

THE ENERGY OMBUDSMAN SERVICE

Terms of Reference

These are the terms of reference approved by the Council in accordance with the Articles of Association of The Ombudsman Service Limited (the Company) for the Energy Ombudsman Service for Energy Suppliers and Energy Network Operators. Certain expressions used in these terms of reference are either defined in paragraph 17 below or otherwise in such Articles.

1 Purpose and scope

1.1 **Purpose, Scope and Complaints** - The main purpose of the Service is:

- (a) the receipt and handling of unresolved complaints made to Energy Suppliers and Energy Network Operators who are Energy Ombudsman Service Members by any of their domestic and Small Business customers;
- (b) the resolution, settlement and/or withdrawal of such unresolved complaints or disputes between such Energy Ombudsman Service Members and any of their domestic and Small Business customers;
- (c) where appropriate, the provision of remedies and redress in respect of matters that form the subject-matter of such unresolved complaints or disputes;

in respect of the supply or provision by Energy Ombudsman Service Members of certain services.

1.2 **Services** - The services provided by Energy Ombudsman Service Members which will be covered by, and fall within the jurisdiction of, the Ombudsman and the Energy Ombudsman Service are the services associated with the metering and billing of customers for the supply of energy; the transfer of customers between energy suppliers, sales of products and services and the provision of regulated products and services by holders of a gas transportation licence or electricity distribution licence.

1.3 **Eligibility for Membership of the Energy Ombudsman Service** – Energy Suppliers who hold a supply licence in respect of domestic and Small Business customers for the supply of gas and/or electricity and electricity distributors and gas transporters who hold a licence for electricity distribution or gas transportation are eligible to become members of the Energy Ombudsman Service.

1.4 **Jurisdiction** – Upon becoming Energy Ombudsman Service Members, all Energy Ombudsman Service Members (to the extent that they offer, supply or provide services specified in paragraph 1.2 above) shall accept and be subject to the jurisdiction of the Energy Ombudsman Service and the Ombudsman in relation to complaints regarding such services.

- 1.5 **Complainants** – The Ombudsman and the Energy Ombudsman Service shall only have jurisdiction in relation to a complaint against an Energy Ombudsman Service Member if the person making the complaint:
- (a) was, at the time the subject matter of the complaint arose, a domestic and Small Business customer with an effective contract or deemed contract with an Energy Ombudsman Service Member; or
 - (b) was, at the time the subject matter of the complaint arose, a domestic and Small Business customer with a grievance with a transfer to or from an Energy Ombudsman Service Member; or
 - (c) was at the time the subject of the complaint arose connected to the network of the Energy Ombudsman Service Member, or would have been so connected were it not for a fault or planned outage on the Member's network, or was seeking to be so connected; or
 - (d) is acting on behalf (and with the written consent) of any person falling within the scope of sub-paragraphs (a), (b) and (c) above; and
 - (e) falls within the scope of (a), (b), (c) or (d) above and has given the Energy Ombudsman Service Member sufficient time, as set out in paragraph 11.1 (b), an opportunity to address complaint(s) against them using their own internal procedures or has encountered sustained difficulty in registering a complaint with an Energy Ombudsman Service Member.

2 Governance of the service

- 2.1 The Ombudsman is appointed by, and responsible to, the Council. In determining any complaints made in accordance with these Terms of Reference the Ombudsman shall act independently of the Council, the Energy Ombudsman Service Member Board, the Finance Board (if any), the Energy Ombudsman Service Members and complainants.
- 2.2 The Energy Ombudsman Service shall be administered by the Company in accordance with the Memorandum, Articles and the Terms of Reference.
- 2.3 The Articles provide for the constitution of a Council being the Board of Directors of the Company with the powers and duties defined in the Articles.
- 2.4 The Articles provide for the establishment of a Member Board for each and any Ombudsman Service administered by the Company and constituted in accordance with the Terms of Reference and with the powers and duties defined in the Articles.
- 2.5 The Energy Ombudsman Service Member Board may appoint one or such other number as may be agreed from time to time by the Council as Industry Council Members.

