

# Annex A: Extracts from Financial Services and Markets Act 2000 as amended by Consumer Credit Act 2006

The Consumer Credit Act 2006 introduced an ombudsman service for consumer credit by making amendments to part XVI and schedule 17 of the Financial Services and Markets Act 2000. In these extracts:

- the amendments are underlined;
  - the "scheme operator" is the Financial Ombudsman Service; and
  - the "Authority" is the FSA.
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## **PART XVI**

### **THE OMBUDSMAN SCHEME**

#### *The scheme*

##### **The scheme and the scheme operator**

- 225** (1) This Part provides for a scheme under which certain disputes may be resolved quickly and with minimum formality by an independent person.
- (2) The scheme is to be administered by a body corporate ("the scheme operator").
- (3) The scheme is to be operated under a name chosen by the scheme operator but is referred to in this Act as "the ombudsman scheme".
- (4) Schedule 17 makes provision in connection with the ombudsman scheme and the scheme operator.

##### **Compulsory jurisdiction**

- 226** (1) A complaint which relates to an act or omission of a person ("the respondent") in carrying on an activity to which compulsory jurisdiction rules apply is to be dealt with under the ombudsman scheme if the conditions mentioned in subsection (2) are satisfied.
- (2) The conditions are that-
- (a) the complainant is eligible and wishes to have the complaint dealt with under the scheme;
  - (b) the respondent was an authorised person at the time of the act or omission to which the complaint relates; and
  - (c) the act or omission to which the complaint relates occurred at a time when compulsory jurisdiction rules were in force in relation to the activity in question.
- (3) "Compulsory jurisdiction rules" means rules-
- (a) made by the Authority for the purposes of this section; and

- (b) specifying the activities to which they apply.
- (4) Only activities which are regulated activities, or which could be made regulated activities by an order under section 22, may be specified.
- (5) Activities may be specified by reference to specified categories (however described).
- (6) A complainant is eligible, in relation to the compulsory jurisdiction of the ombudsman scheme, if he falls within a class of person specified in the rules as eligible.
- (7) The rules-
  - (a) may include provision for persons other than individuals to be eligible; but
  - (b) may not provide for authorised persons to be eligible except in specified circumstances or in relation to complaints of a specified kind.
- (8) The jurisdiction of the scheme which results from this section is referred to in this Act as the "compulsory jurisdiction".

### **Consumer credit jurisdiction**

- 226A** (1) A complaint which relates to an act or omission of a person (“the respondent”) is to be dealt with under the ombudsman scheme if the conditions mentioned in subsection (2) are satisfied.
- (2) The conditions are that -
- (a) the complainant is eligible and wishes to have the complaint dealt with under the scheme;
  - (b) the complaint falls within a description specified in consumer credit rules;
  - (c) at the time of the act or omission the respondent was the licensee under a standard licence or was authorised to carry on an activity by virtue of section 34A of the Consumer Credit Act 1974;
  - (d) the act or omission occurred in the course of a business being carried on by the respondent which was of a type mentioned in subsection (3);
  - (e) at the time of the act or omission that type of business was specified in an order made by the Secretary of State; and
  - (f) the complaint cannot be dealt with under the compulsory jurisdiction.
- (3) The types of business referred to in subsection (2)(d) are -
- (a) a consumer credit business;
  - (b) a consumer hire business;
  - (c) a business so far as it comprises or relates to credit brokerage;
  - (d) a business so far as it comprises or relates to debt-adjusting;
  - (e) a business so far as it comprises or relates to debt-counselling;
  - (f) a business so far as it comprises or relates to debt-collecting;
  - (g) a business so far as it comprises or relates to debt administration;

- (h) a business so far as it comprises or relates to the provision of credit information services;
- (i) a business so far as it comprises or relates to the operation of a credit reference agency.
- (4) A complainant is eligible if-
  - (a) he is-
    - (i) an individual; or
    - (ii) a surety in relation to a security provided to the respondent in connection with the business mentioned in subsection (2)(d); and
  - (b) he falls within a class of person specified in consumer credit rules.
- (5) The approval of the Treasury is required for an order under subsection (2)(e).
- (6) The jurisdiction of the scheme which results from this section is referred to in this Act as the “consumer credit jurisdiction”.
- (7) In this Act “consumer credit rules” means rules made by the scheme operator with the approval of the Authority for the purposes of the consumer credit jurisdiction.
- (8) Consumer credit rules under this section may make different provision for different cases.
- (9) Expressions used in the Consumer Credit Act 1974 have the same meaning in this section as they have in that Act.

