

# **The Hunt Review**

**The Independent Review of the Financial Ombudsman Service**

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## **ACCESSIBILITY AND TRANSPARENCY**

**A CALL FOR EVIDENCE TO THE INDEPENDENT  
REVIEW OF THE FINANCIAL OMBUDSMAN SERVICE  
BY LORD HUNT OF WIRRAL MBE**

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## 1. FOREWORD BY LORD HUNT OF WIRRAL MBE

I was delighted to accept the remit to undertake the second independent review of the Financial Ombudsman Service (FOS). This task links my professional interests as Chairman of Financial Services at Beachcroft LLP with my former ministerial responsibilities for improving accessibility and performance in public services.



Strong complaints systems are essential in any service industry. When consumers believe that mistakes have been made, businesses must find ways to address those concerns quickly and effectively. Sometimes this will mean providing an apology, perhaps with appropriate redress. Sometimes a complaint will highlight more general issues which a company needs to address. Often, however, the right response is an explanation of why the business considers that the consumer's perception is mistaken.

But what happens in those cases where business and consumer views are not reconciled? Or where consumers lack the confidence or competence to express their grievance clearly? The courts provide one means of resolution, but consumers may see them as slow, expensive and intimidating. Businesses may perceive them as adding commercial risk, uncertainty and delay. So the need for effective, accessible alternative dispute resolution (ADR) is clear.

Nowhere is this more true than in financial services. The sums involved and the long-term nature of many products mean that feelings can run high when problems occur. In some cases, the legal framework is simply out of date<sup>1</sup> and issues of regulatory compliance, notably with the principle of "Treating Customers Fairly", add a further layer of complexity. Consumers and businesses both need expert and accessible ADR.

The FOS exists to meet this need. It provides an ADR service across the full range of the retail financial services sector, including, from April 2007, consumer credit disputes. It is the largest ombudsman service in the United Kingdom and the largest specialist financial ombudsman in the world.

Of course, biggest does not automatically mean best. Constant scrutiny is needed to maintain and improve performance. The FOS has been committed to regular independent external scrutiny of its effectiveness. In 2004, Professor Elaine Kempson reviewed case-handling and case-management procedures. My review will begin by looking at how accessible the FOS is to its users – notably individual complainants and small businesses – and how effectively it uses and communicates the information generated by its work to improve understanding and raise standards.

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<sup>1</sup> See, for example, the discussion document on insurance contract law from the Law Commission and Scottish Law Commission at [www.lawcom.gov.uk/docs/cp182\\_web.pdf](http://www.lawcom.gov.uk/docs/cp182_web.pdf)

My aim is to produce concrete recommendations in the first quarter of next year. These may range from short-term suggestions, capable of early implementation by the FOS, to more strategic proposals, which will help to determine direction in the medium-term.

The Chief Ombudsman, Walter Merricks and his staff have been helpful in providing information for the initial stages of our work. I am now determined to involve all the FOS's stakeholders in this process. After all, anybody who sets out to review transparency and accessibility has to practise what he preaches.

So, I hope to hear from a wide range of consumers, businesses and representative bodies through formal responses to this call for evidence document, through the website – [www.thehuntreview.org.uk](http://www.thehuntreview.org.uk) - which I am launching today and through a range of informal discussions which we will be hosting over the coming months. I hope to gather, not only experience and views of the FOS's current practice, but also lessons from other organisations and other sectors to provide practical solutions to the challenges ahead.

I look forward to hearing from you.

A handwritten signature in black ink, appearing to be 'Lord Hunt of Wirral', written in a cursive style.

**LORD HUNT OF WIRRAL MBE**  
**Chairman, Financial Services Division**  
**Beachcroft LLP**

## 2. BACKGROUND TO THE REVIEW

- 2.1 As a public-service organisation, the Financial Ombudsman Service (FOS) has been committed by its Board to external scrutiny through a three-yearly independent review.
- 2.2 The last review was conducted in 2004 by a team lead by Professor Elaine Kempson. The report - "Fair and reasonable: an assessment of the Financial Ombudsman Service" – looked at the FOS's case-handling procedures and systems and assessed its performance in terms of quality, consistency, process and value.<sup>2</sup> Its overall conclusion was that "the Financial Ombudsman Service is a thoughtful, well-managed organisation that is doing a good job under difficult circumstances." The FOS has taken the specific recommendations of that report into account in its management decisions in the intervening period, notably in the creation of a senior post (reporting directly to the chief ombudsman) to lead work on quality assurance.

### Terms of Reference

- 2.3 The aim of the current review is not to duplicate this earlier exercise, but to begin by looking at the quality and effectiveness of the FOS's engagement with the public and industry. Lord Hunt of Wirral MBE, Chairman of Financial Services at Beachcroft LLP, has agreed to lead the review. He is supported by a team comprising Chris Kenny, Richard Hobbs and Michael McManus.
- 2.4 Chapter 4 of the Financial Ombudsman Service's current corporate plan<sup>3</sup> sets out four objectives for the organisation in 2007-08 and beyond:
- *"continuous improvement of our processes and systems, so that they remain capable of delivering a cost-effective redress service which meets ever-rising expectations;*
  - *to manage staff and other resources so as to provide an efficient and effective service, irrespective of future fluctuations in numbers and types of cases.*
  - *to enhance dialogue with our stakeholders so that we remain responsive to their needs and to the public interest, while continuing to provide an impartial service; and*
  - *to help secure wider public benefits by using our expertise and resources to help enhance and extend accessible and effective dispute-resolution."*
- 2.5 The scope of the external review is defined as follows:
- *"..... to inform the work of our accessibility taskforce – by considering, from an external perspective, whether the ombudsman service ought to do more in order to be visible and accessible to those it is designed to serve*

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<sup>2</sup> See [www.financial-ombudsman.org.uk/news/updates/2004-07-kempson.htm](http://www.financial-ombudsman.org.uk/news/updates/2004-07-kempson.htm) for a copy of the report.