3 The Member Board of the Energy Ombudsman Service

- 3.1 The Energy Ombudsman Service Member Board shall consist of up to eight members determined by the Energy Ombudsman Service Member Board in consultation with the Council.
- 3.2 The Energy Ombudsman Service Member Board shall be made up of representatives from Energy Ombudsman Service Members and Independent Council Members.
- 3.3 The Energy Ombudsman Service Member Board shall be constituted such that there:
- are four representatives from Energy Suppliers who are not small suppliers including a representative from the ERA;
 - is one Energy Network Operator representative who may be from ENA;
 - is one Small Supplier representative.

There shall be at least one Independent Council Member for every two Energy Ombudsman Service members on the Energy Ombudsman Member Board or such lesser number as the Council may agree.

- 3.3a The deputy chairman, if any, and chairman of the Energy Ombudsman Service Member Board shall be appointed by the Energy Ombudsman Service Member Board from amongst the Energy Ombudsman Service Industry Members. The Independent Council Members appointed by and from the Independent Council Members shall not take part in the appointment process for the chairman or deputy chairman of the Energy Ombudsman Service Member Board.
- 3.4 The Energy Ombudsman Service Industry Members shall each nominate an alternate who can attend the Member Board meetings in the absence of the nominated representative.
- 3.5a The representation of the Energy Suppliers who are not small suppliers will be rotated between them such that the representatives from each serve for a period of up to two years in turn.
- b The Energy Network Operators representative will be appointed for a period of up to two years.
- c The representative of the Small Suppliers shall be appointed for a period of up to two years.
- d The Secretary shall invite each Small Supplier Member to nominate an individual to be an Energy Ombudsman Industry Member within 21 days of the issuance of such invitation by the Secretary. If there is only one nomination, such nominee shall be appointed to the Energy Ombudsman Service Member Board; if there is more than one nomination by the Small Suppliers, the Secretary shall list the nominees and arrange a ballot with each Small Supplier being entitled validly to vote for one individual nominee in such ballot. The nominee receiving the largest number of votes shall be appointed to the Energy Ombudsman Industry Member.
- e If the ballot provided is inconclusive, in that no one nominee receives more votes than each of the other nominees (a deadlock ballot), then the Small Supplier Members shall use all reasonable endeavours to agree the relevant nominee (which need not be one of the original

- deadlocked nominees) to be appointed to the Energy Ombudsman Member Board. If within 21 days following the deadlock ballot, the Small Suppliers are (i) able to agree upon a nominee, such nominee shall be appointed to the Energy Ombudsman Service Member Board on Small Suppliers reaching agreement and notifying the Secretary of such, or (ii) unable to agree upon a nominee, the provisions of paragraph 3.4(f) shall apply
- f If the Small Suppliers are unable to agree upon a nominee, then the chairman of the Energy Ombudsman Service Member Board (if appointed) shall himself/herself determine which nominee shall be appointed. In making his/her determination the chairman shall be obliged to choose one of the nominees who received the largest number of votes under the deadlock ballot and, in doing so, shall take account of the reasonable views and submissions of the Small Supplier. Such appointment shall take place on the chairman's determination.
- 3.6 The Energy Ombudsman Service Member Board's powers, duties and conduct shall be as detailed in Articles 101 and 103 to 122 (inclusive). In pursuance of Article 101 (c) the Energy Ombudsman Service Member Board will apportion costs between the set of Energy Suppliers who are not Small Suppliers, the set of Small Suppliers and the set of Energy Network Operators separately. The overall budget will be set based on the proportion of the number of cases for Energy Suppliers who are not Small Suppliers, the Small Suppliers and the Energy Network Operators and this will be reconciled at the end of each year.
- 3.7 The Energy Ombudsman Service Board Members appointed by and from the Independent Council Members shall be appointed to serve for a period of up to two years with an option for the Independent Council Members to renew such appointments for one further period of up to two years or, in each case, such lesser periods as conform to the periods for which such persons are appointed to serve as Independent Council Members but nothing herein shall prevent the same person if eligible from being appointed thereafter for a further like term or terms if the Council so decides.

