



# publication of complaint data

## next steps



September 2008

## who should read this paper?

We expect this paper to be of interest both to financial businesses and to consumers, and also to those representing them.

## responses

The Financial Ombudsman Service invites comments on this paper. Please send responses to reach us as soon as possible and, in any event, by **24 December 2008**.

Where possible, please send responses by email to:

[alison.hoyland@financial-ombudsman.org.uk](mailto:alison.hoyland@financial-ombudsman.org.uk).

Alternatively, please post hard-copy responses to:

Alison Hoyland  
Financial Ombudsman Service  
South Quay Plaza  
183 Marsh Wall  
London  
E14 9SR

fax: 020 7094 0869

**In the interests of transparency, we encourage non-confidential responses. We may make responses available for public inspection unless you request otherwise in writing.**

**A standard confidentiality statement in an email message will not be regarded as a request for non-disclosure.**

Copies of this paper can be downloaded at [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk).

## contents

<b>chapter 1</b>	<b>background</b>	<b>page 3</b>
	Financial Ombudsman Service transparency	3
	Financial Services Authority (FSA) proposals	4
	issues of principle and issues of practice	5
<b>chapter 2</b>	<b>our incoming work</b>	<b>page 7</b>
	enquiries and cases	7
	number of new cases	8
<b>chapter 3</b>	<b>outcomes in closed cases</b>	<b>9</b>
	range of outcomes	9
	change in favour of the consumer	11
	nature of the change	12
<b>chapter 4</b>	<b>financial businesses covered</b>	<b>page 14</b>
	number to be covered	14
	groups of financial businesses	16
	trading names	16
<b>chapter 5</b>	<b>verification and publication</b>	<b>page 18</b>
	making the outcome of individual closed cases clear	18
	auditing the business-specific data before publication	18
	period covered by the data	18
	publishing the data	18
	explanations and context	19
	when the data will be first published	21
<b>chapter 6</b>	<b>possible format</b>	<b>page 22</b>
<b>chapter 7</b>	<b>specific questions</b>	<b>page 24</b>

# 1 background

## Financial Ombudsman Service transparency

- 1.1 The Financial Ombudsman Service attaches considerable importance to being an appropriately open and transparent organisation. We already provide extensive information about our work – which is available through our website [[www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)].
- 1.2 We publish details of the numbers and outcomes of cases we receive, analysed according to the different products and different types of financial businesses involved – for example, in our 2007/08 annual review [[www.financial-ombudsman.org.uk/publications/ar08/index.html](http://www.financial-ombudsman.org.uk/publications/ar08/index.html)]. But we have not published complaint data on individual financial businesses.
- 1.3 We have been reviewing our strategic approach to transparency issues – including whether we should publish complaint data on individual financial businesses – in the light of our aims to be as open as possible about our work, and to ensure that stakeholders have confidence in our work.
- 1.4 As part of this review, in 2007 we asked Lord Hunt of Wirral to talk to stakeholders and make recommendations – focused on transparency (and accessibility) – aiming to help build consensus. Lord Hunt's report [[www.thehuntreview.com/updates/FOS\\_Report.pdf](http://www.thehuntreview.com/updates/FOS_Report.pdf)], published in April 2008, has been of considerable assistance to us in planning the way forward.
- 1.5 Lord Hunt's report concluded:
  - o The availability to consumers of accurate information helps to make markets as a whole work more effectively, irrespective of whether every piece of information is understood perfectly by each and every individual.
  - o Information on complaints data should not be any more – or less – likely to be misunderstood than any other information provided by financial businesses, either as part of their marketing efforts or as a response to regulatory rules.
  - o Transparency can help to improve performance, particularly amongst weaker financial businesses, by giving strong incentives to make visible, public progress.

- Bringing information into the public domain sensibly, clearly and with all necessary caveats fully explained, can have a major preventative effect.
- Information about complaint performance is one relevant factor that consumers may wish to take into account in making a purchasing decision and there is no legitimate justification for withholding it as a matter of principle.
- The arguments against any publication at all are not convincing. The reputational risk of being perceived to be withholding data would exceed any danger of possible misinterpretation in the short-term.

