

# FEEDBACK ON OUR CONSULTATION ABOUT EXTENDING OUR JURISDICTION

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## 1 Summary

- 1.1 In May 2002 we published a consultation paper<sup>1</sup>.
- It summarised:
    - the current extent of our *compulsory* jurisdiction;
    - the current extent of our *voluntary* jurisdiction;
    - how FSA was likely to extend our *compulsory* jurisdiction to cover more firms<sup>2</sup> when they became regulated by the Financial Services Authority (FSA).
  - It also consulted about possible extension of the *voluntary* jurisdiction to:
    - past events for some FSA-regulated firms;
    - mortgage intermediaries;
    - insurance intermediaries ;
    - (later) some consumer-credit firms.
- 1.2 This feedback statement summarises the responses we received to the consultation, and outlines the policy conclusions we have reached in the light of those responses. We deal with both in the following chapters, which follow the same order as the consultation paper:
- Chapter 2 – Past events before 1 December 2001
  - Chapter 3 – Mortgage intermediaries
  - Chapter 4 – Insurance intermediaries
  - Chapter 5 – Consumer credit and section 75
  - Chapter 6 – Funding
  - Chapter 7 – Rules
- 1.3 Schedule 1 lists those who responded in writing. Others responded orally. We are grateful for their helpful comments. We received 28 written responses to the consultation paper itself, and 66 written responses to a summary of the consultation paper for mortgage intermediaries that the Mortgage Code Compliance Board (MCCB) kindly distributed with *MCCB News*.

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<sup>1</sup> Still available at <http://www.financial-ombudsman.org.uk/publications/guidance/extending-our-jurisdiction.pdf>

<sup>2</sup> In the text of this feedback statement, 'firms' includes firms that are not FSA-regulated. Those that are FSA-regulated are described as 'FSA-regulated firms'.

But in the draft rules, to accord with the definitions in rest of the FSA handbook, FSA-regulated firms are called 'firms' and firms covered by our *voluntary* jurisdiction are called 'VJ participants'.

- 1.4 In accordance with the policy conclusions we have reached:
- We will open our *voluntary* jurisdiction to:
    - complaints about events before 1 December 2001 against all FSA-regulated firms;
    - where they are not already within our *compulsory* jurisdiction as a result of the firm being covered by one of the eight former complaint-handling schemes<sup>3</sup> immediately before 1 December 2001.
  - We will also open our *voluntary* jurisdiction to:
    - mortgage intermediaries; and
    - general insurance and long-term insurance intermediaries.
  - We will approach relevant firms from 1 January 2003 with a view to their applying to join our *voluntary* jurisdiction, and we will implement the extension to the *voluntary* jurisdiction with effect from 1 April 2003.
  - We will continue to liaise with the Department of Trade and Industry (DTI) about consumer redress in consumer credit - to ensure that any proposals we develop are in harmony with the policy DTI is developing in its review of consumer-credit legislation.
- 1.5 Schedule 2 shows the rule changes required to extend our *voluntary* jurisdiction from 1 April 2003. These are published in 'near-final' form, so that firms and organisations can prepare. The rules will be formally 'made' by the Board of the Financial Ombudsman Service, and approved by the Board of FSA, under section 227 of the Financial Services and Markets Act 2000 in due course.
- 1.6 Schedule 3 outlines the general extent of our *compulsory* and *voluntary* jurisdictions as they will be from 1 April 2003, following the changes.

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<sup>3</sup> The 'eight former complaint-handling schemes' were:

five ombudsman schemes – the Banking, Building Societies, Insurance, Investment and Personal Investment Authority Ombudsman Schemes;

three other schemes – the Financial Services Authority's Complaints Investigator, the Securities and Futures Authority Complaints Bureau and the Personal Insurance Arbitration Service.

## 2 Past events before 1 December 2001

- 2.1 The consultation paper explained that neither our *compulsory* jurisdiction nor our *voluntary* jurisdiction currently covers events before 1 December 2001 for:
- activities (apart from accepting deposits and providing general insurance policies) that were FSA-regulated from 1 December 2001 or later; where
  - the firm was not covered by any of the eight former complaint-handling schemes<sup>4</sup> immediately before 1 December 2001.
- 2.2 To deal with this obvious gap, and the consequent scope for confusion, we proposed to:
- extend our *voluntary* jurisdiction to cover events before 1 December 2001 for activities that were FSA-regulated from 1 December 2001 or later; but
  - restrict the activities to ones that were FSA-regulated at the date the particular firm joined the *voluntary* jurisdiction, so the firm knew what it was signing up to.
- 2.3 In the responses:
- Most respondents supported such an extension, in order to provide consistent coverage.
  - Most of the respondents who would be eligible to sign up for the extension said they would be willing to do so.
  - A few respondents thought firms might be deterred from joining by a fear that standards would be applied retrospectively.
- 2.4 On the last point, we remind firms that, under our rules, we take into account what was required by any relevant law, regulation, code or good industry practice *at the time of the event complained about*.
- 2.5 **We have concluded:**
- **We should extend our *voluntary* jurisdiction to cover events before 1 December 2001<sup>5</sup> for all activities that are FSA-regulated at the date the particular firm joins.**
  - **We will approach relevant firms from 1 January 2003 with a view to their applying to join, and we will implement the extension to the *voluntary* jurisdiction with effect from 1 April 2003.**

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<sup>4</sup> The 'eight former complaint-handling schemes' were:

five ombudsman schemes – the Banking, Building Societies, Insurance, Investment and Personal Investment Authority Ombudsman Schemes;

three other schemes – the Financial Services Authority's Complaints Investigator, the Securities and Futures Authority Complaints Bureau and the Personal Insurance Arbitration Service.

