



# TERMS OF REFERENCE OF THE CREDIT OMBUD SCHEME

# **TERMS OF REFERENCE OF THE CREDIT OMBUD**

## **INTRODUCTION**

The Credit Ombud's scheme (the CO) exists to effectively resolve disputes arising within the credit industry, between subscribing members of the credit industry and credit receivers. In doing so the Ombud shall:

1. Act independently and objectively;
2. Have regard to fairness, justice and equity;
3. Balance the rights of consumers on the one hand and the rights of subscribing members on the other hand.

## **MAINTAINING THE INDEPENDENCE OF THE OMBUD AND THE CO**

The CO is a voluntary, non statutory body that has been afforded recognition under section 11 of the Financial Services Ombud Scheme Act (FSOS) and is an alternative dispute resolution agent in terms of the National Credit Act (NCA), which may engage in the resolution of disputes arising within the credit information industry.

The CO is a Voluntary Association, with a Council comprising of three representatives of consumer bodies, four independent representatives, six representatives of the credit granting industry, one representatives of the credit bureaux industry. The composition of the Council assists in assuring that the scheme is and remains independent. The Council is responsible for appointing the Ombud. The Council is responsible for ensuring and maintaining compliance with the relevant provisions of the FSOS Act.

The Ombud acts independently and objectively in resolving disputes and is not influenced by anybody in making his/her decisions. The Ombud enjoys security of tenure and can only be dismissed on the ground of incompetence, gross

misconduct, or inability to effectively carry out his or her duties.

The independence of the CO and the Ombud is further assured by the fact that the Ombud and employees of the CO are:

- entirely responsible for the handling and determination of complaints;
- accountable only to the Council; and
- adequately resourced to carry out their respective functions.

#### **CRITERIA USED TO RESOLVES DISPUTES**

- The law, especially FSOS and the NCA;
- Fairness in all the circumstances
- Applicable industry codes or guidelines:

In the event of legislation being enacted in the future impacting the credit industry or should any constituency within the credit industry adopt a Code of Conduct, the criteria referred to will be reviewed by the Council of the CO.

## PART 1

### **TERMS OF REFERENCE**

These Terms of Reference have been adopted by the Council of the CO in accordance with its Constitution

These Terms of Reference define the powers and the duties of the Ombud and the CO and the members of the CO (Credit Bureaux, Credit Providers and all Organisations dealing with credit receivers in terms of credit related matters). The Operational Procedures define the manner in which those powers and duties are to be exercised and fulfilled

### *THE CO's PRINCIPAL POWERS AND DUTIES*

1.1 (a) The CO's principal powers and duties are to consider disputes within these Terms of Reference and to facilitate the satisfaction, settlement or resolution of such disputes whether by agreement, by making recommendations or rulings or by such other means as seem expedient, subject to these Terms of Reference and the Operational Procedures.

It is a function of the CO to educate all stakeholders (consumers, credit providers, NGO's, consumer bodies and trade unions) regarding its existence, role, procedures, jurisdiction and terms of reference.

The CO may report to the registrar and to the relevant industry body on matters which may be of interest to them, as contemplated in section 10(1)(e)(v) of FSOS.

1.2 The CO shall:

- Receive and deal with complaints relating to credit and/or the listing of credit information;
- at the Ombud's sole discretion, determine whether or not a complaint falls within his/her jurisdiction within these terms of reference;
- explore any reasonable prospect of resolving a complaint by a conciliated settlement acceptable to both parties;
- report any material or persistent non-compliance with the Terms of Reference or Operational Procedures to the Council;
- Report to the Council regarding complaints which have not been completed within a time laid down by the Council. This time period shall initially be set at sixty working days calculated from the date that a complaint became a dispute;
- provide the Council with any information and assistance which it reasonably requires;
- provide the FSOS Council with any information and assistance which it reasonably requires;
- comply with any requirement under the FSOS, NCA or other applicable legislation.

