



No.21

Handbook Notice

April 2015

Financial Conduct Authority



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Handbook Notice 021

This Handbook Notice introduces the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative powers on 24 March, 4 April and 23 April 2015, and rules also made by the Financial Ombudsman Service Ltd on 20 April 2015. It also contains information about other publications relating to the Handbook and, if appropriate, lists minor corrections made to previous instruments made by the Board.

Contact names for the individual modules are listed in the relevant Consultation Papers and Policy Statements referred to in this Notice.

General comments and queries on the Handbook can be addressed to

Melanie Purdie

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Email: mel.purdie@fca.org.uk

However, queries on specific requirements in the Handbook should be addressed first to your normal supervisory contact in the FCA. For most firms this will be the FCA's Firm Contact Centre:

Tel: 0845 606 9966

Fax: 020 7066 0991

Email: firm.queries@fca.org.uk

Post: Customer Contact Centre
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

1. Overview

Legislative changes

- 1.1** On 24 March 2015, the FCA Board made changes to the Handbook in the instrument listed below.

CP	Title of instrument	Instrument No.	Changes effective
11/22; 11/23; 11/25; 11/27; 12/13; 14/25	Solvency II Instrument 2015	2015/16	1.1.16
14/28	Prudential Sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (Amendment) Instrument 2015	2015/17	26.4.15

- 1.2** On 25 March 2015, the FCA Board made changes to the Handbook in the instrument listed below.

CP	Title of instrument	Instrument No.	Changes effective
14/20	Mortgage Credit Directive Instrument 2015	2015/18	21.9.15; 21.12.15; 21.3.16
13/14	Fees (Mortgage Credit Directive) Instrument 2015	2015/21	1.4.16; 20.4.15

- 1.3** On 4 April 2015, the FCA Board made changes to the Handbook in the instrument listed below.

CP	Title of instrument	Instrument No.	Changes effective
N/A	Compulsory Jurisdiction Rules (Advising on Conversion or Transfer of Pension Benefits) Instrument 2015	2015/22	6.4.15

- 1.5** On 20 April 2015, the Board of the Financial Ombudsman Service (FOS) Ltd made changes to the Handbook in the instruments listed below.

CP	Title of instrument	Instrument No.	Changes effective
14/30	Alternative Dispute Resolution Directive Instrument 2015 (also made by the FCA)	2015/1	1.7.15
N/A	Voluntary Jurisdiction Rules (Advising on Conversion or Transfer of Pension Benefits) Instrument 2015 (also approved by the FCA)	2015/2	24.4.15

- 1.6** On 23 April 2015, the FCA Board made changes to the Handbook in the instruments listed below.

CP	Title of instrument	Instrument No.	Changes effective
14/27	Training and Competence Sourcebook (Qualifications Amendment No 12) Instrument 2015	2015/23	24.4.15
15/8	Client Asset Sourcebook (Amendment No 2) Instrument 2015	2015/24	1.5.15; 1.6.15
14/30	Alternative Dispute Resolution Directive Instrument 2015 (also made by the FOS Ltd)	2015/25	1.7.15

Summary of changes

- 1.7** The legislative changes referred to above are listed and briefly described in Chapter 2 of this Notice.

Feedback on responses to consultations

- 1.8** Feedback to consultations are either set out in Chapter 3 of this Notice or published in separate Policy Statements.

FCA Board dates for 2015

- 1.9** The table below contains a list of forthcoming FCA board meetings for 2015. These dates are subject to change without prior notice.

May	No Board
June	4 and 18
July	2 and 30
August	No Board
September	24
October	22
November	4 and 5
December	3

2. Summary of changes

- 2.1** This chapter briefly describes FCA Handbook changes made by the Board on 24 March, 25 March, 4 April and 23 April 2015. It also describes changes made by the Financial Ombudsman Service Board on 20 April 2015. Where relevant, it also refers to the development stages of that material, enabling readers to look back at developmental documents if they wish. For information on changes made by the Prudential Regulation Authority (PRA) please see <http://www.bankofengland.co.uk/pru/Pages/publications/default.aspx>

Solvency II Instrument 2015 (FCA 2015/16)

- 2.2** Following consultation in CP11/22, CP11/23, CP11/25, CP11/27, CP12/13 and CP14/25, the FCA Board has made changes to the FCA Handbook sections listed below:

Glossary of definitions

SYSC 1, 12

COND 2

FIT 1

GENPRU 1, 2, 3

BIPRU 5

INSPRU 1, 3, 7, 8, TP 1, TP 3, Sch 1, Sch 6

IPRU(FSOC) 1, 2, 7

IPRU(INS) 1, Annex 11

IPRU(INV) 4, 5, 9, 13

COBS 1, 4, 13, 14, 15, 16, 20, 21, Sch 1, Sch 2

ICOBS 1, 2, 4, 6, 7, 8

SUP 3, 4, 6, 11, 13, 13A, 14, 16, 18, App 2, App 3

COMP 14

RCB 1

- 2.3** In summary, this instrument implements the Solvency II Directive. This work has been carried out in conjunction with changes to the PRA Rulebook. The main purpose of Solvency II is to increase consumer protection by requiring member states to ensure firms better assess the risks that they run and hold capital against those risks.
- 2.4** This instrument comes into force on **1 January 2016**. Feedback to this consultation was published in a separate policy statement.¹

¹ PS15/8 *Solvency II* (March 2015)

Prudential Sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (Amendment) Instrument 2015 (FCA 2015/17)

- 2.5** Following consultation in CP14/28², the FCA Board has made changes to the FCA Handbook sections listed below.