1.6 Additionally, in February 2008 the National Consumer Council (NCC) published 'Lessons from ombudsmania' – a paper on the future direction of ombudsmen schemes in consumer markets. The [NCC paper](http://www.ncc.org.uk/nccpdf/poldocs/NCC198ft_ombudsmania.pdf) [www.ncc.org.uk/nccpdf/poldocs/NCC198ft\_ombudsmania.pdf] encouraged ombudsmen to publish details of complaints upheld, in order to use the influence of business reputation on consumer choice to change market practices.

## Financial Services Authority (FSA) proposals

1.7 Those financial businesses which are FSA-regulated firms are required to send to the FSA, twice a year, information about the number and outcome of complaints they have received – as detailed in [DISP 1.10](http://fsahandbook.info/FSA/html/handbook/DISP/1/10) [http://fsahandbook.info/FSA/html/handbook/DISP/1/10], the complaints-reporting rules in the FSA handbook.

1.8 An FSA [discussion paper](http://www.fsa.gov.uk/pubs/discussion/dp08_03.pdf) [www.fsa.gov.uk/pubs/discussion/dp08\_03.pdf] proposes that in future the FSA should publish some of that complaint data. The discussion paper says:

- The data would be published and updated on a six-monthly basis (January to June, and July to December).
- The FSA might publish data for about 125 firms (covering about 95% of reported complaints) or data for about 400 firms (covering about 99% of reported complaints).
- The data might be published as a table in the following format, with the facility for the data to be sorted by any of the columns:

Firm	Part of group (name)	No. complaints received by firm	Percentage of complaints dealt with by firm			% of complaints upheld by firm	£ redress paid by firm
			Within 4 weeks	4 to 8 weeks	Over 8 weeks		
Sort ▼ ▲	Sort ▼ ▲	Sort ▼ ▲	Sort ▼ ▲	Sort ▼ ▲	Sort ▼ ▲	Sort ▼ ▲	Sort ▼ ▲
Firm A	Group 1						
Firm B	Group 2						

- 1.9 The ombudsman service is working closely with the FSA on the issues raised, including the inter-relationships between the format and content of the data which the FSA proposes to publish and the format and content of the data which we plan to make available.

### **issues of principle and issues of practice**

- 1.10 In 25 July 2008 we published a policy statement on [our strategic approach to transparency](http://www.financial-ombudsman.org.uk/publications/policy-statements/transparency.html) [www.financial-ombudsman.org.uk/publications/policy-statements/transparency.html]. This announced that our non-executive board (appointed to safeguard the public interest) had decided that we should publish complaint data on individual financial businesses – including the percentage of complaints upheld.
- 1.11 Our board concluded that publishing data on individual financial businesses would be in the public interest for a number of reasons, including:
- In an age of increased transparency, relevant information should not be kept secret unless there are good reasons to do so.
  - Lord Hunt's independent review concluded, for reasons we agree with, that there is no reason of principle to withhold complaint information about individual financial businesses.
  - Where similar cases are brought by consumers against financial businesses in court, the outcomes are published.
  - We know how differently financial businesses that are otherwise broadly comparable treat complaints, and we believe our stakeholders are entitled to have access to this information.
  - We note that the FSA proposes to publish some of the complaint data which it receives from financial businesses that it regulates.
  - The data we plan to publish is all derived from our own records, and is not provided to us by financial businesses – meaning it is all prepared on a consistent basis.
  - Because the data is all derived from our own records, we will not need to ask financial businesses to provide any additional data.
  - Publication could help consumers and better-performing businesses, as well as better informing all our stakeholders about our work.

- Such data is published by bodies handling financial complaints elsewhere in Europe – for example in the Czech Republic, Finland, Poland and Spain.
- 1.12 This paper does not deal with the principle of publication. It is directed to the practical matters that remain to be resolved in implementing the decision of principle which has already been taken. The paper explains the relevant data which is available for publication and seeks comments on a number of issues concerning the way in which it might be published.
- 1.13 We intend to publish data about financial businesses which have done comparatively well in their complaint-handling as well as those which have done comparatively poorly. Publication of this data is not intended as an exercise in 'naming and shaming' poor performers. It will disclose good practice by financial businesses as well as poor practice.
- 1.14 Verifying and publishing complaint data in the form described in this paper will necessarily involve the ombudsman service in the use of some additional resources – so we may need to progress incrementally. Respondents who propose something more extensive or elaborate will no doubt take into account the likely cost of what they propose.

