

*Status: Point in time view as at 13/08/2009.*

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# SCHEDULES

## SCHEDULE 17

Section 225(4).

### THE OMBUDSMAN SCHEME

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

- C1** Sch. 17 applied (1.5.2009 for certain purposes and 1.11.2009 otherwise) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2), **125** (with reg. 3)
- C2** Sch. 17 applied (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), **reg. 76(2)** (with reg. 3)

#### PART I

##### GENERAL

##### *Interpretation*

- 1 In this Schedule—  
“ombudsman” means a person who is a member of the panel; and  
“the panel” means the panel established under paragraph 4.

#### PART II

##### THE SCHEME OPERATOR

##### *Establishment by the Authority*

- 2 (1) The Authority must establish a body corporate to exercise the functions conferred on the scheme operator by or under this Act.
- (2) The Authority must take such steps as are necessary to ensure that the scheme operator is, at all times, capable of exercising those functions.

##### *Constitution*

- 3 (1) The constitution of the scheme operator must provide for it to have—  
(a) a chairman; and  
(b) a board (which must include the chairman) whose members are the scheme operator’s directors.
- (2) The chairman and other members of the board must be persons appointed, and liable to removal from office, by the Authority (acting, in the case of the chairman, with the approval of the Treasury).

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- (3) But the terms of their appointment (and in particular those governing removal from office) must be such as to secure their independence from the Authority in the operation of the scheme.
- (4) The function of making voluntary jurisdiction rules under section 227 [F1, the function of making consumer credit rules, the function of making determinations under section 234A(1)] and the functions conferred by paragraphs 4, 5, 7, 9 or 14 may be exercised only by the board.
- (5) The validity of any act of the scheme operator is unaffected by—
  - (a) a vacancy in the office of chairman; or
  - (b) a defect in the appointment of a person as chairman or as a member of the board.

#### Textual Amendments

**F1** Words in Sch. 17 para. 3(4) inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. 61(10)(a), 71(2); S.I. 2006/1508, art. 3(1), Sch. 1

#### *The panel of ombudsmen*

- 4 (1) The scheme operator must appoint and maintain a panel of persons, appearing to it to have appropriate qualifications and experience, to act as ombudsmen for the purposes of the scheme.
- (2) A person's appointment to the panel is to be on such terms (including terms as to the duration and termination of his appointment and as to remuneration) as the scheme operator considers—
  - (a) consistent with the independence of the person appointed; and
  - (b) otherwise appropriate.

#### *The Chief Ombudsman*

- 5 (1) The scheme operator must appoint one member of the panel to act as Chief Ombudsman.
- (2) The Chief Ombudsman is to be appointed on such terms (including terms as to the duration and termination of his appointment) as the scheme operator considers appropriate.

#### *Status*

- 6 (1) The scheme operator is not to be regarded as exercising functions on behalf of the Crown.
- (2) The scheme operator's board members, officers and staff are not to be regarded as Crown servants.
- (3) Appointment as Chief Ombudsman or to the panel or as a deputy ombudsman does not confer the status of Crown servant.

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### *Annual reports*

- 7 (1) At least once a year—
- (a) the scheme operator must make a report to the Authority on the discharge of its functions; and
  - (b) the Chief Ombudsman must make a report to the Authority on the discharge of his functions.
- (2) Each report must distinguish between functions in relation to the scheme’s compulsory jurisdiction [<sup>F2</sup>, functions in relation to its consumer credit jurisdiction] and functions in relation to its voluntary jurisdiction.
- (3) Each report must also comply with any requirements specified in rules made by the Authority.
- (4) The scheme operator must publish each report in the way it considers appropriate.

#### **Textual Amendments**

- F2** Words in Sch. 17 para. 7(2) inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. 61(10)(b), 71(2); S.I. 2006/1508, art. 3(1), Sch. 1

### *Guidance*

- 8 The scheme operator may publish guidance consisting of such information and advice as it considers appropriate and may charge for it or distribute it free of charge.

