

**RULES OF THE OMBUDSMAN SERVICE**

**OF**

**THE MORTGAGE ORIGINATION REGULATORY COUNCIL OF  
SOUTH AFRICA**

(First Edition)

## Interpretation

1. All definitions and interpretations used in the Constitution shall have the same meaning in these Rules, unless the context indicates otherwise. For the sake of convenience certain of these definitions are repeated hereunder. In these Rules, the following words and phrases have the meanings and references set out below:

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|-----|---|---|
| 1.1 | <b>“Association”</b>                          | means the Mortgage Origination Regulatory Council of South Africa or “MORCSA”;  |
| 1.2 | <b>“Award”</b>                                | means the binding Determination made by the Ombudsman;  |
| 1.3 | <b>“Code of Practice”</b>                     | means the Code of Practice promulgated by the Association as in force from time to time;  |
| 1.4 | <b>“Complainant”</b>                          | means a Consumer who makes a Complaint to the Ombudsman's Office about a Member or Members;   |
| 1.5 | <b>“Complaint”</b>                            | means a Complaint that has been recorded by the Ombudsman's Office as a Complaint against a particular Member or Members;   |
| 1.6 | <b>“Complaint Summary”</b>                    | means a summary of the Complaint; and the Member's response in whatever manner and form the Ombudsman's Office thinks appropriate;  |
| 1.7 | <b>“Conciliation and Investigation Phase”</b> | means the Conciliation and Investigation Phase of the Ombudsman Service Process as contemplated in Rules 57 to 66;  |
| 1.8 | <b>“Consumers”</b>                            | means members of the public who deal with Members whether as borrowers, applicants, Credit Provider, guarantors, prospective borrowers or prospective guarantors, or who in any other way seek the services of Members in the ordinary course of business in the Mortgage |

		Origination Industry;
1.9	<b>"Consumer Committee Member"</b>	means a member of the Ombudsman Committee from time to time appointed by Exco to represent the interests of Consumers in accordance with the provisions of the Constitution;
1.10	<b>"Credit"</b>	means any form of credit or financial accommodation;
1.11	<b>"Credit Provider"</b>	means any an individual, corporation, bank, financial institution or other entity that lends or provides mortgage secured finance to Consumers;
1.12	<b>"Determination"</b>	means the Ombudsman's Determination (or decision about the merits) of a Complaint, and the word 'determine' has a corresponding meaning;
1.13	<b>"Determination Phase"</b>	means the phase during which the Ombudsman makes a Determination, as contemplated in Rules 67 to 82, and, as required, an Award;
1.14	<b>"Direct Loss"</b>	means direct loss suffered by the Complainant including but not limited to costs incurred in having to obtain Credit or alternative Credit;
1.15	<b>"Disciplinary Rules"</b>	the Disciplinary Rules promulgated by the Association and in operation from time to time;
1.16	<b>"Disciplinary Tribunal"</b>	means the tribunal established by the Association pursuant to the Constitution and the Disciplinary Rules;
1.17	<b>"Exco"</b>	means the Executive Committee of the Association from time to time;
1.18	<b>"Exco Committee Member"</b>	means a member of the Ombudsman Committee from time to time appointed by Exco from representatives nominated by

Corporate Members of the Association in accordance with the provisions of the Constitution;

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|------|-------------------------------|---|
| 1.19 | <b>"Loan"</b>                 | means the provision of Credit;  |
| 1.20 | <b>"Loss"</b>                 | means loss as contemplated in Rules 29 and 30;  |
| 1.21 | <b>"Member"</b>               | means a person, firm or corporation which is a member of the Association;   |
| 1.22 | <b>"Member Services"</b>      | means the services provided, or conduct engaged in, by a Member whether as a Mortgage Originator, Aggregator; Sub-Aggregator or Sub-Originator as these terms are defined in the Constitution;  |
| 1.23 | <b>"Mortgage Origination"</b> | means the process, by a person or legal entity (other than an employee or agent of a credit provider) of soliciting, completing or concluding credit agreements that are mortgage agreements (as contemplated by the National Credit Act, i.e. are secured, directly or indirectly, by way of the mortgage of immovable property), for or on behalf of a credit provider or a Consumer, where such mortgage origination is undertaken for reward. For the purposes hereof, "completing or concluding credit agreements" will include: |
|      | 1.23.1                        | advising or assisting the Consumer in the completion of the application to the credit provider for the credit agreement concerned;  |
|      | 1.23.2                        | advising and/or assisting the Consumer in regard to the credit application, including in regard to different mortgage agreements that may be available, the affordability of  |

		the mortgage agreement for the Consumer and/or other aspects specific to the mortgage agreement application process;
	1.23.3	submitting any application for a mortgage agreement to a credit provider;
1.24	<b>"the Ombudsman's Service"</b>	means the service provided by the Ombudsman Committee established under the Constitution and these Rules and, unless the context indicates the contrary, includes the Ombudsman;
1.25	<b>"the Ombudsman's Service Rules" or "Rules" or "these Rules"</b>	mean the Ombudsman Service Rules and includes as appropriate any practice note or other rule made by the Ombudsman Committee under and in terms of the Constitution;
1.26	<b>"the Ombudsman's Office's website"</b>	means the web site maintained by the Ombudsman's Office at <a href="http://www.morcsa.org">www.morcsa.org</a>

## About the Ombudsman Service

### Introduction

1. The Ombudsman Service is an External Dispute Resolution scheme established by the Office of the Independent Ombudsman for the Origination of Mortgages ("**Ombudsman's Office**") established accordance with the Constitution of the Mortgage Origination Regulatory Council of South Africa ("**Association**"). The Ombudsman's Office provides Consumers who have suffered Loss with an accessible alternative to legal proceedings for the resolution of their Complaints against Members of the Association.
2. The broad aim of the Ombudsman Office is to provide for the independent and prompt resolution of Consumers' Complaints against Members, having regard to:
  - 2.1 relevant legal requirements and rights provided by law to Consumers;
  - 2.2 the Code of Practice;
  - 2.3 good practice in the Mortgage Origination industry.
3. The Ombudsman Service considers Complaints from Consumers against Members in accordance with these Rules and looks to resolve Complaints by:

- 3.1 agreement between the parties; or
  - 3.2 making recommendations to the parties; or
  - 3.3 making a Determination; or
  - 3.4 making an Award; or
  - 3.5 some other appropriate means.
4. The Ombudsman's Office does not provide general information about Members, Members' business operations or services.
5. Complainants who take their Complaint to the Ombudsman Service are not bound by the Ombudsman's Determination unless accepted as provided for in Rule 6. Complainants who do not accept the Ombudsman's Determination still retain any legal rights they have to refer their Complaint to a Court or a tribunal or other similar body.
6. However, the Ombudsman's Determination will be binding on a Member if the Complainant accepts that Determination in full and final settlement of their Complaint against the Member. Complainants who accept the Ombudsman's Determination will be required by the Ombudsman's Office to sign a document called a Deed of Release in such form or to such effect as the Ombudsman's Service specifies from time to time that has the effect of preventing them from later bringing legal or other proceedings against the Member in relation to the matters that were the subject of their Complaint.

