

Consumer complaints and the Financial Ombudsman Service Financial Services Consumer Panel response to: FSA consultation paper 33: consumer complaints and the new single ombudsman scheme

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Executive Summary

- a) Redress for consumers is a key component of consumer protection. We look to the FSA and the FOS to actively involve consumers and their representatives in an ongoing consultation process. (paragraph 4)
- b) It is important that the FOS promotes awareness of its existence and role and that awareness amongst the public is monitored. (paragraph 14)
- c) The FOS complaints resolution is designed to resolve individual disputes. It is not a substitute for, or an efficient alternative to, the FSA using its powers to deal with a systemic problem. (paragraph 19)
- d) The FOS must alert the FSA at the earliest opportunity if there seems to be a problem with one company or a trend in complaints suggesting a new problem. We recommend that the Memorandum of Understanding between the FSA and the FOS should identify the type of information and regulatory intelligence which should be shared. (paragraph 20)
- e) Charities are of a very different nature to business and the access criteria for allowing small businesses to use the FOS may be insufficient criteria to address the differing positions of charities. (paragraph 28)
- f) Conferring wider rights on third parties than those which exist in contract law is not a reason in itself to exclude from the voluntary jurisdiction access to third parties involved in an insurance dispute. (paragraph 32)
- g) Consumers must be able to expect the same standards and procedures for complaints handling for all firms carrying on regulated activities. (paragraph 34)
- h) We are pleased that the compulsory jurisdiction of the FOS will apply to all FSA authorised firms where that firm is permitted to conduct relevant business with customers eligible to use the Service. (paragraph 35)

- i) The FSA should encourage comparable complaints handling arrangements and consistent standards within the professional bodies and the FOS. (paragraph 38)
- j) The FOS has an important role in promoting the FOS as a one-stop shop and we call on them to engage in talks with the relevant professional bodies to encourage their members to join the voluntary jurisdiction of the FOS where appropriate. (paragraph 40)
- k) EEA firms should be required to carry a notice stating the complaints resolution body that their customers have access to on their promotional material and/or on the home page of their website. (paragraph 42)
- l) We welcome and endorse the FSA's and the FOS's stated intention for both compulsory and voluntary jurisdictions to have the same requirements in terms of complainants rights and the service they will receive. (paragraph 43)
- m) The FSA should adopt the approach outlined in Option 2 (maintaining the coverage of existing schemes) with a view to moving towards Option 3 (all financial services activities conducted by FSA authorised firms whether regulated or potentially regulated) as soon as practicable. (paragraph 45)
- n) In the first year of operation of the FOS, the FSA and the FOS should set out a timetable for moving from option 2 to option 3 and involve consumer representatives in the early stages of any discussions about this. (paragraph 46)
- o) Since intermediaries giving advice on mortgages will not require authorisation by the FSA, we consider it to be vitally important for these firms to be brought within the voluntary jurisdiction at the earliest opportunity. (paragraph 48)

- p) We call on the FSA to develop criteria for reviewing limits on awards in advance of the review date and in full consultation with consumer representatives. (paragraph 53)
- q) We support the FSA's and the FOS's decision not to place separate limits on awards within the overall total, e.g. – for distress and inconvenience. (paragraph 54)
- r) We call on the FOS in their contractual arrangements to require firms leaving the voluntary jurisdiction to be subject to a minimum 6-month notice period. In this period, firms should be required by the FOS to write to customers with whom they have an ongoing relationship to explain the implications for them. (paragraph 56).
- s) We look to the FOS to ensure that what constitutes a frivolous or vexatious complaint (with respect to early termination of cases) is interpreted sensitively and flexibly and that steps will be taken to determine that there is no discrimination against people whose first language is not English, or other people who have problems expressing themselves. (paragraph 61)
- t) We welcome the wide definition of a complaint for the purposes of a firm's own complaints handling arrangements as any expression of dissatisfaction from a customer. This is not only important for consumer protection but also beneficial to companies in learning more about how to keep and improve service to their customers. (paragraph 65)
- u) Firms have much to gain from listening to their customers and we hope that firms will recognise that effective complaints handling is a crucial part of this learning opportunity.

Our approach to the Consultation

1. This paper is the response of the Financial Services Consumer Panel ('the Panel') to the joint Financial Services Authority (FSA)/Financial Ombudsman Service (FOS) consultation paper 33: 'Consumer complaints and the new single ombudsman scheme'. The FSA established the Panel to advise the FSA Board on the interests and concerns of consumers and to report on the FSA's effectiveness in meeting its consumer protection and public awareness statutory objectives.
2. In developing our response to the consultation paper, we held a seminar for consumer organisations on these proposals. This was attended by over 30 representatives from organisations as varied as the Money Advice Trust, Age Concern England and trading standards departments in local authorities from Essex to South Ayrshire. In addition to promoting debate on the consultation and encouraging consumer organisations to respond to the fairly technical proposals, the seminar also served to inform the Panel's response. Participants discussed the key consumer issues in detail in the workshops and our response, where appropriate, reflects the views and discussion of the seminar. For a written account of the Consumer Panel's seminar, and attendance, please see appendix A.
3. We welcome the progress made in setting up the new company to run the single ombudsman scheme, known as the Financial Ombudsman Service (from here on this is referred to as the FOS or the 'Service'): appointing the Board; Chief Ombudsman and principle Ombudsmen; and moves towards co-location of existing schemes.
4. **Redress for consumers is a key component of consumer protection. We look to the FSA and the FOS to involve consumers and their representatives in an ongoing consultation process.** The FOS will have more direct contact with consumers than the FSA, the consultation paper quotes an expected: 30 000 written complaints; 30 000 written