### *Budget*

- 9 (1) The scheme operator must, before the start of each of its financial years, adopt an annual budget which has been approved by the Authority.
- (2) The scheme operator may, with the approval of the Authority, vary the budget for a financial year at any time after its adoption.
- (3) The annual budget must include an indication of—
- (a) the distribution of resources deployed in the operation of the scheme, and
  - (b) the amounts of income of the scheme operator arising or expected to arise from the operation of the scheme,
- distinguishing between the scheme’s compulsory [<sup>F3</sup>, consumer credit] and voluntary jurisdiction.

#### **Textual Amendments**

- F3** Words in Sch. 17 para. 9(3) inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. 61(10)(c), 71(2); S.I. 2006/1508, art. 3(1), Sch. 1

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

- C3** Sch. 17 para. 9(3) excluded (18.6.2001) by S.I. 2001/1821, arts. 1(1), 4(1)

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### *Exemption from liability in damages*

- 10 (1) No person is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of any functions under this Act in relation to the compulsory jurisdiction [<sup>F4</sup>or to the consumer credit jurisdiction].
- (2) Sub-paragraph (1) does not apply—
- (a) if the act or omission is shown to have been in bad faith; or
  - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the <sup>M1</sup>Human Rights Act 1998.

#### **Textual Amendments**

- F4** Words in Sch. 17 para. 10(1) inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. 61(10)(d), 71(2); S.I. 2006/1508, art. 3(1), Sch. 1

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

- C4** Sch. 17 para. 10(1) amended (19.7.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/2326, arts. 1(1), 13; S.I. 2001/3538, art. 2(1)
- C5** Sch. 17 para. 10(1) extended (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), 7

#### **Marginal Citations**

- M1** 1998 c. 42.

### *Privilege*

- 11 For the purposes of the law relating to defamation, proceedings in relation to a complaint which is subject to the compulsory jurisdiction [<sup>F5</sup>or to the consumer credit jurisdiction] are to be treated as if they were proceedings before a court.

#### **Textual Amendments**

- F5** Words in Sch. 17 para. 11 inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. 61(10)(d), 71(2); S.I. 2006/1508, art. 3(1), Sch. 1

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

- C6** Sch. 17 para. 11 amended (19.7.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/2326, arts. 1(1), 14; S.I. 2001/3538, art. 2(1)
- C7** Sch. 17 para. 11 extended (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), 8

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## PART III

### THE COMPULSORY JURISDICTION

#### *Introduction*

- 12 This Part of this Schedule applies only in relation to the compulsory jurisdiction.

#### *Authority's procedural rules*

- 13 (1) The Authority must make rules providing that a complaint is not to be entertained unless the complainant has referred it under the ombudsman scheme before the applicable time limit (determined in accordance with the rules) has expired.
- (2) The rules may provide that an ombudsman may extend that time limit in specified circumstances.
- (3) The Authority may make rules providing that a complaint is not to be entertained (except in specified circumstances) if the complainant has not previously communicated its substance to the respondent and given him a reasonable opportunity to deal with it.
- (4) The Authority may make rules requiring an authorised person [<sup>F6</sup>, or a payment service provider within the meaning of the Payment Services Regulations 2009,] who may become subject to the compulsory jurisdiction as a respondent to establish such procedures as the Authority considers appropriate for the resolution of complaints which—
- (a) may be referred to the scheme; and
  - (b) arise out of activity to which the Authority's powers under Part X do not apply.

#### **Textual Amendments**

- F6** Words in [Sch. 17 para. 13\(4\)](#) inserted (2.3.2009 for certain purposes, 1.5.2009 for certain further purposes and 1.11.2009 otherwise) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), [regs. 1\(2\), 126, Sch. 6 para. 1\(2\)](#) (with [reg. 3](#))

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

- C8** [Sch. 17 para. 13](#) amended (19.7.2001 for specified purposes otherwise 1.12.2001) by [S.I. 2001/2326, arts. 1\(1\), 4; S.I. 2001/3538, art. 2\(1\)](#)
- C9** [Sch. 17 para. 13](#) modified (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\(2\), 3](#)

#### *The scheme operator's rules*

- 14 (1) The scheme operator must make rules, to be known as “scheme rules”, which are to set out the procedure for reference of complaints and for their investigation, consideration and determination by an ombudsman.
- (2) Scheme rules may, among other things—

