

**EXITING THE EUROPEAN UNION: FEES AND DISPUTE RESOLUTION:
COMPLAINTS (AMENDMENTS) INSTRUMENT 2019**

Powers exercised by the Financial Ombudsman Service

A. The Financial Ombudsman Service Limited:

- (1) makes and amends the rules for the voluntary jurisdiction;
- (2) fixes and varies the standard terms for voluntary jurisdiction participants;

as set out in Annex B of this instrument; and

- (3) makes and amends the rules and guidance relating to complaints handling procedures of the Financial Ombudsman Service;
- (4) makes and amends the rules for the voluntary jurisdiction; and
- (5) fixes and varies the standard terms for voluntary jurisdiction participants;

to incorporate changes to the Glossary as set out in the Exiting the European Union: Glossary (Amendments) Instrument 2019, 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 14 (The scheme operator’s rules) of Schedule 17;
- (d) paragraph 18 (Terms of reference to the scheme) of Schedule 17
- (e) paragraph 20 (Voluntary jurisdiction rules: procedure) of Schedule 17; and
- (f) paragraph 22 (Consultation) of Schedule 17.

B. The making and amendment of the rules and guidance and the fixing and varying of the standard terms, as set out at paragraph A above, 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 (“the FCA”) makes this instrument in the exercise of:

- (1) regulation 3 of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018;
- (2) the following powers and related provisions in the Act:
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers);
 - (c) section 139A (Power of the FCA to give guidance);
 - (d) section 226 (Compulsory jurisdiction);
 - (e) section 234 (Industry funding);

- (f) paragraph 13 (FCA’s rules) of Schedule 17; and
 - (g) paragraph 23 (Fees) in Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority);
- (3) regulation 120 (Guidance) of the Payment Services Regulations 2017;
 - (4) regulation 60 (Guidance) of the Electronic Money Regulations 2011; and
 - (5) article 1(2) of the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018.
- D. The rule-making provisions referred to above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority consents to and approves the rules and guidance and standard terms made and amended and fixed and varied by the Financial Ombudsman Service Limited, as set out at paragraph A above.

Commencement

- F. This instrument comes into force on exit day as defined in the European Union (Withdrawal) Act 2018, except for Part 2 of Annex B.
- G. Part 2 of Annex B of this instrument comes into force on 1 April 2019 immediately after the changes made by the Claims Management Instrument 2018 (FCA 2018/56) come into force, or on exit day (immediately after Part 1 of Annex B of this instrument) as defined in the European Union (Withdrawal) Act 2018, whichever date is the later.

Amendments to the Handbook

- H. 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) below:

(1)	(2)
Fees manual (FEES)	Annex A
Dispute Resolution: Complaints sourcebook (DISP)	Annex B

- I. Changes to the Glossary as set out in the Exiting the European Union: Glossary (Amendments) Instrument 2019 are incorporated by the Financial Ombudsman Service Limited as set out at paragraph A above.

Notes

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

Citation

- K. This instrument may be cited as the Exiting the European Union: Fees and Dispute Resolution: Complaints (Amendments) Instrument 2019.

By order of the Board of the Financial Ombudsman Service Limited
27 March 2019

By order of the Board of the Financial Conduct Authority
28 March 2019

[*Editor's note*: this Annex takes into account the changes made by Exiting the European Union: High Level Standards (Amendments) Instrument 2019 which come into effect on exit day as defined in the European Union (Withdrawal) Act 2018.]

Annex A

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text.

5 Financial Ombudsman Service Funding

5.1 Application and Purpose

...

5.1.1C R This chapter applies to a *TP firm*. This *rule* demonstrates the contrary intention under *GEN 2.2.26R*.

...

5.3 The general levy

...

5.3.2A G When identifying the relevant *industry block(s)*, the *TP firm*, *TA EMI firm*, *TA PI firm* or *TA RAISP firm* must identify the activity (or activities) in *FEES 5 Annex 1R* that most closely matches that for which that *firm* is treated as having *Part 4A permission*.

...

5.4 Information requirement

- 5.4.1 R (1) A *firm* must provide the *FCA* by the end of February each year (or, if the *firm* has become subject to the *Financial Ombudsman Service* part way through the *financial year*, by the date requested by the *FCA*) with a statement of:
- (a) the total amount of *relevant business* (measured in accordance with the appropriate tariff base(s)) which it conducted; or
 - (b) in the case of *firms* in *industry blocks 2* and *4*, the gross written premium for fees purposes as defined in *FEES 4 Annex 1AR* (unless *FEES 5.4.1R(1A)* applies),

as at or in the year to 31 December of the previous year as appropriate, including only business undertaken from a *branch* or establishment in the *UK* in relation to the tariff base for each of the relevant *industry blocks* set out in *FEES 5 Annex 1*. *Firms that do not carry out their*

business from a *branch* or establishment in the *UK* will pay the *minimum levy* for each tariff base.

...

5 Annex 1R Annual General Levy Payable in Relation to the Compulsory Jurisdiction for 2019/20

...

Compulsory jurisdiction - general levy

Industry block	Tariff base	General levy payable by firm
...		
11-fee-paying payment service providers (but excluding firms in any other Industry block except Industry block 18)	For <i>authorised payment institutions, registered account information service providers, electronic money issuers</i> (except for <i>small electronic money institutions</i>), the Post Office Limited, the Bank of England, government departments and local authorities, <u>TA EMI firms, TA PI firms and TA RAISP firms</u> , relevant income as described in FEES 4 Annex 11 Part 3	...