enquiries; and 150 000 telephone enquiries a year¹. It is therefore regrettable that the consultation paper lacks a clear statement of the visions and the values it will apply in its work. We look to the FSA and the FOS to develop these in consultation with interested parties.

5. The Financial Services and Markets Bill sets a complex statutory framework from which the FSA and the FOS have developed a policy framework for the new single ombudsman scheme. Whilst the FOS aims to deliver a seamless service to the consumer with common standards and processes for all cases dealt with by the Service, the framework behind the service is far from simple. We recognise the difficulty faced by the FSA and the FOS in presenting the complex framework for consultation to interested parties in an accessible way but nevertheless believe that more could have been done to achieve this objective. Ease of access to the Service and to the philosophy and practice that underlies it will be key measures for the future.

6. In that context:

- The consultation paper itself could have been made more consumer friendly by clearly drawing out key issues of consumer interest where views are being sought and by using more examples to demonstrate how the proposals impact on consumers. This must be taken into account in future consultation.
- We welcome the FOS's commitment to engage in dialogue with interested parties and are pleased that the need to involve consumer representatives as well as practitioners has now been recognised – the FOS are hosting a conference in Scotland aimed at consumer organisations. We welcome the innovative ways of promoting debate and input that the FSA experimented with for CP 28, *Comparative Information for financial services*. We look to the FSA to spread good practice initiatives across its organisation.

¹ Paragraph 1.18, FSA/FOS CP 33

- We look to the FSA to and the FOS to involve consumers and their representatives in an ongoing consultation process and consider alternative ways of involving consumer representatives and lay people in the process.

Chapter 1: Introduction

Paragraph 1.16, Page 9. The FSA would welcome comments on the extent to which these proposals achieve the statutory purpose of the Scheme and are compatible with the FSA's general duties

The regulatory objectives

7. The FSA's objectives of consumer protection, public awareness and market confidence are linked. Better informed consumers will increase competition leading to good practice and consumer protection. Similarly, protecting consumers by promptly and effectively dealing with breaches of rules and bad practice in the financial services market will increase consumer confidence. For these reasons, we have commented on these objectives together, as follows.

Providing a consumer friendly service

8. The service must be simple and easy to understand. If it is not it will jeopardise both the public awareness and consumer protection objectives of the FSA.

9. We are encouraged that the FOS intends to adopt the best of good practice initiatives from existing schemes in order to provide a consumer friendly service. These include:

- being able to take initial complaints over the phone without the consumer having to fill in a form;
- providing training to consumer advisers, for example staff of Citizens Advice Bureaux, and Money Advice Centres on how the Ombudsman Service works and providing a dedicated contact for these advisers.

10. We also welcome the FOS's stated intention of providing a wider range of information to consumers, through their helpline, than on purely whether the FOS could deal with their complaint. Indeed, the development of such a helpline or provision of this type of information would play a crucial role in providing a consumer friendly service. In addition to supporting the adoption of good practice from existing schemes (above), we make the following points:

- We urge the FOS to ensure that frontline staff are trained to a high standard to be able to help callers. This will be especially important for those for whom English is not their first language or where callers are less articulate than the average callers. It will also be important to ensure both information lines have a text-phone for deaf consumers. Where the FOS is unable to take up a case, staff should be able to find out the correct organisation to help the caller.
- The FOS's helpline and the FSA's now established consumer helpline must be able to co-ordinate their activities and transfer callers to the other organisation as appropriate. It is likely that many consumers will not know the difference between the FSA and the FOS and will be unable to identify which organisation could help them. We believe that there is a danger in duplication (see below) and that the FSA and the FOS should minimise the need for overlapping services by transferring calls in this way.
- There will be areas where the FSA and the FOS will need to provide the same service to consumers. One such area is when frontline staff receive calls from consumers asking about making complaints. It will be crucial that the FSA and the FOS provide the same information to callers to avoid confusion. The FSA and the FOS should consider joint training for frontline staff on some aspects where the service overlaps.

Consumer understanding

11. The FSA considers that the effectiveness of the Scheme and the resolution of complaints is an integral part of its consumer protection objective². The effectiveness of the FOS as a tool for consumer protection depends upon customers being aware that they have a right to complain and that they can take their complaint to the Ombudsman.

12. We are concerned that consumers are not aware of their rights to complain and do not exercise them. Research conducted by the FSA showed that only 10% of those dissatisfied with the outcome of their complaint to the firm take the matter further³.

