



Financial

**Ombudsman
Service**

consultation amendments to rules (alternative dispute resolution (ADR) and pension transfers)

May 2015

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responses

We welcome your feedback on these amendments to our scheme rules.
Please send your views and comments – to reach us by 5pm on 2 June 2015 – to kristina.kaur@financial-ombudsman.org.uk

Or write to:

Kristina Kaur

Policy team - consultation responses
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We may want to publish the responses we receive to this consultation paper. In the interests 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 confidential. We cannot guarantee that 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 our scheme rules, affecting both businesses subject to our Compulsory Jurisdiction and Voluntary Jurisdiction, in the Dispute Resolution: Complaints sourcebook (DISP) and Glossary of the Financial Conduct Authority Handbook.

background – ADR Directive

The Alternative Dispute Resolution Directive comes into effect on 9 July 2015. It is intended to give all traders across Europe voluntary access to an ADR entity which meets a set of minimum standards. These standards relate to: the types of disputes covered; qualities of case handlers; communication between parties and with the public; operations (including Online Dispute Resolution); cooperation with other bodies (including cross-border disputes); and what obtaining and maintaining recognition as an ‘ADR entity’ involves.

In December 2014 we jointly consulted with the Financial Conduct Authority on various changes to the Dispute Resolution: Complaints sourcebook (DISP) within the FCA’s Handbook to implement the ADR Directive.

We, together with the FCA, consulted on the ombudsman service being able to consider complaints (both ‘ordinary’ and consumer redress scheme complaints) ‘early’ – if certain criteria are met. This change to our jurisdiction has already been made in DISP 2.8.1R (4) (to come into force on 9 July 2015):

“The *Ombudsman* can only consider a *complaint* if:

- (1) the *respondent* has already sent the complainant its *final response*; or
- (2) eight weeks have elapsed since the *respondent* received the *complaint*; or
- (3) in relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*:
 - (a) the *respondent* has already sent the complainant its *redress determination* under the scheme; or
 - (b) the *respondent* has failed to send a *redress determination* in accordance with the time limits specified under the scheme;

unless:

- (4) the *respondent* consents and:
 - (a) the *Ombudsman* has informed the complainant that the *respondent* must deal with the *complaint* within eight weeks and that it may resolve the *complaint* more quickly than the *Ombudsman*; and

(b) the complainant nevertheless wishes the *Ombudsman* to deal with the *complaint*.”

This paper proposes minor consequential amendments to our procedural rules relating to jurisdiction to take account of these changes – in DISP 3.2.2R and 3.2.2AR, to ensure uniformity across the rules.

The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 amended section 404B of the *Financial Services and Markets Act 2000* (also reflected in changes to DISP 3.6.5A G) to allow businesses and consumers to agree for complaints subject to a consumer redress scheme to be dealt with by the ombudsman not in accordance with the scheme rules, but by reference to what is fair and reasonable instead.

This paper proposes to amend the definition of ‘*chargeable case*’ to allow us to charge for these cases where the business and consumer do agree for the ombudsman to consider the complaint not in accordance with the scheme rules, but by reference to what is fair and reasonable instead.

background – pensions transfers

In April we consulted on changes to DISP 2.3.1R for our voluntary jurisdiction in order to bring it in line with recent changes made to the Regulated Activities Order and an emergency rule change made by the FCA to our compulsory jurisdiction. This consultation paper proposes to amend the voluntary jurisdiction rules in line with changes which the FCA is proposing to make.

proposed amendments – ADR Directive

We propose to amend the definition of *chargeable case* so it reads:

chargeable case any complaint referred to the Financial Ombudsman Service, except where:

...

(c) the *Ombudsman* considers it apparent from the *complaint* when it is received, and from any *redress determination* which has been issued by the *respondent*, that the *respondent* has reviewed the subject matter of the *complaint* and issued a *redress determination* in accordance with the terms of a *consumer redress scheme*, unless the complainant and the *respondent* agree that the *complaint* should not be dealt with by the Ombudsman in accordance with the *consumer redress scheme*.