...		
18-fee-paying electronic money issuers	For all <i>fee-paying electronic money issuers</i> except for <i>small electronic money institutions</i> , <u>and TA EMI firms</u> , average outstanding electronic money, as described in FEES 4 Annex 11 Part 3.	...

...		
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Annex B

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In Part 1 to this Annex, underlining indicates new text and striking through indicates deleted text. In Part 2 to this Annex, DISP 1.1.1G, DISP 1.1.1AG, DISP 2.5.1R, DISP 2.6.1R and certain provisions in DISP 2 Annex 1G are deleted in their entirety and replaced by the underlined provisions in that Part. The deleted text is not shown as struck through.

Part 1: Comes into force on exit day as defined in the European Union (Withdrawal) Act 2018

INTRO Introduction

INTRO Introduction 1

...

Chapter 1: Treating complainants fairly

INTRO DISP 1 contains rules and guidance on how *respondents* should deal with *complaints* promptly and fairly, including *complaints* that could be referred to the *FOS*. ~~Some of these rules also apply to certain branches of firms elsewhere in the EEA and certain EEA firms carrying out activities in the United Kingdom under the freedom to provide cross border services.~~

...

1 Treating complainants fairly

1.1 Purpose and application

Purpose

1.1.1 G This chapter contains *rules and guidance* on how *respondents* should deal promptly and fairly with *complaints* in respect of business carried on from establishments: ~~in the United Kingdom, by certain branches of firms in the EEA or by certain EEA firms carrying out activities in the United Kingdom under the freedom to provide cross border services. It is also relevant to those who may wish to make a complaint or refer it to the Financial Ombudsman Service.~~

(1) in the United Kingdom; or

(2) in an EEA State, in the case of a TP firm, a TA EMI firm, a TA PI firm or a TA RAISP firm with respect to services provided into the United Kingdom.

1.1.1A G This chapter is also relevant to those who may wish to make a *complaint* or refer it to the *Financial Ombudsman Service*.

...

Application to firms

1.1.3 R (- This chapter applies to a *TP firm*. This rule demonstrates the
1) contrary intention under *GEN 2.2.26R*.

(1) Subject to *DISP 1.1.5R*, this chapter applies to a *firm* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by it or its *appointed representative*:

(a) in the *United Kingdom*; or

(b) in an *EEA State*, in the case of a *TP firm* with respect to services provided into the *United Kingdom*.

...

- (3) ~~The *complaints data publication rules* do not apply in respect of activities carried on from a *branch* of an *EEA firm* in the *United Kingdom* or activities carried on by an *EEA firm* in the *United Kingdom* under the freedom to provide *cross border services*. [deleted]~~
- (4) ~~This chapter, except the *complaints data publication rules*, also applies to an *incoming EEA AIFM* for *complaints* from *eligible complainants* concerning *AIFM management functions* carried on for an *authorised AIF* or a *UK ELTIF* other than a *body corporate* that is not a *collective investment scheme* under the freedom to provide *cross border services*. [deleted]~~

...

1.1.3A D The *complaints reporting directions* apply to a *firm* that provides *payment services* or issues *electronic money* in respect of:

(1) *complaints* from *payment service users*; and

(2) *complaints* from *electronic money* holders that are *eligible complainants*

concerning activities carried on from an establishment maintained by the *firm* in the *United Kingdom* (or in an *EEA State*, in the case of a *TP firm* with respect to services provided into the *United Kingdom*).

...

1.1.5 R This chapter does not apply to:

...

(4) ~~complaints in respect of auction regulation bidding; [deleted]~~

(5) ~~a full-scope UK AIFM, or a small authorised UK AIFM or an incoming EEA AIFM, for complaints concerning AIFM management functions carried on for an AIF that is a body corporate unless it is a collective investment scheme;~~

...

...

Additional requirements for insurance and reinsurance distribution business in the UK

1.1.10-A R Where *insurance distribution activities* are carried on from an establishment maintained by it or its *appointed representative* in the *United Kingdom* (or in an EEA State, in the case of a TP firm with respect to services provided into the United Kingdom), a firm must have in place and operate appropriate and effective procedures for registering and responding to *complaints* from a person who is not an *eligible complainant*.

...

...

~~Additional IDD requirements for EEA branches of UK firms~~

1.1.10-B R ~~Where *insurance distribution or reinsurance distribution* is carried on from a *branch* maintained by a *UK firm* or its *appointed representative* in another *EEA State*, the *firm* must:~~

~~(1) have in place and operate appropriate and effective procedures for registering and responding to *complaints* from a *customer*; and~~

~~(2) solely in relation to its *insurance distribution business*, adhere to one or more relevant *ADR entities* in that *EEA State* in respect of *consumer disputes*. [deleted]~~

~~[Note: articles 7(2), 14 and 15(1) of the *IDD*]~~

Application to payment services providers that are not firms

1.1.10A R This chapter (except the *complaints reporting rules* and the *complaints data publication rules*) applies to *payment service providers* that are not *firms* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by that *payment service provider* or its *agent* in the *United Kingdom* (or in an EEA State,

in the case of a TA PI firm or a TA RAISP firm with respect to services provided into the United Kingdom).

- 1.1.10A D The *complaints reporting directions* apply to a *payment service provider*
B that is not a *firm* in respect of *complaints* from *payment service users* concerning activities carried on from an establishment maintained by that *payment service provider* or its *agent* in the *United Kingdom* (or in an EEA State, in the case of a TA PI firm or a TA RAISP firm with respect to services provided into the United Kingdom).

...

Application to electronic money issuers that are not firms

- 1.1.10C R This chapter (except the *complaints reporting rules* and the *complaints data publication rules*) applies to an *electronic money issuer* that is not a *firm* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by that *electronic money issuer* or its *agent* in the *United Kingdom* (or in an EEA State, in the case of a TA EMI firm with respect to services provided into the United Kingdom).