## 2 our incoming work

### enquiries and cases

- 2.1 Each year, our annual review sets out the number of new 'enquiries' we received, as well as the number of new 'cases' which arose from them. Our [2007/08 annual review](http://www.financial-ombudsman.org.uk/publications/ar08/index.html) [www.financial-ombudsman.org.uk/publications/ar08/index.html] shows that, in the year ended 31 March 2008, we received 794,648 new enquiries, giving rise to 123,089 new cases.
- 2.2 These enquiries reflect a wide range of consumer concerns:
- Some are full-blown complaints which are ready to become new cases.
  - Some are complaints which have not yet been referred to the financial business concerned.
  - Some are seeking reassurance about something a financial business has said.
  - Some relate to issues that are outside our remit.
- 2.3 We are currently considering how we can develop the information that we collect about these enquiries. This might help consumers, financial businesses and other stakeholders to identify trends in consumer concerns, and potentially highlight circumstances where financial businesses' own complaint-handling systems are not working to best effect.
- 2.4 But, at present, we have concluded that it would not be meaningful or appropriate to publish data on the front-line enquiries we receive that relate to individual financial businesses. We intend to focus on the consumer complaints that become full-blown cases – both their number and their outcomes.
- 2.5 As indicated in our [policy statement on accessibility](http://www.financial-ombudsman.org.uk/publications/policy-statements/accessibility.html) [www.financial-ombudsman.org.uk/publications/policy-statements/accessibility.html], published in July 2008, we are carrying out further research into why some consumers contact us about complaints which they have not yet referred to the financial business, and what happens when they do.



## number of new cases

- 2.6 A consumer must give the financial business a reasonable opportunity to resolve the complaint before it can be referred to the Financial Ombudsman Service and potentially become a 'case'. We can only consider a complaint when *either* the financial business has issued a final response *or* eight weeks have elapsed since the complaint was made to the financial business – rule DISP 2.8.1 [<http://fsahandbook.info/FSA/html/handbook/DISP/2/8>].
- 2.7 Even then, not all complaints referred to us by consumers become new 'cases'. The 'new cases' referred to in our data are those complaints which are defined in the glossary to the FSA handbook as 'chargeable cases' [<http://fsahandbook.info/FSA/html/handbook/Glossary/C>] though the first three chargeable cases per year for each financial business do not attract any case fee.
- 2.8 New cases exclude complaints where we consider it apparent, from the complaint and the financial business's final response, that:
- the consumer is not an eligible complainant;
  - the complaint does not fall within our jurisdiction; *or*
  - the complaint should be dismissed on any of the grounds set out in rule DISP 3.3.4 [<http://fsahandbook.info/FSA/html/handbook/DISP/3/3>].
- 2.9 When we accept a complaint as a new case, our computerised casehandling system automatically sends a letter to the financial business – indicating that the complaint has become a chargeable case. So financial businesses can themselves keep track of the number of complaints against them which have been referred to us and accepted as new cases.
- 2.10 New cases are recorded under the financial business against which the complaint was brought. Sometimes the complaint may relate to an act or omission by a predecessor business which was taken over or absorbed by the financial business against which the complaint was brought. These are not recorded separately.

### 3 outcomes in closed cases

#### range of outcomes

- 3.1 In annual reviews over the years we have presented various analyses of the outcomes of closed cases. We have shown the percentage of cases resolved at different stages of our process – often distinguishing those where:
- we decided that the financial business had treated the consumer's case fairly (because the business had done nothing wrong *or* had already offered sufficient compensation);
  - as a result of the case coming to the ombudsman service, the financial business agreed a 'goodwill payment' even though it refused to admit liability;
  - the financial business had already made an offer to the consumer but we negotiated a fair settlement of the case that resulted in a higher figure; *or*
  - we decided that the financial business had treated the consumer's complaint unfairly, and we required the financial business to pay compensation (or more compensation).
- 3.2 Following feedback that this sort of presentation of case outcomes was too complex, in last year's annual review we simply presented the outcomes of closed cases in three categories:
- where we agreed with the financial business's response;
  - where we agreed with the consumer's complaint; *and*
  - mixed outcome.
- 3.3 The percentage of mixed-outcome cases was appreciable in relation to savings accounts (12%) and other banking services cases (16%). But in relation to all other financial products the percentage of mixed-outcome cases was below 8%. And in some product areas it was as low as 1% (health insurance) or even 0% (mortgage endowments).
- 3.4 Whilst our adjudicators and ombudsmen use a broadly consistent approach, the judgement of what constitutes a 'mixed outcome' is necessarily a partly subjective one – dependant on the circumstances of the case. This would not be appropriate for recording and publishing data about individual financial businesses. It would be difficult to verify and would potentially give