**Glossary of definitions
MIPRU 4**

- 2.6** In summary, this instrument simplifies text and cross-references in MIPRU to make provisions easier for non-bank lenders (NBLs) to understand.

- 2.7** This instrument comes into force on **26 April 2015**. Feedback to this consultation was published in a separate policy statement.³

Mortgage Credit Directive Instrument 2015 (FCA 2015/18)

- 2.8** Following consultation in CP14/20⁴, the FCA Board has made changes to the FCA Handbook sections listed below:

**Glossary of definitions
TC 2, 3, App 1, App 2, App 4, TP 8, TP 9
MIPRU 1, 2, 3, 4, TP
MCOB 1, 2, 2A, 3, 3A, 3B, 4, 4A, 5, 5A, 6, 6A, 7, 7A, 7B, 8, 9, 10A, 11, 11A, 12, 13,
TP 1, Sch 1
SUP 12, 13, 13A, 14, 15, 16, App 3, TP 1
COMP 14, TP 1
PROF 5
PERG 2, 4, 7, 8 and 14
RPPD**

- 2.9** In summary, this instrument implements the Mortgage Credit Directive which aims to increase consumer protection with respect to first and second charge mortgages.

- 2.10** Part of this instrument comes into force on **21 September 2015**, part on **21 December 2015** and the remainder of the instrument comes into force on **21 March 2016**. Feedback to this consultation was published in a separate policy statement.⁵

Fees (Mortgage Credit Directive) Instrument 2015 (FCA 2015/21)

- 2.11** Following consultation in CP13/14⁶, the FCA Board has made changes to the FCA Handbook sections listed below:

**Glossary of definitions
FEES 3 Annex 1R, 4 Annex 1AR**

² CP14/24 *Charges in workplace personal pension schemes* (October 2014)

³ PS15/10 *MIPRU Chapter 4 Simplification: Feedback on CP14/28 and final rules* (March 2015)

⁴ CP14/20 *Implementing the Mortgage Credit Directive and the new regime for second charge mortgages* (September 2014)

⁵ PS15/9 *Implementation of the Mortgage Credit Directive and the new regime for second charge mortgages, feedback to CP14/20* (March 2015)

⁶ CP13/14 *Regulatory fees and levies: policy proposals for 2014/15* (October 2013)

- 2.12** In summary, this instrument implements fees for second charge mortgage lending and broking. It also amends the definition of credit-related regulated activity to cover the new activity of ‘advising on regulated credit agreements for the acquisition of land’.
- 2.13** Part of this instrument comes into force on **1 April 2015** and the remainder of the instrument comes into force on **20 April 2015**. Feedback to this consultation was published in a separate policy statement.⁷

Training and Competence Sourcebook (Qualifications Amendments No 12) Instrument 2015 (FCA 2015/23)

- 2.14** Following consultation in CP14/27⁸, the FCA Board has made changes to the FCA Handbook section listed below:
TC Appendix 4E
- 2.15** This instrument implements a number of additions and amendments to the appropriate qualifications lists in TC Appendix 4E.
- 2.16** This instrument comes into force on **24 April 2015**. Feedback to this consultation is provided in Chapter 3 of this Notice.

Client Asset Sourcebook (Amendment No 2) Instrument 2015 (FCA 2015/24)

- 2.17** Following consultation in CP15/8, the FCA Board has made changes to the FCA Handbook sections listed below:
Glossary of definitions
CASS 6, 7, 7A, 11, TP 1
CONC 12
- 2.18** In summary, this instrument makes changes to the client money and custody assets provisions in the Handbook to ensure that there are appropriate levels of consumer protection.
- 2.19** Part of this instrument comes into force on **1 May 2015** and the remainder of the instrument comes into force on **1 June 2015**. Feedback to this consultation is provided in Chapter 3 of this Notice.

Alternative Dispute Resolution Directive Instrument 2015 (FCA 2015/25; FOS 2015/1)

- 2.20** Following consultation in CP14/30⁹, the FCA Board has made changes to the FCA Handbook sections listed below:
Glossary of definitions
DISP 1, 2, 3, TP 1

⁷ PS15/9 *Implementation of the Mortgage Credit Directive and the new regime for second charge mortgages, feedback to CP14/20* (March 2015)

⁸ CP14/27 *Quarterly Consultation (No 7)* (December 2014)

⁹ CP14/30 *Improving complaints handling* (December 2014)

- 2.21** In summary, this instrument makes changes to implement the ADR Directive, which were explained in Chapter 5 of CP14/30. The purpose of this handbook notice and the above instrument is to ensure that our rules comply with the ADR Directive. CP14/30 also contained policy proposals to improve complaints handling. We plan to issue a policy statement for Chapters 2 to 4 of CP14/30 in the summer.
- 2.22** This instrument comes into force on **9 July 2015**. Feedback to this consultation is published in Chapter 3 of this Notice.

Voluntary Jurisdiction Rules (Advising on Conversion or Transfer of Pension Benefits) Instrument 2015 (FOS 2015/2)

- 2.23** The Financial Ombudsman Service Board has made changes to the following section of the Handbook, as approved by the FCA Board, as listed below:
- DISP 2**
- 2.24** In summary, these changes have been made to align the voluntary jurisdiction rules with changes to the Regulated Activities Order (RAO).
- 2.25** This instrument comes into force on **24 April 2015**.

3. Consultation feedback

- 3.1** This chapter provides feedback on consultations that do not have a separate Policy Statement published by the FCA.