<sup>5</sup> For firms that become FSA-regulated from some later date, this will apply to events before the date they become FSA-regulated.

### 3 Mortgage intermediaries

- 3.1 The consultation paper explained that neither our *compulsory* jurisdiction nor our *voluntary* jurisdiction currently covers mortgage intermediaries – those who advise on or arrange mortgages provided by others.
- 3.2 Those mortgage intermediaries that deal with residential first mortgages are due to be regulated by FSA from 2004. FSA is likely to bring them into the Financial Ombudsman Service's *compulsory* jurisdiction, in relation to events after FSA-regulation starts.
- 3.3 We proposed anticipating likely events – by opening our *voluntary* jurisdiction to mortgage intermediaries sooner. This would also cover non-residential mortgages and second mortgages, because our existing jurisdiction (in respect of lenders) covers all types of mortgages.
- 3.4 In the responses:
- Most respondents supported the proposal, in order to provide improved consumer protection at an early date – and, where appropriate, allow a complaint involving both a lender and an intermediary to be considered by the same body.
  - Those who referred specifically to the issue supported the proposal that the extension should apply to all mortgages – not just residential first mortgages – in order to minimise consumer confusion and create a level playing field for firms.
  - A handful of respondents feared that the workload resulting from the additional complaints could have a detrimental effect on the current standard of service we provide.
- 3.5 In the responses from mortgage intermediary firms to the summary paper circulated with *MCCB News*:
- Of those that expressed a view on the point, most thought the majority of MCCB-registered intermediaries would join if the proposal were adopted.
  - More than two-thirds supported the proposal and said that, if the *voluntary* jurisdiction were opened, they would join.
  - Interestingly, a number who disagreed with the proposal nevertheless said that, if the *voluntary* jurisdiction were opened, they would join.
  - Most agreed with our estimate of up to 600 cases a year against mortgage intermediaries, and very few thought that the number would exceed 1,000.
- 3.6 **We have concluded:**
- **We should extend our *voluntary* jurisdiction to cover mortgage intermediaries.**
  - **We will approach relevant firms from 1 January 2003 with a view to their applying to join our *voluntary* jurisdiction**

- **We will implement the extension to the *voluntary* jurisdiction with effect from 1 April 2003.**

3.7 It will be a question for MCCB, and not for us, whether it should encourage relevant firms registered with it to join our *voluntary* jurisdiction – or even whether it should require them to do so (through its Registration Rules). Issues include:

- Broadly, both our *compulsory* and *voluntary* jurisdictions allow complainants to bring complaints within six years of the event (or, if later, three years from when they could reasonably have known they had cause for complaint).
- MCCB-registered mortgage intermediaries first became subject to the Mortgage Code from 30 April 1998. As that is currently less than 6 years ago, our jurisdiction would currently extend back before that date.
- It would be confusing for consumers, and impracticable for us, for our jurisdiction to have different time limits for different activities. So we do not intend to impose a 30 April 1998 cut-off for mortgage intermediaries.
- MCCB-registered mortgage intermediaries may fear that they would be judged by reference to the Mortgage Code even in relation to complaints about events before 30 April 1998.
- But, under our rules, we take into account what was required by any relevant law, regulation, code or good industry practice *at the time of the event complained about*.
- Though FSA is likely to make mortgage intermediaries subject to our *compulsory* jurisdiction once they become FSA-regulated, that will not cover complaints about events before the date FSA-regulation starts.
- Complaints about events before the date FSA-regulation starts will be covered by our *voluntary* jurisdiction, for those mortgage intermediaries that decide to sign up to it.
- But, unless all MCCB-registered mortgage intermediaries join our *voluntary* jurisdiction, the Mortgage Code Arbitration Scheme would have to continue indefinitely for the rest – or leave consumers without independent redress for events before FSA-regulation starts.

3.8 Some of the responses to the consultation paper touched on the position of professional firms (solicitors and qualified accountants) that give incidental advice as part of their normal work.

- Some professional bodies believed that complaints about such incidental advice were better dealt with by their existing arrangements, as part of the legal/accountancy service.
- But a couple of consumer-sector responses suggested that our jurisdiction should cover such incidental advice by professional firms, not only for mortgages but also for investment business.

