

Consultation paper

Financial Ombudsman Service

Rules for the new
consumer credit jurisdiction



June 2006

responses

The Financial Ombudsman Service invites comments on this consultation paper. Please send responses to reach us by **11 October 2006**.

Where possible, please send responses by email to:

adrian.dally@financial-ombudsman.org.uk.

Alternatively, please send responses in writing to:

Adrian Dally
Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London
E14 9SR

Fax: 020 7093 5587

We will make all responses available for public inspection unless you request otherwise in writing. A standard confidentiality statement in an email message will not be regarded as a request for non-disclosure.

Copies of this consultation paper can be downloaded from our website at www.financial-ombudsman.org.uk. Alternatively, paper copies can be obtained by calling the Financial Ombudsman Service publications line on 020 7093 7270.

who should read this consultation paper?

We expect this consultation paper to be of interest both to businesses and to consumers.

It will be of particular interest to businesses with standard licences issued by the Office of Fair Trading under the Consumer Credit Act 1974. Most of these will not have been covered by an ombudsman service before.

Those consumer credit businesses which are also regulated by the Financial Services Authority are already covered by the ombudsman service, but there will be some changes to the ombudsman arrangements for these businesses.

The consultation paper will also be of interest to consumers, as it sets out how the new ombudsman arrangements for consumer credit will work.

contents

chapter 1	background	page 4
chapter 2	general principles	page 6
chapter 3	scope of the ombudsman service	page 8
chapter 4	complaint-handling by businesses	page 13
chapter 5	ombudsman service's procedure's	page 16
chapter 6	funding	page 21
chapter 7	questions for consultation	page 25
chapter 8	anticipated queries	page 26
annex A	extracts from Financial Services and Markets Act, as amended	page 31
annex B	proposed consumer credit rules	page 50

1 background

recent legislative changes

- 1.1 The Consumer Credit Act 2006 received royal assent in March 2006. It amends the Consumer Credit Act 1974 and the Financial Services and Markets Act 2000. It was the culmination of a three-year review of consumer credit law by the Government, aimed at protecting consumers and creating a fairer, more competitive credit market by:
- enhancing consumer rights and redress by empowering consumers to challenge unfair lending, and through more effective options for resolving disputes;
 - improving the regulation of consumer credit businesses by ensuring fair practices and through targeted action to drive out rogues; *and*
 - making regulation more appropriate for different types of consumer credit transaction by extending protection to all consumer credit and by creating a fairer regime for business.
- 1.2 This consultation paper is about the first of these three elements. This involves the setting up of a new ombudsman service for consumer credit to be provided by the existing Financial Ombudsman Service. The categories of consumer credit activities to be covered are described later, in paragraph 3.1. This service will be provided for all existing categories of consumer credit standard licence-holders from 6 April 2007.
- 1.3 The purpose of this consultation paper is to outline how the ombudsman service for consumer credit will work in practice, as well as to seek feedback from both businesses and consumers on some of the issues surrounding this.

the ombudsman service

- 1.4 The Financial Ombudsman Service's compulsory jurisdiction already covers most businesses that are regulated by the Financial Services Authority (FSA) – not only for FSA-regulated financial services activities but also for some consumer credit activities. The legal foundations of the ombudsman service are set out in Part XVI and Schedule 17 of the Financial Services and Markets Act 2000. The Consumer Credit Act 2006 amended these parts of the Financial Services and Markets Act 2000 in order to add a new consumer credit jurisdiction. Extracts from the 2000 Act, as amended by the 2006 Act, are set out in Annex A.
- 1.5 It is intended that the new consumer credit jurisdiction should mirror the existing compulsory jurisdiction for financial services. The key elements of the ombudsman service are:
- consumers complain to the business first, but have access to the ombudsman service if the business does not resolve the complaint satisfactorily;
 - disputes are resolved promptly and informally by an independent person, on the basis of what is fair and reasonable in all the circumstances of the case;
 - the ombudsman has the power to require all parties to a dispute to provide the information or documents necessary for him/her to resolve the dispute;
 - the ombudsman's decision is binding on all parties if the complainant accepts it, but is binding on neither if the complainant does not;
 - the ombudsman may require the business to pay an award (of up to £100,000) or take other steps the ombudsman considers just and appropriate;

- the service is funded by businesses through a combination of levies raised on all businesses and fees paid by businesses on each case they are a party to.
- 1.6 Under the Consumer Credit Act 2006 the Secretary of State for Trade and Industry will specify, by statutory instrument, the types of consumer credit business that are to be covered by the ombudsman service. His powers to do this came into force on 16 June 2006. The intention is to specify all of the existing licence categories with effect from 6 April 2007 – and the Act provides that the ombudsman service will cover acts and omissions occurring on and after (but not before) that date. The new licence categories of “debt administration” and “provision of credit information services” will be brought within the scope of the ombudsman service once they have been introduced, which is intended to happen on 1 October 2008.
 - 1.7 The 2006 Act requires the Financial Ombudsman Service, with the approval of the FSA, to adopt detailed “consumer credit rules” to supplement the general requirements set out in the Act. These rules are intended to cover detailed issues such as the procedures for the ombudsman service, the relevant time limits and the funding arrangements. It is these rules that we are formally consulting about in this paper.
 - 1.8 Once the Financial Ombudsman Service has adopted the consumer credit rules following the feedback obtained from this consultation, they will be incorporated into the FSA’s Handbook in the chapter entitled “Dispute Resolution: Complaints” (usually referred to as “DISP”). The consumer credit rules we are proposing to adopt are set out in Annex B.
 - 1.9 Annex B shows an extract from DISP as it would look once the proposed consumer credit rules have been adopted. The amendments required to achieve this are highlighted, so that consultees can see all the proposed changes in the context of relevant rules. Annex B also highlights a small number of consequential rule changes that the FSA proposes to make to DISP, following a parallel consultation – which will start in July - about the compulsory jurisdiction. The compulsory jurisdiction consultation paper will be published on the FSA website www.fsa.gov.uk.

structure of consultation paper

- 1.10 This consultation paper serves two purposes. The first purpose is the formal one of consulting on the consumer credit rules we propose to make, as required by the Act. The second purpose is to explain to both businesses and consumers how the new ombudsman service for consumer credit will work more generally.
- 1.11 The relevant legislation in Annex A and the proposed consumer credit rules in Annex B are legal texts which may be difficult for some to follow. So chapters 2 to 6 set out to explain what these mean in non-legal language. Chapter 2 explains the general principles we have used in drafting the consumer credit rules, while chapters 3 to 6 explain the rules themselves. These do not cover every detail of the rules, but do explain the key features of the ombudsman service that businesses and consumers will want to be aware of.
- 1.12 There are some aspects of the proposed consumer credit rules on which we are seeking feedback from consultees. At various points in chapters 2 to 6 there are questions which we have highlighted. These questions are summarised in chapter 7 for easy reference. It would be helpful if consultees were to focus on these questions in their responses.
- 1.13 Chapter 8 sets out to answer some anticipated queries from businesses and consumers about the new ombudsman service for consumer credit.

