

Extending our
voluntary jurisdiction:
**National Savings
and Investments**

Consultation paper from the
Financial Ombudsman Service

May 2004

1 EXECUTIVE SUMMARY

- 1.1 The Financial Ombudsman Service (FOS) was established under the Financial Services and Markets Act 2000 (FSMA) to provide a 'one-stop-shop' for resolving complaints about a broad range of financial services activities. FOS has:
- a *compulsory* jurisdiction, which applies to unresolved complaints about specified activities in relation to financial firms that are regulated by the Financial Services Authority (FSA); and
 - a *voluntary* jurisdiction, which applies to unresolved complaints about specified financial services activities in relation to financial firms (whether or not regulated by FSA), if the firms concerned choose to join.
- 1.2 Currently, FOS does not cover financial services provided by National Savings and Investments (NS&I). Instead, under the relevant statutory provisions:
- the Independent Adjudicator for National Savings and Investments (the Adjudicator) deals with unresolved complaints about contractual matters; and
 - the Parliamentary Commissioner for Administration (the Parliamentary Ombudsman) deals with unresolved complaints about maladministration.
- 1.3 To provide some harmonisation between the treatment of unresolved complaints against NS&I and unresolved complaints against financial firms, an FOS ombudsman was appointed as the Adjudicator in May 2002. But, as the Adjudicator, he has to operate under different rules and with different powers. The government is now considering the possibility of further harmonisation by moving NS&I into FOS's voluntary jurisdiction.
- 1.4 That would first require some modifications to the rules concerning FOS's voluntary jurisdiction, which are made by FOS and approved by FSA. It would then be for government and parliament to decide whether NS&I should join FOS's voluntary jurisdiction, and whether the existing roles of the Adjudicator and the Parliamentary Ombudsman in relation to NS&I should be removed.
- This consultation is about the modifications that would be required to the rules concerning FOS's voluntary jurisdiction, to make it suitable for NS&I to join. These are matters for FOS, subject to approval from FSA.
 - This consultation is *not* about whether NS&I should actually join FOS's voluntary jurisdiction, and whether the existing roles of the Adjudicator and the Parliamentary Ombudsman in relation to NS&I should be removed. These are matters for government and parliament.
- 1.5 Please send any comments on the proposed rule changes, by 11 August 2004, to:
- Alison Hoyland, Financial Ombudsman Service,
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2 BACKGROUND

National Savings and Investments

- 2.1 NS&I is a government department and an executive agency of the Chancellor of the Exchequer. It is one of the largest savings organisations in the UK, offering savings and investment products to personal savers and investors. Its products are sold direct and through the Post Office.
- 2.2 It provides both a secure place for people to save and a source of funding for the Exchequer. The money that NS&I gets from selling savings and other financial products is used by HM Treasury to help manage the national debt. In return for lending money to the government, customers receive interest on their savings or are eligible for Premium Bond prize draws.

Adjudicator

- 2.3 The Adjudicator is appointed by HM Treasury, under section 84 of the Friendly Societies Act 1992, to hear disputes between NS&I customers and the Director of Savings (the statutory post-holder responsible for NS&I). The Adjudicator is under the supervision of the Council on Tribunals, under the Tribunals and Inquiries Act 1992.
- 2.4 The Adjudicator has power to deal with disputes under:
- section 10 of the National Savings Bank Act 1971 (deposits);
 - section 5 of the National Debt Act 1972 (stock); and
 - a number of Statutory Instruments (savings certificates, bonds and contracts).
- 2.5 The Adjudicator:
- can only consider cases in which there is a disputed claim to some legal entitlement, such as the ownership of a sum of money or claims for compensation for financial loss; and
 - does not deal with complaints about matters of policy, such as levels of interest rates or the terms and conditions of NS&I products.
- 2.6 In the main, the Adjudicator decides cases on the basis of documents only and reaches an outcome based on legal principles. However he can hold a formal hearing where appropriate. His powers and procedures are those of an arbitrator. The Adjudicator's decisions are final and legally binding upon both parties to the dispute.
- 2.7 If a dispute falls within the Adjudicator's remit, the customer must refer it to the Adjudicator. The customer cannot take it to court. But either party can ask a court to rule on whether the Adjudicator has misunderstood or misapplied the law.

