

Chapter 2

Jurisdiction of the Financial Ombudsman Service

2.1 Purpose, interpretation and application

Purpose

2.1.1

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The purpose of this chapter is to set out *rules* and guidance on the scope of the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction*, which are the *Financial Ombudsman Service's* two jurisdictions:

- (1) the *Compulsory Jurisdiction* is not restricted to *regulated activities, payment services, issuance of electronic money, and CBTL business* and covers:
 - (a) certain *complaints* against *firms* (and businesses which were *firms* at the time of the events complained about);
 - (b) *relevant complaints* against former members of *former schemes* under the *Ombudsman Transitional Order, the Mortgage and General Insurance Complaints Transitional Order* and the *Claims Management Order*;
 - (c) *relevant credit-related complaints* against businesses which were, at the time of the events complained about, covered by a standard licence under the Consumer Credit Act 1974, or formerly authorised to carry on an activity by virtue of section 34(A) of that Act, in accordance with article 11 of the *Regulated Activities Amendment Order*;
 - (d) certain *complaints* against *designated credit reference agencies* under the *Small and Medium Sized Business (Credit Information) Regulations*; and
 - (e) certain *complaints* against *designated finance platforms* under the *Small and Medium Sized Business (Finance Platforms) Regulations*;
- (2) [deleted]
- (3) the *Voluntary Jurisdiction* covers certain *complaints* against *VJ participants*, including in relation to events before they joined the *Voluntary Jurisdiction*.

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Relevant complaints covered by the *Compulsory Jurisdiction* comprise:

- (1) *relevant existing complaints* referred to a *former scheme* before *commencement* and inherited by the *Financial Ombudsman Service* under the *Ombudsman Transitional Order*;
- (2) *relevant new complaints* about events before *commencement* but referred to the *Financial Ombudsman Service* after *commencement* under the *Ombudsman Transitional Order*;

- (3) *relevant transitional complaints* referred to the *Financial Ombudsman Service* after the *relevant commencement date* under the *Mortgages and General Insurance Complaints Transitional Order*;
- (4) *relevant existing credit-related complaints* referred to the *Financial Ombudsman Service* before 1 April 2014 which were formerly being dealt with under the *Consumer Credit Jurisdiction* and which are to be dealt with under the *Compulsory Jurisdiction* in accordance with article 11 of the *Regulated Activities Amendment Order*;
- (5) *relevant new credit-related complaints* about events which took place before 1 April 2014 but referred to the *Financial Ombudsman Service* on or after 1 April 2014 which are to be dealt with under the *Compulsory Jurisdiction* in accordance with article 11 of the *Regulated Activities Amendment Order*;
- (6) *relevant existing claims management complaints* referred to the *Legal Ombudsman* before 1 April 2019 and inherited by the *Financial Ombudsman Service* under the *Claims Management Order*; and
- (7) *relevant new claims management complaints* about events which took place before 1 April 2019 but referred to the *Financial Ombudsman Service* on or after 1 April 2019 under the *Claims Management Order*.

2.1.3

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The *Ombudsman Transitional Order* and the *Claims Management Order* requires the *Financial Ombudsman Service* to complete the handling of *relevant existing complaints* and *relevant existing claims management complaints*, in a significant number of respects, in accordance with the requirements of the relevant *former scheme* rather than in accordance with the requirements of this chapter.

Interpretation

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In this chapter, carrying on an activity includes:

- (1) offering, providing or failing to provide a service in relation to an activity;
- (2) administering or failing to administer a service in relation to an activity; and
- (3) the manner in which a *respondent* has administered its business, provided that the business is an activity subject to the *Financial Ombudsman Service's* jurisdiction.

Purpose

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In this chapter, ancillary banking services include, for example, the provision and operation of cash machines, foreign currency exchange, safe deposit boxes and account aggregation services (services where details of accounts held with different financial service providers can be accessed by a single password).

Application

- 2.1.6 **R** This chapter applies to the *Ombudsman* and to *respondents*.
- 2.1.7 **D** Part XVI of the *Act* (The Ombudsman Scheme), particularly section 226 (Compulsory jurisdiction), applies to *members* of the *Society* of Lloyd's in respect of the *regulated activities* of *effecting or carrying out contracts of insurance* written at Lloyd's.