1.3 The CO may:

- make a suggestion or recommendation to the parties regarding how the matter should be settled, in order to resolve a complaint speedily by conciliation;
- follow and implement any procedure (including mediation) which the CO deems appropriate;
- require a Credit Provider, Credit Bureau, a Subscriber to the Credit Bureau or any company to which the complaint is relating to, or the complainant involved to provide any information which in the view of the CO relates to that complaint and is necessary for its resolution;

- in determining the principles of good practice, consult within the industry as the Ombud thinks appropriate;
- advise the public on the procedure for making a complaint to the CO;
- collect information concerning any issues which may, in the opinion of the Ombud, be indicative of systemic problems pertaining to a Credit Bureau and/or Subscriber to a Credit Bureau or the credit industry, conduct research and formulate proposals for the rectification of the problems, submit them to the relevant industry body and monitor the response thereto;
- at any stage of the procedure dismiss a complaint on the grounds that:
  - (i) the complainant has misled the CO;
  - (ii) the complainant has failed to:
    - (aa) cooperate in the process; or
    - (bb) respond to requests for information or comments within a reasonable time; or
    - (cc) there does not appear to be a reasonable prospect of the CO eventually making a recommendation or determination in favour of the complainant for whatever reason; or
  - (iii) there is no merit to the complaint
  - (iv) any of the grounds for exclusion from jurisdiction referred to in 3. 2 of these Terms of Reference are established or come into existence after the complaint has provisionally been determined to fall within the CO's jurisdiction.

1.4 The Ombud and any member of the CO staff may not be subpoenaed to testify in court by either of the parties to a dispute considered by the CO.

## **THE OBLIGATIONS OF THE MEMBERS (Credit bureaux and subscribers to Credit bureau as well as Credit Providers and organisations dealing with credit receivers in terms of credit related matters)**

### **2.1 *The members shall:***

- act within these Terms of Reference;
- act according to the rules of procedure;
- abide by the provisions of the relevant Industry Code of Conduct ;
- abide by the standard complaints handling procedures as per the NCA and the CO operational procedures
- compile and make readily available brochures or other materials advising customers of those procedures;
- expeditiously comply with requests made by the CO in terms of the Terms of Reference and Operational Procedures;
- notify every consumer of the existence of the CO if the consumer has been declined for credit based on a negative credit report or if the credit provider or the representative of the credit provider is unable to satisfactorily resolve a dispute with a credit receiver.
- notify consumers, disputing their credit profile, of the existence of the CO.
- abide by the rulings of the Ombud

### **2.2 *The members shall not:***

- resort to litigation while a complaint is being dealt with by the CO, and the CO undertakes to resolve the case within a maximum period of six months;
- prevent a consumer who would otherwise be eligible to use the services of the CO from doing so through the use of an arbitration clause in a contract;
- provide the CO with any misleading information or answer;
- provide any consumer with any misleading information regarding the operation of the CO.

## THE CO's JURISDICTION

### 3.1 *Eligible complainants*

The CO may consider a dispute brought by:

- a private individual; or
- a company, including a sole proprietor or trader, a juristic person, partnership or trust
- a person entitled to complain to the CO under the provisions of FSOS or the NCA.
- an individual or company who has tried unsuccessfully to resolve the dispute through approaches to the Credit Bureaux or Credit Providers or Organisations dealing with credit receivers in terms of credit related matters, or the complaint has been repudiated, or there has been an undue delay (longer than 20 working days) in resolving the complaint.

3.1.1 *Having due regard to the requirements of the National Credit Act and relevant Codes of Conduct - The CO shall only consider complaints that pertain to non-bank credit transactions:*

- (a) Where the member breached any relevant laws or regulations or by-law or duties imposed by law – or did not give effect to a right provided by law or any regulations or by-law to the complainant in relation to the subject matter of the complaint,*
- (b) Breached an applicable code of practice or code of conduct provided for by relevant legislation, regulations or by-laws.*
- (c) Not met standards of good practice*
- (d) Acted unfairly and/or unconscionable towards a complainant.*

## ***Limits of the Ombudsman's Jurisdiction***

### ***Complaints not covered by the Credit Ombudsman in terms of credit transactions***

- *Cash transactions*
- *If the complaints is about someone who is not a member or a member by association of the CO*
- *If the subject matter of the claim is more than R1 million for compensation*
- *If the complaint relates to a members commercial judgment about lending or security*
- *If the complaint relates to any transaction entered into outside South Africa*
- *In the Case of a secured loan, where the security is situated or legally registered outside South Africa or is governed by laws other than the laws in South Africa*
- *If the complainant is not the person to whom the services were directly provided to my the member*
- *If the member's act or omission occurred more than three years before the receipt of the complaint by the CO, except for Credit Information disputes.*
- *If the complainant has lodged a previous complaint regarding similar issues about a member which has been considered by the CO, unless relevant new evidence is available*
- *If the complaint is already the subject of proceedings before a court, tribunal, arbitrator, other Ombudsman or other dispute resolutions Scheme, or is under investigation by any Ombudsman*
- *The complaint is, was or becomes subject to proceedings before a court, tribunal, arbitrator or other ombudsman or dispute resolution scheme*