DISP 3.2 sets out our procedural rules for dealing with complaints in relation to jurisdiction. We propose to make the following amendments so it reads:

3.2 Jurisdiction

...

3.2.2 R Unless the *respondent* has already had eight weeks to consider the *complaint* or issued a *final response*, the *Ombudsman* will refer the *complaint* to the *respondent* (except where *DISP2.8.1R (4)* applies).

3.2.2A R If the subject matter of a *complaint* falls to be dealt with by the *respondent* under a *consumer redress scheme*, and the time limits specified under the scheme for doing so have not yet expired, the *Ombudsman* will refer it to the *respondent* to be dealt with under the scheme (except where *DISP2.8.1R (4)* applies).

Annex 1 contains the draft rules instrument to implement this proposal.

Proposed amendment – pensions transfers

We propose to make the following changes to the glossary of definitions for the voluntary jurisdiction

<i>advising on pension transfers and pension opt-outs</i>	<u>any of the following regulated activities:</u> <ul style="list-style-type: none">(a) <i>advising on investments</i> in respect of <i>pension transfers</i> and <i>pension opt-outs</i> (article 53);(b) <i>advising on conversion or transfer of pension benefits</i> (article 53E).
<i>designated investment business</i>	any of the following activities,....,which is carried on by way of business: <ul style="list-style-type: none">...(m) <i>advising on investments</i> (article 53), but only in relation to <i>designated investments</i> (other than <i>P2P agreements</i>); for the purposes of the <i>permission</i> regime, this is sub-divided into includes:<ul style="list-style-type: none">...(ii)(ma) <i>advising on conversion or transfer of pension benefits</i> (article 53E);...
<i>pension transfer</i>	a transaction, resulting from the decision of a <i>retail client</i> who is an individual;

- (a) to transfer deferred benefits (regardless of when the *retail client* intends to crystallise such benefits) from:
 - ~~(a)~~ ...
 - (i)
 - ~~(b)~~ ...
 - (ii)
 - ~~(c)~~ ...
 - (iii)
 - ~~(d)~~ ...
 - (iv)
 - ~~(e)~~ ...
 - (v)
 - ~~(f)~~ ...
 - (vi) a deferred annuity *policy*, where the eventual benefits depend on investment performance in the period up to the date when those benefits will come into payment; or
 - (vii) a *defined contribution occupational pension scheme*; or
- (b) to require the trustees or manager of a pension scheme to make a transfer payment in respect of any *safeguarded benefits* with a view to obtaining a right or entitlement to *flexible benefits* under another pension scheme.

personal recommendation

(except in *CONRED*) a recommendation that is *advice on investments*, *advice on conversion or transfer of pension benefits*, or *advice on a home finance transaction* and is presented as suitable for the person to whom it is made, or is based on a consideration of the circumstances of that person. A recommendation is not a personal recommendation if it issued exclusively through distribution channels or to the public.

...

regulated activity

(in accordance with section 22 of the *Act* (Regulated activities) the activities specified in Part II of the *Regulated Activities Order* (Specified Activities) which are, in summary):

...

(p)

...

- (ii)
- (pe) advising on conversion or transfer of pension benefits (article 53E);
- ...
- retail investment activity*
- (a) ...
- (b) *arranging (bringing about) deals in investments; or*
- (c) *making arrangements with a view to transactions in investments; or*
- (d) advising on conversion or transfer of pension benefits;
- ...

We also propose to amend DISP 2 Annex 1 G as follows:

2 **G** **Regulated Activities for the Voluntary Jurisdiction at 24 April 2015**
Annex
1

The activities which were covered by the Compulsory Jurisdiction (at 24 April 2015) were:

...

