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STATUTORY INSTRUMENTS

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**2001 No. 2326**

**The Financial Services and Markets Act  
2000 (Transitional Provisions) (Ombudsman  
Scheme and Complaints Scheme) Order 2001**

*The Ombudsman Scheme*

**Determination of relevant existing complaints**

6.—(1) The following provisions do not apply in relation to a relevant existing complaint—

- (a) section 228(2) (criteria for determining complaints);
- (b) except as provided in paragraphs (4) and (5), section 229 (awards); and
- (c) except as provided in paragraph (6), section 230 (costs).

(2) A relevant existing complaint is to be determined (so far as practicable) by reference to such criteria as would have applied to the determination of the complaint by the former ombudsman under the former scheme in question immediately before commencement (provided that where the former scheme is the FSA scheme, the criteria are those which would have applied to the determination of the complaint by an independent investigator under that scheme at that time).

(3) A determination of a relevant existing complaint may include such remedy as could have been included in a determination (whether described as a determination, award, recommendation or otherwise) made by the former ombudsman under the former scheme in question immediately before commencement.

(4) Where such a determination includes an award against the respondent of compensation payable to the complainant, section 229(8)(b) and paragraph 16 of Schedule 17 apply in relation to such an award as they apply in relation to a money award (as defined in section 229(2)(a)).

(5) Where such a determination includes a requirement for the respondent to take any steps in relation to the complainant, section 229(9) and (10) apply in relation to such a requirement as they apply in relation to a direction under section 229(2)(b).

(6) Where the former scheme in question, as it had effect immediately before commencement, included provision for the award of costs, an ombudsman may, on determining the relevant existing complaint, award costs in accordance with that provision (irrespective of whether those costs were incurred, or relate to anything done, before or after commencement); and subsections (6) and (7) of section 230, and paragraph 16 of Schedule 17, apply in relation to such an award of costs as they apply in relation to an award under that section.

(7) Where, in relation to a relevant existing complaint, the former scheme in question was the FSA scheme—

- (a) if the complaint was, at commencement, subject to arbitration in accordance with that scheme, the extent to which the determination of the complaint under the new scheme is binding and final depends on the terms of the arbitration (which are not affected by this Order);

- (b) in any other case, the determination of the complaint under the new scheme is not binding on the respondent or the complainant;

and subsections (4)(c) and (5) to (7) of section 228 (determination of complaints) do not apply in relation to the complaint.

(8) Where, in relation to a relevant existing complaint, the former scheme in question was the SFA scheme—

- (a) if the complaint has not been submitted to arbitration under that scheme, and would not have been eligible to be so submitted under that scheme as it had effect immediately before commencement (disregarding any requirement for certification by the Complaints Bureau that the complaint had not been resolved by conciliation), the determination of the complaint under the new scheme is not binding on the respondent or the complainant;
- (b) if the complaint has been submitted to arbitration under that scheme, or would have been eligible to be so submitted under that scheme as it had effect immediately before commencement (disregarding any such requirement), the determination of the complaint under the new scheme is binding on the respondent and the complainant and final (but if the complaint has been submitted to arbitration the terms of the arbitration are otherwise unaffected by this Order);

and subsections (4)(c) and (5) to (7) of section 228 do not apply in relation to the complaint.

(9) Where, in relation to a relevant existing complaint—

- (a) the former scheme in question was the building societies scheme, and
- (b) the complaint was, at commencement, subject to arbitration in accordance with that scheme,

the extent to which the determination of the complaint under the new scheme is binding and final depends on the terms of the arbitration (which are not affected by this Order); and subsections (4) (c) and (5) to (7) of section 228 do not apply in relation to the complaint.

(10) Where, in relation to a relevant existing complaint—

- (a) the former scheme in question was the building societies scheme, and
- (b) if the complaint had been determined under that scheme as it had effect immediately before commencement, the respondent would have been relieved of his obligation to comply with the determination if he had complied with conditions as to the giving of notice of his non-fulfilment of the obligations imposed by the determination,

the determination of the complaint under the new scheme is (notwithstanding section 228(5)) not binding on the respondent if he complies with equivalent conditions.

(11) But subject to paragraphs (1) to (10), section 228 applies in relation to a relevant existing complaint as it applies in relation to a complaint of the kind mentioned in section 226(1) (compulsory jurisdiction).