

**COMPLAINTS AND COMPENSATION SOURCEBOOKS (MORTGAGE AND  
GENERAL INSURANCE INTERMEDIARIES FUNDING OF THE OMBUDSMAN  
AND COMPENSATION SCHEMES) INSTRUMENT 2004**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 213 (The compensation scheme);
  - (4) section 214 (General);
  - (5) section 223 (Management expenses); and
  - (6) section 234 (Industry funding).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force as follows:
- (1) The amendments in Annexes A, B and C come into force on 31 October 2004;
  - (2) The amendments in Annex D come into force on 14 January 2005.

**Amendments to the Dispute resolution: Complaints sourcebook**

- D. The Dispute resolution: Complaints sourcebook is amended in accordance with Annex A to this instrument.

**Amendments to the Compensation sourcebook**

- E. The Compensation sourcebook is amended in accordance with Annexes B and D to this instrument.

**Amendments to the Glossary**

- F. The Glossary is amended in accordance with Annex C to this instrument.

**Citation**

- G. This instrument may be cited as the Complaints and Compensation Sourcebooks (Mortgage and General Insurance Intermediaries Funding of the Ombudsman and Compensation Schemes) Instrument 2004.

By order of the Board  
20 October 2004

## Annex A

### Amendments to the Dispute Resolution: Complaints sourcebook

In this Annex, underlining indicates new text.

DISP Table Transitional Provisions table

1

(1)	(2)	(3)	(4)	(5)	(6)
	Material provision to which transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision coming into force
	...				
<u>15</u>	<u>DISP 5.5.1R</u>	<u>R</u>	A <i>firm</i> which falls within <i>industry block 16</i> or <i>17</i> needs to provide a statement to the <i>FSA</i> by the end of <u>February 2005</u> only if it is providing the <i>FSA</i> with a statement of the total amount of <u>relevant business</u> .	<u>31 October 2004</u> to <u>28 February 2005</u> for <i>firms</i> falling in <i>industry block 16</i>  <u>14 January 2005</u> to <u>28 February 2005</u> for <i>firms</i> falling in <i>industry block 17</i>	<u>31 October 2004</u>
<u>16</u>	<u>DISP 5.5.1R</u>	<u>G</u>	In respect of the year <u>2005/06</u> , the <i>FSA</i> will already have a statement of the total amount of the <i>firm's</i> annual income as part of the <i>firm's</i> application for a <i>Part IV permission</i> or to vary a <i>Part IV permission</i> . There is thus no need for a <i>firm</i> to repeat this information if it decides not to report annual income for <u>relevant business</u> in accordance with <u>DISP TP 15R</u> .	<u>31 October 2004</u> to <u>28 February 2005</u> for <i>firms</i> falling in <i>industry block 16</i>  <u>14 January 2005</u> to <u>28 February 2005</u> for <i>firms</i> falling in <i>industry block 17</i>	<u>31 October 2004</u>

...

5.4.10 R For the purpose of *DISP 5.4*, references to *relevant business* for a firm which falls in *industry block 16 or 17* and which so elects under part 2 of *DISP 5 Ann 1R*, are references to the *firm's* total amount of annual income reported in accordance with Part 2 of *SUP 20 Ann 1R*.

...

5.5.1 R (4) For the purpose of *DISP 5.5.1R*, references to *relevant business* for a firm which falls in *industry block 16 or 17* and which so elects under part 2 of *DISP 5 Ann 1R*, are references to the *firm's* total amount of annual income reported in accordance with Part 2 of *SUP 20 Ann 1R*.

DISP 5 Ann 1R

...

2 Table: ~~Table:~~ fee tariffs for industry blocks

Industry block	Tariff base	General levy payable by firm
...		
<u>16 – Mortgage lenders, advisers and arrangers (excluding firms in blocks 13, 14 &amp; 15)</u>	<u>Either annual income reported in accordance with Part 2 of SUP 20 Ann 1R from relevant business or the firm's total annual income reported in accordance with Part 2 of SUP 20 Ann 1R</u>	<u>No levy is payable for 2004/2005</u>
<u>17 – General insurance mediation (excluding firms in blocks 13,14 &amp; 15)</u>	<u>Either annual income reported in accordance with Part 2 of SUP 20 Ann 1R from relevant business or the firm's total annual income reported in accordance with Part 2 of SUP 20 Ann 1R</u>	<u>No levy is payable for 2004/2005</u>

## Annex B

### Amendments to the Compensation sourcebook

In this Annex underlining indicates new text.