#### **The Ombudsman's Service**

7. The Members of the Association are individuals, firms and corporations that operate in the Mortgage Origination industry. As Members of the Association they are bound by the Constitution of the Association ("**the Constitution**"), the internal dispute resolution procedures of the Association; the Code of Practice and these Rules. The Ombudsman Service is established in terms of the Constitution. So that the Ombudsman's Service is and is seen to be independent, it is administered, managed and controlled by a committee established under the Constitution (the "**Ombudsman Committee**") which comprises:
- 7.1 the Ombudsman as independent Chairman; and
  - 7.2 an equal number of Consumer Committee Members and Exco Committee Members.
8. The main objectives of the Ombudsman's Office is to:
- 8.1 act as a Complaints resolution body for the Mortgage Origination industry; and
  - 8.2 actively facilitate the resolution of Complaints about Member Services.

## **Ombudsman Service**

9. The Ombudsman Committee has established and supervises the Ombudsman Service. The Ombudsman Service operates under these Rules. These Rules set out:

- 9.1 who can make a Complaint to the Ombudsman Service;
- 9.2 what matters can be the subject of a Complaint;
- 9.3 what matters are not covered by the Ombudsman Service; and
- 9.4 what procedures apply for making a Complaint to the Ombudsman Service and having that Complaint resolved.

10. The Ombudsman Committee may from time to time approve and have published on the Ombudsman's Service's website:

- 10.1 procedure manuals and handbooks;
- 10.2 guidelines to these Rules and procedures of the Ombudsman Service;
- 10.3 policies and policy guidelines; and
- 10.4 other documents relating to the Ombudsman Service Process,

but these always have to be read subject to these Rules.

11. The Ombudsman Service:

- 11.1 receives and investigates Complaints; and
- 11.2 carries out a conciliation role as between Complainants and Members,

and if the parties are unable to resolve the Complaint themselves, the Ombudsman makes a Determination.

12. The Ombudsman Service is not bound by any legal rule of evidence and may inform itself about the Complaint and all matters relating to it in whatever manner and by whatever means in its discretion it thinks appropriate.

13. The Ombudsman's Office can require a Member who is the subject of a Complaint:

- 13.1 to give the Ombudsman's Office; or
- 13.2 to cause another person (not the Complainant) to give the Ombudsman's Office,

any information or document the Ombudsman's Office considers necessary to deal with the Complaint in accordance with these Rules.

14. Subject to Rules 108 to 114 (these are Rules about confidentiality), a Member must comply with the Ombudsman's Service's requirement under Rule 13.
15. Subject to Rules 108 to 114, the Ombudsman's Office may at its discretion give all relevant information and documents it receives to all other parties. However, the Ombudsman's Office need not give other parties any information or document that the Ombudsman's Office receives and relies upon provided it is identified in the Ombudsman's written reasons and is made available to the other parties when requested.
16. If the Ombudsman's Office believes it is appropriate to do so, the Ombudsman's Office may extend with or without conditions any time period under these Rules to enable a party to access and respond to any information or document the Ombudsman's Office relies upon but has not provided to that party.
17. Where practical, the Ombudsman's Office will:
  - 17.1 by whatever means the Ombudsman's Office regards as appropriate, keep all parties informed of the progress of a Complaint;
  - 17.2 publish these Rules, procedures, guidelines, manuals, handbooks, policies, practice notes, edited copies of Determinations and other documents relating to the process of the Ombudsman Service on the Ombudsman's Office web site; and
  - 17.3 provide parties with copies of or extracts from the Ombudsman's Service's policies that are relevant to a particular Complaint.
18. At any time and from time to time during the Ombudsman Service Process, if it thinks it appropriate to do so, the Ombudsman's Office can suggest that the Complaint be withdrawn or settled, with or without conditions, with the agreement of both parties in full and final settlement of the Complaint. If this happens and one of the parties requests it, the Ombudsman's Office will prepare a Settlement Agreement. If the parties do not agree to the withdrawal or settlement of the Complaint, the Ombudsman's Office will continue the Ombudsman Service Process.
19. Where the Ombudsman's Office reasonably considers that an offer made by a Member to a Complainant to resolve a Complaint is reasonable having regard to the information before the Ombudsman, the Ombudsman's Office may recommend to the Complainant that they accept the Member's offer in full and final settlement of the Complaint. If the Complainant does not accept the offer, the Ombudsman's Office may close the Complaint in the absence of further information from the Complainant that would justify the Complaint remaining open. If the Ombudsman's Office closes the Complaint, it will notify the Complainant and Member that it has done so.



## **Role of the Ombudsman**

20. Exco appoints the first Ombudsman. The Ombudsman is the decision-maker of the Ombudsman Service and the person who can make:
- 20.1 any decision allowed for under these Rules, including a decision about whether or not a Complaint is within the jurisdiction of the Ombudsman Service;
  - 20.2 any order allowed for under these Rules;
  - 20.3 a Determination; and
  - 20.4 an Award.
21. The Ombudsman:
- 21.1 has the powers, functions and duties conferred by the Constitution and these Rules, and as conferred and delegated by the Ombudsman Committee from time to time;
  - 21.2 has overall management responsibility for the Ombudsman's Service; and
  - 21.3 establishes systems and procedures to ensure the Ombudsman's Service's efficient and effective operations in accordance with these Rules.
22. The Ombudsman may delegate all or any of his or her powers, functions and duties to employees of the Ombudsman's Office and to other persons approved by the Ombudsman Committee, except:
- 22.1 the power to make a Determination or Award; and
  - 22.2 the Ombudsman's power to delegate.

## **Complaints to which the Ombudsman's Service Rules apply**

23. Different versions of these Rules may operate in respect of a Complaint depending on the date of its receipt.
24. **This First Edition of these Rules takes effect on a date determined by Exco, and applies to every Complaint received on or after that date.**

## **When a Complaint can be made**

25. A Complaint can be made to the Ombudsman Service about a Member if:
- 25.1 the Complainant is a Consumer;
  - 25.2 the Complaint is about a Member Service; and

- 25.3 the Complainant is seeking compensation for Loss.