The Consumers' Association echo this message. *A Which?* (Consumers' Association magazine) survey⁴ in 1997 found that one in five people didn't bother to complain when they had a problem and one in three of those that did complain gave up if their complaint wasn't resolved at the first attempt. Furthermore, of the people who did pursue their complaints with the relevant company almost three-quarters gave up at deadlock rather than go on to an ombudsman or other third-party complaints system.

13. We know from the Personal Investment Authority (PIA) Ombudsman's experience⁵ that small firms do not always inform consumers of the existence of ombudsman schemes. Failure to inform consumers of their rights under the complaints procedure should be prima facie evidence of non-compliance with FSA rules. The FOS should notify the FSA of any company's failure to inform its customers appropriately of the availability of the service.

14. **It is important, therefore, that the FOS promotes awareness of its existence and role and that awareness amongst the public is monitored.** The FOS must allocate sufficient resources to promoting

² Page 7, FSA/FOS CP 33

³ FSA/NOP Complaints research, conducted in the UK with 989 respondents, 1999.

⁴ *Which? Magazine* – January 2000

⁵ PIA Consumer Panel's 1997 Annual Report, page 9.

public awareness of the FOS and recognise that it is not an easy job, as demonstrated by the experience of the FSA, see below.

The Panel's annual survey highlighted the lack of consumer awareness of the FSA. It revealed that although compared with previous financial regulators the FSA has made a good start in raising awareness of its existence, the level of recognition is still very low at 6 per cent⁶. This is despite consumers being interviewed for this survey only 6 months after the £10.5 million pensions review publicity campaign which carried FSA branding.

15. Furthermore, the complexity of whether a consumer has an 'eligible complaint' (Chapter 3: Scope) increases the potential confusion for consumers.
16. The implications of this are that consumers need help to navigate dispute resolution mechanisms and may not refer a case to the Ombudsman where they have every right to if they do not receive help.
17. The complexity of the system and lack of consumer awareness also support our concern, below, that where a systemic problem exists, a far more efficient outcome is likely to be achieved by the FSA taking action to gain restitution for consumers.

Major and systemic problems

18. Consumer confidence in the financial system is increased through swift and effective handling of complaints by both firms and Ombudsman and by prompt action to address systemic problems by the FSA.
19. **The FOS complaints resolution is designed to resolve individual disputes. It is not a substitute for, or an efficient alternative to, the FSA using its powers to deal with a systemic problem.** The

Ombudsman Scheme should, broadly speaking, only be used to deal with individual cases. It may not be obvious initially that disputes arriving at the FOS reflect systemic issues – hence the importance of information sharing with the FSA. Dealing with known and continuing breaches of regulatory rules on a case by case basis is likely to militate against the interests of consumers and there is a likelihood of injustice as not all of those who should receive recompense or restitution may be aware of the problem

20. The FOS will collect data that could provide valuable regulatory intelligence and early warnings to the FSA. The FOS must secure the independence of the Ombudsman in reaching decisions from interference by the FSA or the parties to the dispute; consumers and firms must also have faith that details about individual cases are not passed from the FOS to the FSA. **However, the FOS must alert the FSA at the earliest opportunity if there seems to be a general problem with one company or a trend in complaints suggesting a new problem. We recommend that the Memorandum of understanding between the FSA and the FOS should identify the type of information and regulatory intelligence which should be shared.**

⁶ FS Consumer Panel/MORI survey conducted in the UK with 1253 respondents (to be published in summer 2000)

Chapter 3: Scope of the Financial Ombudsman Service

Which complainants should have access to the scheme?

Q. 3.1 (i) Do respondents agree with the proposal to give access to the Scheme to private individuals and small businesses with a turnover of £1mn or less and under 5 employees (except where the latter are market counterparties or authorised to conduct the type of business about which they are complaining)?

21. Ombudsman schemes exist to provide a cost free, accessible, independent alternative to the courts. The FOS should be open to those who are least able to sustain a financial loss and for whom court action and obtaining relevant professional advice are not viable options.

Small businesses

22. We are encouraged that the FSA has revised its definition of a 'small business' since proposals in the FSA consultation paper 4: *Consumer complaints*. Requiring firms to meet both turnover and employee criteria focuses on those small business unlikely to be able to meet the costs of court action and of obtaining relevant professional advice.

Q. 3.1 (ii) Do respondents agree with the proposal to apply the above definition across all industry sectors, including insurance?

23. In the interests of simplicity and ease of understanding, we support the proposal to apply the small business definition across all industry sectors.

