

Draft rules

2.6 To which activities do the rules apply?

The Compulsory Jurisdiction

- 2.6.1 R** The *Ombudsman* can consider a complaint under the *Compulsory Jurisdiction* only if it relates to an act or omission by a *firm* in the carrying on of one or more of the following activities (unless the provision described in DISP 2.6.3G applies):
- (1) *regulated activities*;
 - (2) lending money secured by a charge on land;
 - (3) lending money (other than *restricted credit*);
 - (4) paying money by a *plastic card* (other than a *store card*);
 - (5) the provision of ancillary banking services (see DISP 2.6.6G); or activities ancillary to them (see DISP 2.6.2R).
- 2.6.2 R** The activities in DISP 2.6.1R include any ancillary activities, including advice, provided by the *firm* in connection with those activities.
- 2.6.3 G** Under article 3 of the *Ombudsman Transitional Order*, the *Ombudsman* can also consider a *relevant new complaint* under the *Compulsory Jurisdiction* where it relates to an act or omission of a *firm* which was, immediately before *commencement*, subject to a *former scheme*, provided that:
- (1) the act or omission occurred in the carrying on by that *firm* of an activity to which that *former scheme* applied; and
 - (2) the complainant is eligible and wishes to have the complaint dealt with under the new scheme.
- 2.6.4 G** The carrying on of an activity in DISP 2.6.1R includes offering, providing or failing to provide and administering or failing to administer a service in relation to the activities covered by that rule. This includes the manner in which a *firm* has administered its business, provided that the business is an activity subject to the jurisdiction of the *Financial Ombudsman Service*.
- 2.6.5 G** Complaints about acts or omissions by a *firm* include complaints about acts or omissions in respect of activities for which the *firm* is responsible (that is the activities of their *appointed representatives*).
- 2.6.6 G** For the purposes of DISP 2.6.1R(5), ancillary banking services include, for example, the provision and operation of cash machines and safe deposit boxes.
- 2.6.7 R** A complaint about an *authorised professional firm* cannot be handled under the *Compulsory Jurisdiction of the Financial Ombudsman Service* if it relates solely to a *non-mainstream regulated activity* and can be handled by a *designated professional body*.
- 2.6.8 G** A complaint about a *non-mainstream regulated activity* conducted by an *authorised professional firm* will be handled by the relevant *professional body*.

The Voluntary Jurisdiction

- 2.6.9 R The *Ombudsman* can consider a complaint under the *Voluntary Jurisdiction* only if it is not covered by the *Compulsory Jurisdiction* and it relates to an act or omission in the carrying on of one or more of the following activities by a *VJ participant*:
- ~~(1) lending money secured by a charge over land;~~
 - (1) *general insurance business*;
 - ~~(2) a financial services activity carried on after commencement and which had been covered by a former scheme in so far as the *VJ participant* was a member of that former scheme, in respect of that activity, immediately before the commencement day;~~
 - (2) accepting deposits;
 - (3) lending money secured by a charge over land;
 - (4) lending money (other than *restricted credit*);
 - (5) paying money by a *plastic card* (other than a *store card*);
 - (6) the provision of ancillary banking services;
 - ~~(7) a financial services activity carried on after commencement and which had been covered by a former scheme in so far as the *VJ participant* was a member of that former scheme, in respect of that activity, immediately before the commencement day;~~
- or an activity ancillary to it or activities ancillary to them (see DISP 2.6.12R).
- 2.6.10 G *DISP 2.6.9R(7)* enables complaints about *VJ participants* which, immediately before the *commencement day*, were members of one of the *former schemes* replaced by the *Financial Ombudsman Service* to be dealt with under the *Voluntary Jurisdiction*. This is in respect of the financial services activities for which the *VJ participant* was previously covered but excludes complaints which fall into the *Compulsory Jurisdiction* as *relevant complaints*. So the complaints which are covered by *DISP 2.6.9R(7)* are only those which arise out of acts or omissions occurring after the *commencement day*.
- 2.6.10A G *DISP 2.6.9R (6)* includes the activities referred to in *DISP 2.6.6G*.
- 2.6.11 R The activities in *DISP 2.6.9R* include any ancillary activities, including advice, provided by the *VJ participant* in connection with those activities.
- 2.6.12 R A complaint subject to these rules which is not covered by the *Compulsory Jurisdiction* can be considered by the *Ombudsman* even though it relates to an act or omission that occurred before the *VJ participant* was participating in the *Financial Ombudsman Service*, and whether the act or omission occurred before or after the *commencement day*, either:
- (1) if the complaint could have been dealt with under a *former scheme*; or

(2) as a consequence of the agreement of the VJ participant in DISP 4.2.5R.