2.2 Which complaints can be dealt with under the Financial Ombudsman Service?

2.2.1 **G** The scope of the *Financial Ombudsman Service's* two jurisdictions depends on:

- (1) the type of activity to which the *complaint* relates (see ■ DISP 2.3, ■ DISP 2.4 and ■ DISP 2.5);
- (2) the place where the activity to which the complaint relates was carried on (see ■ DISP 2.6);
- (3) whether the complainant is eligible (see ■ DISP 2.7); and
- (4) whether the *complaint* was referred to the *Financial Ombudsman Service* in time (see ■ DISP 2.8).

2.2.2 **G** The effect of section 234B of the *Act* is that where a *person* (a “successor”) has assumed a liability (including a contingent one) of another *person* who was, or would have been the *respondent* in respect of a *complaint*, the *complaint* may be dealt with by the *Ombudsman* as if the successor were the *respondent*.

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 *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 *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 article 6(3) of the *UCITS Directive*; and
- (5) a *collective portfolio management investment firm* when providing the activities permitted by 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;

provided that:

- (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 **G** 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 **R** 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 **R** 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 **G** 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.

2.5 To which activities does the Voluntary Jurisdiction apply?

2.5.1

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The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:

- (1) it is not covered by the *Compulsory Jurisdiction*; and
- (2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:
 - (a) an activity (other than *administering a benchmark*) carried on after 28 April 1988 which:
 - (i) was not a *regulated activity* at the time of the act or omission, but
 - (ii) was a *regulated activity* when the *VJ participant* joined the *Voluntary Jurisdiction* (or became an *authorised person*, if later);
 - (b) a financial services activity carried on after *commencement* by a *VJ participant* which was covered in respect of that activity by a *former scheme* immediately before the *commencement day*;
 - (c) at 27 July 2018) activities, other than *regulated claims management activities* and activities ancillary to *regulated claims management activities*, which (at 1 April 2019) would be covered by the *Compulsory Jurisdiction*, if they were carried on from an establishment in the *United Kingdom* (these activities are listed in ■ DISP 2 Annex 1G);
 - (ca) an activity which would be a *regulated claims management activity* and would be covered by the *Compulsory Jurisdiction* if it were carried on in *Great Britain* (see ■ PERG 2.4A);
 - (d) [deleted]
 - (e) lending *money* secured by a charge on land;
 - (f) lending *money* (excluding *restricted credit* where that is not a *credit-related regulated activity*);
 - (g) paying *money* by a *plastic card* (excluding a *store card* where that is not a *credit-related regulated activity*);
 - (h) providing ancillary banking services;
 - (i) acting as an intermediary for a loan secured by a charge over land;
 - (j) acting as an intermediary for *general insurance business* or *long-term insurance business*;

- (k) National Savings and Investments' business;
- (l) offering and/or issuing of *investments* by *ISPVs*;
- (m) [deleted]

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

2.5.2 G The scope of the *Voluntary Jurisdiction* is wider than that of the *Compulsory Jurisdiction*, and so some activities are referred to in both jurisdictions.

2.5.3 G ■ DISP 2.5.1R (2)(a) is for those that are subject to the *Compulsory Jurisdiction* for *regulated activities* but are not covered by the *Ombudsman Transitional Order*, the *Mortgage and General Insurance Complaints Transitional Order*, or the *Claims Management Order*. It enables the *Financial Ombudsman Scheme* to cover *complaints* about earlier events relating to those activities before they became *regulated activities*.

2.5.4 G ■ DISP 2.5.1R (2)(b) is for those that were members of one of the *former schemes* replaced by the *Financial Ombudsman Service* immediately before *commencement*. It enables the *Financial Ombudsman Service* to cover *complaints* that arise out of acts or omissions occurring after *commencement* for any activities which are not covered by the *Compulsory Jurisdiction* but that would have been covered by the relevant *former scheme*.

2.5.4A G ■ DISP 2.5.1R (2)(l) includes *complaints* about the *EEA* end of 'one leg' *payment services* transactions, i.e. services provided from *EEA* establishments that are subject to the territorial jurisdiction of the *Voluntary Jurisdiction* (see ■ DISP 2.6.4R (2)) that also involve a payment service provider located outside the *EEA*. It also includes *complaints* about *payment services* irrespective of the currency of the transaction.

