complaints* should be handled effectively and in an independent manner.

[**Note:** recital (38) of the *MiFID Org Regulation*]

Complaints resolution

1.1A.20 **R** Once a *MiFID complaint* has been received by a *MiFID investment firm*, the firm must:

- (1) investigate the complaint competently, diligently and impartially, obtaining additional information as necessary;
- (2) assess fairly, consistently and promptly:
 - (a) the subject matter of the complaint;
 - (b) whether the complaint should be upheld;
 - (c) what remedial action or redress (or both) may be appropriate; and
 - (d) if appropriate, whether it has reasonable grounds to be satisfied that another respondent may be solely or jointly responsible for the matter alleged in the complaint; and
- (3) comply promptly with any offer of remedial action or redress accepted by the complainant.

[**Note:** subject to a few minor changes reflecting its amended application, this provision replicates ■ DISP 1.4.1R(1), ■ (2) and ■ (5).]

1.1A.21 **G** Factors that may be relevant in the assessment of a *MiFID complaint* under ■ DISP 1.1A.20R(2) include the following:

- (1) all the evidence available and the particular circumstances of the complaint;
- (2) similarities with other complaints received by the respondent;
- (3) relevant guidance published by the *FCA*, other relevant regulators, the *Financial Ombudsman Service* or former schemes; and
- (4) appropriate analysis of decisions by the *Financial Ombudsman Service* concerning similar complaints received by the *MiFID investment firm*.

[**Note:** subject to a few minor changes reflecting its amended application, this provision replicates ■ DISP 1.4.2G.]

1.1A.22 **R** Where a *MiFID complaint* against a *MiFID investment firm* is referred to the *Financial Ombudsman Service*, the *MiFID investment firm* must cooperate fully with the *Financial Ombudsman Service* and comply promptly with any settlements or awards made by it.

[**Note:** subject to a few minor changes reflecting its amended application, this provision replicates ■ DISP 1.4.4R.]

Complaints resolved by close of the third business day.....

- 1.1A.23

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If a *MiFID investment firm* resolves a *MiFID complaint* by close of business on the third *business day* following the day on which it is received, it may choose to comply with ■ DISP 1.1A.24UK to ■ DISP 1.1A.27G rather than with ■ DISP 1.1A.28R to ■ DISP 1.1A.34G.
- 1.1A.24

UK

When handling a complaint, investment firms shall communicate with clients or potential clients clearly, in plain language that is easy to understand and shall reply to the complaint without undue delay.

[Note: article 26(4) of the *MiFID Org Regulation*]
- 1.1A.25

UK

Investment firms shall communicate the firm's position on the complaint to clients or potential clients and inform the clients or potential clients about their options, including that they may be able to refer the complaint to an alternative dispute resolution entity, as defined in regulation 4 of the *ADR Regulations*, or that the client may be able to take civil action.

[Note: article 26(5) of the *MiFID Org Regulation*. See the *ADR Directive*.]
- 1.1A.26

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The explanation given by *MiFID investment firms* to *clients* or potential clients in accordance with ■ DISP 1.1A.25UK must also:

(1)

refer to the fact that the complainant has made a *MiFID complaint* and inform the complainant that the *MiFID investment firm* now considers the *MiFID complaint* to have been resolved;

(2)

inform the complainant that if, still dissatisfied with the resolution of the *MiFID complaint*, the complainant may be able to refer it to the *Financial Ombudsman Service*;

(3)

indicate whether or not the *respondent* consents to waiving the relevant time limits in ■ DISP 2.8.2R or ■ DISP 2.8.7R (Was the complaint referred to the Financial Ombudsman Service in time?) by including the appropriate wording set out in ■ DISP 1 Annex 3R;

(4)

provide the website address of the *Financial Ombudsman Service*; and

(5)

refer to the availability of further information on the website of the *Financial Ombudsman Service*.

[Note: article 13 of the *ADR Directive*]
- 1.1A.27

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The information regarding the *Financial Ombudsman Service* required to be provided in a communication sent under ■ DISP 1.1A.25UK and referred to in ■ DISP 1.1A.26R should be set out clearly, comprehensibly, in an easily accessible way and prominently within the text of those responses.