Charities

24. The Panel remains concerned that the position of charities requires further thought. In taking forward its thinking on how to define eligible charities and non-profit making bodies⁷, we urge the FSA to consider the very different nature of these organisations to businesses. Very large charities may appear to be like similar businesses more than capable of taking professional advice, and obtaining legal advice in pursuing complaints against large financial institutions. Charities are, however, very varied in nature and size. They often lack capital compared to businesses of similar size; they lack the ability to trade their way out of unexpected financial expenditure; and there are few financial providers willing to lend to charities.
25. Charities are nearly always under pressure to finance short-term needs and more often than not, feel obliged to delay the financing of non-essential work. Financing court action, with all the uncertainties that accompany that, is unlikely to be considered a risk worth taking whatever the turnover or number of employees. Indeed, the Government recognises the special status of charities, regardless of their size, with respect to their financial constraints. All charities automatically receive 80% relief on local rates and local authorities have the discretion to waive the remaining 20%.
26. Applying the small business definition to charities would give 98% of charities access to the FOS. We have no doubt that such charities should be treated like private individuals and consider this to be a helpful starting point. We are not convinced, however, that this criteria is sufficient, because turnover and the number of employees do not reflect a charity's ability to sustain a financial loss.

⁷ Paragraph 3.16, Page 17, FSA/FOS CP 33

27. Charities are accountable to their funders who may oppose the accumulation of surpluses and reserves making it difficult to take court action.

28. We consider the proposed definition for inclusion of small businesses may be insufficient criteria to address the differing positions of charities. There will remain 300 charities who won't have access to the FOS. In its August 1998 feedback to consultation paper 4, the FSA stated its desire to "define the term 'private individual' carefully, and to include within this category small trusts and charities, executors and receivers"⁸. We are disappointed that the FSA has not further developed its thinking on this issue and urge the FSA to further refine the criteria applying to this important sector taking account of the types of complaints that arise once the Service is operational.

Third parties

Q3.2 Do respondents agree with the proposal to give access to the Service to insured persons only where they have legal rights to enforce a contract and to the other third parties outlined above?

29. We are concerned about excluding third parties involved in insurance disputes from access to the FOS unless they have legal rights to enforce a contract. Third parties involved in insurance disputes (those primarily excluded) are those for whom the policyholder who's policy is being claimed against caused the event on which a claim is being made. In other words, consumers have better protection against wrongdoing or maladministration by an insurance company if the accident was their fault than if they are the victim of another policyholder's offence. This is inequitable.

⁸ Paragraph 1.15, August 1998 Policy Statement following CP 4

30. We acknowledge that policy makers may be concerned about the volume of complaints disputing the amount of an offer that could be taken to the FOS if all third parties involved in an insurance dispute had access to the FOS. We also understand the need for the FOS to be able to cope with the caseload, particularly in the early years, in order to be able to deliver a sufficiently high standard of service. However, if this is the reason for excluding all third party insurance disputes, unless they have legal rights, then we call on the FSA and the FOS to reconsider its position and consult on this issue.
31. We are particularly concerned that there are cases where consumers would be excluded under the proposals that are not disputes about the amount of an offer. See the example below.

The Insurance Ombudsman Bureau's 1997 Annual Report discusses the case of Mr. P⁹. Mr. P claimed he was unable to work for 11 weeks due to a delay in his vehicle being repaired (following a road accident) which he blamed on the insurers' insistence on using its nominee and its dilatory handling of his claim. Mr. P was able to take this case to the Insurance Ombudsman Bureau and receive damages¹⁰ because he was claiming on his own policy. Had Mr. P been the innocent party and pursuing a claim on someone else's insurance policy, he would not have been able to take his case to the Ombudsman.

32. It is not clear from the consultation paper why the FOS should be precluded from going beyond the law with cases that fall into the voluntary jurisdiction. **We reject the argument, therefore, that conferring wider rights on third parties than those which exist in contract law is a reason in itself to exclude access from the voluntary jurisdiction to**

⁹ Page 7, IOB Annual Report 1997.

¹⁰ Mr. P receives £250 as the Insurance Ombudsman Bureau found four weeks out of the total period excessive.

third parties involved in an insurance dispute. Indeed, the FOS can take into account matters beyond the law when deciding what is 'fair and reasonable' and the consultation paper does not make a case that a different principle applies in deciding who is eligible to access the FOS.

33. There are also concerns about the position of beneficiaries under group health or personal pensions schemes where the employer is the policyholder. Where a policy is for the benefit of a third party, their rights to have a complaint investigated by the Scheme should be protected.

Which firms will be subject to the Scheme?

34. The principle of consistency of standards and procedures applies equally to complaints handling by firms and we return to this issue when considering Chapter 6 of the consultation paper. **We strongly believe that consumers must be able to expect the same standards and procedures for complaints handling for all firms carrying on regulated activities** and this seems to us to be a basic principle of consumer protection. To this end we make a number of observations.

Professional firms

35. **We are pleased that the compulsory jurisdiction of the FOS will apply to all FSA authorised firms where that firm is permitted to conduct relevant business with customers eligible to use the Service.**

36. We welcome the FSA's commitment to work effectively with relevant professional bodies to deal with complaints about authorised firms, where the complaint may not wholly relate to activities within the FOS's scope.

37. The FSA has no powers to require firms that are members of recognised professional bodies (solicitors, accountants and actuaries) carrying out a small amount of financial services related work but which do not carry on mainstream investment business to be subject to the FOS. The consultation paper does not discuss the implications of this for the

continuation of arrangements in the professional bodies for handling complaints about the financial services conducted by these firms. We find it difficult to assess the implications for consumers in the absence of this information.

