

Financial Ombudsman Service Limited

MINUTES

MINUTES of the meeting of the directors, held at Exchange Tower, 1 Harbour Exchange, E14 9SR on Tuesday 2 December 2014, at 15.00

Present	Nick Montagu (NM) Gwyn Burr (GB) Alan Jenkins (AJ) Julian Lee (JL)	chairman director director director
In attendance	Caroline Wayman (CW) Julia Cavanagh (JC) Chris McDermott (CMcD) Garry Wilkinson (GW) Richard Goodman (RG) Georgina Surry (GS) Richard West (RW) Alison Hoyland (AH)	chief executive and chief ombudsman finance and performance director operations director director of new services policy director (for items 6 & 7) senior legal counsel (for items 6 & 7) lead ombudsman (for items 6 & 7) board secretary & head of CEO's office (minutes)
Observing	Gerard Connell (GC)	director (designate)

Apologies for absence

There were apologies for absence from Maeve Sherlock and Pat Stafford.

1-4/1412 Board minutes

The Board approved the note of the meeting held on 22 October 2014.

Matters arising

Matters arising were picked up in the substantive business before the Board.

Chairman's opening remarks

The chairman provided an update on the ombudsman business in which he had been engaged since the last Board meeting, including:

- attendance at the FCA oversight committee, as part of the plan and budget cycle;
- a round of chairman-level meetings with the industry and their representative bodies; and
- other senior-level industry meetings as part of the usual pre-consultation engagement on the service's plans and budget for the next financial year.

The chairman had also approved another intake of ombudsmen since the last meet, which the Board noted, again commending the calibre of the appointees.

Chief ombudsman and chief executive's update

The chief executive updated the Board on a number of organisational developments since the last meeting, including:

- recent staff development/engagement events;
- introductory meetings with Treasury and BIS ministers; and
- a number of external developments of relevance to the ombudsman service and its work.

At its October meeting, the Board agreed the broad parameters within which the ombudsman service was preparing its 2015/16 budget for public consultation, noting that the assumptions around future PPI case volumes would continue to be refined in the light of further analysis, including the views of the industry and other stakeholders, which would be sought as part of the usual round of pre-consultation discussions.

Further analysis since then continued to support the high-level planning assumptions around expected incoming volumes which, for general casework, were expected to remain pretty stable and, for PPI, were likely to decline (though by how much and how quickly remained uncertain). In meetings with the industry, representatives had indicated that they considered the planning assumptions for the following year to be reasonable, although for PPI, they thought the numbers of new cases might be slightly higher than initial forecasts suggested, and that the ombudsman should base its plans on receiving around 150,000 new PPI cases.

There was also general agreement amongst stakeholders that the PPI case-mix and the caseload age-profile supported the expectation that PPI would present some operational challenges for a few years yet. Over time, there were likely to be fewer straightforward and quicker to resolve cases, and the existing stock of cases would contain an increasing proportion of more complex, more difficult to resolve ones. The implications here included the skills and capabilities that case-handlers would need, and supported the ombudsman service's plans to retain its staff and build their skills for the next phase of the PPI journey.

There was agreement too that the longer term picture was difficult to track with any degree of certainty. However, in the light of its strong financial position, including the reserves it held to deal with PPI over the next few years, the ombudsman service was confident that it had sufficient funds to cover a broad range of future scenarios, as well as to help it develop a service fit for the future in a post-PPI world. Stakeholders had indicated that they supported the ombudsman's plans for the reserves it held, noting that the service was, at the same time, committed to robust cost management, continuing the drive for efficiency and ensuring value for money.

In terms of the overall budget, this remained largely unchanged to that presented for review at the October Board, save for adjustments to take account of higher numbers of new PPI cases (and, in turn, plans for higher case resolutions), and to reflect further detailed consideration of the service's capacity needs and plans to now recruit an additional 200 PPI adjudicators. The Board agreed that the ombudsman service could commence some of its 2015/16 recruitment ahead of the budget approval in March, to allow it to be able to satisfy its adjudicator resource requirement to the end of June and its ombudsmen resource needs to the end of September.

