

SMALL AND MEDIUM SIZED BUSINESS (CREDIT INFORMATION)
INSTRUMENT 2016

Powers exercised by the Financial Ombudsman Service

- A. The Financial Ombudsman Service Limited makes and amends the Voluntary Jurisdiction rules and fixes and varies the standard terms for Voluntary Jurisdiction participants as set out in Annexes A and D to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act (“the Act”):
- (1) section 227 (Voluntary Jurisdiction);
 - (2) paragraph 8 (Guidance) of Schedule 17;
 - (3) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
 - (4) paragraph 22 (Consultation) of Schedule 17.
- B. The making and amendment of the Voluntary Jurisdiction rules and the fixing and variation of the standard terms in Annexes A and D by the Financial Ombudsman Service Limited is subject to the approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- C. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions:
- (1) sections 210 (statement of policy) and 211 (statement of policy: procedure) of the Act, as applied and modified by regulation 43 of the Small and Medium Sized Business (Credit Information) Regulations 2015 (SI 2015/1945);
 - (2) section 226 (Compulsory jurisdiction) of the Act, as applied and modified by regulation 17(1) of the Small and Medium Sized Business (Credit Information) Regulations 2015 (SI 2015/1945);
 - (3) paragraph 13(1), (3) and (4) (FCA’s rules) of Schedule 17 to the Act, as applied and modified by regulation 17(1) of the Small and Medium Sized Business (Credit Information) Regulations 2015 (SI 2015/1945); and
 - (4) regulation 20 of the Small and Medium Sized Business (Credit Information) Regulations 2015 (SI 2015/1945).
- D. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority approves the rules made and the fixing and variation of the standard terms by the Financial Ombudsman Service Limited in Annexes A and D to this instrument.

Commencement

- F. This instrument comes into force on 1 April 2016.

Amendments to the Handbook

- G. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
Supervision manual (SUP)	Annex B
Decision Procedure and Penalties manual (DEPP)	Annex C
Dispute Resolution: Complaints sourcebook (DISP)	Annex D

Amendments to the material outside the Handbook

- H. The Enforcement Guide (EG) is amended in accordance with Annex E to this instrument.

Citation

- I. This instrument may be cited as the Small and Medium Sized Business (Credit Information) Instrument 2016.

By order of the Board of the Financial Ombudsman Service Limited
9 March 2016

By order of the Board of the Financial Conduct Authority
17 March 2016

Annex A

Amendments to the Glossary of definitions

In this annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

- credit information* (in accordance with regulation 2 of, and the Schedule to, the *Small and Medium Sized Business (Credit Information) Regulations*):
- (a) information relating to a loan made in sterling to the business, namely:
 - (i) the start date of loan agreement;
 - (ii) the date the loan is due to be fully repaid, has been fully repaid or enters default;
 - (iii) the amount of the loan which is outstanding;
 - (iv) the repayment period;
 - (v) the repayment frequency;
 - (vi) the full repayment amount;
 - (vii) the number of missed payments; and
 - (viii) details of any defaults and associated satisfactions;
 - (b) information relating to a credit card account denominated in sterling and held in the name of the business, namely:
 - (i) the start date of the facility;
 - (ii) the date the facility closed (if applicable);
 - (iii) any outstanding balance;
 - (iv) the agreed credit limit;
 - (v) the number of missed payments;
 - (vi) the number of cash advances;
 - (vii) the value of cash advances; and
 - (viii) details of any defaults and associated satisfactions;

- (c) information relating to a current account denominated in sterling and held in the name of the business, namely the:
- (i) start date of the facility;
 - (ii) date the facility closed (if applicable);
 - (iii) current balance;
 - (iv) minimum balance;
 - (v) maximum balance;
 - (vi) average balance;
 - (vii) overdraft limit;
 - (viii) total value of all payments into the account;
 - (ix) total value of debits withdrawn from the account;
 - (x) number of days in the month where the customer has exceeded its approved limit; and
 - (xi) number of cheques or direct debts that have not been paid due to insufficient funds;
- (d) where any of the information described in the preceding paragraph is provided:
- (i) business type indicator (e.g. limited liability company or non-limited business);
 - (ii) business name and address;
 - (iii) company registration number (if applicable);
 - (iv) telephone number; and
 - (v) VAT number (if applicable).

designated bank a person designated as such for the purposes of regulation 9 of the *Small and Medium Sized Business (Credit Information) Regulations*.

designated credit reference agency a person designated as such for the purposes of regulation 9 of the *Small and Medium Sized Business (Credit Information) Regulations*.

finance provider (in accordance with section 7(2) of the Small Business, Enterprise and Employment Act) a body corporate that:

- (a) lends money or provides credit in the course of a business; or
- (b) arranges or facilitates the provision of debt or equity finance in the course of a business; or
- (c) provides, arranges or facilitates invoice discounting or factoring in the course of a business;

but, in accordance with regulation 2(2) of the *Small and Medium Sized Business (Credit Information) Regulations*, for the purposes of those Regulations it does not include a body corporate that provides credit only by providing goods or services before payment of part, or all of, the amount to be paid for such goods or services.

