

## House of Lords Select Committee on Regulators Memorandum by the Financial Ombudsman Service

### Introduction

1. This memorandum, submitted to the Committee in advance of our appearance on 8 May 2007 describes:
  - o the role of the Financial Ombudsman Service;
  - o our scope and workload;
  - o our relationship with the Financial Services Authority (FSA); and
  - o our relationship with the Office of Fair Trading (OFT).

### Role of the Financial Ombudsman Service

2. The Financial Ombudsman Service is part of the statutory framework designed to underpin consumer confidence in financial services. The Financial Services and Markets Act 2000 (FSMA) established a three-part framework:
  - o the Financial Services Authority (FSA) to regulate and supervise;
  - o the Financial Ombudsman Service to resolve individual disputes; and
  - o the Financial Services Compensation Scheme as a safety net.
3. The Financial Ombudsman Service is not a regulator. We are an alternative to the civil courts – required by FSMA to resolve disputes independently, quickly and with minimum formality, on the basis of what is fair in the circumstances of the case. Over time, we have replaced eleven separate dispute-resolution schemes, and our remit has also been extended to new areas – notably to disputes between consumers and businesses with standard consumer credit licences issued by the OFT .

### Scope and workload

4. The Financial Ombudsman Service has three jurisdictions:
  - o the compulsory jurisdiction automatically covers FSA-regulated financial firms, for both FSA-regulated activities and other specified activities;
  - o the voluntary jurisdiction covers those financial businesses that have chosen to join, most notably National Savings & Investments; and
  - o the consumer credit jurisdiction (which started on 6 April 2007) automatically covers businesses with standard consumer credit licences from the Office of Fair Trading (OFT).

5. We currently handle more than 600,000 enquiries and more than 100,000 cases per year, under procedures that are Human Rights Act compliant. Our adjudicators resolve about 90% of the cases by mediation or by a recommendation that both sides accept. About 10% of cases go on to an internal 'appeal' where the case is reviewed by an ombudsman – whose formal decision is binding on the financial business if accepted by the consumer (subject to judicial review). An ombudsman has power to award up to £100,000.
6. The Financial Ombudsman Service takes care to feed back to consumers and financial businesses the lessons to be drawn from the cases it has handled. There are dedicated liaison arrangements with consumer and trade bodies and with the largest financial businesses (which produce most of the cases), and a full programme of publications, newsletters and seminars. We are a founder member, and on the steering committee, of FIN-NET – the European network of financial dispute-resolution bodies, designed to facilitate redress in cross-border cases.

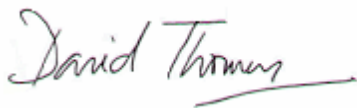
<b>Relationship with the FSA</b>
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12. The attached memorandum of understanding summarises the relationship between the Financial Ombudsman Service and the FSA. As an alternative to the courts, the ombudsman service's operational independence is crucial to its role. FSMA provides for our directors (all of whom are non-executive) to be appointed on terms that secure their independence, and for those independent directors to appoint ombudsmen on terms consistent with the independence of the ombudsmen.
13. The availability of the Financial Ombudsman Service to deal with individual disputes between consumers and financial firms is a key ingredient that enables the FSA to focus its regulatory resources in a risk-based way and to move towards a more principles-based and outcome-focused set of rules. So far as consistent with our separate and independent roles, the two bodies cooperate to secure the efficient functioning of the statutory system. Including:
  - o meeting and communicating regularly – at appropriate levels of seniority – to discuss matters of mutual interest;
  - o consulting one another at an early stage on any issues which might have significant implications for the other organisation; and
  - o maintaining teams dedicated to liaison with the other, and which meet monthly in order to review the management of all current issues of mutual interest.

14. The two bodies have established a process to deal with issues that have wider implications and where their respective independent roles as regulator and dispute-resolver may overlap. A joint website at <http://www.ombudsmanandfsa.info> includes full details of the process and case studies showing when and how it has been used. There are also arrangements for test cases on significant legal issues to be referred to court. Additionally, the Financial Ombudsman Service is represented on the FSA's Retail Savings Regulatory Strategy Group, Treating Customers Fairly Consultative Group and Retail Themes Filtering Group.

#### **Relationship with the OFT**

15. The Financial Ombudsman Service worked closely with the OFT to implement the new consumer credit jurisdiction which came into effect from 6 April 2007. The two bodies are already liaising on issues where their separate and independent roles overlap, and are finalising formal liaison and wider-implications arrangements along similar lines to those with the FSA.



David Thomas

*Corporate Director*

On behalf of the Financial Ombudsman Service

30 April 2007

**Memorandum of Understanding** between  
the Financial Services Authority (the FSA) and  
the Financial Ombudsman Service Limited (the FOS Ltd)



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**This document**

- 1 This memorandum of understanding provides a framework for the FSA and the FOS Ltd to cooperate and communicate constructively in order to carry out their independent roles and separate functions.
- 2 This cooperation and communication benefits both consumers of financial services and the financial services industry by contributing to the efficient functioning of the statutory systems for regulation and dispute-resolution.
- 3 This is particularly important where the FSA is taking supervisory or regulatory action and, at the same time, the FOS Ltd's ombudsman scheme is receiving a significant number of cases concerning the same issue.
- 4 This memorandum of understanding was last updated on 6 April 2007. The FSA and the FOS Ltd will continue to monitor its operation and review it from time to time as necessary.