- 1.1.10C D The *complaints reporting directions* apply to an *electronic money issuer*
A that is not a *firm* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by that *electronic money issuer* or its *agent* in the *United Kingdom* (or in an EEA State, in the case of a TA EMI firm with respect to services provided into the United Kingdom).

...

Application to UCITS management companies

- 1.1.10E R For *complaints* related to *collective portfolio management* services of a *UK UCITS management company* for a *UCITS scheme* or a scheme which, immediately before exit day, was an EEA UCITS scheme, DISP 1.1.3R(1) applies, except where modified as follows:

- (1) the *consumer awareness rules*, *complaints handling rules* and *complaints record rule* apply in respect of *complaints* from *unitholders* rather than from *eligible complainants*; ~~and~~
- (2) ~~the consumer awareness rules, the complaints handling rules and the complaints record rule, as modified in (1), also apply where the services are provided from a branch in another EEA State (and any reference to respondent in the consumer awareness rules includes such a branch):~~ [deleted]

- 1.1.10F R ~~For complaints related to collective portfolio management services of an EEA UCITS management company for a UCITS scheme, DISP 1.1.3R(1) applies, except where modified as follows:~~

- (1) ~~where the services are provided from a *branch* in the *United Kingdom*, the *consumer awareness rules*, *complaints handling rules* and *complaints record rule* apply in respect of *complaints from unitholders* rather than from *eligible complainants*; and~~
- (2) ~~this chapter, except the *consumer awareness rules*, *complaints handling rules*, *complaints record rule* and *complaints data publication rules*, also applies to an *EEA UCITS management company* providing services in the *United Kingdom* under the freedom to provide *cross border services*. [deleted]~~

...

1.1A Complaints handling requirements for MiFID complaints

...

- 1.1A.2 R For the *MiFID complaints* of a *third country investment firm*, the provisions marked “~~EU~~ UK” shall apply as *rules*.
- 1.1A.3 G A *MiFID complaint* is, amongst other things, a complaint to which article 26 of the *MiFID Org Regulation* applies, being a complaint about:
- ...
- (4) the activities permitted by the UK provisions which implemented article 6(3) of the UCITS Directive when carried on by a *collective portfolio management investment firm*; and
 - (5) the activities permitted by the UK provisions which implemented article 6(4) of the AIFMD when carried on by a *collective portfolio management investment firm*.

...

...

- 1.1A.5 G In contrast to the other provisions in *DISP 1* which generally apply to *complaints* from *eligible complainants*, subject to *DISP 1.1A.6R*:
- (1) the obligations in this section that apply to the *MiFID complaints* of *MiFID investment firms*, apply to complaints from “clients” as defined in the UK provisions which implemented MiFID (which includes *retail clients*, *professional clients* and (in relation to *eligible counterparty business*) *eligible counterparties*; and
- ...
- 1.1A.6 R (1) Only the provisions in this section marked “~~EU~~ UK” and *DISP 1.1A.39R* apply to a *MiFID complaint* received from a *retail client*, *professional client* or an *eligible counterparty* that is not an

eligible complainant.

...

Application: Where?

- 1.1A.7 R The table below sets out how *DISP* 1.1A applies to *MiFID* complaints relating to:
- (1) the activities of a *MiFID* investment firm carried on from an establishment in the *United Kingdom*; and
 - (2) the *equivalent business of a third country investment firm* where the complaint is received from a *retail client* or an *elective professional client*;
 - (3) ~~activities carried on from a branch of a UK firm in another EEA State; and [deleted]~~
 - (4) ~~activities carried on from a branch of an EEA firm in the United Kingdom. [deleted]~~

Table: Application of DISP 1.1A to the MiFID business of firms in the UK, and the equivalent business of third country investment firms, ~~branches of UK firms and UK branches of EEA firms~~

(1) Provision	(2) Provision applies to the MiFID business of a firm carried on from an establishment in the UK?	(3) Provision applies to the equivalent third country business of a third country investment firm where the complaint is received from a retail client or an elective professional client?	(4) Provision applies to a branch of a UK firm in another EEA State?	(5) Provision applies to a branch of an EEA firm in the UK?
1.1A.10 E UK	Yes	Yes	Yes	Yes
1.1A.11R	Yes	Yes	No	Yes
1.1A.12 E UK	Yes	Yes	Yes	Yes
1.1A.13 E UK	Yes	Yes	Yes	Yes

1.1A.14G	Yes	Yes	Yes	No
1.1A.15G	Yes	Yes	Yes	No
1.1A.16 E <u>UK</u>	Yes	Yes	Yes	Yes
1.1A.17 E <u>UK</u>	Yes	Yes	Yes	Yes
1.1A.18 E <u>UK</u>	Yes	Yes	Yes	Yes
1.1A.19G	Yes	Yes	Yes	No
1.1A.20R	Yes	Yes	No	Yes
1.1A.21G	Yes	Yes	No	Yes
1.1A.22R	Yes	Yes	No	Yes
1.1A.23R	Yes	Yes	No	Yes
1.1A.24 E <u>UK</u>	Yes	Yes	Yes	Yes
1.1A.25 E <u>UK</u>	Yes	Yes	Yes	Yes
1.1A.26R	Yes	Yes	No	Yes
1.1A.27G	Yes	Yes	No	Yes
1.1A.28R	Yes	Yes	No	Yes
1.1A.29 E <u>UK</u>	Yes	Yes	Yes	Yes
1.1A.30 E <u>UK</u>	Yes	Yes	Yes	Yes
1.1A.31R	Yes	Yes	No	Yes
1.1A.32G	Yes	Yes	No	Yes
1.1A.33G	Yes	Yes	No	Yes
1.1A.34G	Yes	Yes	No	Yes
1.1A.35R	Yes	Yes	No	Yes
1.1A.36R	Yes	Yes	No	Yes

