



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XVI

#### THE OMBUDSMAN SCHEME

##### *Determination of complaints*

#### **228 Determination under the compulsory jurisdiction.**

- (1) This section applies only in relation to the compulsory jurisdiction <sup>F1</sup>....
  - (2) A complaint is to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case.
  - (3) When the ombudsman has determined a complaint he must give a written statement of his determination to the respondent and to the complainant.
  - (4) The statement must—
    - (a) give the ombudsman's reasons for his determination;
    - (b) be signed by him; and
    - (c) require the complainant to notify him <sup>F2</sup>..., before a date specified in the statement, whether he accepts or rejects the determination.
  - (5) If the complainant notifies the ombudsman that he accepts the determination, it is binding on the respondent and the complainant and final.
  - (6) If, by the specified date, the complainant has not notified the ombudsman of his acceptance or rejection of the determination he is to be treated as having rejected it.
- [<sup>F3</sup>(6A) But the complainant is not to be treated as having rejected the determination by virtue of subsection (6) if—
- (a) the complainant notifies the ombudsman after the specified date of the complainant's acceptance of the determination,
  - (b) the complainant has not previously notified the ombudsman of the complainant's rejection of the determination, and

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- (c) the ombudsman is satisfied that such conditions as may be prescribed by rules made by the scheme operator for the purposes of this section are satisfied.]
- (7) The ombudsman must notify the respondent of the outcome.
- [<sup>F4</sup>(7A) Where a determination is rejected by virtue of subsection (6), the notification under subsection (7) must contain a general description of the effect of subsection (6A).]
- (8) A copy of the determination on which appears a certificate signed by an ombudsman is evidence (or in Scotland sufficient evidence) that the determination was made under the scheme.
- (9) Such a certificate purporting to be signed by an ombudsman is to be taken to have been duly signed unless the contrary is shown.

#### Textual Amendments

- F1** Words in s. 228(1) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **10(7)**
- F2** Words in s. 228(4)(c) omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 11 para. 4(2)** (with [Sch. 20](#)); [S.I. 2013/113](#), art. 2(1)(c), [Sch. Pt. 3](#); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F3** S. 228(6A) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 11 para. 4(3)** (with [Sch. 20](#)); [S.I. 2013/113](#), art. 2(1)(c), [Sch. Pt. 3](#); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F4** S. 228(7A) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 11 para. 4(4)** (with [Sch. 20](#)); [S.I. 2013/113](#), art. 2(1)(c), [Sch. Pt. 3](#); [S.I. 2013/423](#), art. 3, [Sch.](#)

#### Modifications etc. (not altering text)

- C1** S. 228 applied (1.12.2001) by [S.I. 2001/2326](#), **arts. 1(1)(b)**, 6(11), 7(1); [S.I. 2001/3538](#), **art. 2(1)**
- C2** Ss. 228-232 applied (31.10.2004 for certain purposes and 14.1.2005 otherwise) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Complaints Relating to General Insurance and Mortgages\) Order 2004 \(S.I. 2004/454\)](#), arts. 1(2), **5**
- C3** S. 228(2) excluded (1.12.2001) by [S.I. 2001/2326](#), **arts. 1(1)(b)**, 6(1)(a); [S.I. 2001/3538](#), **art. 2(1)**
- C4** S. 228(4)(c)(5)-(7) excluded (1.12.2001) by [S.I. 2001/2326](#), **arts. 1(1)(b)**, 6(7)(8)(9); [S.I. 2001/3538](#), **art. 2(1)**

## 229 Awards.

- (1) This section applies only in relation to the compulsory jurisdiction <sup>F5</sup>....
- (2) If a complaint which has been dealt with under the scheme is determined in favour of the complainant, the determination may include—
- an award against the respondent of such amount as the ombudsman considers fair compensation for loss or damage (of a kind falling within subsection (3)) suffered by the complainant (“a money award”);
  - a direction that the respondent take such steps in relation to the complainant as the ombudsman considers just and appropriate (whether or not a court could order those steps to be taken).
- (3) A money award may compensate for—

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- (a) financial loss; or
  - (b) any other loss, or any damage, of a specified kind.
- (4) The [<sup>F6</sup>FCA] may specify [<sup>F7</sup>for the purposes of the compulsory jurisdiction] the maximum amount which may be regarded as fair compensation for a particular kind of loss or damage specified under subsection (3)(b).
- <sup>F8</sup>(4A) . . . . .
- (5) A money award may not exceed the monetary limit; but the ombudsman may, if he considers that fair compensation requires payment of a larger amount, recommend that the respondent pay the complainant the balance.
  - (6) The monetary limit is such amount as may be specified.
  - (7) Different amounts may be specified in relation to different kinds of complaint.
  - (8) A money award—
    - (a) may provide for the amount payable under the award to bear interest at a rate and as from a date specified in the award; and
    - (b) is enforceable by the complainant in accordance with Part III of Schedule 17<sup>F9</sup> . . . . .
  - (9) Compliance with a direction under subsection (2)(b)—
    - (a) is enforceable by an injunction; or
    - (b) in Scotland, is enforceable by an order under section 45 of the <sup>M1</sup>Court of Session Act 1988.
  - (10) Only the complainant may bring proceedings for an injunction or proceedings for an order.