4 Disqualification and removal of Energy Ombudsman Service Board Members

- 4.1 The office of an Energy Ombudsman Service Board Member shall be automatically vacated if he/she:
- (a) in the reasonable opinion of the Energy Ombudsman Service Member Board, becomes of unsound mind; or
 - (b) does any act or finds himself/herself in any position which, in the reasonable opinion of the Energy Ombudsman Service Member Board, is likely to lead him/her, the Energy Ombudsman Service Member Board, the Energy Ombudsman Service or the Company into disrepute; or
 - (c) does any act or finds himself/herself in any position which, in the reasonable opinion of the Energy Ombudsman Service Member Board, conflicts or is likely to conflict with his/her position and/or the exercise of his/her powers and/or duties as an Energy Ombudsman Service Board Member, or the effective operation of the Energy Ombudsman Service, the Ombudsman or the Terms of Reference; or

- (d) in the case of an Energy Ombudsman Service Board Member appointed pursuant to paragraph 3.3 above, ceases to be an Independent Council Member; or
 - (e) does not have their appointment as an Energy Ombudsman Service Industry Member renewed after the expiry of their term of appointment;
 - (f) is an Energy Ombudsman Service Industry Member appointed to the Energy Ombudsman Service Member Board pursuant to paragraph 3.3 and the relevant Energy Ombudsman Service Industry Member ceases to be either employed by or contractually engaged by the Energy Ombudsman Service Member with whom he/she was so employed or engaged at the time of his/her appointment pursuant to paragraph 3.3.
- 4.2 Should the office of an Energy Ombudsman Service Board Member be vacated pursuant to paragraph 4.1, the alternate shall take the place of the Energy Ombudsman Service Board Member until such time as a new Energy Ombudsman Service Board Member is nominated.
- 4.3 In any event, any course of action taken by the Energy Ombudsman Service Member Board pursuant to paragraph 4.2 shall only apply to the remainder of the term of the office determined by reference to paragraph 3.5.

5 Ombudsman's principal aim

The Ombudsman's principal aim is to receive complaints made by complainants in accordance with these Terms of Reference and to consider and, where appropriate, investigate such complaints in order to encourage and/or facilitate the terms of their resolution, settlement and/or withdrawal.

6 Acceptance of complaint

- 6.1 The Ombudsman has an absolute discretion to decide whether a complaint is within the Ombudsman's jurisdiction, as prescribed by these Terms of Reference.
- 6.2 The Ombudsman has an absolute discretion to refuse to accept (or to terminate consideration of) a complaint, if he/she considers that the complainant has no reasonable prospect of success, recovery or redress in relation either to such complaint and/or the Energy Ombudsman Service Member(s) to which such complaint relates.

7 Provision of information

- 7.1 Upon accepting a complaint for consideration the Ombudsman shall inform the relevant Energy Ombudsman Service Member that the complaint has been accepted and may require the Energy Ombudsman Service Member to disclose any documents and to provide any information that the Ombudsman may lawfully and reasonably request relating to his or her consideration of the complaint.
- 7.2 The Ombudsman may additionally require a complainant to disclose any documents and to provide any information that the Ombudsman may lawfully and reasonably request relating to his or her consideration of a complaint.
- 7.3 If any party to a complaint supplies information to the Ombudsman and requests that the Ombudsman treat it as confidential, the Ombudsman shall not disclose that information or the fact or existence of that information to any other party without the consent of the party who has made the confidentiality request, provided that:
- (a) maintaining the confidentiality of such information does not impede the Ombudsman's ability to make a fair and reasonable determination of the complaint; and
 - (b) the Ombudsman is satisfied that the confidentiality request has been made in good faith and not with the aim of impinging on any principles of natural justice.
- 7.4 The Ombudsman's decision (in its absolute discretion) as to whether to keep any information in confidence from any party shall be final and binding.

8 Handling complaints and the Ombudsman's investigation

- 8.1 The Ombudsman will seek to achieve a mutually acceptable settlement of a complaint wherever practical and appropriate.
- 8.2 If the complaint is not resolved by a mutually acceptable settlement or withdrawn, the Ombudsman may conduct a formal investigation of the complaint.
- 8.3 The procedure for the conduct of an investigation will be such as the Ombudsman considers appropriate in the particular circumstances of the case and may require such assistance of the parties to the complaint (including in relation to access, information and submissions) as the Ombudsman may consider reasonable and appropriate.
- 8.4 Where an investigation has been conducted, the Ombudsman will inform, in writing, the complainant and the Energy Ombudsman Service Member(s) concerned of the Ombudsman's provisional conclusions and suggested Remedies (as defined below) and, in each case, the reasons for them and will invite their comments thereon, to be received within 48 days.