1.1A.37 E UK	Yes	Yes	Yes	Yes
1.1A.38 E UK	Yes	Yes	Yes	Yes
1.1A.39R	Yes	Yes	No	Yes
1.1A.40R	Yes	Yes	No	No
1.1A.41G	Yes	Yes	No	No
1.1A.42R	No	No	Yes	No
Notes				
(1) The provisions marked “EU” in the table are ‘directly applicable’ which means they apply to all <i>MiFID investment firms</i> in relation to <i>MiFID complaints</i> by virtue of the <i>MiFID Org Regulation</i> . [deleted]				
(2) ...				

Interpretation of this section

- 1.1A.8 G This section contains a number of provisions marked with the status letters “~~EU~~ UK”, which have been selectively reproduced from the *MiFID Org Regulation*.
- 1.1A.9 G References in column (1) to a word or phrase used in those provisions marked “~~EU~~ UK” have the meaning indicated in column (2) of the table below:

...

Consumer awareness

- 1.1A.10 ~~EU~~ UK Investment firms shall publish the details of the process to be followed when handling a complaint. Such details shall include information about the complaints management policy and the contact details of the complaints management function. This information shall be provided to clients or potential clients, on request, or when acknowledging a complaint.

...

...

Complaints handling

- 1.1A.12 ~~EU~~ UK Investment firms shall establish, implement and maintain effective and transparent complaints management policies and procedures for the prompt handling of clients’ or potential clients’ complaints.

- ...
- 1.1A.13 EU UK The complaints management policy shall provide clear, accurate and up-to-date information about the complaints-handling process. This policy shall be endorsed by the firm's management body.
- ...
- 1.1A.14 G The complaints management policy should be set out in a written document e.g. as part of a general fair treatment policy. It should be made available to all relevant staff of the *firm* through appropriate internal channels.
- [**Note:** guideline 1(b) and (c) of the ~~complaints handling guidelines~~ Joint Committee Final Report on guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors-, 27 May 2014, JC 2014 43. See <https://www.eba.europa.eu/documents/10180/732334/JC+2014+43+-+Joint+Committee+-+Final+report+complaintshandling+guidelines.pdf/312b02a6-3346-4dff-a3e4-41e987484e75>]
- 1.1A.15 G The *firm's* senior management should be responsible for the implementation of the complaints management policy and for monitoring compliance with it.
- [**Note:** guideline 1(b) and (c) of the Joint Committee Final Report on guidelines for complaints-handling ~~complaints handling guidelines~~ for the securities (ESMA) and banking (EBA) sectors-, 27 May 2014, JC 2014 43. See <https://www.eba.europa.eu/documents/10180/732334/JC+2014+43+-+Joint+Committee+-+Final+report+complaintshandling+guidelines.pdf/312b02a6-3346-4dff-a3e4-41e987484e75>]
- 1.1A.16 EU UK Investment firms shall enable clients and potential clients to submit complaints free of charge.
- ...
- 1.1A.17 EU UK Investment firms shall establish a complaints management function responsible for the investigation of complaints. This function may be carried out by the compliance function.
- ...
- 1.1A.18 EU UK Investment firms' compliance function shall analyse complaints and complaints-handling data to ensure that they identify and address any risks or issues.
- ...

...

Complaints resolved by close of the third business day

- 1.1A.23 R If a *MiFID investment firm* resolves a *MiFID complaint* by close of business on the third *business day* following the day on which it is received, it may choose to comply with *DISP* 1.1A.24~~EU~~UK to *DISP* 1.1A.27G rather than with *DISP* 1.1A.28R to *DISP* 1.1A.34G.
- 1.1A.24 ~~EU~~UK When handling a complaint, investment firms shall communicate with clients or potential clients clearly, in plain language that is easy to understand and shall reply to the complaint without undue delay.
- ...
- 1.1A.25 ~~EU~~UK Investment firms shall communicate the firm's position on the complaint to clients or potential clients and inform the clients or potential clients about their options, including that they may be able to refer the complaint to an alternative dispute resolution entity, as defined in ~~Article 4(h) of Directive 2013/11/EU of the European Parliament and Council on consumer ADR regulation~~ 4 of the *ADR Regulations*, or that the client may be able to take civil action.
- [**Note:** article 26(5) of the *MiFID Org Regulation*. See the *ADR Directive* at <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>.]
- 1.1A.26 R The explanation given by *MiFID investment firms* to *clients* or potential *clients* in accordance with *DISP* 1.1A.25~~EU~~UK must also:
- ...
- 1.1A.27 G The information regarding the *Financial Ombudsman Service* required to be provided in a communication sent under *DISP* 1.1A.25~~EU~~UK and referred to in *DISP* 1.1A.26R should be set out clearly, comprehensibly, in an easily accessible way and prominently within the text of those responses.
- ...
- ...
- 1.1A.29 ~~EU~~UK When handling a complaint, investment firms shall communicate with clients or potential clients clearly, in plain language that is easy to understand and shall reply to the complaint without undue delay.
- ...
- 1.1A.30 ~~EU~~UK Investment firms shall communicate the firm's position on the complaint to clients or potential clients and inform the clients or

potential clients about their options, including that they may be able to refer the complaint to an alternative dispute resolution entity, as defined in ~~Article 4(h) of Directive 2013/11/EU of the European Parliament and Council on consumer ADR regulation 4 of the *ADR Regulations*~~, or that the client may be able to take civil action.