2 general principles

the issue

- 2.1 Under the Financial Services and Markets Act 2000, as amended by the Consumer Credit Act 2006, the Financial Ombudsman Service has three “jurisdictions”. These are as follows:
- (a) **compulsory jurisdiction (CJ)**
Most financial services businesses regulated by the FSA are already covered by the existing CJ. It deals with most of their financial services activities and also some consumer credit activities. The consumer credit activities not currently covered include restricted credit and paying money by store card.
 - (b) **consumer credit jurisdiction (CCJ)**
All businesses licensed by the Office of Fair Trading (OFT) under the Consumer Credit Act would in principle belong to the new CCJ. They would be covered for all the consumer credit activities they carry out, including those currently excluded from the CJ – see (a) above.
 - (c) **voluntary jurisdiction (VJ)**
A business may choose to join the VJ to allow the ombudsman service to cover certain other activities. In relation to consumer credit, this would mean activities directed at the UK from elsewhere in the European Economic Area, which would have been consumer credit activities if they had been carried out in or from the UK.
- 2.2 It is intended that the ombudsman service should cover all consumer credit activities. This raises the issue of how to treat FSA-regulated businesses (such as banks and building societies) which are already covered by the CJ for some, but not all, consumer credit activities. Should the CJ be extended so that it covers all of their consumer credit activities, or should they be covered by the CCJ for these?

proposed way forward

- 2.3 It is desirable that the ombudsman service should cover all consumer credit activities, irrespective of whether the business the complaint is made against is regulated by the FSA or not. We believe that individual businesses would not wish to be covered by both the CJ and the CCJ – not least because that would mean paying two sets of levies. But we also believe that both businesses and consumers expect consumer credit complaints to be handled in the same way whether they are covered by the CJ or the CCJ. We therefore propose the following:
- (a) We will ask the FSA to extend the CJ to include those consumer credit activities that are currently excluded. These activities include restricted credit and paying money by store card.
 - (b) This would mean that, where a business licensed by the OFT for consumer credit is also regulated by the FSA, all complaints (including complaints about consumer credit activities) would be covered under the CJ alone.
 - (c) Where a business is licensed by the OFT but is not authorised by the FSA, all complaints about its consumer credit activities would be handled under the CCJ.
 - (d) The consumer credit rules would, to the maximum extent possible, mirror the rules currently in place for CJ, and for participants in the VJ.

- 2.4 The proposed consumer credit rules in Annex B reflect the proposals at (a) to (d) above. There are a number of advantages to these.
- Both businesses and consumers would see no difference in the way complaints are handled by the ombudsman service, irrespective of whether they fall under the CJ, CCJ or VJ.
 - The ombudsman service will be able to handle complaints about all consumer credit activities.
 - Businesses regulated by the FSA would not be required to pay levies and/or fees under both the CJ and the CCJ.

Q1 Do you agree that the ombudsman service's compulsory jurisdiction (over FSA-regulated businesses) should be extended to include those consumer credit activities that are currently excluded – so that all complaints against FSA-regulated businesses can be handled under the compulsory jurisdiction, rather than being split between the compulsory jurisdiction and the consumer credit jurisdiction?

Q2 Do you agree that it will be simpler for both businesses and consumers if the rules for the new consumer credit jurisdiction (*eg* on time limits and procedure) mirror, so far as possible, the current rules for the existing compulsory jurisdiction and voluntary jurisdiction?

3 scope of the ombudsman service

activities covered

- 3.1 The Consumer Credit Act 2006 sets out the consumer credit activities which will be subject to the ombudsman service. These are as follows, in respect of businesses that hold standard licences:
- (a) **consumer credit**
This covers a wide range of lending and credit, including personal loans, overdrafts, budget or subscription accounts, hire purchase, credit cards, store-cards and deferred payment schemes.
 - (b) **consumer hire**
This covers hiring out, renting out or leasing out goods under transactions that are capable of lasting more than three months.
 - (c) **credit brokerage**
This involves the introduction of a customer to a credit provider or to another credit broker – including, for example, where a retailer such as a car dealer recommends a particular credit provider.
 - (d) **debt adjusting**
This involves taking over a debt, or negotiating terms with a creditor on behalf of a debtor, under a consumer credit or hire agreement. This could include, for example, a car dealer settling outstanding finance on a part exchange vehicle.
 - (e) **debt counselling**
This involves giving advice to consumers about the payment of debts under consumer credit or hire agreements.
 - (f) **debt collecting**
This involves the collection of debts due to others under consumer credit or hire agreements.
 - (g) **debt administration**
This involves taking steps (other than debt collection) on behalf of a creditor or owner under a consumer credit or hire agreement;
 - (h) **provision of credit information services**
This involves advising or acting on behalf of an individual to ascertain the existence or contents of information held by a credit information agency, as well as securing the modification, deletion or non-provision of that information to another person.
 - (i) **operation of a credit reference agency**
This involves the collection of information about the creditworthiness of individuals with a view to giving this information to others.
- [The brief summary of each activity is ours. Please refer to the legislation for the full definitions.]
- 3.2 The ombudsman service will also cover any ancillary activities, including advice, provided by a business in connection with the activities listed in paragraph 3.1.
- 3.3 For activities (a) to (f) and (i), the ombudsman service will open on 6 April 2007. The Government intends that the ombudsman service will open for activities (g) and (h) on 1 October 2008.

- 3.4 The ombudsman service will handle complaints about acts or omissions by businesses with standard licences issued by the OFT under the Consumer Credit Act. The act or omission complained about must have happened at a time while the relevant business held a consumer credit licence and also:
- o in relation to activities (a) to (f) and (i), on or after 6 April 2007;
 - o in relation to activities (g) and (h), on current plans, on or after 1 October 2008.

territorial scope

- 3.5 The ombudsman service will cover complaints about the activities of consumer credit businesses operating from an establishment in the United Kingdom, irrespective of whether the customers concerned are based in the UK or elsewhere. Other than for businesses that choose to participate in the VJ, the service will not cover the activities of businesses based outside the UK whose activities are directed at customers within the UK.

businesses covered

- 3.6 The ombudsman service will cover all businesses with standard (but not group) consumer credit licenses issued by the OFT under the Consumer Credit Act. This includes licensees who are also authorised by the FSA (and so covered by the ombudsman service's compulsory jurisdiction) or who are already members of the ombudsman service's voluntary jurisdiction. Chapter 2 explains our proposals for ensuring that the rules apply similarly to each of these categories of licensee.
- 3.7 The 2006 Act provides that a complaint can be dealt with under the CCJ as long as the business was a standard licensee *at the time of the act or omission* being complained about, and as long as that act or omission took place after the CCJ was brought into force (6 April 2007 for most types of business). This means that the ombudsman service can also continue to apply to businesses for previous acts or omissions after they give up their consumer credit licence.

complainants covered

- 3.8 In principle a person can take a complaint to the ombudsman service if they are an existing, past, potential or indirect customer of a business and the complaint is about that business's consumer credit activities. Precisely who is eligible to complain has to be set out in the consumer credit rules.
- 3.9 Under the rules which currently apply in the CJ or VJ, a person can complain if they are:
- (a) a private individual;
 - (b) a business with a group annual turnover of less than £1 million at the time they make the complaint to the business concerned;
 - (c) a charity with an annual income of less than £1 million at the time they make the complaint to the business concerned; *or*
 - (d) the trustees of a trust with net assets of less than £1 million at the time they make the complaint to the business concerned.
- 3.10 Under the Consumer Credit Act, however, the persons potentially eligible to complain are slightly different, namely:
- (e) a private individual;