38. The FSA should, as far as possible, ensure that there is not a two tier system of protection for consumers who will, on the whole, be unaware of whether they are dealing with an authorised or exempt firm. **The FSA should encourage comparable complaints handling arrangements and consistent standards within the professional bodies and the FOS.**

39. The FOS should develop collaborative arrangements with these bodies and endeavour to offer the consumer a seamless service even if the consumer's first port of call is to the FOS who are unable to take their case.

40. In time, the voluntary jurisdiction of the FOS should include financial services activities carried on by non-authorised professional firms who do not have Ombudsman arrangements. **The FOS has an important role in promoting the FOS as a one-stop shop and we call on them to engage in talks with the relevant professional bodies to encourage their members to join the voluntary jurisdiction of the FOS where appropriate.**

European Economic Area (EEA) firms

41. We strongly agree with the FSA's proposal that European Economic Area (EEA) firms that qualify for authorisation by virtue of having obtained a passport under one of the EC directives should be required to participate in the Ombudsman Service. This is necessary not only to provide a level playing field for firms but also to provide consistent standards for consumers.

42. If inwardly passporting EEA firms transacting business into the UK on a *services* only basis will not be required to participate in the Ombudsman Scheme, as proposed in paragraph 3.30, then the FSA and the FOS must seek ways to bridge this gap. This is particularly important considering the increase in consumers using the internet to access financial services.

- We are aware of work undertaken by the FSA to encourage the EC to set 'High Level Principles' and for a network to operate where consumers can submit complaints to the scheme in their own member states who will provide assistance and liaise with the relevant authority in other member states. We view these steps as essential to ensure the protection of consumers, particularly with the expected growth in the financial services sector of retail cross border transactions. We encourage the FSA to pursue these proposals with urgency.
- However, it is also important before they enter a relationship with a firm that consumers are provided with information to help them make an informed decision about the access they would have to an ombudsman or arbitration scheme in the event of a firm failing to deal with a complaint satisfactorily. **The FSA should pursue the most effective means of informing consumers about these rights. We think firms should be required to carry a notice stating the complaints resolution body that their customers have access to on their promotional material and/or on the home page of their website.** Whether this is required as part of an EU directive or by a provision under the financial promotion order, we believe that without such information, consumers could unexpectedly find themselves isolated when making a complaint. At present the availability and nature of consumer redress mechanisms vary significantly across the EU¹¹ and we are concerned that there is a significant protection gap for consumers.

¹¹ *EU Consumer Complaints handling and redress mechanism –Discussion Paper from the FSA.*

Which activities should be covered by the Scheme?

43. In this section, the consultation paper discusses which activities and when these activities should be covered by the compulsory and voluntary jurisdictions. **We welcome and endorse the FSA's and the FOS's stated intention for both jurisdictions to have the same requirements in terms of the service and rights complainants will receive.**

Compulsory jurisdiction

Q3.3 Do respondents agree that the FSA should adopt the approach outlined in Option (2) [regulated activities plus those potentially regulated activities which are currently covered by the existing schemes] in the first instance, but aim to move, in due course, to Option (3) [all financial services activities conducted by FSA authorised firms, whether regulated or potentially regulated]?

44. We agree with the FSA that the scope of the compulsory jurisdiction should certainly be no less than that covered by existing arrangements (Option 2).

45. The scope of the compulsory jurisdiction should be as comprehensive as possible but we recognise the need to ensure that the Scheme can manage its workload and maintain a good quality service whilst doing so. **For these reasons, the FSA should adopt the approach outlined in Option 2 (maintaining the coverage of existing schemes) with a view to moving towards Option 3 (all financial services activities conducted by FSA authorised firms whether regulated or potentially regulated) as soon as practicable.**

46. **In the first year of operation of the FOS, the FSA and the FOS should set out a timetable for moving from option 2 to option 3 and involve consumer representatives in the early stages of any discussions (including cost-benefit analysis) about this.**

Voluntary jurisdiction

Q3.4 Do respondents agree with the phased approach that the FOS proposes to adopt in relation to the voluntary jurisdiction?

47. We agree with the FOS's proposals to make the voluntary jurisdiction available to all authorised firms in respect of any of their potentially regulated activities. Not to do so would create consumer confusion.

48. We agree with the FOS's proposal to make the voluntary jurisdiction available to unauthorised firms in respect of advice on mortgage lending. The Government's announcement that mortgage lenders will require authorisation adds further weight for this activity to be included in the voluntary jurisdiction ahead of 2001 when we look to the FSA to bring this activity into the compulsory jurisdiction. **As mortgage advice given by intermediaries will not be covered by the FSA we consider it to be vitally important for these firms to be brought within the voluntary jurisdiction at the earliest opportunity.**

49. To minimise consumer confusion, unauthorised firms should be able to join the voluntary jurisdiction of the FOS as soon as possible for potentially regulated activities that are covered by the compulsory jurisdiction. The FOS should set out a timetable for achieving this and involve representatives from interested parties in that discussion.