- 8.5 If, after investigation, the Ombudsman considers that the Energy Ombudsman Service Member(s) (against which a complaint has been made) is already offering (and continues to offer) a fair and reasonable settlement (even if it is not acceptable to the complainant), or if the Ombudsman considers that no settlement is required, the Ombudsman may exercise discretion to terminate consideration of the complaint.
- 8.6 In handling complaints, carrying out investigations and reaching any Final Decision (as provided for hereunder) it shall be the duty of the Ombudsman:
- (a) to proceed fairly and in accordance with the principles of natural justice;
 - (b) to make reasoned decisions in accordance with what is fair and reasonable in all the circumstances having regard to principles of law, good practice, equitable conduct and good administration;
 - (c) to decide whether to continue or discontinue the consideration of a complaint;
 - (d) save with the prior written consent of the relevant parties and subject to paragraphs 7.3(a), 7.3(b) and 10.2(e) below, not to disclose the fact of, parties to or details of any complaint, its resolution or enforcement to persons other than the parties to the complaint, the Ombudsman, the Council and the Energy Ombudsman Service and such officers, employees, agents and advisers of each of such persons as are duly authorised for such purposes;
 - (e) to have regard to any applicable rule of law, the terms of any relevant contract, any relevant judicial or regulatory authority or regulatory provision, any relevant codes of conduct or practice, any guidance of a general nature given by the Council and what is, in the Ombudsman's opinion, best practice in the handling of complaints; and
 - (f) to give reasons for any decision made or conclusion reached.
- 8.7 Notwithstanding paragraphs 8.6(a) and 8.6(e) above, the Ombudsman shall not be bound by any legal rule of evidence or by the past conduct or decisions of, or the past remedies or awards imposed by, the Ombudsman or the Energy Ombudsman Service.

9 The Ombudsman's final decision

- 9.1 If the complainant and the relevant Energy Ombudsman Service Member(s) accept the Ombudsman's provisional conclusions, then such provisional conclusions will become the Ombudsman's Final Decision.
- 9.2 If either the complainant or the relevant Energy Ombudsman Service Member(s) or both do not accept the Ombudsman's provisional conclusions, then the Ombudsman will issue a Final Decision, including his or her reasons therefore. Such Final Decision shall be made after considering any representations the complainant or the relevant Energy Ombudsman Service Member(s) or both may make in relation to the provisional conclusions.
- 9.3 Where the Ombudsman issues a Final Decision (either under paragraph 9.1 or 9.2 above) which concludes that an Energy Ombudsman Service Member has not acted fairly or

reasonably, the Ombudsman will set out his or her reasons in writing and may, subject to paragraphs 9.4 and 9.5 below, impose any of the following remedies requiring the Energy Ombudsman Service Member(s) to:

- (a) provide an apology or explanation to the complainant;
- (b) award to the complainant compensation not exceeding £5,000 (inclusive of VAT (if any)) per complaint (an Award);
- (c) take some other practical action of direct benefit to the complainant; or
- (d) provide any combination of the above remedies.

Each remedy set out in paragraphs 9.3(a) to (d) above shall be referred to as a Remedy and any combination thereof as Remedies.

- 9.4 The Ombudsman may also, as a result of considering a complaint, make recommendations to an Energy Ombudsman Service Member(s) about changing its policies or procedures, including in relation to the provision of its services.
- 9.5 The total value of all Remedies to be provided or complied with by an Energy Ombudsman Service Member to or for the direct benefit of a complainant in respect of a complaint shall not exceed £5,000 (inclusive of VAT (if any)).
- 9.6 No Award or Remedy shall contain a punitive element nor be of greater amount than in the reasonable opinion of the Ombudsman is appropriate to compensate the complainant for loss or damage or inconvenience suffered by reason of the acts or omissions of the Energy Ombudsman Service Member against and in respect of which the Award or Remedy is made.
- 9.7 The Ombudsman will determine which Energy Ombudsman Service Member will pay the case fee and provide the remedy.
- 9.8 No Award or Remedy will be made against a complainant.
- 9.9 The Final Decision shall be issued in writing and shall state the Remedies to be provided and a summary of the Ombudsman's reasons for reaching the Final Decision. A copy of the Final Decision shall be given to the complainant and the relevant Energy Ombudsman Service Member(s) together, in the case of the complainant, with an acceptance form (addressed to the Ombudsman) (the Acceptance Form) to be duly completed and signed by the complainant and returned to the Ombudsman within two months of the date of the Final Decision (the Acceptance Period). The Final Decision shall state that if, within the Acceptance Period (or such longer period as the Ombudsman may consider reasonable), the complainant replies to and accepts the Final Decision in full and final settlement of the subject matter of the complaint (by duly completing, signing and returning the relevant Acceptance Form), the Final Decision shall (save in the event of fraud or manifest error) be binding on the complainant and the relevant Energy Ombudsman Service Member(s).
- 9.10 If the complainant does not reply to the Final Decision within the Acceptance Period (or such longer period as the Ombudsman may consider appropriate), then the Final Decision will not be binding on the complainant or the relevant Energy Ombudsman Service Member(s) and it

