

The Hunt Review

The Independent Review of the Financial Ombudsman Service

OPENING UP, REACHING OUT AND AIMING HIGH

**An Agenda for Accessibility and
Excellence in the Financial
Ombudsman Service**

**The report of an independent review of the Financial
Ombudsman Service by Rt Hon Lord Hunt of Wirral MBE**

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FOREWORD

When the Board of the Financial Ombudsman Service (FOS) asked me to undertake the second independent review of the organisation, I knew at once it would be a challenging, but also rewarding and worthwhile, task. As I observed in my call for evidence document, this undertaking combines my ongoing professional interests as Chairman of Financial Services at Beachcroft LLP with my former ministerial responsibilities for improving accessibility and performance in public services. I believe the Board are to be congratulated for commissioning such reviews and, in this particular instance, for giving me so clear a focus on issues of accessibility and transparency, the vital importance of which became increasingly apparent as my work progressed.

The Financial Services and Markets Act 2000 (FSMA) sets out concisely and clearly the intended role of the FOS: to establish “*a scheme under which certain disputes may be resolved quickly and with minimum formality by an independent person*”. That statement is refreshingly direct and, as I have undertaken this Review, I have sought always to bear in mind those three crucial qualities – speed, informality and independence – and also to retain that clarity of purpose and intention.

As well as refreshing my acquaintance with the FSMA, I also looked again at the excellent predecessor to this report, namely *Fair and reasonable – An assessment of the Financial Ombudsman Service*, published in 2004 by Professor Elaine Kempson and her colleagues from the Personal Finance Research Centre at Bristol University. The brief for that first independent review of the FOS focused on internal processes rather than accessibility, but the questions are intimately intertwined. Professor Kempson's recommendations, particularly on quality, are as important now as they ever were, and I revisit them in my Report.

In order to command trust and do its job effectively, the FOS must be competently and efficiently run; and it must be *seen* to be competently and efficiently run. It must also be demonstrably even-handed in its processes and judgements, and it must achieve balance between a series of seemingly competing objectives: exercising discretion in its decisions without falling prey to charges of arbitrary or capricious behaviour; adhering to consistent, fair and reasonable principles whilst always treating every individual case on its individual merits; offering an informal alternative to the courts whilst also operating within the rule of law; and playing its full part in the statutory and regulatory landscape, without ever falling into the trap of attempting to usurp or supplant lawmakers, courts or regulators.

The world in which the FOS operates today is already very different to that at the end of the last century, when it was conceived. The number of cases it considers – 111,673 in 2006-07 – is far higher than was ever envisaged. Furthermore, its potential clients are more diverse in their backgrounds and levels of financial literacy than anyone foresaw. The Internet is transforming how people interact with financial services firms, and how they expect to interact with public bodies as well. Expectations of speed and of openness are also far greater than they were a decade ago. Regulation is moving away from detailed and prescriptive rulebooks, to high-level principles. The FOS now operates in a world where the presence of aggressive advertising by claims management companies has radically changed the terms of engagement between complainants, firms and the Ombudsman.

Much of the work done by the FOS is highly impressive, but there is always room for improvement. My core brief has been to consider accessibility and, in my view, the FOS still looks too much like a middle-class service, for middle-class people. If my conclusions are accepted and my recommendations implemented, I believe the profile of those using the FOS should, must and will evolve, as the organisation thinks not only in terms of its traditional areas of activity – dealing with matters such as mortgages, insurance and

pensions products – but also in terms of the problems that typically afflict our less affluent citizens. Difficulties with debt management are only likely to increase in scale and numbers as the current economic difficulties mount. The sums of money involved may generally be on the low side by FOS standards, but the human misery attendant upon them can be devastating. Accessibility is no abstract concept.

At the FOS today I see a model that can seem intimidating and unwelcoming to the less educated, more vulnerable complainant and at times frustrating even for the more articulate and self-confident; I see a service which has been slow to share its thinking and processes more widely for fear of being perceived as a quasi-regulator; and I see a service whose perceived constituency needs to expand radically.

I should like to see the FOS shift its style. It needs to become more outward-looking; focused on emerging trends as much as on present needs; and robust and open in debate. Above all, I want to see it working ever harder to achieve a demonstrable consistency of approach to cases, whilst simultaneously meeting the changing needs of different users.

The issues of transparency and accessibility, on which I was asked to focus, are ever more crucial if this is to be achieved. As it addresses the challenges it has itself identified, the FOS will find it has sound foundations upon which to build. It boasts an imaginative and genuinely creative (if small) communications team and well-regarded media partnerships; and controls a mass of powerful information. All is flux in the modern world, however, and the FOS needs to keep ahead of the times, pre-empting change and not merely reacting to it.

So the FOS needs to work hard to reach a more diverse clientele. It must make greater investment in its communications efforts; develop a more strategic approach in its planning and evaluation; become more aggressive in advertising; and consider seriously whether a new and more "user-friendly " brand or trading name would give it greater impact.

Extending opening hours and improving e-enablement self-evidently carry cost implications. My 73 recommendations also call for more investment in communications, systems and data analysis. It was not part of my brief to commission detailed costings for my recommendations, or to identify off-setting savings, but I do not believe they have any prohibitively expensive implications. I was also heartened by the willingness of most industry respondents to bear an increased burden for an improved service. The FOS will have to assess costs in detail and make sensible prioritisation decisions, but investment to spread learning from the FOS's practice throughout the industry, and achieve more rapid handling of cases, seems certain to show significant net benefit overall in the longer term.

It is at the level of internal systems where I believe the real challenges on accessibility lie and I would give the highest priority to early progress on these issues. The FOS's existing work on quality, and its plans to update its core systems, represent a positive start in making it more accessible, but there is a long way to go. It must extend its opening hours; more comprehensively e-enable itself; communicate more effectively about timings; develop new systems for "fast-tracking" lower-value debt- and credit-related cases; and experiment with different methods of working, including facilitated mediation and "case advisers" to support vulnerable complainants through its processes.

This does not mean the fundamental statutory basis or business model of the FOS is flawed. The "fair and reasonable in all the circumstances" test remains just that – fair and reasonable – and greater alignment with the legal system might jeopardise that. The case for external appeals is not convincing; and it would be hard to think of any measure that would damage accessibility more comprehensively than would the introduction of fees for complainants.

I do not, however, want the FOS ever again to be accused of "making it up as it goes along", to quote a phrase used by one of the more thoughtful and respected respondents to this Review. There must be more transparency on both cases and practices, which will help set realistic expectations for consumers and their advisers, spread best practice within the industry in order to prevent complaints coming to the FOS in the first place, and also achieve greater consistency in decision-making without compromising the current jurisdiction.

I suggest this should be achieved by means of regular, independently-edited selections of anonymised case reports and a new interactive "FOSBOOK" system, to provide comprehensive data on the FOS's approach to families of cases and facilitate regular, informal two-way feedback. An "openness revolution" of this kind will ultimately be far more useful to both consumers and the industry itself than "league tables" on their own would be.

Nothing I write or say could possibly draw a final line under the long-standing debate over how much performance information by firm can or should be made publicly available, but transparency must be a two-way street: providers cannot demand more information from the FOS to help remove risk from their own processes, without also accepting a greater degree of public scrutiny of their own performances. The practical difficulties are real and I do not belittle them, but I see no reason *en principe* for preventing such data being disclosed.

I propose, as a first step, that the FOS should publish more in the way of anonymised, benchmarked data, alongside a new award scheme to identify and reward best practice, matched by a "wooden spoon" for the worst performers. It should also work with the FSA to ensure that more robust, company-specific data is made available for complaints handling within all parts of the system. Most of the reasons for inaction or delay in this area are purely practical and they can and must be overcome. In the twenty-first century, the openness revolution is here to stay and it is ongoing. The status quo is simply not an option and my instinctive approach is probably best described as "publish and be praised".

This is an area in which my conclusions necessarily range beyond the confines of the FOS itself. The FOS does not operate in a vacuum and some of the challenges it has faced necessarily emerge from the action, or inaction, of regulators. I am not in a position to make recommendations directly to other bodies, but the interaction between the FOS and the relevant regulators does undoubtedly need to improve.