[**Note:** article 26(5) of the *MiFID Org Regulation*. See the *ADR Directive* at <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF.>]

- 1.1A.31 R The explanation given by *MiFID investment firms* to *clients* or potential *clients* in accordance with *DISP* 1.1A.30EUUK must also:

...

- 1.1A.32 G The information regarding the *Financial Ombudsman Service* required to be provided in a *final response* sent under *DISP* 1.1A.30EUUK and referred to in *DISP* 1.1A.31R should be set out clearly, comprehensibly, in an easily accessible way and prominently within the text of those responses.

...

...

Complaints records

- 1.1A.37 EU Investment firms shall keep a record of the complaints received and the UK measures taken for their resolution.

...

Complaints reporting

- 1.1A.38 EU Investment firms shall provide information on complaints and UK complaints-handling to the relevant competent authorities and, where applicable under national law, to an alternative dispute resolution (ADR) entity.

...

...

- 1.1A.41 G The effect of the *complaints data publication rules* and *DISP* 1.1A.37EUUK is that, for the purposes of complying with those rules, a *firm's complaints* data summary should include relevant data about any *MiFID complaints* received by the *firm*.

~~ADR entities and branches of UK MiFID investment firms in other EEA States~~

- 1.1A.42 R ~~A branch of a UK MiFID investment firm in another EEA State must adhere to one or more relevant ADR entities in that EEA State in respect of consumer disputes concerning investment services and ancillary services. [deleted]~~

~~[Note: article 75 of MiFID]~~

...

1.2 Consumer awareness rules

...

- 1.2.2B R ~~To the extent that it applies to an EMD complaint or a PSD complaint, the information specified in DISP 1.2.1R must be available in an official language of each such EEA State where the respondent offers payment services or issues electronic money, or in another language if agreed between the respondent and the payment service user or electronic money holder. [deleted]~~

~~[Note: article 101 of the Payment Services Directive]~~

...

- 1.2.5A G ~~DISP 1.2.5G does not apply to a branch of a UK UCITS management company in another EEA State. [deleted]~~

...

1.3 Complaints handling rules

Complaints handling procedures for respondents

- 1.3.1 R Effective and transparent procedures for the reasonable and prompt handling of *complaints* must be established, implemented and maintained by: a respondent.

(1) ~~a respondent; and~~

(2) ~~a branch of a UK firm in another EEA State.~~

...

...

Particular procedures for UCITS management companies

- 1.3.1B R A UK UCITS management company must ensure that the procedures it establishes under DISP 1.3.1R for the reasonable and prompt handling of *complaints* require that:

(1) ~~there are no restrictions on unitholders exercising their rights in~~

~~the event that the UCITS is authorised in an EEA State other than the United Kingdom; and~~

- (2) ~~unitholders~~ are allowed to file complaints in any of the official languages of the *Home State* of the *UCITS scheme* or a scheme which, immediately before *exit day*, was an EEA UCITS scheme or of any *EEA State* to which a notification ~~has been~~ was transmitted by the *competent authority* of the *scheme's Home State* in accordance with article 93 of the *UCITS Directive*.

~~[Note: article 15 of the UCITS Directive]~~

...

1.9 Complaints record rule

1.9.1 R A firm, ~~including, in the case of collective portfolio management services for a UCITS scheme or an EEA UCITS scheme, a branch of a UK firm in another EEA State,~~ a payment service provider or an e-money issuer, must keep a record of each *complaint* received and the measures taken for its resolution, and retain that record for:

- (1) at least five years where the *complaint* relates to *collective portfolio management services* for a *UCITS scheme* or a scheme which, immediately before *exit day*, was an EEA UCITS scheme; and

...

from the date the *complaint* was received.

...

...

1.10B Payment services and electronic money complaints reporting

1.10B.1 D ...

- (2) Once a year an *electronic money institution*, ~~an EEA authorised electronic money institution,~~ a *payment institution*, ~~or a registered account information service provider~~ or an EEA registered account information service provider must provide the *FCA* with a complete report concerning complaints received about *payment services* and *electronic money*.

...

...

1 Annex 2G Application of DISP 1 to type of respondent / complaint

~~1.~~ The table below summarises the application of *DISP* 1. Where the table indicates that a particular section may apply, its application in relation to any particular activity or *complaint* is dependent on the detailed application provisions set out in *DISP* 1.

~~2.~~ In some cases the application of *DISP* 1 to *firms* depends on whether responsibility for the matter is reserved under an *EU* instrument to an *incoming EEA firm's Home State regulator*. Reference should be made to the detailed application provisions set out in *DISP* 1.

Type of respondent/complaint	DISP 1.1A Requirements for MiFID investment firms	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules	DISP 1.10B Complaints reporting directions
... firm in relation to <i>MiFID</i> complaints concerning <i>MiFID</i> business carried on from an establishment in the UK (or in an <i>EEA State</i> , in the case of a <i>TP</i> firm with respect to services provided into the <i>United Kingdom</i>)	Applies for <i>retail clients</i> and <i>professional clients</i> , and (where relevant) <i>eligible counterparties</i> (see also <i>DISP</i> 1.1A.6R)	Does not apply	Does not apply	<i>DISP</i> 1.7 applies as set out in <i>DISP</i> 1.1A	Does not apply (but see <i>DISP</i> 1.1A.37EUUK)	Applies as set out in <i>DISP</i> 1.1A	Applies as set out in <i>DISP</i> 1.1A	Does not apply
<i>UK UCITS</i> management company in relation to complaints concerning <i>collective portfolio management</i> services in respect of a <i>UCITS</i> scheme or an <i>EEA UCITS</i> scheme provided under the freedom to provide cross border services	Does not apply	Applies for <i>unitholders</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply

<i>branch of a UK UCITS management company in another EEA State in relation to complaints concerning collective portfolio management services in respect of an EEA UCITS scheme—</i>	Does not apply	Applies for <i>unitholders</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>branch of a UK firm (other than a UK UCITS management company when providing collective portfolio management services in respect of an EEA UCITS scheme) in another EEA State in relation to complaints concerning non-MiFID business</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>branch of a UK firm in another EEA State in relation to MiFID complaints</i>	Applies for <i>retail clients</i> and <i>professional clients</i> , and (where relevant) <i>eligible</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply (but see <i>DISP</i> 1-1A.37EU)	Does not apply

	<i>counterparties</i> (see also <i>DISP</i> 1.1A.6R)	Applies for <i>eligible</i> <i>complainants</i>	Applies for <i>eligible</i> <i>complainants</i>	Applies for <i>eligible</i> <i>complainants</i>	Applies for <i>eligible</i> <i>complainants</i>	Applies for <i>eligible</i> <i>complainants</i>	Applies for <i>eligible</i> <i>complainants</i>	Applies for <i>eligible</i> <i>complainants</i>	Applies for <i>eligible</i> <i>complainants</i>	Does not apply	Does not apply
<i>incoming</i> <i>branch</i> of an <i>EEA firm</i> (other than an <i>EEA</i> <i>UCITS</i> <i>management</i> <i>company</i> when providing <i>collective</i> <i>portfolio</i> <i>management</i> <i>services</i> in respect of an <i>EEA UCITS</i> <i>scheme</i>) in relation to complaints concerning non- <i>MiFID</i> <i>business</i>	Does not apply	Applies for <i>eligible</i> <i>complainants</i>	Applies for <i>eligible</i> <i>complainants</i>	Applies for <i>eligible</i> <i>complainants</i>	Applies for <i>eligible</i> <i>complainants</i>	Applies for <i>eligible</i> <i>complainants</i>	Applies for <i>eligible</i> <i>complainants</i>	Applies for <i>eligible</i> <i>complainants</i>	Applies for <i>eligible</i> <i>complainants</i>	Does not apply	Does not apply
<i>incoming</i> <i>branch</i> of an <i>EEA firm</i> in relation to <i>MiFID</i> <i>complaints</i>	Applies for <i>retail clients</i> and <i>professional</i> <i>clients</i> , and (where relevant) <i>eligible</i> <i>counterparties</i> (see also <i>DISP</i> 1.1A.6R)	Does not apply	Does not apply	Applies as set out in <i>DISP</i> 1.1A	Does not apply (but see <i>DISP</i> 1.1A.37EU)	Applies as set out in <i>DISP</i> 1.1A	Applies as set out in <i>DISP</i> 1.1A	Applies as set out in <i>DISP</i> 1.1A	Applies as set out in <i>DISP</i> 1.1A	Does not apply	Does not apply
<i>incoming</i> <i>branch</i> of an <i>EEA UCITS</i> <i>management</i> <i>company</i> in relation to complaints concerning	Does not apply	Applies for <i>unitholders</i>	Applies for <i>unitholders</i>	Applies for <i>eligible</i> <i>complainants</i>	Applies for <i>unitholders</i>	Applies for <i>eligible</i> <i>complainants</i>	Applies for <i>unitholders</i>	Applies for <i>eligible</i> <i>complainants</i>	Applies for <i>eligible</i> <i>complainants</i>	Does not apply	Does not apply

<i>collective portfolio management services in respect of a UCITS scheme</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>incoming EEA UCITS management company in relation to complaints concerning collective portfolio management services in respect of a UCITS scheme provided under the freedom to provide cross border services</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>incoming EEA firm providing cross border services from outside the UK</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
...									
<i>EEA branch of a UK payment service provider in relation to complaints concerning payment services</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>incoming</i>	Does not apply	Applies for	Applies for	Applies for	Applies for	Applies for	Applies for	Does not apply	Applies for

<i>branch of an EEA authorised payment institution in relation to complaints concerning payment services</i>	Does not apply	<i>eligible complainants</i>	<i>eligible complainants</i>	<i>eligible complainants</i>	<i>eligible complainants</i>	<i>eligible complainants</i>	<i>eligible complainants</i>	<i>payment service users</i>
<i>incoming EEA authorised payment institution providing cross border payment services from outside the UK</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>...</i>								
<i>EEA branch of an authorised electronic money institution or an EEA branch of any other UK electronic money issuer in relation to complaints concerning issuance of electronic money</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>incoming branch of an EEA authorised electronic money</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply

<i>institution in relation to complaints concerning issuance of electronic money</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>incoming EEA authorised electronic money institution providing cross border electronic money issuance services from outside the UK</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>... a full-scope UK AIFM, or a small authorised UK AIFM or an incoming EEA AIFM, for complaints concerning AIFM management functions carried on for an AIF that is a body corporate (unless it is a collective investment scheme)</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>...</i>										

an <i>incoming EEA-AIFM</i> , for <i>complaints concerning AIFM management functions</i> carried on for an <i>authorised AIF</i> or a <i>UK EITF</i> under the <i>freedom to provide cross-border services</i> ...	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants (DISP 1.3.4G does not apply)</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply	Does not apply
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...

2 Jurisdiction of the Financial Ombudsman Service

...

2.1 Purpose, interpretation and application

...