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- (a) specify matters which are to be taken into account in determining whether an act or omission was fair and reasonable;
  - (b) provide that a complaint may, in specified circumstances, be dismissed without consideration of its merits;
  - (c) provide for the reference of a complaint, in specified circumstances and with the consent of the complainant, to another body with a view to its being determined by that body instead of by an ombudsman;
  - (d) make provision as to the evidence which may be required or admitted, the extent to which it should be oral or written and the consequences of a person's failure to produce any information or document which he has been required (under section 231 or otherwise) to produce;
  - (e) allow an ombudsman to fix time limits for any aspect of the proceedings and to extend a time limit;
  - (f) provide for certain things in relation to the reference, investigation or consideration (but not determination) of a complaint to be done by a member of the scheme operator's staff instead of by an ombudsman;
  - (g) make different provision in relation to different kinds of complaint.
- (3) The circumstances specified under sub-paragraph (2)(b) may include the following—
- (a) the ombudsman considers the complaint frivolous or vexatious;
  - (b) legal proceedings have been brought concerning the subject-matter of the complaint and the ombudsman considers that the complaint is best dealt with in those proceedings; or
  - (c) the ombudsman is satisfied that there are other compelling reasons why it is inappropriate for the complaint to be dealt with under the ombudsman scheme.
- (4) If the scheme operator proposes to make any scheme rules it must publish a draft of the proposed rules in the way appearing to it to be best calculated to bring them to the attention of persons appearing to it to be likely to be affected.
- (5) The draft must be accompanied by a statement that representations about the proposals may be made to the scheme operator within a time specified in the statement.
- (6) Before making the proposed scheme rules, the scheme operator must have regard to any representations made to it under sub-paragraph (5).
- (7) The consent of the Authority is required before any scheme rules may be made.

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

- C10** Sch. 17 para. 14 amended (19.7.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/2326, arts. 1(1), 5; S.I. 2001/3538, art. 2(1)
- C11** Sch. 17 para. 14 modified (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), 4
- C12** Sch. 17 para. 14 modified by The Payment Services Regulations 2009 (S.I. 2009/209), Sch. 7 para. 3(2) (as inserted (1.10.2009 for certain purposes and 1.11.2009 otherwise) by S.I. 2009/2475, reg. 13)
- C13** Sch. 17 para. 14(4)(5) amended (19.7.2001) by S.I. 2001/2326, arts. 1(1)(a), 16(a); S.I. 2001/3538, art. 2(1)

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- C14** Sch. 17 para. 14(4)-6) excluded by S.I. 2004/454, art. 12(2) (as inserted (15.7.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) (Amendment) Order 2004 (S.I. 2004/1609), art. 6)

### *Fees*

- 15 (1) Scheme rules may require a respondent to pay to the scheme operator such fees as may be specified in the rules.
- (2) The rules may, among other things—
- (a) provide for the scheme operator to reduce or waive a fee in a particular case;
  - (b) set different fees for different stages of the proceedings on a complaint;
  - (c) provide for fees to be refunded in specified circumstances;
  - (d) make different provision for different kinds of complaint.

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

- C15** Sch. 17 para. 15 amended (19.7.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/2326, arts. 1(1), 12(2)(3); S.I. 2001/3538, art. 2(1)
- C16** Sch. 17 para. 15 extended (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), 6(2)(3)

### *Enforcement of money awards*

- 16 A money award, including interest, which has been registered in accordance with scheme rules may—
- (a) if a county court so orders in England and Wales, be recovered by execution issued from the county court (or otherwise) as if it were payable under an order of that court;
  - (b) be enforced in Northern Ireland as a money judgment under the M<sup>2</sup>Judgments Enforcement (Northern Ireland) Order 1981;
  - (c) be enforced in Scotland by the sheriff, as if it were a judgment or order of the sheriff and whether or not the sheriff could himself have granted such judgment or order.

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

- C17** Sch. 17 para. 16 applied (19.7.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/2326, arts. 1(1), 16(4)(6); S.I. 2001/3538, art. 2(1)

#### **Marginal Citations**

- M2** S.I. 1981/226 (N.I.6).

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## [<sup>F7</sup>PART 3A

### THE CONSUMER CREDIT JURISDICTION

#### Textual Amendments

**F7** Sch. 17 Pt. 3A inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. 59(2), 71(2), Sch. 2; S.I. 2006/1508, art. 3(1), Sch. 1

#### *Introduction*

16A This Part of this Schedule applies only in relation to the consumer credit jurisdiction.