- (f) a partnership consisting of two or three persons not all of whom are bodies corporate;
 - (g) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership, *and*
 - (h) a surety in relation to a security provided to a consumer credit business.
- 3.11 The £1 million limit at (b) to (d) is intended to limit the type of entity that can use the ombudsman service (as a complainant) to those who are small, as it is these for whom the ombudsman service would be a more appropriate route for redress than the courts. Assuming that it would be appropriate to retain this limit for all complainants under the CCJ, there would then be a slight mismatch between the entities eligible to complain at (b) to (d) and those at (f) and (g). In particular, more entities would be covered by (b) to (d) than by (f) and (g). This means that, in principle, slightly fewer entities would be able to make complaints about consumer credit activities than about other financial activities.
- 3.12 There are broadly two options for handling this:
- (1) apply the limitations at (f) and (g) to *all* complaints about consumer credit, including those which can currently be taken under the CJ or VJ, *or*
 - (2) apply the limitations only to complaints where the Consumer Credit Act limitations apply, namely to those firms subject to the CCJ and who are not subject to the CJ or VJ.
- 3.13 Option (1) has the advantage that the limitations for complaints about consumer credit activities would be consistent across the three jurisdictions, so that there would be no situations where an individual or entity would be able to take a complaint against one type of consumer credit business (*eg* one in the CJ) but not against another type (*eg* one in the CCJ). This option would, however, involve taking away the present right of some entities to take consumer credit complaints to the ombudsman service under the CJ. The entities concerned would be those under the relevant £1 million limit which are a partnership consisting of more than three persons, a partnership all of whose members are companies, an unincorporated body which consists entirely of companies, or a company.
- 3.14 Option (2), however, has the advantage that the entities which would have lost the right under option (1) to take consumer credit complaints to the ombudsman service under the CJ would retain this right. No individual or entity would therefore lose the right to take a complaint to the ombudsman service. On the basis that we do not believe that it was envisaged that the new ombudsman service for consumer credit would lead to any person losing an existing right to take complaints to the ombudsman service, we propose to adopt option (2). This option will also be simpler for FSA-regulated businesses, as the test for complainant eligibility will be the same for all their activities. The proposed consumer credit rules in Annex B reflect this.
- 3.15 It should be noted that, under option (2), it would be possible for the entities set out in paragraph 3.13 above to take a consumer credit complaint to the ombudsman service if the business complained about is subject to the CJ or the VJ, but not if the business complained about is subject to the CCJ – because of the limitations in the Consumer Credit Act outlined at (f) and (g) above.

Q3 Do you agree that the limitations on eligible complainants in the Consumer Credit Act should apply only to complaints against businesses covered by the CCJ?

complainants covered – exceptions

- 3.16 Apart from the limited exceptions outlined above, there are a number of other persons who are not eligible to take complaints to the ombudsman service. These include a business whose complaint relates in any way to an activity covered by the ombudsman service and which the business itself carries on. This would cover, for example, a loan-intermediary who wished to complain about the activities of a lender. Such businesses would not be able to take such a complaint to the ombudsman service.
- 3.17 The existing rules that apply to the CJ and the VJ also specify a small number of other persons who are not eligible to take complaints to the ombudsman service.

potential customers

- 3.18 A person who is not a customer of a business may still take a complaint to the ombudsman service if their complaint concerns the business's actions towards them as a *potential* customer. This allows a potential customer to use the ombudsman service where the complaint involves an allegation that they have suffered or may suffer financial loss, material distress or material inconvenience as a result of a business's wrongful act or omission. An example of this would be where, as a result of maladministration or illegal discrimination, a service has not been provided to the potential customer.

indirect complainants

- 3.19 In addition to customers and potential customers, the rules specify a number of other persons who may take a complaint to the ombudsman service if the complaint alleges that they have been adversely affected by the business's actions or omissions. In relation to consumer credit, examples of this include:
- (a) where a guarantor for someone else's debt complains about the creditor's actions towards the guarantor;
 - (b) where a person is affected by the information a credit reference agency holds about them; *or*
 - (c) where a person complains about the actions of a debt collector acting against them on behalf of a creditor.

representatives

- 3.20 Most complaints are taken to the ombudsman service by the complainants themselves. But a complaint can also be taken to the ombudsman service on behalf of an eligible complainant, or on behalf of a deceased person who would have been an eligible complainant, by a person authorised by the eligible complainant or authorised by law.
- 3.21 The representative taking the complaint to the ombudsman service on behalf of the complainant does not need to be an eligible complainant themselves. A person is not prevented from acting as a representative if they are a customer of the business complained about, have a claim of their own against the business or are acting for another complainant against the business.

complaints covered – time limits

- 3.22 There are time limits which restrict when complainants may refer their complaint to the ombudsman service. Some of these limits hinge on whether, and if so when, a business has sent the complainant a “final response letter”. A final response letter is a written response from the business which:
- accepts the complaint, and, where appropriate, offers redress; *or*
 - offers redress without accepting the complaint; *or*
 - rejects the complaint and gives reasons for doing so;
- and which informs the complainant that, if they remain dissatisfied with the business's response, they may now refer the complaint to the ombudsman service (enclosing the Financial Ombudsman Service's leaflet) and that they must do so within six months.
- 3.23 The ombudsman service cannot consider a complaint if the complainant refers it to the service:
- (a) less than eight weeks after receipt of the complaint by the business, unless the business has already sent the complainant its final response; *or*
 - (b) more than six months after the business sends the complainant its final response; *or*
 - (c) more than six years after the event complained of or (if later) more than three years after they became aware (or ought reasonably to have become aware) that they had cause for complaint.
- 3.24 There are three exceptions to these limits:
- (d) in the case of (c) above, where the complainant has referred the complaint to the business or to the ombudsman service within that period and has a written acknowledgement or some other record of the complaint having been received;
 - (e) where the business does not object to the ombudsman service considering the complaint; *or*
 - (f) where, in the view of the ombudsman, there were exceptional circumstances which prevented the complainant from complying with the time limits.
- 3.25 Examples of exceptional circumstances under (f) might be where the complainant has been incapacitated, or where the business has failed in its final response to inform the complainant that they may refer their complaint to the ombudsman service or that they must do so within six months.