Chapter 5 of CP14/27 Quarterly Consultation (No 7)

Training and Competence Sourcebook (Qualifications Amendments No 12) Instrument 2015

Background

- 3.2** The Training and Competence sourcebook (TC) sets out the qualification requirements for individuals carrying out certain retail activities, for example, advising on retail investment products. We consult for one month each time a qualification is added or amended on the list of appropriate qualifications.

Summary of proposals

- 3.3** In CP14/27 we proposed the following amendments to the list of appropriate qualifications in TC Appendix 4E:
- adding the following two qualifications to the appropriate qualifications lists:
 - Calibrand / Chartered Institute of Bankers in Scotland - Diploma in Professional Financial Advice (post 30 April 2014)
 - Chartered Institute for Securities and Investment (CISI) - Investment Operations Certificate - Platforms, Wealth Management and Service Providers
 - amending the details for the following Chartered Institute of Bankers in Scotland qualifications on the appropriate qualifications lists as follows:
 - Diploma in Investment Planning (Existing Adviser) (Post 2010 examination standards and Pre 1 June 2015)
 - Diploma in Investment Planning (New Adviser) (Post 2010 examination standards and Pre 1 June 2015)
 - Diploma in Investment Planning (Retail Banking) (New Adviser) (Post 2010 examination standards and Pre 1 June 2015)
 - Diploma in Investment Planning (Retail Banking) (Existing Adviser) (Post 2010 examination standards and Pre 1 June 2015), and

- Diploma in investment planning (work based assessment) (Pre 1 June 2015)
- amending the details for the following Calibrand / Scottish Qualifications Authority qualification on the appropriate qualifications lists as follows:
 - Diploma in Professional Financial Advice (Pre 1 August 2018)

Feedback

- 3.4** We received one industry response to the proposals which was seeking clarification about the underlined dates in the draft instrument. It was considered that the dates could be read as meaning that the qualification was only adequate prior to the dates stated.

Our response

- 3.5** A qualification will be an appropriate qualification if it appears in the appropriate qualification tables and is attained within the relevant time period where one is indicated by the dates set out in the qualification column. We have inserted a note to clarify.
- 3.6** The instrument included in this Handbook Notice does not differ significantly from the draft that we consulted on.

Cost benefit analysis and compatibility statement

- 3.7** Both the cost benefit analysis and compatibility statement remain as published in CP14/27.

Equality and diversity issues

- 3.8** We continue to believe these changes do not give rise to any discrimination. We received no comments during consultation on any equality issues that respondents could foresee.
- 3.9** The changes made by this instrument are listed in Chapter 2 of this Notice.

CP14/30 Improving Complaints Handling

Alternative Dispute Resolution Directive Instrument 2015 (FCA 2015/25)

Background

- 3.10** The Alternative Dispute Resolution Directive (the ADR Directive) is intended to give consumers and traders access to out-of-court schemes that can help settle contractual disputes that arise out of the purchase and sale/supply of goods or services. The Directive applies more broadly than financial services and requires the UK government to ensure that dispute resolution, provided by a qualifying ADR body, is available for any dispute concerning contractual obligations between a consumer and a business, although the use of ADR is not mandatory for firms under the ADR Directive.
- 3.11** In December 2014 we consulted jointly with the Financial Ombudsman Service on changes to the Dispute Resolution: Complaints sourcebook (DISP) within the FCA's Handbook to implement the ADR Directive. Member States have until 9 July 2015 to implement the Directive and respondents to the consultation paper asked us to clarify the rule changes required to implement the Directive as soon as possible.

- 3.12** This Handbook Notice covers changes to DISP to implement the ADR Directive, which were explained in Chapter 5 of CP14/30. CP14/30 also contained policy proposals to improve complaints handling. We plan to issue a policy statement for Chapters 2 to 4 of CP14/30 in the next quarter.
- 3.13** The following amendments to DISP to implement the ADR Directive were covered in the consultation paper:
- 3.14** Amendments to rules made by the FCA:
- referring complaints to the ombudsman service
 - information requirements for firms
 - definition of consumer
 - ombudsman service annual reports
- 3.15** Amendments to rules made by the ombudsman service
- grounds for dismissal
 - test cases
 - resolution of complaints by the ombudsman service
 - changes to the voluntary jurisdiction rules to align them with the changes the FCA proposes to make to the compulsory jurisdiction rules
- 3.16** Chapter 5 of CP14/30 also asked for feedback on a proposed amendment to DISP relating to the timing of complaints procedure disclosure for intermediaries within the scope of the Mortgage Credit Directive. Feedback on this question (question 18) will be dealt with in the consumer buy-to-let Policy Statement which we expect to publish in the summer.
- 3.17** A summary of the feedback we received from stakeholders on each of the themes in the ADR chapter of CP14/30 is set out below. We also explain how we have decided to proceed in the light of this feedback.
- 3.18** The instrument does not differ significantly from the instrument consulted upon but some minor amendments have been made which are noted in the text.
- 3.19** As indicated in CP14/30, at the time of publication of the consultation, the Government had not yet made the regulations implementing the ADR Directive in the UK. Regulations have now been published and are due to come into force on 9 July 2015. These regulations have also affected the form of the final rules.

Timing for the rule changes

- 3.20** We consulted on the basis that firms would be required to introduce some of the changes in mid-May. We have now changed that approach so that firms are only required to comply with the new rules from 9 July 2015 and only in relation to complaints received from that date onwards.