What should the territorial coverage of the Scheme be?

Q3.5 Do respondents agree with the proposed territorial coverage of the Scheme?

50. We agree with the FSA that it would be undesirable to apply a residence qualification to consumers, not least because of the reciprocal arrangements for consumers across EU member states to access redress mechanisms.

What should the limits on awards be?

Q3.6 Views are invited on the limits on award outlined above.

51. We agree that the limit on awards for compulsory and voluntary jurisdiction should be the same as there should be no distinction to the consumer between the rights they are entitled to in the compulsory and voluntary jurisdiction.

52. We are disappointed that the FSA and the FOS have not proposed an increase in the limit on awards from £100 000. The PIA Consumer Panel, in their response to CP 4, highlighted the fact that whilst this is the most common current limit on awards, it is based on that adopted by the Insurance Ombudsman Bureau in 1981 and if indexed to inflation, it would now be over £200 000.

53. Whilst the FSA has made a commitment to reviewing the limit every three years (in consultation with the FOS), there is no mention of any criteria by which this limit will be reviewed. **We call on the FSA to develop criteria in advance of the review date and in full consultation with consumer representatives.** In our response to CP 24 – *Consumer compensation: a further consultation*, we suggested that the FSA should include the following criteria in its review of compensation limits:

- Consumers' levels of savings and investment and the extent to which they can afford to sustain a loss;

- The Government's policy that individuals should increasingly provide for themselves in retirement, the changing levels of state benefits for retirement and the influence this might have on personal savings and investments;
- The need to keep limits up-to-date to keep pace with growth in levels of savings and investments; and
- The number of cases concerning amounts above the limit.

These criteria should be included in the review of the FOS's award limits.

54. We support the FSA's and the FOS's decision not to place separate limits on awards within the overall total, e.g. – for distress and inconvenience.

When is a complaint an 'eligible complaint'?

55. Any relevant act or omission during a firm's membership of the voluntary jurisdiction of the Ombudsman Scheme should qualify for a complainant to have an eligible complaint. We are disappointed that the Bill allows firms to avoid resolving a dispute through the FOS if the relevant act or omission arises from a period when a firm was participating in the FOS but the firm has terminated their participation in the voluntary jurisdiction. This seems to us wholly unacceptable and potentially hazardous for consumers.

56. While it is not in the FSA's powers to make firms who have left the FOS subject to the FOS for complaints that arose when they were participants, the FOS can seek to minimise the danger to consumers that arises from this. **We call on the FOS in their contractual arrangements to require firms leaving the voluntary jurisdiction to be subject to a minimum 6-month notice period with power for the Ombudsman to increase this in the event of an outstanding complaint. We further believe that in this period, firms should be required by the FOS to write to**

customers with whom they have an ongoing relationship to inform them of:

- **the fact that they are ceasing to participate in the FOS and when this will come into effect;**
- **that their customers will no longer be able to pursue complaints with the FOS after the date on which they leave; and**
- **alternative arbitration/ombudsman arrangements.**

57. We believe that this is necessary because:

- When firms join the voluntary jurisdiction of the Scheme, they acquire the benefit of giving the consumer confidence that a dispute can be taken to the Ombudsman and this may be misleading if they subsequently terminate their relationship.
- The consumer will not be aware that a decision to withdraw from the scheme at a later date could jeopardise this safety net.
- A systemic problem in 'potentially regulated activities', where the FSA is unable to take action, may cause a haemorrhage of firms anticipating complaints.
- The FOS has the power of early termination of a complaint and firms do not, therefore, have anything to fear from informing their customers of their imminent departure from the FOS unless they have breached rules or codes in place at the time.

Chapter 4: Scheme rules, standard terms and costs rules

European Convention on Human Rights

58. The FOS is faced with the task of developing a new service that retains all the advantages of Ombudsman schemes (free to consumers; cost effective; informal; accessible; investigative; and which avoid giving an advantage to those who can afford legal representation) and that also complies with the European Convention on Human Rights (ECHR). We acknowledge that this is no easy task and it is one facing all complaints resolution systems that provide an alternative to the courts.

59. We welcome the commitment expressed in the consultation paper to incorporate ECHR safeguards without undermining “the essential informality and speed of the ombudsman process”¹² and encourage the FOS in their attempts to retain the fairness which characterises ombudsman schemes. We also urge the FOS to monitor the success with which they achieve this.

Fair and reasonable

60. We warmly welcome the proposals for the Ombudsman to take into account what is fair and reasonable and relevant law and codes of practice. Determining what is fair and reasonable is a matter for the Ombudsman and not the FOS Board. We would be concerned if the Board became involved in such decisions.

Early termination

61. We recognise the importance of having early termination criteria but stress that it is a minority of consumers who fit into these criteria. Determining what is frivolous or vexatious is difficult and it may be particularly difficult to make a fair assessment if judging solely on the basis of correspondence.