COMP Table: Transitional Provisions Table

1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional Provision	(5) Transitional provision: dates in force	(6) Handbook Provisions coming into force
...					
<u>10</u>	<u>COMP 5.7.1R, 13.4.7BR and 13.6.9BR</u>	<u>R</u>	<u>Rules not in effect.</u>	<u>31 October 2004 to 13 January 2005</u>	<u>31 October 2004</u>
<u>11</u>	<u>COMP 13.4.1R, 13.4.19R, 13.5.6R, 13.5.8R, 13.6.1R and 13.6.6R</u>	<u>R</u>	<u>With regard to <i>contribution group A.18 – Mortgage lenders, advisers and arrangers, the management expenses levy and compensation costs levy</i> for 2005/2006 may also take account of expenditure in the period 31 October 2004 to 31 March 2005.</u>	<u>31 October 2004 to 31 March 2006</u>	<u>31 October 2004</u>
<u>12</u>	<u>COMP 13.4.1R, 13.4.19R, 13.5.6R, 13.5.8R, 13.6.1R and 13.6.6R</u>	<u>R</u>	<u>With regard to <i>contribution group A.19 – General insurance mediation, the management expenses levy and compensation costs levy</i> for 2005/2006 may also take account of expenditure in the period 14 January 2005 to 31 March 2005.</u>	<u>14 January 2005 to 31 March 2006</u>	<u>31 October 2004</u>

<u>13</u>	<u>COMP 13.6.7 (4) 13.6.9A R and 13.6.11R(2)</u>	<u>R</u>	For the period 31 October 2004 to 31 March 2006 the tariff base will be the annual income (relating to the relevant <i>contribution group</i> ) reported in accordance with note 3 to <i>AUTH 4 Ann 2</i> or, if the <i>firm</i> prefers, that amount of its annual income which is attributable to business conducted with <i>eligible claimants</i> but only if the <i>firm</i> notifies <i>FSCS</i> of the amount by 28 February 2005.	31 October 2004 to 31 March 2006	31 October 2004
<u>14</u>	<u>COMP 13.6.7(5), 13.6.9B R and 13.6.11R(2)</u>		For the period 14 January 2005 to 31 March 2006 the tariff base will be the annual income (relating to the relevant <i>contribution group</i> ) reported in accordance with note 3 to <i>AUTH 4 Ann 2</i> or, if the <i>firm</i> prefers, that amount of its annual income which is attributable to business conducted with <i>eligible claimants</i> but only if the <i>firm</i> notifies <i>FSCS</i> of the amount by 28 February 2005.	14 January 2005 to 31 March 2006	31 October 2004

...

5.7.1 R *Protected non-investment insurance mediation* is an *insurance mediation activity* where the *investment* concerned is a *non-investment insurance contract* which is not a *reinsurance contract*, provided that the condition in *COMP 5.7.2R* is satisfied.

...

13.4.7A R The *FSCS* must not require a *participant firm* in the mortgage advice and arranging *sub-scheme* to pay a share of a *compensation costs levy* allocated to that *sub-scheme* in any financial year of the *compensation scheme*, to the extent that:

- (1) the share in question; plus
- (2) all previous amounts paid by the *firm* as its share of *compensation costs levies* allocated to that *sub-scheme* in that financial year;

amounts to more than 0.8% of the *participant firm's annual eligible income*.

13.4.7B R The *FSCS* must not require a *participant firm* in the general insurance mediation *sub-scheme* to pay a share of a *compensation costs levy* allocated to that *sub-scheme* in any financial year of the *compensation scheme*, to the extent that:

- (1) the share in question; plus
- (2) all previous amounts paid by the *firm* as its share of *compensation costs levies* allocated to that *sub-scheme* in that

financial year;  
amounts to more than 0.8% of the participant firm's annual eligible income.

...  
 13.6.7 R ...

- (3) ... ;  
 (4) the mortgage advice and arranging sub-scheme, the FSCS must use the contribution group and tariff base set out in the table in COMP 13.6.9AR;  
 (5) the general insurance mediation sub-scheme, the FSCS must use the contribution group and tariff base set out in the table in COMP 13.6.9BR.

...  
13.6.9AR Table: the contribution groups and tariff bases for the mortgage advisers and arrangers (see COMP 13.6.7R(4))

<u>SUB-SCHEME</u>	<u>CONTRIBUTION GROUP (REFERENCE S TO A1, A2 ETC ARE TO THE FSA FEE BLOCKS)</u>	<u>LEGAL BASIS FOR ACTIVITY (references to articles are to articles of the Regulated Activities Order)</u>	<u>TARIFF BASE</u>
<u>Mortgage advice and arranging</u>	<u>A.18 – Mortgage lenders, advisers and arrangers</u>	<u>Any of the following: (a) arranging (bringing about) regulated mortgage contracts; (b) making arrangements with a view to regulated mortgage contracts; (c) advising on regulated mortgage contracts; (d) agreeing to carry on a regulated activity which is within any of the above; and (e) the activities of a mortgage lender which would be arranging but for article 28A of the Regulated Activities Order (Arranging contracts to which the arranger is a party).</u>	<u>annual eligible income</u>