### **Types of Complaints covered by the Ombudsman's Service**

26. The Ombudsman's Office will deal with a Complaint if, in relation to Member Services, the Member breached the Code of Practice.
27. Once the Conciliation and Investigation Phase of the Ombudsman Service Process commences but before the start of the Determination Phase, the Complainant may only raise new grounds of Complaint with the Ombudsman's Office's approval. The Ombudsman's Office will generally give its approval unless the Ombudsman's Office considers that the Complainant has been tardy in raising the new grounds of Complaint or it has by then become unreasonable for the Member to have to respond to the new grounds of Complaint.
28. Once the Determination Phase of the Ombudsman Service Process commences, the Complainant may not raise any new ground of Complaint unless:
- 28.1 the Ombudsman's Office is satisfied that exceptional circumstances exist justifying allowing this to happen;
- 28.2 the Member consents in writing; and
- 28.3 the Ombudsman's Office consents in writing on such terms and conditions as the Ombudsman's Office regards as appropriate.

### **Compensation and orders available to a Complainant**

29. The Complainant can claim compensation up to R250,000 (or such other limit set by the Ombudsman Committee) for any Loss they have suffered as a result of the Member's conduct. If the Loss suffered by the Complainant is or may be more than R250,000 (or such other limit set by the Ombudsman Committee) in respect of the Complaint or in the aggregate of all the Complaints that are or could be based on the same subject matter against the same Member, the Complainant may still claim compensation, but only for an amount not exceeding R250,000 (or such other limit set by the Ombudsman Committee). The Ombudsman Committee may increase the amount of the compensation limit from time to time. The Ombudsman's Office will publish any increase in the compensation limit on the Ombudsman's Office's web site.
30. The Complainant can claim compensation for Loss that is:
- 30.1 Direct Loss, or
- 30.2 other indirect or non-financial Loss or disadvantage as the Ombudsman Committee specifies as recoverable from time to time and publishes on the Ombudsman's Office's web site.

31. Alternatively, or in addition to claiming compensation, the Complainant can ask the Ombudsman to order the Member to do or to refrain from doing some act in relation to the subject matter of the Complaint.

#### **Complaints not covered by Ombudsman Service**

32. The Ombudsman's Office will not deal with a Complaint if, at the time of receiving the Complaint or at any time during the Ombudsman Service Process, the Ombudsman's Office is satisfied that the Complaint falls into one or more of the following cases:

- 32.1 the Complaint is about a Member's acts or omissions that do not comprise or otherwise are not directly related to the Member Services; or
- 32.2 the Complaint is about someone who:
  - 32.2.1 was not a Member at the time of the acts or omissions the Complainant is complaining about; or
  - 32.2.2 is not a Member at the time the Complaint is made; or
- 32.3 the Complainant is claiming more than R250,000 (or such other limit set by the Ombudsman Committee):
  - 32.3.1 in respect of the Complaint; or
  - 32.3.2 in the aggregate of all the Complaints that are or could be based on the same subject matter against the same Member; or
- 32.4 to the extent that any aspect of the Complaint relates to acts, omissions, policies or commercial or other matters by or concerning someone other than the Member the Complainant is complaining about e.g. a Credit Provider's decision to refuse the Complainant's loan application or approve it on conditions, interest rates, a Credit Provider's policy to require mortgage insurance etc; or
- 32.5 to the extent that the Complaint relates to any transaction entered into outside the Republic of South Africa; or
- 32.6 to the extent that the Complainant is not seeking compensation or orders (see Rules 29 to 31) against a Member; or
- 32.7 to the extent that the Complainant is seeking compensation other than compensation for Loss (see Rules 29 to 31); or
- 32.8 the Complainant is not the person to whom the Member Services directly relate; or

- 32.9 the Member's act or omission being complained about (or the earliest of them) occurred more than 3 years before the date of receipt of the Complaint by the Ombudsman's Service; or
  - 32.10 the Complainant has previously made a Complaint about the same Member in relation to the same subject matter which has been considered by the Ombudsman Service, unless relevant new evidence is available as determined by the Ombudsman; or
  - 32.11 the subject matter of the Complaint is or was the subject of proceedings brought by the Member before a court, tribunal or arbitrator, or is or was under consideration or investigation by another dispute resolution body (other than the Disciplinary Tribunal), unless both the Complainant and the Member consent in writing to the Complaint being considered by the Ombudsman Service; or
  - 32.12 the subject matter of the Complaint becomes the subject of proceedings brought by the Member before a court, but only if this occurred as a result of the Member having commenced legal proceedings in accordance with the Objection Notice procedure outlined in Rules 91 to 99; or
  - 32.13 it is more appropriate that the Complaint is dealt with by a court, tribunal, arbitrator, or another complaints or dispute resolution body, scheme or procedure; or
  - 32.14 the Complaint involves an issue which may have important consequences for the business of the Member or the Mortgage Origination industry generally, or raises an important or novel point of law, and is dealt with under the special procedures set out in Rules 91 to 99;
  - 32.15 even if the matters set out in the Complaint were found to be true, these matters would not constitute:
    - 32.15.1 a breach of relevant laws (or duties imposed by law) by the Member, or a failure by the Member to give effect to a right provided by law to the Complainant in relation to the subject matter of the Complaint;
    - 32.15.2 a breach of the Code of Practice by the Member;
    - 32.15.3 a failure by the Member to meet standards of good practice in the Mortgage Origination industry;
  - 32.16 the Complaint is frivolous or vexatious or is being pursued by the Complainant in a frivolous or vexatious manner or for an improper purpose.
33. If the Ombudsman's Office thinks that it is appropriate to refer the Complaint and the information and documents the Complainant has provided to another independent

complaints or dispute resolution or arbitration body, scheme or procedure, before doing so it will obtain the Complainant's consent.

34. If the Ombudsman Service does not cover the Complaint, the Ombudsman's Office will write to the Complainant informing them of same and setting out the reasons why the Complaint is not covered by the Ombudsman Service.

**Complaint at no cost to Complainant**

35. The Complainant does not have to pay any fee other than for a frivolous or vexatious Complaint brought by the Complainant.

