

# I'm THE REMOVALS INDUSTRY OMBUDSMAN SCHEME

## TERMS OF REFERENCE & PROCEDURAL RULES

### 1. Interpretation

In these Rules:

- 1.1 "Complainant" means the person who has made the complaint or raised the dispute against the Member and references to the Complainant shall where the context permits include a reference to any authorised representative of the Complainant
- 1.2 "complaint" means a complaint of negligence, breach of contract or duty or poor administration against a Member
- 1.3 "Member" means any recognised trade or similar association representing persons or corporate bodies providing removal and/or storage services which is or at a relevant time had been accepted as a member of the Scheme
- 1.4 "the Ombudsman" means the person for the time being appointed by the Scheme to investigate complaints and to hear and determine disputes in accordance with these Terms and Rules
- 1.5 "party" means the Complainant or the Respondent (as defined in these Terms and Rules) as the context permits and "parties" shall be construed accordingly
- 1.6 "Respondent" means the person or corporate body which is a member of or represented by the Member to whom the complaint or dispute relates and references to the Respondent shall where the context permits include a reference to any authorised representative of the Respondent
- 1.7 "Scheme" means The Removals Industry Ombudsman Scheme
- 1.8 "Terms and Rules" means the Terms of Reference and Procedural Rules for the Scheme as set out in this document or as properly replaced or amended from time to time

### 2. The Ombudsman's Powers and Duties

- 2.1 The Ombudsman's main powers and duties are:
  - 2.1.1 To receive complaints from any person relating to the provision to that person pursuant to a contract made in the United Kingdom of removal and/or storage services by any member of a Member
  - 2.1.2 Subject to the Terms and Rules to consider those complaints and facilitate their disposal either by agreement between the parties, by recommendation or award, or by such other means as are in the circumstances both reasonable and expedient
- 2.2 In addition the Ombudsman may within the provisions of the Terms and Rules prescribe the procedure for the making and resolution of a complaint

### **3. Application of Terms and Rules**

The Terms and Rules shall be used in connection with the processing of all complaints made to the Ombudsman

### **4. Prescribed Form of Complaint**

Any complaint made to the Ombudsman shall be in the form prescribed by the Ombudsman from time to time and contain the details required to complete the prescribed form

### **5. Amendment of Complaint**

The Complainant may with the agreement of the Ombudsman (which shall not be refused unreasonably) at any time before the determination of the complaint:

- 5.1 submit an additional statement in relation to the complaint
- 5.2 amend details of the complaint or any additional statement to the complaint

### **6. Withdrawal of Complaint**

The Complainant may withdraw a complaint:

- 6.1 Before the end of 28 days from the date of receipt of a copy of the reply referred to in clause 8.2 by sending to the Ombudsman a notice stating that the complaint is withdrawn signed by the Complainant
- 6.2 Thereafter at any time with the agreement of the Ombudsman which shall not be refused unreasonably

### **7. Acceptance or Rejection of Complaint by Ombudsman**

- 7.1 Upon receipt of a complaint in the prescribed form the Ombudsman shall send to the Complainant an acknowledgement of receipt
- 7.2 After due consideration the Ombudsman shall decide whether or not the complaint is one he is able to investigate further within the Terms and Rules
- 7.3 If the Ombudsman decides that the complaint is one he is able to investigate further he shall:
  - 7.3.1 inform the Complainant of acceptance of the complaint for investigation and
  - 7.3.2 forward a copy of the Complainant's prescribed complaint form to the Respondent and the procedure set out in clause 8 shall then apply
- 7.4 The Ombudsman shall be entitled to decide not to investigate a complaint if it appears to him that there has been no breach of contract or breach of duty by the Respondent or that the matter otherwise falls outside the ambit of the Terms and Rules in which event he shall inform the Complainant in writing that he does not propose to conduct an investigation together with the reasons for such decision