rise to time-consuming secondary arguments about how the case outcome was going to be recorded.

3.5 It could be argued that an ideal approach would be for the ombudsman service to make (and record) more sophisticated value judgements on complaint-handling by financial businesses.

For example:

- Where we agreed with the financial business's position, it could be argued that we should distinguish between those cases where:
  - the financial business explained its position so poorly that it was entirely reasonable for the consumer to refer the matter to us; *and*
  - the financial business explained its position well, but the consumer was simply not prepared to accept it.
- Where we agreed with the consumer's position, it could be argued that we should distinguish between those cases where:
  - the financial business should have known to uphold the consumer's complaint on the basis of previous ombudsman decisions; *and*
  - there was simply a conflict of evidence to be resolved which the financial business might reasonably have felt should be settled independently by the ombudsman service.

3.6 Similarly, distinctions could potentially be made which identified cases where either the consumer or the financial business unreasonably pursued the case through every available stage of our process. But, ideal as such distinctions might appear to be in theory, it is doubtful whether the additional time necessary and the potentially-controversial subjectivity involved in arriving at these judgements would make this approach appropriate for data which is to be published.

3.7 Our provisional conclusion therefore is that, accepting all these qualifications, published outcome data about individual businesses should simply show the percentage of closed cases where the outcome has been changed in favour of the consumer – regardless of:

- the stage at which the case was resolved;
- any impact that might have on the willingness of financial businesses to compromise on borderline cases; *and*

- whether a more sophisticated (but subjective) approach would provide a more subtle judgement on the quality of complaint-handling by a financial business or the behaviour of its customers.

## **change in favour of the consumer**

- 3.8 When we close a case, after it has been resolved, we already record whether there has been any change in favour of the consumer between:
- the position the financial business took when it issued its final response to the consumer's complaint; *and*
  - the final outcome of the closed case, after our involvement.
- 3.9 This means that the outcome we record is not based solely on whether or not the original complaint made to the financial business was well-founded. It is also based on whether or not the financial business offered appropriate redress if it had indeed done something wrong.
- 3.10 We record the outcome of a closed case as 'no change' (*i.e.* the consumer's complaint was rejected) where:
- the financial business had done nothing wrong; *or*
  - the financial business had done something wrong, but had already offered the consumer appropriate redress (before the complaint became a case).
- 3.11 We record the outcome of a closed case as 'changed' (*i.e.* the consumer's complaint was upheld) where the outcome of the complaint had changed in favour of the consumer after it became a case. Typically, this is where the financial business had done something wrong, but its final response to the consumer's complaint:
- failed to accept that the financial business had done something wrong; *or*
  - failed to offer appropriate redress.

3.12 This means, for example, that we will record the outcome of a closed case as 'changed' where:

- the financial business's final response said it had done nothing wrong but, after the complaint became a 'case', the financial business belatedly accepted that it *had* done something wrong; *or*
- the financial business's final response offered the consumer inadequate compensation but, after the complaint became a case, the financial business belatedly increased its offer to an appropriate level.

3.13 That is because the financial business should have investigated the complaint properly and offered appropriate redress in the first instance. The clear inference is that, in a changed-outcome case, the financial business would not have altered its position if the consumer had not referred the complaint to the ombudsman service.

3.14 Of course, we do not record such outcomes for any case that we decide is out-of-jurisdiction or where the consumer decides to withdraw the complaint without having obtained any redress. So these are excluded when calculating the percentages of closed cases where the outcome is 'no change' or 'changed'.

### **nature of the change**

3.15 For some purposes (such as the comparative anonymised data we provide to our largest users) we have in the past distinguished between:

- 'small change' (for example, where we largely agreed with the financial business's position, but made a small increase in compensation); *and*
- 'substantial change' (for example, where we upheld a complaint which the financial business had rejected or there was a substantial change to the amount of compensation).

