

**COMPLAINTS SOURCEBOOK (MORTGAGE AND GENERAL INSURANCE  
TRANSITIONAL COMPLAINTS) INSTRUMENT 2004**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157(1) (Guidance);
  - (4) section 226 (Compulsory jurisdiction);
  - (5) section 229 (Awards);
  - (6) section 234 (Industry funding);
  - (7) paragraph 13 of schedule 17 (Authority's procedural rules); and
  - (8) articles 9 and 12 of the Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (SI 2004/454).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 31 October 2004.

**Amendments to the Disputes resolution: Complaints sourcebook**

- D. The Dispute resolution: Complaints sourcebook is amended in accordance with Annex A to this instrument.

**Amendments to the Glossary**

- E. The Glossary is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Complaints Sourcebook (Mortgage and General Insurance Transitional Complaints) Instrument 2004.

By order of the Board  
15 July 2004

Amended by Addendum  
17 August 2004

## Annex A

### Amendments to the Disputes resolution: Complaints sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### Transitional provisions

(1)	Material provision to which transitional applies	(3)	(4) Transitional provision	Transitional provision: dates in force	(6) Handbook provision coming into force
...					
<u>10</u>	<u>DISP 1</u>	<u>R</u>	<p><u>Where, at the <i>relevant commencement date</i>, a <i>firm</i> is still dealing with a complaint that is capable of being referred to the <i>Financial Ombudsman Service</i> as a <i>relevant transitional complaint</i>:</u></p> <p>(1) <u>it may continue to try to resolve the complaint in accordance with the complaints procedures that applied previously; but</u></p> <p>(2) <u>it must, within eight weeks of the <i>relevant commencement date</i>, send the complainant a response which satisfies <i>DISP 1.4.5R</i>, unless <i>DISP 1.4.3AR</i> or <i>DISP 1.4.9R</i> applies.</u></p>	<p><u>31 October 2004 (for a complaint to which the <i>MCAS Scheme</i> applied immediately before that date)</u></p> <p><u>14 January 2005 (for a complaint to which the <i>GISC Facility</i> applied immediately before that date)</u></p>	<u>31 October 2004</u>
<u>11</u>		<u>G</u>	<p><u><i>DISP TP10</i> recognises that where a <i>firm</i> has already received, but only partly completed the handling of, a complaint which is capable of becoming a <i>relevant</i></u></p>		

			<u>transitional complaint, it may not always be practicable to handle the complaint in accordance with DISP 1 after the relevant commencement date.</u>		
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...

1.1.5R Except as otherwise specified, references to a "complaint" in this chapter include a complaint which is capable of becoming a *relevant new complaint* or a relevant transitional complaint.

...

1.3.2R *DISP 1.4 – DISP 1.6* also apply to any complaints that are capable of becoming *relevant new complaints* or relevant transitional complaints, unless *DISP 1.3.3R* applies.

...

1.3.4G Under the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order*, a complaint received by a *firm*, either before or after *commencement*, relating to an act or omission relating to business which was not a regulated activity at the time of the matter complained of is capable of becoming a *relevant new complaint* or a *relevant transitional complaint*. A *firm* is expected to handle such complaints in accordance with *DISP 1*. However, where a *firm* has already received, but only partly completed the handling of, such a complaint by *commencement*, *DISP 1.4.6R* recognises that this may not always be practicable.

...

Complaints being dealt with at commencement

1.4.6R Where, at *commencement*, a *firm* is still dealing with a complaint that is capable of being referred to the *Financial Ombudsman Service* as a *relevant new complaint*:

- (1) ~~it may continue to try to resolve the complaint in accordance with its pre-*commencement* complaints procedures; but~~
- (2) ~~it must, within eight weeks of *commencement*, send the complainant a response which satisfies *DISP 1.4.5R*, unless *DISP 1.4.3AR* or *DISP 1.4.9R* applies. [deleted]~~

...

2.1.3R A reference in this chapter to a "complaint":

- (1) includes part of a complaint; and
- (2) under the *Compulsory Jurisdiction* includes all or part of a *relevant new complaint* and all or part of a relevant transitional complaint.

...

Complaints (other than relevant new complaints or relevant transitional complaints)

2.2.1G The following conditions will need to be satisfied before a complaint (other than a *relevant new complaint* or relevant transitional complaint) can be dealt with ...

...

#### Relevant transitional complaints

2.2.2AG (1) Article 2 of the Mortgage and General Insurance Complaints Transitional Order provides that (subject to certain modifications) the *Compulsory Jurisdiction* applies to a *relevant transitional complaint*, provided that:

- (a) the act or omission is that of a person ("R") who, at the time of that act or omission, was subject to a former scheme;
- (b) R was an authorised person on or after the relevant commencement date;
- (c) the act or omission occurred in the carrying on by R of an activity to which that former scheme applied; and
- (d) the complainant is eligible and wishes to have the complaint dealt with under the new scheme.