<sup>3</sup> See [www.financial-ombudsman.org.uk/publications/pb07/index.html](http://www.financial-ombudsman.org.uk/publications/pb07/index.html) for a copy of the current corporate plan.

- . .... [to] consider whether the ombudsman service is making the most effective use of the information and experience derived from its dispute-resolution work, in order to add value for the benefit of industry, consumers and regulators."
- 2.6 These terms of reference are clearly particularly relevant to the third and fourth of the objectives set out in para 3.4. But achieving effective public and industry engagement can also contribute to the organisation's overall efficiency in case handling and resource allocation by helping to
- reduce the likelihood of consumers approaching the FOS at the wrong stage or with an inadequate understanding of its role;
  - reduce the number of complaints by facilitating learning within the industry about the root causes of complaints;
  - set reasonable expectations on both sides of the dispute about the FOS's approach.
- 2.7 We will not repeat Professor Kempson's detailed scrutiny of the FOS's working systems, but we are interested to hear comments about the FOS's overall approach which may have implications for how it communicates in future. We will also explore any wider impact on the FOS of any changes we recommend in relation to its current practices on communication and accessibility. Where relevant, we will highlight possible implications of our recommendations for other organisations, for example the FSA, trade or professional bodies, individual businesses or consumer advisers. Respondees will want to reflect this in their response to this call for evidence.

### **Purpose of this Document**

- 2.8 The purpose of this document is to call for evidence to assist the Review Team in reaching conclusions. It does not seek to test specific views or air options, but instead aims simply to
- describe current practice in the FOS and the reasons for it;
  - highlight changes in the external environment which may have an impact;
  - set out the broad issues and specific questions on which the team would welcome views.
- 2.9 Section 3 therefore sets out the issues in relation to accessibility. Section 4 explores the perhaps broader area of how the FOS's practices on transparency and engagement with businesses, consumers and regulators may help the market to function more effectively. Section 5 gives detailed consultation questions and section 6 describes the next steps in our work.

### **3. HOW ACCESSIBLE IS THE FINANCIAL OMBUDSMAN SERVICE?**

#### **Background**

- 3.1 The relevant primary legislation establishing the FOS is contained in sections 225-234 of the Financial Services and Markets Act 2000. The specific regulatory rules on its operation are spelled out in the FSA Handbook. DISP1 sets out the responsibilities on businesses to alert consumers to the existence of FOS, notably at the point when a dispute reaches deadlock. DISP2 sets out the Ombudsman's jurisdiction and DISP3 sets out high level rules for the Ombudsman's process.
- 3.2 The regulatory framework neither prescribes nor proscribes any specific access-related or publicity activity by FOS. In practice, the FOS has always invested significantly in ensuring that its services are accessible to both consumers and businesses. This section describes the nature of that investment to date and future plans. The focus here is on immediate accessibility and understanding of the nature of the service. Broader questions of transparency on policy approach, FOS decisions and performance of individual businesses are covered in section 4.

#### **Initial Access**

- 3.3 The FOS's Customer Contact Division (CCD) follows a traditional opening pattern of 09:00 to 17:00 on Monday to Friday. FOS has not, so far, followed the extended working day or weekend opening increasingly common in parts of the service sector. On average, it receives 1,400 telephone contacts and 1,300 written enquiries (90 per cent by post, 10 per cent by email) each working day. It is not, however, possible to initiate a complaint by text message at present. Unlike a number of ombudsman services overseas, phone calls are on a local rate, rather than a freephone number.
- 3.4 CCD works to the following service standards. (Figures in brackets give actual performance for the whole of 2006).
- 80 per cent of calls answered within 20 seconds (85 per cent)
  - Fewer than 2 per cent of calls abandoned (>2 per cent)
  - Full response to 75 per cent of written enquiries within 5 working days (90 per cent) and 100 per cent within 10 days (100 per cent)
- 3.5 The FOS forecast for the coming financial year is that CCD will receive over 500,000 phone calls and items of mail from enquirers. Some of these will raise issues which can be resolved on the spot or general enquiries that are outwith the FOS's remit. This is expected to leave about 228,000 complaints where a specific computer record is opened. Of these: about 75,000 are likely not to be pursued by the consumer after receiving appropriate advice from the FOS; about 58,000 are expected to relate to complaints which are referred to the business (because the consumer has not yet raised the issue with the business) and are resolved at that stage, sometimes with input from the FOS; and about 15,000 are expected to be resolved by phone without having to become a formal case. This is likely to leave about 80,000 complaints that become formal cases requiring investigation.