3.16 But this distinction is, necessarily, partly subjective – taking into account the circumstances of the case. For example, an amount that appears small in relation to a well-off consumer's £50,000 investment can appear substantial in relation to a low-income consumer's £500 loan. And, rather than awarding a specific amount of compensation, we may direct the financial firm to do something, such as:

- reconstructing an account or an investment on a different basis; *or*

- reconsidering an application or a claim on a different basis.

3.17 As we have previously indicated, it is doubtful whether potentially-controversial subjectivity is appropriate in relation to analysing published data about individual financial firms. So our provisional conclusion is that published outcome data about individual businesses should simply show the percentage of closed cases where the outcome has been changed in favour of the consumer – regardless of the nature of the change.

3.18 If you disagree with that, please suggest how different types of change could be defined – in a way that will:

- cover the wide variety of cases and types of redress;
- avoid subjectivity and time-wasting controversy; *and*
- be verifiable for the purpose of publication.

## 4 financial businesses covered

*[In explaining about groups of financial businesses and trading names, this chapter refers by name to some real financial businesses. These are examples only and are not intended to imply anything about our experience of the financial businesses mentioned.]*

### **number to be covered**

- 4.1 By 'financial business' we mean a distinct legal entity – usually regulated by the FSA, licensed by the Office of Fair Trading (OFT) or both. As explained later in this chapter, some well-known financial groups or brands include multiple financial businesses, and some financial businesses include multiple trading names or brands.
- 4.2 More than 100,000 financial businesses come within our compulsory, consumer credit and voluntary jurisdictions. About 25% of these are regulated by the FSA, and it is a relatively small number of these FSA-regulated financial businesses that are involved in the majority of cases we deal with.
- 4.3 In the six months from January to June 2008, 2,361 financial businesses had one or more new cases with the Financial Ombudsman Service, but most cases were produced by a much smaller number of financial businesses. The new cases per financial business included:
- 296 financial businesses, with 10+ new cases each, produced 93% of all new cases;
  - 212 financial businesses, with 20+ new cases each, produced 91% of all new cases;
  - 160 financial businesses, with 30+ new cases each, produced 89% of all new cases;
  - 119 financial businesses, with 50+ new cases each, produced 86% of all new cases;
  - 75 financial businesses, with 100+ new cases each, produced 81% of all new cases;
  - 36 financial businesses, with 250+ new cases each, produced 70% of all new cases;
  - 20 financial businesses, with 500+ new cases each, produced 59% of all new cases;
  - 9 financial businesses, with 1,000+ new cases each, produced 45% of all new cases;
  - 4 financial businesses, with 2,000+ new cases each, produced 31% of all new cases.

- 4.4 The closed cases per financial business in the six months from January to June 2008 were:
- 260 financial businesses, with 10+ closed cases each, produced 90% of all closed cases;
  - 177 financial businesses, with 20+ closed cases each, produced 87% of all closed cases;
  - 140 financial businesses, with 30+ closed cases each, produced 85% of all closed cases;
  - 102 financial businesses, with 50+ closed cases each, produced 82% of all closed cases;
  - 69 financial businesses, with 100+ closed cases each, produced 77% of all closed cases;
  - 35 financial businesses, with 250+ closed cases each, produced 64% of all closed cases;
  - 16 financial businesses, with 500+ closed cases each, produced 49% of all closed cases.
  - 8 financial businesses, with 1,000+ closed cases each, produced 37% of all closed cases;
  - 3 financial businesses, with 2,000+ closed cases each, produced 20% of all closed cases.

4.5 Our provisional conclusion is that publishing data about any financial business that has had a case with the ombudsman service – including smaller businesses with occasional cases – would not be proportionate. And, below a minimum number of closed cases, the outcome data would not be a statistically significant indication of a financial business's approach. The data should reflect those financial businesses that had most impact on our service.

4.6 We propose that we should set a threshold for publication. Striking a balance between the number of financial businesses to be covered and the percentage of cases they produce, and taking into account the resources required to collate and publish the data, we propose to focus initially on those financial businesses which had at least 30 new cases *and* 30 closed cases in the relevant six-month period. Do you agree?