(2) For the purposes of (1)(d), the Mortgage and General Insurance Complaints Transitional Order enables the Ombudsman, if he considers it appropriate, to treat the complainant as eligible if he would have been entitled to refer an equivalent complaint to the former scheme in question immediately before the relevant commencement date.

(3) The Mortgage and General Insurance Complaints Transitional Order enables relevant transitional complaints to be handled, so far as possible, under the Financial Ombudsman Service procedures, but provides for the rules of the former schemes to apply or be taken into account in certain circumstances.

...

2.3.1R ...

- (2) ... or where the *firm* or VJ participant has not objected to the Ombudsman considering the complaint.

...

2.4.2G *Eligible complainants* are those falling within one of the classes of *person* specified in *DISP 2.4.3R*; and

...

or, in relation to *relevant complaints*, those specified in the *Ombudsman Transitional Order* or the *Mortgage and General Insurance Complaints Transitional Order* (see *DISP 2.4.14G*, ~~and~~ *DISP 2.4.15G*, *DISP 2.4.15AG*, *DISP 2.4.15BG* and *DISP App 1.3.1G*).

...

2.4.14G In respect of a *relevant new complaint* or a *relevant transitional complaint*, where the complainant is not eligible in accordance with *DISP 2.4*, article 3(3) of the *Ombudsman Transitional Order* and article 2(3) of the *Mortgage and General Insurance Complaints Transitional Order* provides that the *Ombudsman* may, nonetheless, if he considers it appropriate...

...

2.4.15AG Article 2(4) of the *Mortgage and General Insurance Complaints Transitional Order* provides that, in the case of a *relevant transitional complaint*, where the *former scheme* in question is the *GISC facility*, a complainant is not to be treated as an *eligible complainant* unless:

- (1) he is an individual; and
- (2) he is acting otherwise than solely for the purposes of his business.

2.4.15BG Article 2(5) of the *Mortgage and General Insurance Complaints Transitional Order* provides that, in the case of a *relevant transitional complaint*, where the *former scheme* in question is the *MCAS scheme*, a complainant is not to be treated as an *eligible complainant* if:

- (1) the complaint does not relate to a breach of the Mortgage Code published by the Council of Mortgage Lenders;
- (2) the complaint concerns physical injury, illness, nervous shock or their consequences; or
- (3) the complainant is claiming a sum of money that exceeds £100,000.

...

2.6.3AG Under article 2 of the *Mortgage and General Insurance Complaints Transitional Order*, the *Ombudsman* can also consider a *relevant transitional complaint* under the *Compulsory Jurisdiction* where it relates to an act or omission of a *firm* which was, immediately before the *relevant commencement date*, subject to a *former scheme*, provided that:

- (1) the act or omission occurred in the carrying on by that *firm* of an activity to which that *former scheme* applied; and
- (2) the complainant is eligible and wishes to have the complaint dealt with under the new scheme.

...

3.1.4R Except as otherwise specified, references in this chapter to a "complaint" include:

- (1) a *relevant new complaint* and a *relevant transitional complaint*; and
- (2) part of a complaint or a *relevant new complaint* or a *relevant transitional complaint*.

...

3.1.6G The *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order* provides, with some exceptions (see *DISP 2.2.2G* and *DISP 2.2.2AG* (scope of Compulsory Jurisdiction and Relevant transitional complaints), *DISP 2.3.2G* (time limits), *DISP 2.4.14G* and *DISP 2.4.15R* (*eligible complainant*) and *DISP 3.8.2G* and *DISP 3.8.2AG* (determinations) for *relevant new complaints* and *relevant transitional complaints* to be determined in accordance with the requirements of the *Financial Ombudsman Service*.

...

3.3.2AG Under article 4(2) of the *Mortgage and General Insurance Complaints Transitional Order*, the *Ombudsman*, in deciding whether a *relevant transitional complaint* is to be dismissed without consideration of its merits, must take into account whether an equivalent complaint would have been so dismissed under the *former scheme* in question, as it had effect immediately before the *relevant commencement date*.

...

3.8.2AG In determining, in relation to a *relevant transitional complaint*, what is fair and reasonable in all the circumstances of the case and what amount (if any) constitutes fair compensation for the purposes of section 229(2)(a) of the *Act*, the *Ombudsman* is required, under article 5(2) of the *Mortgage and General Insurance Complaints Transitional Order*, to take into account what determination might have been expected to be made under the *former scheme* in question and what amount (if any) might have been expected to have been awarded or recommended by way of compensation under that scheme, in relation to an equivalent complaint dealt with under the *former scheme* immediately before the *relevant commencement date*.

