



TERMS OF REFERENCE

OF

THE CREDIT OMBUD

1. PREAMBLE

1.2 Mission Statement

1.2.1 The Office of the Credit Ombud (“Credit Ombud”) exists to effectively resolve disputes arising within the Credit Industry, between members of the Association on the one hand and credit receivers or consumers and businesses on the other.

1.2.2 The Credit Ombud will act as an educator to the public in matters pertaining to the credit industry, general financial matters and the role and functioning of the office.

1.3 Values

The values of the Credit Ombud are not negotiable and cannot be diminished in any way.

1.4 Fair

The Credit Ombud will act in the best interests of all the parties, taking both sides into consideration and considering the merits of each case carefully.

1.5 Independent

The Credit Ombud will not take sides and will remain impartial at all times. No individual or organization will be in a position to unduly influence the Ombudsman or the staff of the Credit Ombud in relation to any matter.

1.6 Honest

- 1.6.1 The Credit Ombud will openly deal with any issues brought before it, asking the relevant questions and communicating clearly and transparently.
- 1.6.2 In resolving disputes, the Credit Ombud shall:
- i. act independently and objectively;
 - ii. have regard to the law, fairness, justice, equity and fundamental human rights and values as prescribed by the principles of “UBUNTU”
- 1.6.3 The Credit Ombud must balance the rights of consumers on the one hand and the rights of the members on the other hand.

2. INTRODUCTION - TERMS OF REFERENCE

- 2.1 These Terms of Reference have been adopted by the Council of the Credit Ombud in accordance with the Constitution of the Credit Ombud Association.
- 2.2 The Terms of Reference of the Credit Ombud define the powers and the duties of the Ombudsman delegated to him/her by the Council, as well as the powers, duties responsibilities of the Office of the Credit Ombud and the members of the Credit Ombud Association.
- 2.3 The Operational Procedures set out the administrative processes followed by the Credit Ombud from time to time, in fulfilling its functions in accordance with the powers and duties set out in these Terms of Reference.

3. APPOINTMENT OF THE OMBUDSMAN

- 3.1 The Council will be responsible to appoint the Ombudsman (“ the Ombud”) who must possess the relevant qualifications, competence, knowledge and experience to effectively execute his/her duties as Ombud. The Ombud will be appointed and elected by a majority vote of the Council. There shall at all times be 1 (one) Ombudsman.
- 3.2 If requested by the Ombud, the Council shall be entitled to appoint a Deputy Ombud. The appointment and election of the Deputy Ombud will take place by majority vote of the Council.
- 3.3 Any person appointed as Ombud shall hold office until:
 - 3.3.1 He/she shall have resigned there from by notice in writing to the Association; or
 - 3.3.2 A period of 5 (five) years from the date of election as Ombud has elapsed, provided that such Ombud may be re-elected at a subsequent meeting of the Council held for the purposes of electing an Ombud, for an additional term of 3 (three) years from the date of re-election; or
 - 3.3.3 If the Council wishes to extend the Ombud’s tenure beyond the periods stipulated above, the Council must apply to the FSOS Council to approve such extended tenure.

4 POWERS AND DUTIES OF THE OMBUDSMAN

- 4.1 The Ombudsman shall have delegated authority from the Credit Ombud Council to oversee and manage the functioning of an effective and efficient Office for the Credit Ombud and to do all things necessary to give effect to this objective of the Credit Ombud Association.
- 4.2 The powers and duties of the Ombudsman shall be exercised in accordance with the limits and mandate determined by the Council and as shall be stipulated in the Terms of Reference for the Credit Ombud’s Office and the Ombudsman’s Contract of Employment.

- 4.3 The Ombudsman shall further have specific authority to do the following:
- 4.3.1 Appoint and manage personnel to ensure the efficient management of complaints as well as the performance of the other duties of the Credit Ombud as provided for in this Terms of Reference.
 - 4.3.2 Enter into agreements of purchase and sale and letting and hiring of property reasonably required for the purposes of the functioning of the association.
 - 4.3.3 Open bank and other accounts, necessary for the association to perform its obligations.
 - 4.3.4 Make recommendations to the Council for amendments to the Terms of Reference and Policies.
 - 4.3.5 Institute and defend legal proceedings in his/her own name, as well as any legal proceeding instituted by or against the Association.
 - 4.3.6 Notwithstanding anything to the contrary contained herein, to apply the funds, reserves and surpluses of the Association in promoting the objects of the Association and the functioning of the office of the Credit Ombud.
 - 4.3.7 The rulings of the Ombudsman shall be binding on the members. However complainants may dispute any ruling made by the Ombud and could institute legal proceedings and/or approach a court of law or any other relevant regulator or organisation.
 - 4.3.8 The Ombudsman shall be accountable to the Credit Ombud's Council.

