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## SCHEDULES

### SCHEDULE 17 **U.K.**

#### 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](#))
- C1** Sch. 17 applied (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), [reg. 76\(2\)](#) (with [reg. 3](#))

### **PART III** **U.K.**

#### THE COMPULSORY JURISDICTION

##### *Introduction*

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

##### *[<sup>F1</sup>FCA's] procedural rules*

##### **Textual Amendments**

- F1** Word in Sch. 17 para. 13 cross-heading substituted (24.1.2013 for specified purposes) by [Financial Services Act 2012 \(c. 21\)](#), [s. 122\(3\)](#), [Sch. 11 para. 24\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#)

- 13 (1) The [<sup>F2</sup>FCA] 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 [<sup>F2</sup>FCA] 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 [<sup>F2</sup>FCA] may make rules requiring an authorised person [<sup>F3</sup>, [<sup>F4</sup>an electronic money issuer within the meaning of the Electronic Money Regulations 2011] 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

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establish such procedures as the [F<sup>2</sup>FCA] considers appropriate for the resolution of complaints which—

- (a) may be referred to the scheme; and
- (b) arise out of activity to which the [F<sup>5</sup>FCA's] powers under [F<sup>6</sup>Part 9A] do not apply.

#### Textual Amendments

- F2** Word in Sch. 17 para. 13 substituted (24.1.2013 for specified purposes) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 11 para. 24(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3
- F3** 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)
- F4** Words in Sch. 17 para. 13(4) inserted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(a)(xv)(b), 79, Sch. 4 para. 2(8) (with reg. 3)
- F5** Word in Sch. 17 para. 13 substituted (24.1.2013 for specified purposes) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 11 para. 24(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3
- F6** Words in Sch. 17 para. 13(4)(b) substituted (24.1.2013 for specified purposes) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 11 para. 24(c) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

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

- C1** 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)
- C2** 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—
- (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;

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- [<sup>F7</sup>(fa) allow the correction of any clerical mistake in the written statement of a determination made by an ombudsman;
- (fb) provide that any irregularity arising from a failure to comply with any provisions of the scheme rules does not of itself render a determination void;]
- (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 [<sup>F8</sup>FCA] is required before any scheme rules may be made.

#### Textual Amendments

- F7** Sch. 17 para. 14(2)(fa)(fb) inserted (24.1.2013 for specified purposes) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 11 para. 25\(a\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3
- F8** Word in Sch. 17 para. 14(7) substituted (24.1.2013 for specified purposes) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 11 para. 25\(b\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

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

- C3** 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\(1\)](#)
- C4** 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
- C5** 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](#))
- C6** 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\(1\)](#)
- C7** 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](#))

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### *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)**

- C8** 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\(1\)](#)
- C9** 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 <sup>M1</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)**

- C10** 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**

- M1** [S.I. 1981/226](#) (N.I.6).

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