Parliamentary Ombudsman

- 2.8 The Parliamentary Ombudsman's jurisdiction derives from the Parliamentary Ombudsman Act 1967. She investigates complaints from members of the public that they have suffered injustice because of maladministration in connection with

administrative action by central government departments or certain other public bodies.

- 2.9 Anyone resident in the UK who claims to have suffered such an injustice can bring a complaint. But the complaint must be referred through a Member of Parliament, who asks the Parliamentary Ombudsman to conduct an investigation.
- 2.10 Because NS&I is a government department and an executive agency of the Chancellor of the Exchequer, the Parliamentary Ombudsman can deal with a complaint against NS&I if the complaint is about the way NS&I has administered a customer's business.
- 2.11 The Parliamentary Ombudsman has extensive powers to determine the procedure to be followed in any complaint. She has no power to order compensation or other action to remedy an injustice. But, as a matter of practice, she will make recommendations – which the department concerned almost always accepts – about the appropriate course of action the department should take, which may include the payment of compensation.

Financial Ombudsman Service

- 2.12 FOS was established under part XVI and schedule 17 of FSMA to provide "a scheme under which certain disputes may be resolved quickly and with minimum formality".¹ FOS has:
- a *compulsory* jurisdiction; and
 - a *voluntary* jurisdiction.
- 2.13 Broadly, FOS's *compulsory* jurisdiction applies to unresolved complaints about specified activities in relation to financial firms that are regulated by FSA:
- The specified activities include FSA-regulated activities plus: lending on mortgage; other specified lending; and providing payments through plastic cards (apart from storecards) – if, in all cases, the service was provided in or from the UK.
 - Financial firms that are currently regulated by FSA include: banks, building societies, insurance companies, investment providers and investment intermediaries.
 - Financial firms regulated by FSA will include: (from 31 October 2004) mortgage intermediaries and those mortgage lenders that are not already covered as banks or building societies; and (from 14 January 2005) insurance intermediaries.
- 2.14 Broadly, FOS's *voluntary* jurisdiction applies to unresolved complaints about specified financial services activities in relation to the financial firms that provide them (whether or not regulated by FSA), and which are not covered by the compulsory jurisdiction. These include:
- lending on mortgage, other specified lending and providing payments through plastic cards (apart from storecards) where the service was provided by a financial firm not currently regulated by FSA;

¹ See: <http://www.legislation.hmso.gov.uk/acts/acts2000/20000008.htm>

- providing mortgage intermediation or insurance intermediation (which are not yet regulated by FSA); and
 - accepting deposits and providing general insurance where the service was directed at the UK but was provided from elsewhere in the European Economic Area.
- 2.15 FOS operates in accordance with rules made under powers conferred by FSMA. Some of the rules are made by FSA, and some are made by FOS with the consent of FSA. All of these rules are in the 'Dispute resolution: complaints' section of the FSA handbook (the Handbook), identified by the prefix DISP.² FOS procedures and powers to award redress are the same for both the compulsory and voluntary jurisdictions.
- 2.16 FOS ombudsmen have power to make awards of up to £100,000 and/or to require respondent firms to take specified steps in relation to the complainant. If the complainant accepts the ombudsman's decision, both sides are legally bound. If the complainant does not accept the decision, neither side is legally bound and the complainant remains free to bring court proceedings against the respondent firm.
- 2.17 Because it provides one of its ombudsmen as the Adjudicator, FOS is already familiar with NS&I business. But the significant differences in public identity, procedures and powers create some practical problems. FOS can see advantages for all concerned if these differences were removed by NS&I joining the voluntary jurisdiction.

² See: <http://www.fsa.gov.uk/vhb/html/disp/DISPtoc.html>. In order to provide maximum harmonisation between FOS's compulsory and voluntary jurisdictions, the standard terms for the voluntary jurisdiction in DISP 4 apply, by cross-reference, many of the provisions that relate to the compulsory jurisdiction. These include the provisions about time limits and complainant eligibility in DISP 2

3 PROPOSED RULE CHANGES

- 3.1 Before NS&I could join FOS's voluntary jurisdiction, some modifications would be required to a few of the existing rules. These are explained in this section, and they are set out in detail in the appendix.