- 3.9 We have concluded that, in practice, the position of professional firms does not produce any new problems for us in this area.
- In the nature of our *voluntary* jurisdiction, professional firms will only be covered if they choose to join – which may be unlikely.
  - Under part XX of the Financial Services and Markets Act 2000 special provision is already made for professional firms in relation to investment advice and arranging.
  - Our current understanding is that similar provision is to be made for professional firms in relation to mortgage advice and arranging, save where the professional firm recommends a particular mortgage from a particular lender.
  - But, if professional firms become subject to our *voluntary* or *compulsory* jurisdictions for mortgage advice or arranging, we have well-established arrangements with the bodies responsible for professional complaints in order to deal with boundary issues.

## 4 Insurance intermediaries

- 4.1 The consultation paper explained that neither our *compulsory* jurisdiction nor our *voluntary* jurisdiction currently covers general insurance intermediaries – those who advise on or arrange general insurance provided by others – except for:
- banks or building societies that arrange insurance for banking customers;
  - insurance-broker members of the former Insurance Ombudsman scheme.
- 4.2 Insurance intermediaries are due to be regulated by the FSA from 2004. FSA is likely to bring them into the Financial Ombudsman Service's *compulsory* jurisdiction, in relation to events after FSA-regulation starts. Additionally, there are proposals about cover for long-term care:
- Cover for long-term care can be structured as an investment, a long-term insurance policy<sup>6</sup> or (rarely) a general insurance policy.
  - The product providers for all three types of cover, and intermediaries for the investment type, are already FSA-regulated – and covered by our *compulsory* jurisdiction.
  - H M Treasury has announced that intermediaries for the insurance types of cover for long-term care are to be FSA-regulated from 2004.
- 4.3 We proposed anticipating likely events – by opening our *voluntary* jurisdiction to insurance intermediaries sooner. This would include intermediaries for ancillary holiday insurance (whether or not it is decided that these should be FSA-regulated) and cover for long-term care.
- 4.4 In the responses:
- Most respondents (including the main regulators and trade associations) supported our proposal, in order to provide improved consumer protection at an early date.
  - Many respondents accepted the advantages of our being able to consider a complaint involving both an insurer and an intermediary. Some stressed the need to apportion properly the responsibility between the insurer and the intermediary.
  - A number of respondents said that the scope of the *voluntary* jurisdiction should not be finalised until the scope of the forthcoming FSA-regulation was known.
  - Most respondents said that the number of firms that would join the *voluntary* jurisdiction would be affected significantly by the funding arrangements (which we deal with later, in chapter 6).

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<sup>6</sup> Some types of long-term insurance policies are treated as contractually based investments. But this excludes most policies that provide cover for incapacity.

- 4.5 Complaint-enquiries to the General Insurance Standards Council (GISC)<sup>7</sup> provided the only significant indication of potential workload. The numbers have not caused us to revise our estimate of up to 600 cases per year.
- 4.6 If we open the *voluntary* jurisdiction to intermediaries for one type of long-term insurance, in the form of cover for long-term care, it appears logical to open it to intermediaries for other types of long-term insurance (such as permanent health insurance)<sup>8</sup> as well.
- 4.7 We have concluded:**
- **We should extend our *voluntary* jurisdiction to cover general insurance and long-term insurance intermediaries.**
  - **We will approach relevant firms from 1 January 2003 with a view to their applying to join our *voluntary* jurisdiction**
  - **We will implement the extension to the *voluntary* jurisdiction with effect from 1 April 2003.**
- 4.8 It will be a question for GISC, and not for us, whether it should encourage relevant member firms to join our *voluntary* jurisdiction – or even whether it should require them to do so. Some respondents supported the possibility of GISC recognising us as the only mechanism for complaints. But GISC would have to resolve some competition law issues if it wished to do this.
- 4.9 Issues were raised about professional firms acting incidentally as insurance intermediaries, similar to those described in paragraphs 3.8 and 3.9 concerning professional firms acting incidentally as mortgage intermediaries.

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<sup>7</sup> GISC is the self-regulatory body for insurers and intermediaries. It covers about a quarter of the 20,000 insurance intermediary firms, but they probably deal with more than half the relevant business).

<sup>8</sup> Intermediaries are already covered by our *compulsory* jurisdiction for those types of long-term insurance policies that are treated as contractually based investments.

## 5 Consumer credit and Section 75

5.1 The consultation paper explained that we already cover FSA-regulated firms, and non FSA-regulated firms who were covered by one of the eight former complaint-handling schemes, for some consumer-credit activities:

- providing mortgages;
- providing other loans (apart from point-of-sale credit);
- providing credit cards (but not storecards).