5 MAINTAINING THE INDEPENDENCE OF THE OMBUDSMAN AND THE OFFICE OF THE CREDIT OMBUD

- 5.1 The Credit Ombud is a voluntary, non statutory body that has been afforded recognition under section 11 of the Financial Services Ombud Scheme Act, 2004

and is an alternative dispute resolution agent and an Ombud with jurisdiction in terms of the National Credit Act, 2005 (NCA), which may engage in the resolution of disputes arising within the credit industry.

- 5.2 The Credit Ombud Association is a Voluntary Association of members, which acts through the Credit Ombud Council in accordance with the authority delegated to the Council, the Ombudsman and the Office of the Credit Ombud.
- 5.3 The Council is comprised of nine (9) representatives of consumer bodies and independent representatives, and eight (8) representatives of the credit industry.
- 5.4 The composition of the Council assists in assuring that the Credit Ombud scheme is and remains independent.
- 5.5 The Council is responsible for appointing the Ombudsman.
- 5.6 The Council is responsible for ensuring and maintaining compliance with the relevant provisions of the FSOS Act and any other legislation or regulation.
- 5.7 The Credit Ombud as well as the Ombudsman shall act independently and objectively in resolving disputes and is not influenced by anybody in making its decisions.
- 5.8 The Ombudsman enjoys security of tenure and can only be dismissed on the grounds of incompetence, gross misconduct, or inability to effectively carry out his or her duties.
- 5.9 The independence of the Office of the Credit Ombud and the Ombudsman is further assured by the fact that the Ombudsman and employees of the Credit Ombud are:
 - 5.9.1 entirely responsible for the handling and determination of complaints;
 - 5.9.2 accountable only to the Council; and
 - 5.9.3 adequately resourced to carry out their respective functions.

6 CRITERIA USED TO RESOLVES DISPUTES

- 6.1 The law, more particularly but not limited to FSOS, the NCA and the CPA;
- 6.2 Applicable industry codes and relevant codes of conduct and/or guidelines
- 6.3 Fairness in all the circumstances

In the event of legislation being enacted in the future impacting the credit industry, the criteria referred to may be extended by the Council of the Credit Ombud.

7 THE CREDIT OMBUD'S PRINCIPAL POWERS AND DUTIES

- 7.2 The Credit Ombud's principal powers and duties are to consider disputes within these Terms of Reference and to facilitate and negotiate the satisfaction, settlement or resolution of such disputes whether by agreement, mediation or by making recommendations or rulings or by such other means as seem expedient, subject to these Terms of Reference and the Operational Procedures.
- 7.3 It is a function of the Credit Ombud to educate all stakeholders regarding its existence, role, procedures, jurisdiction and Terms of Reference.
- 7.4 It is a further function of the Credit Ombud to promote education initiatives and to educate consumers in general regarding financial and credit matters.
- 7.5 The Credit Ombud 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 the FSOS Act, and as may be agreed by the Council from time to time.
- 7.6 The Credit Ombud shall:

- 7.6.1 receive and deal with complaints relating to credit agreements and/or the listing of credit information and/or debt counselling matters, as may be determined by the Council from time to time;
- 7.6.2 at the Ombud's sole discretion, determine whether or not a complaint falls within its jurisdiction within these Terms of Reference;
- 7.6.3 explore any reasonable prospect of resolving a complaint by a conciliated settlement acceptable to all parties;
- 7.6.4 report any material or persistent non-compliance with the Terms of Reference, Operational Procedures, Constitution of the Association or the relevant legislation, to the Council;
- 7.6.5 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;
- 7.6.6 Prepare and submit to the Council an Annual Report detailing the activities and finances of the association for the year in question.
- 7.6.7 Prepare and submit reports to the Council on current matters and activities.
- 7.6.8 provide the Council with any information and assistance which it reasonably requires;
- 7.6.9 provide the FSOS Council with any information and assistance which it reasonably requires;
- 7.6.10 comply with any requirements under the FSOS Act, the NCA or other applicable legislation.
- 7.6.11 publicize the services provided by the association through the media and consumer bodies.