Referring complaints to the ombudsman service (question 9 in CP14/30)

- 3.21** The aim of our proposals was to bring our rules into line with the provisions of the ADR Directive, which contains a list of those grounds on which an ADR entity can refuse to deal with a dispute. Our proposals would enable us to retain the substance of the current rules by allowing firms and consumers to agree to the ombudsman service considering complaints where the ombudsman would otherwise be precluded from doing so by our rules. This is consistent with the ADR Directive, which does not make participation in alternative dispute resolution mandatory for firms.
- 3.22** In CP14/30 we proposed an amendment to DISP 2.8.1R to enable the ombudsman service to consider complaints where the firm has not itself investigated the complaint, but only if both the firm and the consumer consent. We highlighted that firms should be aware that if they consent to the ombudsman service considering a complaint before they have investigated it, they would still need to comply with the relevant rules in DISP 1. For example, if the ombudsman service does not resolve the complaint within eight weeks, the firm must send the consumer a final response or other response for the purposes of DISP 1.6.2R by the end of the eight-week period. We asked:

Q9: *Do you agree with our proposed amendments to DISP 2.8.1R?*

Feedback

- 3.23** The majority of respondents agreed with our proposed amendments to DISP 2.8.1R or did not object on the grounds that both the firm and the consumer would have to agree to the ombudsman service considering the complaint before the firm had investigated it. A number of firms told us in their responses that it was unlikely that they would agree to the ombudsman service considering a complaint before they had had the chance to investigate and resolve it.
- 3.24** Some industry respondents asked for clarification about how the ombudsman service would report these complaints, in terms of change of outcome, and asked whether a case fee would be payable. A number of industry respondents expressed strong concerns about the requirement for firms to comply with DISP 1 if they had agreed that the ombudsman service could consider the complaint and argued that this could lead to confusion for consumers and an unnecessary duplication of resources, eg, both the firm and the ombudsman service carrying out a dual investigation. A few respondents expressed concerns about the additional pressure this would put on the ombudsman service's resources.

Our response

- 3.25** It is our view that the proposed rule change implements the ADR Directive in a way which maintains the current procedures for access to the ombudsman service, unless firms agree otherwise, and could be beneficial to vulnerable consumers, for example if the ombudsman service is able to act quickly to resolve complaints about high-cost, short-term consumer credit.
- 3.26** Under the ombudsman service's current charging arrangements and data publication processes, complaints referred to the ombudsman where DISP 2.8.1R(4) applies will be 'chargeable cases' and will be taken into account in the ombudsman's published data. However, in the future, the ombudsman service may consider whether it is appropriate to make specific funding rules or reporting changes for these cases.
- 3.27** We have considered suggestions that firms should not be required to comply with the relevant rules in DISP 1 if they have agreed to let the ombudsman service consider a complaint before the firm has investigated it. Our approach ensures that consumers do not receive a slower response to their complaint than if they had not referred their complaint straight to the ombudsman

service. We consider that it would be very unlikely that the ombudsman service would agree to consider complaints it did not think could be resolved within a short timeframe and we would expect firms to liaise closely with them to resolve the complaint as soon as possible and before the eight-week deadline expires. If a firm is concerned that allowing the ombudsman service to consider a complaint (before the firm has investigated it) could lead to a duplication of resources, it can refuse to consent.

- 3.28** We intend to make the rules as consulted on, but we have removed the requirement for the ombudsman service to inform the complainant of his/her ability to complain to the firm. The ombudsman service will forward the complaint that it has received from the consumer to the firm when it asks the firm if it is happy for it to consider the case.

Time limits for referring complaints to the ombudsman service (questions 10 and 11 in CP14/30)

- 3.29** In CP14/30 we set out our proposals to preserve the current time limits in our rules. As explained above, the ADR Directive does not make firm participation in ADR procedures mandatory so we proposed distinguishing between complaints that are made:

- a. within the specified time limits – firms would be required to submit to the jurisdiction of the ombudsman service for such complaints, and
- b. outside the specified time limits – submission to the jurisdiction of the ombudsman service would be voluntary (ie, the firm would need to consent to the ombudsman service considering the complaint), except for certain limited reasons, such as where the failure to comply was as a result of exceptional circumstances.

- 3.30** We also proposed a new rule which provides that if a firm consents to the ombudsman service considering a complaint that is made outside the time limits, it may not subsequently withdraw that consent.

- 3.31** We asked:

Q10: *Do you agree with our proposal to retain the existing six-month and six- and three-year time limits for complaints made to the ombudsman service?*

Q11: *Do you agree that once a firm has consented to the ombudsman service considering a complaint it should not be permitted to withdraw consent?*

Feedback

- 3.32** The vast majority of respondents agreed with our proposals to retain the existing six-month and six- and three-year time limits for complaints made to the ombudsman service. One consumer organisation questioned why we were not extending the six-month time limit for referring complaints to the ombudsman service to 12 months and suggested that this approach could leave us open to a legal challenge. Some industry respondents welcomed our commitment to consider the case for a 15-year time limit on complaints referred to the ombudsman service.

- 3.33** The vast majority of respondents agreed that, to provide certainty for both consumers and the ombudsman service, once a firm has consented to the ombudsman service considering a complaint, it should not be permitted to withdraw consent. Some industry respondents suggested that firms should be permitted to withdraw consent in exceptional circumstances, for example where new evidence comes to light which would materially affect the firm's position.