4.7 Many of the financial businesses we cover are not regulated by the FSA. So the number and identity of the financial businesses for which we publish data should not necessarily be tied completely to those for which the FSA intends to publish data (even though we expect a high degree of commonality). But we will review the position in the light of FSA decisions about the scope of the data it intends to publish.



## groups of financial businesses

- 4.8 Our complaint data for financial businesses is recorded against the relevant legal entity, which is regulated by the FSA or holds a consumer credit licence from the OFT. Many of these legal entities form part of a larger group, which may well share the same brand-identity in the eyes of consumers.
- 4.9 For example, what a consumer may identify simply as 'Barclays' actually covers a number of separate legal entities, including Barclays Bank Plc, Barclays Bank Trust Company Limited, Barclays Insurance Services Company Limited and Barclays Life Assurance Company Limited. So, where applicable, we propose that the published data should identify any group to which a financial business belongs.
- 4.10 But what if a group includes some financial businesses with case numbers above the threshold for publication and some with case numbers below the threshold? Our provisional conclusion is that we should also publish the data for the group businesses below the threshold, to provide a full picture for the group. Do you agree?

## trading names

- 4.11 Conversely, there are other financial businesses where a single legal entity operates under a variety of brand-identities or trading names – without consumers necessarily understanding that it is all one legal entity. Our cases are necessarily recorded against the single legal entity.
- 4.12 For example, although some consumers might think that the banking and mortgage businesses of Halifax and Birmingham Midshires are separate legal entities, they are now both merely trading names of Bank of Scotland plc. So they could not appear in the published data in their own right. Their data would be included under Bank of Scotland.
- 4.13 A list of a financial business's trading names can be found:
- if the financial business is regulated by the FSA, in the [FSA register of firms](http://www.fsa.gov.uk/register/home.do) [[www.fsa.gov.uk/register/home.do](http://www.fsa.gov.uk/register/home.do)];
  - if the financial business is licensed by the OFT, in the [OFT register of consumer credit licensees](http://www2.crw.gov.uk/pr/default.aspx) [[www2.crw.gov.uk/pr/default.aspx](http://www2.crw.gov.uk/pr/default.aspx)].

4.14 In order to make the published data clearer, our provisional conclusion is that it should list, against relevant legal entities, any other major trading names or brands under which they deal with consumers. Do you agree?

## 5 verification and publication

### **making the outcome of individual closed cases clear**

- 5.1 We will continue to include the correct recording of outcomes as a key part of our case-management and quality-control work. And we will alter our casework system so that, when a case is closed, a letter will automatically be sent to the financial business indicating how we have recorded the outcome – enabling financial businesses to check this case by case.

### **auditing the business-specific data before publication**

- 5.2 Financial businesses will also want to be satisfied that the aggregate data published about them is correct. So we propose to instruct our internal auditors (currently KPMG) to audit the data before publication. Do you consider that there are any further checks required in order to verify the data?

### **period covered by the data**

- 5.3 As previously indicated, the FSA aims to publish the data it receives from financial businesses six-monthly. Accordingly, it seems sensible that 'our' data should also be published on a similar six-monthly basis (January to June and July to December) – even though the data published by the FSA will cover complaints handled by financial businesses in that period and the data we publish will cover cases handled by the ombudsman service. Do you agree?

### **publishing the data**

- 5.4 We would publish the data on the internet. Chapter 6 includes a possible format, on which we would welcome comments. Insofar as the data relates to financial businesses for which the FSA publishes data, the FSA will be able to repeat it alongside the data it receives from financial businesses if it wishes to do so.