## **8. Procedure**

- 8.1 Where the Ombudsman proposes to investigate a complaint a copy of the prescribed form of complaint together with any amendments or additional statements or other documents received from the Complainant shall be supplied forthwith to the Respondent
- 8.2 Within 28 days of receipt of a complaint the Respondent shall reply to the Ombudsman in writing acknowledging receipt and stating:
  - 8.2.1 Whether or not the Respondent opposes the allegations made in the complaint and, if so, any facts or details on which it relies in opposition
  - 8.2.2 The Respondent may in its reply, or in a separate notice to the Ombudsman submitted within the 28 day period request further particulars of the complaint
- 8.3 If no reply is received from the Respondent by the Ombudsman within the periods referred to in clause 8.2 or any extension of that period allowed by the Ombudsman, or if the Respondent states in writing that it does not oppose or withdraws its opposition to the complaint the Ombudsman may in any such case determine the complaint forthwith
- 8.4 Where the Respondent opposes the complaint and the Ombudsman is not satisfied with the information or documents received or any statements made he may make further investigation of the Respondent's records, take written evidence from the Respondent's staff or take such other steps as he considers necessary to obtain sufficient information on which to form an opinion and make a determination. The Ombudsman shall also have the power to:
  - 8.4.1 Order either or both of the parties to produce documents or property for inspection
  - 8.4.2 Make an examination of the subject matter of the investigation
  - 8.4.3 Conduct such enquiries of any party as the Ombudsman considers desirable
  - 8.4.4 Receive and take into account any evidence as the Ombudsman considers relevant
  - 8.4.5 Appoint an expert or experts to report on specific issues or take legal advice
  - 8.4.6 Proceed with the investigation notwithstanding either party fails to comply with these Terms and Rules or with the Ombudsman's directions, or if either party fails to comply with any instruction given by the Ombudsman
  - 8.4.7 Terminate the procedure if the Ombudsman considers the case to be incapable of determination under the Scheme
- 8.5 The parties shall deliver to the Ombudsman by such date as the Ombudsman may specify sufficient copies of any document or other material on which it intends to rely to enable copies to be available to the Ombudsman and the other party or parties
- 8.6 Where a document or other material is obtained by the Ombudsman pursuant to a request made by him the Ombudsman shall supply a copy to any other party
- 8.7 It shall be a condition of the supply of any document under these Terms and Rules that a party shall use the document supplied only for the purposes of the investigation

## **9. Determination**

- 9.1 The Ombudsman will make and publish a determination with reasons after considering all submissions and will send a copy of the determination to each party
- 9.2 Any determination made under the Scheme shall be final and binding on all parties so far as the Scheme is concerned which means that there will be no right of appeal within the Scheme nor any right to appeal the decision of the Ombudsman outside the Scheme and the Ombudsman shall not be liable to any of the parties for any breach of duty, save where he has been guilty of gross misconduct or fraud
- 9.3 Any party may request the return of any of its original documents submitted in evidence but must do so within 42 days of the date of dispatch of the determination.

## **10. Compensation**

- 10.1 Where the complaint is upheld the Ombudsman may at his sole discretion order the Respondent to make a payment to the Complainant as compensation for loss, damage or inconvenience suffered by the Respondent as a result of the acts and omissions of the Respondent
- 10.2 Unless otherwise directed any amount so awarded shall be paid as directed by the Ombudsman, any such payment to be made by the Respondent directly to the party entitled to receive it

## **11. Basis of Determination**

- 11.1 In making any Determination including any award of compensation under the Terms and Rules the Ombudsman shall do so by reference to what is in his opinion fair in all the circumstances and:
  - 11.1.1 Shall observe any applicable rule of law or relevant judicial or statutory authority
  - 11.1.2 Shall have regard to general principles of good practice in the removals industry and general good business practice
  - 11.1.3 Shall where he considers it appropriate consult within the removals industry or elsewhere
- 11.2 Notwithstanding clause 11.1.1 the Ombudsman shall not be bound by:
  - 11.2.1 Any legal rule of evidence
  - 11.2.2 Any previous decision made by him or any predecessor in office

## **12. Cost of the Investigation**

- 12.1 The Ombudsman's fees and expenses and those of any expert or legal adviser appointed by him in relation to the investigation of any complaint shall be met by the Respondent and the administration costs of the Scheme shall be met in full by the Scheme and shall be recovered from the Members
- 12.2 Each party shall bear its own costs (if any) of preparing and submitting its case to the Ombudsman