¹² Page 30, FSA/FOS CP 33

We look to the FOS to ensure that what constitutes frivolous or vexatious is interpreted sensitively and flexibly and that steps will be taken to determine that there is no discrimination against people whose first language is not English, or other people who have problems expressing themselves. Training plays a key role in ensuring that consumer friendly practices are the norm. These practices might include being willing to phone up or visit a complainant rather than always communicate by correspondence. These need to be reflected in FOS's approach as a whole and not just early termination cases.

Chapter 5: Funding

62. We have a few general points to make on the issue of funding that we hope would guide any detailed policy making on this issue.

- The FOS must be sufficiently well funded to maintain a high quality service and this includes ensuring that it is adequately staffed.
- The levy system should not unduly burden small firms or those against whom the complaints made do not prove to be justified.

Chapter 6: Complaints handling by firms

63. The consultation paper promotes the idea of good practice for complaints handling by encouraging firms to adopt procedures that comply with a recently published 'British Standard' outlining the attributes of a good complaints handling process. We agree that the British Standard or similar procedures to the British Standard are to be encouraged.

64. We also believe that if firms have a consistently bad complaints record, the FSA should 'name and shame' these firms.

65. We welcome the wide definition of a complaint for the purposes of a firm's own complaints handling arrangements as any expression of dissatisfaction from a customer and believe that this is not only important for consumer protection but also beneficial to companies in learning more about how to keep and improve service to their customers. These complaints will include complaints about the behaviour of a firm or individual about, for example, misleading advertising, unfair contract terms or aggressive or intrusive selling practices. These complaints may not be eligible for consideration by the Ombudsman if the complainant has not suffered financial loss, distress or inconvenience but it is clear that these complaints could provide valuable regulatory intelligence. These complaints should also be able to be dealt with effectively by an FOS helpline and be able to feed seamlessly into the FSA's authorisation, supervision and enforcement function.

66. The proposals for improving complaints handling by firms are welcome and necessary.

67. Firms have much to gain from listening to their customers and we hope that firms will recognise that effective complaints handling is a crucial part of this learning opportunity.

Q6.1 Do respondents agree that the FSA Register should make these details [of a contact point within a firm whom consumers should contact in the first instance] available to consumers?

68. The FSA should identify on the FSA register a contact point within a firm for consumers to contact in the first instance about a complaint. There are many barriers to consumers' exercising their right to complain about to a firm. We discussed the extent of these barriers in paragraphs 11-17.

Q6.2 Do respondents agree with the proposed time limits?

69. We warmly welcome the proposal that the time limit for firms dealing with a complaint should be 4 weeks with the option that if a firm has been unable to resolve the complaint and needs more time that the complainant is informed of this in writing and told of their right to approach the Ombudsman at the end of a further four weeks if not satisfied. This is in step with time limits for complaints handling procedures in other sectors. The Ombudsman service should establish its own performance targets and keep people informed of any delays in its investigations.

Qu. 6.3 The consultation asks for views on the desirability of requiring firms prudentially supervised only to supply data on their complaints handling.

70. We encourage the FSA to require firms subject only to prudential supervision to supply the same data to the FSA on their complaints handling as other authorised firms. This is because:

- All authorised firms are subject to the 'Principles for business' and the collection of complaints data will be an important part of monitoring the extent to which these principles are followed. This is important even if the FSA would only take action in relation to breaches of these principles by firms where it was threatening the prudential standing of the firm.
- The FSA will not be able to assess the need to extend conduct of business regulation to these firms without being able to analyse their complaints.

71. We expressed a view at the beginning of this response that the FOS will inevitably be the source of regulatory intelligence that will help the FSA fulfil its consumer protection objective. We also expect that complaints

dealt with by a FOS helpline that are not eligible for consideration by the Scheme will be passed to the FSA where they provide regulatory intelligence, e.g. – reporting of misleading information or indications of gaps in consumer protection.

Appendix A: Summary of Financial Services Consumer Panel seminar

on FSA/FOS's consultation: 'consumer complaints and the new single ombudsman scheme', on Monday 24th January, 1.00-4.45pm, @ FSA, Canary Wharf, London

Phil Telford, Consumers' Association – Principles of good ombudsman schemes & current situation

Phil Telford gave a brief introduction to the Consumers' Association. The Consumers' Association has carried out research on Ombudsmen and consumer complaints. **Please find attached a copy of the slides presented that summarise some of the research findings.**

Interestingly, consumers think that the most important aspects to an ombudsman service is a thorough, fair, impartial and speedy investigation. Upholding their complaint came further down their list of what they expected from an ombudsman than these key factors. The Consumers' Association do not expect an ombudsman to be the 'consumer's champion' but to deal with cases to ensure:

- Accessibility – maximise the efforts by which complaints can be taken, and that it should always be free to consumers;
- Independence – consumers and their representatives need to be assured of the ombudsman's independence, ombudsman should publish an annual report;
- Fairness – there should be a full investigation and information about this should be available for consumers to see, the ombudsman should publish information about their decisions and how they reached them;
- Effectiveness – as far as possible ombudsman should have comprehensive coverage; and
- efficiency – ombudsman should develop and publish performance indicators such as speed of response, cost per case and consumer satisfaction (by carrying out surveys).