**Member to be given opportunity to resolve Complaint**

36. Before taking a Complaint to the Ombudsman's Office the Complainant must first of all try to resolve their Complaint with the Member concerned using the Member's internal dispute resolution ("**IDR**") procedures. The Ombudsman's Office will not consider the Complaint unless the Complainant has first attempted to resolve it with the Member.
37. Every Member must have IDR procedures in place. As part of these IDR procedures, the Member must give the Complainant the name and contact details of the Member's "Internal Dispute Resolutions Manager". The Member must also promptly give the Complainant a copy of its IDR procedures if it is asked for.
38. In addition, the Ombudsman's Office can advise the Complainant what they need to do to have their Complaint dealt with under the Member's IDR procedures.
39. The Member's IDR procedures require the Member to give the Complainant a substantive response as soon as possible, but within 30 days, after the Complainant lodge their Complaint.
40. The Ombudsman's Office regards the Member as having given the Complainant a substantive response if the Member:
  - 40.1 accepts the Complaint and if appropriate offers the Complainant redress; or
  - 40.2 offers the Complainant redress without accepting the Complaint; or
  - 40.3 rejects the Complaint.
41. Subject to Rule 36, if:
  - 41.1 the Member does not acknowledge the Complainant within the prescribed time period as provided for in the IDR;

- 41.2 the Member does not give the Complainant a substantive response to their Complaint within 30 days; or
- 41.3 the Member gives a substantive response but the Complainant considers that the response does not satisfactorily resolve their Complaint;

the Complainant may make a Complaint to the Ombudsman's Office.

#### **Complaints against two or more Members**

- 42. If the Complainant wants to make a Complaint about two or more Members in relation to the same subject matter, the Complainant can do so. But the Complainant must first of all try to resolve their Complaint with each of the Members concerned. These Rules apply with any necessary modifications in respect of a Complaint against two or more Members in relation to the same subject matter.

#### **The Ombudsman's Service's guiding principles**

- 43. In dealing with a Complaint at any stage of the Ombudsman Service Process, the Ombudsman's Office has regard to:
  - 43.1 relevant legal requirements or rights provided by law to the Complainant in relation to the subject matter of the Complaint;
  - 43.2 the Code of Practice; and
  - 43.3 good practice in the Mortgage Origination industry.
- 44. Dealing with a Complaint includes:
  - 44.1 deciding if the Complaint is covered by the Ombudsman Service;
  - 44.2 assessing the merits of the Complaint;
  - 44.3 making recommendations to the Complainant and the Member about resolving it;
  - 44.4 making a Determination;
  - 44.5 making an Order; and
  - 44.6 making an Award.
- 45. In considering what is good practice in the Mortgage Origination Industry the Ombudsman's Service:
  - 45.1 may consult within the Mortgage Origination industry;

- 45.2 may seek, but is not bound by, advice from such persons (including but not limited to those in the Mortgage Origination industry) as the Ombudsman's Office regards as suitably qualified to give that advice; and
- 45.3 is bound by the Code of Practice.

## **Making a Complaint to the Ombudsman's Service - the Initial Referral Phase**

### **Making a Complaint**

- 46. A Complainant may make a Complaint to the Ombudsman Service:
  - 46.1 by writing to the Ombudsman's Office;
  - 46.2 by completing the Complaint information through the Ombudsman's Office's web site;
  - 46.3 by phoning the Ombudsman's Office and giving details of the Complaint to the Ombudsman's Office.
- 47. If the Complainant phones the Ombudsman's Office, a written Complaint setting out the Complaint must be sent to the Ombudsman's Office afterwards.
- 48. If the Complainant has any difficulty in presenting their Complaint, the Ombudsman's Office will help them prepare it. In doing so, the Ombudsman's Office will not be "taking sides" but will simply help the Complainant present their Complaint as clearly and concisely as possible. The Ombudsman's Office will not do anything that could impair or could be seen to impair its impartiality.
- 49. When a Complainant makes a Complaint:
  - 49.1 they do not need to use any formal, legal or technical language;
  - 49.2 they must tell the Ombudsman's Office what compensation they want the Member to give them, or what corrective action the Complainant wants the Member to take to resolve the Complaint;
  - 49.3 the Complainant must give the Ombudsman's Office a copy of every document relevant to their Complaint; and
  - 49.4 the Complainant must give written consent to the Ombudsman's Office sending a copy of their Complaint, and copies of their documents to the Member they are complaining about.
- 50. When the Ombudsman's Office receives a written Complaint, that Complaint is immediately recorded as received. Then, if it has not done so already, the Ombudsman's

Office assesses whether the Complaint is within the jurisdiction of the Ombudsman Service. If it is not, the Ombudsman's Office writes to the Complainant letting them know why their Complaint is not covered by the Ombudsman Service. The Ombudsman's Office's decision that the Complaint is not covered by the Ombudsman Service is final and binding on the Complainant.

51. The Ombudsman's Office will also consider whether or not the Complainant has satisfied the requirement to try to resolve their Complaint with the Member as required by Rule 36.

### **Acceptance of Complaint**

52. Provided that the Complainant has given all necessary consents, and the Ombudsman's Office is satisfied that Rule 36 or Rule 41 has been complied with and that the Complaint is within the jurisdiction of the Ombudsman Service, the Ombudsman's Office:

- 52.1 records the Complaint as accepted;
- 52.2 sends the Complaint and the information and documents the Complainant has provided the Ombudsman's Office to the Member concerned; and
- 52.3 informs the Member it is required to provide the Ombudsman's Office with a response within 21 days.

53. The Member's response must comply with the requirements the Ombudsman's Office specifies.

54. The Member must give its response to the Complaint to the Ombudsman's Office within 21 days after the Ombudsman's Office has sent the Member a copy of the Complaint.

55. When the Ombudsman's Office receives the Member's response, it will send the response to the Complainant for their consideration.

56. If the Complainant is not satisfied with the Member's response and has provided the Ombudsman's Office with reasons for this, the Complainant may, within 21 days of the Ombudsman's Office sending the Complainant the Member's response, request the Ombudsman's Office to deal with the Complaint. The Ombudsman's Office will advise the Complainant of their right to do this.

### **Conciliation and Investigation Phase**

#### **Complainant dissatisfied with Member's response**

57. Once the Complainant notifies the Ombudsman's Office that it is not satisfied with the Member's response to their Complaint, the Ombudsman's Office will begin the Conciliation and Investigation Phase of the Ombudsman Service Process.