- (h) ~~the regulated activity specified in article 53E (advising on conversion or transfer of pension benefits) of the *Regulated Activities Order*, [deleted]~~

...

The activities which (at 24 April 2015) were *regulated activities* were, in accordance with section 22 of the *Act* (the classes of activity and categories of investment), any of the following activities specified in Part II of the *Regulated Activities Order*:

...

- (29B) advising on conversion or transfer of pension benefits (article 53E);

...

Annex 2 contains the draft rules instrument to implement this proposal.

ADR DIRECTIVE SUPPLEMENTARY INSTRUMENT 2015

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes and amends:
- (i) rules relating to the complaint handling procedures of the Financial Ombudsman Service; and
 - (ii) the standard terms for Voluntary Jurisdiction participants;
- as set out in Annex A and B 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 14 (The scheme’s operator’s rules) 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 rules and standard terms in Annex A and B 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 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, pursuant to the following powers and related provisions in the Act:
- (a) section 227 (Voluntary jurisdiction)
 - (b) paragraph 14 (The scheme operator’s rules) of Schedule 17; and
 - (c) paragraph 18 (Terms of reference to the scheme) of Schedule 17.
- D. The rule making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- E. This instrument comes into force on 9 July 2015.

Amendments to the FCA Handbook

- F. The Glossary of definitions is amended in accordance with Annex A to this instrument.

- G. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with Annex B to this instrument.

Citation

- H. This instrument may be cited as the ADR Directive Supplementary Instrument 2015.

By order of the Board of the Financial Ombudsman Service
3 June 2015

By order of the Board of the Financial Conduct Authority
4 June 2015

Annex A

Amendments to the Glossary of definitions

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

- chargeable case* any complaint referred to the Financial Ombudsman Service, except where:
- ...
- (c) the *Ombudsman* considers it apparent from the *complaint* when it is received, and from any *redress determination* which has been issued by the *respondent*, that the *respondent* has reviewed the subject matter of the *complaint* and issued a *redress determination* in accordance with the terms of a *consumer redress scheme*, unless the complainant and the *respondent* agree that the *complaint* should not be dealt with by the Ombudsman in accordance with the *consumer redress scheme*.

Annex B

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

3.2 Jurisdiction

...

3.2.2 R Unless the *respondent* has already had eight weeks to consider the *complaint* or issued a *final response*, the *Ombudsman* will refer the *complaint* to the *respondent* (except where DISP2.8.1R(4) applies).

3.2.2A R If the subject matter of a *complaint* falls to be dealt with by the *respondent* under a *consumer redress scheme*, and the time limits specified under the scheme for doing so have not yet expired, the *Ombudsman* will refer it to the *respondent* to be dealt with under the scheme (except where DISP2.8.1R(4) applies).

PENSION TRANSFERS AND CONVERSIONS INSTRUMENT 2015

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service amends the Voluntary jurisdiction provisions in Annex D of this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (a) section 227 (Voluntary jurisdiction);
 - (b) paragraph 8 (Information, advice and guidance) of Schedule 17;
 - (c) paragraph 18 (Terms of reference to the scheme) of Schedule 17.
- B. The making and amendment of the rules and standard terms in Annex 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 in or under the Act:
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 139A (The FCA’s power to give guidance);
 - (4) section 137R (Financial promotion rules); and
 - (5) section 226 (Compulsory Jurisdiction).
- 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 consents to and approves the rules made and amended by the Financial Ombudsman Service Limited in Annex D to this instrument pursuant to the following powers and related provisions in the Act:
- (a) section 227 (Voluntary jurisdiction);
 - (b) paragraph 14 (The scheme operator’s rules) of Schedule 17; and
 - (c) paragraph 18 (Terms of reference to the scheme) of Schedule 17.

Commencement

- F. This instrument comes into force on 5 June 2015.

Amendments to the FCA 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).