I stress, in particular, the need for prompt regulatory action to find generic regulatory (or, if necessary, statutory) solutions to future issues which have the potential to generate complaints in large volumes. Mass-produced Alternative Dispute Resolution is rarely, if ever, a satisfactory and sustainable solution in such cases. We must be realistic about the tasks that the FOS may, and may not, be required to undertake within a complex regulatory and legal environment.

The FOS therefore needs to maintain and develop partnerships with complementary organisations, whilst also remaining robustly independent and firm of purpose whenever it encounters issues that cry out for regulatory solution. To help achieve this, I offer proposals to make both the role and activities of the FOS Board, and also FOS communication with the FSA and OFT, considerably more transparent.

In other areas, I recommend that the FOS should press regulators to take action, for instance in relation to achieving "through handling" of complaints across the entire system, and also by making advertising by claims management companies more transparent, informative and scrupulous. Even in areas that are outwith its remit, the FOS has experience and wise counsel to offer.

Speaking of wisdom and experience, I think my most heartfelt words of advice to the FOS relate to its Board. The FOS Board brings together a group of hugely talented individuals, with wide and deep knowledge of the financial services world, regulation and also ADR. They offer a wonderful resource that could be harnessed more effectively both internally and externally. I am convinced that, were members of the Board to engage more and play an enhanced role in developing the policies of the FOS, the reputation and prestige of the FOS would be enormously enhanced. Individuals of this calibre are no mere adornments; or at least they should and must be far, far more than that. The recent reconstitution of the Board presents an excellent opportunity to reinvigorate and extend the role it plays. I sincerely hope the FOS seizes that opportunity with both hands.

The potential of the FOS as an organisation is considerable. I end my report with a discussion of whether extending the FOS's jurisdiction would improve accessibility and transparency across the board. I believe it would, but there is much work to be done first. That is why I style my report as an agenda for change. I very much hope the FOS and its Board have the necessary confidence to seize the great opportunity that lies before them.

Rt Hon the Lord Hunt of Wirral MBE
Beachcroft LLP

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Chapter 2

1. The FOS should establish a Board-led Communications Taskforce to drive improvements in accessibility. It should:
 - spell out the FOS's overall positioning, reasserting and emphasising its independence from industry, regulators and consumer bodies, and the impartial nature of its internal processes;
 - develop and publish a specific annual programme, with clear objectives and targets and contributions expected from other organisations for each individual task;
 - identify, within that programme, permanent "baseline" activities and shorter-term "campaign" projects.
 - evaluate the impact of campaigns to enable the outcomes to be added to baseline activity if appropriate.
2. The FOS should make a significant increase in investment in communication, *provided* that it is properly targeted and evaluated.
3. The FOS should press the claims management regulator operating under the aegis of the Ministry of Justice, in close consultation with the Advertising Standards Authority, to insist that advertising by claims management companies makes clear the level of charges faced by consumers and also the fact that the FOS service itself is available free of charge.
4. The FOS should:
 - intensify both its direct work with consumers and also its third-party contacts;
 - monitor the level and nature of marketing activity by claims management companies by media, region and subject, to identify where specific responses are needed;
 - develop a range of advertising vehicles, notably through local media and daytime television, in order to ensure that the message about free resolution is heard by vulnerable consumers;
 - work with Consumer Direct's regional communications leads to increase editorial penetration in local media;
 - develop partnerships to encourage relevant storylines in radio and television soap operas;
 - develop a "portal strategy" to ensure that its service is readily available through links on relevant sites – for instance Directgov;
 - do whatever it can to ensure that its name consistently appears at the top of search engine lists for the widest possible variety of relevant search terms;
 - press the FSA to include the FOS logo on the letterheads and websites of authorised firms.

5. The FOS website is excellent, so far as it goes, but the FOS now needs to take a policy decision to fund an extensive renovation of its website, making it more user-friendly, more cheerful and more welcoming. The excellent existing FOS team is more than capable of undertaking this and making a success of it, given the requisite level of financial, administrative and political support from the top of the organisation.

6. The FOS should:
 - develop a system of named contacts or relationship managers for local and national voluntary bodies;
 - further develop, for major advice-giving bodies, both online and phone-based services through the Technical Advice Desk to provide immediate support to those giving face-to-face advice;
 - work to promulgate practical information about the FOS and its processes within such organisations, encouraging them to develop and promote specific skills within the organisations' ongoing training strategies, designed to help front-line staff to support clients, rather than relying on one-off interventions;
 - appoint and promote the role of a relationship manager for elected representatives in the Westminster and Scottish Parliaments and in the devolved assemblies in Wales and Northern Ireland, to assist them and their staffs in helping constituents navigate their way through the system;
 - produce suitable tools to enable trusted staff, for example in the education system, housing associations and benefit offices, welfare rights organisations, caring services, trades unions, to give relevant guidance.

In some cases, this will involve following through existing pilot initiatives and ensuring that these initiatives are given a greater profile.

7. The FOS should work with the FSA, government and others to ensure that communication strategies for financial policy initiatives targeting lower earners and vulnerable groups take account of the specific role of the FOS.
8. The FOS should also develop relationships with business advisory services to provide appropriate guidance to smaller firms as possible complainants.
9. The FOS should continue to develop close working relationships with the wide range of trade bodies whose members offer consumer credit.
10. The FOS should commission a more "user-friendly", readily understood and enticing trading or brand name (or names) to convey its activities to the public more effectively, whilst also clearly retaining its role and legal identity as an ombudsman service. My own suggestion is that "Financial Complaints Service" may be an appropriate starting point.

Chapter Three

11. A single, publicly named and authoritative individual, reporting directly to both the Chief Ombudsman and the chair of the new Board Quality Sub-Committee, should be personally responsible for monitoring and maintaining quality within the FOS.
12. The FOS should not pursue the issue of regional offices in the foreseeable future.
13. The FOS should provide a phone line service between 8am and 8pm on weekdays and on Saturday mornings.
14. The FOS should ensure that out-of-hours callers can leave their details by means of voicemail or text, and request a call back.
15. The FOS should offer a freephone service, at least for initial enquiries and complaints.
16. The FOS should give greater publicity to their practice of returning calls to mobile numbers where this is requested.
17. The FOS should develop and pilot a "case adviser" system, to ensure that vulnerable consumers feel confident about using the FOS dispute resolution service.
18. The case for a general reduction in the 8-week deadline is far from conclusive.
19. The FOS should establish a system of follow-up letters and calls to those complainants it has referred back to companies.
20. The FOS should:
 - identify how best to "fast track" complaints on consumer credit, which, although of relatively low value, are often of pressing urgency to complainants;
 - take every opportunity to remind firms that the first expression of dissatisfaction by a customer marks the start of the initial 8-week complaint period;
 - press regulators to shorten the 8-week deadline for companies to resolve simpler debt- and credit-linked complaints.
21. The FOS should take the lead, working with the FSA, trade and consumer bodies and individual companies, to develop common forms of complaint template to enable the relevant information to be collected "right first time" for use at all stages of the complaints process by all parties. The parties should
 - seek to keep all such forms to a maximum length of 4 sides;
 - use "plain English";
 - ensure that the material is available in web friendly and hard copy versions.
22. The FOS should ensure that staffing levels are constantly re-evaluated in the light of looming changes in demand, as recommended in the Kempson Report, and also that
 - clear targets are set to minimise delays in passing cases to adjudicators and

adjudicators communicate an expected timetable for decision to both parties;

- similar processes are followed when cases are referred to an Ombudsman;
 - the Board reports performance against these standards in the Annual Report.
23. The FOS should e-enable its firm- and complainant-facing operations, so that firms and complainants can submit evidence electronically and track the progress of complaints in real time.
 24. The FOS should consider revising the style of its decision letters in the light of its changing client base.
 25. The FOS should seek to ensure decision letters always contain the proposed amount of compensation (if any), rather than a formula.
 26. To improve service to small businesses, the FOS should ensure that
 - the Small Business Taskforce continues its work to ensure that the entire organisation is sensitive to the particular needs of smaller businesses;
 - the membership of the Taskforce is expanded to include external representatives of smaller financial sector firms;
 - the Taskforce develops and publishes its communications strategy to explain the outcomes of its work and communicate good practice in handling complaints within smaller firms;
 - the service of the Technical Advice Desk continues to be promoted widely to smaller firms and its resourcing reviewed to ensure it can meet increased demand in relation to smaller consumer credit and advisory firms.
 - the performance standards for the Technical Advice Desk are aligned with the slightly tougher targets for CCD.
 27. The FOS should pilot facilitated meetings and calls in the early stages of complaints, on a limited basis.
 28. The FOS should not make any changes to its approach on hearings.
 29. As a general rule the FOS should disclose to the other party to a complaint the documents on which it has relied in reaching its final decision.