- 3.6 Cases may not progress beyond CCD for a variety of reasons. CCD staff may
- simply provide more information on how a product works to equip a consumer to have a better-informed conversation with a business;
  - where a complaint has not been referred to the business, help the consumer to clarify the precise nature of the complaint and then forward details directly to the business concerned. The FOS will then take no part in consideration of the complaint, unless the complainant refers it back to them. This gives the business an opportunity to resolve the complaint first, but may be wrongly perceived by some consumers as a "fob-off" from the FOS;
  - decide not to take forward a complaint in cases where they consider there is no reasonable prospect of success or where the business has accepted the complaint in full and clearly made a reasonable offer of settlement.
- 3.7 Before a complaint can be accepted, a complaint form must be completed and signed. CCD staff will help callers and correspondents by capturing the information needed on the complaints form and sending this "pre-populated" version to the consumer for amendment and signature. The FOS believes that it requires a physical signature to discharge the business from its duty of confidentiality to the complainant. It is not therefore possible for a complaint to be initiated solely through email contact.
- 3.8 In relation to potentially vulnerable complainants
- The FOS aims to keep use of automation to a minimum. Initial calls (on a local rate number) face only one automated response, which asks whether their query deals with banking, insurance or investment;
  - Alternative formats, such as Braille, typetalk, large print and audio, are frequently used, reflecting the 12 per cent of consumers who tell the FOS that they have specific disabilities or needs;
  - an instant phone-based interpreting service is used for those with difficulty in communicating in English – 60 calls in 10 languages in 2006 – and letters and documents were translated into and out of 20 languages in the course of the year. This is in addition to general information about the services being available in 19 languages on the website.
- 3.9 Once a complaint is accepted for consideration, the level, nature and frequency of communication with the consumer(s) and business(es) involved will be driven by a variety of factors, notably the complexity of the case; the extent to which evidence is incomplete or disputed; a need to await evidence from the other party; or the adjudicator's own caseload. Therefore, while complainants and businesses are always made aware of the named individual leading on their case, there can be some unavoidable lulls in communication between complainant, business and the FOS.
- 3.10 Staff of the FOS need to be mindful of the needs of vulnerable consumers throughout the process. At one level, this is simply a matter of courtesy and customer service and the same disciplines noted in relation to CCD activities

remain relevant. More importantly, however, an assessment of the consumer's level of understanding of the issues behind the complaint is often a material factor in the ultimate determination of a case. The FOS's ability to call for documents from businesses can help to redress any problems of information asymmetry between companies and consumers.

- 3.11 At the same time, however, the FOS needs to be alert to consumers attempting to influence its judgement by offering deliberately incomplete information. The challenge is to ensure that the FOS can extract the full information to provide a fair outcome, without becoming too bureaucratic, intrusive or heavy-handed in its approach.
- ***Are there potential improvements to the FOS's working methods at initial contact and subsequently which would improve its accessibility and help to ensure fair outcomes for both businesses and complainants? Can any additional costs be justified?***
  - ***Are there any particular improvements which would assist potentially vulnerable groups?***
  - ***How far is a material - or perceived - barrier to accessibility created by the eight-week period that businesses are granted to resolve complaints before they can be considered by the FOS?***

### **Consumer Outreach**

- 3.12 The FOS has always recognised that accessibility demands much more than the provision of an effective and reasonably user-friendly "front end" to its service. It has therefore undertaken a range of activities, which might be described as "outreach", to ensure that as many consumers as possible are aware of its activities and have a realistic understanding of its role.
- 3.13 The FOS's work in this area is steered by its Accessibility Taskforce. This group comprises the FOS's Decision Director, one of the five lead ombudsmen, the Director of Communications and other senior policy and operational staff. Its terms of reference cover the prioritisation and coordination of accessibility policies and activities across the service, to enhance the service's responsiveness to the individual needs of its users (and potential users). The Accessibility Taskforce does not, however, consider the broader question of the relative priority of outreach within the overall work of the FOS.
- 3.14 The Board and management of the FOS see the importance of accessibility growing in the light of the recent extension of the remit to cover complaints about consumer credit borrowing. Consumer credit is relied on by a much wider segment of the population than use investments or financial products related to home ownership, complaints about which have dominated the FOS's workload in recent years. So it is particularly important that the FOS is accessible to those who may not be used to expressing themselves in writing or find it generally difficult to advocate their own cause.
- 3.15 However, there is also a case for ensuring good communication more broadly in the light of aggressive marketing campaigns by claims management companies. The FOS has, for example, devoted considerable efforts in the

media to ensuring that consumers are aware they have the right to have their complaints considered without paying a charge, and that they do not need third-party help to have their complaint considered by the Ombudsman.

3.16 In addition to routinely surveying consumers who have used its service, the FOS surveys the generality of consumers each quarter to investigate knowledge of the service. This enables it to test understanding among groups of consumers segmented by age, gender, ethnicity, regional location and social background. The outcome of this research has influenced recent campaigns designed to raise awareness and manage expectations of the role of the FOS amongst

- younger women
- older teenagers, taking on their first financial commitments
- the Asian community, where an innovative partnership has been forged with Zee TV
- young families.

Shifts in awareness levels in the regular surveys provide one means of evaluating the impact of such campaigns, although it is not always possible to establish a direct causal link.

3.17 Other key means of communication are consumer factsheets (8 are currently available on the work of the FOS in general and the most common categories of complaints), the consumer leaflet *Your Complaint and the Ombudsman* (1m copies distributed annually), and the FOS website, which received 40 million hits in 2006-07. The website includes guidance for consumers on how to make a complaint.<sup>4</sup>

3.18 In addition, the FOS works with consumer advice providers, such as Citizens Advice, trading standards departments and, increasingly, Consumer Direct. The focus is specifically on sharing front-line complaints-handling skills and better understanding of the role of the Ombudsman to help avoid wrongly directed complaints. In addition to contact at the national level, the FOS undertakes a range of activities, including stands at relevant exhibitions and speaking at regional conferences, to reach front-line staff in advisory agencies. In practice, relatively few complaints come directly through those channels – 7 per cent in 2006 – but they have an important and arguably growing role to play as dissemination channels for information about the FOS.