- *The complaint has already been determined by court, tribunal, arbitrator or ombudsman or other dispute resolution scheme*
- *If the complaint is frivolous or vexatious or is being pursued in a frivolous or vexatious manner or for an improper purpose*

**3.1.2 *The following jurisdiction relates specifically to credit information and the CO shall only consider complaints that pertain to:***

- (a) Inaccurate or incorrect credit information;
- (b) Insufficient or incomplete credit information;
- (c) Out-dated credit information;

The best predictor of future behavior is past behavior, credit bureaux provide detailed information on a borrower's past credit performance, but in order to give borrowers an incentive to work on repairing their credit it is necessary to put a limit on the time that data may be kept. Credit Bureaux must ensure, taking into account cyclical economic trends, that sufficient time elapses before deleting essential risk related data. This obligation must be balanced against the interests of persons who should not be prejudiced by obsolete data. Data must be factual and reported in full. The consumer Credit information as per the following Table may be displayed and used for purposes of credit scoring or credit assessment for a maximum period from the date of the event, as indicated:

	<b>Category of Consumer Credit Information</b>	<b>Description</b>	<b>Maximum Period</b>
1	Details and results of disputes lodged by consumers	Number and nature of complaints lodged and whether complaint was rejected. No information may be displayed on complaints that were upheld	18 Months
2	Enquiries	Number of enquires made on a consumer's record, including the name of the entity/person who made the enquiry and a contact person if available	2 Years
3	Payment Profile	Factual information pertaining to the payment profile of the consumer	5 Years
4	Adverse classification of consumer behaviour	Subjective classifications of consumer behaviour	1 Year
5	Adverse classification of consumer behaviour	Classifications related to enforcement actions taken by the credit provider	2 Years
6	Debt Restructuring	As per section 86 of the Act an order given by the Court or Tribunal	Until a clearance certificate is issued
7	Civil Court Judgements	Civil Court Judgements including default judgement	The earlier of 5 years or until the judgment is rescinded by a court or abandoned by the credit provider in terms of section 86 of the Magistrates Court Act, 32 of 1944
8	Administration Orders	As per the Court Record	The earlier of 10 years or until rehabilitation order is granted

9	Liquidations	As per the court record	Unlimited period
10	Rehabilitation Order	As per the court record	5 Years
11	Sequestrations	As per the court record	The earlier of 10 years or until rehabilitation order is granted
12	Other information	Any other information not included in any category above	2 Years

- The date of the event is the date on which the relevant order was given or the date on which the event occurred which is being displayed in the consumer credit record
- Adverse classifications of consumer behaviour are subjective classifications of consumer behaviour and include classifications such as 'delinquent', 'default', 'slow paying', 'absconded', or 'not contactable'.
- Adverse classifications of enforcement action are classifications related to enforcement action taken by the credit provider, including classifications such as 'handed over for collection or recovery', 'legal action', or 'write-off';
- Payment profile refers to the consumer's payment history in respect of a particular transaction.

- (d) The obligation of the Subscriber to the Credit Bureaux to supply accurate credit information to the bureau;

Subscribers of credit bureaux shall take reasonable steps to ensure that the data supplied to credit bureaux is correct, accurate, up-to-date, relevant, complete and valid. Subscribers will supply the information to the Credit Bureaux within a reasonable time period.

- (e) The obligation of the Subscriber to the Credit Bureaux to properly inform credit receivers prior to adversely listing them;

Subscribers of credit bureaux shall give their customers twenty (20) working days notice of their intention to submit the following adverse information concerning that person to a credit bureau:

- a) Classification of behaviour, including classifications such as delinquent, default, slow payer, absconded and not contactable;
  - b) Classifications related to enforcement such as handed over for collection or recovery, legal action or write-off
- (f) Cases where a credit receiver defaults through no fault of his/her own and subsequently rehabilitates himself/herself.

The CO may apply the following test to ensure that the consumer qualifies for early removal of information.