Small Business, Enterprise and Employment Act

the Small Business, Enterprise and Employment Act 2015 (c.26).

Small and Medium Sized Business (Credit Information) Regulations

the Small and Medium Sized Business (Credit Information) Regulations 2015 (SI 2015/1945).

Amend the following text as shown.

Compulsory Jurisdiction

the jurisdiction of the *Financial Ombudsman Service* to which *firms, payment service providers, ~~and~~ electronic money issuers and designated credit reference agencies* (as a result of the *Small and Medium Sized Business (Credit Information) Regulations*) (and certain other *persons* as a result of the *Ombudsman Transitional Order* or section 226(2)(b) and (c) of the *Act*) are compulsorily subject.

respondent

- (1) (in *DISP, FEES 5* and *CREDS 9*) a *firm* (except an *AIFM qualifier* or a *UCITS qualifier*), *payment service provider, electronic money issuer, designated credit reference agency*, or *VJ participant* covered by the *Compulsory Jurisdiction, Consumer Credit Jurisdiction* or *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.
- (2) (in *DISP 2* and *3* and *FEES 5*) includes, as a result of section 226 of the *Act*, including as applied and modified by the *Small and Medium Sized Business (Credit Information) Regulations*:

...

- (c) a *person* who was formerly a *payment service provider* in respect of a *complaint* about an act or omission which occurred at the time when it was a *payment service provider*, provided that the compulsory jurisdiction rules were in force in relation to the activity in question; ~~and~~
- (d) a *person* who was formerly an *electronic money issuer* in respect of a *complaint* about an act or omission which occurred at the time when it was an *electronic money issuer*, provided that the compulsory jurisdiction rules were in force in relation to the activity in question; and
- (e) a *person* who was formerly a *designated credit reference agency* in respect of a *complaint* about an act or omission which occurred at the time when it was a *designated credit reference agency*, provided that the compulsory jurisdiction rules were in force in relation to the activity in question.

Annex B

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

5 Reports by skilled persons

5.1 Application and purpose

...

- 5.1.2A G (1) This chapter also applies, as guidance, to a *designated bank* or a *designated credit reference agency*:
- (a) in relation to its activities under the *Small and Medium Sized Business (Credit Information) Regulations*;
 - (b) as if, in relation to the activities in (a), references to “must” in SUP 5 were read as “should”; and
 - (c) where it is not a *firm*, as if it were a *firm*.
- (2) Regulation 26 of the *Small and Medium Sized Business (Credit Information) Regulations* applies Part 11 of the Act which includes the provisions concerning skilled persons in relation to activities of a *designated bank* or a *designated credit reference agency* under those Regulations.
- (3) In relation to a *designated bank* or a *designated credit reference agency*, a reference in this chapter to the *regulatory system* includes the requirements applicable to such a *person* set out in the *Small and Medium Sized Business (Credit Information) Regulations*.
- (4) The application of section 166 by regulation 26 of the *Small and Medium Sized Business (Credit Information) Regulations* does not include the *persons* set out in section 166(11). Therefore, any reference to those persons in this chapter does not apply in relation to a *designated bank* or a *designated credit reference agency*.
- (5) In relation to an appointment under section 166A as applied by the *Small and Medium Sized Business (Credit Information) Regulations*, any reference in this chapter to a breach of rules concerning collecting and keeping up-to-date information is a reference to contravention of the requirement under regulation 24 of the *Small and Medium Sized Business (Credit Information) Regulations*.

...

Annex C

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new table at the end of DEPP 2 Annex 1G.

2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

...

<u>The Small and Medium Sized Business (Credit Information) Regulations 2015</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulations 39 and 40</u>	<u>when the FCA is proposing or deciding to publish a statement (under regulation 28), or impose a financial penalty (under regulation 29), or impose a limitation or restriction (under regulation 30), or exercise the power to require restitution (under regulation 32(2))</u>		<u>RDC</u>

Amend the following as shown.

Sch 3 Fees and other required payments

...

Sch 3.2G

The FCA's power to impose financial penalties is contained in:

...

	the <i>MCD Order</i>
	<u>the <i>Small and Medium Sized Business (Credit Information) Regulations</i></u>
	...