#### *Procedure for complaints etc.*

- 16B (1) Consumer credit rules—
- (a) must provide that a complaint is not to be entertained unless the complainant has referred it under the ombudsman scheme before the applicable time limit (determined in accordance with the rules) has expired;
  - (b) may provide that an ombudsman may extend that time limit in specified circumstances;
  - (c) may provide that a complaint is not to be entertained (except in specified circumstances) if the complainant has not previously communicated its substance to the respondent and given him a reasonable opportunity to deal with it;
  - (d) may make provision about the procedure for the reference of complaints and for their investigation, consideration and determination by an ombudsman.
- (2) Sub-paragraphs (2) and (3) of paragraph 14 apply in relation to consumer credit rules under sub-paragraph (1) of this paragraph as they apply in relation to scheme rules under that paragraph.
- (3) Consumer credit rules may require persons falling within sub-paragraph (6) to establish such procedures as the scheme operator considers appropriate for the resolution of complaints which may be referred to the scheme.
- (4) Consumer credit rules under sub-paragraph (3) may make different provision in relation to persons of different descriptions or to complaints of different descriptions.
- (5) Consumer credit rules under sub-paragraph (3) may authorise the scheme operator to dispense with or modify the application of such rules in particular cases where the scheme operator—
- (a) considers it appropriate to do so; and
  - (b) is satisfied that the specified conditions (if any) are met.
- (6) A person falls within this sub-paragraph if he is licensed by a standard licence (within the meaning of the Consumer Credit Act 1974) to carry on to any extent a business of a type specified in an order under section 226A(2)(e) of this Act.



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### *Fees*

- 16C (1) Consumer credit rules may require a respondent to pay to the scheme operator such fees as may be specified in the rules.
- (2) Sub-paragraph (2) of paragraph 15 applies in relation to consumer credit rules under this paragraph as it applies in relation to scheme rules under that paragraph.

### *Enforcement of money awards*

- 16D A money award, including interest, which has been registered in accordance with consumer credit rules may—
- (a) if a county court so orders in England and Wales, be recovered by execution issued from the county court (or otherwise) as if it were payable under an order of that court;
  - (b) be enforced in Northern Ireland as a money judgment under the Judgments Enforcement (Northern Ireland) Order 1981;
  - (c) be enforced in Scotland as if it were a decree of the sheriff and whether or not the sheriff could himself have granted such a decree.

### *Procedure for consumer credit rules*

- 16E (1) If the scheme operator makes any consumer credit rules, it must give a copy of them to the Authority without delay.
- (2) If the scheme operator revokes any such rules, it must give written notice to the Authority without delay.
- (3) The power to make such rules is exercisable in writing.
- (4) Immediately after the making of such rules, the scheme operator must arrange for them to be printed and made available to the public.
- (5) The scheme operator may charge a reasonable fee for providing a person with a copy of any such rules.

### *Verification of consumer credit rules*

- 16F (1) The production of a printed copy of consumer credit rules purporting to be made by the scheme operator—
- (a) on which there is endorsed a certificate signed by a member of the scheme operator's staff authorised by the scheme operator for that purpose, and
  - (b) which contains the required statements,
- is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.
- (2) The required statements are—
- (a) that the rules were made by the scheme operator;
  - (b) that the copy is a true copy of the rules; and
  - (c) that on a specified date the rules were made available to the public in accordance with paragraph 16E(4).
- (3) A certificate purporting to be signed as mentioned in sub-paragraph (1) is to be taken to have been duly signed unless the contrary is shown.

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### *Consultation*

- 16G (1) If the scheme operator proposes to make consumer credit rules, it must publish a draft of the proposed rules in the way appearing to it to be best calculated to bring the draft to the attention of the public.
- (2) The draft must be accompanied by—
- (a) an explanation of the proposed rules; and
  - (b) a statement that representations about the proposals may be made to the scheme operator within a specified time.
- (3) Before making any consumer credit rules, the scheme operator must have regard to any representations made to it in accordance with sub-paragraph (2)(b).
- (4) If consumer credit rules made by the scheme operator differ from the draft published under sub-paragraph (1) in a way which the scheme operator considers significant, the scheme operator must publish a statement of the difference.]