58. In the Conciliation and Investigation Phase, the Ombudsman's Office can, subject to any Ombudsman Committee Direction or Practice Note, carry out whatever conciliation and investigation process it thinks appropriate to deal with the Complaint.
59. Without in any way limiting what the Ombudsman's Office can do, the Ombudsman's Office can do all or any of the following things:
  - 59.1 ask any party questions in relation to the Complaint;
  - 59.2 ask any party to give the Ombudsman's Office information or documents;
  - 59.3 ask any party for their comments generally on the other party's responses to the Ombudsman's Office;
  - 59.4 send to one party copies of:
    - 59.4.1 the other party's comments on the Complaint;
    - 59.4.2 the other party's answers to questions asked; and
    - 59.4.3 information provided to the Ombudsman's Office by the other party;
  - 59.5 prepare a Complaint Summary for the parties and tell them what the Ombudsman's Office sees as:
    - 59.5.1 the key issues in the case;
    - 59.5.2 the strengths and weaknesses in each party's case;
  - 59.6 conduct a conciliation conference to be attended by both parties and their permitted representatives, if any;
  - 59.7 conduct a hearing to be attended by both parties and their permitted representatives, if any;
  - 59.8 continue to carry out the investigation process until the Ombudsman's Office is reasonably satisfied that it is in possession of all relevant information;
  - 59.9 facilitate informal negotiations between the parties to resolve the matter;
  - 59.10 invite the parties to participate in any form of recognised alternative dispute resolution in relation to the Complaint;
  - 59.11 obtain whatever advice from whatever source the Ombudsman's Office thinks will assist in dealing with the Complaint;
  - 59.12 having completed its investigation:

- 59.12.1 give the Complainant and the Member the Ombudsman's Office's assessment of the merits of the Complaint; and
  - 59.12.2 make a recommendation to the Complainant and the Member about resolving the Complaint.
60. The Ombudsman's Office may convene a hearing or a conciliation conference if it is satisfied that doing so would lead to the more efficient and effective resolution of the Complaint.
61. However, the Ombudsman's Office does not have power to subpoena witnesses or take evidence on oath or cross examine witnesses, so generally the Ombudsman's Office would regard:
- 61.1 a hearing as appropriate only where the Ombudsman's Office believed that a question and answer investigation format would help clarify issues; and
  - 61.2 a conciliation conference as appropriate only where the Member agreed that an error had been made and that the only question to be determined was the amount of Direct Loss suffered by the Complainant because of the Member's error.

#### **Length of Conciliation and Investigation Phase**

62. Normally the Ombudsman's Office will try to complete the Conciliation and Investigation Phase within 45 days. However the Ombudsman's Office may allow up to 90 days for a resolution of the Complaint if the Ombudsman's Office thinks this is appropriate. The Ombudsman's Office will let the Complainant know as soon as practical if it is going to allow the Conciliation and Investigation Phase to last up to 90 days.
63. If at any time the Ombudsman's Office in its discretion considers that:
- 63.1 it will be unable for whatever reason to further assist the parties to achieve resolution of the Complaint in the Conciliation and Investigation Phase; or
  - 63.2 the subject matter of a Complaint against a Member is the same as or similar to that of other Complaints before the Ombudsman's Office against the same Member,
- the Ombudsman's Office may declare the Conciliation and Investigation Phase completed and move on to the Determination Phase.

#### **Member and Complainant reach agreement during Conciliation and Investigation phase**

64. If the Complainant and the Member come to an agreement about resolving the Complaint during the Conciliation and Investigation Phase, and one of the parties asks for it, the Ombudsman's Office will prepare a Settlement Agreement.

65. Both the Complainant and the Member must sign the Settlement Agreement for it to be binding on the Member.

66. If the Ombudsman's Office is satisfied that:

66.1 the Settlement Agreement was validly signed by both the Complainant and the Member;

66.2 the Complaint was one which could be dealt with by the Ombudsman Service; and

66.3 the Member has failed to comply with the Settlement Agreement,

the Ombudsman can make an Award in terms of the Settlement Agreement to enforce it.

### **The Determination Phase**

#### **Where Conciliation and Investigation Phase does not work**

67. If:

67.1 the Complaint is not resolved by the end of the Conciliation and Investigation Phase; or

67.2 the Member has not responded to the Ombudsman's Office when required to do so under these Rules; or

67.3 the Ombudsman's Office has declared the Conciliation and Investigation Phase completed pursuant to Rule 63,

the Ombudsman can make a Determination about the Complaint.

#### **How a Determination is made**

68. The Ombudsman will generally make its Determination based upon:

68.1 the Complaint;

68.2 the Member's response;

68.3 the Complainant's reply; and

68.4 information and documents the Ombudsman's Office has received during the Ombudsman Service Process, including any advice from suitably qualified people.

69. The Ombudsman will only carry out further investigation of the Complaint if it thinks that it is absolutely necessary to do so to enable a Determination to be made.

### **Member and Complainant reach agreement during Determination Phase**

- 70. If the Complainant and the Member come to an agreement about resolving the Complaint during the Determination Phase, and one of the parties asks for it, the Ombudsman's Office will prepare a Settlement Agreement.
- 71. Both the Complainant and the Member must sign the Settlement Agreement for it to be binding on the Member.
- 72. If the Ombudsman is satisfied that:
  - 72.1 the Settlement Agreement was validly signed by both the Complainant and the Member;
  - 72.2 the Complaint was one which could be dealt with by the Ombudsman Service; and
  - 72.3 the Member has failed to comply with the Settlement Agreement;

the Ombudsman can make an Award in terms of the Settlement Agreement to enforce it.

### **Types of Determinations the Ombudsman can make**

- 73. If the Ombudsman is satisfied that having regard to the principles in Rule 43, it is fair to the Complainant and the Member and otherwise appropriate to do so, the Ombudsman can make a Determination that:
  - 73.1 the Member pay the Complainant compensation for any Loss the Complainant has suffered, up to R250,000 or such other limit set by the Ombudsman Committee; and/or
  - 73.2 the Member do some act or refrain from doing some act in relation to the subject matter of the Complaint; or
  - 73.3 no compensation be paid and no orders made;

otherwise, if the Ombudsman is not satisfied that the Complaint has been proven to the satisfaction of the Ombudsman, the Ombudsman will declare the Complaint closed.

- 74. The amount of compensation will be what the Ombudsman believes is sufficient but not more than is required to compensate the Complainant for their Loss as a result of the act or omission of the Member.
- 75. In determining whether to order the Member to do or refrain from doing some act, the Ombudsman will have regard to what is fair and reasonable to put the Complainant and the Member in the position the Complainant and the Member would have been in were it

not for the act or omission of the Member. In doing this, the Ombudsman will consider what is fair and reasonable for all parties, including someone who is not a party to the Complaint but who might be affected by the Ombudsman's Determination, e.g. a Credit Provider.