- ***What evidence do you have on the current effectiveness of the FOS in reaching individual consumers directly and/or through trusted third parties?***
- ***Are you aware of good practice on accessibility within your own organisation or elsewhere that the FOS might consider adopting?***
- ***How should FOS approach the identification and targeting of under-represented groups ?***

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<sup>4</sup> See [www.financial-ombudsman.org.uk/consumer/complaints.htm](http://www.financial-ombudsman.org.uk/consumer/complaints.htm) 'what to do if you have a complaint about a financial product or service'

## Business Outreach

3.19 Around half of the FOS's cases relate to the ten largest financial groups. At the other extreme, fewer than 5 per cent of cases relate to businesses that send the FOS five or fewer cases each year, and the overwhelming majority of small businesses have no cases at all. The FOS invests in general communication with both groups, but gives particular weight to the latter, as many small firms, and in particular the new community of consumer credit providers, will have little knowledge of the service.

3.20 Mechanisms for this communication include

- contact through dedicated FOS/industry liaison groups, trade associations and more ad hoc business groupings – the FOS maintains links with over 150 trade associations, both directly in the financial services sector and, in relation to its consumer credit jurisdiction, in other sectors where consumer credit is merely an adjunct to members' core activities. Often, this dialogue focuses on reaching practitioners through attendance at regional events;
- a dedicated section on its website<sup>5</sup>, including technical notes and quick guides for business on general questions of how the FOS approaches its jurisdiction generally and more detailed guidance on issues such as redress calculation;
- technical advice desk – this line for businesses and consumer advisers receives some 18,000 enquiries per year. In the last quarter 67 per cent came from professionals dealing with complaints (with general insurers, banks and independent financial advisers accounting for the majority of the calls), 18 per cent from consumer credit firms and the remainder from consumer advisers and others. The calls include general queries about the nature of the FOS's jurisdiction and work, guidance on issues thrown up by complaints that have not yet been referred to the FOS and requests for speakers from the FOS to visit businesses.

3.21 Despite the high call volumes, the technical advice desk is a small operation, usually staffed by no more than 4 staff at any one time. It works to the following quality standards (figures in brackets give achievement in the last available quarter):

- 80 per cent of calls answered in 20 seconds or less (80 per cent)
- call abandon rate of no more than 4 per cent (4.8 per cent)
- emails answered within 3 days or acknowledged in cases where substantive research needed (100 per cent)

3.22 The FOS seeks to ensure that information given by the technical advice desk is consistent with practice in the organisation through use of the various systems to document casework practice and procedures – see section 5. In addition, information gathered by the technical advice desk is fed through into the wider organisation through regular informal contact with ombudsmen to

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<sup>5</sup> See [www.financial-ombudsman.org.uk/faq/businesses/index.htm](http://www.financial-ombudsman.org.uk/faq/businesses/index.htm) 'information for businesses covered by the ombudsman service'

resolve individual queries, to underpin the regular "relationship management" contact with larger businesses (described in the next section) and to inform the work of the FOS 'Small Firms Taskforce' whose role is to ensure that the FOS works effectively with businesses which are unused to dealing with the Ombudsman.

- ***How far do the FOS's practices enable or limit the ability of businesses (in particular small businesses) to understand how they can best participate in and contribute to a satisfactory resolution of complaints made against them?***
- ***What should the priority areas be for business outreach?***

### **Outreach Strategy**

- 3.23 Each year, the outreach strategy is drawn up to reflect the objectives and priorities set out in the corporate plan and budget and is approved by senior management in the FOS Executive. For 2007-08, for example, resources are being concentrated on improvements to the technical advice desk, with proportionately less being devoted to independent relationship management activities with the 45 largest businesses, described in para 4.27.
- 3.24 This Review will address the issue of the relative importance to be given to outreach within the overall priorities of the FOS. Clearly the FOS needs to adopt good practice in its communication with individual consumers, particularly those who find any complaints process daunting. It also needs to deal effectively with businesses, particularly those with whom it deals only infrequently. But broader promotional activity is, to some extent, discretionary. For example, it would be open to the FOS simply to produce materials to enable third parties to advise consumers. The FOS and the FSA could choose to rely on the regulated communications of businesses with consumers throughout the lifecycle of a complaint as the main means of communication and perhaps seek to improve the effectiveness of this channel. As broadband penetration increases, the FOS could choose to use its website as its principal means of communication. This would tend to reduce costs for the industry or, alternatively, enable reinvestment in the FOS's core dispute resolution activity. (However, there would inevitably be a risk that currently disadvantaged groups would continue to be excluded unless pro-active and remedial action could be taken to reach out to them.)
- 3.25 The counter-argument is that the FOS itself is far better placed to give information than any third party and that there are clear cost benefits in ensuring that both consumers and businesses are better informed when approaching the service. Current survey evidence suggests that the FOS is better known than many of the potential "consumer gateway" organisations. Only 19 per cent had heard of the FOS from the financial services industry, which suggests that the communication prescribed in regulation is not sufficient on its own. The media are a significantly more important source.
- 3.26 A middle position might be to argue for strict prioritisation and assessment of the effectiveness of the FOS's promotional activity, with programmes being dropped either when their goals are clearly achieved and consolidated, or where progress is so slow that different approaches are clearly required.

