

our jurisdiction: where investment firms are no longer authorised

This is a quick guide to the rules and remit of the Financial Ombudsman Service – in relation to complaints about firms that are no longer authorised to carry out investment business. It will be of interest primarily to investment firms formerly regulated by FIMBRA and PIA.

complaints about former firms

The Financial Ombudsman Service was set up under *the Financial Services and Markets Act 2000*. There are *transitional provisions* under this Act – to deal with the fact that problems giving rise to complaints may not always emerge immediately.

The *transitional provisions* allow us to deal with complaints about events that took place when the firm concerned was covered by one of the *previous* complaints schemes – which later merged to form the Financial Ombudsman Service.

The *transitional provisions* mean that the Financial Ombudsman Service covers complaints about former investment firms that have never been authorised by the Financial Services Authority (FSA) – but were previously authorised by a former regulator and covered by a former complaints scheme.

what the rules say

Article 3 of the *Ombudsman Transitional Order* says that (subject to certain modifications) the *Compulsory Jurisdiction* applies to a *relevant new complaint*, provided that:

- a) the act or omission is that of a *person* who was, immediately before *commencement*, subject to a *former scheme*;

- b) the act or omission occurred in the carrying on by that *person* of an activity to which that *former scheme* applied [...]

These *transitional provisions* are referred to in the FSA Handbook at DISP 2.3.2 G. They mean that a complaint will usually fall within our jurisdiction if:

- the *activity* complained about was covered by the jurisdiction of the relevant former complaints scheme; *and*
- the *firm in question* was covered by that former complaints scheme immediately before the Financial Ombudsman Service received its own powers on 1 December 2001.

(1 December 2001 is the date – often referred to as “N2” – when the FSA also received its new regulatory powers under the *Financial Services and Markets Act*).

complaints relating to FIMBRA and PIA days

In most cases, the former complaints scheme will be the Personal Investment Authority (PIA) Ombudsman Bureau. Under its terms of reference (at paragraphs 8 and 6.1[e]), the PIA Ombudsman’s jurisdiction extended both to PIA-member firms and to *former* PIA-members. So a firm that gave up its PIA-authorisation still remained subject to the PIA Ombudsman.

Additionally, under the PIA rules (chapter 8), investment business carried out by a firm when it was authorised by PIA's predecessor regulator, FIMBRA, automatically came under the PIA Ombudsman's jurisdiction if the firm had *continuous* authorisation – originally as a FIMBRA member and then as a PIA member *or* representative of a PIA-authorized firm.

This means that the firm's investment activities under *either* regulator were covered by the PIA Ombudsman. And the PIA Ombudsman could consider complaints about both FIMBRA-regulated and PIA-regulated investment activities up until "N2" (when the FSA replaced PIA) – whether or not the firm remained authorised up to that date.

It also means that in these circumstances a complaint about investment activities dating back to either PIA *or* FIMBRA days is covered by the compulsory jurisdiction of the Financial Ombudsman Service.

a firm's obligations and responsibilities

Generally speaking, a firm *remains responsible* for complaints about events and activities which occurred when it was authorised – even if the firm is no longer authorised to carry out investment business and/or it has stopped trading.

This reflects the general principle that people providing professional services cannot just walk away from their responsibilities and duties of care to their clients.

Any complaint made by a current or former customer should be dealt with in accordance with the FSA's requirements for handling complaints (as set out in the DISP section of the FSA Handbook).

These requirements include:

- investigating the complaint;
- complying with the time limits for dealing with the complaint;

- providing a final response letter to the customer; *and*
- co-operating with the Financial Ombudsman Service.

A firm's failure to co-operate with us – on the grounds that it is no longer trading or authorised – does not prevent us from investigating a complaint against it. Nor does it prevent us from issuing a final decision (with or without the input of the firm in question). Our final decision will be legally binding on the firm – if accepted by the consumer – and the firm will be liable to pay the customer any award we may make against it.

files and records

If we know that a firm has ceased trading and sold on its client base *and* no longer has the paperwork relating to its former business, then we will make every reasonable effort to obtain the files from the business which now has them.

But if we are unable to get hold of the files, we will still need to investigate the complaint and make a decision – based on whatever paperwork we have.

No longer having the relevant file does not automatically mean that a firm will lose a complaint. But if we believe redress should be paid, the original firm will still be responsible for any award we make against it.

"in default"

Only if it has been formally declared "in default" by the Financial Services Compensation Scheme (FSCS) is a firm no longer required to deal with complaints against it. FSCS is the "safety net" for customers of authorised financial firms that go out of business – and are unable to meet their liabilities to their clients. FSCS is a separate organisation from the Financial Ombudsman Service.

If we receive complaints about a firm that FSCS declares “in default”, we will forward the cases on to FSCS. Otherwise we will continue to work on the complaints – even if the firm involved is no longer authorised and/or has stopped trading.

“my firm is insolvent so it cannot pay any awards made against it”

Unless it is formally declared “in default” by FSCS, a firm’s financial status does not affect our ability to consider any complaint or make any award against it.

“am I still liable for advice that one of the other partners who gave?”

If you were a partner in the firm at the time of the event complained about, it is likely that you will be liable. Any agreement on liabilities that partners may have entered into when the firm ceased trading is a matter for those partners to sort out between themselves. We will consider the complaint against the firm and its former partners.

“when I sold my business, the liabilities were transferred to the new firm”

Where there is a dispute about liability, we will need to see clear documentary evidence – from the time of the transfer – that the liabilities were legally transferred to the new business. We will then make our own decision about which business we believe is liable for the complaint.

more information

If you have a general query about our rules or jurisdiction, you can contact our technical advice desk for informal advice (*phone* 020 7964 1400; *email* technical.advice@financial-ombudsman.org.uk).

If you have a jurisdiction query about a specific complaint that has already been allocated to an adjudicator, you should get in touch with that adjudicator.

www.financial-ombudsman.org.uk

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- news and frequently-asked questions
- information and updates
- technical information for businesses and help for consumers
- *ombudsman news* – our regular newsletter with case studies, features and commentary.

This quick guide gives general information only. It is not a definitive statement of the law, our approach or our procedure.