## **PART IV**

### THE VOLUNTARY JURISDICTION

#### *Introduction*

- 17 This Part of this Schedule applies only in relation to the voluntary jurisdiction.

#### *Terms of reference to the scheme*

- 18 (1) Complaints are to be dealt with and determined under the voluntary jurisdiction on standard terms fixed by the scheme operator with the approval of the Authority.
- (2) Different standard terms may be fixed with respect to different matters or in relation to different cases.
- (3) The standard terms may, in particular—
- (a) require the making of payments to the scheme operator by participants in the scheme of such amounts, and at such times, as may be determined by the scheme operator;
  - (b) make provision as to the award of costs on the determination of a complaint.
- (4) The scheme operator may not vary any of the standard terms or add or remove terms without the approval of the Authority.
- (5) The standard terms may include provision to the effect that (unless acting in bad faith) none of the following is to be liable in damages for anything done or omitted in the discharge or purported discharge of functions in connection with the voluntary jurisdiction—
- (a) the scheme operator;
  - (b) any member of its governing body;
  - (c) any member of its staff;
  - (d) any person acting as an ombudsman for the purposes of the scheme.

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### *Delegation by and to other schemes*

- 19 (1) The scheme operator may make arrangements with a relevant body—
- (a) for the exercise by that body of any part of the voluntary jurisdiction of the ombudsman scheme on behalf of the scheme; or
  - (b) for the exercise by the scheme of any function of that body as if it were part of the voluntary jurisdiction of the scheme.
- (2) A “relevant body” is one which the scheme operator is satisfied—
- (a) is responsible for the operation of a broadly comparable scheme (whether or not established by statute) for the resolution of disputes; and
  - (b) in the case of arrangements under sub-paragraph (1)(a), will exercise the jurisdiction in question in a way compatible with the requirements imposed by or under this Act in relation to complaints of the kind concerned.
- (3) Such arrangements require the approval of the Authority.

### *Voluntary jurisdiction rules: procedure*

- 20 (1) If the scheme operator makes voluntary jurisdiction rules, it must give a copy to the Authority without delay.
- (2) If the scheme operator revokes any such rules, it must give written notice to the Authority without delay.
- (3) The power to make voluntary jurisdiction rules is exercisable in writing.
- (4) Immediately after making voluntary jurisdiction rules, the scheme operator must arrange for them to be printed and made available to the public.
- (5) The scheme operator may charge a reasonable fee for providing a person with a copy of any voluntary jurisdiction rules.

### *Verification of the rules*

- 21 (1) The production of a printed copy of voluntary jurisdiction rules purporting to be made by the scheme operator—
- (a) on which is endorsed a certificate signed by a member of the scheme operator’s staff authorised by the scheme operator for that purpose, and
  - (b) which contains the required statements,
- is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.
- (2) The required statements are—
- (a) that the rules were made by the scheme operator;
  - (b) that the copy is a true copy of the rules; and
  - (c) that on a specified date the rules were made available to the public in accordance with paragraph 20(4).
- (3) A certificate purporting to be signed as mentioned in sub-paragraph (1) is to be taken to have been duly signed unless the contrary is shown.

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### *Consultation*

- 22 (1) If the scheme operator proposes to make voluntary jurisdiction rules, it must publish a draft of the proposed rules in the way appearing to it to be best calculated to bring them to the attention of the public.
- (2) The draft must be accompanied by—
- (a) an explanation of the proposed rules; and
  - (b) a statement that representations about the proposals may be made to the scheme operator within a specified time.
- (3) Before making any voluntary jurisdiction rules, the scheme operator must have regard to any representations made to it in accordance with sub-paragraph (2)(b).
- (4) If voluntary jurisdiction rules made by the scheme operator differ from the draft published under sub-paragraph (1) in a way which the scheme operator considers significant, the scheme operator must publish a statement of the difference.

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

**C18** Sch. 17 para. 22(1)(2) amended (19.7.2001) by S.I. 2001/2326, **arts. 1(1)(a), 16(b)**; S.I. 2001/3538, **art. 2(1)**

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