Chapter Four

30. The FOS should maintain a system based on the principles of Alternative Dispute Resolution and should not align itself to court processes.
31. The FOS should not establish an appeals mechanism.
32. The FOS should:
 - make more explicit the internal appeals procedure that already exists, in the form of the right for either party in a dispute to seek a second decision on the case from an Ombudsman, emphasising that this second decision involves reviewing the full facts

of the case *ab initio*;

- ensure that, in any case where an Ombudsman has offered an informal view, the same Ombudsman is not involved in the final adjudication of a case;
 - continue to ensure that the appointment of the Independent Assessor follows an openly advertised "Nolan"-based process.
33. The FOS should have the discretion fully to reopen a decision in the very rare cases where relevant information emerges after a decision has been made, including through the work of the Service Review Team and Independent Assessor.

Chapter Five

34. The FOS should develop a public interactive system – which I call "FOSBOOK" – as the main means of recording and promulgating details of its developing practice and decisions. This new resource should also, as recommended in the Kempson Report in 2004, be sufficiently comprehensive to "enable staff to develop their knowledge of products and to keep up-to-date with changes".
35. "FOSBOOK" should contain "mock-ups" of how the FOS might respond to possible future complaints categories to guide the development of industry practice.
36. The Communications Taskforce should take an active interest in the development and evolution of "FOSBOOK".
37. The FOS should ensure that decisions draw upon and explicitly refer to the guidance in FOSBOOK, and explain any variation from it, by reference to the facts of the individual case.
38. The FOS should define and publish ahead of the development of "FOSBOOK" the criteria by which it decides when to commission independent technical advice; and individual decisions should make clear how these criteria have been applied in practice.
39. The FOS should:
- select and publish suitable decisions in full, but anonymised, form in FOSBOOK, to show the relationships between the broad principles applied to resolution of categories of cases and their application in practice;
 - commission and publish regular academic analysis of the full range of Ombudsman decisions alongside future independent reviews.
40. The FOS should also consider changes to common authoring standards/templates and so forth, to facilitate publication and comparison; and identify suitable ways of involving independent bodies, such as the Society of Court Reporters, in the process of selection and analysis of decisions.
41. The FOS should work with the FSA to subsume the role of the Industry Liaison Groups into those of the Financial Services Practitioner Panel and Smaller Businesses Practitioner Panel, with the Financial Services Consumer Panel providing consumer input.

42. The FOS should continue to pursue detailed issues through continued bilateral contact with trade associations and consumer bodies, with the Banking Advisory Panel maintaining its current technical advisory role.
43. *Ombudsman News* should evolve into a fortnightly email news letter, aimed at front-line complaint handlers in companies and consumer advisers, covering:
 - FOS views of emerging issues;
 - specific examples of good practice/problems in complaint handling;
 - updates on changes to FOSBOOK;
 - news of specific changes of methodologies/logistics etc;
 - a letters page;
 - feedback form.
44. With suitable safeguards to protect confidentiality, the FOS should begin to develop secondment programmes with firms and consumer bodies to develop greater understanding and share best practice.

Chapter Six

45. I see no legitimate justification for withholding information about complaint performance as a matter of principle.
46. The FOS should:
 - broaden the current recipients of its anonymised, benchmarked “Working Together” information to include all 45 of the groups for whom it has relationship managers;
 - make these anonymised data public;
 - develop that dataset in dialogue with industry on the basis of the proposals put forward in March 2007.
47. The FOS should set up an Awards scheme to acknowledge firms that have achieved exceptional improvements in their complaints handling.
48. The FOS should announce each year the worst performer in terms of uphold rates in each of the categories of retail banking; investments; general insurance; intermediation in investments; and intermediation in general insurance. It should refrain from announcing such a name or names in certain, special circumstances, such as where a firm’s performance is rapidly improving.
49. The FOS should work with the FSA, industry and consumer stakeholders to define a common complaints dataset to enable joint publication of performance data on a firm-specific basis in the medium term.

Chapter Seven

50. To improve transparency of the FOS's governance the FOS Board should:
- publish its minutes as a matter of routine, in line with best public-sector practice (but with appropriate arrangements to cover genuinely confidential matters);
 - encourage the attendance at its meetings of at least one senior representative from the FOS's sponsoring body (the FSA) and possibly also from the NAO;
 - publish full reports from relevant Board sub-committees in the Annual Report;
 - make a formal public response to the Annual Report of the Independent Assessor in the context of the FOS Annual Report;
 - instruct the Internal Service Review team to make a public report, similar in form to that of the Independent Assessor.
51. The FOS Board should constantly be on its guard for any instances where the FOS is in danger of becoming a quasi-regulator or quasi-legislator as a consequence of gaps in either the regulatory structure or the law, drawing such instances urgently to the attention of the relevant public body and detailing them as a matter of course in the FOS Annual Report.
52. With the exception of any communication relating to specific enforcement investigation, the FOS should place all formal communication with regulators on the public record.
53. The Wider Implications (WI) process should be improved in the following ways:
- the FOS should be totally insulated from all aspects of any regulatory decision-making within the process;
 - the Financial Services Practitioner and Consumer Panels should have the right, not merely to submit an issue for consideration as to whether it has wider implications, but also to trigger a full examination of the substance of the issue or issues they have raised;
 - time limits should be set for resolution of issues by the FSA or OFT and the process should be regarded as ending once the relevant regulator has reached a decision on whether regulatory change is needed;
 - the relationship between the WI process and the FOS's approach to "lead cases" should be reviewed and made more explicit;
 - the FOS, the FSA and the OFT should produce a short annual report to supplement the web material, detailing how the process has been used over the preceding twelve months;
 - studies on cases which are not accepted under the WI procedure should be more explicitly related back to the criteria for acceptance.
54. The FOS should work to identify where its practice diverges from regulatory rules and work with regulators to achieve alignment where the divergence causes cost and uncertainty.
55. The FOS should work with the FSA to ensure coordinated communication on the development of the "Treating Customers Fairly" strategy.

56. The FOS should work with the regulators to maintain a common approach to the treatment and recognition of industry guidance.
57. The FOS and regulators should communicate with firms and consumers in a coordinated manner whenever a single category of case begins to generate a disproportionate amount of the FOS's caseload.
58. The FOS should work with self-regulatory bodies such as the Banking Code Standards Board, to ensure proportionate arrangements for communication and formal and informal liaison, similar to those for statutory regulators, are put in place and communicated to stakeholders.
59. The FOS should clearly document in "FOSBOOK" its general approach in approaching the assessment of evidence in cases relating to sales made over 6 years ago.
60. The FOS's Memoranda of Understanding with regulators should be updated in the light of this Report.
61. The FOS should take an active role in the development of the "Stakes in the Ground" concept and make clear in FOSBOOK how it regards specific guidance produced through that process as it emerges.
62. The FOS should work with regulators to identify how Ombudsman experience and regulatory supervision practice can best inform each other, identifying possible initiatives such as short-term secondments between the two organisations to develop skills and buttress mutual understanding.
63. The FOS Board should consult stakeholders before deciding the scope of future independent reviews, also committing in advance to the publication of the outcome of those reviews and their responses to them.
64. I recommend that the next independent review of the FOS should focus principally on questions of efficiency, as suggested by the House of Lords Select Committee report on economic regulation. I also believe the FOS Board would be well advised to select the NAO for that review.

