

Terms of Reference

These are the Terms of Reference approved by the Board in accordance with the Articles of Association of the Company (herein “Ombudsman Services”).

1 Purpose and Scope

1.1 The main purpose of Ombudsman Services is:

- (a) the receipt and handling of unresolved complaints made to Participating Companies by any of their Customers as defined in these Terms of Reference and its Annexes;
- (b) the resolution, settlement and/or withdrawal of such unresolved complaints or disputes between a Participating Company and any of their Customers;
- (c) where appropriate, to administer remedies and provide redress in respect of matters that form the subject-matter of such unresolved complaints or disputes; in respect of the supply or provision (or failure to supply or provide) by Participating Companies of certain services;
- (d) where appropriate, to make recommendations to the Participating Company about its policies, procedures or the provision of its services.

2 Eligibility to join Ombudsman Services

2.1 A Potential Participating Company shall be eligible to join Ombudsman Services upon;

- (a) satisfying the criteria set out by Ombudsman Services from time to time; or
- (b) satisfying the criteria specified in any applicable Annex to these Terms of Reference; and
- (c) agreeing to adhere to the Membership Rules for Participating Companies.

3 Jurisdiction

3.1 A Participating Company shall accept and be subject to the jurisdiction of Ombudsman Services in relation to eligible Complaints.

3.2 Ombudsman Services shall only have jurisdiction in relation to a Complaint against a Participating Company that satisfies the criteria laid down in these Terms of Reference and its Annexes.

- 3.3 Ombudsman Services shall have jurisdiction in relation to cross-border disputes brought by Customers, as defined in these Terms of Reference, against Participating Companies.
- 3.4 Ombudsman Services shall have jurisdiction in relation to domestic disputes brought by Customers, as defined in these Terms of Reference and its Annexes, against Participating Companies.
- 3.5 Complainants shall retain the absolute right to withdraw or discontinue their complaint at any stage.

4 Charges and Fees

- 4.1 Ombudsman Services will make no charge to Complainants for the consideration of their complaints.

5 Governance of the Service

- 5.1 Ombudsman Services is governed in accordance with its Articles of Association (“the Articles”).
- 5.2 The services provided to Complainants and to Participating Companies by Ombudsman Services are governed in accordance with these Terms of Reference and any applicable Annex.
- 5.3 The Chief Ombudsman (hereinafter referred to as “the Ombudsman”) is appointed by, and responsible to, the Board, in accordance with the Articles.
- 5.4 In determining eligible Complaints made in accordance with these Terms of Reference and its Annexes, the Ombudsman shall act independently of the Board, any Regulator, Trade Body, Sector Liaison Panel, the Participating Company and Complainants.

6 Acceptance of a complaint

- 6.1 The Ombudsman has an absolute discretion to decide whether a complaint is within Ombudsman Service’s jurisdiction, as prescribed within these Terms of Reference and Annexes.
- 6.2 The Ombudsman will accept a complaint for consideration if:
 - (a) the Complainant gave the relevant Participating Company notice of the matter which is the subject of the complaint; and
 - (b) either;
 - (i) the Participating Company has given notice that it is unable or unwilling itself to resolve the complaint to the Complainant’s satisfaction and

provided details of the existence of Ombudsman Services and appropriate contact details for the Ombudsman (a deadlock letter); or

- (ii) the Participating Company has not issued a deadlock letter within up to eight weeks of the complainant's notice (as referred to in paragraph 6.2(a), above) or such a period as the Ombudsman may consider reasonable; or
- (iii) other requirements, as stated in the relevant annex; or
- (iv) the complainant has encountered sustained difficulty in registering a complaint with a Participating Company.

7 Non-Acceptance of a complaint

7.1 The Ombudsman shall not accept a complaint about a matter:

- (a) that the Complainant has not submitted to Ombudsman Services within 12 months, or any other period specified within a relevant Annex, from the date upon which the Participating Company has given notice to the Complainant it is unable to resolve the complaint with the Complainant (or issued a deadlock letter, as described in paragraph 6.2(b)(i), above);
- (b) of which the complainant had notice before the date when the relevant Participating Company joined Ombudsman Services unless the Participating Company consents otherwise;
- (c) to the extent such matter has been or is the subject of Court proceedings or arbitration or some other independent procedure for the determination of disputes brought by the complainant (unless such proceedings, arbitration or other procedure have been abandoned, stayed or suspended either by or with the consent of the relevant court, arbitral or procedural body or with the written consent of the relevant Participating Company);
- (d) which either does not concern or relate to the Complainant or to a service of the relevant Participating Company falling within the jurisdiction of Ombudsman Services;
- (e) if it appears to the Ombudsman that the complaint is frivolous or vexatious; or
- (f) if dealing with the complaint, or a complaint of its type, would seriously impair the operation of Ombudsman Services.