Our response

- 3.34** We intend to proceed with the proposals in the CP to preserve the current time limits in the rules. When we reviewed our existing rules to check whether they complied with the Directive, we decided that it was not necessary to amend the current time limit rules if the changes we consulted on are applied.
- 3.35** Under the current rules in DISP 2.8.2R, the ombudsman service cannot look at a complaint if it is referred either more than six months after the firm sent the complainant its 'final response' or redress determination, or six years from when the act complained of happened (or three years from when the complainant should have reasonably been aware of a problem). Under the ADR Directive, an ADR entity can only refuse to deal with a dispute if the consumer has taken more than a year from the date the complaint was made to the firm to refer it to the ADR entity.
- 3.36** Our view is that our proposed rules would comply with the Directive and provide a higher level of consumer protection than required under the Directive – because firms are required to use the ombudsman service if the complaint is referred within the relevant time limits but can consent to the ombudsman service considering complaints referred outside those time limits. Firms will also be required to tell consumers in final response letters whether they consent to the ombudsman service considering a complaint if it is referred more than six months after the date of the final response.
- 3.37** In relation to the six-month time limit issue, it is our view that the costs to firms of extending the time limit to 12 months would potentially outweigh the benefits to consumers. There is no evidence that the current six-month time limit in our rules is too short or that it causes detriment to consumers.
- 3.38** We also intend to proceed with our proposal to introduce a new rule (DISP 2.8.2AR) that if a firm consents to the ombudsman service considering a complaint outside the time limits, it may not subsequently withdraw that consent. This rule will create certainty for consumers and ensure that the ombudsman service does not waste resources reviewing a case when a firm could subsequently withdraw consent. If a firm considers that possible time limit issues could arise in relation to a particular complaint, it can refuse to provide consent for the ombudsman service to consider the complaint in the response to the consumer (rather than providing consent then subsequently withdrawing it).
- 3.39** We have also brought the proposed rule on consent in DISP 2.8.2R(5) into line with the changes made by the Government's regulations implementing the ADR Directive to section 404B and paragraph 13 of Schedule 17 of the Financial Services and Markets Act 2000 (FSMA). These changes are due to come into force on 9 July 2015. The changes to FSMA mean that, where a complaint falls within the scope of a consumer redress scheme, the relevant firm may not consent to waive the time limits under DISP 2.8.2R(5) unless the firm and the consumer agree to disapply the consumer redress scheme for that particular complaint.

Information requirements for firms (question 12 in CP14/30)

- 3.40** Article 13 of the ADR Directive requires firms to tell consumers about the availability of the ombudsman service and to tell consumers whether the firm is obliged to use it to resolve disputes (or whether the firm will make use of it if it is not required to do so). We consulted on wording that firms will be required to use in their responses to consumers to inform a consumer that they will or will not consent to the ombudsman service considering a complaint if it is referred outside the relevant time limits. We asked:

Q12: *Do you have any comments on the proposed wording firms will be required to use in final response letters?*

Feedback

3.41 All of the consumer respondents and some respondents from firms thought that the proposed wording was clear. A number of industry respondents expressed concerns that the wording was lengthy, confusing, not in customer-friendly language and inconsistent with an individual firm's style or 'tone of voice'. Some respondents provided suggestions for alternative wording, but most of the suggestions did not appear to comply with the Directive because they did not specify if the firm consented to using the ombudsman service if it was not required to do so.

Our response

3.42 The Directive will require firms to inform consumers whether or not they will consent to the ombudsman service considering a complaint if the firm is not required to make use of it (for example, because the complaint is referred to the ombudsman service outside the relevant time limits). We are pleased that consumer representative bodies considered the draft wording to be clear. It is our view that prescribed wording will mitigate the risk of firms developing their own wording which might be confusing to consumers or not comply with the Directive (particularly given that most of the alternative wording suggested by respondents did not appear to comply with the Directive).

3.43 However, following the consultation paper, we have reviewed the wording that firms will be required to use in their responses. We have also made clear that where appropriate wording for a firm's circumstances has not been specified (for example, the new wording enables firms to consent to certain time limits but not others), firms must adapt the appropriate wording as necessary. We have also moved the appropriate wording to an annex. The rule changes that will come into force on 9 July apply to written responses and final responses. We plan to provide feedback on our proposal to introduce a summary resolution communication in a policy statement in the summer.

Definition of consumer (question 13 in CP14/30)

3.44 A consumer is defined in the ADR Directive as 'any natural person who is acting for purposes which are outside his trade, business, craft or profession'. In CP14/30 we proposed amendments to DISP 2.7.9AR to ensure that the term 'eligible complainants' in our rules is widened to include all natural persons who are acting for purposes wholly or mainly outside their trade, business, craft or profession. The rule changes allow the following to be eligible complainants:

- professional clients and eligible counterparties, where the person is an individual acting for purposes outside his trade, business, craft or profession.

3.45 We asked:

Q13: Do you agree with our proposal to extend the definition of eligible complainant so it is consistent with the ADR Directive?

Feedback

3.46 The majority of respondents agreed with our proposal to extend the definition of eligible complainant to ensure consistency with the Directive. A number of industry respondents expressed concerns about extending the definition to professional clients and eligible counterparties where the individual is acting for purposes outside their trade, business, craft or profession. Some respondents asked us why the change was made to the exception rather than the actual rule and to provide practical examples, such as what constitutes an eligible counterparty.

Our response

3.47 We proposed both amending the definition of 'consumer' to align it with the definition in the ADR Directive and removing the exception to eligibility for professional clients and eligible counterparties contained in DISP 2.7.9R (but only insofar as such complainants are consumers within the meaning of the ADR Directive).