The Board noted that while it was proposed that the basis of the funding arrangements would remain largely unchanged from the previous year, and that, for example, the case-fee and levy would be frozen for a further year, the position would be kept under review for future years, when the case for change may be better made, including against the background of the funding and cost implications of the service development plans and new casework approaches.

In concluding its discussions, the Board agreed that the ombudsman service should proceed to present its budget and fee plans to the FCA Board on 11 December. Subject to FCA approval, the plan and budget would then be published for consultation in January. The Board would have the opportunity to take a final view on the budget against the latest forecasts and responses to the consultation, when it was asked to approve it in March. In the meantime, a draft of the consultation document would be circulated to the Board for comment, and the Board agreed to

delegate final sign-off to the chairman: any significant changes between now and publication would, though, be brought to the Board's attention.

6/1412 Assurance reports

fos/14/12/06

As part of the Board assurance framework, updates were provided on the service's work in relation to:

- information-sharing with the Financial Conduct Authority;
- information rights; and
- litigation.

Information sharing with the Financial Conduct Authority

The Financial Services Act 2012 introduced new statutory duties relating to the disclosure of information to the Financial Conduct Authority (FCA). The Board noted the information exchanges that the ombudsman service had had with the FCA in the last six months in the exercise its obligations here. The obligation had now been in force for a little over 18 months, and so there would be sufficient data for future reports to include a trend analysis, including on the types of referrals and the issues involved.

Information rights

The ombudsman service was subject to the Data Protection Act (DPA) and had been subject to the Freedom of Information Act (FOIA) since November 2011. In reviewing the summary round-up of requests received under both Acts in the last six months, the Board noted that the types and numbers of requests were consistent with the nature of a casework-based operation, with most requests relating to people's individual cases with the service.

Staff training on data rights remained a priority, not just in relation to the statutory obligations, but also to ensure fairness between the parties in the handling of cases.

Legal and litigation

The legal team's work comprised two main elements:

- internally facing work – helping to mitigate the risk of legal challenge by assisting and advising case handling colleagues on specific cases, or more generally on broad-brush themes, regulatory rules and core legal issues; and
- litigation – defending the service's position in legal action brought against it.

On the latter, the ombudsman service was experiencing an increase in its litigation work, consistent with the growth in its casework, including at the ombudsman stage (albeit judicial review challenges were only made against a very small proportion of final decisions). There was a pretty even split between cases brought by the businesses against whom consumers had complained, and consumers with whose cases the ombudsman had dealt. As previous reports had noted, more litigants than before were using the services of larger law firms, an indication perhaps that the issues were being harder fought because the stakes were higher, including because of tougher financial times.

The ombudsman continued to take an approach to its litigation work which balanced the need for it to defend robustly its position and its decision-making, with the need to do the right thing and to seek to settle matters where it could, without the need for formal litigation.

7/1412 EU Directive on Alternative Dispute Resolution

fos/14/12/07

The EU Alternative Dispute Resolution (ADR) Directive was due come into effect on 9 July 2015, giving traders across Europe access to voluntary ADR entities which met a set of minimum standards. The main standards in the Directive related to:

- the types of disputes covered;
- the qualities of case handlers;
- communications between parties and with the public;
- the timeliness of the procedures;
- cooperation with other bodies (including in relation to cross-border disputes); and
- certification of 'ADR entities'.

The ombudsman service provided an update on its readiness to meet the Directive, and where its current approaches already complied (which was the case for the majority of the standards) and where it was likely that there would need to be changes to the relevant legislation and/or rules to ensure compliance with the Directive.

A number of issues had yet to be finalised, including the implementation regulations and the required legislative changes. The ombudsman was working closely with the relevant government departments, BIS and HM Treasury, and with the FCA (who would be the competent authority with responsibility for certifying the ombudsman service under the Directive) and would keep the Board updated on developments, as appropriate.

Any other business

There being no other business, the meeting ended at 17.00.