- *What priority for investment should improving accessibility have within the FOS's broader agenda?*
- *And what should its accessibility priorities be – should they differ between different elements of its work?*

#### **4. CAN FOS INFORMATION MAKE THE MARKET WORK BETTER?**

4.1 Section 3 has specifically considered the accessibility of the FOS for businesses and consumers involved with individual complaints. The Review will, however, also focus on the FOS's broader communication activity.

4.2 This can be divided into four distinct areas:

- conveying the outcome of individual cases;
- developing and communicating the practices and policies of the FOS;
- communicating the outcome of the FOS's activity to individual companies and the wider market to improve performance and, in particular, to reduce the number of complaints in the future;
- formal and informal communication with the FSA and the OFT to help them carry out their policy and supervisory functions.

4.3 This section considers issues under each heading. Our starting point in each case will be to consider to what extent the FOS can help the financial services market function more effectively by ensuring that

- its own work is fully informed by stakeholder views
- the information it holds as a result of its work is communicated in ways which have the maximum positive impact
- confidence is built in its own practices.

#### **Information about individual cases**

4.4 Although the FOS is a statutory body, its practice regarding publication of material on individual cases dates from its predecessor industry ombudsman bodies and has not changed in 25 years. Complaints are dealt with confidentially, and neither businesses nor complainants are identified publicly. The full texts of decisions are issued only to the parties concerned and case summaries are not routinely published at the level of the individual case. There is therefore no public record of individual decisions made, whether through informal mediation at the earliest stage, formal adjudication after investigation, or full Ombudsman decisions. The FOS is not subject to freedom of information legislation.

4.5 The FOS's model is not universally followed by comparable ombudsman and adjudication schemes in the UK and abroad. Some release their full reports only to the parties to the individual complaint, some publish summaries of all cases which have been determined by the ombudsman and some publish the full texts. In such cases, the complainant is usually (but not universally) anonymised, but practice varies in relation to identifying the business or public body subject to the complaint.

4.6 The FOS does publish some anonymised case summaries in its regular newsletter *Ombudsman News*. The primary focus of this communication is to alert everyone with an interest in complaints to patterns of cases and decisions, not to serve as a resource to facilitate full analysis of FOS practices. The FOS can and does comment on the principles to be derived from its decisions, but it is difficult for others to evaluate how effectively it does so. For example, although there may be a whole line of cases on a

particular topic, individual businesses see only the ones affecting them directly. By definition, this cannot give the full picture. Equally, *Ombudsman News* tends to deal with patterns of cases once a clear trend has been definitively established: it does not highlight any emerging trends in the way that independent legal reporting might seek to do.

- 4.7 Equally, there is scope for the FOS's judgements to be subject to accidental or deliberate misinterpretation by the parties, or by those who hear about them through the parties. In the absence of some form of full publication, it would be possible for one party to a dispute to publicise a partial picture of the outcome with their own "spin". However, publication of decisions could also arguably distort the actions of businesses, and might deter some customers from approaching the service, even if their anonymity were to be guaranteed.
- 4.8 The FOS has been resolving around 100,000 cases per year, many of them by mediation. It would be possible to publish the outcome of all of these in some form, but this could pose some difficult practical issues of making the mass of data easily accessible. Additionally, one or other of the parties may wish to keep such a settlement confidential, as would be common practice in other forms of mediation. One alternative might be to focus on the 6,000 or so formal ombudsman decisions that are issued each year, which, by definition cover the more contentious cases presented to the FOS. The Review will consider whether all or some adjudications and ombudsman decisions should be published. We intend to look at the possible market impact of doing so and consider practical issues (e.g. who should set the selection criteria and on what basis, if only a minority of cases are to be made available?)
- 4.9 The FOS's practice on publication of individual decisions is, of course, very different to that of the courts. All court decisions are matters of public record. Where important cases are independently reported, they can be subject to public scrutiny and academic analysis. In turn, this enables debate about the underlying principles to be deduced from them as well as the merits of the decisions themselves.
- 4.10 It is important to recognise that some apparent inconsistencies may be inevitable, given the statutory base of the FOS's jurisdiction. S228(2) of FSMA refers to complaints being "determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case." DISP 3.8.1(2) expands on this by referring to the Ombudsman taking into account "the relevant law, regulations, regulators' rules and guidance and standards, relevant codes of practice and, where appropriate, what he considers to have been good industry practice at the relevant time" in deciding what is fair and reasonable. The emphasis on weighing "all the circumstances of the case" makes it clear that, in the absence of statutory or regulatory change, individual FOS decisions are not precedent-setting in the same way that, for instance, a judgement of the High Court would be.
- 4.11 However, it is not immediately clear that the unique nature of Ombudsman decisions is, of itself, a reason for current practices on confidentiality to be maintained. The issue of publication of decisions is emblematic therefore of the broader issue of how far the FOS's process should be aligned with or separate from those in the legal system. Within the constraints of FSMA and the DISP rules, there is scope for debate about how far a more court-like process would aid transparency and thus boost confidence or, alternatively,

add cost and delay and be perceived as less accessible by at least some consumers.