will be open to the complainant to initiate any other proceedings to which the complainant is entitled in pursuit of the complaint.

- 9.11 If within the Acceptance Period (or such longer period as the Ombudsman may consider reasonable) the complainant replies to the Final Decision but does not accept it in full and final settlement of the subject matter of the complaint, then the Final Decision will not be binding on the complainant or the relevant Energy Ombudsman Service Member(s) and it will be open to the complainant to initiate any other proceedings to which the complainant is entitled in pursuit of the complaint.
- 9.12 If the Final Decision becomes binding on the complainant and the relevant Energy Ombudsman Service Member(s) in accordance with paragraph 9.9, the Ombudsman shall notify the relevant Energy Ombudsman Service Member(s) of such fact within 14 days of his or her receipt of the complainant's duly completed and signed Acceptance Form. The relevant Energy Ombudsman Service Member(s) shall then provide the Remedy (including any Award (if any)) to the complainant within 28 days of the Ombudsman's notification.
- 9.13 If the Final Decision does not become binding on the complainant and the relevant Energy Ombudsman Service Member(s) in accordance with paragraph 9.10 or 9.11, then the Ombudsman shall notify the complainant and the relevant Energy Ombudsman Service Member(s) of such fact within 14 days following the end of the Acceptance Period (or such longer period as the Ombudsman may consider reasonable).

10 Powers and duties of the Ombudsman

- 10.1 The Ombudsman shall have the following powers and duties:
- (a) to report to the Council on the non-compliance with a decision of the Ombudsman (including in relation to any Awards or Remedies imposed by the Ombudsman) by an Energy Ombudsman Service Member;
 - (b) to ensure the efficient, effective and economical use of resources;
 - (c) to ensure, so far as reasonably practicable, equality of access to the Energy Ombudsman Service by complainants irrespective of age, disability, gender, race, religion or sexual orientation;
 - (d) to enter into Memoranda of Understanding with any bodies the Ombudsman considers fit on matters of common interest, including the exchange of information (subject to paragraph 8.6(d) above);
 - (e) to attend meetings of the Council when asked to do so on reasonable notice and to provide them with such information (other than about individual complaints) as they may reasonably request;
 - (f) to prepare, each year, a draft Annual Business Plan for the period commencing on and from the next Business Plan Commencement Date, for presentation to the Council by not later than the 31 December falling immediately prior to the relevant Business Plan Commencement Date;

- (g) to prepare, each year, a draft Annual Budget for the period commencing on and from the next Budget Commencement Date, for presentation to the Council by not later than the 31 December falling immediately prior to the relevant Budget Commencement Date;
- (h) to prepare, each year, an Ombudsman's Report (which shall be distinct from the annual report of the Company) on the discharge of the Ombudsman's functions during the most recently ended Ombudsman's Reporting Period and provide it to the Council and the Energy Ombudsman Service Member Board for publication within such period following the end of such Ombudsman's Reporting Period as the Council shall determine;
- (l) to encourage and promote good practice by Energy Ombudsman Service Members in the handling of complaints they receive;
- (j) to develop and sustain discussions with Energy Ombudsman Service Members and consumer bodies about matters relevant to the Energy Ombudsman Service; and
- (k) to refer to the Council complaints received by him or her about the Energy Ombudsman Service and/or the Ombudsman.

