

SMALL BUSINESS (ELIGIBLE COMPLAINANT) INSTRUMENT 2018

Powers exercised by the Financial Ombudsman Service

- A. The Financial Ombudsman Service Limited makes and amends the Voluntary Jurisdiction rules and guidance, and fixes and varies the standard terms for Voluntary Jurisdiction participants as set out in the Annexes to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“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 Financial Ombudsman Service Limited notes that, for the avoidance of doubt, the Transitional Provisions at TP 1.1 in Annex B to this instrument apply equally to the Voluntary Jurisdiction of the Financial Ombudsman Service and the Compulsory Jurisdiction.
- C. The making and amendment of the Voluntary Jurisdiction rules and guidance and the fixing and varying of the standard terms for Voluntary Jurisdiction participants by the Financial Ombudsman Service Limited is subject to the approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- D. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions of the Act:
- (1) section 137A (The FCA’s general rule-making power);
 - (2) section 137T (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance);
 - (4) section 226 (Compulsory jurisdiction); and
 - (5) paragraph 13(4) (FCA’s rules) of Schedule 17.
- E. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- F. The Financial Conduct Authority approves the Voluntary Jurisdiction rules and guidance to be made and amended and the standard terms for Voluntary Jurisdiction participants to be fixed and varied by the Financial Ombudsman Service Limited under this instrument.

Commencement

- G. This instrument comes into force on 1 April 2019, immediately after those changes made by the Claims Management Instrument 2018 (FCA 2018/56) (FOS 2018/6) come into force.

Amendments to the Handbook

- H. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- I. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with Annex B to this instrument.

Notes

- J. In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- K. This instrument may be cited as the Small Business (Eligible Complainant) Instrument 2018.

By order of the Board of the Financial Conduct Authority
13 December 2018

By order of the Board of the Financial Ombudsman Service Limited
14 December 2018

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 definition in the appropriate alphabetical position. The text is not underlined.

- enterprise* any *person* engaged in an economic activity, irrespective of legal form, including, in particular:
- (a) self-employed *persons* and family businesses engaged in craft or other activities; and
 - (b) *partnerships* or associations regularly engaged in an economic activity.

[Note: article 1 of the Annex to the *Micro-enterprise Recommendation*]

Amend the following definitions as shown.

- guarantor* (1) (in *PR*) a *person* that provides a *guarantee*.
- (2) (in *DISP*) an individual who:
- (a) is not a *consumer* (as defined in *DISP*); and
 - (b) has given a guarantee or security in respect of an obligation or liability of a *person* which was a *micro-enterprise* or *small business* as at the date that the guarantee or security was given.

- micro-enterprise* an ~~enterprise~~ *enterprise* which:
- (a) employs fewer than 10 *persons*; and
 - (b) has a turnover or annual balance sheet that does not exceed €2 million₂.

and in determining whether these criteria are met articles 3 to 6 of the Annex to the *Micro-enterprise Recommendation* must be applied.

~~In this definition, “enterprise” means any *person* engaged in an economic activity, irrespective of legal form and includes, in particular, self-employed *persons* and family businesses engaged in craft or other activities, and *partnerships* or associations regularly engaged in an economic activity.~~

[Note: article 4(~~26~~36) of the *Payment Services Directive* and the Annex to the *Micro-enterprise Recommendation*]

small business

(1) (in *COMP* and in the definition of *relevant credit union client*) a *partnership, body corporate*, unincorporated association or mutual association with an annual turnover of less than £1 million (or its equivalent in any other currency at the relevant time).

(2) (in *DISP*) an *enterprise* which:

(a) is not a *micro-enterprise*;

(b) has an annual turnover of less than £6.5 million (or its equivalent in any other currency); and

(i) employs fewer than 50 *persons*; or

(ii) has a balance sheet total of less than £5 million (or its equivalent in any other currency),

and in determining whether these criteria are met articles 3 to 6 of the Annex to the *Micro-enterprise Recommendation* must be applied.

Annex B

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

2 Jurisdiction of the Financial Ombudsman Service

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2.7 Is the complainant eligible?

...

Eligible complainants

2.7.3 R An *eligible complainant* must be a *person* that is:

(1) a *consumer*; or

(2) a *micro-enterprise*;

...

(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 ~~£1~~ £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 ~~£1~~ £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~~ enterprise meets the tests for being a *micro-enterprise* or a *small business*, account should be taken of the ~~enterprise's~~ 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~~ articles 1 and 3 to 76 of the Annex to the *Micro-enterprise Recommendation*]-

...

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).

...

TP 1 Transitional provisions

1.1 Transitional provisions table

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
<u>51</u>	<u>DISP 2.7.3R(6)</u>	<u>R</u>	<u>DISP 2.7.3R(6) applies only in relation to a complaint concerning an act or omission which occurs on or after 1 April 2019.</u>	<u>From 1 April 2019</u>	<u>From 1 April 2019</u>
<u>52</u>	<u>DISP 2.7.3R(7)</u>	<u>R</u>	<u>DISP 2.7.3R(7) applies only in relation to a complaint concerning a guarantee or security given on or after 1 April 2019.</u>	<u>From 1 April 2019</u>	<u>From 1 April 2019</u>

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