Chapter Eight

65. Any review of compensation limits should cover, *inter alia*:
 - how many enquiries are received by the FOS, in which the consumer alleges losses of over £100,000;
 - how many of these enquiries subsequently turn into cases and what the outcome of those cases is;
 - the number and proportion of cases in which the FOS uses its discretion to recommend compensation payments over the £100,000 limit and the number of cases in which this is accepted or rejected by companies;
 - establishing the number of court cases involving financial services complaints in the £100,000-250,000 level, with a view to estimating how many might have been suitable for ADR by the FOS;
 - whether there is a case for the turnover limit of £1 million for small businesses to bring their cases to the FOS also to be increased
 - a cost-benefit analysis of any widening of jurisdiction;
 - what form of indexation, if any, would be appropriate in future;

- what issues arise from the variation in limits between the FOS and the Financial Services Compensation Scheme. (I should add that, although this is strictly outwith my remit, I share the surprise of some that the FSCS sees fit to reinvestigate cases where the FOS has found against a company that has subsequently gone bankrupt without paying the compensation);
 - and what issues may arise following the FOS's merger with the Pensions Ombudsman, which currently has no limit on the compensation it can order.
66. The FOS should not introduce fees for consumers.
67. The FOS should introduce a case fee for vexatious claims put forward by claims management companies and work with the Ministry of Justice to put protection in place to prevent such fees being passed to consumers.
68. The FOS should work with the FSA and the Ministry of Justice to broaden the base of FOS levy-payers to include regulated claims managers.
69. The dangers of making a radical shift to outcome-related case fees, sometimes referred to as "polluter pays" funding) would outweigh the putative benefits.
70. The FOS should:
- continue its current practice of summarily dismissing complaints in appropriate circumstances, identifying separately those that it judges to be vexatious and publishing its criteria for so doing and the numbers so dismissed each year;
 - move as quickly as possible to a general policy of not charging a case fee in all cases found to be outside its jurisdiction, even if investigation is needed to establish this fact;
 - document its practice thoroughly on "FOSBOOK."
71. The FOS should introduce a higher case fee for "enforced deadlock" cases with effect from 2009-10 and report on the numbers of cases.
72. The FOS should investigate the option of differential fees for "assessment" and "investigation" cases as distinct from simple fast-tracked consumer credit cases.
73. The FOS Board should assess the impact on accessibility and transparency for all its work when it considers the scope for extending its jurisdiction.

CHAPTER 1 INTRODUCTION

Background to the Review

- 1.1 The Board of the Financial Ombudsman Service (FOS) decided in 2003 that the organisation should undergo regular external scrutiny through three-yearly independent reviews. As chairman of financial services at Beachcroft LLP I was asked in August 2007 to lead the review team for the second such review, and began work in mid September. I have been supported by a team comprising Chris Kenny, formerly Director of Life and Pensions at the Association of British Insurers; and Richard Hobbs and Michael McManus, close colleagues at Beachcroft. We have also been able to call upon the ready and invaluable assistance and support of other colleagues at Beachcroft, most notably Andrew Parker, Robin Fry, Tony Child, Eleanor Tunnicliffe, Claire Larnder, Karen Summers, Margaret Simms, Tracey Field and Danielle Thompson. All in all, they are quite a team.
- 1.2 I described the background to the Review in the Call for Evidence document, which I published on 16 October 2007. For ease of reference, I repeat the relevant sections below.

Extract from Call for Evidence Document, 16 October 2007

2.4 Chapter 4 of the Financial Ombudsman Service's current corporate plan sets out four objectives for the organisation in 2007-08 and beyond:

- *"continuous improvement of our processes and systems, so that they remain capable of delivering a cost-effective redress service which meets ever-rising expectations;*
- *to manage staff and other resources so as to provide an efficient and effective service, irrespective of future fluctuations in numbers and types of cases.*
- *to enhance dialogue with our stakeholders so that we remain responsive to their needs and to the public interest, while continuing to provide an impartial service; and*
- *to help secure wider public benefits by using our expertise and resources to help enhance and extend accessible and effective dispute-resolution."*

2.5 The scope of the external review is defined as follows:

- *"..... to inform the work of our accessibility taskforce – by considering, from an external perspective, whether the ombudsman service ought to do more in order to be visible and accessible to those it is designed to serve*
- *. [to] consider whether the ombudsman service is making the most effective use of the information and experience derived from its dispute-resolution work, in order to add value for the benefit of industry, consumers and regulators."*

2.6 These terms of reference are clearly particularly relevant to the third and fourth of the objectives set out in para 2.4. But achieving effective public and industry engagement can also contribute to the organisation's overall efficiency in case handling and resource allocation by helping to

- reduce the likelihood of consumers approaching the FOS at the wrong stage or with an inadequate understanding of its role;
- reduce the number of complaints by facilitating learning within the industry about the root causes of complaints;
- set reasonable expectations on both sides of the dispute about the FOS's approach.

These are the issues which the Review has set out to tackle systematically throughout its work.

How the Review was Conducted

1.3 My work has fallen into four phases:

- intensive desk research and discussion with FOS staff to understand current practice – as well as senior managers, I was most grateful to staff in the Communications team and Customer Contact Division in particular, who described their work in considerable detail with both professionalism and enthusiasm;
- publication of the "Call for Evidence". This initial document deliberately did not seek to test specific views or air options, but instead aimed simply to:
 - describe current practice in the FOS and the reasons for it;
 - highlight changes in the external environment which may have an impact;
 - set out the broad issues and specific questions for the review to tackle.

The document attracted 151 responses from members of the public and 87 from organisations, suggesting that it served its purpose;

- meetings and discussions with stakeholders. In total, members of my team and I held 61 separate discussions with individual firms; trade associations; consumer bodies, parliamentarians; ministers and officials; and regulators. These discussions proved invaluable in allowing me to understand fully the various views expressed and to test my own emerging thinking;
- analysis of responses and preparation of the final report.

1.4 I am grateful to all who contributed to the work of the Review, but I should like to highlight four contributions in particular:

- first, the All-Party Parliamentary Group on Insurance and Financial Services, chaired by my friend and colleague John Greenway MP, held three public hearings with a variety of consumer and industry groups, which provided the foundations of a very thoughtful and illuminating paper which I have found very helpful indeed in framing my conclusions. I am grateful to the Group and its support staff for their hard work;
- secondly, Citizens Advice not only provided a helpful paper, but also organised a visit to their Greenwich Office to meet staff in the Greenwich Money Advice Service. This taste of services "at the sharp end" was invaluable in helping to test the practicality of some of the solutions I had been exploring. I am most grateful to Peter Lee, the chairman of the trustees, and to Sue Edwards and all her team for taking so much time and trouble in speaking to us and sharing their experiences;
- thirdly, a number of journalists were kind enough in the early stages of my work not only to give me their own views on how the FOS was serving the needs of its clients, but also to allow me to use their columns to solicit views from members of the public who had used the FOS. This considerably broadened the base of evidence I was able to collect and I am most grateful;
- Finally, I should thank Alison Hoyland of the FOS, who was an exemplary "link-person" throughout the duration of the Review process and could not have been, in the spirit of the review itself, more open or accessible. Sally Young, also of the FOS, maintained our website expertly and cheerfully throughout the Review. Publication of responses from major organisations helped to enrich the debate, particularly in its final stages, and I am grateful to Sally for making this possible.

1.5 I should note one point of process in relation to the submissions I received from members of the public. Many of my correspondents wished me to examine their cases in detail and offer detailed specific comments on them. I have not done so. As I explained in the call for evidence document, it was not within my remit to repeat the work which Professor Elaine Kempson and her team carried out in 2004 in looking at the FOS's casework practice in detail, nor was I charged with undertaking detailed case reviews in order to comment on the quality of decision-making. My focus has been on the FOS's policy and practice in relation to accessibility and transparency. Comments from the public about their cases have informed my work and I hope many of my correspondents will be able to recognise aspects of their experience in some of my commentary and recommendations, but it would not have been appropriate to go further in using individual cases to illustrate specific points.