2.5.5 R The *Voluntary Jurisdiction* covers an act or omission that occurred before the *VJ participant* was participating in the *Voluntary Jurisdiction*, and whether the act or omission occurred before or after *commencement*, either:

- (1) if the *complaint* could have been dealt with under a *former scheme*;
or
- (2) under the agreement by the *VJ participant* in the *Standard Terms*.

2.6 What is the territorial scope of the relevant jurisdiction?

Compulsory Jurisdiction

2.6.1

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(1) The *Compulsory Jurisdiction* covers complaints about the activities of a firm (including its appointed representatives), of a payment service provider (including agents of a payment institution), of an electronic money issuer (including agents of an electronic money institution), of a CBTL firm, of a designated credit reference agency or of a designated finance platform which: establishment in the United Kingdom.

(c) are, or are ancillary to, regulated claims management activities.

(2) The *Compulsory Jurisdiction* also covers complaints about:

(a) collective portfolio management services provided by an EEA UCITS management company managing a UCITS scheme; and

(b) AIFM management functions provided by an incoming EEA AIFM managing an authorised AIF or a UK ELTIF other than a body corporate that is not a collective investment scheme; and

(c) complaints in relation to regulated claims management activity.

from an establishment in another EEA State under the freedom to provide cross-border services.

(3) [deleted]

(4) [deleted]

(5) [deleted]

(6) [deleted]

2.6.2

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This:

(1) includes incoming EEA firms, incoming EEA authorised payment institutions, incoming EEA authorised electronic money institutions and incoming Treaty firms; but

(2) excludes complaints about business conducted in the United Kingdom on a services basis from an establishment outside the United Kingdom other than:

- (a) *complaints about collective portfolio management services provided by an EEA UCITS management company in managing a UCITS scheme; and*
- (b) *complaints about AIFM management functions provided by an incoming EEA AIFM managing an authorised AIF or a UK ELTIF other than a body corporate that is not a collective investment scheme; and*
- (c) *complaints in relation to regulated claims management activity.*

2.6.2A G For an activity to amount to a *regulated claims management activity* it must be carried on in *Great Britain* (see ■ PERG 2.4A). The application of the *Compulsory Jurisdiction* to firms which carry on *regulated claims management activities* (and activities ancillary to *regulated claims management activities*) depends on whether the activity is carried on in *Great Britain* rather than whether it is carried on from an establishment maintained in the *United Kingdom*.

Consumer Credit Jurisdiction

2.6.3 G

Voluntary Jurisdiction

2.6.4 R The *Voluntary Jurisdiction* covers only *complaints* about the activities of a *VJ participant* carried on from an establishment:

- (1) in the *United Kingdom*; or
- (2) elsewhere in the *EEA* if the following conditions are met:
 - (a) the activity is directed wholly or partly at the *United Kingdom* (or part of it);
 - (b) contracts governing the activity are (or, in the case of a potential customer, would have been) made under the law of England and Wales, Scotland or Northern Ireland; and
 - (c) the *VJ participant* has notified appropriate regulators in its *Home State* of its intention to participate in the *Voluntary Jurisdiction*.

2.6.4A G *Complaints* about activities which are *claims management services* but which are not *regulated claims management activity* (for example, services provided by a company incorporated in Northern Ireland to a natural person ordinarily resident in Northern Ireland) may be covered by the *Voluntary Jurisdiction* under ■ DISP 2.6.4R(1) where the activities are carried on from an establishment in the *United Kingdom*.

Location of the complainant

2.6.5 G A *complaint* can be dealt with under the *Financial Ombudsman Service* whether or not the complainant lives or is based in the *United Kingdom*.

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 *ELTIF*;
- (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 *UK ELTIF* (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 account fund operator*) the complainant is (or was) a customer of a *bank* or *building society* which transferred any *balance* from a *dormant account* 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*.

2.7.7

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- (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) their *complaint*:
 - (a) is that such identification is incorrect; or
 - (b) relates to an act or omission by the *respondent* in consequence of such identification.