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Supervision manual (SUP)	Annex C
Dispute Resolution: Complaints sourcebook (DISP)	Annex D

Amendments to material outside the Handbook

- H. The Perimeter Guidance manual (PERG) is amended in accordance with Annex E to this instrument.

Notes

- I. In Annex A 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

- J. This instrument may be cited as the Pension Transfers and Conversions Instrument 2015.

By order of the Board of the Financial Ombudsman Service
3 June 2015

By order of the Board of the Financial Conduct Authority
4 June 2015

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.

<i>advising on conversion or transfer of pension benefits</i>	the <i>regulated activity</i> specified in article 53E of the <i>Regulated Activities Order</i> , which is described in <i>PERG 2.7.16FG</i> .
<i>flexible benefits</i>	has the meaning given in section 74 of the Pension Schemes Act 2015 which in relation to a <i>member of a pension scheme</i> or a <i>survivor of a member of a pension scheme</i> is: <ul style="list-style-type: none">(a) a money purchase benefit (defined in section 181 of the Pension Schemes Act 1993 and section 176 of the Pension Schemes (Northern Ireland) Act 1993); or(b) a cash balance benefit (defined in Section 75 of the Pension Schemes Act 2015); or(c) a benefit, other than a money purchase benefit or cash balance benefit, calculated by reference to an amount available for the provision of benefits to or in respect of the member (whether the amount so available is calculated by reference to payments made by the member or any other person in respect of the member or any other factor).
<i>guaranteed annuity rate</i>	an arrangement in a pension scheme to provide benefits whereby, in defined circumstances and irrespective of the prevailing market rate for annuities when those benefits come into payment, a member is entitled to: <ul style="list-style-type: none">(a) an annuity at a minimum specified rate; or(b) benefits equivalent to that annuity at that minimum specified rate.
<i>member of a pension scheme</i>	has the same meaning as it has in article 53E(2) of the <i>Regulated Activities Order</i> , which is, a member of a pension scheme within the meaning of section 1(5) of the Pension Schemes Act 1993 (and section 1(5) of the Pension Schemes (Northern Ireland) Act 1993).
<i>pension conversion</i>	a transaction resulting from a decision of a <i>retail client</i> to require the trustees or managers of a pension scheme to:

- (a) convert *safeguarded benefits* into different benefits that are *flexible benefits* under that pension scheme; or
- (b) pay an *uncrystallised funds pension lump sum* in respect of any of the *safeguarded benefits*.

[Note: see article 53E(1)(c)(i) and (iii) of the *RAO*]

safeguarded benefits

has the meaning given in section 48(8) of the Pension Schemes Act 2015 which is benefits other than money purchase benefits and cash balance benefits.

subsisting rights

has the meaning given in section 76 of the Pension Schemes Act 2015 which is:

- (a) for a *member of a pension scheme*:
 - (i) any right which has accrued to or in respect of the member to future benefits under the scheme; or
 - (ii) any entitlement to benefits under the scheme;
- (b) for a *survivor of a member of a pension scheme*, any right to future benefits, or entitlement to benefits, which the *survivor* has under the scheme in respect of the member.

survivor

has the meaning given in section 76 of the Pension Schemes Act 2015 which, for a *member of a pension scheme*, means a *person* who has survived the member and has a right to future benefits, or is entitled to benefits, under the scheme in respect of the member.

uncrystallised funds pension lump sum

has the meaning given by paragraph 4A of Schedule 29 to the Finance Act 2004 which, subject to the exceptions in the Finance Act 2004, includes a lump sum that:

- (a) is paid on or after 6 April 2015 in respect of a money purchase arrangement;
- (b) is paid when all or part of the member's lifetime allowance is available;
- (c) is paid when the member has reached normal minimum pension age (or the ill-health condition is met);
- (d) is not a lump sum that, for the purposes of Part 9 of ITEPA 2003 (pension income), is treated by regulations under section 164(1)(f) and (2) of the Finance Act 2004 as a trivial commutation lump sum paid to the member; and

- (e) immediately before the member becomes entitled to it, the sums or assets that are to be used to provide it:
 - (i) represent rights of the member under the scheme that are uncrystallised rights as defined by section 212(1) and (2) of the Finance Act 2004; and
 - (ii) do not to any extent represent rights attributable to a disqualifying pension credit.