7.7 The Credit Ombud may:

- 7.7.1 make a suggestion or recommendation to the parties regarding how the matter should be settled, in order to resolve a complaint speedily by conciliation;
- 7.7.2 follow and implement any procedure (including mediation) which the Credit Ombud deems appropriate;
- 7.7.3 require a complainant or a member to provide any information which in the view of the Credit Ombud relates to that complaint and is necessary for its resolution;
- 7.7.4 in determining the principles of good practice, consult with the industry as the Credit Ombud thinks appropriate;
- 7.7.5 advise the public on the procedure for making a complaint to the Credit Ombud;
- 7.7.6 collect information concerning any issues which may, in the opinion of the Credit Ombud, be indicative of systemic problems pertaining to the credit industry; conduct research; comment and formulate proposals for the rectification of the problems; submit them to the relevant industry body and/or regulator and monitor the response thereto;
- 7.7.7 at any stage of the procedure dismiss a complaint on the grounds that:
 - (a) the complainant has misled the Credit Ombud;
 - (b) the complainant has failed to:
 - (i) cooperate in the process; or
 - (ii) respond to requests for information or comments within a reasonable time; or
 - (c) there does not appear to be a reasonable prospect of the Credit Ombud eventually making a recommendation or determination in favour of the complainant for whatever reason; or
 - (d) there is no merit to the complaint; or

- (e) any of the grounds for exclusion from jurisdiction referred to in these Terms of Reference are established or come into existence after the complaint has provisionally been determined to fall within the Credit Ombud's jurisdiction.

8 THE OBLIGATIONS OF THE MEMBERS

- 8.1 The members of the Credit Ombud are the individual persons or organisations who are members, as well as the persons or organisations which are members of certain Industry Associations. The members, the application for membership and the duties of members are more fully set out in the Constitution of the Credit Ombud Association. The members include the Credit Bureaux, Subscribers to the Credit Bureaux, Debt Counsellors, PDA's, Credit Providers and Organizations dealing with credit receivers in terms of credit related matters.
- 8.2 The duties of members shall include:
 - 8.2.1 To act within these Terms of Reference;
 - 8.2.1 To abide by the provisions of any relevant Industry Code of Conduct ;
 - 8.2.2 To abide by the standard complaints handling procedures as per the NCA, the relevant Industry Codes of Conduct as well as the Credit Ombud's operational procedures;
 - 8.2.3 To compile and make readily available brochures or other materials advising customers of its membership of the Credit Ombud's Office, as well as the required procedures for submitting a complaint;
 - 8.2.4 To expeditiously comply with requests made by the Credit Ombud in terms of these Terms of Reference and the Operational Procedures;
 - 8.2.5 To take every reasonable step to notify consumers with a dispute of the existence of the Credit Ombud or if the consumer has been declined for credit based on a negative credit report or if the debt counsellor, PDA or

credit provider or the representative of the credit provider is unable to satisfactorily resolve a dispute with that consumer or the consumer's representative;

8.2.6 To notify consumers, disputing their credit profile, of the existence of the Credit Ombud;

8.2.7 To notify and promote to consumers who have a complaint relating to their debt counsellor, PDA or their credit providers in relation to their applications for debt counselling or the debt counselling process in general, of the services of the Credit Ombud; and

8.2.8 To abide by the rulings of the Ombudsman.

8.3 The members shall not:

8.3.1 resort to or continue with litigation while a complaint is being dealt with by the Credit Ombud, and the Credit Ombud undertakes to resolve the case within a maximum period of six months unless another period is agreed between the Credit Ombud and the member or a representative industry body;

8.3.2 prevent a consumer who would otherwise be eligible to use the services of the Credit Ombud from doing so through the use of an arbitration clause in a contract;

8.3.3 provide the Credit Ombud with any misleading information or answer or unduly delay the process through lack of cooperation or failure to provide the necessary information and/or documentation to enable the Credit Ombud to assess the matter; and

8.3.4 provide any consumer with any misleading information regarding the operation of the Office of the Credit Ombud.

9 THE CREDIT OMBUD'S JURISDICTION

9.2 General

9.2.1 The Credit Ombud may consider a dispute brought by:

- (a) a private individual; or
- (b) a company, including a sole proprietor or trader, a juristic person, partnership or trust
- (c) a person entitled to complain to the Credit Ombud under the provisions of FSOS or the NCA.