7.2 The Ombudsman shall also not accept or consider;

- (a) a new Complaint in which the subject matter and the parties are the same, or substantially the same, as those addressed in another Complaint that the Ombudsman has already reached a decision or conclusion in; or

- (b) a request to reconsider a Complaint, unless, in exceptional circumstances, the Ombudsman is of the opinion that:
 - (i) significant evidence or facts not available at the time of, or not taken into account in, the Ombudsman's consideration of the Concluded Complaint have come to the attention of the Ombudsman; and
 - (ii) had such evidence or facts been so available or taken into account it is reasonably likely that the decision or conclusion reached in relation to the Concluded Complaint would have been substantially different.

7.3 In the event of a dispute or disagreement, the Ombudsman has absolute discretion to determine the application of paragraphs 7.1 and 7.2, above.

7.4 Notwithstanding the provisions of paragraph 7.1(a), above, the Ombudsman has discretion to accept, or continue to handle, a complaint made outside of any time limit imposed by these Terms of Reference or Annexes if satisfied that there are exceptional reasons to justify the delay.

8 Provision of information to Ombudsman Services

8.1 Upon accepting a complaint for consideration, the Ombudsman shall;

- (a) inform the relevant Participating Company and the Complainant that the complaint has been accepted;
- (b) afford both parties adequate opportunity to provide information about it, this being not less than 14 calendar days, or such longer period as the Ombudsman deems appropriate; and
- (c) having afforded both parties such an opportunity (8.1(b), above), shall notify them that Ombudsman Services has received a complete complaint file.

8.2 If the Participating Company fails to provide information, as provided for in 8.1(b), above, the Ombudsman will deem the information provided by the Complainant alone as constituting the complete case file and will proceed to handle the complaint based upon a consideration of it.

8.3 The Ombudsman may require the Participating Company to disclose any documents and to provide any information that the Ombudsman may lawfully and reasonably request relating to his or her consideration of the complaint.

8.4 The Ombudsman may additionally require a Complainant to disclose any documents and to provide any information that the Ombudsman may lawfully and reasonably request relating to the consideration of a complaint.

8.5 The Ombudsman may make additional requests to either party to disclose additional documentation or information while handling the complaint as and when they consider it appropriate to do so.

- 8.6 Any information or documentation that is passed to the Ombudsman by the Complainant or the Participating Company will be taken account of and may be;
- (a) disclosed in full or in part to either the Complainant or Participating Company; or
 - (b) cited or referred to in correspondence or telephone discussions pertaining to the complaint with either the Complainant or Participating Company.
- 8.7 Complainants and Participating Companies shall be afforded a reasonable opportunity, of not less than seven days duration, to consider and to provide their comments about any information or documentation that has been disclosed to them pursuant to 8.6 (a), above.

9 Handling of complaints and the Ombudsman's investigation

- 9.1 The Ombudsman will seek to achieve an early resolution of a complaint wherever practical and appropriate.
- 9.2 If the complaint cannot be resolved by an early resolution the Ombudsman may conduct an investigation of the complaint.
- 9.3 The procedure for an investigation will be as the Ombudsman considers appropriate in the particular circumstances of the case.
- 9.4 In exceptional circumstances, where the Ombudsman considers it necessary, as a matter of their sole discretion, a site visit, expert report or face-to-face or remote meeting (or hearing) may be arranged (a fee may be applicable).
- 9.5 The Ombudsman may request such assistance from the Complainant and Participating Company to the complaint (including in relation to access, information and submissions and written or oral submissions) as the Ombudsman may consider reasonable and appropriate.
- 9.6 The Ombudsman will inform, in a durable medium, the Complainant and the Participating Company concerned of the proposed conclusion and suggested remedies and, in each case, the reasons for them, and will invite their comments thereon.
- 9.7 The Ombudsman will provide details of the conclusion reached or decision made, as required in paragraph 9.7, above;
- (a) within 90 days of receiving a complete complaint file (as described in paragraph 8.1, above), unless the complaint is deemed, by the Ombudsman, to be a highly complex dispute;
 - (b) if the complaint is deemed, by the Ombudsman, to be a highly complex dispute, an extended period of time may be granted. In such circumstances the Ombudsman will inform both the Complainant and Participating Company of;

- (i) the fact that an extension has been allowed; and
- (ii) the expected length of time that the Ombudsman will need.