2.7.8

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

- (1) wishes to have a *relevant new complaint*, a *relevant transitional complaint* or a *relevant new claims management 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

R

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.

2.8 Was the complaint referred to the Financial Ombudsman Service in time?

General time limits

2.8.1

R

The *Ombudsman* can only consider a *complaint* if:

- (1) the *respondent* has already sent the complainant its *final response* or *summary resolution communication*; or
- (2) in relation to a *complaint* that is not an *EMD complaint* or a *PSD complaint*, eight weeks have elapsed since the *respondent* received the *complaint*; or

in relation to a complaint that is an *EMD complaint* or a *PSD complaint*:

- (a) 15 *business days* have elapsed since the *respondent* received the *complaint* and the complainant has not received a holding response as described in ■ DISP 1.6.2A R(2)(a); or
 - (b) where the complainant has received a holding response, 35 *business days* have elapsed since the *respondent* received the *complaint*; or
- (3) in relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*:
 - (a) the *respondent* has already sent the complainant its *redress determination* under the scheme; or
 - (b) the *respondent* has failed to send a *redress determination* in accordance with the time limits specified under the scheme;
unless:
 - (4) the *respondent* consents and:
 - (a) the *Ombudsman* has informed the complainant that the *respondent* must deal with the *complaint* within eight weeks (or for *EMD complaints* and *PSD complaints* 15 *business days* or, in exceptional circumstances, 35 *business days*) and that it may resolve the *complaint* more quickly than the *Ombudsman*; and
 - (b) the complainant nevertheless wishes the *Ombudsman* to deal with the *complaint*.

- 2.8.1A** **R** Where a *respondent* has chosen to treat a *complaint* in its entirety in accordance with **■ DISP 1.6.2AR**, notwithstanding that parts of it fall outside **■ DISP 1.6.2AR**, **■ DISP 2.8** will apply as if the whole complaint were an *EMD complaint* or a *PSD complaint*.
- 2.8.2** **R** The *Ombudsman* cannot consider a *complaint* if the complainant refers it to the *Financial Ombudsman Service*:
- (1) more than six *months* after the date on which the *respondent* sent the complainant its *final response*, *redress determination* or *summary resolution communication*; or
 - (2) more than:
 - (a) six years after the event complained of; or (if later)
 - (b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the *complaint* to the *respondent* or to the *Ombudsman* within that period and has a written acknowledgement or some other record of the *complaint* having been received;

unless:

 - (3) in the view of the *Ombudsman*, the failure to comply with the time limits in **■ DISP 2.8.2 R** or **■ DISP 2.8.7 R** was as a result of exceptional circumstances; or
 - (4) the *Ombudsman* is required to do so by the *Ombudsman Transitional Order*; or
 - (5) the *respondent* has consented to the *Ombudsman* considering the *complaint* where the time limits in **■ DISP 2.8.2 R** or **■ DISP 2.8.7 R** have expired (but this does not apply to a “relevant complaint” within the meaning of section 404B(3) of the Act).
- 2.8.2A** **R** If a *respondent* consents to the *Ombudsman* considering a *complaint* in accordance with **■ DISP 2.8.2 R** (5), the *respondent* may not withdraw consent.
- 2.8.3** **G** The six-month time limit is only triggered by a response which is a *final response*, *redress determination* or *summary resolution communication*. The response must tell the complainant about the six-month time limit that the complainant has to refer a *complaint* to the *Financial Ombudsman Service*.
- 2.8.4** **G** An example of exceptional circumstances might be where the complainant has been or is incapacitated.
- Pensions review and FSAVC review**.....
- 2.8.5** **R** The six-year and the three-year time limits do not apply where:
- (1) [deleted]

- (2) the *complaint* concerns a contract or policy which is the subject of a review directly or indirectly under:
 - (a) the terms of the Statement of Policy on 'Pension transfers and Opt-outs' issued by the FSA on 25 October 1994; or
 - (b) the terms of the policy statement for the review of specific categories of *FSAVC* business issued by the FSA on 28 February 2000.