*Test*

1. *Was there intentional conduct on the part of the complainant that caused the default listing?*
2. *Was there any negligent conduct on the part of the complainant that caused the default listings?*

*Prior to the default listing in question did the complainant's payment behaviour shows an intention to honour his/her debts?  
Did the complainant take the necessary steps to avoid the default listings?*

3. *Has the complainant since the default, made bona fide attempts to rehabilitate himself?*

(g) Listings in respect of prescribed debt.

Subscribers of credit bureaux shall not submit information to credit bureaux in respect of debts that have prescribed. Prescription of debt in terms of this code is defined as follows: In the event that a debtor has not acknowledged a debt for a period longer than 36 months, the said debt would have prescribed and a subscriber of credit bureaux will not be allowed to list the information on the credit bureaux.

(h) Duplicate/double listings in respect of the same debt

Subscribers of credit bureaux shall not submit information more than once in respect of the same debt.

(i) Identity Fraud, where a consumer is the victim of fraud

(j) Cases where a consumer has not paid the subscriber to the Credit Bureaux as a result of a service dispute and was subsequently listed on the Credit Bureaux.

### ***Limits of the Ombudsman's Jurisdiction***

#### ***Complaints not covered by the Credit Ombudsman in terms of credit Information***

The CO may not consider a complaint or dispute that:

- *If the complaints is about someone who is not a member or a member by association of the CO*
- *If the complaint relates to any credit information outside South Africa*
- *If the complainant is not the person to whom the services were directly provided to my the member*
- *If the complainant has lodged a previous complaint regarding similar issues about a member which has been considered by the CO, unless relevant new evidence is available*
- *If the complaint is already the subject of proceedings before a court, tribunal, arbitrator, other Ombudsman or other dispute resolutions Scheme, or is under investigation by any Ombudsman*
- *The complaint is, was or becomes subject to proceedings before a court, tribunal, arbitrator or other ombudsman or dispute resolution scheme*
- *The compliant has already been determined by court, tribunal, arbitrator or ombudsman or other dispute resolution scheme*
- *If the complaint is frivolous or vexatious or is being pursued in a frivolous or vexatious manner or for an improper purpose*

### ***3.3 Unreasonable complainants***

The Ombud may, at the Ombud's sole discretion, determine that a dispute should not be considered on the grounds that the complainant is pursuing it:

- in an unreasonable manner; or
- in a frivolous, vexatious, offensive, threatening or abusive manner.

### *3.4 Termination by complainant*

A complainant may, at any time prior to the issuing of a ruling, terminate the CO's handling of the complaint and resort to litigation or other dispute resolution process by withdrawing the complaint in writing.

## **4. RULES OF EVIDENCE**

The CO shall not be bound by any legal rule of evidence and will resolve complaints according to Operational Procedures contained in part 2 of this document.

## **5. DOCUMENTS**

Correspondence, communications and documents which came into existence in the course of a genuine and bona fide attempt to settle a dispute will be considered to be privileged and not subject to the rule of discovery in any ensuing court action.

Documentation relating to assessments, recommendations and rulings shall not be admissible in a court of law.

The CO shall return all original documents to the parties from whom they are received, when requested to do so, unless the documents are required for the purposes of investigation

The CO shall ensure that any such documents are safeguarded and returned upon the closure of the case.

## **6. ASSESSMENT, FACILITATION, MEDIATION, RECOMMENDATION AND RULING**

### *6.1 Assessment*

The CO may, in order to settle a dispute speedily, make an assessment of its merits without undertaking an investigation and suggest to the parties how the matter should be settled.

## 6.2 *Facilitation*

The CO may, in its sole discretion, facilitate any matter that it believes is appropriate for facilitation, taking into consideration the wishes of the parties and the nature of the complaint.

## 6.3 *Mediation*

If the Ombud and all the parties concerned are in agreement that a complaint or a material and conclusive dispute of fact can best be decided by the hearing of evidence, it may be so decided.

A hearing as aforesaid may be conducted in an inquisitorial manner by the Ombud or any other person or persons appointed for that purpose by the Ombud.

The decision arrived at in a hearing shall be of the same effect as a ruling made under 6.5.

No party shall have the right to be legally represented at a hearing, whether by a practicing lawyer, legal advisor or counsel.