### **13. Miscellaneous Powers of the Ombudsman**

13.1 The Ombudsman may:

13.1.1 Extend the time appointed by these Rules for doing any act, even when the time appointed has expired

13.1.2 Subject to clause 13.2 at any stage of the investigation order to be struck out or amended any complaint or written representation in the complaint on the grounds that it is frivolous or vexatious

13.1.3 Subject to clause 13.2 order the discontinuance of an investigation if he considers it appropriate to do so

13.2 Before making any order under clauses 13.1.2 or 13.1.3 the Ombudsman shall send notice to the party to the investigation or reference against whom it is proposed that any such order should be made giving him an opportunity to show cause why such an order should not be made

13.3 In addition to the powers conferred by the Terms and Rules the Ombudsman shall have the widest discretion permitted by law to complete any investigation in a just, economical, expedient and final manner in accordance with these Terms and Rules and natural justice

### **14. Miscellaneous Duties of the Ombudsman**

14.1 The Ombudsman shall have overall responsibility for the conduct of the business of the Scheme

14.2 The Ombudsman shall endeavour to attend each meeting of the General Committee of the Scheme and give the General Committee any information and assistance (including general information about any complaint) which they reasonably request

14.3 No later than 28 days before the Annual General Meeting of the Scheme the Ombudsman shall send to all members of the General Committee of the Scheme a report containing a general review of his activities during the previous financial year and such other information as the General Committee of the Scheme may reasonably direct

### **15. Limits on the Ombudsman's Powers**

The Ombudsman shall have no power to consider a complaint:

15.1 Unless the Complainant has first tried to resolve the complaint by utilising any complaint resolution procedure operated by the Respondent and/or the Member and has been unsuccessful in achieving a resolution

15.2 If at any time it appears to the Ombudsman that it is more appropriate that the complaint be dealt with by a court of law or other available arbitration procedure

15.3 If it is reported to the Ombudsman that the subject matter of the complaint falls within the jurisdiction of any other complaints or conciliation scheme

15.4 If he is not satisfied that the complaint is made by or on behalf of an individual to or for whom the services in question were provided

- 15.5 If the complaint is made to him more than twelve months after either the service to which the complaint relates was provided or any available procedures as referred to in clause 15.1 have been exhausted, whichever is the later
- 15.6 Except where relevant new evidence is available, if the subject matter of the complaint was comprised in a complaint by the same Complainant (whether on his own or with jointly with others) previously considered by the Ombudsman
- 15.7 If in the reasonable opinion of the Ombudsman the complaint being pursued is trivial, unreasonable, frivolous, vexatious or false

## **16. Irregularities**

- 16.1 Any irregularity resulting from failure to comply with any provisions of the Terms and Rules shall not of itself render the proceedings or any Determination void
- 16.2 Clerical mistakes in any written statement of a Determination or award of compensation (including in any direction made) or errors arising in such a document from an accidental slip or omission may be corrected in writing by the Ombudsman

## **17. Method of Delivering Notices and Other Documents**

- 17.1 Any document required or authorised by the Terms and Rules to be sent or delivered to any person shall be duly sent or delivered to that person:
  - 17.1.1 If it is sent to him at his proper address by first class post in which event it shall be regarded as received 2 working days after the date of posting
  - 17.1.2 If it is transmitted to him at that address as a facsimile in which event the document shall be regarded as received at the time it is sent
  - 17.1.3 If it is delivered to him or left at his proper address by hand in which event the document shall be regarded as received at the time it is so delivered or left
- 17.2 The proper address for the Ombudsman is the address of the principal office of The Scheme from time to time
- 17.3 The proper address of any other person to whom any such document is to be sent or delivered shall be the address given by that person or, if none, the last known address of that person or, in the case of an incorporated company or body, the registered or principal office of that company or body

## **18. Substituted service**

If any person to whom any document is required to be sent or delivered for the purpose of the Terms and Rules cannot be found or has died and has no known personal representative, or is out of the United Kingdom, or if for any other reason service on him cannot be readily effected, the Ombudsman may dispense with service on such person or may make an order for substituted service on such other person in such other form as is reasonable