- ***Should the FOS publish all or some adjudication and/or formal ombudsman decisions? What reasons are there for or against publication?***
- ***What practical issues (e.g. on selection criteria, anonymity, approach to summarising, regularity and form of publication) would arise and how should they be resolved?***
- ***Within the broad remit of current FSMA and DISP rules, to what extent should the FOS align its practices with those of the legal system?***

## **Practices and Policies**

- 4.12 Given the volume of cases dealt with by the FOS, publishing individual case decisions might not, of itself, provide sufficiently comprehensive information to industry or consumers about the service's overall approach. Nor would it necessarily be readily accessible to those unwilling or unable to take the time to extract general lessons from the mass of cases. Instead, it may be argued that more aggregated and/or summarised information is needed about the FOS's overall approach. (This information could be provided as an alternative to publication of decisions or in addition to them). Such information might cover
- overall practice on how individual cases are managed and the geenna systems in place (e.g. to ensure consistent decision-making);
  - specific practice on how general issues (e.g. absence of documentation) are managed in the course of investigations;
  - policies on decision-making – how the service approaches categories of cases.
- 4.13 Such publication arguably might assist the FOS in better discharging its role of seeking to help the industry avoid future complaints. It could also help to improve efficiency by making the FOS' working practices more visible. Most broadly, it also might encourage fuller public debate on the remit and jurisdiction of the FOS, which would potentially be of value to other policy-makers in financial services as well as to the FOS itself.
- 4.14 At present, the main means of presenting such summary information are *Ombudsman News* and the consumer and technical fact sheets. The FOS's annual review and forward-looking corporate plan together also cover some of the same ground. Whilst these sources together document a great deal of the FOS's practice and the technical advice line is available to provide greater detail, there is no single, comprehensive record of practice to which public or industry can turn.
- 4.15 This does not mean that such a record does not exist. The FOS has a full computer-based knowledge management system called KIT (Knowledge and Information Toolkit). This consists of well over 100 separate notes, produced by senior FOS staff and subject to detailed internal quality assurance on both style and content, on a variety of topics arranged at the level of products, sectors and more generic topics. The information in the notes is layered in

order to make them usable as appropriate by front-line operational staff in the Customer Contact Division, as well as by adjudicators and ombudsmen. The FOS has a regular programme to review the contents of the system to ensure that the material is kept up to date and is being appropriately used by staff.

- 4.16 It is important to stress that the material on KIT does not represent strategic policy statements in the manner of an FSA feedback statement, nor is it intended that the staff of the FOS should view its contents as having the force of a regulatory rule. Most of the material on the system deals with common issues which arise in casework, rather than embodying or enshrining strategic policy development. It does not, of course, override the need for the Ombudsman to decide each case individually on the precise facts, rather than fitting them to a template.
- 4.17 However, despite its limited value and application, an arguable case exists for giving the material wider visibility. This would give both consumers and businesses greater insight into the FOS's likely approach and also facilitate challenge and debate in cases where the approach adopted does not command full support. However, the FOS's decision-making has always had a great deal in common with principle-based regulation in its focus on fairness in the light of the full facts of the individual case, rather than assessing cases against a single rigid checklist. There is a clear tension here.
- 4.18 Views within the industry reflect this tension between the desirability of transparency and the need to avoid prescription. Complaint-handling and compliance managers in the industry have sometimes encouraged the FOS to publish its approach – so that its decisions might be more predictable and enable businesses to respond accordingly. Conversely, others in the industry sometimes perceive the FOS as increasingly acting like a quasi regulator. The Review will seek to find the right balance.
- ***How can the FOS best develop and communicate its policies and practices in a manner consistent with principle-based regulation?***
- 4.19 It would be wrong to characterise the current practice of the FOS as simply top-down communication to industry or consumer bodies. There is scope for more interactive debates, most notably through the three industry liaison groups. These cover banking, investment and general insurance and meet every quarter. They are chaired and supported by relevant trade bodies. They were reviewed most recently in 2005 and provide one means of ensuring relatively informal exchanges of intelligence. However, as with *Ombudsman News*, it could be argued that these are relatively ephemeral means of communication, which do not necessarily enable communication to all interested parties.
- 4.20 The liaison meetings also provide a forum where there can be some initial debate of issues with wider implications for consumers, businesses or the development of regulatory policy – so called IWIs. This process has been used less frequently than both the FOS and the FSA expected. Hence they, together with the OFT, recently (25 September) relaunched the IWI process with more user-friendly information now available on shared webpages.<sup>6</sup>

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<sup>6</sup> See [www.wider-implications.info](http://www.wider-implications.info) 'issues with wider implications'.

4.21 It is, however, rare for the FOS to hold formal consultation exercises on its specific policies and practices, other than through the regular debate on its annual priorities and budget.

- 4.22 The challenge facing the FOS is therefore to find ways of intensifying its dialogue with its stakeholders without
- compromising its statutory independence
  - becoming – or being seen as – an additional layer of regulatory bureaucracy
  - building in the delays which can characterise formal consultation machinery.
- ***How effective do you find the FOS's publications; telephone helplines; website; and industry/consumer liaison arrangements in enabling you to understand and inform FOS policy and practice? How are these sources used within your organisation?***
  - ***Do you use any other sources? What else would you value?***
  - ***Why has the IWI procedure been relatively little used? What additional changes are needed?***

### **Communicating Outcomes**

- 4.23 One feature which distinguishes ombudsman schemes in general from the courts is the efforts they make to feed back the results of their activities to enable lessons to be drawn from the examination of complaints. This aspect of the review will examine to what extent the FOS can make better use of the information and experience it acquires in the course of its work to enhance knowledge among consumers and firms, and thus reduce the potential for complaints.
- 4.24 The FOS uses many of the communication channels already discussed to convey the broad lessons which emerge from their work. The aim is both to improve companies' own handling of complaints at the initial stage, but also to facilitate root cause analysis of the common drivers of complaints. In addition, the FOS has supported industry-led initiatives, such as the Banking Code and the Association of British Insurers' Complaints Benchmarking initiative, which have addressed similar objectives. They have also taken part in other initiatives, such as the Endowment Liaison Committee, to help industry, regulator and ombudsman communicate and coordinate effectively on complex issues.
- 4.25 On the public record, the FOS annual review contains statistics about complaint trends and a commentary on them. What it does not do is to identify individual businesses. It is clear, however, that among the larger financial groups there is a large disparity in the proportion of the complaints made to the FOS about different firms and the outcome of those cases, even when account is taken of market share<sup>7</sup>.