### **Voluntary jurisdiction**

- 227**
- (1) A complaint which relates to an act or omission of a person ("the respondent") in carrying on an activity to which voluntary jurisdiction rules apply is to be dealt with under the ombudsman scheme if the conditions mentioned in subsection (2) are satisfied.
  - (2) The conditions are that-
    - (a) the complainant is eligible and wishes to have the complaint dealt with under the scheme;
    - (b) at the time of the act or omission to which the complaint relates, the respondent was participating in the scheme;
    - (c) at the time when the complaint is referred under the scheme, the respondent has not withdrawn from the scheme in accordance with its provisions;
    - (d) the act or omission to which the complaint relates occurred at a time when voluntary jurisdiction rules were in force in relation to the activity in question; and
    - (e) the complaint cannot be dealt with under the compulsory jurisdiction or the consumer credit jurisdiction.
  - (3) "Voluntary jurisdiction rules" means rules-
    - (a) made by the scheme operator for the purposes of this section; and
    - (b) specifying the activities to which they apply.

- (4) The only activities which may be specified in the rules are activities which are, or could be, specified in compulsory jurisdiction rules.
- (5) Activities may be specified by reference to specified categories (however described).
- (6) The rules require the Authority's approval.
- (7) A complainant is eligible, in relation to the voluntary jurisdiction of the ombudsman scheme, if he falls within a class of person specified in the rules as eligible.
- (8) The rules may include provision for persons other than individuals to be eligible.
- (9) A person qualifies for participation in the ombudsman scheme if he falls within a class of person specified in the rules in relation to the activity in question.
- (10) Provision may be made in the rules for persons other than authorised persons to participate in the ombudsman scheme.
- (11) The rules may make different provision in relation to complaints arising from different activities.
- (12) The jurisdiction of the scheme which results from this section is referred to in this Act as the "voluntary jurisdiction".
- (13) In such circumstances as may be specified in voluntary jurisdiction rules, a complaint-
  - (a) which relates to an act or omission occurring at a time before the rules came into force, and
  - (b) which could have been dealt with under a scheme which has to any extent been replaced by the voluntary jurisdiction,
 is to be dealt with under the ombudsman scheme even though paragraph (b) or (d) of subsection (2) would otherwise prevent that.
- (14) In such circumstances as may be specified in voluntary jurisdiction rules, a complaint is to be dealt with under the ombudsman scheme even though-
  - (a) paragraph (b) or (d) of subsection (2) would otherwise prevent that, and
  - (b) the complaint is not brought within the scheme as a result of subsection (13),
 but only if the respondent has agreed that complaints of that kind were to be dealt with under the scheme.

### *Determination of complaints*

#### **Determination under the compulsory jurisdiction**

- 228**
- (1) This section applies only in relation to the compulsory jurisdiction and to the consumer credit jurisdiction.
  - (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 in writing, 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.
- (7) The ombudsman must notify the respondent of the outcome.
- (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.

## Awards

- 229**
- (1) This section applies only in relation to the compulsory jurisdiction and to the consumer credit jurisdiction.
  - (2) If a complaint which has been dealt with under the scheme is determined in favour of the complainant, the determination may include-
    - (a) 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");
    - (b) 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-
    - (a) financial loss; or
    - (b) any other loss, or any damage, of a specified kind.
  - (4) The Authority may specify 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).
  - (4A) The scheme operator may specify for the purposes of the consumer credit jurisdiction the maximum amount which may be regarded as fair compensation for a particular kind of loss or damage specified under subsection (3)(b).
  - (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 or (as the case may be) Part 3A of that Schedule.
- (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 Court of Session Act 1988.
- (10) Only the complainant may bring proceedings for an injunction or proceedings for an order.
- (11) "Specified" means-
  - (a) for the purposes of the compulsory jurisdiction, specified in compulsory jurisdiction rules;
  - (b) for the purposes of the consumer credit jurisdiction, specified in consumer credit rules.
- (12) Consumer credit rules under this section may make different provision for different cases.

## Costs

- 230**
- (1) The scheme operator may by rules ("costs rules") provide for an ombudsman to have power, on determining a complaint under the compulsory jurisdiction, or the consumer credit jurisdiction, to award costs in accordance with the provisions of the rules.
  - (2) Costs rules require the approval of the Authority.
  - (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 or (as the case may be) paragraph 16D of that Schedule.

## *Information*

### **Ombudsman's power to require information**

- 231** (1) An ombudsman may, by notice in writing given to a party to a complaint, require that party-
- (a) to provide specified information or information of a specified description; or
  - (b) to produce specified documents or documents of a specified description.
- (2) The information or documents must be provided or produced-
- (a) before the end of such reasonable period as may be specified; and
  - (b) in the case of information, in such manner or form as may be specified.
- (3) This section applies only to information and documents the production of which the ombudsman considers necessary for the determination of the complaint.
- (4) If a document is produced in response to a requirement imposed under this section, the ombudsman may-
- (a) take copies or extracts from the document; or
  - (b) require the person producing the document to provide an explanation of the document.
- (5) If a person who is required under this section to produce a document fails to do so, the ombudsman may require him to state, to the best of his knowledge and belief, where the document is.
- (6) If a person claims a lien on a document, its production under this Part does not affect the lien.
- (7) "Specified" means specified in the notice given under subsection (1).