FOS – the operational background

1.6 I was asked to undertake my work at an interesting time for the FOS, as the relentless surge of activity seen in the first years of its operation may be slowing. The scale of the operation is still considerable, however, for in 2006-07 the FOS

- handled 672,814 calls and enquiries from the public and some 15,000 calls from firms and consumer advisors to the Technical Advice Desk;
- opened 94,392 cases;
- resolved 111,673 complaints – 104,831 (94 per cent) of them informally at the adjudication stage, with 6,842 being referred to an ombudsman;
- had a budget of £59 million and an average staff complement of 960.

This makes the FOS, by some way, the largest Financial Ombudsman Service in the world and the largest Ombudsman service of any kind in the UK. Its work rate is similarly higher than any other service ever sees – at its peak in 2005-06, some 250 new mortgage endowment complaints were being received every working day.

1.7 The number of businesses covered is far higher than is the case for any other scheme. There were 22,823 businesses covered at 31 March 2007. This figure increased dramatically in autumn 2007 with the addition of some 80,000 consumer credit licensees not previously covered. This will rise further over coming years with

- the broadening of the consumer credit jurisdiction in October 2008 to cover debt administration and credit information firms;
- implementation of the Payment Services Directive in 2009;
- the Government's plans in response to the Thornton Review, to merge the FOS and the Pensions Ombudsman.

1.8 The FOS expects case numbers to fall in 2008-09, however, as time-barring of mortgage endowment cases starts to take effect and has started to restructure itself accordingly. But it would be rash to conclude that the service is in any kind of "steady state". Changing consumer expectations, the activities of claims management companies and regulatory changes are all having effects – and can be expected to continue to do so in coming years. The FOS's corporate plan for 2008-09 predicts that the service will receive 103,300 new complaints in 2007-08, compared to an initial estimate of 80,000; and that around 94,000 cases will be closed, compared with an estimate of 106,500. For 2008-09, the current estimate is for 72,000 new cases, with 80 per cent of these resolved within six months. The outcome of cases currently on hold pending a court decision on bank charges remains uncertain, however, and recent months have brought a noticeable increase in cases relating to Payment Protection Insurance. As we were going to press, the FOS reported a 50 per cent increase in such cases in the space of just one month.

1.9 My review has therefore taken place against a somewhat uncertain background. My aim has been to produce recommendations which make the FOS fit for the future by managing the tension between two objectives, which must underpin its operations:

- first, providing a service which is personalised for individual complainants and companies, allowing a proper response to the circumstances of each individual case in all its complexity;
- secondly, providing a service which is reasonably consistent in its quality and fairly predictable, communicating clearly across its wide spread of activity to achieve fair and consistent outcomes, in a way which sets sensible expectations for consumers and helps firms get complaints handling right first time.

That means moving the FOS's practice forward on the related issues of accessibility and transparency. I present my analysis on both issues in the firm belief that this report must be followed by concerted action.

CHAPTER 2 ACCESSIBILITY - PUBLICITY

2.1 I have considered two main issues in looking at the accessibility of the FOS:

- **publicity** - how effectively does the FOS reach potential complainants and communicate its role to them and to the firms complained against? How strong are its liaison networks with industry and other stakeholders?
- **processes** – how far do the FOS's practices help or hinder understanding and accessibility at all stages of the process?

This chapter considers the first of these.

Current Activity

2.2 The FOS currently has a small communication team, which

- produces “Ombudsman News” and all the FOS’s other printed publicity material;
- authors and maintains the website in-house;
- manages the Technical Help Desk and, using the same staff, the system of relationship managers for the 45 largest companies;
- manages day-to-day and strategic media liaison;
- provides speakers for a wide range of industry and voluntary sector events;
- provides informal training to consumer bodies, trading standards officers, Consumer Direct and others;
- leads specific communication initiatives, with recent activity focusing on reaching young people and, through an innovative partnership with Zee TV, the South Asian community;
- prepares the benchmarked “Working Together” data for discussion with the largest companies (see chapter 6 below).

A separate team manages the FOS’s regular market research and ad hoc exercises.

2.3 This activity is planned annually, with quarterly updates. Its total cost is less than £1.25 million in 2007-08 – under 2½ per cent of the total spend on the FOS as a whole – and the very modest sum of around £17,000 per year is spent on market research on accessibility and awareness. This all represents extremely good value for money, but self-evidently more could usefully be done. The press team is very well regarded by the media representatives to whom I spoke in the course of the Review. Responses to the call for evidence spoke positively of the Technical Advice Desk and many trade and voluntary bodies were appreciative of the FOS’s willingness to provide speakers for conferences, training sessions and the like. I share this positive opinion.

2.4 One of the main issues for my Review is whether this scale of relatively thinly-spread activity can meet the needs of the diverse consumer base the FOS should be serving, and the changing nature of the complaints landscape. My clear conclusion is that it does not. This chimes with the recommendation of the All-Party Group on Financial Services that the FOS should take a more pro-active stance in communicating its role.

- 2.5 I should make one general point in framing this discussion. Many industry commentators have put it to me that trust in the FOS process is being undermined by the organisation, consciously or unconsciously, positioning itself as a "consumer champion". The evidence of the FOS doing this is not very strong, but the perception is clearly unhelpful, as the credibility of the service depends on it maintaining the trust of all its stakeholders in the even-handedness of its adjudications.
- 2.6 This does not mean, however, that the organisation should make a vow of silence or cease to help complainants find their way through a complex system. There are asymmetries of information, knowledge and power between companies and consumers and I firmly believe that, with appropriate leadership and board level monitoring, it is possible for the FOS to address these in its practices and publicity without losing the reputation for impartiality which it must maintain at all costs. An outward-looking and ambitious communications strategy can perfectly well co-exist with internal ADR systems that are fair and balanced and are also recognised by all concerned as being fair and balanced. The goal requires robust management systems, transparency and a certain degree of human ingenuity, but it is perfectly attainable.

The Need for a Comprehensive Communications Strategy

- 2.7 There are at least four factors which make the public communications task facing the Ombudsman Service significantly more challenging in the future than it has been historically:
- first, the need to become accessible to a wider number of consumers, many of whom are likely to be significantly less financially capable and often less literate than many current users of the service;
 - secondly, the fact the FOS needs to compete with claims management companies for "share of voice" in reaching potential users;
 - thirdly, the need to ensure that the distinctive role of the FOS is conveyed clearly at a time when a variety of public agencies – the FSA through its Financial Capability work, possibly a new Money Guidance service as proposed by the Thoresen Review, possibly the Personal Accounts Delivery Authority – are all addressing essentially the same audience with what could easily be perceived as overlapping messages;
 - fourthly, the evidence from the FOS's own consumer surveys suggest that, although helpful, the efforts of third parties and industry alone are not sufficient to alert consumers to its role.
- 2.8 This changing landscape justifies a higher level of leadership from the Board of the FOS and from top management. I welcome the addition of specific communications expertise in the recent Board membership changes. To build on this further, I recommend that **the FOS should establish a Board-led Communications Taskforce to drive improvements in accessibility. It should:**
- **spell out the FOS's overall positioning, reasserting and emphasising its independence from industry, regulators and consumer bodies, and the impartial nature of its internal processes;**

- **develop and publish a specific annual programme, with clear objectives and targets and contributions expected from other organisations for each individual task;**
- **identify, within that programme, permanent "baseline" activities and shorter-term "campaign" projects.**
- **evaluate the impact of campaigns to enable the outcomes to be added to baseline activity if appropriate.**

2.9 Any such programme is likely to call for more resources than the present low baseline, but the changing nature of the FOS clientele justifies this. **I recommend that the FOS should make a significant increase in investment in communication, provided that it is properly targeted and evaluated.**

2.10 The remainder of this chapter gives some suggestions on possible elements of such a strategy.

The Case for Advertising

2.11 Had I been conducting this review five or even three years ago, it is unlikely I would have even raised the issue of whether advertising could be justified. To generalise, the FOS dealt primarily with articulate consumers, who were clear about the redress routes open to them and who could be relied upon to use the information prescribed by the regulator to pursue their complaint with their company and then, if they were still in search of satisfaction, the FOS. To have suggested advertising in those circumstances would have been seen as adding inappropriate cost to business and possibly confusing consumers by causing expectations that the FOS would act as a "consumer champion" rather than as an ADR scheme seeking to resolve complaints.