5.2 We:

- sought views on the possibility of extending the *voluntary* jurisdiction (at a later date) to other consumer-credit firms and/or other consumer-credit activities;
- noted that there were about 150,000 firms with consumer-credit licences and suggested that any extension would have to be staged;
- asked for suggestions about clearly definable areas of consumer credit activity where access to our service would provide consumers with most benefit;
- indicated that we would need some indication that a significant number of firms operating in those areas were prepared to join;
- suggested that we would need a discretion not to deal with complaints which were not really about financial issues but about the goods/services financed.<sup>9</sup>

5.3 Responses to this part of the consultation came mainly from consumer organisations, relevant regulators and trade associations. In the responses from consumer bodies and relevant regulators:

- They supported an extension of the *voluntary* jurisdiction, staged (on the basis of clearly definable areas of consumer credit activity) so as to avoid our being overwhelmed by a sudden influx of consumer-credit complaints.
- The Office of Fair Trading (OFT) indicated that areas of activity could possibly be defined on the basis of existing categories of credit agreement in the Consumer Credit Act or existing categories of licensable activities.
- The following lending activities were identified as ones where there was the greatest risk of consumer detriment:
  - loans provided by non-FSA authorised firms;
  - debt-consolidation lending;
  - credit cards provided by non-FSA authorised firms;
  - point-of-sale credit and storecards.
- There was also concern about the risk of consumer detriment in equity-release home-reversion plans, which do not involve loans.

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<sup>9</sup> Under section 75 of the Consumer Credit Act 1974, there are circumstances where the supplier of credit may be equally liable with the supplier of the goods/services for any breach of contract or misrepresentation by the supplier of the goods/services.

- Some respondents said that, whilst an extension of our *voluntary* jurisdiction would be welcome, the firms with the worst practices would not join voluntarily.
  - Respondents who were keen to see point-of-sale finance and store-cards covered accepted the need for a discretion to exclude complaints that were primarily about the goods or services financed rather than about the finance provided.
  - Some respondents stressed the importance of co-operation and information exchange between the relevant authorities operating in this area.
- 5.4 The relevant trade associations favoured further investigation of a possible extension of our *voluntary* jurisdiction. But there was considerable hesitation (particularly on cost grounds) and they detected very little enthusiasm from their members.
- 5.5 Since our consultation paper was issued:
- In August 2002, reporting on progress in the review of consumer-credit legislation by the Department of Trade and Industry (DTI), the Parliamentary Under Secretary of State for Competition, Consumers and Markets said – *“I am considering many proposals as part of the review, including, for example, an independent consumer redress mechanism to deal with complaints about unfair lending practices.”*
  - In September 2002 the European Commission published a draft directive on credit for consumers<sup>10</sup>
    - Article 10 includes – *“Agreements shall mention the existence or non-existence of out-of-court complaint and redress procedures accessible to consumers who are party to a contract and, if such procedures exist, the formalities for gaining access to them.”*
    - More significantly, article 32 includes – *“Member States shall ensure that adequate and effective complaints and redress procedures for the out-of-court settlement of consumer disputes concerning credit and surety agreements are put in place, using existing bodies where appropriate.”*
- 5.6 **We understand that DTI is likely to be consulting on the question of consumer redress as part of its review of consumer-credit legislation. We will continue to liaise with DTI, to ensure that any specific proposals we develop are in harmony with developing DTI policy.**

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<sup>10</sup> Proposal for a directive of the European Parliament and of the Council on the harmonisation of the laws, regulations and administrative provisions of the Member States concerning credit for consumers – COM(2002) 443 of 11 September 2002 – 2002/0222 (COD)

## 6 Funding

- 6.1 The consultation paper explained that, in our *compulsory* jurisdiction and our current *voluntary* jurisdiction, our costs are recovered:
- partly by a levy, based on the size of a firm's business, payable in advance;
  - partly by a case fee (fixed at £360 for 2002/3) charged to firms on a 'user pays' basis and payable when the case is closed.
- 6.2 In relation to mortgage intermediaries and insurance intermediaries:
- We explained that we planned to adopt the levy plus case-fee arrangement in due course. But we could not do so at this stage – because we would not know in advance which firms would actually join, and so we could not calculate a general levy;
  - We proposed that, for most firms, we would start by recovering a similar amount through setting the levy at £0 and charging a special case fee that would produce an amount per case broadly similar to the levy plus the standard case fee;
  - But, if an organisation brought a substantial block of firms into the *voluntary* jurisdiction at the same time and provided us with sufficiently robust information on which to base a levy, we would be prepared (if it wished) to negotiate a levy/case-fee arrangement for that block of firms.
- 6.3 In the responses:
- It was generally accepted that the only practical way forward at this stage is to charge a special case-fee - reverting to a levy/case-fee mechanism once FSA has determined relevant fee-blocks (or sooner, if sufficiently robust information becomes available on which to calculate a levy).
  - The likely level of the special case fee compares favourably with that currently charged by the Mortgage Code Arbitration Scheme. So, though cost is an issue, many respondents to the summary paper for mortgage intermediaries indicated that it would not deter them from joining.
  - Cost was a bigger issue for most insurance intermediaries, who expected many complaints to be about sums much less than the special case fee. But the main regulators and industry representatives for this sector emphasised their commitment to working with us to resolve this issue.
- 6.4 We are currently required to prepare our budgets on the basis that there is no material cross-subsidisation between our *compulsory* jurisdiction and our *voluntary* jurisdiction, or between different industry sectors. So we cannot charge a specially lower fee for insurance intermediaries. But the special case fee, for all concerned, is likely to be lower than the illustrative figure mentioned in the consultation paper.