Amend the following definitions as shown.

advising on pension transfers and pension opt-outs any of the following regulated activities:

- (a) *advising on investments* in respect of *pension transfers* and *pension opt-outs* (article 53);
- (b) *advising on conversion or transfer of pension benefits* (article 53E).

designated investment business any of the following activities,....,which is carried on by way of business:

...

- (m) *advising on investments* (article 53), but only in relation to *designated investments* (other than *P2P agreements*); for the purposes of the *permission* regime, this ~~is sub-divided into~~ includes:
 - ...
 - (ii) ~~*advising on pension transfers and opt-outs*~~ *advising on investments* in respect of *pensions transfers and pension opt-outs*;
 - (ma) *advising on conversion or transfer of pension benefits* (article 53E);

...

pension transfer a transaction, resulting from the decision of a *retail client* who is an individual:

- (a) to transfer deferred benefits (regardless of when the *retail client* intends to crystallise such benefits) from:
 - (a) ...
 - (i)

~~(b)~~ ...
(ii)

~~(c)~~ ...
(iii)

~~(d)~~ ...
(iv)

~~(e)~~ ...
(v)

~~(f)~~ a deferred annuity *policy*, where the eventual benefits depend on investment performance in the period up to the date when those benefits will come into payment; or

(vii) a defined contribution occupational pension scheme; or

(b) to require the trustees or manager of a pension scheme to make a transfer payment in respect of any safeguarded benefits with a view to obtaining a right or entitlement to flexible benefits under another pension scheme.

personal recommendation

(except in *CONRED*) a recommendation that is *advice on investments, advice on conversion or transfer of pension benefits, or advice on a home finance transaction* and is presented as suitable for the person to whom it is made, or is based on a consideration of the circumstances of that person. A recommendation is not a personal recommendation if it issued exclusively through distribution channels or to the public.

...

regulated activity

(in accordance with section 22 of the Act (Regulated activities) the activities specified in Part II of the *Regulated Activities Order* (Specified Activities) which are, in summary):

...

(p) *advising on investments* (article 53); for the purposes of the *permission* regime, this is ~~subdivided into~~ includes:

...

(ii) ~~*advising on pension transfers and opt-outs*~~ *advising on investments* in respect of *pensions transfers* and *pension opt-outs*;

(pe) advising on conversion or transfer of pension benefits (article 53E);

...

retail investment activity

(a) ...

(b) *arranging (bringing about) deals in investments; ~~or~~*

(c) *making arrangements with a view to transactions in investments; or*

(d) advising on conversion or transfer of pension benefits;

...

Annex D

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

...

2.3 To which activities does the Compulsory Jurisdiction apply?

Activities by firms

- 2.3.1 R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:

...

- (1B) ~~the regulated activity specified in article 53E (advising on conversion or transfer of pension benefits) of the *Regulated Activities Order*, [deleted]~~

...

2 Annex 1 G Regulated Activities for the Voluntary Jurisdiction at 24 April 2015

The activities which were covered by the Compulsory Jurisdiction (at 24 April 2015) were:

...

- (h) ~~the regulated activity specified in article 53E (advising on conversion or transfer of pension benefits) of the *Regulated Activities Order*, [deleted]~~

...

The activities which (at 24 April 2015) were *regulated activities* were, in accordance with section 22 of the *Act* (the classes of activity and categories of investment), any of the following activities specified in Part II of the *Regulated Activities Order*:

...

- (29B) *advising on conversion or transfer of pension benefits* (article 53E);

...