Sch 4 Powers Exercised

...

Sch 4.1G

The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FCA</i> to make the statements of policy in <i>DEPP</i> :	
	...
	Section 210(1) (Statements of policy) (including as applied by regulation 86(6) of the <i>Payment Services Regulations</i> , by paragraph 3 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i> , and by article 23(4) of the <i>MCD Order</i> <u>and by regulation 43 of the <i>Small and Medium Sized Business (Credit Information) Regulations</i></u>)
	...
	Section 395 (The Authority's procedures) (including as applied by paragraph 7 of Schedule 5 to the <i>Payment Services Regulations</i> , by paragraph 5 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i> , and by article 24(2) of the <i>MCD Order</i> <u>and by regulation 44 of the <i>Small and Medium Sized Business (Credit Information) Regulations</i></u>)

Annex D

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

The rules and guidance in this Annex are made by the Financial Conduct Authority in relation to the compulsory jurisdiction of the ombudsman scheme, and by the Financial Ombudsman Service (with the approval of the Financial Conduct Authority) in relation to the voluntary jurisdiction of the ombudsman scheme.

INTRO Introduction

This part of the *FCA Handbook* sets out how *complaints* are to be dealt with by *respondents* (*firms, payment service providers, electronic money issuers, CBTL firms, designated credit reference agencies* and *VJ participants*) and the *Financial Ombudsman Service*.

...

The powers to make rules (or set *standard terms*) relating to *firms, payment service providers, electronic money issuers, CBTL firms, designated credit reference agencies* and *VJ participants* derive from various legislative provisions; but the rules (and *standard terms*) have been co-ordinated to ensure that they are identical, wherever possible.

...

1 Treating complainants fairly

1.1 Purpose and application

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Background

1.1.2 G Details of how this chapter applies to each type of *respondent* are set out below. For this purpose, *respondents* include:

- (1) *persons carrying on regulated activities (firms), providing payment services (payment service providers), providing electronic money issuance services (electronic money issuers) or carrying on CBTL business (CBTL firms), or providing credit information under the Small and Medium Sized Business (Credit Information) Regulations (designated credit reference agencies)* and which are covered by the *Compulsory Jurisdiction*; and

...

...

Application to designated credit reference agencies

1.1.10I R This chapter (except the *complaints record rule*, the *complaints reporting rules* and the *complaints data publication rules*) applies to a *designated credit reference agency* in respect of *complaints from eligible complainants concerning activities carried on from an establishment maintained by it or its agent in the United Kingdom*.

1.1.10J G Although *designated credit reference agencies* are not required to comply with the *complaints record rule*, they must retain records in accordance with regulation 24 of the *Small and Medium Sized Business (Credit Information) Regulations* and these can be used to assist the *Financial Ombudsman Service* should this be necessary.

...

Exemptions for firms, payment service providers, ~~and~~ electronic money issuers and designated credit reference agencies

1.1.12 R (1) A *firm, payment service provider, ~~or~~ electronic money issuer or designated credit reference agency* falling within the *Compulsory Jurisdiction* which does not conduct business with *eligible complainants* and has no reasonable likelihood of doing so, can, by written notification to the *FCA*, claim exemption from the *rules* relating to the funding of the *Financial Ombudsman Service*, and from the remainder of this chapter.

...

...

**1 Annex Application of DISP 1 to type of respondent / complaint
2G**

...

Type of respondent/ complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
...						
a <i>CBTL firm</i> in	...					

relation to complaints concerning <i>CBTL business</i>						
<u>designated credit reference agency in relation to complaints about providing credit information</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>

2 Jurisdiction of the Financial Ombudsman Service

2.1 Purpose, interpretation and application

Purpose

2.1.1 G 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, CBTL business* and covers:

...

(b) *relevant complaints* against former members of *former schemes* under the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order*; ~~and~~

(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*; and

(d) certain complaints against designated credit reference agencies under the *Small and Medium Sized Business (Credit Information) Regulations*;

...

...

2.3 To which activities does the Compulsory Jurisdiction apply?

...

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).

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, or CBTL firm or designated credit reference agency* is responsible (including business of any *appointed representative* or *agent* for which the *firm, payment institution, or electronic money institution or designated credit reference agency* has accepted responsibility).

...

2.5 To which activities does the Voluntary Jurisdiction apply?

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

...

- (2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:

...

- (c) activities which (at ~~21 March~~ 1 April 2016) 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*);

...

...

...

2.6 What is the territorial scope of the relevant jurisdiction

Compulsory Jurisdiction

- 2.6.1 R (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*) ~~or~~ of a *CBTL firm*, or of a *designated credit reference agency* carried on from an establishment in the *United Kingdom*.