4 complaint-handling by businesses

general principles

- 4.1 The ombudsman service will not consider a complaint until the business has had an opportunity of considering it. It is important that businesses have their own complaint handling arrangements, and it is expected that these will resolve the majority of complaints.
- 4.2 Businesses regulated by the FSA are already subject to rules about how they should handle complaints from consumers. These rules cover a range of issues, including internal complaint handling procedures and controls, publicity, time limits, the requirement for a final response letter, rules on referral of complaints to others, and requirements to co-operate with the ombudsman service. There are also rules on keeping records of complaints and reporting these to the FSA.
- 4.3 In line with the principle that the consumer credit rules should, to the maximum extent possible, mirror the rules currently in place for businesses already covered by the ombudsman service (see chapter 2) we propose, with one exception, to apply the existing complaint handling rules to those businesses to be covered by the CCJ.
- 4.4 The exception is that we do not intend to apply to businesses covered by the CCJ the rules on keeping records of complaints and reporting these to the FSA – reflecting the fact that the FSA is not the relevant regulator for CCJ participants. The ombudsman service is not a regulator and does not have facilities to monitor how firms act generally, and the burden on businesses of record keeping and reporting rules would not be proportionate to the benefits to be achieved.
- 4.5 But businesses covered by the CCJ would be well-advised to keep sufficient records to enable them to deal with any complaints that are referred to the ombudsman service. If there is any dispute about what happened, the ombudsman service must decide on the balance of probabilities in the light of the available evidence – so any business that has not kept appropriate records will be at a disadvantage.

Q4 Do you agree that the rules on recording and reporting of complaints should not be applied to businesses covered by the CCJ?

- 4.6 There might be occasional one-off exceptional circumstances in which a business's compliance with aspects of the complaint handling rules would be unduly burdensome or would not achieve the purpose for which the rules were made. We therefore propose that the Financial Ombudsman Service should have the power to dispense with or modify the application of the consumer credit rules in such cases. Application of such a power would be subject to the requirement that this would not result in undue risk to the persons whose interests the rules are intended to protect. This is to ensure that the possibility of a consumer seeking and obtaining appropriate redress is not adversely affected.

Q5 Do you agree that the Financial Ombudsman Service should have the power to dispense with or modify the application of the complaint handling rules where this would be unduly burdensome or would not achieve the purpose for which they were made?

- 4.7 The draft consumer credit rules in Annex B reflect the proposals above. What the proposed complaint handling rules mean for businesses covered by the CCJ is explained below.

requirement to have a complaint handling procedure

- 4.8 Each business must have in place and operate an appropriate and effective internal complaints handling procedure. This procedure would be for handling any complaints from a person who would be eligible ultimately to take their complaint to the ombudsman service. The procedure should be appropriate to the type and size of the business, the activity it undertakes, and to the nature, complexity and number of the complaints it is likely to receive. This could include the possibility of using a third party administrator to handle complaints. If one business markets consumer credit products on behalf of another, both businesses should specify in their complaints handling procedure how complaints would be referred between them.
- 4.9 The business must take appropriate steps to publicise the existence of the complaints handling procedure. This includes at or immediately after the point of sale and when a complaint is made. The business must also display at each of its branches or sales offices to which eligible complainants have access a notice indicating that it is covered by the Financial Ombudsman Service.
- 4.10 The complaints handling procedure should provide for complaints to be investigated by an employee of sufficient competence who, where appropriate, was not directly involved in the matter complained about. The employee responding to complaints should have the authority to settle them and to offer redress where appropriate, or have ready access to someone who has the authority. Responses to complaints should adequately address the subject matter of the complaint and, where it is upheld, offer appropriate redress.
- 4.11 Where the business decides that redress is appropriate, it must provide fair compensation for any acts or omissions for which it was responsible. If the complainant accepts an offer of redress, the business must honour this. Appropriate redress might not always include financial compensation, and could in some circumstances simply consist of an apology.
- 4.12 The business must take reasonable steps to ensure that all relevant employees are aware of the complaints handling procedure and must endeavour to ensure that they follow it. The business must also put in place appropriate management controls to ensure that it handles complaints fairly, consistently and promptly, and that it identifies and remedies any recurring or systemic problems with the procedure.

procedural rules

- 4.13 The rules lay down certain procedures which businesses must follow when handling complaints. This is a summary of those procedures. They do not apply where the business resolves the complaint on the spot or by close of business on the next business day, or where the complainant is not someone eligible to complain to the ombudsman service.
- 4.14 Otherwise, the business must send a written acknowledgement to the complainant within five business days of receipt of a complaint. This must give the name or job title of the employee handling the complaint, together with details of the business's complaints handling procedure.

- 4.15 The business must then, within four weeks, send the complainant either a “final response letter” (see the explanation of this at paragraph 3.22) or a holding response indicating when the business will be making further contact. Then, within eight weeks of receipt of the complaint, the business must send the complainant either a final response letter or a response that explains the delay and the next steps and informs the complainant that they can now take the complaint to the ombudsman service. In both instances the business must enclose a copy of the Financial Ombudsman Service’s leaflet.
- 4.16 The rules recognise that some larger businesses may operate a two stage complaints-handling procedure (which might, for example, involve offering complainants the opportunity to appeal to head office if they are dissatisfied with an initial offer to resolve a dispute). There are therefore some modifications to the rules in the previous paragraph to allow a business to use this procedure, without taking away the complainant’s ability to take their complaint to the ombudsman service after the relevant eight week period.
- 4.17 If a business has reasonable grounds to believe that another business may be solely responsible for a complaint, the complaint may be referred to that other business. This must be done within five business days of the business identifying that the other business is responsible. Information about the complaint should be referred using a “durable medium”, which would include letter, email, floppy disk, CD-ROM or DVD. The original business must then tell the complainant of the referral by means of a final response letter which includes the other business’s contact details.
- 4.18 Once the business responsible has received the complaint referred to it by the original business, the procedural rules outlined above then start to apply. The receiving business thus has to send an acknowledgement to the complainant within five business days. If the two businesses are jointly responsible for a complaint, the original business must continue to respect the original time limits as if it were solely responsible.

co-operation with the ombudsman service

- 4.19 The rules say that a business must cooperate fully with the ombudsman service in the handling of complaints against it. In practical terms this means, for example, sending in documents when asked to do so, respecting any deadlines given, attending hearings if asked to do so, and complying promptly with any settlements or awards.

5 ombudsman service's procedures

introduction

- 5.1 The purpose of this chapter is to explain the way in which the ombudsman service will operate to ensure that consumer credit complaints may be resolved promptly and with minimum formality. It outlines:
- the procedures in the rules for the investigation and consideration of complaints;
 - the circumstances in which a complaint may be terminated without consideration of its merits;
 - the evidence which may be required;
 - the provisions for fixing and extending time limits for different aspects of the proceedings;
 - the factors which the ombudsman service will take into account in determining what is fair and reasonable;
 - the types of loss or damage for which the ombudsman service can award compensation;
 - the limits on awards, and the costs that can be awarded.
- 5.2 In line with the principles proposed in chapter 2, we propose that the ombudsman service's procedures for handling complaints under the CCJ should be the same as those that currently apply to complaints under the CJ and VJ. The proposed consumer credit rules in Annex B reflect this.

Ombudsman service's complaint handling procedures

- 5.3 When the ombudsman service first receives a complaint, it will consider whether it falls within jurisdiction. This includes an assessment of:
- (a) whether the business complained about is covered;
 - (b) whether the complainant is covered;
 - (c) whether the activity is covered, *and*
 - (d) whether the complaint is within the relevant time limits.
- 5.4 The ombudsman service will also consider whether the complaint is one which should be dismissed without consideration of its merits (see paragraphs 5.13 to 5.14 below).
- 5.5 If the business has not yet had eight weeks to consider the complaint (and has not already sent its final response letter), the ombudsman service will refer the complaint back to the business concerned.
- 5.6 If the ombudsman service considers that it should not handle the complaint, because it is outside jurisdiction or because it is to be dismissed without consideration of its merits, it will give the complainant an opportunity to make representations before a decision is made. Once the ombudsman service has made a decision, it will inform both the complainant and the business. If the business considers that the complaint is not eligible to be handled by the ombudsman service, the ombudsman service will give both the business and the complainant an opportunity to make representations before a decision is made.

