
STATUTORY INSTRUMENTS

2018 No. 1253

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

PART 5

Miscellaneous

Interpretation

86. In this Part—

“the 2006 Act” means the Compensation Act 2006;

“the 2012 Act” means the Financial Services Act 2012(1);

“the 2018 Act” means the Financial Guidance and Claims Act 2018; and

“the OLC”, “the FOS” and “the Regulator” have the meanings given in paragraph 2 of Schedule 4 to the 2018 Act.

Legal professional privilege

87.—(1) The FCA is entitled to claim legal professional privilege or, in Scotland, confidentiality of communications in respect of legally privileged information disclosed to the FCA by the Regulator under paragraph (4).

(2) The FOS is entitled to claim legal professional privilege or, in Scotland, confidentiality of communications in respect of legally privileged information disclosed to the FOS by the OLC under paragraph (4).

(3) In this article, “legally privileged information” means information received or generated by the Regulator or the OLC before 1st April 2019, in respect of which the Regulator or the OLC would have been able, before that date, to maintain a claim for legal professional privilege or confidentiality of communications in legal proceedings.

(4) For the purposes of this article legally privileged information is disclosed where—

(a) it is transferred to the FCA by the Regulator—

(i) under a transfer scheme made under paragraph 3 of Schedule 4 to the 2018 Act (Regulation of Claims Management Services: Transfer Schemes); or

(ii) otherwise in connection with functions of the FCA becoming exercisable in respect of an activity which—

(aa) ceases on 1st April 2019 to be an activity in respect of which an authorisation under section 4(1)(a) of the 2006 Act (provision of regulated claims management services) is required or would be required but for the exemption or waiver conferred by subsections (1)(b) or (c) of that section; and

- (bb) becomes on that date a regulated activity for the purposes of the 2000 Act.
- (b) it is transferred to the FOS by the OLC—
 - (i) under a transfer scheme made under paragraph 13 of Schedule 4 to the 2018 Act; or
 - (ii) otherwise in connection with functions of the FOS becoming exercisable in respect of an activity which—
 - (aa) ceases on 1st April 2019 to be an activity in respect of which an authorisation under section 4(1)(a) of the 2006 Act (provision of regulated claims management services) is required or would be required but for the exemption or waiver conferred by subsections (1)(b) or (c) of that section; and
 - (bb) becomes on that date a regulated activity for the purposes of the 2000 Act.

Complaints against the Regulator where no determination made before 1st April 2019

88.—(1) Paragraphs (2) and (3) apply if, before 1st April 2019—

- (a) a person (“A”) had made a complaint against the Regulator about the service it had provided; and
- (b) that complaint had not been finally determined by the Regulator in accordance with its complaint procedures.

(2) The complaint referred to in paragraph (1) is to be treated as a complaint made under the FCA’s complaints scheme within the meaning of section 84(1)(a) of the 2012 Act whether or not it is made in relation to any of the FCA’s relevant functions.

Definition of “consumer”

89.—(1) For the purposes of the provisions listed in paragraph (2), “consumer” includes a person—

- (a) who before 1st April 2019 received services from persons authorised, or by any person providing services for which an authorisation was required, under section 5 of the 2006 Act;
- (b) who has rights or interests which are derived from, or are otherwise attributable to, the use of any such services by other persons;
- (c) who has rights or interests which may be adversely affected by the use of any such services by a person acting on their behalf or in a fiduciary capacity in relation to them; or
- (d) in respect of whom a person carries on an activity specified in article 89G of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001⁽²⁾, whether that activity is a regulated activity or is, by reason of an exclusion provided for under the 2001 Order or under the 2000 Act, not a regulated activity.

(2) The provisions are—

- (a) section 1G of the 2000 Act⁽³⁾ (meaning of “consumer”);
- (b) section 404E of the 2000 Act⁽⁴⁾ (meaning of “consumers”); and
- (c) section 425A of the 2000 Act⁽⁵⁾ (consumers: regulated activities etc carried on by authorised persons).

(2) [S.I. 2001/544](#).

(3) Section 1G was inserted by the Financial Services Act 2012, section 6.

(4) Section 404E was substituted by the by the Financial Services Act 2010 (c. 28).

(5) Section 425A was inserted by the Financial Services Act 2010, section 24(1).

- (3) For the purposes of this article—
- (a) where a person provided a service mentioned in paragraph (1) as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used, or may use the service; and
 - (b) a person who deals, or dealt, with another person (“A”) in the course of A providing a service mentioned in paragraph (1) is to be treated as using, or having used, the service.