Mortgage endowment complaints

2.8.6

G

If a *complaint* relates to the sale of an endowment *policy* for the purpose of achieving capital repayment of a mortgage, the receipt by the complainant of a letter which states that there is a risk (rather than a high risk) that the *policy* would not, at maturity, produce a sum large enough to repay the target amount is not, itself, sufficient to cause the three year time period in ■ DISP 2.8.2R (2) to start to run.

2.8.7

R

- (1) If a *complaint* relates to the sale of an endowment *policy* for the purpose of achieving capital repayment of a mortgage and the complainant receives a letter from a *firm* or a *VJ participant* warning that there is a high risk that the *policy* will not, at maturity, produce a sum large enough to repay the target amount then, subject to (2), (3), (4) and (5):
 - (a) time for referring a *complaint* to the *Financial Ombudsman Service* starts to run from the date the complainant receives the letter; and
 - (b) ends three years from that date ("the final date").
- (2) Paragraph (1)(b) applies only if the complainant also receives within the three year period mentioned in (1)(b) and at least six months before the final date an explanation that the complainant's time to refer such a *complaint* would expire at the final date.
- (3) If an explanation is given but is sent outside the period referred to in (2), time for referring a *complaint* will run until a date specified in such an explanation which must not be less than six months after the date on which the notice is sent.
- (4) A complainant will be taken to have complied with the time limits in (1) to (3) above if in any case he refers the *complaint* to the *firm* or *VJ participant* within those limits and has a written acknowledgement or some other record of the *complaint* having been received.
- (5) Paragraph (1) does not apply if the *Ombudsman* is of the opinion that, in the circumstances of the case, it is appropriate for ■ DISP 2.8.2R (2) to apply.

Payment protection insurance complaints

2.8.8

G

If a *complaint* relates to the sale of a *payment protection contract*, knowledge by the complainant that there was a problem with the sale of the *payment protection contract* generally (for example where there has been a rejection of a claim on the grounds of ineligibility or exclusion, or the complainant has received a customer contact letter explaining that they may

have been mis-sold) would not in itself ordinarily be sufficient to establish for the purposes of the three-year time period in ■ DISP 2.8.2R(2) that the complainant had become aware (or ought reasonably to have become aware) that he or she had cause for complaint in respect of a failure to make the disclosure set out at ■ DISP App 3.3A.2E (relating to failure to disclose commission).

2.8.9

R

- (1) In addition to ■ DISP 2.8.1R and ■ DISP 2.8.2R, unless one or more of the conditions in (2) below is met, the *Ombudsman* cannot consider a *complaint* which:
 - (a) relates to the sale of a *payment protection contract* that took place on or before 29 August 2017; and
 - (b) expresses dissatisfaction about the sale, or matters related to the sale, including where there is a rejection of claims on the grounds of ineligibility or exclusion (but not matters unrelated to the sale, such as delays in claims handling or administrative matters such as taking the incorrect amount of premium).
- (2) The conditions are that:
 - (a) the complainant referred the *complaint* to the *respondent* or to the *Financial Ombudsman Service* on or before 29 August 2019 and has a written acknowledgement or some other record of the *complaint* having been received; or
 - (b) in the view of the *Ombudsman*, the failure to comply with the time limit in (2)(a) was as a result of exceptional circumstances; or
 - (c) the *respondent* has consented to the *Ombudsman* considering the *complaint* where the time limit in (2)(a) has expired (but this does not apply to a “relevant complaint” within the meaning of section 404B(3) of the *Act*); or
 - (d) the *complaint*:
 - (i) is made on or after 29 August 2019;
 - (ii) relates to the sale of a *payment protection contract* that was live as at 29 August 2017;
 - (iii) is made following a full or partial rejection of a claim on or after 29 August 2017 on the grounds of ineligibility, exclusion or limitationand this condition applies only to the extent that the *complaint* relates to those grounds of rejection.

2.8.10

G

Where a *complaint* meets the requirements of ■ DISP 2.8.9(2)(d), those parts of the *complaint* that relate to the grounds of rejection of the claim are not subject to the restriction in ■ DISP 2.8.9(1) on an *Ombudsman* considering the *complaint*.