3.48 We consider it necessary to make this change to implement the ADR Directive. Therefore, we intend to proceed with our proposal to extend the definition of eligible complainant so it is consistent with the ADR Directive. We also intend to amend the definition of 'consumer' to highlight the link with the definition in the Government's regulations implementing the ADR Directive in the UK. We do not intend to provide additional guidance or practical examples – client classification is covered in our rules in the Conduct of Business sourcebook (COBS).

Ombudsman service annual reports (question 14 in CP14/30)**Our response**

3.49 In CP14/30 we consulted on new rules in DISP 5 to transpose the relevant provisions in article 7(2) of the ADR Directive which requires the ombudsman service to include certain information in its annual reports. Since the consultation paper was published, the Department for Business, Innovation and Skills (BIS) has laid the first set of implementing regulations. The regulations set out the information that annual reports must contain and will apply to the ombudsman service if it becomes certified under the Directive, so we do not intend to make the rules in DISP 5 that we consulted on.

Grounds for dismissal (question 15 in CP14/30)

3.50 In CP14/30 we proposed to revise the dismissal grounds in DISP 3 to ensure that they comply with the Directive. We asked:

Q15: Do you agree with our proposed revision of the dismissal grounds in order to bring them in line with the Directive?

Feedback

3.51 Respondents broadly agreed with the proposed changes to the dismissal grounds, which will apply to complaints referred to the ombudsman service from 9 July 2015.

3.52 Some respondents were concerned about what they saw as an expansion of the ombudsman's remit through the reduction in the number of dismissal grounds, in particular through the removal of DISP 3.3.4R(11) which permits the ombudsman to dismiss a complaint about the legitimate exercise of a firm's commercial judgement.

Our response

3.53 The reduction in the number of dismissal grounds does not alter the scope of the ombudsman's jurisdiction to consider complaints.

3.54 Currently, the dismissal grounds give the ombudsman the discretion to decide whether it is appropriate to dismiss a complaint without considering the merits for one of the permitted reasons, or to proceed to determine the merits of the complaint. Going forward, to comply with the Directive, the ombudsman service will only have the discretion to dismiss a complaint in the more limited circumstances permitted by the ADR Directive.

Test cases (question 16 in CP14/30)

3.55 Under the existing rules, the ombudsman service has the power to dismiss a complaint in certain circumstances so that it may be considered as a test case. This goes beyond the procedural rules

expressly permitted by article 5(4). In CP14/30 we proposed amending this rule so that the ombudsman service may only invoke the test case procedures with the consumer's consent. We asked:

Q16: Do you agree with the proposal to amend the test case rules in this way?

Feedback and our response

- 3.56** Respondents broadly agreed with our proposal to require the consent of both parties before invoking the test case procedures. The changes will bring the test case procedure in line with the ADR Directive. Several respondents raised concerns about what would happen if a consumer did not consent but, as other respondents noted, the test case procedure is rarely used. Given the costs safeguards for consumers, we believe it would be unlikely for a consumer not to consent. But ultimately we consider the change necessary so that the test case rule is consistent with the ADR Directive.

Resolution of complaints by the ombudsman service

- 3.57** In CP14/30 we proposed to amend current rules to clarify that, in cases where the ombudsman service does not receive the requested information from the complainant or where the complainant fails to respond within the specified time limits, the ombudsman service may decide to treat the complaint as withdrawn. We asked:

Q17: Do you have any comments on the proposed wording for this rule?

Feedback and our response

- 3.58** Respondents broadly agreed with the proposal to amend DISP 3.5.13R and DISP 3.5.14R to allow the ombudsman service the discretion to cease to consider – and treat as withdrawn – complaints where the complainant does not provide information or respond within specified time limits. This is broadly in line with the current rules which allow the ombudsman service the discretion to dismiss a complaint in those circumstances. Several respondents asked about the funding arrangements for these cases. Like other withdrawn complaints (and the complaints we currently dismiss under the current versions of DISP 3.5.13R and 3.5.14R), these cases will be 'chargeable cases' under the current charging arrangements.

Summary of amendments made to the rules

- 3.59** We have made the following amendments to the rules in the light of the responses that we received to the consultation paper.
- DISP 2.8.1R – We have removed the requirement for the ombudsman service to inform the complainant of their ability to complain to the firm because the ombudsman service will forward the complaint that they have received from the consumer to the firm when it asks the firm if it is happy for it to consider the case.
 - Following the consultation paper, we have reviewed the wording that firms will be required to use in final response letters and have amended it to cover additional circumstances. We have also made clear that where appropriate wording for a firm's circumstances has not been specified (for example, the new wording enables firms to consent to certain time limits but not others) firms must adapt the appropriate wording as necessary.
 - Since the consultation paper was published, BIS has laid the first set of implementing regulations. The regulations set out the information that annual reports must contain and will apply to the ombudsman service if it becomes certified under the Directive, so we do

not intend to make the rules in DISP 5 that we consulted on. Where appropriate, we have also cross-referred to the regulations.

- We have brought the proposed rule on consent in DISP 2.8.2R(5) into line with the changes made by the Government's regulations implementing the ADR Directive to section 404B and paragraph 13 of Schedule 17 of the Financial Services and Markets Act 2000 (FSMA). These changes are due to come into force on 9 July 2015. The changes to FSMA mean that, where a complaint falls within the scope of a consumer redress scheme, the relevant firm may not consent to waive the time limits under DISP 2.8.2R(5) unless the firm and the consumer agree to disapply the consumer redress scheme in relation to the particular complaint.