**6.5 We have concluded that, for mortgage intermediaries and insurance intermediaries in our *voluntary* jurisdiction:**

- **we will start by setting the levy at £0 and charging a special case fee that would produce an amount per case broadly similar to the levy plus the standard case fee, and move to our normal levy plus case fee later;**
- **But, if an organisation brings a substantial block of firms into the *voluntary* jurisdiction at the same time and provides us with sufficiently robust information on which to base a levy, we would be prepared (if the organisation wishes) to negotiate a levy/case-fee arrangement for that block of firms.**

6.6 The actual amount of the special case fee will be established, in the light of the levy and standard case fee decided on for 2003/4, following the forthcoming consultation concerning our budget for 2003/4. Our present expectation is that the special case fee is likely to be around £600 – a significant reduction on the illustrative figure mentioned previously in our consultation paper.

6.7 Some of the responses touched on funding issues that relate to the whole of our jurisdiction. Most of these have been the subject of previous consultations and are covered by our rules. Some are within the scope of our normal annual budget consultation, which leads to the setting of the levy and the case fee.

- Some respondents said that we should not charge a case fee for frivolous or vexatious complaints. Our rules already provide that no case fee is payable if we dismiss a complaint as frivolous or vexatious.
- Some respondents said that we should not charge a case fee if the complaint is not upheld. There has already been extensive consultation on this point. It was concluded that, as there is often no clear 'winner' or 'loser', that would not be appropriate.
- One or two respondents suggested that we should charge complainants a fee when they bring a complaint us, refundable if their complaint is upheld. But all eight former complaint-handling bodies were free to complainants, and Parliament did not give us power to charge complainants a fee.
- One or two respondents said that tiered case-fees (where the amount depends on the stage at which the case is resolved) should be introduced as soon as practicable after the *voluntary* jurisdiction is opened up. That is an issue to which we will return once we have a sufficient history of comparable statistics to work on. We have only been operating on common rules since 1 December 2001.

## 7 Rules

- 7.1 The consultation paper contained a draft of the rules intended to extend the *voluntary* jurisdiction to events before 1 December 2001 for all FSA-regulated firms, mortgage intermediaries and insurance intermediaries. Very few respondents raised any points on these.
- 7.2 In connection with mortgage intermediaries:
- Those who commented were in broad agreement that the proposed definition would cover all relevant activities undertaken by mortgage intermediaries.
  - One or two respondents, however, sought further clarification of “*making arrangements with a view to a borrower or potential borrower who participates in the arrangements entering into a loan secured over land*”.
  - This is intended to cover firms that may refer borrowers to a mortgage intermediary or lender – even though some of these firms, who comply with certain qualifying conditions, will be excluded from FSA-regulation.
  - It is not necessary to complicate the rules by referring to these qualifying conditions, because qualifying firms are unlikely to sign up to the *voluntary* jurisdiction anyway
- 7.3 In connection with insurance intermediaries:
- A number of respondents said that the scope of the *voluntary* jurisdiction should not be finalised until the scope of the forthcoming FSA-regulation was known.
  - We do not consider that to be necessary. Our extended *voluntary* jurisdiction is, deliberately, wider than the area likely to be FSA-regulated. It will only require amendment in the unlikely event that the scope of FSA-regulation turns out to be wider still.
  - We have taken into account the scope of the European directive on insurance mediation<sup>11</sup> and also the additional activities referred to in H M Treasury’s consultation paper on insurance mediation published in October 2002.
  - And, as explained in chapter 4, we now intend to cover both general insurance intermediaries and long-term insurance intermediaries

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<sup>11</sup> Directive of the European Parliament and of the Council on insurance mediation of 30 September 2002.

- 7.4 Schedule 2 shows the rule changes required to extend our *voluntary* jurisdiction from 1 April 2003. These are published in 'near-final' form<sup>12</sup>, so that firms and organisations can prepare.**
- 7.5 The rules will be formally 'made' by the Board of the Financial Ombudsman Service, and approved by the Board of FSA, under section 227 of the Financial Services and Markets Act 2000 in due course.

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<sup>12</sup>'Near-final' means that any changes will be confined to:

- technical changes to improve clarity or correct text where this does not reflect the published policy intention (and for which no further consultation is necessary) and may include changes arising from H M Treasury's definition of the scope of the regime for insurance intermediaries;
- consequential changes resulting from other consultations, by us or FSA, that directly or indirectly affect the relevant rules.

# Schedule 1: List of respondents

## **to the consultation paper**

Abbey National  
AMP (UK) Financial Services  
Association of British Insurers  
British Bankers' Association  
Cockerill, Mr N R  
Consumers' Association  
Consumer Credit Trade Association  
Council of Mortgage Lenders  
Finance & Leasing Association  
Financial Services Consumer Panel  
General Insurance Standards Council (Scrutiny Committee)  
GMAC-RFC  
IFAcare  
Institute of Chartered Accountants in England & Wales, The  
Institute of Insurance Brokers  
Law Society, The  
Law Society of Scotland, The  
Local Authorities Coordinators of Regulatory Services  
London Market Insurance Brokers' Committee  
National Association of Citizens Advice Bureaux  
National Consumer Council  
Northern Rock  
Norwich Union  
Office of Fair Trading  
Reynolds, Mr T  
Royal Bank of Scotland Group, The  
Royal & Sun Alliance  
Trading Standards Institute

