

*Status: Point in time view as at 01/04/2013.*

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## SCHEDULES

### SCHEDULE 17

#### 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 II

#### THE SCHEME OPERATOR

##### *[<sup>F1</sup>Duty of FCA*

##### Textual Amendments

- F1** Sch. 17 para. 2 and cross-heading 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. 14** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

- 2 The FCA must take such steps as are necessary to ensure that the body corporate established by the Financial Services Authority under this Schedule as originally enacted is, at all times, capable of exercising the functions conferred on the scheme operator by or under this Act.]

##### *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 [<sup>F2</sup>FCA] (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 [<sup>F2</sup>FCA] in the operation of the scheme.

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- (4) The function of making voluntary jurisdiction rules under section 227 <sup>[F3]</sup>, 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 <sup>[F4]</sup>, 9A] 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

- F2** Word in [Sch. 17 para. 3](#) 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. 15\(a\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F3** 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
- F4** Word in [Sch. 17 para. 3\(4\)](#) 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. 15\(b\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

#### <sup>[F5]</sup> Relationship with FCA

#### Textual Amendments

- F5** [Sch. 17 para. 3A](#) and crossheading 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. 16](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

- 3A (1) The scheme operator and the FCA must each take such steps as it considers appropriate to co-operate with the other in the exercise of their functions under this Part of this Act.
- (2) The scheme operator and the FCA must prepare and maintain a memorandum describing how they intend to comply with sub-paragraph (1).
- (3) The scheme operator must ensure that the memorandum as currently in force is published in the way appearing to the scheme operator to be best calculated to bring it to the attention of the public.]

#### *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.

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### *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 <sup>F6</sup>... 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.

#### **Textual Amendments**

- F6** Words in [Sch. 17 para. 6\(2\)](#) 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. 17](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), [Sch. Pt. 3](#); S.I. 2013/423, art. 3, [Sch.](#)

### *Annual reports*

- 7 (1) At least once a year—
- (a) the scheme operator must make a report to the [<sup>F7</sup>FCA] on the discharge of its functions; and
- (b) the Chief Ombudsman must make a report to the [<sup>F7</sup>FCA] on the discharge of his functions.
- (2) Each report must distinguish between functions in relation to the scheme's compulsory jurisdiction [<sup>F8</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 [<sup>F7</sup>FCA].
- (4) The scheme operator must publish each report in the way it considers appropriate.
- [<sup>F9</sup>(5) The Treasury may—
- (a) require the scheme operator to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or
- (b) direct that any provision of that Act about accounts and their audit is to apply to the scheme operator with such modifications as are specified in the direction, whether or not the provision would otherwise apply to the scheme manager.
- (6) Compliance with any requirement under sub-paragraph (5)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.

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(7) Proceedings under sub-paragraph (6) may be brought only by the Treasury.]

#### Textual Amendments

- F7** Word in [Sch. 17 para. 7](#) 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. 18\(a\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F8** 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
- F9** [Sch. 17 para. 7\(5\)-\(7\)](#) 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. 18\(b\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

#### *[<sup>F10</sup>Audit of accounts*

#### Textual Amendments

- F10** [Sch. 17 para. 7A and crossheading](#) 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. 19](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

- 7A (1) The scheme operator must send a copy of its annual accounts to the Comptroller and Auditor General as soon as is reasonably practicable.
- (2) The Comptroller and Auditor General must—
- (a) examine, certify and report on accounts received under this paragraph, and
  - (b) send a copy of the certified accounts and the report to the Treasury.
- (3) The Treasury must lay the copy of the certified accounts and the report before Parliament.
- (4) The scheme operator must send a copy of the certified accounts and the report to the FCA.
- (5) Except as provided by paragraph 7(5), the scheme operator is exempt from the requirements of Part 16 of the Companies Act 2006 (audit), and its balance sheet must contain a statement to that effect.
- (6) In this paragraph “annual accounts” has the meaning given by section 471 of the Companies Act 2006.]

#### *[<sup>F11</sup>Information, advice and guidance]*

#### Textual Amendments

- F11** [Sch. 17 para. 8 crossheading](#) 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. 20](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

- <sup>F11</sup>8 The scheme operator may publish [<sup>F12</sup>such information, guidance or advice] as it considers appropriate and may charge for it or distribute it free of charge.

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#### Textual Amendments

- F12** Words in [Sch. 17 para. 8](#) 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. 21](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), [Sch. Pt. 3](#); S.I. 2013/423, art. 3, [Sch.](#)

#### 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 <sup>F13</sup>FCA].
- (2) The scheme operator may, with the approval of the <sup>F13</sup>FCA], vary the budget for a financial year at any time after its adoption.
- (3) The annual budget must include an indication of—
- the distribution of resources deployed in the operation of the scheme, and
  - 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>F14</sup>, consumer credit] and voluntary jurisdiction.

#### Textual Amendments

- F13** Word in [Sch. 17 para. 9](#) 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. 22](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), [Sch. Pt. 3](#); S.I. 2013/423, art. 3, [Sch.](#)
- F14** 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)

- C1** [Sch. 17 para. 9\(3\)](#) excluded (18.6.2001) by S.I. 2001/1821, [arts. 1\(1\)](#), [4\(1\)](#)

#### <sup>F15</sup>Annual plan

#### Textual Amendments

- F15** [Sch. 17 para. 9A and crossheading](#) 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. 23](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), [Sch. Pt. 3](#); S.I. 2013/423, art. 3, [Sch.](#)

- 9A (1) The scheme operator must in respect of each of its financial years prepare an annual plan.
- (2) The plan must be prepared before the start of the financial year.
- (3) An annual plan in respect of a financial year must make provision about the use of the resources of the scheme operator.
- (4) The plan may include material relating to periods longer than the financial year in question.

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- (5) Before preparing an annual plan, the scheme operator must consult such persons (if any) as the scheme operator considers appropriate.
- (6) The scheme operator must publish each annual plan in the way it considers appropriate.]

*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>F16</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**

- F16** 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)**

- C2** 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\(1\)](#)
- C3** 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>F17</sup>or to the consumer credit jurisdiction] are to be treated as if they were proceedings before a court.

**Textual Amendments**

- F17** 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)**

- C4** 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\(1\)](#)
- C5** 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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