Cost-benefit analysis and compatibility statement

- 3.60** The sections of the cost-benefit analysis and the compatibility statement in CP 14/30 relevant to implementation of the ADR Directive remain valid.

Equality and diversity issues

- 3.61** We do not consider that the amendments to DISP required to implement the ADR Directive give rise to any equality or diversity issues.
- 3.62** The changes made by this instrument are listed in Chapter 2 of this Notice.

Chapter 2 of CP15/8 Quarterly Consultation Paper (No 8)

Client Assets Sourcebook (Amendment No 8) Instrument 2015 (FCA 2013/24)

Background

- 3.63** In Chapter 2 of CP15/8, we proposed a series of minor amendments to the custody rules (CASS 6), the client money rules (CASS 7), the client money distribution rules (CASS 7A), CASS transitional provisions (TPs) and the Consumer Credit sourcebook (CONC).

CASS 6

- 3.64** We proposed to allow firms subject to our custody rules (CASS 6 firms) to perform external custody reconciliations against third parties' system records for uncertified units of securities governed by the relevant uncertified securities regulations (USRs) in Ireland, Jersey, Guernsey and Isle of Man.
- 3.65** We also proposed to make clear that when a CASS 6 firm deposits client assets with a third party, then the CASS 6 firm need not be the party responsible for the registration of legal title of the assets deposited with the third party.

CASS 7

- 3.66** We proposed that when clearing member firms have entered into arrangements with a central counterparty (CCP), and in accordance with the rules governing the use of a single house bank account to receive payments from and make payments to the CCP, the clearing member firm may also use that single house bank account to receive payments of pure client money.

- 3.67** We also proposed to clarify in the final client money rules that authorised fund managers (AFMs) are not prevented from transferring client money (except cheques) from a client bank account into a corporate account before the money is transferred to a third party, in the context of a delivery versus payment (DvP) transaction in a collective investment scheme (CIS).

CASS 7A

- 3.68** We proposed to amend the relevant CASS rules and definitions to make the constitution of the general client money pool formed on occurrence of a primary pooling event absolutely clear. This should include any client money in client bank accounts and client transaction accounts and any client money identifiable in any house account held by the firm into which client money has been received.

CASS TPs and CONC

- 3.69** We proposed amendments to CONC to clarify that CASS applies to loan-based crowdfunding firms, as stated in PS14/4, and that these rules apply when a firm has only interim permission. We proposed amendments to TPs in CASS relating to CASS oversight officers. As interim permission firms will not have employees performing significant influence functions yet, we proposed to ask the firms to mirror the same tasks, by allocating them to relevant staff they expect to fulfil the operational oversight roles, including that of the CF10a, until they are fully authorised.

- 3.70** We also proposed to clarify that interim permission firms cannot submit a client money asset return (CMAR) as they do not have access to GABRIEL, but that we may make the return available to them by another means (in accordance with the existing rules).

Feedback

- 3.71** We received 16 responses to Chapter 2 of CP15/8. Respondents included investment firms, industry associations and auditors. We would like to thank all respondents for their feedback. Respondents were broadly supportive of the majority of our proposals.

CASS 6

- 3.72** We received wide support for our proposal affecting external custody reconciliations. One respondent suggested widening the relevant rules to include certain CISs.

- 3.73** We received mixed feedback in relation to our proposal on registration and recording of legal title to client assets. Many respondents supported the proposal but several respondents raised concerns that the proposed rule amendment was too widely drafted and suggested CASS 6 firms should be obligated to require the third party (with whom the client's assets are deposited) to register the relevant assets in accordance with the rules governing registration and recording of legal title. A number of respondents queried whether there would be related changes to the CMAR.

CASS 7

- 3.74** We received universal support for our proposal related to client money segregation for certain regulated clearing arrangements. Several respondents suggested clarification was needed regarding the application of CASS when firms enter into title transfer collateral arrangements (TTCA) with clients as part of their segregation arrangements with CCPs under EMIR. Two respondents suggested the rule should expressly permit firms to receive a mixed remittance into the firm's own bank account.

- 3.75** Our proposal relating to the DvP rules for regulated CISs received strong support. A number of respondents requested clarification of the term 'immediate payment' in the draft rules. Two respondents suggested this proposal be widened to include transactions using the DvP exemption for commercial settlement systems. One respondent asked whether firms making payments through corporate bank accounts (in accordance with the proposed rules) in advance of 1 June 2015 will be considered to be in breach of CASS until the rule change takes effect on 1 June 2015.

CASS 7A

- 3.76** The proposal clarifying the constitution of the notional client money pool also received widespread support. One respondent suggested the wording in the draft rule does not consider the situation on pooling where general estate money is deposited in the client money pool.

CASS TPs and CONC

- 3.77** A small number of respondents addressed this question. The proposals to ensure that CASS applies to loan-based crowdfunding received universal support. One respondent asked for further clarification of practical matters on how the rules will apply to loan-based crowdfunding firms while they have interim permission only. Another respondent questioned whether our proposal would impose costs on firms.

Our response

- 3.78** We have made some minor corrections and provided additional clarification to the final rules in response to feedback.

CASS 6

- 3.79** The proposal to allow CASS 6 firms to perform external custody reconciliations against third parties' system records for uncertified units of securities governed by the relevant USRs in Ireland, Jersey, Guernsey and Isle of Man, will be implemented as consulted on in CP15/8. The drafting of the final rules has not been widened beyond its proposed application to safe custody assets that are uncertificated units of a security governed by any of the relevant overseas USRs.