...

3.9.4AG In determining, in relation to a *relevant transitional complaint*, what amount (if any) constitutes fair compensation for the purposes of section 229(2)(a) of the *Act*, the *Ombudsman* is required under article 5(2) of the *Mortgage and General Insurance Complaints Transitional Order* to take into account what amount (if

any) might have been expected to have been awarded or recommended by way of compensation under that scheme, in relation to an equivalent complaint dealt with under the former scheme immediately before the relevant commencement date.

...

3.10.2G Under article 11 of the *Ombudsman Transitional Order* and article 11 of the *Mortgage and General Insurance Complaints Transitional Order*, any information held by any *person* responsible for the operation of a *former scheme* in connection with the operation of a *former scheme* may be disclosed by that *person* (after commencement or, as the case may be, the relevant commencement date) to *FOS Ltd* or to an *Ombudsman* without contravening any restriction on disclosure of that information (imposed by statute or otherwise) to which that *person* was subject. But *FOS Ltd* or the *Ombudsman* is subject to any restrictions on disclosure (and exceptions) which would have applied to the former holder of that information.

3.10.3G Article 11 of the *Ombudsman Transitional Order* and article 11 of the *Mortgage and General Insurance Complaints Transitional Order* does not, however, prevent the application of section 31(4A) of the Data Protection Act 1998. ...

## Annex B

### Amendments to the Glossary

In this Annex, underlining indicates new text and striking through indicates deleted text.

<p><i>former scheme</i></p>	<p>(1) <u>(except in relation to a <i>relevant transitional complaint</i>)</u> any of the following:</p> <p>(a) ... ... (h) ...;</p> <p>(2) <u>(in relation to a <i>relevant transitional complaint</i>)</u></p> <p>(a) <u>the <i>GISC facility</i></u>; or</p> <p>(b) <u>the <i>MCAS scheme</i></u>.</p>
<p><u><i>GISC facility</i></u></p>	<p><u>The Dispute Resolution Facility established by the General Insurance Standards Council.</u></p>
<p><u><i>MCAS scheme</i></u></p>	<p><u>Mortgage Code Arbitration Scheme.</u></p>
<p><u><i>Mortgage and General Insurance Complaints Transitional Order</i></u></p>	<p><u>The Financial Services and Markets Act 2000 (Transitional Provisions)(Complaints Relating to General Insurance and Mortgages) Order 2004 (SI 2004/454)</u></p>
<p><u><i>relevant commencement date</i></u></p>	<p><u>(as defined in article 1 of the <i>Mortgage and General Insurance Complaints Transitional Order</i>):</u></p> <p>(a) <u>in relation to a complaint which relates to an activity to which, immediately before 14 January 2005, the <i>GISC Facility</i> applied, the beginning of 14 January 2005;</u></p> <p>(b) <u>in relation to a complaint which relates to an activity to which, immediately before 31 October 2004, the <i>MCAS scheme</i> applied, the beginning of 31 October 2004.</u></p>



<i>relevant complaint</i>	<p>(1) (in DISP) a <i>relevant existing complaint</i> or a <i>relevant new complaint</i> or a <i>relevant transitional complaint</i>.</p> <p>(2)...</p>
<i>relevant transitional complaint</i>	<p><u>(in accordance with the <i>Mortgage and General Insurance Complaints Transitional Order</i>) a complaint referred to the <i>Financial Ombudsman Service</i> after the <i>relevant commencement date</i> which relates to an act or omission occurring before that date if:</u></p> <p>(a) <u>the act or omission is that of a <i>person</i> ("R") who, at the time of that act or omission, was subject to a <i>former scheme</i>;</u></p> <p>(b) <u>R was an <i>authorised person</i> on or after the <i>relevant commencement date</i>;</u></p> <p>(c) <u>the act or omission occurred in the carrying on by R of an activity to which that <i>former scheme</i> applied; and</u></p> <p>(d) <u>the complainant is eligible and wishes to have the complaint dealt with under the <i>new scheme</i>.</u></p>

## ADDENDUM

### COMPLAINTS SOURCEBOOK (MORTGAGE AND GENERAL INSURANCE TRANSITIONAL COMPLAINTS) INSTRUMENT 2004

Annex A to this instrument is amended by the insertion of the underlined text and the deletion of the text that is struck through.

#### Transitional provisions

(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
...					
<del>1013</del>	<del>DISP</del> <u>DISP</u> 1	R	Where, at the <i>relevant commencement date</i> ...	...	31 October 2004
<del>1114</del>		G	<u>DISP TP</u> <del>1013R</del> recognises that...		