10.2 In addition to the powers conferred elsewhere in these Terms of Reference, the Ombudsman may:

- (a) incur expenditure for the purposes of the functions of the Energy Ombudsman Service, subject to and to the extent such are provided for in the then current Annual Business Plan and Annual Budget as approved by the Energy Ombudsman Service Member Board;
- (b) recruit, appoint, train, manage and remove staff, subject to and to the extent such are provided for in the then current Annual Business Plan and Annual Budget as approved by the Energy Ombudsman Service Member Board;
- (c) delegate, subject (where necessary) to the approval of the Council, any of the Ombudsman's powers and duties to members of the staff of the Energy Ombudsman Service (including, deputy ombudsmen (if any)), provided that, in delegating any such powers and duties, the Ombudsman shall exercise all reasonable care and skill to ensure that the delegate discharges all such powers and duties in accordance with the standards expected of the Ombudsman himself/herself;
- (d) subject to the approval of the Council and the provisions of sub-paragraph (a) above, determine the terms and conditions of service/employment of the staff of the Energy Ombudsman Service;
- (e) publish individual determinations and digests of complaints in anonymised form (i.e. in which the parties are not identified); and
- (f) recommend systemic changes in policy or procedure relating to dispute handling within the energy industry and, in his or her discretion, to publish such recommendations.

- 10.3 Notwithstanding the above, the Ombudsman shall not exercise any powers which are explicitly conferred upon the Council or the Energy Ombudsman Service Member Board.

11 Limits on the Ombudsman's powers

- 11.1 The Ombudsman shall not accept a complaint for consideration unless:

- (a) the complainant gave the relevant Energy Ombudsman Service Member(s) notice of the matter which is the subject of the complaint within twelve months of first knowing of the matter; and
- (b) either (i) the Energy Ombudsman Service Member has sent the complainant a letter saying that it is unable or unwilling itself to resolve the complaint to the complainant's satisfaction and providing details of the existence of the Energy Ombudsman Service and appropriate contact details for the Ombudsman (a deadlock letter), or (ii) the Energy Ombudsman Service Member has not issued a deadlock letter within 8 weeks of the complainant's notice (as referred to in paragraph 11.1(a) above) (or such longer period as the Ombudsman may consider reasonable) or (iii) the complainant has encountered sustained difficulty in registering a complaint with an Energy Ombudsman Service Member: and
- (c) the complaint is made to the Ombudsman within six months of the issue of the deadlock letter or, if no deadlock letter has been issued, within nine months of the complainant first giving notice of the complaint to the Energy Ombudsman Service Member (as referred to in paragraph 11.1(a) above); the Ombudsman has discretion, however, to accept a complaint made out of time if satisfied that there are exceptional reasons to justify the delay.

- 11.2 The Ombudsman shall not accept a complaint about a matter:

- (a) of which the complainant had notice before (i) the commencement of the provision and operation of the Energy Supply Ombudsman Service on 1st July 2006, or (ii) the date when the relevant Energy Ombudsman Service Member became a member of the Energy Supply Ombudsman Service or the Energy Ombudsman Service whichever is the later;
- (b) to the extent such matter has been or is the subject of court proceedings or arbitration or some other independent procedure for the determination of disputes brought by the complainant (unless such proceedings, arbitration or other procedure have been abandoned, stayed or suspended either by or with the consent of the relevant court, arbitral or procedural body or with the written consent of the relevant Energy Ombudsman Service Member(s));
- (c) which either does not concern or relate to the complainant or to a service of the relevant Energy Ombudsman Service Member falling within the jurisdiction of the Energy Ombudsman Service;

- (d) which concerns or relates to terms of employment or other personnel issues of, in each case, the complainant;
- (e) which concerns or relates to pipework, conduit, cabling or wiring which is not the responsibility of an Energy Ombudsman Service Member;
- (f) if it appears to the Ombudsman that it is more appropriate that the complaint be dealt with by a court, by arbitration, by Ofgem determination or under another complaints or conciliation procedure;
- (g) if it appears to the Ombudsman that the complaint is frivolous or vexatious;
- (h) to the extent that the complaint relates to an Energy Ombudsman Service Member's commercial judgment in determining whether and, if so, on what terms a service is to be provided; or
- (i) which concerns a dispute solely between providers of energy supply, electricity distribution and gas transportation services falling within the jurisdiction of the Energy Ombudsman Service in relation to the provision of such services.