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<sup>7</sup> "We compile a benchmarking table showing the top 11 financial groups – who produce over half of the complaints we receive, ranked simply in terms of the number of complaints referred to us proportionate to their market share ..... This shows consistently that the best group is approximately nine times better than the worst." Walter Merricks, chief ombudsman, speech to PEP and ISA Managers Association, 29 January 2007. See [www.financial-ombudsman.org.uk/news/speech/WM-PIMA.htm](http://www.financial-ombudsman.org.uk/news/speech/WM-PIMA.htm)

4.26 It could be argued that retaining or withholding information is anachronistic at a time when publication of performance data is increasingly the norm in many sectors and where some organisations seek to extract competitive advantage from their performance in them. The National Consumer Council has recently called on ombudsman schemes to publish data about the complaints upheld against businesses above an agreed threshold, thus enabling consumers better to distinguish between businesses<sup>8</sup>. However, some "league tables" have their critics among both producer and consumer interests, who draw attention to the potential odd incentive effects of highlighting one particular set of indicators over another and argue that such publication can present an overly simplistic picture of performance across the board. The extent to which such data should be published will therefore be a crucial issue for the review.

4.27 The FOS has two current systems for communicating data about performance to individual companies:

- relationship managers are assigned to 45 of the larger businesses. These staff seek to ensure a constant flow of informal communication between the FOS and the company concerned to highlight emerging trends and maintain effective working communications. Recently, a series of more formal semi-structured annual discussions has been introduced to ensure a greater degree of consistency and comparability;
- in addition, 11 of the largest groups receive a more detailed analysis of FOS cases at top management level twice a year. This shows information on
  - number of complaints by product type
  - number of cases where the FOS disagrees significantly with the company's stance
  - benchmarked data showing how the above two indicators measure against the other ten (anonymised) groups
  - a brief commentary highlighting trends and other relevant data.

4.28 These data are then discussed between the FOS and each of the groups individually at a senior level. These are currently strictly private dialogues. They do not result in any formal publications. Using such data publicly would therefore be a major change.

4.29 Among the factors we will consider are

- The extent to which data on FOS outcomes are genuinely commercially confidential or might be characterised more accurately as public-policy information, which, in other sectors, would be legitimately caught within the spirit (or the letter) of freedom of information legislation;
- The implications for publishing FOS data at a company-specific level in the absence of publication of broader complaints data by the FSA. It could be argued that consumers will have a distorted picture of a company's performance if details are published specifically on the relatively small number of complaints referred to the FOS;

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<sup>8</sup> National Consumer Council: Regulation and Reputation, 2006. See [www.ncc.org.uk/regulation/reputation.pdf](http://www.ncc.org.uk/regulation/reputation.pdf)

- What the possible behavioural consequences of such a change might be for both firms and consumers. Theoretical arguments might be advanced that such a change would help to increase efficiency in the market by adding to the overall quantity and quality of information available to companies and consumers. However, the impact of injecting apparently "straightforward" information about complaints into an environment in which there is much evidence about the limitations of financial capability might arguably create perverse effects;
  - Practical issues, for example about the quality of FOS data in the light of its recent and continuing initiatives to improve data management and about the format of any presentation;
  - The extent to which the FOS can and should be prepared to provide more detailed, company-specific analysis of its data to individual businesses over and above that put into the public domain for individual firms and how any such analysis should be paid for.
- ***What is the appropriate balance for the FOS between reasonable claims for confidentiality and modern expectations of openness? What are the lessons from other sectors?***
  - ***What level of information should the FOS put into the public domain about outcomes of cases by individual businesses? What would be the consequences? What should be withheld and why?***
  - ***If more data were to be made publicly available, what practical issues would need to be overcome in relation to: data quality and timeliness; fair presentation; and accessibility for the needs of different audiences? What sort of qualifications, or "health warnings", if any, would need to be attached to them?***

## Communication with Regulators

- 4.30 The FOS's relationship with the FSA is different in kind to its relationships with its other stakeholders, in large part due to the formal oversight role which the Financial Services and Markets Act (FSMA) 2000 gives to the FSA in relation to the other bodies within the so-called "FSMA family". Both the formal statutory base and the informal relationships are covered in the memorandum of understanding (MoU) between the FOS and the FSA, available at <http://www.financial-ombudsman.org.uk/about/MOU-april2007.pdf>.
- 4.31 The FSA has a small liaison team to manage the relationship and ensure proper scrutiny of the FOS's budget and operational plans. In accordance with the legislative framework, however, the FSA looks to the FOS's Board to set strategic direction and monitor operational progress.