## **to the summary paper for mortgage intermediaries**

Advent Mortgages, Independent Mortgage Broker  
Alexander Sterling  
Ashfield Mortgage Shop  
AssetGrowth, Independent Financial Management, Mortgages & Investment  
Blackbourne Financial Services Ltd, Independent Financial Adviser  
Brian Henry King Optimum  
Cator & Company, Independent Financial Adviser  
City Centre Mortgages Ltd  
Clarke Gillan Associates Ltd, Independent Financial Advisers  
Clearview Financial Consultancy  
Clive Lambert & Partners, Mortgage Brokers  
Clive Webb, Independent Mortgage Adviser  
Cumbrian Mortgage Services, North West Mortgage Services  
Dave Archer Mortgage Choices, Mortgage Adviser  
David Pritchard Jones, Mortgages Services  
Dewar & Co., Financial Advisers & Estate Agents  
Diverse Mortgages Ltd.

Edward Barclay, Mortgage desk  
Elizabeth Anne Horder, Independent Mortgage Adviser  
Ethos Financial Management Ltd  
FAB, Loan & Mortgage Brokers  
Falcon Group PLC, Independent Financial Advisers  
Financial Consultancy Ltd  
Financial Solutions 2000  
Financial Webb Plc, Independent Financial & Mortgage Advisers  
Geoff Hanson, Mortgage & Finance Broker  
Geoffrey B Severn, Mortgages  
Gregory Brown, Financial Planning  
Grosvenor Consultancy Ltd, Independent Financial Adviser  
Grovenor, Financial Management Consultancy  
HMG Financial Services, Mortgage Consultant  
Hulbert Financial Services, Financial Adviser  
Independent Mortgage Adviser Network Ltd  
Independent Mortgage Solutions, Independent Mortgage service  
John Gregory Mortgages, Independent Mortgages Broker  
John Williams (Brokers) Limited, Mortgage Broker  
Jonathan Kinghorn Mortgages  
JS Financial Advice Service  
Keystone, Financial Services  
Kimpton & Co, Independent Mortgage Advisers  
Legal & General  
Lighthouse Mortgage Consultancy, Independent Mortgage Consultants  
Lynbrook  
Maze Castle Direct  
McCrea Financial Services Ltd  
Meridian Financial Services, Independent Financial advisers  
MJ Mortgage Services, Independent Mortgage Broker  
Money Matters  
Mortgage Applications Ltd., Mortgage Consultant  
Mortgage Arrangers  
Mortgage Selections Limited, Independent Mortgage Brokers  
Mortgage2move, Mortgage Specialist  
Noble Grant, Independent Financial Advisers  
Oak Financial Management, Independent Financial Advisers  
Oakley, Independent Advisers  
Phillips & Co  
Pilgrims, Estate agents  
PW Solicitors, Independent Financial Adviser  
QED Financial, Independent Financial Advisers  
Robert Wilson & Son, Solicitors, Notaries, Estate Agents & Tax Consultants  
Signature Mortgages  
Simply Mortgages, Independent Mortgage Specialists  
Spencer & Company, Financial Services  
Stephen Foster, Mortgage & Insurance Consultant  
Western Mortgage Brokers Limited  
White Horse, Financial & Insurance Services

## Schedule 2: 'Near-final' rules

### Note:

- The following rules are based on those that have applied since 1 April 2002, following the extension of our *voluntary* jurisdiction to cover EEA insurers and banks directing activities at the UK.<sup>13</sup> New or amended text is underlined. Deleted text is ~~struck-out~~.
- As the rules form part of the dispute-resolution section (DISP) of the FSA handbook, the overall format is set by the FSA. Accordingly:
  - In the rules, *firms* means FSA-regulated firms. Firms that are covered by our voluntary jurisdiction are called *VJ participants*.
  - To avoid renumbering existing rules, additional rules are given modified numbering. For example, where an existing rule is numbered 1.1, a new rule inserted after the existing rule is numbered 1.1A.
- DISP 2.6.9C G (concerning mortgage intermediaries):
  - takes into account the wording in the revised draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) [No.\*] Order 200[3] published by H M Treasury in August 2002.
  - for simplicity, does not refer specifically to the qualified exclusion of introducers in clause 11 of H M Treasury's draft, on the basis that firms covered by this qualified exclusion are unlikely to sign up to the *voluntary* jurisdiction anyway.
  - covers all mortgages, not just residential first mortgages, in line with our existing jurisdiction in relation to mortgage lenders.
- DISP 2.6.9D G (concerning insurance intermediaries):
  - takes into account the final text of the European directive on insurance mediation and also the draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) [No. X] Order 2003 published by H M Treasury in October 2002.
  - includes some additional activities outside the scope of the directive, notably trading in all second-hand policies<sup>14</sup> and the sale of ancillary holiday insurance, which might become FSA-regulated – depending on the outcome of H M Treasury's October 2002 consultation.
  - is intended to include all those activities in the voluntary jurisdiction now, whether or not they ultimately become FSA-regulated.
  - may be revised before 1 April 2003 if H M Treasury decides to extend FSA-regulation to additional activities.