- 5.7 Once the ombudsman service has decided that it can handle a complaint, it will try to resolve it at the earliest possible stage and by whatever means appear to be most appropriate, including mediation or investigation.
- 5.8 If an investigation is necessary, the ombudsman service will first give both parties an opportunity to make representations. Following this, it will send a provisional assessment to both parties. If either party responds (by the deadline given), disagreeing with this assessment, the dispute will then go to an ombudsman to be formally “determined”.
- 5.9 Both parties will then be able to make further representations to the ombudsman. Most cases are decided by the ombudsman on the basis of the documents sent in by both of the parties. Complainants who wish to make recorded spoken representations can do so by arrangement. Either party may request a hearing, by writing to the ombudsman setting out the issues they wish to raise and (if appropriate) any reasons why the hearing should be in private. The ombudsman will then decide whether the issues are material and whether a hearing should take place and, if so, whether it should be held in public or private. In taking this decision, the ombudsman will have regard to the provisions of the European Convention on Human Rights. In practice, only in a very few cases is a hearing considered necessary to achieve the fair determination of the complaint.

ombudsman’s determination

- 5.10 Under the Financial Services and Markets Act 2000 the ombudsman is required to determine a consumer credit complaint by reference to what is, in his or her opinion, fair and reasonable in all the circumstances of the case.
- 5.11 In considering what is fair and reasonable in all the circumstances of the case, the ombudsman will take into account the relevant law, regulations, regulators’ rules and guidance and standards, relevant codes of practice and, where appropriate, what he or she considers to have been good industry practice at the time of the act or omission complained about.
- 5.12 When the ombudsman has determined the complaint, he or she will write to both the complainant and the business explaining the determination. The ombudsman will also invite the complainant to say, within a specified time, whether they accept or reject the determination. If the complainant accepts it, the determination is final and binding on both the complainant and the business. But if the complainant rejects the determination (or does not reply by the deadline set), neither the business nor the complainant will be bound by it. The ombudsman will inform the business of the complainant’s response (or lack of response).

dismissal without consideration of the merits

- 5.13 There are certain circumstances where the ombudsman service may, but is not obliged to, dismiss a complaint early in the procedure without considering its merits. The rules set these out in full. The following is a list of those circumstances most likely to be relevant to consumer credit complaints. These are circumstances where the ombudsman service is satisfied that:
- (a) the complainant has not suffered, and is unlikely to suffer, financial loss, material distress or material inconvenience;
 - (b) the complaint is frivolous or vexatious;
 - (c) the complaint clearly does not have any reasonable prospect of success;

- (d) the business has already made an offer of compensation which is fair and reasonable in relation to the circumstances alleged by the complainant and which is still open for acceptance;
- (e) the business has correctly applied the relevant regulatory requirements or guidance to the complaint;
- (f) the matter has previously been considered or excluded by the ombudsman service (unless material new evidence likely to affect the outcome has subsequently become available);
- (g) the matter has been dealt with, or is being dealt with, by a comparable independent complaints scheme or dispute resolution process;
- (h) the complaint has been the subject of court proceedings where there has been a decision on the merits;
- (i) the subject matter of the complaint is the subject of current court proceedings;
- (j) it would be more suitable for the matter to be dealt with by a court, arbitration or another complaints scheme;
- (k) it is a complaint about the legitimate exercise of a business's commercial judgement;
- (l) the complaint involves more than one complainant, has been referred without the consent of the other complainant and it would be inappropriate to deal with the complaint without that consent;
- (m) the complaint raises an important or novel point of law, which has important consequences and would more suitably be dealt with by a court as a test case; or
- (n) there are other compelling reasons why it would be inappropriate for the complaint to be dealt with by the ombudsman service.

5.14 An example of where the ombudsman service would dismiss a consumer credit complaint without considering its merits – where it is about the legitimate exercise of a business's commercial judgement (example (k) above) – would be where the complaint is solely about the interest rate a lender has charged. It would be inappropriate for the ombudsman service to handle such complaints as to do so would put it in the position of a becoming a price-fixer or regulator (which is not the ombudsman service's role).

5.15 The Government confirmed this position in its feedback statement following its December 2003 consultation on the proposed ombudsman arrangements for consumer credit. Confirming that the Financial Ombudsman Service's existing procedures on this would be continued, the Government said:

"The Financial Ombudsman Service does not consider disputes which revolve entirely around allegedly excessive interest rates, as the setting of interest rates is considered to be the proper exercise of a firm's commercial judgement. This is a matter which is more appropriate for the courts to deal with. However, a dispute in which the level of interest charged is only an element may be considered [by the ombudsman service] on its other merits."

evidence

5.16 The ombudsman service has significant discretion to decide the evidence it needs to have in order to determine a complaint. It has the discretion to decide, for example, whether such evidence should be oral or written. Furthermore, in line with the provisions of the Civil Justice Rules that apply in court, the ombudsman service may decide what evidence is admissible or not.

- 5.17 Where necessary or appropriate, the ombudsman service can accept information in confidence, so that only an edited version or (where this is not practicable) a summary or description would be disclosed to the other party. This could include, for example, confidential information about third parties or security information.
- 5.18 The ombudsman service will take into account any failure by a complainant or business to provide information that it has requested, and may dismiss a complaint if a complainant fails to supply required information.

time limits during consideration of complaint

- 5.19 The ombudsman service may fix time limits, or extend those already provided for, in order to resolve a complaint. If a *business* does not comply with a time limit, the ombudsman service may proceed to the next stage of the process. It may also, if appropriate, take into account any material distress or inconvenience caused by this in any award made. If a *complainant* does not comply with a time limit, the ombudsman service may either proceed to the next stage of the process or dismiss the complaint.

awards

- 5.20 If a complaint is determined in favour of the complainant, the ombudsman may do one or more of the following:
- (a) make a money award against the business; *and/or*
 - (b) require the business to 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); *and/or*
 - (c) award costs and/or interest against the business.
- 5.21 A money award may include such amount as the ombudsman considers fair compensation for financial loss (including consequential or prospective loss), pain and suffering, damage to reputation, distress or inconvenience. The maximum money award an ombudsman may make is £100,000. If the ombudsman considers that an amount of more than £100,000 is required as fair compensation, then he/she may in addition *recommend* to the business that it pays the balance.
- 5.22 An award of costs may include an amount which covers some or all of the costs reasonably incurred by the complainant in connection with the complaint. Such awards are likely to be exceptional, as in most cases complainants should not need to use professional advisers to bring complaints to the ombudsman service.
- 5.23 The ombudsman service may in addition require reasonable interest to be paid on the money award and/or the costs. Neither the interest to be paid nor the costs themselves count towards the £100,000 limit.
- 5.24 A business is obliged to comply promptly with any award made against it, any direction given under (b) above or any settlement which it agreed at an earlier stage of the procedures. A money award can be recovered or enforced through the courts by the complainant. The complainant may also enforce a direction under (b) by injunction or (in Scotland) by order.