2.1.6A R This chapter applies to a TP firm. This rule demonstrates the contrary intention under GEN 2.2.26R.

...

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:

(1) *regulated activities* (other than ~~*auction regulation bidding and administering a benchmark*~~);

...

2.3.1A R The *Ombudsman* can also consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by:

(1) an *investment firm* authorised under the UK provisions which implemented MiFID when providing *investment services* or *ancillary services*;

(2) a *CRD credit institution* when providing one or more *investment services*;

(3) an *investment firm* authorised under the UK provisions which implemented MiFID or a *CRD credit institution* when selling *structured deposits* to *clients*, or advising *clients* on them;

(4) a *collective portfolio management investment firm* when providing the activities permitted by the UK provisions which implemented article 6(3) of the UCITS Directive; and

(5) a *collective portfolio management investment firm* when providing the activities permitted by the UK provisions which implemented article 6(4) of the AIFMD.

...

...

2.5 To which activities does the Voluntary Jurisdiction apply?

2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:

...

- (c) activities which (at 27 July 2018 on exit day) would be covered by the *Compulsory Jurisdiction*, if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Annex 1G*);

...

...

...

2.5.4A G ~~*DISP 2.5.1R(2)(1)*~~ *DISP 2.5.1R(2)(c)* includes *complaints* about the *EEA* end of 'one leg' *payment services* transactions, i.e. services provided from *EEA* establishments that are subject to the territorial jurisdiction of the *Voluntary Jurisdiction* (see *DISP 2.6.4R(2)*) that also involve a payment service provider located outside the *EEA*. It also includes *complaints* about *payment services* irrespective of the currency of the transaction.

...

2.6 What is the territorial scope of the relevant jurisdiction?

Compulsory Jurisdiction

2.6.1 R (1) The *Compulsory Jurisdiction* covers *complaints* about the activities of a *firm* (including its *appointed representatives*), of a *payment service provider* (including *agents* of a *payment institution*), of an *electronic money issuer* (including *agents* of an *electronic money institution*), of a *CBTL firm*, of a *designated credit reference agency* or of a *designated finance platform* carried on from an establishment;

(a) in the *United Kingdom*; or

(b) in an *EEA State*, in the case of a *TP firm*, a *TA EMI firm*, a *TA PI firm* or a *TA RAISP firm* with respect to services provided into the *United Kingdom*.

(2) ~~The *Compulsory Jurisdiction* also covers *complaints* about:~~

~~(a) *collective portfolio management services* provided by an *EEA UCITS management company* managing a *UCITS scheme*;
and~~

- (b) ~~AIFM management functions provided by an incoming EEA AIFM managing an authorised AIF or a UK ELTIF other than a body corporate that is not a collective investment scheme; [deleted]~~

~~from an establishment in another EEA State under the freedom to provide cross border services.~~

2.6.2 G This:

- (1) ~~includes incoming EEA firms, incoming EEA authorised payment institutions, incoming EEA authorised electronic money institutions and incoming Treaty firms; but~~
- (2) ~~excludes complaints about business conducted in the United Kingdom on a services basis from an establishment outside the United Kingdom other than:~~
- (a) ~~complaints about collective portfolio management services provided by an EEA UCITS management company in managing a UCITS scheme; and~~
- (b) ~~complaints about AIFM management functions provided by an incoming EEA AIFM managing an authorised AIF or a UK ELTIF other than a body corporate that is not a collective investment scheme. [deleted]~~

Voluntary Jurisdiction

2.6.4 R The *Voluntary Jurisdiction* covers only *complaints* about the activities of a *VJ participant* carried on from an establishment:

- (1) in the *United Kingdom*; or
- (2) ~~elsewhere~~ in the *EEA* or Gibraltar if the following conditions are met:
- (a) the activity is directed wholly or partly at the *United Kingdom* (or part of it);
- (b) 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
- (c) the *VJ participant* has notified appropriate regulators in the place in which the establishment is located ~~its Home State~~ of its intention to participate in the *Voluntary Jurisdiction*.

...

2 Annex Regulated Activities for the Voluntary Jurisdiction at 27 July 2018 on exit

1G **day**

This table belongs to *DISP 2.5.1R*.

The activities which were covered by the *Compulsory Jurisdiction* (~~at 27 July 2018~~ on exit day) were:

- (1) for *firms*
 - (a) *regulated activities* (other than ~~auction regulation bidding and administering a benchmark~~)
 - ...
- ...
- (7) for *investment firms* authorised under the UK provisions which implemented MiFID:
 - ...
- ...
- (9) for a *collective portfolio management investment firm*:
 - (a) when providing the activities permitted by the UK provisions which implemented article 6(3) of the UCITS Directive; and
 - (b) when providing the activities permitted by the UK provisions which implemented article 6(4) of the AIFMD;
 - ...
- ...

The activities which (~~at 27 July 2018~~ on exit day) were *regulated activities* were, in accordance with section 22 of the *Act* (Regulated Activities), any of the following activities specified in Part II of the *Regulated Activities Order* (with the addition of ~~auction regulation bidding and administering a benchmark~~):

- ...
- (22 *managing a UK UCITS* (article 51ZA);
A)
- ...

...

3 **Complaint handling procedures of the Financial Ombudsman Service**

...

3.1 Purpose, interpretation and application

...

3.1.6 R This chapter applies to a TP firm. This rule demonstrates the contrary intention under GEN 2.2.26R.

...

4 Standard terms

...

4.2 Standard terms

...

4.2.6 R The following rules in FEES apply to VJ participants as part of the standard terms, but substituting 'VJ participant' for 'firm':

...