**After Determination is made**

76. After Determination is made the Ombudsman sends its Determination to the Complainant and the Member.
77. At the same time as sending the Complainant its Determination, the Ombudsman sends the Complainant a Deed of Release. If the Complainant signs their acceptance of the Ombudsman's Determination, the Complainant also needs to sign the Deed of Release. The Deed of Release will have the effect and only the effect of releasing the Member from any further legal liability to the Complainant and precluding commencement of legal proceedings by the Complainant against the Member in relation to the subject matter of the Complaint on condition that the Member has fully complied with the Determination.
78. If the Complainant signs both the acceptance of the Ombudsman's Determination and the Deed of Release within 28 days of the documents being sent to them by the Ombudsman, the Member will be advised by the Ombudsman that:
  - 78.1 the Complainant has signed the acceptance of the Ombudsman's Determination and the Deed of Release; and
  - 78.2 the Member must also sign an acceptance of the Ombudsman's Determination and send that signed acceptance to the Ombudsman; and
  - 78.3 the Member may choose to also sign the Deed of Release the Complainant has signed and send a copy of that signed Deed of Release to the Ombudsman.
79. If the Ombudsman has not received from the Member its signed acceptance of the Ombudsman's Determination as accepted by the Complainant within 28 days of sending it to the Member, the Ombudsman can make a binding Award in terms of that Determination.
80. If the Ombudsman does not receive the Complainant's signed acceptance of its Determination and the signed Deed of Release within 28 days after the Ombudsman sends them to the Complainant, the Ombudsman may declare the Complaint closed.
81. If the Complainant and the Member have both signed acceptances of the Ombudsman's Determination but the Member does not fully comply with it, then the Complainant can ask the Ombudsman to make a binding Award in terms of that Determination.

82. Whenever the Ombudsman makes an Award, the Member must comply with it fully and within the time period specified in the Award. If the Ombudsman's Award does not specify a particular time period, then the Member must comply with the Award as soon as is reasonable.

### **Publication and publicity of Determinations**

#### **Determination will be published**

83. The Ombudsman's Determination of the Complaint will be in writing and include the Ombudsman's reasons for making the Determination. Any Award the Ombudsman makes will also be in writing. As an Award is based upon the Ombudsman's Determination or upon a Member's failure to comply with a Settlement Agreement, the Award may but does not need to include the Ombudsman's reasons for making the Determination.

84. A copy of the Determination and any Award may be given to:

- 84.1 the Complainant;
- 84.2 the Member;
- 84.3 the Ombudsman Committee; and
- 84.4 to Disciplinary Tribunal, (subject to removal from the document of any identification of the Complainant).

#### **Publicity**

85. The Ombudsman's Office may publish a non-identifying copy of the Ombudsman's Determination on the Ombudsman's Office's web site.

### **Cost of Hearing**

#### **Member may pay cost of Hearing**

86. The Ombudsman may award costs against a Member if an hearing has been held in relation to the Complaint because that Member specifically asked for it. In that case, the Member will be required to meet the Complainant's reasonable costs of attending the Hearing including reasonable travel and accommodation costs.

### **Giving effect to the resolution of a Complaint**

#### **Other orders by Ombudsman**

87. The Ombudsman can make any order the Ombudsman thinks appropriate to give full effect to the resolution of a Complaint including but not limited to orders about giving effect to the Ombudsman's Determination or Award.

### **Non-compliance by party to Complaint**

88. If a party does not comply with the Ombudsman's Office requirement within the period specified:
- 88.1 the Ombudsman's Office may give the party whatever further period the Ombudsman's Office thinks appropriate to comply; and
  - 88.2 if the Member still does not comply, the Ombudsman may proceed to determine the Complaint on the basis of the information and documents then available; or
  - 88.3 if the Complainant still does not comply, the Ombudsman's Office may declare the Complaint closed.
89. For the purposes of these Rules, the expression "the Ombudsman's Office requirement" refers to any requirement imposed by the Ombudsman's Office or these Rules on the Complainant or the Member, including the requirement to respond to the Ombudsman's Office within a certain time or the requirement to provide the Ombudsman's Office with such information and documents that may be requested by the Ombudsman's Office in relation to the Complaint.

### **Enforcing an Award**

90. If a Member fails to comply with an Award after the Ombudsman gives the Member 28 days' written notice to comply with it, then the Ombudsman's Office can take whatever action it thinks is necessary to enforce the Award including but not limited to the following things:
- 90.1 referring it to the Disciplinary Tribunal;
  - 90.2 give written notice of the fact to the Association;
  - 90.3 bring legal proceedings against the Member for recovery of the amount awarded or for the making of Court orders in terms of the Award;
  - 90.4 bring legal proceedings for specific performance of the Member's agreement to abide by the Constitution and these Rules including but not limited to the Member's obligation to comply with the Award; or
  - 90.5 take such other action as the Ombudsman's Office thinks appropriate to secure compliance with the Member's obligations under the Constitution and these Rules.

## **Important issues**

### **Objection Notice from Member**

91. The Ombudsman's Office will suspend dealing with a Complaint if the Member gives an Objection Notice to the Ombudsman's Office and is able to demonstrate to the Ombudsman's Office's reasonable satisfaction:

91.1 that the Complaint involves or may involve an issue which could have important consequences for the Member's business or the Mortgage Origination industry generally; or

91.2 that the Complaint raises an important or novel point of law.

92. A Member who gives an Objection Notice must:

92.1 identify and describe the issues which could have important consequences for the Member's business or the Mortgage Origination industry generally as the issues relate to the Complaint;

92.2 identify and describe the important or novel point of law as it relates to the issues raised in the Complaint; and

92.3 advise the Ombudsman's Office of the grounds on which the Member seeks a declaration from the Court or Tribunal and how the declaration being sought relates to the issues raised in the Complaint.

93. The Ombudsman's Office will refuse to accept an Objection Notice if:

93.1 the Member has not complied with Rules 91 and 92; or

93.2 the Ombudsman's Office reasonably considers that the Member has no or inadequate grounds for seeking a declaration from a Court or Tribunal; or

93.3 having regard to all other relevant circumstances, the Ombudsman's Office is reasonably satisfied that the Member has given the Ombudsman's Office the Objection Notice for an improper purpose; or

93.4 the Member previously gave the Ombudsman's Office an Objection Notice in relation to the same Complaint.

The Ombudsman's Office will give the Member written notice of the refusal and will continue to deal with the Complaint.

94. If the Ombudsman's Office accepts the Objection Notice, the Member must, in order to have the issue determined, commence proceedings in a Court or Tribunal in the Republic



of South Africa within 14 days of the Ombudsman's Office acknowledging in writing receipt of the Objection Notice. The Member must also give an undertaking to the Ombudsman's Office and the Complainant to pay the Complainant's costs and disbursements (on an attorney and client basis) of the proceedings and any subsequent appeal that may be commenced by the Member.

