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SCHEDULES

SCHEDULE 12

SCHEMES FOR INVESTIGATION OF COMPLAINTS

PART III

MINIMUM REQUIREMENTS FOR RECOGNISED SCHEMES: OTHER PROVISIONS

Grounds of complaint

- 1 The grounds for making action by a building society or associated body subject to investigation under the scheme must be that the action constitutes—
- (a) in the case of a building society, a breach of the society's obligations under this Act, the rules or any other contract, or
 - (b) in the case of an associated body, a breach of the associated body's obligations under its rules (if any) or any contract, or
 - (c) unfair treatment, or
 - (d) maladministration,
- in relation to the complainant and has caused him pecuniary loss or expense or inconvenience.

Permissible exclusions from investigation

- 2 A scheme must not exclude action from investigation on any other than the following grounds, that is to say—
- (a) that the complaint is frivolous or vexatious;
 - (b) that the action is the subject of proceedings in a court of law or was the subject of such proceedings in which a judgment on the merits was given;
 - (c) that, where the society or associated body has a procedure for the resolution of complaints by it (an "internal procedure"), the procedure has not been invoked or has not been exhausted;
 - (d) that there has been undue delay in having the matter investigated under the scheme; or
 - (e) that the action in question occurred outside the United Kingdom.

Note: An international procedure for resolution of complaints is not to be treated as having been invoked unless the complainant has made his complaint to the principal office of the society or, as the case may be, the registered office of the associated body and is not to be treated as having been exhausted unless more than three months has elapsed since

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the complainant invoked it without any decision on his complaint having been communicated to him.

Note: Delay in having a matter investigated under the scheme is not “undue delay” unless at least six months (disregarding the period for exhausting the society’s or associated body’s internal procedure) has expired since the matter came to the knowledge of the complainant; and a person is not, for this purpose, to be presumed to have knowledge of the contents of a document which contains or relates to the terms or proposed terms of any transaction between him and the society.

Functions of adjudicator

- 3 A scheme must, as regards the duties and powers attached to the investigation of complaints under the scheme—
- (a) impose on the adjudicator a duty, subject to the provision made in pursuance of sub-paragraph (c) below, to investigate and determine any complaint duly made;
 - (b) impose on the adjudicator a duty to afford the complainant and the society or associated body an opportunity to make representations (whether orally or in writing) in relation to the action complained of;
 - (c) confer power on the adjudicator to advise, mediate or act as conciliator before proceeding further with an investigation;
 - (d) confer power on the adjudicator to extend the scope of his investigation to other matters related to the action complained of; and
 - (e) confer on an adjudicator such powers to require information and documents relevant to the matter to be furnished to him as are necessary for the purposes of the investigation.
- 4 (1) Subject to any provision made in pursuance of sub-paragraph (3) below, a scheme must authorise the adjudicator, in reaching his decision, to have regard to, but not to be bound by, any matter (whether or not of obligation) relevant to the action complained of and to question any decision.
- (2) A scheme must impose on the adjudicator a duty, in reaching his decision, to have regard to—
- (a) the rules (if any) of the society or associated body;
 - (b) the provisions of any deed or contract binding the society and the complainant or, as the case may be, the associated body and the complainant;
 - (c) the provisions of any code of conduct applicable to the conduct by the society or associated body of its affairs or business;
 - (d) any advertisement issued by the society or associated body in connection with any aspect of its activities and any communication with the complainant.
- (3) Subject to sub-paragraph (4) below, a scheme may preclude the adjudicator, in his determination, from questioning the merits of any decision taken by the society or associated body with reference to—
- (a) the taking or conduct of legal proceedings to enforce any right of the society or associated body; or

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- (b) the creditworthiness, for the purposes of any advance or other service or facility, of the complainant;
 - but not otherwise.
 - (4) Where investigation of a complaint on the ground of maladministration involves consideration by the adjudicator of any decision taken with reference to the creditworthiness of the complainant the scheme must confer power on the adjudicator to direct the society or associated body to take its decision again and reach it by proper procedures.
- 5
- (1) Subject to sub-paragraph (2) below, a scheme must confer power on the adjudicator, by his determination, to do either or both of the following, that is to say—
 - (a) direct the society or associated body whose action is complained of to take or desist from taking such steps as are specified in the determination;
 - (b) order the society or associated body whose action is complained of to pay the complainant a sum by way of compensation for the loss, expense or inconvenience caused by the action.
 - (2) A scheme may impose a limit on the amount of compensation that a society or associated body may be ordered to pay a complainant, but the limit must not be less than £100,000.

Effect of determinations and their communication

- 6
- (1) Subject to any provision made in pursuance of sub-paragraph (2) or (3) below, a scheme must provide that, if the complainant, by notice to the adjudicator within the period specified in the scheme, accepts his determination the society or associated body is under an obligation to take the steps it is directed to take or pay the compensation awarded or both.
 - (2) A scheme may relieve a society of the obligation imposed by a determination if, but only if, the society undertakes an obligation to give notice to its members of the reasons for its non-fulfilment of the obligations imposed by the determination in the next directors' report under section 75 and to give notice of those reasons to the public in such manner as the adjudicator requires.
 - (3) A scheme may relieve an associated body of the obligations imposed by a determination if, but only if, each of the building societies with which it is associated undertakes an obligation to give notice to its members of the reasons for the non-fulfilment of the obligations imposed by the determination in the next directors' report under section 75 and to give notice of those reasons to the public in such manner as the adjudicator requires.
- 7
- A scheme must impose on the adjudicator an obligation not to disclose, whether in his determination or otherwise, any information or opinion furnished in confidence to the society or, as the case may be, to the associated body for the purpose of any action on its part.

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Reports by adjudicator to administering body

- 8 A scheme must require reports by the adjudicator as to the discharge of his functions to be made to the body administering the scheme not less frequently than once in every year.

Publication

- 9 (1) A scheme must permit the body administering the scheme to publish the whole or any parts of the reports made to them by the adjudicator.
- (2) A scheme, if it makes the provision authorised by paragraph 6(2) or (3) above, must require the body administering the scheme to send to the Commission, not less frequently than once in every year, particulars of the cases in which building societies have undertaken the alternative obligation authorised by either or both of those subparagraphs.

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