referral to another complaints scheme

- 5.25 The ombudsman service may refer a complaint to another complaints scheme if it considers that the complaint is more suitable to be dealt with by that other scheme, provided the complainant agrees to this.

dealing with information

- 5.26 The ombudsman service must have regard to the parties' rights of privacy in dealing with any information it receives in connection with a complaint. It may disclose this information to the other parties to a complaint, or if it is otherwise required or authorised by law to do so. This could either be in full or, where necessary or appropriate, in an edited form or (where this is not practicable) in summary or description.
- 5.27 So long as it has regard to the parties' rights of privacy, the ombudsman service may also disclose information to a body exercising regulatory or statutory functions, such as the OFT or the FSA. This would be to enable that body, or the ombudsman service, to discharge its functions. An example of this would be where evidence comes to light that a business or complainant has broken the law. Under such circumstances it would be appropriate for the ombudsman service to inform the relevant enforcement authority.

6 funding

background

- 6.1 The legislation provides for the CCJ to be funded by businesses. It does not contain any provision for the ombudsman service to require complainants to pay an application fee or deposit. The same principle already applies to the CJ and VJ, which are also fully funded by businesses. Having considered the responses to its consultation on alternative dispute resolution for consumer credit complaints, the government decided that the ombudsman scheme should be free for consumers. Businesses are ultimately the beneficiaries of the ombudsman service, as the existence of the service underpins consumer confidence in the industry, irrespective of whether a particular business has a case with the ombudsman service or not.
- 6.2 The legislation provides that the CCJ may be funded by a levy and/or by case fees. A levy would be an amount paid by all businesses covered by the CCJ at regular intervals, while a case fee would be an amount paid by a business for each complaint about them that is handled by the ombudsman service. The Act allows for any levy to be collected from businesses by the OFT, which would then pass this to the ombudsman service. And the Act allows the consumer credit rules to provide for case fees payable directly to the ombudsman service.
- 6.3 Any funds collected under these arrangements would be ring-fenced for the CCJ – they could not be used for any other purpose. The same applies to funds currently collected for the CJ and the VJ which are similarly ring-fenced. The effect of this is that, if there were a shortfall in funding for the CCJ, we could not draw upon funds from elsewhere in the ombudsman service to make up the shortfall. It is therefore important that the funding arrangements we put in place are sufficient to cover the full costs of the CCJ.
- 6.4 The CJ is also funded by a combination of levies and case fees. The balance between the levy and the case fee in the CJ is being reviewed and is currently the subject of a discussion paper produced jointly by the FSA and the ombudsman service – see http://www.fsa.gov.uk/pubs/discussion/dp06_02.pdf
- 6.5 The outcome of the CJ funding review, following a formal consultation in the autumn, will be implemented in the future funding arrangements for the CJ. Although there is no requirement or presumption that the funding arrangements for the CJ and the CCJ should be similar, the timetable for decisions on them (in parallel) means that it could be possible to reach decisions about them at around the same time.

factors to consider

- 6.6 In order to determine the most appropriate funding arrangements for the CCJ, a number of factors must be considered:
- (a) **caseload**
- Given that there has never been a centralised dispute resolution scheme for consumer credit before, it is inherently difficult to forecast the likely caseload that the ombudsman service will receive. A number of estimates have been made, based on an analysis of the information that is currently available (including the consumer credit complaints we currently handle under the CJ and the complaints experience of consumer credit businesses). These estimates range upwards to a maximum of 20,000 eligible complaints a year under the CCJ.

(b) cost per case

The current unit cost of handling a case under the CJ is less than £500. But this figure has been reduced by economies of scale in dealing with large numbers of similar complaints (such as mortgage endowment complaints) against a limited number of firms. These are expected to tail off. For the purposes of forecasting costs over the next five years, therefore, it would be prudent to assume that there will be a modest rise in the average cost per case.

(c) number of businesses

There is some uncertainty about the number of currently active consumer credit businesses. The uncertainty arises partly because, although each consumer credit firm currently has to renew its licence with the OFT every five years, a number of firms will move out of consumer credit before their next renewal is due. Some businesses may exit consumer credit because of increased obligations under the 2006 Act. An uncertain proportion of consumer credit businesses are also regulated by the FSA. These will continue to be covered by the CJ alone and its funding arrangements, and so will not be subject to the CCJ funding arrangements. For planning purposes we are assuming that there will be around 75,000 businesses which would be subject to the CCJ funding arrangements.

(d) structure of the industry

In order to assess the relative appropriateness of the levy or the case fee, it is important to take into account the structure of the consumer credit industry. Given the diversity of the industry and the number of businesses involved, this is hard to characterise. That said, we do know that there will be around three times as many businesses in the CCJ as in the CJ, yet those in the former cover only around 30% of the UK consumer credit market by monetary value. We can conclude therefore, in very broad terms, that small businesses (each with a limited number of customers) will be a more prominent feature of the CCJ than of the CJ.

(e) distribution of cases

In the CJ, only 15% of businesses have any ombudsman cases at all; only 5% have more than 2 ombudsman cases per year; and 95% of ombudsman cases come from only 3% of the businesses – mainly large organisations. Based on this, we expect that in the CCJ, with a higher proportion of small businesses, those with any ombudsman cases will be an even smaller proportion.

(f) levy collection procedure

The Consumer Credit Act provides the CCJ levy to be collected by the OFT. The funds raised are then passed to the ombudsman service. The OFT currently collects a licensing fee when a business applies for a licence and, thereafter, every five years as long as the business wishes to renew its licence. The most cost-effective option for collecting the CCJ levy is therefore for it to be collected from businesses every five years at the same time as the OFT licensing fee. This would make maximum use of existing systems and thus minimise collection costs. By contrast, the option of collecting the CCJ levy from each business annually would require separate systems to be put in place, as well as five times as much collection activity – which would make collection costs a disproportionately high percentage of the levy. Collection of the CCJ levy from businesses every five years is therefore the preferred option. Under this option it would be prudent to take a five year view of the funding arrangements so that, as far as possible, businesses are subject to broadly similar funding obligations irrespective of when during that five year period their licensing fee is paid – though the ombudsman service must remain free to adjust amounts each year, particularly if the caseload is outside expectations.

(g) current and proposed CJ funding arrangements

Current CJ funding arrangements include both a levy and a case fee. The amount of the levy for each business is determined by complex formulae which are

intended to reflect the size of the business and the amount of cases that come to the ombudsman service from the business sector the firm belongs to. The levy thus varies from as little as £50 per year for some small businesses up to several hundreds of thousands of pounds for some very large businesses. The case fee is payable irrespective of the outcome of the case. In order to minimise the impact of this case fee on small businesses, the fee is not charged for the first two cases that a business has with the ombudsman service each year. These arrangements are currently being reviewed (see paragraphs 6.4 and 6.5 above), and the discussion paper suggests a number of alternative options. These include: an updated version of the existing arrangements with two “free” cases per firm per year, with a case fee of around £405 covering 80% of costs and a levy (using the existing formulae) covering the other 20%; and 5, 10 or 24 ‘free’ cases per firm per year, with a case fee of around £480 and a flat-rate levy (ranging from about £175 to £325 per firm, depending on the number of free cases).

analysis of options

- 6.7 Given the factors outlined above, the key feature is *uncertainty*, in particular about the likely future caseload and how it will be distributed amongst consumer credit businesses of different types and sizes. The current graduated levy in the CJ is based on business data collected by the FSA, which would not be available for businesses covered by the CCJ – so that any levy in the CCJ would need to be a flat-rate one.
- 6.8 There are in principle three broad funding options to consider against that background, each of which is analysed below.