2.12 As discussed in paragraph 2.7, however, the context is now very different and FOS practice must adapt to keep pace with it. The case against advertising is far less clear-cut than it was. In particular, I am mindful that complainants, in particular the less wealthy and less articulate amongst them, need to be aware they are under no compulsion to use claims management companies in approaching the FOS and that, unlike claims management companies (CMCs), the FOS provides a free service. It is far from clear that many consumers are aware of this. As I mention later in this report, claims management companies can provide an element of expertise and partisan advocacy that may otherwise be lacking within the process, but the fact remains that, in almost all instances, the ADR process itself can operate perfectly well without them, at no cost to the consumer. As the FOS itself states on its website, "experience shows no difference in the outcome of complaints – whether consumers bring them to us themselves, or use a claims-management company to complain on their behalf". That message is crucially important to a great many people and deserves far wider proliferation. I should also add in passing that the group of vulnerable consumers whom the FOS may not currently be reaching will often be making claims of relatively low value. For better or for worse, claims management companies are profit-making outfits and such claims are likely to be of little or no interest to them. Other routes must be identified and explored.

- 2.13 **I therefore recommend that the FOS should press the claims management regulator operating under the aegis of the Ministry of Justice in close consultation with the Advertising Standards Authority, to insist that advertising by claims management companies makes clear the level of charges faced by consumers and also the fact that the FOS service itself is available free of charge.** I see no reason why advertisements from CMCs should not carry a "wealth warning" to alert possible users of their services to the full cost and alternatives available. I make further recommendations in relation to FOS interaction with CMCs in chapter 8.
- 2.14 I am also mindful of the fact that FOS research shows that users learn about the Service and approach it in many different ways. Interestingly, only around 5 per cent of complaints come via consumer advisory bodies such as trading standards or Citizens Advice, whereas 18 per cent of complaints in 2006-07 were made via a claims management company. Perhaps surprisingly, only 19 per cent of people say they learned about the FOS from the financial services industry itself, which I take to be indicative not as evidence of widespread non-compliance, but rather of inadequate signposting to the FOS within the mass of documentation provided at point of sale. In contrast, 40 per cent of people using the FOS learned of its existence via the media. It is likely that the majority of these, despite the good links achieved by the FOS with some tabloid titles, will have been via the broadsheet print media. It is not clear to me that the FOS effectively reaches enough of the audience targeted by CMCs, in particular those who derive much of their information from television, online sources, local media (both radio and papers) and mass market titles. It needs to address this audience directly, rather than relying on third parties.
- 2.15 The FOS needs to be both pragmatic and opportunistic in responding to these challenges. **I recommend that the FOS should:**
- **intensify both its direct work with consumers and also its third-party contacts;**
 - **monitor the level and nature of marketing activity by claims management companies by media, region and subject, to identify where specific responses are needed;**
 - **develop a range of advertising vehicles, notably through local media and daytime television, in order to ensure that the message about free resolution is heard by vulnerable consumers;**
 - **work with Consumer Direct's regional communications leads to increase editorial penetration in local media;**
 - **develop partnerships to encourage relevant storylines in radio and television soap operas;**
 - **develop a "portal strategy" to ensure that its service is readily available through links on relevant sites – eg Directgov;**
 - **do whatever it can to ensure that its name consistently appears at the top of search engine lists for the widest possible variety of relevant search terms.** I was particularly struck by a comment from a personal finance journalist that the

“googleability” could be improved. In fact, I found considerable improvements in the course of my review, although visibility is still low for some search terms. This issue has to stay on the agenda - such visibility is no longer an optional extra;

- **press the FSA and OFT to include the FOS logo on the letterheads and websites of authorised firms.** The information that there is an organisation established to resolve complaints is arguably of more use to the average consumer than the knowledge that an organisation is authorised by its regulator.

2.16 I do not go so far as to accept the argument put forward by the National Consumer Council that the FOS should consider the positive encouragement of complaints to be part of its role. That would run counter to the founding principles of the organisation, turning it into a "consumer champion" rather than an impartial "honest broker" providing ADR. The FOS must therefore take care to advertise defensively, rather than aggressively. It also needs, in the first instance, to point consumers clearly back to the firm providing the alleged poor service, to ensure that attempts at resolution can begin quickly at the most appropriate level. The need to set expectations appropriately is also important. These are points to be factored into implementation, not a reason to retain the status quo. Many consumers are ignorant of the detail of how the financial services industry works and now face information about how to complain which may be both incomplete and partial in its presentation. "Promoting public understanding of the financial system" is, of course a statutory objective of the FSA, but the FOS also needs to play its own important part in addressing this information gap.

2.17 I discuss other reasons why members of the public might choose to use claims management companies and how the FOS should respond in the next chapter.

2.18 Estimates vary, but something between 60 per cent and 70 per cent of the UK population now has access to the Internet. It is no longer the exclusive preserve of the relatively wealthy. Many libraries and other local authority or charitable institutions offer free online access. That underlines the point that the FOS website must be regarded as a major – perhaps the major – tool in its accessibility policy. **The FOS website is excellent, so far as it goes, but I believe a policy decision now needs to be taken to fund an extensive renovation of it, making it more user-friendly and simply more cheerful and welcoming. The excellent existing FOS team seems to me to be more than capable of undertaking this and making a success of it, given the requisite level of financial, administrative and political support from the top of the organisation.**

Working with Third Parties

2.19 The FOS must develop and actively maintain and refresh strong partnerships with a wide range of other agencies in seeking to alert vulnerable consumers to its work. There are a number of reasons for this:

- As I discuss in the next chapter, I do not believe that there is a strong case for the FOS to develop a regional infrastructure. Hence, much face-to-face explanation of its role will be done by third parties;
- It is possible that some of the traditional “trusted intermediaries”, such as Trading Standards and Citizens Advice offices, may themselves not always be uniformly accessible to all groups, so a variety of approaches and partners may be needed;

- In reaching more vulnerable groups, even allowing for the simplifications I suggest in the next chapter, it is likely that many individuals will need significant face-to-face help and support through the process of making a complaint, rather than simply information to do so themselves. The nature of the support available to third parties needs to change to reflect this.

2.20 As with communications, I suggest some pragmatic elements for an outreach strategy, some of which reflect an intensification of existing activity, some of which are wholly new. Much of my thinking was underpinned by the helpful submission from Citizens Advice, which talked about developing an engagement strategy, covering "engagement by information, engagement by training and engagement by stakeholder relationship". I **recommend that the FOS should:**

- **develop a system of named contacts or relationship managers for local and national voluntary bodies.** As for relationship managers for firms, these roles should be proactive in their nature, seeking to establish two-way flows of both "hard" evidence and "soft" intelligence on emerging issues. This system should go beyond national bodies such as Citizens Advice to include bodies, such as carers' support groups, which may be the first port of call for a vulnerable person;
- **for major advice-giving bodies, further develop both online and phone-based services through the Technical Advice Desk to provide immediate support to those giving face-to-face advice.** There is also a challenge for the organisations concerned to make sure that this information is communicated effectively to their own front-line staff;
- **work to promulgate practical information about the FOS and its processes within such organisations, encouraging them to develop and promote specific skills within the organisations' ongoing training strategies, designed to help front-line staff to support clients, rather than relying on one-off interventions;**
- **appoint and promote the role of a relationship manager for elected representatives in the Westminster and Scottish Parliaments and in the devolved assemblies in Wales and Northern Ireland, to assist them and their staffs in helping constituents navigate their way through the system.** There is scope for this role to develop imaginatively. For example, a member of FOS staff visiting an MP's surgery could generate helpful local media coverage raising the profile of the service generally;
- **produce suitable tools to enable trusted staff, for example in the education system, housing associations and benefit offices, welfare rights organisations, caring services, trades unions, to give relevant guidance.**

In some cases, this will involve following through existing pilot initiatives and ensuring that these initiatives are given a greater profile.