11.3 In relation to any matter forming the subject of a complaint in respect of which the Ombudsman has previously reached a decision or conclusion (a Concluded Complaint), the Ombudsman shall not accept or consider:

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

12 Charges and case fees

12.1 The Ombudsman will make no charge to complainants for the consideration of their complaints.

12.2 Energy Ombudsman Service Members shall be obliged to pay subscriptions and case fees to the Company in respect of the Energy Ombudsman Service in accordance with the Articles.

13 Duties of each member

Each Energy Ombudsman Service Member undertakes to:

- (a) submit to any consideration or investigation of a complaint by the Ombudsman and the Energy Ombudsman Service to which it is a party, pursuant to and in accordance with these Terms of Reference;
- (b) comply with any Final Decision (including any Remedy and Award) which, in accordance with these Terms of Reference, is made by the Ombudsman against it and is duly accepted by the complainant and which is binding on it and the relevant complainant under these Terms of Reference;
- (c) maintain and operate an adequate internal complaints procedure for the resolution of complaints in relation to matters which could be the subject of consideration or investigation by the Ombudsman and the Energy Ombudsman Service, being a procedure under which the complaint, if not previously resolved, settled or withdrawn is addressed by the dispatch of a deadlock letter (as defined above);
- (d) provide information to complainants regarding the Energy Ombudsman Service in accordance with its complaint handling procedures and encourage any such complaint, which is not resolved, settled or withdrawn, to be dealt with under the jurisdiction of the Ombudsman and the Energy Ombudsman Service, including (without limitation) by giving due and reasonable consideration to any request by a complainant for such Energy Ombudsman Service Member written consent to abandon, stay or suspend any court proceedings, arbitration or other procedures as are referred to in paragraph 11.2(b) above;
- (e) contemporaneous with becoming an Energy Ombudsman Service Member execute a deed poll (in the form set out in the Schedule hereto or in such other form as may, subject to the approval of the Energy Ombudsman Service Member Board, be prescribed by the Council from time to time) (the "Deed Poll") which shall, inter alia, enable a complainant to enforce any Remedy and/or Award directly against such Energy Ombudsman Service Member; and
- (f) ensure that it and, as appropriate, each of its relevant subsidiary undertakings complies with, observes and performs the obligations and duties of an Energy Ombudsman Service Member under the Terms of Reference, the Articles, the Deed Poll and/or otherwise in connection with the Energy Ombudsman Service.

14. Termination of an Energy Ombudsman Member's membership

An Energy Ombudsman Member may only terminate its membership with the Energy Ombudsman by giving not less than six months' notice in writing to the Secretary.

15. Review of the terms of reference

The Council will complete a review of these Terms of Reference periodically the first being between 18 months and two years after the start of the Energy Supply Ombudsman Service and thereafter at intervals of not more than three years. Such reviews will include (without limitation) consideration as to whether there is evidence of complainants seeking to abuse the right to complain in order to evade or delay the payment of money or the performance of any other obligation rightfully owed by them to any Member of the Energy Ombudsman Service.

16. Amendment of the terms of reference

- 16.1. The provisions of paragraphs 1, 3, 13, 16.2 and this paragraph 16.1 of these Terms of Reference (together with any definitions used within such paragraphs) may only be amended by the Council with the approval of the Energy Ombudsman Service Member Board, and after consulting with and taking due account of the views of the Energy Ombudsman Service Members and such other bodies as the Council considers appropriate.
- 16.2. All other provisions of these Terms of Reference may only be amended by the Council after consultation with, and taking due account of the views of the Energy Ombudsman Service Member Board, the Energy Ombudsman Service Members and such other bodies as the Council considers appropriate.

17. Interpretation

- 17.1 Unless the context otherwise requires, the definitions and interpretations set out below shall apply to these Terms of Reference and, in addition, to the extent not otherwise set out below and not otherwise inconsistent herewith, the definitions and interpretations included in Article 1 of the Articles shall also apply to these Terms of Reference:

“Annual Budget” means each annual financial budget for the Company for the period commencing either from (and including) the commencement of the provision and operation of the Energy Ombudsman Service or, if later, from (but excluding) the end of the period covered by the last annual financial budget (in each case, the Budget Commencement Date), and ending on (and including) the next following Company Year End;

“Annual Business Plan” means each annual business plan for the Company for the period commencing either from (and including) the commencement of the provision and operation of Energy Ombudsman Service or, if later, from (but excluding) the end of the period covered by the last annual business plan (in each case, the Business Plan Commencement Date), and ending on (and including) the next following Company Year End;

