
STATUTORY INSTRUMENTS

2018 No. 1253

**The Financial Services and Markets Act 2000
(Claims Management Activity) Order 2018**

PART 3

Transitional provisions

CHAPTER 4

Complaints: the Legal Ombudsman and the Financial Ombudsman Service

Interpretation

68. In this Chapter—

“compulsory jurisdiction” has the same meaning as it has in the 2000 Act⁽¹⁾;

“former scheme” means the scheme operated by the Office for Legal Complaints under Part 6 of the 2007 Act (legal complaints)⁽²⁾;

“new scheme” means the scheme for which provision is made in Part 16 of the 2000 Act (the ombudsman scheme);

“relevant complaint” means a relevant existing complaint or a relevant new complaint;

“relevant existing complaint” means a complaint of a kind specified in article 69(1);

“relevant new complaint” means a complaint of a kind specified in article 70(1); and

“scheme operator” has the same meaning as it has in Part 16 of the 2000 Act⁽³⁾.

Complaints made before 1st April 2019 not concluded by that date

69.—(1) This article applies to a complaint which—

(a) was referred under the former scheme before 1st April 2019 by a person who was at that time entitled under the terms of the former scheme to refer the complaint;

(b) relates to the provision of claims management services (within the meaning given in section 4(2) of the 2006 Act); and

(c) was not concluded on 1st April 2019.

(1) For the meaning of “compulsory jurisdiction” see the 2000 Act, section 226(8).

(2) Section 115 of the 2007 Act provides that the scheme is to be operated under a name (which must include the word “ombudsman”) chosen by the Office for Legal Complaints. The chosen name is “The Legal Ombudsman Scheme”. Section 161 of the 2007 Act extends Part 6 of the 2007 Act to claims management services, and is repealed by this Order subject to saving provisions.

(3) For the meaning of “scheme operator” see the 2000 Act, section 225(2).

(2) Subject to articles 71 and 72, a relevant existing complaint is to be dealt with as if it had been referred under the new scheme in compliance with rules made by the FCA under paragraph 13 of Schedule 17(4) to the 2000 Act.

(3) For the purposes of paragraph (1), except where paragraph (5) applies, a complaint is to be treated as concluded on 1st April 2019 where, before that date—

- (a) the complainant notified the ombudsman of the complainant's rejection of a determination under section 137 of the 2007 Act (determination of complaints);
- (b) the complainant accepted a determination under that section, and any direction contained in the determination was fully complied with;
- (c) the complaint was resolved otherwise than by a determination under that section, and any direction or agreement forming part of the resolution was fully complied with;
- (d) the complaint was dismissed in accordance with provision made in scheme rules under section 133(3)(a) of the 2007 Act; or
- (e) the complaint was referred with the consent of the complainant to another body in accordance with provision made in scheme rules under section 133(3)(b) of the 2007 Act.

(4) For the purposes of paragraph (3)(b) the cases in which a direction contained in the determination of a complaint was fully complied with include a case where, in relation to such a direction, the court has not yet heard an application under section 141(2) or (3) of the 2007 Act (enforcement by complainant of directions under section 137 of that Act).

(5) This paragraph applies where, in relation to a complaint referred under the former scheme—

- (a) an ombudsman did not decide, before 1st April 2019, whether the respondent would be required to pay a charge under rules made in compliance with section 136(1) of the 2007 Act; or
- (b) an ombudsman did, before that date, require the respondent to pay such a charge and the charge has not been paid.

(6) For the purposes of paragraph (2) it is immaterial that the condition set out in section 226(2)(c) of the 2000 Act (compulsory jurisdiction) is not met in relation to the complaint.

Complaints made on or after 1st April 2019 about acts or omissions before that date

70.—(1) This article applies to a complaint—

- (a) about an act or omission which occurred before 1st April 2019 in relation to the provision of claims management services (within the meaning given in section 4(2) of the 2006 Act);
- (b) which had not, before that date, been referred under the former scheme by a person who was entitled under the terms of the former scheme to refer the complaint; and
- (c) in relation to which the conditions set out in paragraph (2) are met.

(2) The conditions are that—

- (a) in relation to the compulsory jurisdiction, the complainant falls within a class of person specified as eligible in the compulsory jurisdiction rules (within the meaning given by section 226(3) of the 2000 Act); and
- (b) the complainant wishes to have the complaint dealt with under the new scheme.

(3) Where the condition set out in paragraph (2)(a) is not met in relation to a complaint, an ombudsman may nonetheless treat the complaint as if it does meet that condition if the complainant

(4) Paragraph 13 of Schedule 17 was amended by the Financial Services Act 2012 (c. 21), section 39 and by S.I. 2009/209, 2011/99, 2015/542, and 2017/752.

would have been entitled, immediately before 1st April 2019, to refer the complaint under the former scheme.

(4) A relevant new complaint—

(a) may be referred under the new scheme; and

(b) upon referral, subject to articles 71 and 73, is to be dealt with in the same way as any other complaint referred under the new scheme.