**Roles of the FSA and the FOS Ltd**

- 5 Under the Financial Services and Markets Act 2000 (FSMA), amended (in relation to dispute-resolution) by the Consumer Credit Act 2006:
  - (a) The FSA operates as the single financial regulator. Its regulatory objectives are to maintain market confidence in the UK financial system, promote public understanding of the UK financial system, secure the appropriate protection of consumers and reduce financial crime. It is answerable, through the Treasury, to Parliament for the effective discharge of its functions.
  - (b) The FOS Ltd's main role is to operate a scheme to resolve disputes, as an alternative to the civil courts. The scheme's statutory objectives are to resolve disputes quickly and with minimum formality on the basis of what is fair and reasonable in the circumstances. The scheme has three jurisdictions – the compulsory jurisdiction, the consumer credit jurisdiction and the voluntary jurisdiction.

**Statutory responsibilities**

- 6 Under FSMA the FSA is responsible, in particular, for:
  - (a) appointing and removing the directors of the FOS Ltd (in the case of the chairman, with the approval of the Treasury);
  - (b) ensuring that the directors' terms of appointment (and particularly those governing removal from office) secure their independence from the FSA in the operation of the scheme;
  - (c) ensuring that the FOS Ltd is capable of exercising its statutory functions; and
  - (d) making rules for the compulsory jurisdiction on: complaint-handling by firms; activities covered; complainants eligible; time-limits; limits on awards; and levies to cover the establishment and operation of that jurisdiction.
- 7 Under FSMA the FOS Ltd (with the consent/approval of the FSA) is responsible, in particular, for:
  - (a) adopting a budget (which must indicate amounts of income arising/expected to arise and distribution of resources deployed) distinguishing between each of the scheme's three jurisdictions;

- (b) making rules (or standard terms) for the consumer credit and voluntary jurisdictions on: complaint-handling by respondents; activities covered; complainants eligible; time-limits; limits on awards; and levies to cover the establishment and operation of those jurisdictions; and
- (c) making rules (or standard terms) for the compulsory, consumer credit and voluntary jurisdictions on: ombudsman procedures; awards of costs and interest; and case fees.

8 The FOS Ltd is responsible, in particular, for:

- (a) operating the ombudsman scheme (which is known as the Financial Ombudsman Service);
- (b) appointing the ombudsmen (including the chief ombudsman) on terms consistent with their independence; and
- (c) making a yearly report to the FSA on the discharge of its functions and publishing that report.

### **Additional governance issues**

9 In appointing the directors of the FOS Ltd, the FSA will take into account the views of the chairman of the FOS Ltd and the need to maintain an appropriate balance in the composition of the board.

10 The FSA and the FOS Ltd will cooperate in the smooth running, and periodic review, of their arrangements for:

- (a) setting the FOS Ltd's budget and the associated levies and case fees;
- (b) collection by the FSA, on behalf of the FOS Ltd, of the levy in relation to the compulsory jurisdiction; and
- (b) consulting on and making rules affecting the Financial Ombudsman Service.

### **Cooperation and information-sharing**

11 The FSA and the FOS Ltd agree that they will:

- (a) seek to dispel confusions and misunderstandings about their different roles;
- (b) seek to achieve a complementary and consistent approach, so far as that is consistent with their independent roles;
- (c) meet and communicate regularly – at appropriate levels of seniority – to discuss matters of mutual interest;
- (d) consult one another at an early stage on any issues which might have significant implications for the other organisation; and
- (e) share (for comment) at an early stage draft documents (such as consultation papers and briefings) that affect the other's functions.

12 The FOS Ltd will inform the FSA of issues that appear likely to have significant regulatory implications, which the FSA will then evaluate and consider whether any FSA action is required.

13 The FSA and the FOS Ltd will agree, publish and periodically review operational procedures on:

- (a) dealing with cases that raise wider-implications issues; and
- (b) routine information-sharing.

14 Any information-sharing between the two organisations is subject to relevant restrictions on disclosure of confidential information:

- (a) So long as it has regard to any rights of privacy, the FOS Ltd may disclose information to the FSA for the purpose of assisting the FSA or the FOS Ltd to discharge its functions.
- (b) The FSA may disclose confidential information to the FOS Ltd for the purpose of facilitating the carrying out of a public function of the FSA or a function of the FOS Ltd if permitted by the

Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001.

- 15 The operational procedures for information-sharing will include the following:
- (a) The FOS Ltd will give the FSA the information it reasonably requires to enable it to discharge its statutory obligations with regard to the scheme.
  - (b) Routinely, the FOS Ltd will give the FSA regular information about the number and types of complaints handled.
  - (c) If concerns arise, the FOS Ltd will give the FSA information about: serious shortcomings in a firm's complaint-handling; concerns about the fitness and propriety of a firm or approved person; or other issues that may require action by the FSA in accordance with its statutory objectives.
  - (d) If the FSA requests it for actual or contemplated regulatory action, the FOS Ltd will give the FSA (for the specific firm concerned) information about: the number and types of complaints handled; and specific initial and final decisions.
  - (e) The FSA will give the FOS Ltd information about: proposed changes to rules or guidance on complaints-handling; and, when it is relevant to the FOS Ltd's functions, actual and contemplated regulatory action.

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