“Articles” means the Articles of Association from time to time of the Company;

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

“Company” means The Ombudsman Service Limited;

“Company Year End” means 31 March in each year, or such other financial year end date as the Company may adopt from time to time;

“the Council” means the Board of Directors of the Company, or the members of such Board present at a duly convened meeting of the Council at which a quorum is present, and Council Member means an individual member of the Council;

“customer” means any person who is party to a contract with an Energy Ombudsman Service Member for the supply or provision of any service falling within the jurisdiction of the Ombudsman and Energy Ombudsman Service. For the avoidance of doubt, where the context allows, it includes a person who is connected to or seeks to be connected to, the network owned or operated by an Energy Ombudsman Service Member;

“domestic customer” means a customer who uses or requests for use any service falling within the jurisdiction of the Ombudsman and the Energy Ombudsman Service for purposes which are outside his or her trade, business or profession;

“Energy Networks Association” means the body that is funded by licensed electricity distributors and gas transporters in Great Britain;

“Energy Network Operator” means a distributor of energy who holds a UK gas transporter and/or electricity distribution licence;

“Energy Ombudsman Service” means the Ombudsman Service provided to Energy Suppliers and Energy Network Operators;

“Energy Ombudsman Service Member” means an Energy Supplier or Energy Network Operator admitted into the Energy Ombudsman Service by the Council in accordance with these Terms of Reference (and (as the context so requires) each and/or any of its subsidiary undertakings from time to time) which has put its relevant services under the jurisdiction of the Ombudsman and the Energy Ombudsman Service;

“the Energy Ombudsman Service Member Board” means the Member Board referred to in Paragraphs 3 and 4 (inclusive) of these Terms of Reference, or the members of such Board present at a duly convened meeting of the Energy Ombudsman Service Member Board at which a quorum is present;

“Energy Ombudsman Service Industry Member” means an individual who is appointed to the Member Board by the Energy Ombudsman Service Member who is not an Independent Council member;

“Energy Ombudsman Service Board Member” means an individual member of the Energy Ombudsman Service Member Board;

“Energy Retail Association” means the body that represents Britain's major domestic electricity and gas suppliers in the domestic market in Great Britain;

“Energy Supplier” means a provider of energy who holds a supply licence for the supply of gas and/or electricity to domestic and Small Business customers;

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

"Finance Board" means a Finance Board constituted in accordance with the Articles where there are two or more Ombudsman Services with Member Boards;

"licences" refers to:

- (a) Gas licences:
 - (i) a licence under section 7A(1) of the Gas Act 1986 (supply licences)
 - (ii) a licence under section 7(2) of the Gas Act 1986 (transportation licences)
- (b) Electricity licences:
 - (i) a licence under section 6(1)(d) of the Electricity Act 1989 (supply licences)
 - (ii) a licence under section 6(1)(c) of the Electricity Act 1989 (distribution licences)

"Memorandum" means the Memorandum of Association from time to time of the Company;

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

"Ombudsman Service" means the ombudsman services which the Company administers in accordance with the Articles and the Terms of Reference;

"Remedy" and "Remedies" shall have the meaning attributed to them in paragraph ♦ above;

"small business customer" means a business customer as defined by Ofgem from time to time;

"Small Supplier" means an Energy Supplier who has less than 1 million customers;

"subsidiary undertaking" has the meaning given in section 258 of the Act; and

"user" means a legal entity or natural person using or requesting for use any service falling within the jurisdiction of the Energy Ombudsman Service.

- 17.2 Words importing the singular number include the plural and vice versa.
- 17.3 Words importing the masculine include the feminine and vice versa.
- 17.4 References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time modified, amended re-enacted or supplemented.
- 17.5 Unless the context otherwise requires, references to paragraphs and subparagraphs are to paragraphs and sub-paragraphs of these Terms of Reference.

- 17.6 These Terms of Reference are to be read and construed subject to the Articles and Clause 3 of the Memorandum and, in the event and to the extent of any conflict or inconsistency between the provisions of these Terms of Reference and the provisions of the Articles or Clause 3 of the Memorandum, the provisions of the Articles and/or such Clause 3, as the case may be, shall prevail and apply.