[<sup>F10</sup>(11) “Specified” means specified in compulsory jurisdiction rules.]

<sup>F11</sup>(12) . . . . .

#### Textual Amendments

- F5** Words in s. 229(1) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **10(8)(a)**
- F6** Word in s. 229(4) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 11 para. 5** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F7** Words in s. 229(4) inserted (16.6.2006) by [Consumer Credit Act 2006 \(c. 14\)](#), **ss. 61(4)**, 71(2); S.I. 2006/1508, **art. 3(1)**, Sch. 1
- F8** S. 229(4A) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **10(8)(b)**
- F9** Words in s. 229(8)(b) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **10(8)(c)**
- F10** S. 229(11) substituted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **10(8)(d)**

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- F11** S. 229(12) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **10(8)(e)**

#### Modifications etc. (not altering text)

- C5** S. 229 applied (1.12.2001) by [S.I. 2001/2326](#), arts. **1(1)(b)**, 7(1); [S.I. 2001/3538](#), art. **2(1)**  
S. 229 restricted (1.12.2001) by [S.I. 2001/2326](#), arts. **1(1)(b)**, 6(1)(b)(4)(5); [S.I. 2001/3538](#), art. **2(1)**
- C6** Ss. 228-232 applied (31.10.2004 for certain purposes and 14.1.2005 otherwise) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Complaints Relating to General Insurance and Mortgages\) Order 2004 \(S.I. 2004/454\)](#), arts. 1(2), **5**
- C7** S. 229(8)(b) applied (1.12.2001) by [S.I. 2001/2326](#), arts. **1(1)(b)**, 6(4); [S.I. 2001/3538](#), art. **2(1)**
- C8** S. 229(9)(10) applied (1.12.2001) by [S.I. 2001/2326](#), arts. **1(1)(b)**, 6(5); [S.I. 2001/3538](#), art. **2(1)**

#### Commencement Information

- I1** S. 229 wholly in force at 1.12.2001; s. 229 not in force at Royal Assent see s. 431(2); s. 229 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), art. 2, **Sch.**; s. 229 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), art. **2(1)**

#### Marginal Citations

- M1** 1988 c. 36.

## 230 Costs.

- (1) The scheme operator may by rules (“costs rules”) provide for an ombudsman to have power, on determining a complaint under the compulsory jurisdiction <sup>F12</sup>..., to award costs in accordance with the provisions of the rules.
- (2) Costs rules require the approval of the [<sup>F13</sup>FCA].
- (3) Costs rules may not provide for the making of an award against the complainant in respect of the respondent’s costs.
- (4) But they may provide for the making of an award against the complainant in favour of the scheme operator, for the purpose of providing a contribution to resources deployed in dealing with the complaint, if in the opinion of the ombudsman—
  - (a) the complainant’s conduct was improper or unreasonable; or
  - (b) the complainant was responsible for an unreasonable delay.
- (5) Costs rules may authorise an ombudsman making an award in accordance with the rules to order that the amount payable under the award bears interest at a rate and as from a date specified in the order.
- (6) An amount due under an award made in favour of the scheme operator is recoverable as a debt due to the scheme operator.
- (7) Any other award made against the respondent is to be treated as a money award for the purposes of paragraph 16 of Schedule 17 <sup>F14</sup>....

#### Textual Amendments

- F12** Words in s. 230(1) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **10(9)(a)**

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- F13** Word in s. 230(2) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 11 para. 6](#) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F14** Words in s. 230(7) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2013 \(S.I. 2013/1881\), arts. 1\(2\)\(6\), 10\(9\)\(b\)](#)

#### **Modifications etc. (not altering text)**

- C9** S. 230 applied (19.7.2001 for specified purposes otherwise 1.12.2001) by [S.I. 2001/2326, arts. 1\(1\), 7\(1\); S.I. 2001/3538, art. 2\(1\)](#)  
S. 230 restricted (19.7.2001 for specified purposes otherwise 1.12.2001) by [S.I. 2001/2326, arts. 1\(1\), 6\(1\)\(c\); S.I. 2001/3538, art. 2\(1\)](#)
- C10** Ss. 228-232 applied (31.10.2004 for certain purposes and 14.1.2005 otherwise) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Complaints Relating to General Insurance and Mortgages\) Order 2004 \(S.I. 2004/454\), arts. 1\(2\), 5](#)
- C11** S. 230(6)(7) applied (19.7.2001 for specified purposes otherwise 1.12.2001) by [S.I. 2001/2326, arts. 1\(1\), 6\(6\); S.I. 2001/3538, art. 2\(1\)](#)

#### **[<sup>F15</sup>230A Reports of determinations**

- (1) The scheme operator must publish a report of any determination made under this Part.
- (2) But if the ombudsman who makes the determination informs the scheme operator that, in the ombudsman's opinion, it is inappropriate to publish a report of that determination (or any part of it) the scheme operator must not publish a report of that determination (or that part).
- (3) Unless the complainant agrees, a report of a determination published by the scheme operator may not include the name of the complainant, or particulars which, in the opinion of the scheme operator, are likely to identify the complainant.
- (4) The scheme operator may charge a reasonable fee for providing a person with a copy of a report.]

#### **Textual Amendments**

- F15** S. 230A inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 11 para. 7](#) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

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