9.2.2 The Credit Ombud may consider a dispute if an individual or organization has tried unsuccessfully to resolve the dispute through approaches to the Credit Bureaux, Debt Counsellor, PDA, or Credit Providers or any Organisation 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.

9.3 Limits on the jurisdiction of The Credit Ombud

9.3.1 If the complaint is about someone who is not a member or a member by association of the Credit Ombud, the Credit Ombud has the discretion to decide whether or not to assist the consumer with his/her complaint, provided that the Credit Ombud acknowledges that any non-member is under no obligation to assist or respond to the complainant;

9.3.2 If the complaint relates to a member's commercial judgment about lending or security;

9.3.3 If the complaint relates to any transaction entered into outside South Africa;

- 9.3.4 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;
- 9.3.5 If the complainant is not the person to whom the services were directly provided to by the member, provided that complainants may be assisted by third parties to submit their complaints;
- 9.3.6 If the member's act or omission occurred more than three years before the receipt of the complaint by the Credit Ombud, the Credit Ombud has the discretion to accept the complaint or not, except for Credit Information disputes, where the three year period shall not apply;
- 9.3.7 If the complainant has lodged a previous complaint regarding similar issues about a member which has been considered by the Credit Ombud, unless relevant new evidence is available;
- 9.3.8 If the same complaint is already or has been the subject of proceedings before a tribunal, arbitrator, other Ombudsman, or is under investigation by any Ombudsman or Regulator. If the complaint is the subject of proceedings before a Court of law, instituted by or on behalf of the credit provider, subscriber to the credit bureau or any other organization dealing with the matter, the Ombud has the discretion to accept the complaint.

10 JURISDICTION IN RESPECT OF NON-BANK CREDIT AND DEBT COUNSELLING MATTERS

The following jurisdiction relates specifically to non-bank credit transactions and debt counselling matters and having due regard to the requirements of the National Credit Act and any relevant Codes of Conduct, the Credit Ombud shall consider complaints that pertain to matters where a member:

- 10.1 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 in relation to the subject matter of the complaint;
- 10.2 breached an applicable code of practice or code of conduct provided for by relevant legislation or applicable in the industry, regulations or by-laws;
- 10.3 did not meet standards of good practice;
- 10.4 Acted unfairly and/or unconscionable towards a complainant;

11 LIMITS ON JURISDICTION IN RESPECT OF COMPLAINTS IN TERMS OF NON-BANK CREDIT TRANSACTIONS AND DEBT COUNSELLING MATTERS:

- 11.1 Cash transactions;
- 11.2 If the complaint relates to a member's commercial judgment about lending or security;
- 11.3 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.

12 JURISDICTION IN RESPECT OF CREDIT INFORMATION MATTERS:

The Credit Ombud shall consider complaints that pertain to:

- 12.1 Inaccurate or incorrect credit information;
- 12.2 Insufficient or incomplete credit information;
- 12.3 Out-dated credit information;
- 12.4 Notification or the lack thereof to consumers prior to listing adverse information as provided for in the NCA and more fully explained hereunder;
- 12.5 "No- fault- default" matters, as defined hereunder;

- 12.6 Listings in respect of prescribed debt, as defined hereunder;
- 12.7 Duplicate and/or double listings in respect of the same debt;
- 12.8 Service disputes – i.e. non-payment of an account or debt due to a dispute relating to service to which the account relates;
- 12.9 Listings in respect of claims or Court orders for damages and/or costs
- 12.10 Listings following incidents of identity theft and/or identity fraud

The Credit Ombud shall apply the applicable legislation, regulation, Code of Conduct or guidelines, and/or the principles of fairness and equity in resolving a dispute.

13 LIMITS OF THE CREDIT OMBUD'S JURISDICTION IN RESPECT OF CREDIT INFORMATION MATTERS

The Credit Ombud may not consider a complaint or dispute it relates to any credit information outside South Africa.

14 THE CREDIT OMBUD'S JURISDICTION IN RESPECT OF CREDIT INFORMATION MATTERS – FURTHER INFORMATION AND INTERPRETATION

- 14.1 The Consumer Credit information as per Regulation 17 of the National Credit Act, 2005 - see [ANNEXURE B](#), 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 in the Table, and as may be amended from time to time.

14.2 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.

