

Submission to the Joint Committee on the Draft Financial Services Bill from the Financial Ombudsman Service

- 1 The Joint Committee on the Draft Financial Services Bill has called for evidence as part of its consideration of the draft Bill. The Financial Ombudsman Service welcomes the opportunity to contribute to the Committee's evidence.

About the Financial Ombudsman Service

- 2 The Financial Ombudsman Service is the statutory-based scheme for the resolution of complaints between financial businesses and their customers. We are established formally under the Financial Services and Markets Act 2000 but are based on several predecessor schemes, most of which were established by industry. We are an impartial body that provides an informal alternative to the courts, resolving complaints by individual consumers and small businesses who remain dissatisfied after complaining unsuccessfully to a financial firm. The ombudsman service is independent of the parties in dispute, and operationally independent of government and regulators. We are funded entirely by the industry via an annual levy and case fees.
- 3 We handled more than one million initial enquiries during 2010/2011 and for most of these we were able to provide general advice or guidance. We accepted 206,000 new cases, which was a 26% increase on the number of cases recorded in the previous year. This was largely a result of a significant increase in the number of complaints about Payment Protection Insurance (PPI). Since the ombudsman service was set up, and to the end of 2010/11 we have received a total of 1,172,719 cases of which 26% have involved the sale of mortgage endowments, 19% have involved the sale of PPI and 4% have involved unauthorised overdraft charges.
- 4 The Financial Ombudsman Service has a distinct and discrete role. It has no remit to act as a regulator, a consumer champion or to reflect the interests of businesses. Its functions are complementary to the other bodies in the wider regulatory framework including the Money Advice Service and the Financial Services Compensation Scheme.

The draft Bill and white paper

- 5 We welcome the fact that the draft legislation retains the independence of the ombudsman service and the fundamentals of our operating model and quasi-judicial role. Our independence is important because we do not represent the interests of either consumers or industry – so both parties to a complaint can be confident that our decision will be impartial and therefore fair.
- 6 Independence must go hand in hand with strong governance and accountability. So we welcome the provisions in the draft Bill to strengthen the current requirements which will, in part, formalise some of the things that we already do on a voluntary basis.
- 7 We also welcome the new provisions which would require the ombudsman service to disclose information to assist the FCA in advancing its objectives, and the complementary requirement for the FCA to take this information into account.
- 8 Because we attach considerable importance to being an open and transparent organisation we are pleased that the draft Bill includes a clause which would give greater clarity about the ombudsman service's ability to publish information, in particular ombudsman determinations.
- 9 The draft Bill also includes a number of technical changes which will assist the practical handling of complaints, again we welcome these.
- 10 We are aware that the businesses which use our service require us to keep pace with developments in the industry and we are mindful that developments in technology change the way in which consumers elect to communicate with organisations such as ours. We are therefore pleased that the Bill has been drafted in a way which will not compromise our ability to ensure our service continues to reflect the reality of the financial services market.

The joint committee's questions

- 11 While most of the questions posed by the committee go beyond the remit of the ombudsman service, we would like to make some observations in response to the following question:

Will the new regulatory arrangements reduce the risk and cost of dealing with miss-selling of financial products?

There is no doubt that the widespread mis-selling of some financial services products has had a significant impact. The mis-selling of PPI has had a negative effect on consumer confidence at a time when the reputation of the industry was already undermined. Mis-selling has caused detriment not only for the consumers who have been its victims, but also those who have been deterred from taking up financial services products and so denied the benefits they can offer. It has generated large numbers of complaints, often intermediated by claims management companies and so has consumed significant resources, for the regulator and for the ombudsman service as well as for financial firms and their customers.

12 There appears to be a broad consensus that, had action been taken by the regulator to intervene at an earlier stage, much of the consumer detriment and unnecessary cost might have been prevented. It is also the case that in the absence of an early intervention by the regulator, the ombudsman service has had no choice but to deal with large numbers of cases on an individual basis and as a result has been criticised by the industry for acting as a de-facto regulator.

13 We are optimistic that recent changes to the existing legislation, which are now being implemented, when taken together with the proposals set out in the draft Bill, are likely to have the effect of reducing mis-selling. This is because they combine three key elements:

- Early **identification** of issues which might lead to mass detriment. The ombudsman service and the FSA, with OFT in respect of consumer credit, are now working together closely through a new coordination committee established this year to help identify emerging areas of conduct risk. That coordination will help regulators to take early and proactive intervention where it is required. As part of the process, the ombudsman service shares with FSA and OFT information about the issues it sees in its casework. This helps to ensure that retail market conduct risks are identified early before large scale detriment or large volumes of complaints have arisen. The draft Bill will

strengthen this by requiring the ombudsman service to disclose information to the FCA.

- The new focus on conduct regulation, with the FCA using early and proactive **intervention** to ensure that the interests of customers are protected, is intended to help prevent large scale customer detriment occurring. The FSA has said that the new FCA will have greater willingness to intervene earlier to deliver better outcomes for customers.
- The FCA will have a range of regulatory **powers** to tackle areas of large scale customer detriment should they arise – ranging from requirements for “back-book reviews” of past sales and the use of s404-style redress schemes (which have the effect of “binding” the ombudsman into that solution), to solutions which are essentially complaint-led.

The new arrangements address many of the concerns of industry stakeholders that, for wider issues, the ombudsman service and the regulator need to be able to work in a joined up way. The new s404 powers have already been used successfully in two recent high profile cases. However, the effectiveness of the arrangements will depend upon the new regulator being adequately resourced and being able to secure a significant change in its operational culture to deliver the change in approach which is required.

- 14 No regulatory regime or industry will avoid all conduct failings. So the ombudsman service has a role in resolving the problems that inevitably arise from mistakes, misunderstandings and poor practice that fall below the threshold for regulatory intervention. This helps to underpin customer confidence in the expectation that where such problems do arise they can be resolved promptly, fairly and with the minimum of formality. Where the customer and financial business cannot agree, the availability of the ombudsman service as an alternative to the civil courts provides a proportionate, low cost and accessible means of resolving disputes.