## 6.4 *Recommendation*

- (a) The CO may, in any case where a matter has not been settled, make a recommendation setting out how the matter should be resolved and the reasons for the recommendation.
- (b) Neither a complainant nor a subscribing member shall be bound to accept a recommendation made by the CO, but if a subscribing member does not accept a recommendation that has been accepted by the complainant and that satisfies the requirements of 6.5, the Ombud may then proceed to issue a ruling.
- (c) A complainant who does not accept a recommendation may institute legal proceedings at his or her own expense, if so advised, or request the Ombud to make a ruling, if the requirements of 6.5 are satisfied.
- (d) All recommendations are to be made in writing and authorized by the Ombud

## 6.5 *Ruling*

- (a) The Ombud personally may in a case where a recommendation has not been accepted by all parties concerned, make a binding written ruling based on the law or the Code, provided that all the material facts are agreed or the facts have been established on a balance of probabilities;
- (b) A ruling is binding on Credit Providers, Organisations dealing with credit receivers in terms of credit related matters, Credit Bureaux and/or the Subscriber to the Credit Bureaux and not on the complainant.
- (c) A ruling may order that the Subscribing member or complainant take such steps in relation to the complaint as the Ombud deems appropriate and just.
- (d) The Subscribing member must give effect to any order made in a ruling within the time stipulated by the Ombud.
- (e) Should the Subscribing member fail to give effect to any order made in a ruling within the time stipulated, that subscribing member will be reported to the Council under 1.2.

## 7. **ENFORCEMENT OF OUTCOME**

If any matter that falls within the provisions of NCA is resolved by agreement between the parties or through a ruling, the CO may record the resolution of that dispute in the form of an order and, with the consent of the parties, submit it to a court or the National Consumer Tribunal to be made a consent order.

In the event that a subscribing member does not adhere to a ruling of the Ombud, the Ombud will revert to section 134(5) of the National Credit Act of 2005.

## **8. INFORMATION NOT PROVIDED TIMEOUSLY**

If a Subscribing member does not provide information requested or does not provide it timeously, the CO shall have power to assume that the evidence is against that Subscribing Member and to make a decision accordingly.

## **9. ANNUAL REPORT**

The Ombud shall prepare a report on the activities of the Association for each calendar year and shall publish that report by June of the following year. The report must comply with any requirements imposed by FSOS.

## **10. AMENDMENTS TO TERMS OF REFERENCE**

The Ombud may make recommendations to the Council for changes to these Terms of Reference and Operational Procedures.

## **PART 2**

### **OPERATIONAL PROCEDURES**

#### **STEP 1**

##### *1. RECEIPT OF ENQUIRY*

- 1.1 Upon receipt of an enquiry, the CO will ascertain if the complainant referred the complaint to the Credit Bureaux, Credit Providers or Organisations dealing with credit receivers in terms of credit related matters and allowed the relevant party at least twenty (20) working days to deal with the complaint.
- 1.2 If this has not been done, the CO will advise the complainant to refer the matter to the subscribing member and supply the complainant with the relevant contact details.
- 1.3 The subscribing member shall provide the complainant with a reference number as proof that a complaint has been lodged.

#### **STEP 2**

##### *2. COMPLAINT RETURNED TO / RECEIVED BY CO*

- 2.1. When a complaint is received, the CO shall establish that: (Complaint can be lodged in writing or telephonically in any official language of South Africa)
  - the Application for Assistance form has been correctly completed and that the complainant accepted the Terms and Conditions of the CO; or

- If the complaint is lodged telephonically, the CO will make the complainant aware of the Terms and Conditions of the CO and confirm acceptance thereof.
  - the complainant has lodged the complaint with the subscribing member
  - the complainant is not satisfied with the outcome or has not received a response from the subscribing member within twenty (20) working days,
- 2.2 The CO shall determine whether or not the complaint falls within its jurisdiction and the Terms of Reference and, in reaching this decision may consider representations from both the complainant and the Subscribing member.
- 2.3.1 If the complaint falls within the Terms of Reference, the CO shall inform the Complainant that the complaint falls within this Terms of Reference and if necessary requests more detailed information and the necessary evidence from the complainant to substantiate the complaint. The Complainant shall have a time period set by the CO, but not less than ten (10) work days from receipt of the communication, to provide the CO with the necessary detailed information and the relevant evidence.

### **STEP 3**

#### **SUBSCRIBING MEMBER NOTIFICATION OF COMPLAINT**

- 3.1 If the complaint falls within its jurisdiction and the Terms of Reference, the CO shall inform the person responsible for complaint resolution within the relevant subscribing member, in writing, that a complaint has been lodged with the CO, and the Subscribing member shall have a time period set by the CO, but not less than ten (10) work days from receipt of the communication, to provide the CO with the necessary response and relevant evidence.