(6) FEES 5.4.1R (information) but substituting:

- (a) 'FOS Ltd' for 'the FCA'; ~~and~~
- (b) 'FEES 5 Annex 2R' for 'FEES 5 Annex 1R'; and
- (c) the following for FEES 5.4.1R(1):

(A) A VJ participant must provide the FOS Ltd by the end of February each year (or, if the VJ participant has become subject to the Financial Ombudsman Service part way through the financial year, by the date requested by the FOS Ltd) with a statement of:

(i) the total amount of relevant business (measured in accordance with the appropriate tariff base(s)) which it conducted; or

(ii) in the case of firms in industry blocks 2 and 4, the gross written premium for fees purposes as defined in FEES 4 Annex 1AR (unless FEES 5.4.1R(1A) applies),

as at or in the year to 31 December of the previous year as appropriate, in relation to the tariff base for each of the relevant industry blocks set out in FEES 5 Annex 2R;

...

...

TP 1 Transitional provisions

1.1 Transitional provisions table

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
46A	<u>DISP 1</u> <u>DISP 2</u> <u>DISP 3</u> and <u>FEES 5</u>	<u>R</u>	<u>DISP 1, DISP 2, DISP 3 and FEES 5 only apply to a TP firm, a TA EMI firm, a TA PI firm and a TA RAISP firm in respect of complaints under the Compulsory Jurisdiction about acts or omissions that occurred on or after exit day.</u>	<u>From exit day</u>	<u>Amended with effect from exit day</u>

...

Sch 1 Record keeping requirements

...

Sch
1.2G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<u>DISP 1.1A.37EUUK</u>	<i>MiFID complaints</i> subject to <i>DISP 1.1A.</i>	Each <i>MiFID complaint</i> received and the complaint handling measures taken to address the <i>MiFID complaint</i> and for its resolution [Note: Note: see article	Not specified [Note: (see article 26(1), article 72 and Annex 1 of the <i>MiFID Org Regulation</i>)]	Not specified [Note: (see article 72 of the <i>MiFID Org Regulation</i>)]

		26(1), article 72, and Annex 1 of the <i>MiFID Org Regulation</i>]		
...				

Part 2: Comes in force on 1 April 2019, immediately after the changes made by the Claims Management Instrument 2018 (FCA 2018/56) come into force, or on exit day (immediately after Part 1 of Annex B of this instrument) as defined in the European Union (Withdrawal) Act 2018, whichever date is the later.

[*Editor's note:* the following existing provisions in DISP are deleted and replaced by the corresponding text below. For the avoidance of doubt deleted text is not shown as struck through. The new text is underlined.]

1 Treating complainants fairly

1.1 Purpose and application

Purpose

1.1.1 G This chapter contains rules and guidance on how respondents should deal promptly and fairly with complaints in respect of business:

- (1) carried on from establishments in the *United Kingdom*; or
- (2) carried on from establishments in an *EEA State*, in the case of a *TP firm*, a *TA EMI firm*, a *TA PI firm* or a *TA RAISP firm* with respect to services provided into the *United Kingdom*; or
- (3) carried on in *Great Britain*, in respect of *regulated claims management activities* (see *PERG 2.4A*).

1.1.1A G This chapter is also relevant to those who may wish to make a *complaint* or refer it to the *Financial Ombudsman Service*.

...

2 Jurisdiction of the Financial Ombudsman Service

...

2.5 To which activities does the Voluntary Jurisdiction apply?

2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:

...

- (2) it relates to an act or omission by a VJ participant in carrying on one or more of the following activities:

...

- (c) activities, other than regulated claims management activities and activities ancillary to regulated claims management activities, which (at 1 April 2019) would be covered by the Compulsory Jurisdiction, if they were carried on from an establishment in the United Kingdom (these activities are listed in DISP 2 Annex 1G);

2.6 What is the territorial scope of the relevant jurisdiction?

Compulsory Jurisdiction

- 2.6.1 R (1) The Compulsory Jurisdiction covers complaints about the activities of a firm (including its appointed representatives), of a payment service provider (including agents of a payment institution), of an electronic money issuer (including agents of an electronic money institution), of a CBTL firm, of a designated credit reference agency or of a designated finance platform which:
- (a) (except for regulated claims management activities and activities ancillary to regulated claims management activities) are carried on from an establishment in the United Kingdom; or
- (b) are carried on from an establishment in an EEA State, in the case of a TP firm, a TA EMI firm, a TA PI firm or a TA RAISP firm with respect to services provided into the United Kingdom; or
- (c) are, or are ancillary to, regulated claims management activities.

[Editor's note: DISP 2.6.2G is deleted in Part 1 of this instrument with effect from exit day as defined in the European Union (Withdrawal) Act 2018. If exit day is before the 1 April 2019, the effect of this deletion is that the amendments made to DISP 2.6.2G by instrument FCA 2018/56 could not take effect. We are showing the provision as [deleted] here for clarity and completeness.]

- 2.6.2 G [deleted]

...

[*Editor's note:* the following existing provisions in DISP 2 Annex 1G are deleted and replaced by the corresponding text below. For the avoidance of doubt deleted text is not shown as struck through. The new text is underlined.]

2 **Regulated Activities for the Voluntary Jurisdiction at 1 April 2019**
Annex
1G

...

The activities which were covered by the *Compulsory Jurisdiction* (at 1 April 2019) were:

...

The activities which (at 1 April 2019) were *regulated activities* were, in accordance with section 22 of the *Act* (Regulated Activities), any of the following activities specified in Part II and Parts 3A and 3B of the *Regulated Activities Order* (with the addition of *administering a benchmark*):

...