### **Powers of court where information required**

- 232** (1) If a person ("the defaulter") fails to comply with a requirement imposed under section 231, the ombudsman may certify that fact in writing to the court and the court may enquire into the case.
- (2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and, in the case of a body corporate, any director or officer) as if he were in contempt and "officer", in relation to a limited liability partnership, means a member of the limited liability partnership.
- (3) "Court" means-
- (a) the High Court;
  - (b) in Scotland, the Court of Session.

### **Data protection**

- 233** In section 31 of the Data Protection Act 1998 (regulatory activity), after subsection (4), insert-

"(4A) Personal data processed for the purpose of discharging any function which is conferred by or under Part XVI of the Financial Services and Markets Act 2000 on the body established by the Financial Services Authority for the purposes of that Part are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of the function."

## ***Funding***

### **Industry funding**

- 234** (1) For the purpose of funding-
- (a) the establishment of the ombudsman scheme (whenever any relevant expense is incurred), and
  - (b) its operation in relation to the compulsory jurisdiction,
- the Authority may make rules requiring the payment to it or to the scheme operator, by authorised persons or any class of authorised person of specified amounts (or amounts calculated in a specified way).
- (2) "Specified" means specified in the rules.

### **Funding by consumer credit licensees etc**

- 234A** (1) For the purpose of funding-
- (a) the establishment of the ombudsman scheme so far as it relates to the consumer credit jurisdiction (whenever any relevant expense is incurred), and
  - (b) its operation in relation to the consumer credit jurisdiction, the scheme operator may from time to time with the approval of the Authority determine a sum which is to be raised by way of contributions under this section.
- (2) A sum determined under subsection (1) may include a component to cover the costs of the collection of contributions to that sum ("collection costs") under this section.
- (3) The scheme operator must notify the OFT of every determination under subsection (1).
- (4) The OFT must give general notice of every determination so notified.
- (5) The OFT may by general notice impose requirements on-
- (a) licensees to whom this section applies, or
  - (b) persons who make applications to which this section applies,
- to pay contributions to the OFT for the purpose of raising sums determined under subsection (1).
- (6) The amount of the contribution payable by a person under such a requirement-
- (a) shall be the amount specified in or determined under the general notice; and
  - (b) shall be paid before the end of the period or at the time so specified or determined.

- (7) A general notice under subsection (5) may-
- (a) impose requirements only on descriptions of licensees or applicants specified in the notice;
  - (b) provide for exceptions from any requirement imposed on a description of licensees or applicants;
  - (c) impose different requirements on different descriptions of licensees or applicants;
  - (d) make provision for refunds in specified circumstances.
- (8) Contributions received by the OFT must be paid to the scheme operator.
- (9) As soon as practicable after the end of-
- (a) each financial year of the scheme operator, or
  - (b) if the OFT and the scheme operator agree that this paragraph is to apply instead of paragraph (a) for the time being, each period agreed by them,
- the scheme operator must pay to the OFT an amount representing the extent to which collection costs are covered in accordance with subsection (2) by the total amount of the contributions paid by the OFT to it during the year or (as the case may be) the agreed period.
- (10) Amounts received by the OFT from the scheme operator are to be retained by it for the purpose of meeting its costs.
- (11) The Secretary of State may by order provide that the functions of the OFT under this section are for the time being to be carried out by the scheme operator.
- (12) An order under subsection (11) may provide that while the order is in force this section shall have effect subject to such modifications as may be set out in the order.
- (13) The licensees to whom this section applies are licensees under standard licences which cover to any extent the carrying on of a type of business specified in an order under section 226A(2)(e).
- (14) The applications to which this section applies are applications for-
- (a) standard licences covering to any extent the carrying on of a business of such a type;
  - (b) the renewal of standard licences on terms covering to any extent the carrying on of a business of such a type.
- (15) Expressions used in the Consumer Credit Act 1974 have the same meaning in this section as they have in that Act.
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## SCHEDULE 17

### THE OMBUDSMAN SCHEME

#### 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).
- (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, 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.

### ***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.

### ***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, 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.

### ***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, consumer credit and voluntary jurisdiction.

### ***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 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 Human Rights Act 1998.

### ***Privilege***

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

## **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 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.

### *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;
  - (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.

***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.

***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 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.

**PART IIIA**

**THE CONSUMER CREDIT JURISDICTION**

**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) or 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.

### 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.

### 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 in 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.

#### ***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.

***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.