2.21 As with other elements of the communications strategy, these are not cost-free proposals. Detailed assessment will be needed, but the improvements in productivity which can result from the information being "right first time" as a result of such support being available would make the relatively limited investment needed more than worthwhile. I return to the issue of "right first time" in the next chapter.

The need for coordination

- 2.22 I commented in para 2.7 about the potential proliferation of “official” sources of financial information to disadvantaged groups. This presents both a challenge and an opportunity to the FOS and to policy makers generally. The picture that could emerge is one of fragmentation, with each organisation taking a narrow view of its role, and gaps and overlaps arising as a result. The opportunity does, however, exist to provide genuinely diverse routes, providing different individuals with the support they need to tackle their financial issues, alongside different organisations working from a common information base.
- 2.23 This is not, of course, primarily a task for the FOS, but I believe that both the nature of its work and the quality of its current communications efforts do demonstrate that it has a major contribution to make in ensuring that the necessary coordination with both the FSA’s financial capability strategy and the development of a generic advisory service takes place. **I recommend that the FOS should work with the FSA, government and others to ensure that communication strategies for financial policy initiatives targeting lower earners and vulnerable groups take account of the specific role of the FOS.**

Small Businesses

- 2.24 Although the main focus of the proposed outreach strategy should be on the potentially vulnerable consumer, the FOS should also be mindful of the needs of small businesses as potential users of the service. The Federation of Small Business pointed out to me that it would be wrong to assume a high level of financial sophistication in many micro businesses. **I therefore recommend that the FOS should also develop relationships with business advisory services to provide appropriate guidance to smaller firms as possible complainants.**
- 2.25 It was put to me that new entrants to those markets where credit is often offered as a related product need particular help in understanding the role of the FOS. I have been impressed by the efforts that the FOS made to work with no fewer than 150 trade bodies representing firms offering consumer credit in preparing to undertake that jurisdiction. **I recommend that the FOS should also continue to develop close working relationships with the wide range of trade bodies whose members offer consumer credit.**
- 2.26 I discuss the different issue of whether the FOS should have a separate Small Business Division in the next chapter.

A New Name?

- 2.27 I leave my most radical recommendation to the end of the chapter.
- 2.28 At one level, it can be argued that the name of the Financial Ombudsman Service is not a barrier to accessibility at all. The number of cases has risen enormously in the course of its existence. Its Annual Report and its programme of market research shows

a reasonably high level of public knowledge of its existence and role, much of it due to its own efforts. There are also plenty of failed examples of rebranding in both public and private sectors to make sensitive territory. Nobody wants the FOS to be the next "Consignia"! The opportunity cost of senior management time is also an important factor to be considered.

2.29 All that having been rehearsed, the word "Ombudsman" is not an inviting one to the general public, nor is "FOS" especially attractive or informative as an acronym. Although I am not aware of any specific research on the impact of the name on vulnerable consumers in particular, a number of parliamentary colleagues have commented on the issue. It was argued that the name was meaningless to some and intimidating to others, who saw it as signalling a pompous, impersonal "establishment" body. Ironically, the image created was more akin to that of the courts rather than of an informal alternative to them. This suggests the current name is not simply sub-optimal, but positively inimical to positive perceptions of the nature of the service offered, particularly for potential consumer credit complainants.

2.30 **I therefore recommend that the FOS should commission a more "user-friendly", readily understood and enticing trading or brand name (or names) to convey its activities to the public more effectively, whilst also clearly retaining its role and legal identity as an ombudsman service. My own suggestion is that "Financial Complaints Service" may be an appropriate starting point.**

Conclusion

2.31 Taken together, I believe that the suggestions in this chapter can materially build on the good work already undertaken by the FOS to develop greater understanding of its role and work within the financial services world and more widely amongst the general public. This will all be wasted activity, however, unless the activities of the FOS are also readily accessible to its users. I turn to this issue in my next chapter.

CHAPTER 3 ACCESSIBILITY – PROCESSES

3.1 Accessibility is not simply a matter of hearing about the FOS, but also of ensuring that its service is genuinely responsive at all stages of its interactions with complainants and firms. In this chapter, I therefore consider:

- office infrastructure and opening hours;
- the support available for vulnerable complainants;
- the 8-week limit;
- information gathering;
- duration of a complaint;
- e-enabling the FOS;
- the form in which decisions are communicated;
- the case for a small business division;
- the case for public hearings.

3.2 I should add that my consideration has been solely from the point of view of transparency. I have not sought to duplicate the detailed examination of processes undertaken by Professor Elaine Kempson in her review of 2004, but it soon became clear to me that her broad conclusions continue to be relevant. In particular, her dual emphasis on the need to maintain a strong Board and top management focus on quality remains vital. Consistently high quality and demonstrable impartiality are the twin foundations for the FOS. Firms are bound by the decisions of the FOS and they must be able to have the utmost confidence in the quality, the even-handedness and the integrity of its internal processes. The view of the Kempson Report was that quality in the context of the FOS can be defined in terms of "the extent to which the service provided adheres to the organisation's core values". The Report's conclusion was that this question was so important that a single, named individual should be "given overall responsibility for managing quality across the organisation" and that this should be "a member of the executive team". This recommendation was acted upon initially, but this is an area of such importance that reiteration and reinforcement is continuously required. **I recommend that a single, named and authoritative individual, reporting directly to both the Chief Ombudsman and the chair of the new Board Quality Sub-Committee, should be personally responsible for monitoring and maintaining quality within the FOS.**

Office Infrastructure

3.3 The FOS is rightly sensitive to the need to offer its services to consumers equitably across the UK. It therefore regularly surveys usage by region. The latest results, documented in its Annual Report, do not indicate any significant inequity, but this is clearly an area which should be constantly monitored.

3.4 I was asked to consider whether the introduction of regional offices might add a further guarantee of equality of access. I saw no evidence of demand for such offices in responses to my call for evidence. Nor do I see any operational advantage in multiple site working. The FOS is not a face-to-face service and, other than in the most exceptional of cases, has no reason to become one. Consequently physical access to complainants is not an issue. Locating decision-making work outside London would create new issues of managing consistency of decision-making and performance

between sites and ensuring equal access internally to senior management time for informal guidance and quality control. The case for a small number of offices focused on outreach and consumer support work is slightly stronger, but my overall judgement is that the FOS will achieve maximum impact in this area by increasing its media and web profile and by partnerships with a wide range of local bodies, rather than developing its own direct geographically-based services. **I recommend that the FOS should not pursue the issue of regional offices in the foreseeable future.**

- 3.5 I noted in my call for evidence document that the FOS currently operates a rather traditional weekday-only service, accessible to the public between 9am and 5pm. This seemed to surprise respondents. A large number of industry respondents said their own contact centres were often at their most active in the early evening. Many positively recommended moving to a pattern of 8am-8pm opening on weekdays and on Saturday mornings. Consumer bodies generally made the same point and argued persuasively that many individuals may find it difficult to discuss a complaint at the necessary length in the course of a working day. Conversely, the FOS reports that comparatively few calls are currently made out of hours and Consumer Direct, whose services are available on Saturday mornings, report this as a comparatively quiet time both for their core activities and in relation to the Generic Advice pilot they have recently undertaken as part of the Thoresen review.
- 3.6 In my view, however, the clear balance of advantage lies in moving to wider opening times. Precise levels of investment and the optimum split between staffing in the Consumer Contact Division and those involved in investigations can be determined in the light of experience. Differing levels of use of other services may say as much about consumer expectations of the relative inaccessibility of public services in general as they do about absence of demand per se. I see no case for a "24/7" service, **I therefore recommend that the FOS should provide a phone line service between 8am and 8pm on weekdays and on Saturday mornings.**
- 3.7 It is also important that the FOS should be accessible out of hours. I was struck by the fact that it is not possible to leave a voicemail out of hours or to text a request for a call back on the following day to discuss a potential complaint. The Danish Mortgage Credit Complaint Board described a system of "booking a call", which seemed capable of relatively easy replication. **I therefore recommend that the FOS should ensure that out-of-hours callers can leave their details by means of voicemail or text, and request a call back.**
- 3.8 A number of respondents asked whether the FOS might adopt an 0800 freephone number. At first glance this might appear to be unnecessary for the bulk of users of the service; and one might even argue there are more worthy priorities for expenditure on improving access. On balance, however, I do not share that view because the expense would not be so great; and also because I think it misses the point. Email enquiries are free of charge and it seems to me inequitable that telephone enquiries should be treated differently. Furthermore, the initial point of contact is all-important and, for the most vulnerable and least affluent would-be complainants, every potential barrier or discouragement should be removed, including any cost associated with making that initial enquiry. **I therefore recommend that the FOS should offer a freephone service, at least for initial enquiries and complaints.**