## explanations and context

- 5.5 The possible format in chapter 6 contains a number of notes, to provide generic explanations about the data we are publishing. These include:
- explaining what we mean by 'financial business', 'other trading names', 'part of group', 'number of new cases' and 'percentage of closed cases upheld';
  - noting that some new cases recorded against a financial business may relate to acts or omissions of another business which has been taken over or absorbed;
  - clarifying that the group of new cases differs from the group of closed cases – because not all new cases received during the period were closed during the period, and some cases closed during the period were received in a previous period;
  - warning that, because of timing differences in deciding blocks of cases, the outcome data for the cases closed in a single period may not, on its own, be significant – and that the trend over several periods is more likely to be significant; *and*
  - (at the risk of stating what should be obvious) indicating that the number of new cases relating to a particular financial business will be affected by, amongst other things, the size of the financial business.
- 5.6 In relation to the size of the financial businesses concerned, should any wider context be provided by reference to (for example) industry developments, the structure of individual groups or the market share and product mix of individual financial businesses? Our provisional conclusion is that this is not an appropriate task for the ombudsman service.
- There is no generally-accepted measure of market share across the banking, insurance and investment sectors. And, because complaints relate to events in the past when market shares may well have been different, the current market share might be misleading.
  - Complaint numbers can also be affected by many other factors, such as product mix. And the ombudsman service does not hold the underlying market data. So any commentary by the ombudsman service would necessarily be subjective, and potentially controversial.
  - It is one thing for the ombudsman service to put into the public domain the complaint data which we already hold, and which we have verified. It would be quite another thing for us to publish subjective, and potentially controversial, business-specific commentaries.

- We do not consider that this would be consistent with our impartial dispute-resolution role. It is for others (including financial businesses, industry bodies and consumer groups) to comment on these issues.
- Such comment will be better informed than it is currently, because it will be made against the background of our having put the information we hold, and can verify, into the public domain.
- The data we intend to publish on the proportion of cases upheld should be comparable, irrespective of current or past market share. A high proportion of cases upheld suggests problems with in-house complaint-handling by a financial business, whatever its size.
- For financial businesses regulated by the FSA, which provide most of our cases, some context would be provided by the data which the FSA proposes to publish on cases handled by the financial businesses themselves.
- For example, it would be possible to compare how many complaints an FSA-regulated financial business receives (and the proportion it upholds) with the number of complaints that come on to the ombudsman service (and the proportion we uphold).

5.7 But if all relevant stakeholders (including industry bodies, consumer bodies and the FSA) can agree amongst themselves how market-share can be measured and published, we are then happy to talk to them about how this could be used to give context to the complaint data we publish. Problems our stakeholders will have to overcome in reaching agreement include:

- In measuring market share within one sector, there would be radically different results depending on the benchmark used. For example, within the banking sector, the benchmark could be (amongst other things) numbers of accounts or combined account balances – but the combined balances on a few mortgage accounts would be likely to equal the combined balances on a much larger number of current accounts.
- And the problem is compounded in seeking to compare market share in one sector with another sector. Most of the larger financial businesses operate across the banking, insurance and investment sectors – but with different proportions in each. How many bank accounts (or how much in balances) equal how many insurance policies (or how much premium income) equal how many investments (or how much invested, or how much commission income)?
- It is not clear how far larger financial businesses will be prepared to put into the public domain commercially-sensitive information about their varying shares of the market, either explicitly or in a way which can be calculated from our complaint data – for example, by

saying that a particular number of cases we received from an individual financial business arose from a particular percentage of the market.

- A financial business's exposure to potential complaints relates not just to its current market share but also to its historic book of customer relationships. Many of the cases that the ombudsman service deals with (particularly investment and pension cases) concern events some years ago. Establishing a context which included both current and historic data about market share (and product mix) would be extremely complex.

### **when the data will be first published**

5.8 The FSA is proposing to publish the data it receives from financial businesses, and so a financial business can hardly dispute the data it has itself provided. But we will be publishing data that we have recorded ourselves, so our task (including verification procedures) is rather more complex.

5.9 We would not want to publish data that related to cases we dealt with in a period before any necessary changes to our systems (including verification procedures) had been put in place. So, depending on the responses to this paper, we might be able to start with data for the first half of 2009 or we might have to await the data for the second half of 2009.

## 6 possible format

[Here is a possible format in which the data might be published – assuming that data is published for financial businesses with more than 30 new cases and more than 30 closed cases during the period. We would welcome suggestions on how its presentation might be improved.]

PERIOD 1 JANUARY TO 30 JUNE 2009				
Please read the important explanatory notes below				
1	2	3	4	5
Financial business	Other trading names	Part of group	Number of new cases	% of closed cases upheld
Sort ▼ ▲	Sort ▼ ▲	Sort ▼ ▲	Sort ▼ ▲	Sort ▼ ▲
Business A	Name X	Group 1		
Business B				
Business C		Group 2		
Business D	Name Z			

Column 1: 'Financial business' = the name of the legal entity (usually authorised by the Financial Services Authority, licensed by the Office of Fair Trading or both) against which the case was brought. Some cases may have related to an act or omission by a predecessor business.