Activities covered

- 3.2 The activities covered by FOS's voluntary jurisdiction are listed in DISP 2.6.9 R in the Handbook. FOS does not consider that the existing rule would enable it to deal with complaints arising out of all aspects of NS&I business.
- 3.3 DISP 2.6.9 R currently covers "accepting deposits", but NS&I business is more extensive than this. It includes a range of other products, such as savings certificates, bonds and contracts. Collectively, NS&I calls these 'investments', but they are not investment business such as is regulated by FSA under FSMA.
- 3.4 So FOS proposes to amend DISP 2.6.9 R, under the powers in section 227 (3) to (5) of FSMA, to add a new class of activity in order to offer full coverage of NS&I business.

Eligible complainants

- 3.5 The standard terms for the voluntary jurisdiction in DISP 4.2 apply the same conditions for complainant eligibility as apply to the compulsory jurisdiction under DISP 2.4. Under these conditions, FOS can receive complaints from the following persons (as long as they are customers, potential customers or have a specified indirect relationship with the financial firm):
- private individuals;
 - businesses with a yearly turnover of less than £1 million;
 - charities with a yearly income of less than £1 million; and
 - trustees of a trust with net assets of less than £1 million.
- 3.6 It is just possible that this might exclude certain classes of person who are currently able to refer complaints to the Adjudicator, or to the Parliamentary Ombudsman as 'persons aggrieved', under the existing legislation. So FOS proposes to make a new rule DISP 2.4.12A, applicable only to the voluntary jurisdiction and NS&I, under the power in section 227 (3) and (7) of FSMA. This would treat a complainant as eligible to bring a complaint against NS&I if he would previously have been entitled to refer an equivalent complaint to either of the former schemes, even if he is not otherwise eligible under DISP 2.4.

Funding

- 3.7 FOS is free to consumers. All costs are met by the financial firms covered. For most firms and activities, FOS charges:
- a standard case fee of £360, which covers about 70% of FOS costs; and
 - a yearly levy, which covers about 30% of FOS costs.³
- 3.8 The total levy is first divided amongst “industry blocks” (financial firms grouped by activity) according to the proportion of FOS’s budgeted costs and the number of case-handling staff required to deal with unresolved complaints generated by that industry block. The figure for each industry block is then divided amongst the financial firms concerned, in proportion to their market share.
- 3.9 NS&I is unlike other financial firms. And its activities do not fit readily into any of the existing industry blocks. So FOS proposes, under paragraph 18 of schedule 17 of FSMA, to create an additional voluntary jurisdiction industry block for NS&I alone. In the light of FOS’s existing experience of providing the Adjudicator it is proposed to fix the initial yearly levy at £10,000, or proportionately for part of a year. In addition to this levy, NS&I will pay the standard case fee of £360.

³ For a few, FOS raises an equivalent amount by charging a special case fee of £550 and no levy.

4 EFFECT OF SOME EXISTING RULES

- 4.1 If NS&I joined FOS's voluntary jurisdiction, most of the existing rules would be applicable without modification. The impact of some of these is explained in this section.

Past events

- 4.2 Under the combined effect of DISP 2.6.12 R and DISP 4.2.5 R, the voluntary jurisdiction already offers coverage in respect of complaints about events occurring before a firm joins the voluntary jurisdiction. So FOS would have power to deal with unresolved complaints about prior events.
- 4.3 Under DISP 3.3.1 R (7) FOS has power to dismiss a complaint without consideration of its merits where the matter has been dealt with by a comparable independent complaints scheme or dispute resolution process. So FOS would have power to decline to deal with matters that had already been considered by the Adjudicator or the Parliamentary Ombudsman.

Complaint handling by NS&I

- 4.4 Under DISP 4.2.2 R many (but not all) of the provisions of DISP 1 apply, so that NS&I would have to follow certain procedures relating to the handling of complaints. Broadly, unless the complaint was resolved by close of business on the next business day, NS&I would be required to:
- send an acknowledgement within 5 business days; and either
 - send a final response within 4 weeks, confirming that the complainant could refer the complaint to FOS if he were still dissatisfied; or
 - send a holding response within 4 weeks, explaining why it needed more time, and send a final response within 8 weeks, confirming that the complainant could refer the complaint to FOS if he were still dissatisfied.