- 4.32 There are regular informal meetings to compare notes on emerging trends within the market generally and areas of relatively new FSA jurisdiction such as mortgage broking and general insurance. The FOS tends to be involved at the earliest stages of FSA policy formulation, ahead of contact with industry and consumer bodies. These contacts are complemented by more formal flows of case data on a monthly basis. The MoU also provides for the FOS to provide information on volumes and nature of complaints and on specific initial and final decisions on request to the FSA in cases where regulatory action is being considered.
- 4.33 Because of this strong informal contact, the FOS is less likely to involve itself in formal dialogue with the FSA through responses to consultation documents and so forth. Practice also varies in the extent to which the FOS plays a part in FSA-led groups that engage directly with the industry.
- 4.34 Broadly analogous arrangements have been put in place with the OFT, including a memorandum of understanding available at [http://www.financial-ombudsman.org.uk/about/FOS-OFT\\_MoU.pdf](http://www.financial-ombudsman.org.uk/about/FOS-OFT_MoU.pdf). Inevitably, as the Consumer Credit jurisdiction only took effect in April 2007, these arrangements are not as firmly established as those with the FSA.
- ***What level of transparency should there be in communication between the FOS and the FSA and OFT?***

## 5. SPECIFIC CONSULTATION QUESTIONS

This section sets out some specific consultation questions, which arise from our initial identification of the issues. We are, however, happy to have more wide ranging comments on aspects of the FOS's work which fall within our remit, as described in section 3.

### ***How Accessible is the Financial Ombudsman Service?***

- Are there potential improvements to the FOS's working methods at initial contact and subsequently which would improve its accessibility and help to secure fair outcomes for both businesses and complainants? Can any additional costs be justified? (*para 3.3-3.11*)
- Are there any particular improvements which would assist potentially vulnerable groups? (*para 3.3-3.11*)
- How far is a material - or perceived - barrier to accessibility created by the eight-week period businesses are granted to resolve complaints before they can be considered by the FOS? (*para 3.3-3.11*)
- What evidence do you have on the current effectiveness of the FOS in reaching individual consumers directly and/or through trusted third parties? (*para 3.12-3.18*)
- Are you aware of good practice on accessibility within your own organisation or elsewhere that the FOS should consider adopting? (*para 3.12-3.18*)
- How should the FOS approach the identification and targeting of under-represented groups? (*para 3.12-3.18*)
- How far do the FOS's practices enable or limit the ability of businesses (in particular small businesses) to understand how they can best participate in and contribute to a satisfactory resolution of complaints made against them? (*para 3.19-3.22*)
- What should the priority areas be for business outreach? (*para 3.19-3.22*)
- What priority for investment should improving accessibility have within the FOS's broader agenda? (*para 3.23-3.26*)
- What should its accessibility priorities be – should they differ between different elements of its work? (*para 3.23-3.26*)

### ***Can FOS information make the market work better?***

- Should the FOS publish all or some adjudication and/or formal ombudsman decisions? What reasons are there for or against publication? What practical issues (e.g. on selection criteria, anonymity, approach to summarising, regularity and form of publication) would arise and how should they be resolved? (*para 4.4-4.11*)

- How can the FOS best develop and communicate its policies and practices in a manner consistent with principle-based regulation? (*para 4.12-4.18*)
- Within the broad remit of current FSMA and DISP rules, to what extent should the FOS align its practices with those of the legal system? (*para 4.12-4.18*)
  
- How effective in enabling you to understand and inform the policy and practice of the FOS do you find the FOS publications; telephone helplines, website; and industry/consumer liaison arrangements ? How are these sources used within your organisation? (*para 4.19-4.22*)
- Do you use any others? What else would you value? (*para 4.19 – 4.22*)
- Why has the IWI procedure been relatively little used? What additional changes are needed? (*para 4.19 – 4.22*)
  
- What is the appropriate balance for the FOS between reasonable claims for confidentiality and modern expectations of openness? What are the lessons from other sectors? (*para 4.23-4.29*)
  
- What level of information should the FOS put into the public domain about outcomes of cases by individual businesses? What would be the consequences? What should be withheld and why? (*para 4.23-4.29*)
  
- If more data were to be made publicly available, what practical issues would need to be overcome in relation to: data quality and timeliness; fair presentation; and accessibility for the needs of different audiences? What sort of qualifications, or "health warnings", if any, would need to be attached to them? (*para 4.23-4.29*)
  
- What level of transparency should there be in communication between the FOS and the FSA and OFT? (*para 4.30-4.34*)

## 6. TIMETABLE AND NEXT STEPS

6.1 We welcome all responses to this call for evidence, to be received by 16 January 2008. In line with the approach we describe in para 2.7 and section 5 above, the specific questions are intended to guide, rather than constrain responses.

6.2 In the course of the evidence gathering process, the review team intends to invite comments from

- FOS and FSA officials
- Relevant government departments
- Parliamentarians
- FSA Advisory Panels
- Consumer representative bodies
- Trade associations
- Professional bodies
- Small business organisations
- individual financial services companies
- Independent financial advisers, brokers and other intermediaries
- Consumer Advisory bodies
- Other ombudsman bodies

6.3 We are particularly interested to hear about

- views on the effectiveness or otherwise of current FOS practice and the issues which arise from it;
- examples of good practice in other sectors which might be considered for FOS;
- the implications of any changes in practice for consumer and company behaviour and incentives;
- practical issues which may need to be addressed in making any changes.

6.4 The Review will produce its final report and recommendations in the first quarter of next year for publication by the FOS. The Board of the FOS will determine its response to those recommendations and specific action will be subject to further detailed consultation, where appropriate.

6.5 Responses should be sent, preferably by email through [www.thehuntreview.org.uk](http://www.thehuntreview.org.uk) or by hard copy to

Karen Summers  
The Hunt Review  
Beachcroft LLP  
100 Fetter Lane  
LONDON  
EC4A 1BN

Responses may be made public through the website unless privacy is specifically requested. A standard confidentiality statement in an e-mail message will not be regarded as a request for privacy.