9.8 If, after investigation, the Ombudsman considers that the Participating Company (against which a complaint has been made) is already offering (and continues to offer) a fair and reasonable settlement (even if it is not acceptable to the Complainant), or if the Ombudsman considers that no settlement is required, the Ombudsman may exercise discretion to terminate consideration of the complaint.

9.9 In handling complaints, carrying out investigations and reaching any Final Decision (as provided for hereunder) it shall be the duty of the Ombudsman:

- (a) to proceed fairly and in accordance with the principles of natural justice;
- (b) to make reasoned decisions in accordance with what is fair and reasonable in all the circumstances having regard to principles of law, good practice, equitable conduct and good administration;
- (c) to decide whether to continue or discontinue the consideration of a complaint;
- (d) not to disclose the fact of, parties to or details of any complaint, its resolution or enforcement to persons other than the parties to the complaint, the Board and such officers, employees, agents and advisers of each of such persons as are duly authorised for such purposes, unless;
 - (i) disclosure is necessary or required under a statutory provision or enactment or by order of a Court; or
 - (ii) disclosure is necessary pursuant to paragraph 11.1(i) of these terms of reference; or
 - (iii) it is with prior consent of the relevant parties; or
 - (iv) it is provided for under an Annex to these terms of reference;
- (e) to have regard to the terms of any relevant contract, any relevant judicial authority or regulatory provision, any relevant codes of conduct or practice, any guidance of a general nature given by the Board and what is, in the Ombudsman's opinion, fair and reasonable in the circumstances and best practice in the handling of complaints; and
- (f) to give reasons for any conclusion reached or decision made.

9.10 Notwithstanding paragraphs 9.9(a) and 9.9(e) above, the Ombudsman shall not be bound by any legal rule of evidence or by the past conduct or decisions of, or the past Remedies or Awards imposed by the Ombudsman.

10 The Ombudsman's Final Decision

10.1 If at any stage during the process of the Ombudsman's investigation both the Complainant and the relevant Participating Company accept any conclusion reached or

decision made, having being afforded chance to reflect upon it of up to seven calendar days, then such will become the binding settlement of the complaint.

- 10.2 If either the complainant or the relevant Participating Company or both do not accept any conclusion reached or decision made, then the Ombudsman will issue a Final Decision. Such Final Decision shall be made after considering any representations the Complainant or the relevant Participating Company or both may make in relation to the proposed conclusion, decision or remedies.
- 10.3 When a binding settlement of the complaint is issued (as under paragraph 10.1, above) or the Ombudsman issues a Final Decision (as under 10.2, above) which concludes that the Participating Company has not acted fairly or reasonably, the Ombudsman will set out the reasons in writing and may, subject to paragraphs 10.5 and 10.6, below, impose any of the following Remedies requiring the Participating Company to:
- (a) provide an apology or explanation to the Complainant;
 - (b) award to the complainant a financial payment not exceeding the limit detailed in the annex per complaint (an Award);
 - (c) take some other practical action of direct benefit to the Complainant; or
 - (d) provide any combination of the above Remedies.
- 10.4 The Ombudsman may also, as a result of considering a complaint, make recommendations to the Participating Company about changing its policies or procedures, including in relation to the provision of its services.
- 10.5 The total value of all Remedies to be provided or complied with by a Participating Company to or for the direct benefit of a Complainant in respect of a complaint shall not exceed the limit detailed in the annex.
- 10.6 No Award or Remedy shall;
- (a) contain a punitive element; or
 - (b) be of greater amount than, in the reasonable opinion of the Ombudsman, is appropriate;
 - (i) to return the Complainant to the position they would have been in if the complaint had not occurred; or
 - (ii) to provide redress in relation to losses and inconvenience suffered as a consequence of the acts or omissions of the Participating Company in respect of which the Award or Remedy is made.
- 10.7 The Ombudsman will determine which Participating Company will pay the case fee and provide the Remedy.
- 10.8 No Award or Remedy will be made against a Complainant.