- 3.80** Based on feedback, we have clarified the requirements for CASS 6 firms registering and recording legal title to client assets when those client assets are deposited with a third party. The final rules make it clear that when a firm deposits safe custody assets with a third party in accordance with CASS 6.3, and because of the arrangements with that third party for depositing the safe custody assets, it is not practicable for the firm to effect the appropriate registration or recording of legal title itself, then the firm need not itself comply with the requirements for the registration and recording of legal title in CASS 6.2.3R for those assets.

- 3.81** There are no changes made to the CMAR and firms are not required to change their approach to CMAR completion.

CASS 7

- 3.82** As proposed in CP15/8, when clearing member firms have entered into arrangements with a CCP, and in accordance with the rules governing the use of a single house bank account to receive payments from and make payments to the CCP, the clearing member firm may also use that single house bank account to receive payments of pure client money.

- 3.83** In PS12/23¹⁰ *Client assets regime: changes following EMIR* (December 2012) we set out our view on the use of TTCA by firms in the context of EMIR.
- 3.84** Our proposal relating to the DvP rules for regulated CISs will be implemented as consulted on in CP15/8, with clarification on the meaning of 'immediate payment'. In relation to this rule, firms are not prevented from transferring client money into the firm's own account provided this is done only for the purposes of making a payment on the same day from that account in accordance with the relevant rules for the discharge of fiduciary duty. Widening the application of this rule to include DvP payments for commercial settlement systems is outside the scope of this paper's consultation. Firms may comply with the amended DvP rules for CISs in advance of 1 June 2015.

CASS 7A

- 3.85** This proposal will be implemented as consulted on in CP15/8. The final rules clarify that the constitution of the general client money pool formed on occurrence of a primary pooling event should include any client money in client bank accounts and client transaction accounts and any client money identifiable in any house account held by the firm into which client money has been received. We are not amending the client money distribution rules beyond this narrow amendment at this time.

CASS TPs and CONC

- 3.86** These proposals will be implemented as consulted on in CP15/8. The amendments to CONC clarify that the CASS rules apply to loan-based crowdfunding firms in the manner stated in PS14/4.
- 3.87** The amendments to CASS TPs provide that as interim permission firms will not have employees performing significant influence functions, they are required to mirror the tasks relating to CASS oversight, by allocating them to relevant staff they expect to fulfil the operational oversight roles, including that of the CF10a, until they are fully authorised.
- 3.88** Regarding the question of whether there would be costs associated with the proposals, we are clarifying that as there are no additional requirements, as we are clarifying the position already set out in PS14/4, the same costs and benefits apply as previously stated.
- 3.89** In response to a request for clarification, we note that the requirement to have a CASS audit will apply, for interim permission firms, from when firms are subject to SUP 3.11 (from 1 June 2015, when the made rules come into force). The first audit period must therefore end not more than 53 weeks after this, in accordance with SUP 3.10.6R. Where necessary, we will liaise with the industry regarding making the CMAR available to firms in accordance with existing SUP 16.14.6R.

Cost benefit analysis and compatibility statement

- 3.90** As the amended rules that we are making do not differ significantly from the draft on which we consulted, we believe the cost benefit analysis and compatibility statement, as set out in Chapter 2 of CP15/8, remain valid.

¹⁰ www.fsa.gov.uk/static/pubs/policy/ps12-23.pdf

Equality and diversity issues

- 3.91** We received no comments during consultation on any equality issues. As stated in CP15/8, we do not envisage any negative equality and diversity impacts as a result of the proposed changes.
- 3.92** The changes made by this instrument are listed in Chapter 2 of this Notice.

4. Additional information

Making corrections

- 4.1** The FCA reserves the right to make correctional or clarificatory amendments to the instruments made at the Board meeting without further consultation should this prove necessary or desirable.

Publication of Handbook material

- 4.2** This Notice is published on the FCA website and is available in hardcopy.
- 4.3** The formal legal instruments (which contain details of the changes) can be found on the FCA's website listed by date and reference number at <http://fshandbook.info/FS/InstrumentsByDate.jsp> or listed by module at <http://fshandbook.info/FS/InstrumentsByModule.jsp>. The definitive version of the Handbook at any time is the version contained in the legal instruments.
- 4.4** The changes to the Handbook are incorporated in the consolidated Handbook text on the website as soon as practicable after the legal instruments are published.
- 4.5** The consolidated text of the Handbook can be found on the FCA's website at <http://fshandbook.info>.
- 4.6** Copies of the FCA's consultation papers referred to in this Notice are available on the FCA's website or on request in hardcopy form.

Obligation to publish feedback

- 4.7** This Notice, and the feedback to which paragraph 1.8 refers, fulfil for the relevant text made by the Board the obligations in sections 138I(4) and (5) and similar sections of the Financial Services and Markets Act 2000 ('the Act'). These obligations are: to publish an account of representations received in response to consultation and the FCA's response to them; and to publish (where applicable) details of any significant differences between the provisions consulted on and the provisions made by the Board, with a cost-benefit analysis and a statement under section 138K(4) of the Act if a proposed altered rule applies to authorised persons which include mutual societies.

Comments

- 4.8** We always welcome feedback on the way we present information in the Handbook Notice. If you have any suggestions, they should be sent to handbookproduction@fca.org.uk (or see contact details at the front of this Notice).

Financial Conduct Authority



PUB REF: 004954

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