



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XVI

#### THE OMBUDSMAN SCHEME

##### *Determination of complaints*

#### **228 Determination under the compulsory jurisdiction.**

- (1) This section applies only in relation to the compulsory jurisdiction [<sup>F1</sup>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 <sup>F2</sup>..., 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.
- [<sup>F3</sup>(6A) But the complainant is not to be treated as having rejected the determination by virtue of subsection (6) if—
- (a) the complainant notifies the ombudsman after the specified date of the complainant's acceptance of the determination,

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- (b) the complainant has not previously notified the ombudsman of the complainant's rejection of the determination, and
  - (c) the ombudsman is satisfied that such conditions as may be prescribed by rules made by the scheme operator for the purposes of this section are satisfied.]
- (7) The ombudsman must notify the respondent of the outcome.
- [<sup>F4</sup>(7A) Where a determination is rejected by virtue of subsection (6), the notification under subsection (7) must contain a general description of the effect of subsection (6A).]
- (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.

**Textual Amendments**

- F1** Words in s. 228(1) inserted (16.6.2006) by [Consumer Credit Act 2006 \(c. 14\)](#), **ss. 61(3)**, 71(2); S.I. 2006/1508, **art. 3(1)**, **Sch. 1**
- F2** Words in s. 228(4)(c) 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. 4(2)** (with **Sch. 20**); S.I. 2013/113, **art. 2(1)(c)**, **Sch. Pt. 3**; S.I. 2013/423, **art. 3**, **Sch.**
- F3** S. 228(6A) 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. 4(3)** (with **Sch. 20**); S.I. 2013/113, **art. 2(1)(c)**, **Sch. Pt. 3**; S.I. 2013/423, **art. 3**, **Sch.**
- F4** S. 228(7A) 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. 4(4)** (with **Sch. 20**); S.I. 2013/113, **art. 2(1)(c)**, **Sch. Pt. 3**; S.I. 2013/423, **art. 3**, **Sch.**

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

- C1** S. 228 applied (1.12.2001) by S.I. 2001/2326, **arts. 1(1)(b)**, 6(11), 7(1); S.I. 2001/3538, **art. 2(1)**
- C2** Ss. 228-232 applied (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)**, **5**
- C3** S. 228(2) excluded (1.12.2001) by S.I. 2001/2326, **arts. 1(1)(b)**, 6(1)(a); S.I. 2001/3538, **art. 2(1)**
- C4** S. 228(4)(c)(5)-(7) excluded (1.12.2001) by S.I. 2001/2326, **arts. 1(1)(b)**, 6(7)(8)(9); S.I. 2001/3538, **art. 2(1)**

**229 Awards.**

- (1) This section applies only in relation to the compulsory jurisdiction [<sup>F5</sup>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).

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- (3) A money award may compensate for—
  - (a) financial loss; or
  - (b) any other loss, or any damage, of a specified kind.
- (4) The [<sup>F6</sup>FCA] may specify [<sup>F7</sup>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).
- [<sup>F8</sup>(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 [<sup>F9</sup>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 <sup>M1</sup>Court of Session Act 1988.
- (10) Only the complainant may bring proceedings for an injunction or proceedings for an order.
- [<sup>F10</sup>(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.]

#### Textual Amendments

- F5** Words in s. 229(1) inserted (16.6.2006) by [Consumer Credit Act 2006 \(c. 14\)](#), **ss. 61(3)**, 71(2); S.I. 2006/1508, **art. 3(1)**, Sch. 1
- F6** Word in s. 229(4) 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. 5** (with Sch. 20); S.I. 2013/113, **art. 2(1)(c)**, Sch. Pt. 3; S.I. 2013/423, **art. 3**, Sch.
- F7** Words in s. 229(4) inserted (16.6.2006) by [Consumer Credit Act 2006 \(c. 14\)](#), **ss. 61(4)**, 71(2); S.I. 2006/1508, **art. 3(1)**, Sch. 1
- F8** S. 229(4A) inserted (16.6.2006) by [Consumer Credit Act 2006 \(c. 14\)](#), **ss. 61(5)**, 71(2); S.I. 2006/1508, **art. 3(1)**, Sch. 1

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- (1) The scheme operator may by rules (“costs rules”) provide for an ombudsman to have power, on determining a complaint under the compulsory jurisdiction [<sup>F11</sup>or the consumer credit jurisdiction], to award costs in accordance with the provisions of the rules.
- (2) Costs rules require the approval of the [<sup>F12</sup>FCA].
- (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 [<sup>F13</sup>or (as the case may be) paragraph 16D of that Schedule].

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#### Textual Amendments

- F11** Words in s. 230(1) inserted (16.6.2006) by [Consumer Credit Act 2006 \(c. 14\)](#), **ss. 61(8)(a)**, 71(2); S.I. 2006/1508, **art. 3(1)**, Sch. 1
- F12** Word in s. 230(2) 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. 6** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F13** Words in s. 230(7) inserted (16.6.2006) by [Consumer Credit Act 2006 \(c. 14\)](#), **ss. 61(8)(b)**, 71(2); S.I. 2006/1508, **art. 3(1)**, Sch. 1

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

- C9** S. 230 applied (19.7.2001 for specified purposes otherwise 1.12.2001) by [S.I. 2001/2326](#), **arts. 1(1)**, 7(1); [S.I. 2001/3538](#), **art. 2(1)**  
S. 230 restricted (19.7.2001 for specified purposes otherwise 1.12.2001) by [S.I. 2001/2326](#), **arts. 1(1)**, 6(1)(c); [S.I. 2001/3538](#), **art. 2(1)**
- C10** Ss. 228-232 applied (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), 5
- C11** S. 230(6)(7) applied (19.7.2001 for specified purposes otherwise 1.12.2001) by [S.I. 2001/2326](#), **arts. 1(1)**, 6(6); [S.I. 2001/3538](#), **art. 2(1)**

### [<sup>F14</sup>230A] Reports of determinations

- (1) The scheme operator must publish a report of any determination made under this Part.
- (2) But if the ombudsman who makes the determination informs the scheme operator that, in the ombudsman's opinion, it is inappropriate to publish a report of that determination (or any part of it) the scheme operator must not publish a report of that determination (or that part).
- (3) Unless the complainant agrees, a report of a determination published by the scheme operator may not include the name of the complainant, or particulars which, in the opinion of the scheme operator, are likely to identify the complainant.
- (4) The scheme operator may charge a reasonable fee for providing a person with a copy of a report.]

#### Textual Amendments

- F14** S. 230A 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. 7** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

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