Column 2: 'Other trading names' = any other major trading names (or brands) under which the financial business also deals with consumers. A list of a financial business's trading names can be found:

- if the financial business is regulated by the Financial Services Authority, in the [FSA register of firms](http://www.fsa.gov.uk/register/home.do) [www.fsa.gov.uk/register/home.do];
- if the financial business is licensed by the Office of Fair Trading, in the [OFT register of consumer credit licensees](http://www2.crw.gov.uk/pr/default.aspx) [www2.crw.gov.uk/pr/default.aspx].

Column 3: 'Part of group' = the name of any larger group of which the financial business forms part. Sorting the data by column 3 will bring together all the financial businesses in a particular group.

Column 4: 'Number of new cases' = the number of new complaints against the financial business which were accepted as chargeable cases by the Financial Ombudsman Service during the period (including the first three cases a year, which attract no case fee). The number of cases will be affected by, amongst other things, the size of the financial business.

Column 5: 'Percentage of closed cases upheld' = percentage of cases against the financial business closed by the Financial Ombudsman Service during the period where there was a change in outcome in favour of the consumer (see notes C and D).

- Note A: The list excludes any financial business which did not have at least [30] new cases and [30] closed cases [unless it is part of a larger group which includes another financial business which had at least [30] new cases and [30] closed cases].
- Note B: The group of new cases in column 4 differs from the group of closed cases in column 5. Not all new cases received during the period were closed during the period. Some cases closed during the period were received in a previous period.
- Note C: The outcomes in column 5 record any change in favour of the consumer between:
- the position the financial business took in its final response to the consumer's complaint (before the complaint became a case with the ombudsman service);  
*and*
  - the final outcome of the closed case, after the ombudsman service's involvement.
- Note D: The time between receiving a new case and closing a case varies, depending on the type of case and other factors. So the outcome data for the cases closed in a single period may not, on its own, be significant. The trend over several periods is more likely to be significant.



## 7 specific questions

*[Verifying and publishing complaint data in the form described in this paper will necessarily involve the ombudsman service in the use of some additional resources – so we may need to progress incrementally. Respondents who propose something more extensive or elaborate will no doubt take into account the likely cost of what they propose.]*

### **outcomes of closed cases**

- Q1 Do you agree that the published data about the outcomes of closed cases should distinguish simply between closed cases where there has been a change, or no change, in favour of the consumer?
- Q2 If you consider that the published data about the outcome of closed cases should be divided into a greater number of categories, please say what and why – and indicate how they would be defined in order to eliminate subjectivity and controversy.

### **number of financial businesses to be covered**

- Q3 Do you agree that the initial threshold for financial businesses about which we publish complaint data should be at least 30 new cases *and* 30 closed cases within the relevant period?

### **groups of financial businesses**

- Q4 Do you agree that, where applicable, the published data should identify any larger group to which the financial business belongs?
- Q5 If a group includes some financial businesses with case numbers above the threshold and some with case numbers below, do you agree that the published data should include those below – to provide a full picture for the group?

## **trading names**

- Q6 Do you agree that, where applicable, the published data should identify any other major trading names under which the financial business deals with the public?

## **verification of the data**

- Q7 Do you agree that notifying the financial business of the outcome recorded at the end of each case and having the aggregate data audited by our internal auditors (currently KPMG) will provide sufficient verification of the data?

## **period covered by the data**

- Q8 Do you agree that 'our' data should be published in respect of each half of the calendar year (January to June and July to December) in line with the FSA proposal?

## **possible format**

- Q9 Have you any suggestions on how the possible format for publication (in chapter 6) could be improved? Are the generic explanations adequate?

## **additionally**

- Q10 Have you any other comments on the practical matters that remain to be resolved in implementing the decision to publish business-specific complaint data?

## **in conclusion**

- NB If all relevant stakeholders (including industry bodies, consumer bodies and the FSA) can agree amongst themselves how market-share can be measured and published, we are then happy to talk to them about how this could be used to give context to the complaint data we publish.