The CO will ensure that the Subscribing Member concerned is given full details of the complaint, including copies of relevant documentation submitted to the CO to the extent necessary.

The notification referred to in 3.1 may be delivered by hand to the Subscribing Member concerned, or be sent by post, telefax or e-mail.

The Subscribing Member must acknowledge receipt of the notification and may do so by letter delivered by hand or sent by post, telefax or e-mail.

3.2. During the time set in terms of 3.1, the Subscribing Member shall:

- undertake any investigation that is necessary;
- inform the CO if it establishes any fact that would exclude the matter from the CO's jurisdiction; and
- Provide the CO with a response and/or the relevant evidence to substantiate their decision and/or conduct.
- if the Subscribing Member was unable to provide the necessary response and/or relevant evidence within the time period stipulated by the CO, provide the CO with a report outlining the investigation that it undertook and the reasons that the response and/or evidence could not be provided to the CO. The Subscribing Member could apply in writing for a time extension to produce the necessary response and/or evidence.

During the time set in terms of 3.1, the CO may facilitate a settlement between the Subscribing Member and the complainant if the CO considers that it would be appropriate and helpful to do so.

If the CO is of the view that the Subscribing Member has provided the assistance sought by the complainant or provided an acceptable explanation for its conduct complained of, the CO may inform the complainant of this fact and close the file if no new information or response is received from the complainant.

## **STEP 4**

### *COMPLAINANT TO RESPOND TO SUBSCRIBING MEMBER'S RESPONSE*

- 4.1 When the CO receives information and/or evidence from the Subscribing member, the CO will provide this information to the Complainant to verify the validity of the information and/or evidence. The Complainant shall have a time period set by the CO, but not less than ten (10) work days from receipt of the communication, to provide the CO with a response to the information provided by the Subscribing member and to verify that the information, provided by the Subscribing member, is correct.

### *INVESTIGATION*

- 4.2 The CO may require the parties to clarify any issues raised by the complaint or to provide such information in their possession or under their control to the extent that the CO deems necessary in order to arrive at a conclusion.
- 4.3 The CO shall, to the extent deemed appropriate, permit each of the parties to comment on the information provided to the CO by the other.

## **STEP 5**

### *ASSESSMENT*

- 5.1 If deemed appropriate by the CO, a brief assessment will be issued to the parties.
- 5.2 Should either party disagree with the conclusion reached in the assessment or should either party wish to submit new information that it believes might affect the final decision, it may make further representations to the CO.
- 5.3 In making such further representations, the parties should avoid repeating arguments already put forward, unless they were clearly overlooked.
- 5.4 A Subscribing member wishing to provide new information shall explain why the information was not submitted sooner and valid reasons why the Subscribing member has caused the delay.
- 5.5 Upon receipt of representations from either of the parties, a final written recommendation may be issued without further consultation with either party.

## **STEP 6**

### *MEDIATION*

- 6.1 If, after the consideration of a complaint, the CO believes the complaint is suitable for Mediation, the CO shall establish from the relevant parties whether they are prepared to take part in the Mediation hearing.
- 6.2 If any party declines the invitation to take part in the Mediation hearing, the complaint shall be dealt with in the usual way.
- 6.3 At any Mediation hearing, any party must conduct their case themselves or may appear and be represented by any person who is not legally qualified, provided that, if in any particular case there are good and sufficient reasons for doing so, the Ombud or person appointed by the Ombud may refuse to permit a particular person to assist or represent the party at the Mediation hearing.
- 6.4 Neither party shall be entitled to be legally represented at a Mediation hearing.
- 6.5 Evidence before the Ombud or person appointed by the Ombud may be given orally or where the Ombud or person appointed by the Ombud considers appropriate, by affidavit or written statement, but the Ombud or person appointed by the Ombud may, if it is appropriate, at any stage of the Mediation hearing require the personal attendance of any deponent or maker of a written statement.
- 6.6 At such a Mediation hearing, which shall be conducted in an inquisitorial manner, all issues of a procedural or evidentiary nature shall be determined by the Ombud or other person or persons so appointed.