...

...

2.7 Is the complainant eligible?

...

Eligible complainants

...

- 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*:

...

- (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*;

...

...

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* or *VJ participant* whose *complaint* relates in any way to an activity which:

...

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

Regulations; or

...

...

...

2 Annex 1G Regulated activities for the Voluntary Jurisdiction at ~~21 March~~ 1 April 2016

...

The activities which were covered by the *Compulsory Jurisdiction* (at ~~21 March~~ 1 April 2016) were:

...

(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).

The activities which (at ~~21 March~~ 1 April 2016) were *regulated activities* ...

Annex E

Amendments to the Enforcement Guide (EG)

In this Annex, all of the text is new and is not underlined.

After EG 19.29.28 insert the following new provisions.

The Small and Medium Sized Business (Credit Information Regulations) 2015

- 19.29.29 The *Small and Medium Sized Business (Credit Information) Regulations* were made under the *Small Business, Enterprise and Employment Act*. The *Small and Medium Sized Business (Credit Information) Regulations* impose a duty on *designated banks* to provide information about their small and medium sized business customers (with the consent of those businesses) to designated credit reference agencies. The Treasury is the body that has the power to designate a bank or credit reference agency and may revoke such a designation.
- 19.29.30 As the provision of credit data on companies is not a regulated activity under the *Act*, the Regulations create a separate monitoring and enforcement regime but apply, or make provision corresponding to, certain aspects of the *Act*. The *FCA's* approach to taking enforcement action under the Regulations will reflect its general approach to enforcing the *Act*, as set out in *EG 2*. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate and responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers.

Information gathering and investigation powers

- 19.29.31 Regulation 26 of the *Small and Medium Sized Business (Credit Information) Regulations* applies many of the provisions of the *Act* regarding the *FCA's* investigation and information-gathering powers to *designated banks* and *designated credit reference agencies*. The effect is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating any breaches of the *Small and Medium Sized Business (Credit Information) Regulations*.
- 19.29.32 For example, the *FCA* will notify the subject of the investigation that it has appointed investigators to carry out an investigation and the reasons for the appointment. The *FCA's* policy in regulatory investigations under the *Small and Medium Sized Business (Credit Information) Regulations* is to use powers to compel information, in the same way as it would in the course of an investigation under the *Act*.

Decision making under the Small and Medium Sized Business (Credit Information) Regulations

19.29.33 The *RDC* is the *FCA*'s decision maker for some decisions which require *warning notices* or *decision notices* to be given under the *Small and Medium Sized Business (Credit Information) Regulations*, as set out in *DEPP 2 Annex 1G*. The *RDC* will make its decisions following the procedure in *DEPP 3.2* or, where appropriate, *DEPP 3.3* or *DEPP 3.4*. For decisions made by executive procedures, the procedure to be followed will be those described in *DEPP 4*.

19.29.34 Regulation 46 of the *Small and Medium Sized Business (Credit Information) Regulations* applies the procedural provisions of Part 9 of the *Act*, in respect of matters that can be referred to the *Tribunal*, and regulation 44 of the *Small and Medium Sized Business (Credit Information) Regulations* applies Part 26 of the *Act* to *warning* and *decision notices* given under the *Regulations*.

Public censures, imposition of penalties and the impositions of restrictions under the Small and Medium Sized Business (Credit Information) Regulations

19.29.35 When determining whether to take action to impose a penalty or to issue a public censure under the *Small and Medium Sized Business (Credit Information) Regulations*, the *FCA*'s policy includes having regard to the relevant factors in *DEPP 6.2* and *DEPP 6.4*. When determining the level of financial penalty, the *FCA*'s policy includes having regard to the relevant principles and factors in *DEPP 6.5*, *DEPP 6.5A*, *DEPP 6.5D* and *DEPP 6.7*.

19.29.36 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving breaches of the *Small and Medium Sized Business (Credit Information) Regulations* to assist it to exercise its functions. *DEPP 5*, *DEPP 6.7* and *EG 5* set out information on the *FCA*'s settlement process and the settlement discount scheme.

19.29.37 When determining whether to take action to impose a restriction under regulation 30 of the *Small and Medium Sized Business (Credit Information) Regulations*, the *FCA*'s policy includes having regard to the relevant factors in *DEPP 6A.2* and *DEPP 6A.4*. When determining the length of the period of restriction, the *FCA*'s policy includes having regard to the relevant principles and factors in *DEPP 6A.3*.

19.29.38 The *FCA* will apply the approach to publicity that is outlined in *EG 6*.