13.6.9B R Table: the contribution groups and tariff bases for the general insurance intermediaries (see COMP 13.6.7R(5))

<u>SUB-SCHEME</u>	<u>CONTRIBUTION GROUP (REFERENCES TO A1, A2 ETC ARE TO THE FSA FEE BLOCKS)</u>	<u>LEGAL BASIS FOR ACTIVITY (references to articles are to articles of the <i>Regulated Activities Order</i>)</u>	<u>TARIFF BASE</u>
<u>General insurance mediation</u>	<u>A.19 – General insurance mediation</u>	<u>Any of the following in relation to a <i>non-investment insurance contract</i>: (a) <i>dealing in investments as agent</i>; (b) <i>arranging (bringing about) deals in investments</i>; (c) <i>making arrangements with a view to transactions in investments</i>; (d) <i>assisting in the administration and performance of a contract of insurance</i>; (e) <i>advising on investments</i>; and (f) <i>agreeing to carry on a regulated activity which is within any of the above</i>.</u>	<u><i>annual eligible income</i></u>

## Annex C

### Amendment to the Glossary of definitions

In this Annex underlining indicates new text and strikethrough indicates deleted text.

Insert the following new definition in the appropriate alphabetical position:

*annual eligible income* (in *COMP*) the annual income (as described in Part 2 of *SUP* 20 Ann 1R) for the *firm's* last financial year preceding the date for submission of the information under COMP16.6.11R attributable to the relevant *contribution group*; or if the *firm* prefers, that amount of that annual income attributable to business conducted with *eligible claimants*, but only if the *firm* notifies *FSCS* of the amount in accordance with *FSCS* reporting requirements.

Amend the following definition as shown:

*sub-scheme* one of the ~~three~~ sub-schemes to which the *FSCS* allocates liabilities for *compensation costs* , as described in *COMP* 13.6.7R.



## Annex D

### Amendments to the Compensation sourcebook

In this Annex new sections of text are being inserted, so the place where the change will be made is indicated and the text is not struck through or underlined.

Insert the following new rule after *COMP* 3.2.3 R

- 3.2.4 R The *FSCS* may also pay compensation to a *firm*, who makes a claim in connection with *protected non-investment insurance mediation* on behalf of its *customers*, if the *FSCS* is satisfied that:
- (1) each *customer* has borne a *shortfall* in *client money* held by the *firm* caused by a *secondary pooling event* arising out of the *failure* of a broker or *settlement agent* which is a *relevant person in default*;
  - (2) the *customers* in respect of which compensation is to be paid satisfy the conditions set out in *COMP* 3.2.2R(1);
  - (3) the *customers* do not have a *claim* against the *relevant person* directly, nor a claim against the *firm*, in respect of the same loss;
  - (4) the *customers* would have been paid compensation by *FSCS* if the *customers* had a *claim* for their share of the *shortfall*, and if the *firm* were the *relevant person*; and
  - (5) the *firm* has agreed, on such terms as the *FSCS* thinks fit, to pay, or credit the accounts of, without deduction, each relevant *customer* in (1), that part of the compensation equal to the *customer's* financial loss, subject to the limits in *COMP* 10.2.

...

Insert the following new rule after *COMP* 6.3.7G:

- 6.3.8 R Claims arising under *COMP* 3.2.4R
- For the purposes of *COMP* 6.3 a claim made by a *firm* under *COMP* 3.2.4R is to be treated as if it were a *protected claim* against the *relevant person*.

...

Insert the following new rule after *COMP* 7.2.6G

- 7.2.7 R (1) For the purposes of compensation paid under *COMP* 3.2.4R, *FSCS* may require any *firm* (including, but not limited to, the claimant *firm*) to assign to *FSCS* any rights the *firm* may have to claim against the *relevant person* in relation to the amount of the *shortfall* in *client money* arising out of the *failure* of the *relevant person*.
- (2) A *firm* required by *FSCS* to assign its rights in (1), must assign those rights as requested, unless it has a reasonable

excuse for not doing so.

...

Insert the following new rule after *COMP* 10.2.8R

Claims arising under *COMP* 3.2.4R

- 10.2.9 R If a *firm* has a claim under *COMP* 3.2.4R, the *FSCS* must treat the share of the *shortfall* of each *customer* as if it were a *protected claim* for the purposes of calculating the limits of compensation payable, within *COMP* 10.2, in relation to that *customer*.

...

Insert the following new rule after *COMP* 12.6.11R

Claims arising under *COMP* 3.2.4R

- 12.6.12 R If a *firm* has a claim under *COMP* 3.2.4R, the *FSCS* must treat each *customer* of the *firm* as having the claim for the purposes of calculating compensation within *COMP* 12.