14.3 The Definitions of Adverse Classifications of Consumer Behaviour are as set out in the Regulations to the NCA, namely:

14.3.1 subjective classifications of consumer behaviour which include classifications such as 'delinquent', 'default', 'slow paying', 'absconded', or 'not contactable'.

14.3.2 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';

14.4 Payment profile refers to the consumer's payment history in respect of a particular transaction.

14.5 The obligation of the Subscriber to the Credit Bureaux to supply accurate credit information to the bureaux, entails the following;

14.5.1 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.

14.5.2 Subscribers will supply the information to the Credit Bureaux within a reasonable time period or as required in terms of the legislation and regulations.

14.6 The obligation of the Subscriber to the Credit Bureaux to properly inform credit receivers and all consumers listed on the bureaux, prior to adversely listing them, entails;

14.6.1 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:

- i. Classification of behaviour, including classifications such as delinquent, default, slow payer, absconded and not contactable;
- ii. Classifications related to enforcement such as handed over for collection or recovery, legal action or write-off

14.6.2 Subscribers shall have the obligation to prove that the relevant notification referred to above was given to the customer.

- i. The Credit Ombud shall accept postage via registered mail, using the track and trace system, to the correct *domicilium* address for the consumer, as prove of notification;
- ii. In all other cases and by using other methods or notification, the subscriber must produce proof that the notification reached the consumer.
- iii. If there is not sufficient proof in respect of clause ii above, and the consumer disputes receiving notice, the information may not be listed and must be removed if already listed. The consumer must be given 20 days notice where after the information may be listed for the remainder of the maximum period as provided for in the NCA (see table in Annexure B).

14.6.3 In respect of cases where a credit receiver defaults through no fault of his/her own and subsequently rehabilitates himself/herself, the Credit Ombud may, but is not limited to, applying any or all of the following tests to ensure that the consumer qualifies for early removal of the information:

Test

1. *Was there any intentional or negligent conduct on the part of the complainant that caused the default listing?*
2. *Prior to the default listing in question - did the complainant's payment behaviour shows an intention to honour his/her debts?*
3. *Did the complainant take the necessary steps, if any, to avoid the default listings?*
4. *Did the complaint act reasonably in communicating with his/her credit providers?*
5. *Has the complainant since the default, made bona fide attempts to rehabilitate himself?*

14.6.4 The Credit Ombud's jurisdiction in respect of listings in respect of prescribed debt entails the following:

- i. Subscribers of credit bureaux shall not submit information to credit bureaux in respect of debts that have prescribed.
- ii. Prescription of debt in these Terms of Reference is defined as follows: In the event that a debtor has not acknowledged or paid a debt for a period of 36 months or longer, the said debt would have prescribed and a subscriber of Credit Bureaux will not be allowed to list the information on the Credit Bureaux.

14.6.5 Duplicate/double listings in respect of the same debt:

- i. Subscribers of Credit Bureaux shall not submit information more than once in respect of the same debt.

15 UNREASONABLE COMPLAINTS

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

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

16 TERMINATION OF COMPLAINT BY COMPLAINANT

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

17 RULES OF EVIDENCE

The Credit Ombud shall not be bound by any legal rule of evidence and will resolve complaints according to Operational Procedures contained in Annexure 1 to this document, or as may be amended by the Credit Ombud from time to time.

18 DOCUMENTS

- 18.1 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 will not be disclosed to any other party without the consent of the owner/author or person who provided such documentation to the Credit Ombud.

18.2 The Credit Ombud 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.

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

19 THE COMPLAINTS PROCESS

The Credit Ombud's complaint process is more fully set out in the Operational Procedures - see [ANNEXURE A](#) attached to these Terms of Reference.

For ease of reference, the process may be summarized as follows:

ASSESSMENT, FACILITATION, MEDIATION, RECOMMENDATION AND RULINGS

19.1 **Assessment**

The Credit Ombud 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.

19.2 **Facilitation**

The Credit Ombud 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.

19.3 **Mediation**

19.3.1 The Credit Ombud may, as it deems it appropriate, at any time during the investigation of a complaint, invite the complainant and the member to participate in mediation proceedings, which mediation shall be conducted in an inquisitorial manner by the Ombud or any other person or persons appointed for that purpose by the Ombud.

19.3.2 At the request of a party to the mediation proceeding, the Credit Ombud may allow legal representation. Each request shall be determined on its own merits at the sole and absolute discretion of the Credit Ombud.