95. If the Member does not commence these proceedings within 14 days of the Ombudsman's Office acknowledging in writing receipt of the Objection Notice to, then the Ombudsman's Office will deal with the Complaint as if the Objection Notice had not been given.
96. The Member is not required to pay the Complainant's costs if it is the Complainant that institutes a subsequent appeal.
97. Except as permitted by Rules 91 to 96, once the Ombudsman's Office records a written Complaint from a Complainant as received under Rule 50, a Member cannot commence legal proceedings against the Complainant in relation to the subject matter of the Complaint.
98. However, subject to Rule 99 but otherwise despite any other provision of these Rules, the Ombudsman Committee may in its absolute discretion direct that a Member may commence legal proceedings against the Complainant in relation to the subject matter of the Complaint on or after the date on which the written Complaint is received by the Ombudsman's Office if the Ombudsman Committee is satisfied that to not allow this would be unfair to the Member.
99. The direction of the Ombudsman Committee under Rule 98 is final and binding on the Complainant and the Member.

#### **Miscellaneous matters**

##### **Joining other parties**

100. If the Ombudsman's Office believes that:

- 100.1 it would not unfairly prejudice the Complainant or the Member; and

- 100.2 it would lead to a more efficient and effective resolution of the Complaint;

the Ombudsman's Office may allow or require another Member (called the Third Party Member) to be joined as a party to the Complaint.

101. The Ombudsman's Office may impose terms and conditions on joining a Third Party Member. For example, the Ombudsman's Office may require the Member the Complainant has complained about to pay costs or to provide security for future costs.

102. Once a Third Party Member has been joined in the Complaint, the Ombudsman's Office may give directions about how the Complaint will be dealt with.
103. A Third Party Member has all the rights and duties under these Rules as if that Third Party Member were the Member as referred to in these Rules.
104. Where a Third Party Member has been joined, these Rules are to be read to include that Third Party Member with appropriate changes being made.

#### **Legal representation**

105. Neither party has to have legal or other representation ("**Representation**") whilst the Ombudsman's Office deals with the Complaint. Either party can choose to have Representation at their own cost. However, if the Ombudsman's Office convenes a hearing or a conciliation conference the parties need to ask the Ombudsman's Office to allow Representation at the hearing or conciliation conference. It will be up to the Ombudsman's Office to decide at its discretion if Representation can or should be allowed and on what basis. The Ombudsman's Office will consider what is procedurally fair to both the Complainant and the Member. Any party who has Representation will have to pay all their own costs of any Representation the Ombudsman's Office permits the party to have at a hearing or conciliation conference.

#### **Statements and information made 'without prejudice'**

106. All statements the Complainant or Member makes and information or documents they provide to the Ombudsman's Office are on a "without prejudice" basis. This means that anything said or done or information as provided to the Ombudsman's Office during the Ombudsman Service Process cannot be used in legal proceedings.
107. Any information obtained by the Ombudsman's Office during the Ombudsman Service Process must not be disclosed by:
  - 107.1 the Complainant;
  - 107.2 the Member;
  - 107.3 the Ombudsman Committee; or
  - 107.4 the Ombudsman's Office;

to anyone else unless disclosure is required by law or required or permitted by these Rules or the Constitution.

## **Confidentiality**

108. Any party to a Complaint who believes that disclosure of any information or document to the Ombudsman's Office will place them in breach of a duty of confidentiality they owe to someone else may tell the Ombudsman's Office this. The party claiming confidentiality must use their best endeavours to obtain the consent of the person to whom the duty is owed to disclosure of the information or document. If the consent is not given within a reasonable time, then the party claiming confidentiality will not be required to comply with any direction from the Ombudsman's Office that the information or document be provided.
109. If the Ombudsman's Office receives any information or document from any party to a Complaint with a request from that party that it be treated confidentially, the Ombudsman's Office will not disclose that information or document to any other party or to any other person except:
- 109.1       with the consent of the person supplying the information or document, or
- 109.2       as required by law.
110. The Ombudsman's Office will not use any confidential information or document to make a finding adverse to any party who has not had access to the confidential information or document.
111. The Ombudsman's Office will return a party's confidential document or information as soon practical after a Complaint is resolved or declared closed.
112. Before the Ombudsman's Office sends any confidential information or document to another forum as contemplated in Rule 32.13, the Ombudsman's Service will obtain the consent of the party claiming confidentiality.
113. Except where these Rules, the Constitution or the law prohibits it, the Ombudsman's Office may at its discretion disclose the Complaint, the Member's response, the Complainant's reply and any information or document obtained by the Ombudsman's Office during the Ombudsman Service Process to any Ombudsman's Office employee, consultant, contractor or agent to the extent that is appropriate to do so to enable the person to fully and effectively carry out their powers, functions or duties.
114. Despite anything else in these Rules, any party to a Complaint who receives from the Ombudsman's Office any document provided to the Ombudsman's Office by another party:
- 114.1       must use that document only for the purpose of dispute resolution in accordance with and as contemplated by the these Rules; and

- 114.2 must not disclose the document to any person who is not the party who provided the document to the Ombudsman's Office without the prior written consent of the Ombudsman's Office which consent may be subject to such conditions as the Ombudsman's Office may in its absolute discretion consider appropriate;

and for the purposes of this Rule "disclose" includes communicating or divulging by any means whether written, electronic or oral or otherwise including copying by any means the whole or any part of the document.

### **Exemptions from these Rules**

115. The Ombudsman's Office may of its own volition or on the application of a party at any time and from time to time at its discretion and on whatever conditions it sees fit to impose, exempt a party from any one or more of these Rules. Before the Ombudsman's Office grants any exemption, it must satisfy itself that doing so:

- 115.1 is necessary to ensure the efficient and effective resolution of the Complaint; and
- 115.2 would not be unfair to or impose an unreasonable burden or disadvantage on any party.

### **Extensions of time**

116. The Ombudsman's Office may of its own volition or on the application of a party at its discretion and on whatever conditions it sees fit to impose extend any time for compliance with any matter under these Rules. Before the Ombudsman's Office grants any extension of time, it must satisfy itself that doing so would not be unfair to or impose an unreasonable burden or disadvantage on any party.

### **Declaring the Complaint closed**

117. The Ombudsman's Office may at any time declare the Complaint closed in any of the following cases:
- 117.1 the Complaint is or becomes one not covered by the Ombudsman's Office by reason of Rule 32; or
- 117.2 the Complaint is withdrawn; or
- 117.3 the Ombudsman's Office deems the Complaint withdrawn by reason of the Complainant's failure to respond to the Ombudsman's Office's communications within the timeframes the Ombudsman's Office sets; or
- 117.4 the Ombudsman's Office determines that the Complaint has not been made out; or

- 117.5 if the Ombudsman's Office is unable to locate the Member despite its reasonable efforts to do so; or
- 117.6 the Member is at the time that the Ombudsman's Office records a Complaint as received or becomes during the course of the Ombudsman Service Process an insolvent or is wound up.