Option A: case fees only

- 6.9 Under this option, all the funding would be raised through case fees charged to businesses for each case they have with the ombudsman service. With nothing coming in from levy, the case fee would have to start at around £505. The advantages of this option would include relative simplicity and the relative certainty that the ombudsman service would recover the costs of the CCJ irrespective of the number of cases received, so reducing the risk of caseload uncertainty. The significant disadvantage, however, is that small businesses which have an occasional complaint under the CCJ would risk paying a case fee of around £505, without the benefit of the two “free” cases a year available under the CJ. Were free cases to be introduced under a case-fee-only option, the case fee would have to rise correspondingly further. It is unlikely, therefore, that this option would be equitable, either with or without “free” cases.

Option B: flat-rate levy only

- 6.10 Calculation of this would be based on the assumptions outlined above. To cover the maximum estimate of 20,000 cases per year, this would require a five-year levy of around £735 (or around £740 after adding OFT’s collection costs). The advantages of this option include relative simplicity and ease of collection. The significant disadvantage is that the smallest businesses with the best complaint record would end up paying the same as the largest businesses with the worst complaint record.

Option C: both flat-rate levy and case fee

- 6.11 Under this option, there would be a flat-rate levy, a number of “free” cases per business per year and a case fee for any additional cases. There is, of course, a trade-off amongst these three factors – with the cost of any free cases having to be covered by the levy and/or case fee. Because the spread of complaints amongst consumer credit businesses of different types and sizes is currently unknown, it is

difficult to predict how a specific number of free cases per firm per year would translate into a total of free cases per year. But we estimate that two free cases per business per year might produce a total of about 5,000 free cases per year. This would involve a five-year levy of around £145 (or around £150 after adding OFT's collection costs), with a case fee of around £405 for the remaining cases. Alternatively, five free cases per firm per year might require the same levy but an increased case fee of around £480 for the remaining cases.

conclusion

- 6.12 Option C appears to be the most equitable for businesses while also reducing the financial risk to the ombudsman service of receiving more cases than forecast. Firms paying the levy would, in effect, buy themselves the protection of a number of free cases per year – whilst the very small minority of firms that produce more cases would pay in proportion to the workload they produce. That said, significant uncertainty would still remain, in particular about future caseloads. For that reason, as well as for risk management reasons more generally, it will be necessary to review the funding arrangements for the CCJ annually in the light of actual case numbers and trends.
- 6.13 In view of the significant uncertainties involved in forecasting the number of future cases under the CCJ, we would welcome feedback from consultees on the assumptions we have made above. We would welcome in particular any data about existing and future complaint numbers, distribution amongst businesses and trends.

Q6 Do you agree that the most appropriate funding arrangement would be a combination of a flat-rate five-yearly levy of around £150 per firm and a case fee of around £405 to £480, depending on the number of "free" cases offered?

Q7 Would you in theory favour two "free" cases per business per year and a case fee of around £405 for any additional cases, or five "free" cases per business per year and a case fee of around £480 for any additional cases?

Q8 Do you have any information on likely numbers of complaints under the CCJ and how they will be distributed amongst businesses of different types and sizes?

7 questions for consultation

Q1 Do you agree that the ombudsman service's compulsory jurisdiction (over FSA-regulated businesses) should be extended to include those consumer credit activities that are currently excluded – so that all complaints against FSA-regulated businesses can be handled under the compulsory jurisdiction, rather than being split between the compulsory jurisdiction and the consumer credit jurisdiction?

Q2 Do you agree that it will be simpler for both businesses and consumers if the rules for the new consumer credit jurisdiction (*eg* on time limits and procedure) mirror, so far as possible, the current rules for the existing compulsory jurisdiction and voluntary jurisdiction?

Q3 Do you agree that the limitations on eligible complainants in the Consumer Credit Act should apply only to complaints against businesses covered by the CCJ?

Q4 Do you agree that the rules on recording and reporting of complaints should not be applied to businesses covered by the CCJ?

Q5 Do you agree that the Financial Ombudsman Service should have the power to dispense with or modify the application of the complaint handling rules where this would be unduly burdensome or would not achieve the purpose for which they were made?

Q6 Do you agree that the most appropriate funding arrangement would be a combination of a flat-rate five-yearly levy of around £150 per firm and a case fee of around £405 to £480, depending on the number of "free" cases offered?

Q7 Would you in theory favour two "free" cases per business per year and a case fee of around £405 for any additional cases, or five "free" cases per business per year and a case fee of around £480 for any additional cases?

Q8 Do you have any information on likely numbers of complaints under the CCJ and how they will be distributed amongst businesses of different types and sizes?

8 anticipated queries

8.1 **My business is FSA-regulated and so is already covered by the CJ. Once the CCJ is open, will we be covered by both jurisdictions or will we be able to choose which jurisdiction we are covered by?**

You will be covered by the CJ alone. Businesses authorised by the FSA and which are also licensed by the OFT will remain in the CJ, which will cover their consumer credit complaints.

The consumer credit rules we are proposing broadly mirror those of our existing CJ and VJ. In order to provide a simple and consistent regime for everyone, we propose some changes to the CJ and VJ rules in terms of what activities are covered, so that all three jurisdictions are harmonised to the maximum extent possible.

This should ensure that users of the service experience the seamless complaint coverage that the arrangements are intended to achieve. It also means businesses will not have to be covered by more than one mandatory jurisdiction and thus will not, for example, have to pay levies in both the CJ and CCJ.

8.2 **When will the ombudsman service start considering complaints under the new CCJ, and what about complaints about events that have already happened?**

It is expected that the CCJ will open on 6 April 2007 for all activities except debt administration and the provision of credit information services (for which the opening date is expected to be 1 October 2008). These are the dates from which we expect formally to start dealing with complaints under the CCJ.

The CCJ will not deal with complaints about events that happened before 6 April 2007. But we may need to refer, during our investigations, to earlier events in order to determine a complaint about something that happened after 6 April 2007.

We expect there will be considerable interest in the CCJ from around January 2007, so staff in our front-line customer contact division will be trained to deal with early consumer enquiries about the jurisdiction.

We also plan to provide support to businesses in the months running up to the new jurisdiction. We have already begun to work with consumer credit trade bodies in preparing for the new jurisdiction, and this work will gather speed through the rest of 2006.

8.3 **Why is the dispute resolution function being provided before the new licensing regime is in place – shouldn't they happen at the same time?**

Because the ombudsman service provides only dispute resolution, and does not have any regulatory function, the CCJ does not need to mirror the timetable of the new licensing regime.

