

**consultation  
amendment to rules**

**October 2016**

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**A. Handbook administration (no 43) instrument 2016**

**responses**

We welcome your feedback on these amendments to our rules. Please send your views and comments – to reach us by 5pm on 9 November 2016 – to:

[consultations@financial-ombudsman.org.uk](mailto:consultations@financial-ombudsman.org.uk)

Or write to:

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Stakeholder team – consultation responses  
Financial Ombudsman Service  
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London  
E14 1PR

We may want to publish the responses we receive to this consultation paper. In the interest of transparency, we encourage non-confidential responses.

If you do send us a confidential response, it would be helpful if you could tell us why you consider the information to be confidential. We cannot guarantee that the confidentiality can always be maintained. We will not regard an automatic confidentiality disclaimer generated by your IT system, of itself, as binding.

We are subject to the Freedom of Information Act 2000, so information provided in response to this consultation may be subject to publication, disclosure, or release to other parties.

## **introduction**

This consultation sets out the amendments that we propose to make to the terms of our voluntary jurisdiction, as set out in the Dispute Resolution: Complaints sourcebook (DISP) of the Financial Conduct Authority Handbook.

## **background**

The ombudsman service currently has two jurisdictions –

- the compulsory jurisdiction (CJ):
  - covers financial businesses regulated by PRA and FCA;
  - covers activities specified in rules made by FCA; and
  - is mainly restricted to services provided in or from the UK.
  
- the voluntary jurisdiction (VJ):
  - covers financial businesses that volunteer to join it;
  - covers activities specified in rules made by the ombudsman service with the approval of FCA; and
  - covers services directed at the UK from the European Economic Area, as well as services provided in or from the UK.

The FCA is responsible for making the rules for the CJ and the ombudsman service is responsible for making the rules for the VJ. It is generally the ombudsman service's policy for the rules and standard terms for the VJ to match those for the CJ. This is to minimise confusion for consumers and financial businesses, and for operational simplicity.

Part 2 of DISP dictates the scope of our VJ. The Financial Conduct Authority is proposing to make minor amendments to correct some historic drafting discrepancies, amend the glossary of definitions in relation to consumer buy-to let firms (CBTL) and remove reference to the consumer credit jurisdiction for the purposes of our CJ. The FCA has the power to make such administrative changes without a consultation, but our powers to make rules are different and require us to consult first to make the same changes.

Annex A contains the draft rules instrument to implement this proposal.

**HANDBOOK ADMINISTRATION (NO 44) INSTRUMENT 2016**

**Powers exercised by the Financial Conduct Authority**

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Financial Services and Markets Act 2000 (“the Act”).

**Powers exercised by the Financial Ombudsman Service**

- C. The Financial Ombudsman Service Limited amends the standard terms in Annex C (DISP) to this instrument under the Compulsory Jurisdiction and varies the standard terms for VJ participants relating to the payment of fees in Annex B (FEES) under the Voluntary Jurisdiction in the exercise of the following powers and related provisions of Schedule 17 (The Ombudsman Scheme) to the Act:
  - (1) paragraph 14 (The scheme operator’s rules);
  - (2) paragraph 15 (Fees);
  - (3) paragraph 18 (Terms of reference to the scheme); and
  - (4) paragraph 22 (Consultation).
- D. The making of these changes to the standard terms by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority.
- E. The Financial Conduct Authority approves and consents to the making (and amendment) of the rules 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 [date].

**Amendments to the Handbook**

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

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Dispute Resolution: Complaints (DISP)	Annex C

**Citation**

H. This instrument may be cited as the Handbook Administration (No 43) Instrument 2016.

By order of the Board of the Financial Conduct Authority  
[*date*] 2016

By order of the Board of the Financial Ombudsman Service Limited  
[*date*] 2016

## Annex A

### Amendments to the Glossary of definitions

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

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

Delete the following definition.

*Consumer Credit  
Jurisdiction*            the jurisdiction of the *Financial Ombudsman Service* which resulted  
from section 226A (repealed) of the *Act*.

[*Editor's Note:* The changes made in this Annex to the FCA Handbook correct the drafting of FCA 2015/36; FOS 2015/5, and are correct as at 5/6/2015, but have since been superseded by more recent amendments to the relevant provisions.]

## Annex B

### Amendments to the Fees manual (FEES)

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

## 2 Financial Ombudsman Service Funding

...

### 2.2 Late Payments and Recovery of Unpaid Fees

...

#### Recovery of fees

- 2.2.3 G (1) Paragraph 23(8) ~~and 27~~ of Schedule 1ZA ~~and paragraphs 31(7) and 35 of Schedule 1ZB~~ of the Act ~~permit~~ permits the FCA to recover fees (including ~~in respect of the FCA~~, fees relating to *payment services*, the issuance of *electronic money*, fees relating to *CBTL firms*, *designated credit reference agencies* and, where relevant, *FOS levies* and *CFEB levies*).
- (2) Section 213(6) of the Act permits the FSCS to recover shares of the FSCS levy payable, as a debt owed to the FCA, ~~PRA~~ and FSCS respectively, and
- (3) The FCA, ~~PRA~~ and FSCS, as relevant, will consider taking action for recovery (including interest) through the civil courts.

...

## 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*.

## Annex C

### Amendments to Dispute Resolution: Complaints (DISP)

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

#### 2 Jurisdiction of the Financial Ombudsman Service

...

#### 2.7

...

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~~ .

...

...