#### **Ombudsman Committee Directions**

118. The Ombudsman Committee may from time to time issue Ombudsman Committee Directions or Practice Notes:

- 118.1 dealing with administrative and procedural matters to ensure that Complaints are resolved efficiently and effectively;
- 118.2 dealing with the Ombudsman Committee's reporting obligations;
- 118.3 dealing with other matters raised in relation to the Ombudsman Committee's powers and functions under Constitution; or
- 118.4 dealing with changes to the law, Government regulation, and the Mortgage Origination industry generally.

119. All Ombudsman Committee Directions or Practice Notes are binding on the Complainant, the Member, the Ombudsman's Office and all other parties to a Complaint to the Ombudsman's Office.

120. To the extent to which a Ombudsman Committee Direction applies to the Complainant or the Member or the subject of the Complaint, the Ombudsman Committee Direction must in the manner determined by the Ombudsman Committee be given to the Complainant and the Member.

#### **Previous Ombudsman's decisions**

- 121. No Ombudsman's Office decision creates or is be taken as creating a precedent binding on the Ombudsman's Office in dealing with any other Complaint.
- 122. The Ombudsman's Office decision includes but is not limited to a Determination and an Award.
- 123. If the Ombudsman's Office thinks it is appropriate, the Ombudsman's Office will send the Complainant and the Member a copy of or extract from an Ombudsman's Office policy that the Ombudsman's Office thinks is relevant to their Complaint.

**The Ombudsman's Office and Ombudsman Committee decisions are final and binding**

124. Every Ombudsman's Office decision and every Ombudsman Committee Direction is final and binding on a Member and may be reviewed or reopened only in the circumstances allowed in these Rules.
125. Subject always to these Rules, the Complainant is expected to comply with every Ombudsman's Office decision and every Ombudsman Committee Direction insofar as applicable to the Complainant.
126. The Ombudsman's Determination in respect of which both the Complainant and the Member have signed an acceptance and an Award are each binding on the Complainant and the Member. The Complainant is at liberty at all times to reject any Ombudsman's Office decision or a Ombudsman Committee Direction and pursue other remedies in relation to the subject matter of the Complaint in the courts or any another forum. If the Complainant does this, the Ombudsman's Office can declare the Complaint closed and no Ombudsman's Office decision or Ombudsman Committee Direction will have any force or effect against the Member in relation to the Complaint.
127. The Ombudsman's Office decision includes but is not limited to a Determination by the Ombudsman.
128. If upon the Ombudsman's own motion or upon application by a party within 28 days after the date on which a Determination or Award was sent to that party, the Ombudsman is satisfied that in relation to that Determination or Award:
- 128.1       there is a clerical mistake; or
  - 128.2       there is an error from an accidental slip or omission; or
  - 128.3       there is a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
  - 128.4       there is a defect in form; or
  - 128.5       the terms of the Determination or Award do not reflect the Ombudsman's actual intentions,
- the Ombudsman may:
- 128.6       make whatever amendments to the Determination or Award it thinks appropriate; or
  - 128.7       re-issue the Determination or Award; or
  - 128.8       give such directions as it thinks appropriate (including directions about times for compliance) in connection with the Determination or Award.

129. A Member who institutes legal proceedings to challenge any Ombudsman's Office decision or a Ombudsman Committee Direction must comply with all the following requirements:

- 129.1 the legal proceedings must be instituted within 28 days after the Ombudsman sends the Member the Determination or Award, the Ombudsman's Office notifies a party about the Ombudsman's Office decision or the Ombudsman Committee Direction; and
- 129.2 as a condition of commencing legal proceedings the Member must pay on an attorney and client basis the legal costs of, and must pay the disbursements incurred by, each of the Member concerned, the Ombudsman's Office and the Complainant in relation to the legal proceedings and any appeal; and
- 129.3 if the Ombudsman's Office so specifies, the Member must furnish security for costs and disbursements in relation to the legal proceedings and any appeal as the Ombudsman's Office reasonably requires.

A Member who fails to institute legal proceedings within 28 days or otherwise fails to satisfy all the requirements of this Rule forever waives its rights to institute legal proceedings to challenge the relevant Ombudsman's Office decision or a Ombudsman Committee Direction.

#### **Providing information to any person**

130. For the purposes of these Rules and the Constitution, the Ombudsman's Office may give or send any information or document (including but not limited to any the Ombudsman's Office decision, Ombudsman Committee Direction, , Award, notice, or correspondence) to any person by whatever means and in whatever manner the Ombudsman's Office regards as appropriate to bring the information or document to the attention of that person.

#### **Giving the Ombudsman's Service documents to certain bodies**

131. Where:

- 131.1 a Determination or Award has been made; and
- 131.2 the Determination or Award has been given to the Association; and
- 131.3 the Association has requested in writing that documents or copies of documents held by the Ombudsman's Office in relation to the Complaint be given to the Association, the Ombudsman Committee may cause the whole or part of all or any of the documents requested, or copies of them, to be given to the Association.

132. The Ombudsman Committee will only give a document under Rule 131 where it is satisfied that the whole or part of the document to be given to the body concerned is not subject to legal professional or other legally recognised privilege.

**Effect of Member's cessation of membership (including by resignation)**

133. If the membership of a Member that is or has been the subject of a Complaint ceases in accordance with the Constitution (for the avoidance of doubt, including by way of resignation of membership, expulsion or suspension from membership, that cessation of membership:

- 133.1 does not preclude or restrict in any manner whatsoever the Ombudsman's Office exercising its powers under these Rules to deal with a Complaint received by it before the date on which the Member's cessation of membership took effect in accordance with the Constitution and to require the Member to comply fully with the Member's obligations under these Rules in respect of that Complaint; and
- 133.2 does not prejudice or diminish in any manner whatsoever the Member's obligations under these Rules in respect of a Complaint received by the Ombudsman's Office before the date on which the Member's cessation of membership took effect in accordance with the Constitution; and
- 133.3 does not preclude or restrict in any manner whatsoever the making of an Award by the Ombudsman or the due enforcement by the Ombudsman's Office of any Award made by the Ombudsman as regards that Member pursuant to these Rules in respect of a Complaint received by the Ombudsman's Office before the date on which the Member's cessation of membership took effect in accordance with the Ombudsman's Service's Constitution.

**Publicising the Ombudsman Service**

134. The Ombudsman Committee and all Members must ensure that the Ombudsman Service is appropriately and effectively publicised. For example, the Ombudsman Service is publicised on the Ombudsman's Office's web site. Also, copies of these Rules are to be available on request from a Member.