There is considerable appetite within both consumer groups and consumer credit trade bodies for the early availability of the informal, flexible and accessible complaint resolution that an ombudsman service can offer. Most stakeholders regard an

ombudsman service as a more appropriate forum than the courts for the majority of consumer credit complaints.

As we already deal with significant numbers of consumer credit complaints against businesses in our CJ and VJ, and have the capacity to deal with more of them as work in some other areas begins to level off, there seems no obvious benefit to be gained by delaying the start of the CCJ.

8.4 Will a business get its case fee waived if you find in its favour on a case?

No. That is because the purpose of the case fee is to pay (wholly or partly) for the costs of case handling – not to ‘fine’ a licensee for doing something wrong. Our costs of considering the case will be the same, whatever the outcome. Furthermore, if receipt of our case fee depended on the outcome of the case, we might be seen to have an incentive to find against businesses, and our impartiality could be questioned.

8.5 My business normally refers complaints to our trade body, who handles them for us. Will we still be able to do that?

Yes. There is no reason why you cannot use your trade body to provide your initial complaint handling function, provided you make it clear to the customer that the trade body is acting for you, the trade body sticks to the appropriate time limits, and you make sure that the customer is given referral rights to the ombudsman service if the complaint remains unresolved.

We are planning workshops for businesses and trade bodies to explain how our complaint process works.

8.6 Is every case seen and decided by an ombudsman?

No. For our existing consumer credit complaints, less than 10% need to be decided by an ombudsman. They are usually the more complex cases, or those presenting new points.

The vast majority of complaints are resolved more informally, often through mediation by the adjudicators in our casework teams. We are often able to resolve cases informally after phone conversations with the consumer and the business, saving both sides the time and effort of providing full written submissions.

However, if either the consumer or the business disagrees with the adjudicator’s view of a complaint, they have the right to an ombudsman’s decision on the case.

8.7 How will my business know the way in which the ombudsman service is likely to approach a particular type of complaint?

As well as hosting workshop events for business, we also provide information on our website and in our publications such as *ombudsman news* – available through our website: www.financial-ombudsman.org.uk/publications/ombudsman.htm. As the CCJ draws nearer, we will be providing more *ombudsman news* articles that cover areas of interest to CCJ participants.

If you have a complaint that has not yet been referred to us, our technical advice desk can give you a 'steer' when you do not know how to proceed. You can contact them by phoning 020 7964 1400, or by sending an email to technical.advice@financial-ombudsman.org.uk.

If you have a complaint that has been referred to us, you can talk to the adjudicator about the case. We are impartial, and so can provide help to both parties to the complaint in arriving at an appropriate outcome.

8.8 What opportunity will I get to put my side of the case, and what sort of 'proof' will I be expected to provide?

We do not make up our minds about the merits of a complaint until we have heard both sides' arguments, and weighed up the evidence.

Typically, evidence might include copy documents (such as a loan application form and agreement), contemporaneous notes or correspondence, and written statements from the parties about what happened. Much will depend on the nature of the complaint.

We guide the parties about what form of evidence they should provide, and issue questionnaires if we need them to answer specific questions. We frequently discuss the case with the parties by phone, but it is rare for us to require them to attend a hearing.

8.9 How will the ombudsman service decide who wins the case?

We question the parties, and then make up our own minds about the case. Where there is a dispute about what happened, we decide what happened on the balance of probabilities in the light of the evidence that is available now.

We take into account the law, any relevant regulations and codes of practice, and good industry practice. The law require us to decide cases on the basis of what is fair and reasonable in all the circumstances.

Because most of our cases are resolved informally (often by means of mediated settlements) and because we consider what both sides did (or failed to do), there may not always be a clear 'winner' or 'loser'.

8.10 How can we be sure that the ombudsman service has the necessary knowledge and experience to deal with complaints about consumer credit?

The Financial Ombudsman Service has always dealt with complaints about consumer credit, because we already cover firms that provide about 70% of UK consumer credit by monetary value.

We have extensive experience of dealing with complaints about credit cards, personal loans and lines of credit such as overdrafts. We already cover complaints about debt collection and recovery by businesses in our CJ. We also deal with complaints about leasing and debt factoring services, where they are ancillary to a banking service.

Whilst we will be providing thorough training to our adjudicators so that they fully understand all the new consumer credit products and activities - and will also be

training our staff in the technical provisions of the Consumer Credit Act 2006 - this will mainly be building on our existing knowledge.

8.11 How will the ombudsman service deal with complaints about the interest rate that a customer is charged?

Because we are not a price-fixer or regulator, we do not generally investigate complaints that are solely about the rate of interest that a lender charges.

Our existing CJ and VJ rules include provision for us to decline to deal with a complaint if it relates to a business's legitimate exercise of its commercial judgement. That provision is replicated in the CCJ as well. Furthermore, the Government in its White Paper *Fair, Clear and Competitive: The Consumer Credit Market in the 21st Century* did not envisage the ombudsman service being a vehicle for addressing unfair or excessive interest rates.

8.12 How will the ombudsman service deal with the new challenge created by the need to apply the 'unfair business relationship' provisions of the Consumer Credit Act 2006?

We have always had to decide cases on the basis of what is fair and reasonable in all the circumstances of the case. So this does not represent a new challenge for us. Because of that, we do not anticipate having to change our normal approach when assessing complaints under the new provisions.

8.13 Will the Financial Ombudsman Service only deal with complaints that allege a breach of the Consumer Credit Act?

No. The test for us is that the complaint (and the complainant) must fall within our rules. So we could uphold a complaint where there had been no breach of the Act if the business has done something else wrong. But, equally, if there has been a breach of the Act but the complainant has been caused no loss or inconvenience by it, then we would be unlikely to uphold the complaint.

8.14 Can 'class actions' be brought by customers through the Financial Ombudsman Service?

Our procedures do not provide for class actions, or joint complaints by groups of consumers. We deal with each case individually, in confidence. Where we receive a cluster of cases about the same thing, we may administer the complaints as a group so as to avoid duplication of effort and ensure consistency in decision-making. But each complaint is still decided separately on its merits.

8.15 My business receives complaints under section 75 of the Consumer Credit Act 1974, which require a judgement to be made about the standard or quality of goods bought with credit. How will the Financial Ombudsman Service be able to deal with this sort of complaint?

This is an area with which we are already very familiar from our existing credit card work. Sometimes these complaints present difficulties of evidence that make them unsuitable for determination by us, and more suitable for a court. However, the

majority of section 75 complaints we receive are capable of being decided by us. We take a common sense, practical approach to the problem. For example:

- A dispute about whether or not a garden marquee conformed to its description was decided by reference to the sales literature and detailed photographs of the assembled marquee.
- A dispute about a poorly-fitted kitchen was decided with the aid of a report from a local trading standards officer.
- A dispute about a defective car was decided with the aid of a report from an independent diagnostic garage.

8.16 **Why have you not provided for consumers to pay a complaint fee or deposit?**

The law as made by Parliament does not allow for us to make such a charge. The government decided that the ombudsman service should be free for consumers. A fee or deposit would be a barrier to disadvantaged consumers.