

HANDBOOK ADMINISTRATION (NO 45) INSTRUMENT 2017

Powers exercised by the Financial Ombudsman Service

- A. The Financial Ombudsman Service Limited makes this instrument amending:
- (1) the rules relating to complaints handling procedures of the Financial Ombudsman Service; and
 - (2) the rules, standard terms and guidance for VJ participants;

as set out in the Annexes to this instrument in the exercise of the following powers and related provisions of the Financial Services and Markets Act 2000 (“the Act”):

- (a) section 227 (Voluntary jurisdiction);
 - (b) paragraph 8 (Guidance) of Schedule 17 (The Ombudsman Scheme);
 - (c) paragraph 14 (The scheme operator’s rules) of Schedule 17;
 - (d) paragraph 15 (Fees) of Schedule 17;
 - (e) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
 - (f) paragraph 22 (Consultation) of Schedule 17.
- B. The making (and amendment) of the rules, guidance and standard terms in the Annexes to this instrument by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- C. The Financial Conduct Authority makes Part 1 of Annex A, Part 1 of Annex B and Annex C to this instrument in the exercise of the following powers and related provisions of the Act:

- (1) section 137A (The FCA’s general rules);
- (2) section 137T (General supplementary powers);
- (3) section 139A (Power of the FCA to give guidance);
- (4) section 226 (Compulsory jurisdiction);
- (5) paragraph 23 of Schedule 1ZA (The Financial Conduct Authority); and
- (6) paragraph 13 (FCA’s procedural rules) of Schedule 17 (The Ombudsman Scheme).

- D. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

- E. The Financial Conduct Authority approves and consents to the making (and amendment) of the rules, guidance and standard terms that are made and amended by the Financial Ombudsman Service Limited under this instrument.

Commencement

F. This instrument comes into force on 24 February 2017.

Citation

G. This instrument may be cited as the Handbook Administration (No 45) Instrument 2017.

By order of the Board of the Financial Ombudsman Service Limited
8 February 2017

By order of the Board of the Financial Conduct Authority
23 February 2017

[*Editor's note: The amendments made in Part 2 of this Annex A have already been made by the Financial Conduct Authority in instrument FCA 2015/39 (Complaints Handling and Call Charges Instrument 2015)*]

Annex A

Amendments to the Glossary of definitions

Amend the following definitions as shown. Underlining indicates new text and striking through indicates deleted text.

Part 1: Amendments made by both the Financial Conduct Authority and the Financial Ombudsman Service Limited

- CBTL firm* ...
- (2) (in *DISP* and *FEES* 5.5B) a ~~person~~ person within (1) who is not a *firm*.
- respondent*
- (1) (in *DISP*, *FEES* 5, *CREDS* 9 and *GEN* 7) a *firm* (except an *AIFM* qualifier or a *UCITS* qualifier), *payment service provider*, *electronic money issuer*, *CBTL firm*, *designated credit reference agency*, *designated finance platform*, or *VJ participant* covered by the *Compulsory Jurisdiction*, ~~*Consumer Credit Jurisdiction*~~ or *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.
- (2) ...
- ...
- (d) ...; ~~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; ;
- ~~(e)~~
(ea) a *person* who was formerly a *CBTL firm* in respect of a *complaint* about an act or omission which occurred at the time when it was a *CBTL firm*, provided that the compulsory jurisdiction rules were in force in relation to the activity in question; ; and

(f) ~~[not used]~~

(g) ...

...

Part 2: Amendments made by the Financial Ombudsman Service Limited (already having been made by the Financial Conduct Authority)

respondent

(1) (in *DISP*, *FEES 5* and *CREDS 9* and *GEN 7*) a firm (except an *AIFM* qualifier or a *UCITS* qualifier), payment service provider, electronic money issuer, *CBTL* firm, designated credit reference agency, designated finance platform or *VJ* participant covered by the *Compulsory Jurisdiction*, *Consumer Credit Jurisdiction* or *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.

...

[*Editor's note:* The amendments made in Part 2 of this Annex B have already been made by the Financial Conduct Authority in instruments FCA 2015/11 (*Handbook Administration (No 37) Instrument 2015*) and FCA 2016/12 (*Handbook Separation (Fees) Instrument 2016*)]

Annex B

Amendments to the Fees manual (FEES)

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

Part 1: Amendments made by both the Financial Conduct Authority and the Financial Ombudsman Service Limited

5 Financial Ombudsman Service Funding

5.1 Application and Purpose

...

- 5.1.1-A G Whilst no ~~rule~~ rule made by the *FCA* in this chapter applies to *VJ participants*, some of the *guidance* may do. The application of rules made by the *FOS Ltd* in this chapter is set out in *FEES 5.5B* and described in *FEES 5.1.2AG*.

...

Part 2: Amendments made by the Financial Ombudsman Service Limited (already having been made by the Financial Conduct Authority)

2 General Provisions

...

2.2 Late Payments and Recovery of Unpaid Fees

...

Recovery of Fees

- 2.2.3 G (1) ~~Paragraphs Paragraph 23(8) and 27 of Schedule 1ZA and paragraphs 31(7) and 35 of Schedule 1ZB of the Act permit~~ Paragraphs 23(8) and 27 of Schedule 1ZA and paragraphs 31(7) and 35 of Schedule 1ZB of the Act permits the *FCA* and *PRA* respectively to recover fees (including ~~in respect of the FCA,~~ in respect of the FCA, fees relating to *payment services*, the issuance of *electronic money*,

fees relating to *CBTL firms, designated credit reference agencies, designated finance platforms* and, where relevant, *FOS levies and CFEB levies*).

...

...

5 Financial Ombudsman Service Funding

5.1 Application and Purpose

...

- 5.1.1-A G Whilst no *rule* made by the *FCA* in this chapter applies to *VJ participants*, some of the *guidance* may do. The application of rules made by the *FOS Ltd* in this chapter is set out in *FEES 5.5B* and described in *FEES 5.1.2AG*.

Annex C

Amendments to Dispute Resolution: Complaints (DISP) made by both the Financial Conduct Authority and the Financial Ombudsman Service Limited

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

2 Jurisdiction of the Financial Ombudsman Service

...

2.7 Is the complainant eligible?

...

Exceptions

2.7.9 R The following are not *eligible complainants*:

...

(2) ...

...

in relation to the *firm* and activity in question at the time of the act or omission which is the subject of the *complaint* ~~and~~.

...

...