- 10.9 The Final Decision shall be issued in a durable medium and shall state the Remedies to be provided and a summary of the Ombudsman's reasons for reaching the Final Decision. A copy of the Final Decision shall be given to the Complainant and the relevant Participating Company. The Complainant shall be required to confirm their acceptance or rejection of the Remedies within 14 calendar days of the date of the Final Decision (the Acceptance Period). The Final Decision shall state that if, within the Acceptance Period (or such longer period as the Ombudsman may consider reasonable), the complainant replies to and accepts the Final Decision in full and final settlement of the subject matter of the complaint (by duly completing, signing and returning the relevant Acceptance Form), the Final Decision shall, save in the event of proven fraud or manifest error, be binding on the complainant and the relevant Participating Company.
- 10.10 If the Complainant does not reply to the Final Decision within the Acceptance Period (or such longer period as the Ombudsman may consider appropriate), then the Final Decision will not be binding on the Complainant or the relevant Participating Company and it will be open to the Complainant to initiate any other proceedings to which the Complainant is entitled in pursuit of the complaint.
- 10.11 If within the Acceptance Period (or such longer period as the Ombudsman may consider reasonable) the Complainant replies to the Final Decision but does not accept it in full and final settlement of the subject matter of the complaint, then the Final Decision will not be binding on the complainant or the relevant Participating Company and it will be open to the Complainant to initiate any other proceedings to which the Complainant is entitled in pursuit of the complaint.
- 10.12 If the Final Decision becomes binding on the Complainant and the relevant Participating Company in accordance with paragraph 10.9, the Ombudsman shall notify the relevant Participating Company of such fact within 14 calendar days of receipt of the Complainant's duly completed and signed Acceptance Form. The relevant Participating Company shall then provide the Remedy (including any Award) to the complainant within 28 calendar days of the Ombudsman's notification.
- 10.13 Should the Participating Company fail to provide the Remedy (including any Award) to the Complainant within 28 days of the Ombudsman's notification, the Ombudsman may take further action to bring about implementation, including, but not limited to;
- (a) referring the Participating Company to any relevant Regulator or Trade Body;
 - (b) notifying the Complainant of any right they may have to pursue implementation of the remedy directly; or
 - (c) applying the remedy implementation policy as provided for in the relevant Annex.
- 10.14 If the Final Decision does not become binding on the Complainant and the relevant Participating Company(ies) in accordance with paragraph 10.10 or 10.11, then the Ombudsman shall notify the Complainant and the relevant Participating Company of such fact within 14 calendar days following the end of the Acceptance Period (or such longer period as the Ombudsman may consider reasonable).

11 Powers and duties of the Ombudsman

11.1 The Ombudsman shall have the following powers and duties:

- (a) to report to the Board of the Company, regulatory, professional and trade bodies on the non-compliance with a Final Decision of the Ombudsman (including in relation to any Awards or Remedies imposed by the Ombudsman) by a Participating Company;
- (b) to ensure equality of access to Ombudsman Services by complainants irrespective of age, disability, race, religion or belief, sex, gender reassignment, or sexual orientation;
- (c) to enter into Memoranda of Understanding with any bodies the Ombudsman considers appropriate on matters of common interest, including the exchange of information (subject to paragraph 9.10 (d), above);
- (d) to encourage and promote good practice by Participating Companies in the handling of complaints they receive;
- (e) to encourage develop and sustain discussions with Participating Companies, trade and professional bodies, consumer bodies and other bodies considered appropriate through the creation and upkeep of Sector Liaison Panels about matters relevant to Ombudsman Services;
- (f) to recommend systemic changes in policy or procedure relating to dispute handling within a Service Sector and, in their discretion, to publish such recommendations;
- (g) to recommend systemic changes in policy or procedure relating to dispute handling within a Participating Company;
- (h) to publish, from time to time, or make publically available, information about complaints, such as data relating to the number of complaints received, investigated or decided upon, in such a format that the identity or personal details of the Complainant or their third parties or representatives will remain anonymous.
- (i) to provide information to relevant competent authorities, as defined in the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, as directed under those Regulations; and
- (j) appraise the Board in relation to complaints received about Ombudsman Services and/or the Ombudsman.

11.2 The Ombudsman shall have the power to delegate, subject (where necessary) to the approval of the Board, any of the Ombudsman's powers and duties to members of staff provided that, in delegating any such powers and duties, the Ombudsman shall exercise all reasonable care and skill to ensure that the delegate discharges all such powers and duties in accordance with the standards expected of the Ombudsman himself/herself..