## **STEP 7**

### **RECOMMENDATION**

- 7.1 Once the CO has investigated a matter to the extent necessary, a written recommendation may be made.
- 7.2 Should either party disagree with the conclusion reached in the provisional recommendation or should either party wish to submit new information that it believes might affect the final decision, it may make further representations to the CO.
- 7.3 In making such further representations, the parties should avoid repeating arguments already put forward, unless they were clearly overlooked.
- 7.4 A Subscribing member wishing to provide new information shall explain why the information was not submitted sooner and valid reasons why the Subscribing member has caused the delay.
- 7.5 Upon receipt of representations from either of the parties, a final written recommendation may be issued without further consultation with either party.
- 7.6 The Subscribing member and the complainant must advise the CO in writing within 10 working days from receiving the final written recommendation from the CO whether they accept the terms of the recommendation or not.
- 7.7 If the complainant accepts the recommendation and the Subscribing member fails to respond to the CO within the stipulated time the Ombud may proceed to make a ruling.

- 7.8 If the Subscribing member responds within the stipulated time limit but the complainant rejects the recommendation or fails to respond within the time limit, the recommendation will fall away.
- 7.9 If both parties accept the terms of the recommendation, they must comply within the period of time prescribed in the recommendation.

## **STEP 8**

### *Ruling*

- 8.1 The Ombud will make a ruling in the matter if all attempts have failed to resolve a dispute between a Subscribing member and the Complainant.
- 8.2 The Ombud will take all relevant information, including all new information provided by both parties, into consideration when making the ruling.
- 8.3 All rulings will be in writing and will be distributed to all relevant parties.
- 8.4 The ruling of the CO shall be binding on the Subscribing members.
- 8.5 Complainants who dispute the ruling from the CO could seek alternative remedies to resolve the dispute with the Subscribing member and the Ombud may refer the parties to the National Credit Regulator as prescribed in National Credit Act, with specific reference to the “National Credit Act Processes” stipulated in the paragraph below.

## **NATIONAL CREDIT ACT PROCESSES**

If any matter that falls within the provisions of the NCA is resolved, the CO may:

- record the resolution of that dispute in the form of an order; and
- if the parties to the dispute consent to that order, submit it to:
  - a court to be made a consent order, in terms of its rules; or
  - the National Consumer Tribunal to be made a consent order in terms of section 138.

If in any matter that may be dealt with by the Regulator or the Tribunal under the NCA, the CO concludes that either party to conciliation, mediation or arbitration is not participating in that process in good faith, or that there is no reasonable probability of the parties resolving their dispute through that process, the CO shall issue a certificate in the prescribed form stating that the process has failed and refer the parties to the National Credit Regulator.

### ***CONFIDENTIALITY***

If any party to a complaint supplies information to the CO and requests, in writing, that it be treated as confidential information, the CO shall not disclose that information to any other party, except with the written consent of the first mentioned party.

If consent is not given, the CO is not entitled to use that information to reach a decision adverse to the party to whom the confidential information is denied.

As far as is practical and at the sole discretion of the CO, all documentation should be provided to both parties to a dispute. However, it is not necessary for documents and information used by the CO to be provided to both parties as long as the CO's written reasons clearly identify the documents or information relied on and the identified documents or information are provided on request.

## **INTERPRETATION**

***In these Terms of Reference the following expressions have the following meanings:***

**“Ombud”** means the Credit Ombud appointed from time to time by the Council to exercise the powers and duties of that office.

**“CO”** means the Credit Ombud

**“Council”** means the Council of the CO “

**“Code”** means the Credit Industry Code of Conduct

**“Complainant”** means any person (individual or juristic person) making a complaint to the CO.

**“Dispute”** means a disagreement in relation to information listed on a Credit bureau which has not been resolved by the parties or disagreement in relation to a credit transaction between a subscribing member and customer of the subscribing member which has not been resolved between the parties.

**“FSOS”** means the Financial Service Ombudscheme Act.

**“NCA”** means the National Credit Act.

**“Scheme”** means the Credit Information Ombud.

**“Subscribing member”** means a credit bureau registered with the National Credit Regulator and/or a subscriber to a credit bureau or a credit provider registered with the National Credit Regulator.

**“Tribunal”** means the National Consumer Tribunal created in terms of s 26 of NCA.

The use of the male gender in these Terms of Reference includes the other gender, as applicable, and references to the singular number include, where the context admits, the plural number and vice versa.

## **CONFLICTS**

If there is a conflict between the provisions of these Terms of Reference and the provisions of any Act, the latter take precedence.