(5) For the purposes of paragraph (4), it is immaterial that the conditions set out in section 226(2)(b) and (c) of the 2000 Act are not met in relation to the complaint.

Procedure for dealing with relevant complaints

71.—(1) In this article “scheme rules” means rules made under paragraph 14(1) of Schedule 17 to the 2000 Act (the scheme operator’s rules).

(2) A relevant existing complaint is to be treated as if it had been referred in accordance with any applicable procedure for reference of complaints set out in scheme rules.

(3) Relevant complaints are to be dealt with in accordance with the procedure for the investigation, consideration and determination of complaints set out in scheme rules, and for those purposes scheme rules apply with the modifications in paragraphs (4) to (7).

(4) In determining a relevant existing complaint, an ombudsman is to have no regard to rules made under paragraph 14(2)(a) of Schedule 17 to the 2000 Act (rules specifying matters to be taken into account in determining whether an act or omission was fair and reasonable).

(5) Where an ombudsman is deciding whether to dismiss a complaint without a consideration of its merits in accordance with rules made under paragraph 14(2)(b) and (3) of Schedule 17 to the 2000 Act (“relevant rules”)—

(a) paragraph (6) applies if the complaint is a relevant existing complaint; and

(b) paragraphs (6) and (7) apply if the complaint is a relevant new complaint.

(6) An ombudsman must consider whether the complaint would have been dismissed under the rules of the former scheme, if the decision were being made immediately before 1st April 2019, and if the ombudsman considers that the complaint—

(a) would have been dismissed under the rules of the former scheme; or

(b) should be dismissed under the relevant rules,

the ombudsman may dismiss the complaint.

(7) The corresponding rules of the former scheme are to be read as if they were subject to paragraph 13 of Schedule 3 to the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015(5) (grounds to refuse to deal with a dispute).

(8) Paragraph (9) applies to a relevant existing complaint where—

(a) the complainant accepted a determination under section 137 of the 2007 Act before 1st April 2019; and

(b) a direction contained in that determination had not been complied with on or before that date.

(9) A direction made under—

- (a) section 137(2)(c) of the 2007 Act is to be treated as a money award (within the meaning given by section 229(2)(a) of the 2000 Act) for the purposes of section 229(8)(b) and paragraph 16 of Schedule 17 to the 2000 Act; and
- (b) any other sub-paragraph of section 137(2) of the 2007 Act is to be treated as a direction under section 229(2)(b) of the 2000 Act for the purposes of section 229(9) and (10) of the 2000 Act.

Determination of relevant existing complaints

72.—(1) In this article, except for the references in paragraphs (2) and (4) to sections of the 2007 Act, a reference to a numbered section is a reference to the section so numbered in the 2000 Act.

(2) Where a relevant existing complaint is to be determined under the new scheme, the complaint must, so far as practicable, be determined by reference to such criteria as would have applied to the determination of the complaint under the former scheme immediately before 1st April 2019 by virtue of scheme rules under section 133 of the 2007 Act.

(3) Sections 228(6) (determination under the compulsory jurisdiction) and 230A (reports of determinations) apply in relation to the determination of a relevant existing complaint with the following modifications—

- (a) section 228 is to be read as if subsection (2) were omitted; and
- (b) section 230A(1)(7) is to be read as if the reference to any determination made under Part 16 included the determination of the relevant existing complaint.

(4) The determination of a relevant existing complaint may contain any one or more of the directions set out in subsection (2) of section 137 of the 2007 Act, and for those purposes—

- (a) a direction under subsection (2)(c) of that section, is to be treated as a money award (within the meaning given by section 229(2)(a)(8)) for the purposes of paragraph 16 of Schedule 17 to the 2000 Act; and
- (b) any other direction is to be treated as a direction under section 229(2)(b) for the purposes of section 229(9) and (10).

(5) An ombudsman may, on determining a relevant existing complaint, award costs having regard to provision for the award of costs made in rules of the former scheme, and for those purposes—

- (a) it does not matter whether the award is attributable to an act or omission which occurs before 1st April 2019 or to an act or omission which occurs on or after that date; and
- (b) section 230(7) of, and paragraph 16 of Schedule 17 to, the 2000 Act apply in relation to the award as they apply in relation to an award of costs made in accordance with rules under section 230(1).

Determination of relevant new complaints

73.—(1) In this article, except for the references in paragraph (5) to section 137 of the 2007 Act, a reference to a numbered section is a reference to the section so numbered in the 2000 Act.

(2) Subject to paragraphs (3) to (5), a relevant new complaint is to be determined by reference to the criteria applicable to the determination of any other complaint referred under the new scheme.

(3) The provisions specified in paragraph (4) apply in relation to a relevant new complaint with the modifications in paragraph (5).

(6) Section 228 was amended by the Financial Services Act 2012 (c. 21), section 39 and S.I. 2013/1881.

(7) Section 230A was inserted by the Financial Services Act 2012, section 39.

(8) Paragraph 16 of Schedule 17 was amended by the Crime and Courts Act 2013 (c. 22), section 17(5) and the Tribunals, Courts and Enforcement Act 2007 (c. 15), section 62(3).