12 Review of the Terms of Reference

- 12.1 The Board will complete a review of these Terms of Reference periodically at intervals of not more than three years.
- 12.2 Substantial amendments to the Terms of Reference (together with any definitions used within such paragraphs) may only be made by the Board and after consulting with and taking due account of the views of the Sector Liaison Panel and Participating Companies and such other bodies as the Board considers appropriate.
- 12.3 Participating Companies will be notified of any amendments to the Terms of Reference that are made to reflect changes in Government policy and legislation.

13 Interpretation

- 13.1 The definitions, below, apply to these Terms of Reference and its Annexes. Additional definitions are set out within each of the Annexes to the Terms of Reference. These additional definitions apply to the Terms of Reference and the individual Annex in relation to complaints Ombudsman Services has received pursuant to the relevant Annex.

“Annex” and **“Annexes”** means the addendum documents to these Terms of Reference, which set out additional rules and procedures for specific sectors, industries or markets that Ombudsman Services provides dispute resolution services to;

“Articles” means the Articles of Association of the Company;

“Board” means the board of directors of the Company;

“Chief Ombudsman” means the Chief Ombudsman and Chief Executive of the Company, appointed in accordance with the Articles of Association;

“Company” means The Ombudsman Service Limited, herein referred to as “Ombudsman Services”;

“Complainant” means a customer who has brought a complaint to Ombudsman Services for resolution;

“Complete complaint file” will comprise of information provided by the Complainant and the Participating Company about the complaint. It will typically consist of i) the parties’ summary of the facts and issues in dispute, ii) their opinions as to the merits of the complaint, iii) any evidence that the parties would like Ombudsman Services to consider;

“Concluded complaint” means a complaint that has been investigated and a Final Decision has been issued;

“Customer” means either a customer of a Participating Company, in the ordinary sense, or as further defined in an applicable Annex to these Terms of Reference.

“Cross-border dispute” means a dispute concerning contractual obligations arising from a sales contract or a service contract where, at the time the consumer orders the goods or services, the Participating Company is established in the United Kingdom and the consumer is resident in another member state of the European Union;

“Domestic dispute” means a dispute concerning contractual obligations arising from a sales contract or service contract where both parties to the complaint are resident in, or established in, the United Kingdom;

“Durable format” means a letter or an email delivered either by post, facsimile or electronic medium.

“Eligible Complaint” means a complaint that Ombudsman Services is able to handle on the basis that it is made against a Participating Company in the manner prescribed within these Terms of Reference and any relevant Annex;

“Final Decision” means a Final Decision made by the Ombudsman pursuant to and as referred to in these Terms of Reference;

“Person” includes any body, body corporate, government, state or agency of any government or state, or any joint venture, association or partnership, and references (express or implied) to person or it, shall be construed so as to include references to such persons, to any natural or legal person and to a person’s legal personal representatives and successors;

“Ombudsman Service” means Ombudsman Services which the Company administers in accordance with the Articles and the Terms of Reference;

“Participating Company/Companies” means a person who has subscribed to participate in the Service in respect of a Service Sector and has joined the Service in accordance with the relevant Terms of Reference (and (as the context so requires) each and/or any of its subsidiary undertakings from time to time) and which has put relevant services and/or products under the jurisdiction of the Chief Ombudsman and the Service **Person** including any body, body corporate, government, state or agency of any government or state, or any joint venture, association or partnership, and references (express or implied) to **person, he, she or it**, shall be construed so as to include references to such persons, to any natural or legal person and to a person’s legal personal representatives and successors;

“Regulator” means a body or organisation that is provided for by statute, or is otherwise empowered by government, to act as regulator in some capacity;

“Remedy” and “Remedies” shall have the meaning attributed to them in paragraph 10 above;

“Sector Liason Panel” means a forum or advisory panel through which representatives from Ombudsman Services, Participating Companies, regulators and Trade Bodies can convene to identify trends and issues and promote effective complaint handling.

“Services” means services provided by Participating Companies which will be covered by, and fall within the jurisdiction of, the Ombudsman and Ombudsman Services are the services as defined in the annex of these Terms of Reference.

“Subsidiary undertaking” has the meaning given in s.1159(1) of the Companies Act 2006.

“Trade Body” means a body or an association that acts to promote the interests of, and to set standards within, a sector or industry or within a faction of a sector or industry, and whose members become Participating Companies as a requirement or condition of their membership of the trade body.

- 13.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

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