Regulated Activities for the Voluntary Jurisdiction as at 1 April 2019 Regulated Activities for the Voluntary Jurisdiction at 27 July 2018

This table belongs to ■ DISP 2.5.1 R

The activities which were covered by the *Compulsory Jurisdiction* (at 1 April 2019) were: 27 July 2018) were:

(1) for *firms*:

(a) *regulated activities* (other than *auction regulation bidding* and *administering a benchmark*)

(b) *payment services*;

[deleted]

(d) *lending money* secured by a charge on land;

(e) *lending money* (excluding *restricted credit* where that is not a *credit-related regulated activity*);

(f) *paying money* by a *plastic card* (excluding a *store card* where that is not a *credit-related regulated activity*);

(g) providing ancillary banking services;

(h) [deleted]

(i) *CBTL business*;

(j) offering and/or issuing of *investments* by *ISPVs*;

(k) giving *non-personal recommendation advice*;

(2) for *payment service providers*:

(a) *payment services*;

(b) *credit-related regulated activities*;

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

(3) for *electronic money issuers*:

(a) issuance of electronic money;

(b) *credit-related regulated activities*;

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

(4) for *CBTL firms*: *CBTL business* or any ancillary activities, including advice, carried on by the *CBTL firm* in connection with it.

(5) for *designated credit reference agencies*:

(a) providing *credit information* under the *Small and Medium Sized Business (Credit Information) Regulations*; or

(b) any ancillary activities, including advice, carried on by the *designated credit reference agency* in connection with the activity in (a).

(6) for *designated finance platforms*:

(a) providing *specified information* under the *Small and Medium Sized Business (Finance Platforms) Regulations*; or

(b) any ancillary activities, including advice, carried on by the *designated finance platform* in connection with the activity in paragraph (a).

(7) for *investment firms* authorised under *MiFID*:

(a) providing *investment services*;

(b) providing *ancillary services*;

(c) selling *structured deposits to clients*; and

(d) advising *clients on structured deposits*;

(and, in the case of *investment services* and *ancillary services*, this includes any acts which are preparatory to the provision of an *investment service* or *ancillary service* which are an integral part of such a service).

(8) for a *CRD credit institution*:

(a) providing *investment services*;

(b) selling *structured deposits to clients*; and

(c) advising *clients on structured deposits*;

(and, in the case of *investment services*, this includes any acts which are preparatory to the provision of an *investment service* which are an integral part of such a service).

(9) for a *collective portfolio management investment firm*:

(a) when providing the activities permitted by article 6(3) of the *UCITS Directive*; and

(b) when providing the activities permitted by article 6(4) of the *AIFMD*;

and, in the case of such activities, this includes any acts which are preparatory to the provision of an *investment service* which are an integral part of such a service).

The activities which (at 1 April 2019) were *regulated activities* were, in accordance with section 22 of the *Act* (Regulated Activities), any of the following activities specified in Part II and Parts 3A and 3B of the *Regulated Activities Order* (with the addition of *administering a benchmark*): at 27 July 2018 *auction regulation bidding* and

(1) *accepting deposits* (article 5);

(2) *issuing electronic money* (article 9B);

(3) *effecting contracts of insurance* (article 10(1));

(4) *carrying out contracts of insurance* (article 10(2));

(4A) *insurance risk transformation* (article 13A);

(5) *dealing in investments as principal* (article 14);

(6) *dealing in investments as agent* (article 21);

(7) *arranging (bringing about) deals in investments* (article 25(1));

(8) *making arrangements with a view to transactions in investments* (article 25(2));

(9) *arranging (bringing about) regulated mortgage contracts* (article 25A(1));

- (10) *making arrangements with a view to regulated mortgage contracts* (article 25A(2));
- (11) *arranging (bringing about) a home reversion plan* (article 25B(1));
- (12) *making arrangements with a view to a home reversion plan* (article 25B(2));
- (13) *arranging (bringing about) a home purchase plan* (article 25C(1));
- (14) *making arrangements with a view to a home purchase plan* (article 25C(2));
- (14A) *operating a multilateral trading facility* (article 25D);
- (14B) *arranging (bringing about) a regulated sale and rent back agreement* (article 25E(1));
- (14C) *making arrangements with a view to a regulated sale and rent back agreement* (article 25E(2));
- (14D) *credit broking* (article 36A);
- (14E) *operating an electronic system in relation to lending* (article 36H);
- (15) *managing investments* (article 37);
- (16) *assisting in the administration and performance of a contract of insurance* (article 39A);
- (16A) *debt adjusting* (article 39D(1) and (2));
- (16B) *debt counselling* (article 39E(1) and (2));
- (16C) *debt collecting* (article 39F(1) and (2));
- (16D) *debt administration* (article 39G(1) and (2));
- (17) *safeguarding and administering investments* (article 40);
- (18) *sending dematerialised instructions* (article 45(1));
- (19) *causing dematerialised instructions to be sent* (article 45(2));