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<sup>13</sup> The rules relating to the Financial Ombudsman Service are in the dispute-resolution section (DISP) of the FSA handbook – see [www.fsa.gov.uk/handbook/BL4DISPpp/Disp/TOC.pdf](http://www.fsa.gov.uk/handbook/BL4DISPpp/Disp/TOC.pdf)

<sup>14</sup> Intermediaries are already covered by our *compulsory* jurisdiction for trading in those types of long-term insurance policies that are treated as contractually based investments.

- There are only three changes of substance from the draft rules in the consultation paper.
  - In DISP 2.6.9R (6B) and DISP 2.6.9D G (both concerning insurance intermediaries) we have added reference to long-term insurance business.
  - In DISP 2.6.9D G (concerning insurance intermediaries) we have taken into account the final text of the European directive and also H M Treasury’s draft amendment to the Regulated Activities Order.
  - In DISP 4.2.12B R (1) we have clarified that the levy comprises the general levy and any supplementary levy.

## [In DISP Chapter 2]

### 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) *general insurance business*;
  - (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;
  - (6A) acting as an intermediary for a loan secured by a charge over land;**
  - (6B) acting as an intermediary for general insurance business or long-term insurance business;**
  - (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*;
  - (7A) an activity which was a regulated activity when the VJ participant joined the Voluntary Jurisdiction, but which was not a regulated activity at the time of the act or omission;**
- or activities ancillary to them (see *DISP 2.6.11R*).
- 2.6.9A G A complaint may be covered by the *Voluntary Jurisdiction* under one or more of the subparagraphs of *DISP 2.6.9R*.
- 2.6.9B G *DISP 2.6.9R(6)* ('the provision of ancillary banking services') includes the activities referred to in *DISP 2.6.6G*.
- 2.6.9C G *DISP 2.6.9R(6A)* ('acting as an intermediary for a loan secured by a charge over land') includes:
- (1) making arrangements for a borrower or potential borrower to enter into, or vary the terms of, a loan secured by a charge over land;
  - (2) making arrangements with a view to a borrower or potential borrower who participates in the arrangements entering into a loan secured over land; and
  - (3) advising a borrower or potential borrower on the merits of entering into, or varying the terms of, a loan secured by a charge over land.
- 2.6.9D G *DISP 2.6.9R(6B)* ('acting as an intermediary for general insurance business or long-term insurance business') includes:
- (1) introducing, proposing or carrying out other work preparatory to the conclusion of contracts of general insurance business or long-term insurance business or reinsurance;
  - (2) concluding such contracts;
  - (3) assisting in the administration and performance of such contracts, in particular in the event of a claim;
  - (4) dealing as an agent, or arranging deals, in such contracts (or rights in them);
  - (5) managing, safeguarding or administering assets consisting of, or including, such contracts (or rights in them); and
  - (6) advising on the merits of buying, selling, subscribing for or underwriting such contracts (or rights in them)
- But customers of reinsurance intermediaries are unlikely to be eligible complainants.

- 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(2)* are only those which arise out of acts or omissions occurring after the *commencement day*.
- 2.6.10A G *DISP 2.6.9R(7A)* enables a *firm* that is subject to the compulsory jurisdiction for *regulated activities* to become a *VJ participant* in order to cover complaints about earlier events relating to those activities before they became *regulated activities*.
- 2.6.11 R The activities in *DISP 2.6.9R* include any ancillary activities, including advice and any ancillary *long-term insurance*, 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 2.6.12R* are made under the power in subsections 227(13) and 227(14) of the *Act*. Those subsections 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~~. Under subsection 227(13), the act or omission must, ~~however~~, be one which could have been dealt with under a *former scheme*. Under subsection 227(14), the *VJ Participant* must agree; but that agreement is provided by *DISP 2.6.12(2)R* and *DISP 4.2.5R*. 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 2.6.12R*.

## 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*.
- 2.7.1A 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) to DISP 2.6.9R (6)* or activities ancillary to them carried on from an establishment elsewhere in the *EEA* 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*.**
- 2.7.1B G DISP 2.7.1A R (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*.
- 2.7.2 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*.
- 2.7.3 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 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 DISP 2.7.2R (3).
- 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*.