Time limits

- 4.5 Under DISP 2.3.1 R, in general, the complainant must have referred the complaint:
- to FOS within 6 months of the financial firm sending its final response; and
 - to FOS within 6 years of the event complained about or (if later) within 3 years of the date on which the complainant became aware, or ought reasonably to have become aware, that he had cause for complaint; or
 - to the financial firm within those (6 years/3 years) time limits and have received a written acknowledgement or other record of receipt;
- though the ombudsman may extend these time limits:
- in exceptional circumstances; or
 - if the financial firm does not object.

- 4.6 These time limits differ from the existing arrangements for referring complaints to the Adjudicator or to the Parliamentary Ombudsman. But they are likely to be more generous to complainants in most cases. So we do not propose any amendments to them.

Determination of complaints

- 4.7 Complaints dealt with by FOS are determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case – 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 (DISP 3.8.1 R).
- 4.8 An ombudsman’s determination includes a time limit for acceptance. If the complainant notifies the ombudsman that he accepts the determination within the time limit, but not otherwise, it is binding upon both parties and final (DISP 3.8.3 R and DISP 4.2.6 R) and enforceable in a court of law (DISP 4.2.10 R).
- 4.9 This is more favourable to complainants than the existing arrangements relating to the Adjudicator. He makes his decisions solely according to the law, and they automatically bind both parties. So an FOS ombudsman has a wider discretion than the Adjudicator, and an NS&I customer would have an option (not previously available) *either* to accept the Ombudsman’s determination *or* to reject it and to preserve any existing legal rights he may have.

APPENDIX: DRAFT RULES

Note:

- Proposed amendments are underlined.
- Words in italics are defined in the glossary to the handbook.
- VJ means FOS's voluntary jurisdiction

[Eligible complainants in the VJ – in DISP 2.4]

2.4.12A R In respect of a complaint under the *Voluntary Jurisdiction* relating to National Savings and Investments' business under DISP 2.6.9 R (9), where the complainant is not otherwise eligible in accordance with DISP 2.4, the Ombudsman may, nonetheless, if he considers it appropriate, treat the complainant as an *eligible complainant* if he or she would have been entitled to refer an equivalent complaint to the Adjudicator for National Savings or, as the case may be, the Parliamentary Commissioner for Administration immediately before the *Voluntary Jurisdiction* began to cover National Savings and Investments' business, provided that the complainant wishes to have the complaint dealt with under the *Financial Ombudsman Service*.

[Activities covered in the VJ – in DISP 2.6]

2.6.9 R The *Ombudsman* can consider a complaint under the *Voluntary Jurisdiction* only if it is not covered by the *Compulsory Jurisdiction* and it relates to an act or omission in the carrying on or one or more of the following activities by a *VJ participant*:

- (1) *general insurance business*;⁴
- (2) *accepting deposits*;⁴
- (3) lending *money* secured by a charge over land;
- (4) lending *money* (other than *restricted credit*);
- (5) paying *money* by a *plastic card* (other than a *store card*);
- (6) the provision of ancillary banking services;
- (6A) acting as an intermediary for a loan secured by a charge over land;
- (6B) acting as an intermediary for *general insurance business* or *long-term insurance business*;

⁴ If carried out in or from the UK, these are FSA-regulated activities and covered by FOS's compulsory jurisdiction. If directed at the UK from elsewhere in the European Economic Area, they are (subject to the conditions in DISP 2.7.2 R) covered by the voluntary jurisdiction.

- (7) a financial services activity carried on after *commencement* and which had been covered by a *former scheme* in so far as the *VJ participant* was a member of that *former scheme*, in respect of that activity, immediately before the *commencement day*;
- (8) an activity carried on or after 29 April 1988 which was a regulated activity when the VJ participant joined the Voluntary Jurisdiction (or became an authorised person if later) but which was not a *regulated activity* at the time of the act or omission;
- (9) National Savings and Investments' business;
- or activities ancillary to them (see DISP 2.6.11R).

[VJ funding – in the VJ tariff]

	VJ industry block and business activity	Tariff basis	Tariff rate	Minimum levy	Case fee
8V	<u>National Savings and Investments' business</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>£10,000</u>	<u>£360</u>

End