- 3.9 I am mindful, however, of the fact that an increasing number of people rely only on mobile phones, rather than landlines. Mobile networks rarely allow access to freephone numbers and users of mobile services alone are often people on lower incomes. **I therefore recommend that the FOS should give greater publicity to their practice of returning calls to mobile numbers where this is requested.**

The Support Available for Vulnerable Consumers

- 3.10 In considering the needs of the most vulnerable complainants to the FOS, I have been struck by how often such complainants turn to claims management companies to advance their claims. There are at least four reasons for this:

- the low level of intrinsic financial capability, which makes some people wish to have a third party to advance their claim;
- the fear that many such people have in dealing with any kind of official body;
- positive perceptions of the customer care that a claims management company will give;
- ignorance of the fact that the FOS is a free service.

- 3.11 CPH Financial Advisory Services, a complaints handling company, told me that those who used their services in complaining both to individual firms and to the FOS included those who

- "Are afraid to be seen directly criticising a large financial institution with whom they may still have a financial indebtedness;
- are put off by the complexity of the process;
- are afraid of completing forms;
- lack clarity in how compensation is calculated;
- would not know about how to go about starting a complaint;
- find that dealing with a complaint is too complex;
- and believe that they would be rejected as the system is stacked against the individual".

Independent research done on behalf of the FSA Consumer Panel also suggested that, for some consumers at least, the decision to use a claims management company was driven by worries about the opacity of the complaints process within firms and the FOS.

- 3.12 The FOS clearly needs to address all these perceptions – irrespective of whether they accurately reflect the reality or not - in the manner in which it deals with complainants. I have no wish to remove people's ability to choose to go to claims management companies, but it is important that the FOS's communications and processes ensure that people make such a decision with their eyes wide open. The FOS also needs to recognise changes in the type of people who use its service, and the type of problems and needs they will have. Many of these problems will relate not to relatively familiar insurance, mortgage or private pension products, but to the alleged mis-selling of debt management products, with the sums of money involved usually being comparatively modest. To the people who are bringing the complaints, however, the sums may seem formidable and the need for resolution is likely to be urgent.

- 3.13 I am impressed by the skill and sensitivity with which the FOS's Customer Contact Division (CCD) handles initial contacts and seeks to capture the core of a complaint from what can be a lengthy and sometimes confused conversation. The fact that staff can populate the complaints form from information supplied by the complainant is helpful, as is the fact that interpretation services in 20 languages and support for people with disabilities are readily available, but staff are – understandably – constrained in the nature of advice they can offer. The question therefore arises, for the least capable consumer, of whether a more interventionist service is needed within the FOS itself.
- 3.14 I believe that such a model should be explored in more depth. I envisage the FOS establishing a cadre of specially trained staff within CCD who would effectively act as "case advisers" for the most vulnerable consumers in progressing their complaint through the adjudication and decision process.
- 3.15 The case adviser would assist in
- framing the complaint;
 - progress chasing it through the system;
 - explaining adjudicator requests for further information;
 - explaining decisions and advising on whether there would be merit in seeking a review by an Ombudsman.
- 3.16 Considerable care would need to be taken in running such a system. In particular, I am very clear that it must not tip the FOS into the role of a partial "consumer champion". The role would certainly fall short of pure advocacy, as the adviser would need to give advice about the weakness as well as the strength of the case. Clear criteria would be needed in identifying the consumers (potentially including some micro-businesses) who most need such a service. The consumer would also need to understand that the sponsor would not be involved in decision-making on the case, so as not to compromise the impartiality of the service. Overall, volumes and timeliness would need to be monitored to ensure that a "two-tier" service did not arise.
- 3.17 These are serious points, but they are arguments for careful piloting and evaluation, rather than for inaction. Cash-rich and time-poor consumers may decide to advance their claim through a claims management company as a matter of conscious choice, but it is unacceptable if less affluent consumers feel they have no alternative but to use these expensive services because of the perceived difficulty of dealing with the "system". **I therefore recommend that the FOS should develop and pilot a "case adviser" system, to ensure that vulnerable consumers feel confident about using the FOS dispute resolution service.**
- 3.18 In parallel with exploring the development of such a service in-house, I believe the FOS should intensify its efforts to equip staff in voluntary organisations with the skills necessary to offer a similar service. This is in line with my earlier recommendations about developing a more extensive role in actively training, rather simply communicating with, voluntary sector partner bodies and in ensuring clear coordination with "Money Guidance" services.

The 8-Week Limit

- 3.19 My call for evidence document asked for views on whether the current 8-week period given to firms to resolve the complaint before it can be referred to the FOS was a barrier to access. As might have been anticipated, views were mixed. The NCC noted strong evidence from other sectors that consumers' willingness to complain declined over time. *Which?* argued for a shortening of the limit and Citizens Advice suggested it be reduced to two weeks. The Energy and Water Ombudsman of Victoria explained that, rather than running a time limit, her office looks for evidence that a company has twice failed to satisfy a complainant before a case is accepted. Company and trade association responses, on the other hand, highlighted the importance for confidence in the general financial services market of firms themselves having the opportunity to identify issues and put them right without third party intervention.
- 3.20 There is considerable force in both sets of arguments. To take industry's points first, it does create the wrong incentives for effective customer care if there is no onus on firms to resolve issues themselves. A disproportionate shortening of the deadline would also lead to additional costs for the FOS – and hence industry and ultimately consumers – with little discernible gain. I also note that other regulated industries are some way behind financial services in respect of such deadlines – both Ofgem and Ofcom are considering moving to an 8-week deadline from 12 weeks. Additionally, the proportion of "forced deadlock" cases – i.e. where the firm has not responded at all within 8 weeks as opposed to providing a response judged unsatisfactory by the consumer – is lower in the case of the FOS than for some other comparable Ombudsman services. **I therefore conclude that the case for a general reduction in the 8-week deadline is far from conclusive.** (I discuss "forced deadlock" in relation to the fee structure at para 8.14).
- 3.21 I was struck very forcefully in discussion, both with front-line Citizens Advice staff and with my parliamentary colleagues, by the difficulties that the timescale can cause for their less affluent clients and constituents, in particular in relation to consumer credit cases. Urgency of need should in no way be equated to the scale of the sum in dispute. In some cases, firms need to resolve such complaints in days, rather than weeks, to save the complainant from genuine distress. It was suggested that the legalistic approach taken by some firms to defining when a complaint had officially "started" for the purpose of the 8-week rule added a further layer of disadvantage. Any perception of further delay within the FOS would simply lead to such complainants not coming forward in the first place. Shortening of the time limit would, of course, require a full cost-benefit analysis, but, *prima facie*, the case for change appears very powerful.
- 3.22 I conclude therefore that a "one size fits all" approach to regulatory time limits for complaint handling – and to the FOS's own processing of complaints – no longer makes sense in the light of their new responsibilities. I therefore differentiate my recommendations between the FOS's established core jurisdiction and its new Consumer Credit role.
- 3.23 On the former, I believe it would both help individual consumers and provide good incentives to firms if the FOS were to follow up pro-actively with those complainants, whom it has referred to the relevant business for their complaint to be considered, after 8 weeks have elapsed, to see if they have pursued their complaints, what outcomes