- (22A) *managing a UCITS* (article 51ZA);
- (22B) *acting as a trustee or depositary of a UCITS* (article 51ZB);
- (22C) *managing an AIF* (article 51ZC);
- (22D) *acting as a trustee or depositary of an AIF* (article 51ZD);
- (22E) *establishing, operating or winding up a collective investment scheme* (article 51ZE);
- (23) *establishing, operating or winding up a stakeholder pension scheme* (article 52(a));
- (24) *providing basic advice on a stakeholder product* (article 52B);
- (25) *establishing, operating or winding up a personal pension scheme* (article 52(b));

- (26) *advising on investments (except P2P agreements) (article 53(1));*
- (26A) *advising on P2P agreements (article 53(2));*
- (27) *advising on regulated mortgage contracts (article 53A);*
- (28) *advising on a home reversion plan (article 53B);*
- (28A) *advising on a home purchase plan (article 53C);*
- (29) *advising on a regulated sale and rent back agreement (article 53D);*
- (29A) *advising on regulated credit agreements for the acquisition of land (article 53DA)*
- (29B) *advising on conversion or transfer of pension benefits (article 53E);*
- (30) *advising on syndicate participation at Lloyd's (article 56);*
- (31) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's (article 57);*
- (32) *arranging deals in contracts of insurance written at Lloyd's (article 58);*
- (32A) *entering into a regulated credit agreement (article 60B(1));*
- (32B) *exercising, or having the right to exercise, rights and duties under a regulated credit agreement (article 60(B)(2));*
- (32C) *entering into a regulated consumer hire agreement (article 60N(1));*
- (32D) *exercising, or having the right to exercise rights and duties under a regulated consumer hire agreement (article 60N(2));*
- (33) *entering into a regulated mortgage contract (article 61(1));*
- (34) *administering a regulated mortgage contract (article 61(2));*
- (35) *entering into a home reversion plan (article 63B(1));*
- (36) *administering a home reversion plan (article 63B(2));*
- (37) *entering into a home purchase plan (article 63F(1));*
- (38) *administering a home purchase plan (article 63F(2));*
- (38A) *entering into a regulated sale and rent back agreement (article 63J(1));*
- (38B) *administering a regulated sale and rent back agreement (article 63J(2));*
- (38C) *meeting of repayment claims (article 63N(1)(a));*
- (38D) *managing dormant account funds (including the investment of such funds) (article 63N(1)(b));*
- (38E) *providing information in relation to a specified benchmark (article 63O(1)(a));*
- (38F) *administering a specified benchmark (article 63O(1)(b));*

- (39) *entering as provider into a funeral plan contract* (article 59);
- (40) *agreeing to carry on a regulated activity* (article 64);
- (40A) *providing credit information services* (article 89A);
- (40B) *providing credit references* (article 89B);
- (41) *seeking out, referrals and identification of claims or potential claims* (article 89G);
- (42) *advice, investigation or representation in relation to a personal injury claim* (article 89H);
- (43) *advice, investigation or representation in relation to a financial services or financial product claim* (article 89I);
- (44) *advice, investigation or representation in relation to a housing disrepair claim* (article 89J);
- (45) *advice, investigation or representation in relation to a claim for a specified benefit* (article 89K);
- (46) *advice, investigation or representation in relation to a criminal injury claim* (article 89L);
- (47) *advice, investigation or representation in relation to an employment-related claim* (article 89M);

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of (22A), (22B), (22C), (22D), (22E) and (23), is carried on in relation to property of any kind or, in the case of (40A) or (40B) relates to information about a person's financial standing or, in the case of (41) to (47), is or relates to *claims management services* and is carried on in *Great Britain*.