## [In DISP Chapter 4]

- 4.2.12A R Subject to DISP 4.2.12B R, any case fee for which a *VJ participant* falling into either *industry block 4V* (mortgage intermediaries) or *industry block 5V* (insurance intermediaries) becomes liable before 1 April 2004 will be the *special case fee*, instead of the *standard case fee*.**
- 4.2.12B R If an organisation which covers a significant number of *VJ participants* who would otherwise fall into either *industry block 4V* (mortgage intermediaries) or *industry block 5V* (insurance intermediaries) and *FOS Ltd* both agree in writing:**
- (1) **the organisation will pay a *general levy* and any *supplementary levy* calculated by *FOS Ltd* for the *VJ participants* covered by that organisation as if they were in a separate *industry block*; and**
- (2) **the *VJ participants* covered by the organisation will pay the *standard case fee*.**

## [In DISP Chapter 5]

### Part 4: VJ participants

#### 8 Table Fee tariffs and case fees for VJ participants

Voluntary jurisdiction block	industry	Tariff base	General levy payable by firm	Minimum general levy per firm	Supplementary levy payable by firm	Minimum supplementary levy per firm	Case fee
4V	<u>Mortgage intermediaries</u>	<u>not applicable</u>	<u>£0</u>	<u>£0</u>	<u>£0</u>	<u>£0</u>	<u>£*</u>
5V	<u>Insurance intermediaries</u>	<u>not applicable</u>	<u>£0</u>	<u>£0</u>	<u>£0</u>	<u>£0</u>	<u>£*</u>

[\* The special case fee will be fixed following the separate consultation on our 2003/4 budget. Our current expectation is that it will be in the region of £600.]

## Schedule 3: Jurisdiction from 1 April 2003

The main provisions of the Financial Services and Markets Act 2000 came into force from 1 December 2001. FSA-regulation is due to be extended to mortgage<sup>15</sup> lenders, mortgage<sup>11</sup> intermediaries and insurance intermediaries in October 2004.

The next page shows the main permutations of the Financial Ombudsman Service's jurisdiction from 1 April 2003 in respect of events:

- before 1 December 2001
- from 1 December 2001 until the relevant date in October 2004
- from the relevant date in October 2004

It does not cover all the possible permutations. For example:

- Credit unions in Great Britain and electronic money institutions became subject to FSA-regulation during 2002.
- An institution may change its activities and become, or cease to be, an FSA-regulated firm.

It distinguishes:

- **the compulsory jurisdiction**
- **the voluntary jurisdiction** as extended from 1 April 2003

It deals with:

- first, institutions covered by one of the former schemes<sup>16</sup> on 30 November 2001
- second, institutions not covered by a former scheme on 30 November 2001.

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<sup>15</sup> In this schedule 'mortgage' means a residential first mortgage that will be subject to FSA-regulation.

<sup>16</sup> The 'former schemes' were:

five ombudsman schemes – the Banking, Building Societies, Insurance, Investment and Personal Investment Authority Ombudsman Schemes;

three other schemes – the Financial Services Authority's Complaints Investigator, the Securities and Futures Authority Complaints Bureau and the Personal Insurance Arbitration Service.

**Events before  
1 December 2001**

**Events from  
1 December 2001**

**Events from the relevant  
date in October 2004**

**1: institutions covered by one of the former schemes on 30 November 2001**

<b>Compulsory jurisdiction</b>	<b>Compulsory jurisdiction</b>	<b>Compulsory jurisdiction</b>
Institutions that: <ul style="list-style-type: none"><li>– were covered by one of the former schemes on 30 November 2001; and</li><li>– were FSA-regulated firms from 1 December 2001.</li></ul> For example: all building societies; many banks and insurance companies; most investment product-providers and investment intermediaries.		

<b>Compulsory Jurisdiction</b>	<b>Voluntary Jurisdiction</b>	<b>Compulsory Jurisdiction</b>
Institutions that: <ul style="list-style-type: none"><li>– were covered by one of the former schemes on 30 November 2001; and</li><li>– will be FSA-regulated firms from 2004 as mortgage lenders, mortgage intermediaries or insurance intermediaries.</li></ul> For example: some bank and building society subsidiaries that do not accept deposits but provide residential first mortgages; a few mortgage/insurance intermediaries.		

<b>Compulsory Jurisdiction</b>	<b>Voluntary jurisdiction</b>	<b>Voluntary jurisdiction</b>
Institutions that: <ul style="list-style-type: none"><li>– were covered by one of the former schemes on 30 November 2001; but</li><li>– are not due to be regulated by FSA.</li></ul> For example: some bank and building society subsidiaries that do not accept deposits but provide credit cards or personal loans.		

**2: institutions not covered by one of the former schemes on 30 November 2001**

<b>Voluntary jurisdiction</b>	<b>Compulsory jurisdiction</b>	<b>Compulsory jurisdiction</b>
Institutions that: <ul style="list-style-type: none"><li>– were not covered by one of the former schemes on 30 November 2001 and</li><li>– were FSA-regulated firms from 1 December 2001.</li></ul> For example: some banks, insurance companies and investment firms; Lloyd's.		
The position is similar for credit-unions in Great Britain and electronic money institutions (from the date they become FSA-regulated firms rather than from 1 December 2001).		

<b>Voluntary jurisdiction</b>	<b>Voluntary jurisdiction</b>	<b>Compulsory Jurisdiction</b>
Institutions that: <ul style="list-style-type: none"><li>– were not covered by one of the former schemes on 30 November 2001 and</li><li>– will be FSA-regulated firms from 2004 as mortgage lenders, mortgage intermediaries or insurance intermediaries.</li></ul> For example: residential first mortgage lenders that are not banks or building societies; most mortgage/insurance intermediaries.		

**END**