- 2.6.13 G The provisions of *DISP 2.6.13R* are made under the power in section 227(13) of the Act. The section allows for a complaint relating to an act or omission occurring either before *commencement* or before the *VJ participant* joined the *Voluntary Jurisdiction* (or both) to be dealt with under the *Financial Ombudsman Service* provided the *VJ participant* agrees. The act or omission must, however, be one which could have been dealt with under a *former scheme*. Where complaints in this category are not already covered by the *Compulsory Jurisdiction* as *relevant complaints*, they can, therefore, be included in the *Voluntary Jurisdiction* under *DISP 2.6.13R*.

2.7 The territorial scope of the jurisdiction of the Financial Ombudsman Service

- 2.7.1 R **The territorial scope of the jurisdiction of the *Financial Ombudsman Service* covers complaints about the activities of a *firm*, an *appointed representative* or a *VJ participant* carried on from an establishment in the *United Kingdom*.**

- 2.7.2 G ~~The territorial scope therefore covers *firms* (including *appointed representatives*) or *VJ participants* operating from a permanent place of business in the *United Kingdom*, including *incoming EEA firms* and *incoming Treaty firms* which qualify for authorisation under Schedule 3 (*EEA Passport Rights*) or Schedule 4 (*Treaty rights*) to the Act.~~

- 2.7.2 R **The territorial scope of the jurisdiction of the *Voluntary Jurisdiction* of the *Financial Ombudsman Service* also covers complaints about activities specified in DISP 2.6.9R (1) - (6) or activities ancillary to them carried on from an establishment elsewhere in the *EEA*, the *Channel Islands* and the *Isle of Man* if the following conditions are met:**

- (1) the activity is directed wholly or partly at the *United Kingdom* (or part of it);**
(2) contracts governing the activity are, or (in the case of a potential customer) would have been, made under the law of England and Wales, Scotland or Northern Ireland; and
(3) the *VJ Participant* has notified appropriate regulators in its Home State of its intention to participate in the *Voluntary Jurisdiction*.

- 2.7.3 G ~~Complaints which concern business conducted by branches of *firms* or *VJ participants* outside the *United Kingdom* or by *EEA firms* operating in the *United Kingdom* on a services basis from outside the *United Kingdom* are not subject to the *Compulsory Jurisdiction* or the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.~~

- 2.7.3 G DISP 2.7.2R (1) covers activities which the *VJ participant* conducts with the intention that some or all of the customers relating to that activity should reside in the *United Kingdom*.

- 2.7.4 G *The Compulsory Jurisdiction:*

- (1) covers *firms* (including *appointed representatives*) operating from an establishment in the *United Kingdom*, including *incoming EEA firms* and *incoming Treaty firms* which qualify for authorisation under Schedule 3 (*EEA*

Passport Rights) or Schedule 4 (Treaty Rights) to the Act; but

(2) does not cover complaints which concern business conducted by branches of firms outside the United Kingdom or by EEA firms operating in the United Kingdom on a services basis from outside the United Kingdom.

2.7.4 ~~G A complaint can be dealt with under the *Financial Ombudsman Service* irrespective of whether the complainant lives or is based in the *United Kingdom*.~~

2.7.5 G *The Voluntary Jurisdiction:*

(1) covers VJ Participants operating from an establishment in the United Kingdom;

(2) also covers complaints that concern business conducted by VJ participants operating elsewhere in the EEA, Channel Islands and Isle of Man but only in relation to the activities specified in DISP 2.6.9R (1) to (6) subject to the conditions in DISP 2.7.2R (1) to (3).

2.7.4 G A complaint can be dealt with under the *Financial Ombudsman Service* irrespective of
2.7.6 whether the complainant lives or is based in the *United Kingdom*.