[Note: article 13 of the *ADR Directive*]

Complaints time limits

- 1.1A.28** R On receipt of a *MiFID complaint*, a *MiFID investment firm* must:
- (1) send the complainant a prompt written acknowledgement providing early reassurance that it has received the *MiFID complaint* and is dealing with it; and
 - (2) ensure the complainant is kept informed thereafter of the progress of the measures being taken for the *MiFID complaint's* resolution.
- [**Note:** subject to a few minor changes reflecting its amended application, this provision replicates ■ DISP 1.6.1R.]
- 1.1A.29** UK When handling a complaint, investment firms shall communicate with clients or potential clients clearly, in plain language that is easy to understand and shall reply to the complaint without undue delay.
- [**Note:** article 26(4) of the *MiFID Org Regulation*]
- 1.1A.29** EU
- 1.1A.30** R Investment firms shall communicate the firm's position on the complaint to clients or potential clients and inform the clients or potential clients about their options, including that they may be able to refer the complaint to an alternative dispute resolution entity, as defined in regulation 4 of the *ADR Regulations*, or that the client may be able to take civil action.
- [**Note:** article 26(5) of the *MiFID Org Regulation*. See the *ADR Directive*.]
- 1.1A.31** R The explanation given by *MiFID investment firms* to *clients* or potential *clients* in accordance with ■ DISP 1.1A.30UK must also:
- (1) enclose a copy of the *Financial Ombudsman Service's* standard explanatory leaflet;
 - (2) provide the website address of the *Financial Ombudsman Service*;
 - (3) inform the complainant that if, still dissatisfied with the *respondent's* response, the *complaint* may now be referred to the *Financial Ombudsman Service*; and
 - (4) indicate whether or not the *respondent* consents to waiving the relevant time limits in ■ DISP 2.8.2R or ■ DISP 2.8.7R (Was the complaint referred to the Financial Ombudsman Service in time?) by including the appropriate wording set out in ■ DISP 1 Annex 3R.
- [**Note:** article 13 of the *ADR Directive*]
- 1.1A.32** G The information regarding the *Financial Ombudsman Service* required to be provided in a *final response* sent under ■ DISP 1.1A.30UK and referred to in ■ DISP 1.1A.31R should be set out clearly, comprehensibly, in an easily accessible way and prominently within the text of those responses.
- [**Note:** article 13 of the *ADR Directive*]

1.1A.33	G	<p>When assessing a <i>MiFID investment firm's</i> response to a <i>MiFID complaint</i>, the <i>FCA</i> may have regard to a number of factors, including, the quality of response, as against the above rules, as well as the speed with which it was made.</p> <p>[Note: subject to a few minor changes reflecting its amended application, this provision replicates ■ DISP 1.6.8G]</p>
1.1A.34	G	<p>■ DISP 2.8.1R sets out the circumstances in which the <i>Ombudsman</i> can consider a <i>complaint</i>, including where eight weeks have elapsed since its receipt by the <i>MiFID investment firm</i> and where the <i>MiFID investment firm</i> consents (subject to the other requirements of ■ DISP 2.8.1R(4)).</p>
Complaints forwarding		
1.1A.35	R	<p>■ DISP 1.7 also applies to a <i>MiFID complaint</i> received by a <i>MiFID investment firm</i>.</p>
Complaints time barring		
1.1A.36	R	<p>If a <i>MiFID investment firm</i> receives a <i>MiFID complaint</i> which is outside the time limits for referral to the <i>Financial Ombudsman Service</i> (see ■ DISP 2.8) it may reject the <i>MiFID complaint</i> without considering the merits, but must explain this to the complainant in a <i>final response</i>.</p> <p>[Note: subject to a few minor changes reflecting its amended application, this provision replicates ■ DISP 1.8]</p>
Complaints records		
1.1A.37	UK	<p>Investment firms shall keep a record of the complaints received and the measures taken for their resolution.</p> <p>[Note: article 26(1) of the <i>MiFID Org Regulation</i>; see also article 72 of the <i>MiFID Org Regulation</i> regarding the retention of records]</p>
Complaints reporting		
1.1A.38	UK	<p>Investment firms shall provide information on complaints and complaints-handling to the relevant competent authorities and, where applicable under national law, to an alternative dispute resolution (ADR) entity.</p> <p>[Note: article 26(6) of the <i>MiFID Org Regulation</i>]</p>
1.1A.39	R	<p>The <i>complaints reporting rules</i> also apply to the <i>MiFID complaints</i> of a <i>firm</i>, except that the relevant parts of the report which the <i>firm</i> must provide to the <i>FCA</i> under ■ DISP 1.10.1R must, in relation to <i>MiFID complaints</i>, include information about such complaints received from <i>retail clients</i>, <i>professional clients</i>, and (where relevant) <i>eligible counterparties</i> rather than <i>eligible complainants</i>.</p>
Complaints data publication		
1.1A.40	R	<p>The <i>complaints data publication rules</i> apply to the <i>MiFID complaints</i> of a <i>firm</i>.</p>

1.1A.41 **G** The effect of the *complaints data publication rules* and **■ DISP 1.1A.37UK** is that, for the purposes of complying with those *rules*, a *firm's complaints* data summary should include relevant data about any *MiFID complaints* received by the *firm*.

1.1A.42 **R** [deleted]