

## 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
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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	<div><div>G</div><div><p>(2) their <i>complaint</i>:</p><p>is that such identification is incorrect; or</p><p>(b) relates to an act or omission by the <i>respondent</i> in consequence of such identification.</p><p>In the <i>Compulsory Jurisdiction</i>, under the <i>Ombudsman Transitional Order</i>, the <i>Mortgages and General Insurance Complaints Transitional Order</i>, <i>Claims Management Order</i> and the <i>Funeral Plans Order</i>, where a complainant:</p><p>(1) wishes to have a <i>relevant new complaint</i>, a <i>relevant transitional complaint</i> a <i>relevant new claims management complaint</i>, or a <i>relevant transitional funeral plan complaint</i> dealt with by the <i>Ombudsman</i>; and</p><p>(2) is not otherwise eligible; but</p><p>(3) would have been entitled to refer an equivalent <i>complaint</i> to the <i>former scheme</i> in question immediately before the relevant order came into effect;</p><p>if the <i>Ombudsman</i> considers it appropriate, he may treat the complainant as an <i>eligible complainant</i>.</p></div></div>
2.7.9	<div><div>R</div><div><p><b>Exceptions</b></p><p>The following are not <i>eligible complainants</i>:</p><p>(1) (in all jurisdictions) a <i>firm</i>, <i>payment service provider</i>, <i>electronic money issuer</i>, <i>CBTL firm</i>, <i>designated credit reference agency</i>, <i>designated finance platform</i> or <i>VJ participant</i> whose <i>complaint</i> relates in any way to an activity which:</p><p>(a) the <i>firm</i> itself has <i>permission</i> to carry on; or</p><p>(ab) the <i>firm</i>, <i>payment service provider</i>, <i>electronic money issuer</i>, <i>CBTL firm</i>, <i>designated credit reference agency</i> or <i>designated finance platform</i> itself is entitled to carry on under the <i>Payment Services Regulations</i>, the <i>Electronic Money Regulations</i>, the <i>MCD Order</i>, the <i>Small and Medium Sized Business (Credit Information) Regulations</i> or the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i>; or</p><p>(b) the <i>VJ participant</i> itself conducts;</p><p>and which is subject to the <i>Compulsory Jurisdiction</i> or the <i>Voluntary Jurisdiction</i>;</p><p>(2) (in the <i>Compulsory Jurisdiction</i>) a complainant, other than a trustee of a <i>pension scheme</i> trust, who was:</p><p>(a) a <i>professional client</i>; or</p><p>(b) an <i>eligible counterparty</i>;</p><p>in relation to the <i>firm</i> and activity in question at the time of the act or omission which is the subject of the <i>complaint</i>.</p><p>(3) [deleted]</p></div></div>

- 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.