19.4 Recommendation

19.4.1 The Credit Ombud 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.

19.4.2 Neither a complainant nor a member shall be bound to accept a recommendation made by the Credit Ombud, but if a member does not accept a recommendation that has been accepted by the complainant, the Ombud may then proceed to issue a ruling.

19.4.3 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, or Deputy Ombud, to make a ruling.

19.4.4 All recommendations are to be made in writing and authorized by the Ombud or Deputy Ombud.

19.5 Ruling

19.5.1 The Ombudsman 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, any applicable Code, or fairness, provided that all the material facts are agreed or the facts have been established on a balance of probabilities;

19.5.2 A ruling is binding on the members but not on the complainant.

- 19.5.3 A ruling may order that the member or complainant take such steps in relation to the complaint as the Ombudsman deems appropriate and just.
- 19.5.4 The member must give effect to any order made in a ruling within the time stipulated by the Ombudsman.
- 19.5.5 Should the member fail to give effect to any order made in a ruling within the time stipulated, that member will be reported to the Council.

20 ENFORCEMENT OF OUTCOME OF A COMPLAINT

- 20.1 If any matter that falls within the provisions of the NCA is resolved, the Credit Ombud 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:
 - 20.1.1 a court to be made a consent order, in terms of its rules; or
 - 20.1.2 the National Consumer Tribunal to be made a consent order in terms of section 138 of the NCA.
- 20.2 If in any matter that may be dealt with by the Regulator or the Tribunal under the NCA, the Credit Ombud 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 Credit Ombud shall issue a certificate in the prescribed form stating that the process has failed and refer the parties to the National Credit Regulator.
- 20.3 The members of the Credit Ombud shall abide by the rulings of the Ombud, subject to any appeal process which may be approved by the Credit Ombud Council.

- 20.4 Consumers shall not be bound by any ruling or decision of the Credit Ombud and may refer the matter to any other body, court or regulator.

21 INFORMATION NOT PROVIDED TIMEOUSLY

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

22 ANNUAL REPORT

The Credit Ombud shall prepare a report on the activities of the Association for each calendar year and shall publish that report within 6 months after the financial year end. The report must comply with any requirements imposed by FSOS.

23 CONFIDENTIALITY

- 23.1 If any party to complaint supplies information to the Credit Ombud and requests, in writing, that it is treated as confidential information, the Credit Ombud shall not disclose that information to any other party, except with the written consent of the first mentioned party.
- 23.2 As far as is practical and at the sole discretion of the Credit Ombud, all documentation should be provided to both parties to a dispute. However, it is not necessary for documents and information used by the Credit Ombud to be provided to both parties as long as the Credit Ombud's written reasons in the case of a recommendation and ruling, clearly identify the documents or information relied on and the identified documents or information are provided on request.

24 AMENDMENTS TO TERMS OF REFERENCE

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

25 CONFLICTS

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

26 INTERPRETATION

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

26.1.1 **“Ombudsman”** means the Ombudsman appointed from time to time by the Council to exercise the powers and duties of that office, and where appropriate it shall include the Deputy Ombud.

26.1.2 **“CO and Credit Ombud”** means the Office of the Credit Ombud;

26.1.3 **“Council”** means the Council of the Credit Ombud appointed and operating in accordance with the Constitution for the Credit Ombud Association

26.1.4 **“Code of Conduct”** means any relevant Industry Code of Conduct, or any Code approved by the NCR, or accepted in a particular industry;

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

26.1.6 **“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 member

and customer of that member which has not been resolved between the parties, or any disagreement between a consumer and his/her debt counsellor or PDA or any credit provider in relation to the consumer's application for debt counselling.

26.1.7 **"FSOS Act"** means the Financial Service Ombud Scheme Act, 2004.

26.1.8 **"NCA"** means the National Credit Act, 34 Of 2005.

26.1.9 **"Scheme"** means the Credit Ombud Scheme.

26.1.10 **"member"** means a member as defined in the Constitution of the Credit Ombud Association.

26.1.11 **"Tribunal"** means the National Consumer Tribunal created in terms of s 26 of NCA.

26.1.12 **"PDA"** means a Payment Distribution Agent that facilitates payments to credit providers on behalf of consumers who applied for debt counselling,

26.1.13 **"NDMA"** means the National Debt Mediation Association

26.1.14 **"PDASA"** means the Payment Distribution Agents of South Africa

26.1.15 **"DCASA"** means the Debt Counselling Association of South Africa.

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.