(4) Paragraph (5) applies for the purposes of determining, in relation to a relevant new complaint—

- (a) under section 228(2), what is fair and reasonable in all the circumstances of the case;
- (b) under section 229(2)(a), what amount, if any, constitutes fair compensation for loss or damage suffered by the complainant; and
- (c) under section 229(2)(b), what steps would be just and appropriate in any direction under that section.

(5) An ombudsman may take into account—

- (a) what an ombudsman determining the complaint under the former scheme might reasonably have considered fair and reasonable in all the circumstances of the case;
- (b) what amount an ombudsman determining the complaint under the former scheme might reasonably have directed the respondent to pay under section 137(2)(c) of the 2007 Act; and
- (c) what other steps an ombudsman determining the complaint under the former scheme might reasonably have directed the respondent to take under section 137(2) of the 2007 Act.

Funding and charges

74.—(1) Paragraphs (2) and (3) apply to a complaint referred under the former scheme which is a relevant existing complaint by virtue only of article 69(5)(a).

(2) The ombudsman who is dealing with the complaint must decide under rules made in compliance with section 136(1) of the 2007 Act whether the respondent is to be required to pay a charge under those rules.

(3) Where the respondent is required to pay a charge under those rules, the charge is payable to the scheme operator.

(4) Paragraph (5) applies to a complaint referred under the former scheme which is a relevant existing complaint by virtue only of article 69(5)(b).

(5) The charge which the respondent was required to pay under rules made in compliance with section 136(1) of the 2007 Act is payable to the scheme operator.

Surplus fees

75.—(1) In this article, “relevant OLC expenditure”⁽⁹⁾ has the meaning given in section 174A of the 2007 Act⁽¹⁰⁾.

(2) Paragraph (3) applies to any periodic fees charged by the Lord Chancellor to 2006 Act authorised persons under section 174A of the 2007 Act for the purposes of meeting any costs incurred by the Lord Chancellor in respect of relevant OLC expenditure.

(3) Where, immediately before 1st April 2019, the periodic fees held by the Lord Chancellor exceeded the Lord Chancellor’s costs incurred in respect of relevant OLC expenditure, those fees may be paid—

- (a) to the OLC for the purpose of funding applications under section 141(2) or (3) of the 2007 Act falling within article 69(4); or
- (b) to the FCA or the scheme operator for the purpose of funding the operation of the new scheme under section 234(1)(b) of the 2000 Act (industry funding).

⁽⁹⁾ The OLC is the Office for Legal Complaints established by section 114 of the Legal Services Act 2007 (c. 29).

⁽¹⁰⁾ Section 174A was inserted by the Financial Services (Banking Reform) Act 2013 (c. 33), section 140(4) and (5) and is repealed by this Order.

Exemption from liability in damages

76. Paragraph 10(1) of Schedule 17 to the 2000 Act⁽¹¹⁾ (exemption from liability in damages) applies to the discharge, or purported discharge, of any functions by virtue of this Chapter in relation to dealing with a relevant complaint (“relevant functions”), and is to be read for those purposes as if—

- (a) the reference to functions under the 2000 Act included a reference to relevant functions; and
- (b) the reference to the compulsory jurisdiction included a reference to the jurisdiction of the new scheme which results from this Chapter.

Privilege

77. Paragraph 11 of Schedule 17 to the 2000 Act⁽¹²⁾ (privilege) applies to proceedings in relation to a relevant complaint, and is to be read for those purposes as if the reference to the compulsory jurisdiction included a reference to the jurisdiction of the new scheme enacted by this Chapter.

Record-keeping and reporting requirements relating to relevant complaints

78. The FCA may make rules applying to 2000 Act authorised persons with respect to the keeping of records and the making of reports in relation to relevant complaints.

Information and reports

79.—(1) Sections 230A, 231, 232 and 232A of the 2000 Act apply in relation to a relevant complaint as they apply in relation to a complaint which relates to an act or omission of a person in carrying on an activity to which compulsory jurisdiction rules (within the meaning given by section 226(3) of the 2000 Act) apply.

- (2) This paragraph applies where—
 - (a) the ombudsman who was dealing with a relevant complaint under the former scheme certified to the court under section 149(2) of the 2007 Act a failure to comply with a requirement imposed under section 147(1) of that Act; and
 - (b) on 1st April 2019, the court had not concluded its enquiry into the case with a finding that the defaulter failed or did not fail without reasonable excuse to comply with the requirement.
- (3) Where paragraph (2) applies—
 - (a) the court may continue its enquiry into the case under section 149(3) of the 2007 Act; and
 - (b) the ombudsman dealing with the complaint under the new scheme may continue to assist the court with that enquiry, and for that purpose is to be treated as having made the certification under section 149(2).

⁽¹¹⁾ Paragraph 10(1) of Schedule 17 was amended by the Consumer Credit Act 2006 (c. 14), section 61(10)(d) and S.I. 2013/1881.

⁽¹²⁾ Paragraph 11 of Schedule 17 was amended by the Consumer Credit Act 2006, section 61(10)(d) and by S.I. 2013/1881.