Helena Wiesner, Director of the Financial Ombudsman Service (FOS) Board and Consumer consultant – Consumer issues in the consultation paper: *consumer complaints and the new single ombudsman scheme*

Helena Wiesner set out some of the main consumer issues in the consultation paper. Some of these issues are discussed in the *Guide to consumer issues in CP 33* produced by the Consumer Panel and distributed at the meeting. These include: who should be entitled to refer a case to the FOS – how to define small businesses, charities; wider access issues such as awareness; which types of complaints are covered; and limits on awards. **Please find attached a copy of the handout that Helena gave out.**

Helena also raised issues not covered in the Panel's guide and/or in the CP 33. These include:

- the need that the FOS will have, in time, for a statement of 'visions and values';
- accountability mechanisms – these need fleshing out; and
- 'fair and reasonable' in all the circumstances must apply to awards and not just decisions
- issues around an Independent Complaints Commissioner for the FOS.

Barbara Saunders, Chairman, Financial Services Consumer Panel – Financial Services Consumer Panel's response to the consultation

Barbara summarised some aspects of the Financial Services Consumer Panel's response to the consultation. These include:

- the importance of a seamless service for consumers;
- the need for interaction between the FOS and the FSA particularly in terms of helplines and also regulatory intelligence;
- that there must be equivalent standards across compulsory and voluntary jurisdiction;
- that the FOS must aim to move towards 'option 3' whereby all authorised firms' activities were part of the compulsory jurisdiction of the FOS;
- there will be serious gaps in the FOS's coverage if it takes too long to expand the voluntary jurisdiction; and, particularly in the interim,
- the FOS must help those consumers not eligible to complain who turn to the FOS to find the correct body to help them.

Workshops

Workshop A: providing a consumer friendly service

Participants called on the FOS to ensure that it is as accessible as possible to all consumers. This includes:

- ensuring publications are available in an accessible form to those with sensory impairments e.g. – partially sighted or deaf people who have difficulty communicating because English is not their first language.
- The FOS should promote awareness of it through the broadest newspaper range including ethnic minority newspapers. FSA's 'they owe U' campaign was successful and this wide dissemination should be considered.
- There should be links to the FOS's web site from the FSA's site and vice vs versa.
- The name and logo of the FOS should be fixed as soon as possible to bring the FOS to the public's attention.
- Written information given out at the point of sale about the FOS are useful to consumers.
- FOS should use existing local networks to promote awareness – e.g. citizens' advice bureaux, trading standards, money advice and ethnic minority and other community groups. FOS should also build links with these organisations and offer training for their staff on the FOS.
- FOS and FSA should have the ability to transfer calls from one to the other as appropriate.
- Training is extremely important especially for frontline staff dealing with enquiries from consumers. These staff must also be aware when to pass a caller onto the FSA.
- FOS should consider the possibility of providing face-to-face facility for those consumers who need it/feel that they need it.

Workshop B: complaints, regulatory intelligence and funding

Participants discussed the third parties issue and suggested that:

- There is a case for many third parties to have access to the scheme. At same time, it must be recognised that there is the possibility of incurring more costs for consumers if the FOS is swamped.
- It is concerning to confer wider rights on consumers that the law gives them.
- Companies should be encouraged to make clear who will have access to the FOS and who won't when they send information about the product.

Participants discussed charities and made the following points:

- There is should be a clear distinction when assessing a charities' eligibility to use the scheme, between their clients money and theirs.
- The FOS should monitor enquiries to see the extent of a problem.

Relationship between FSA and FOS

- Recognise that FOS's independence and consumer's and firms' perception of this is important. FOS shouldn't give details of individual cases; but
- must alert FSA at earliest opportunity if there seems to be a problem with one company or a trend with a new problem.

Funding

- The way in which the FOS is funded will have an effect on how the companies act.
- Sympathy with small IFAs having to pay a set fee whether they win or lose a case.
- Level of fee should not deter firms from joining the voluntary jurisdiction.
- A 'no claims bonus' or rebate for firms for whom no cases are brought to the FOS could provide an incentive to firms to handle complaints effectively etc.
- FOS budget should specify money that is put aside for education.

Workshop C: bridging the 'protection gap for consumers'

Whilst welcoming the fact that authorised professional firms' consumers will have access to the FOS, participants expressed concern at the possible two-tier system of dealing with complaints about professional firms if some can be dealt with by the FOS and some will be dealt with by the professional body. Participants felt that there was insufficient information in the consultation paper about the implications for the financial services complaints handling departments of the professional bodies when a significant number of these firms participate in the FOS rather than the current arrangements. Participants recognised the danger that current financial services complaints handling arrangements in these bodies might be reduced at the detriment to consumers. Participants called on the FOS to consider the following:

- FOS should work with these professional bodies to ensure standards in complaints handling are as close as possible
- FOS needs to liaise with professional bodies over individual cases
- FOS should enter into discussions with professional bodies about firms joining the voluntary jurisdiction of the scheme at some point in the future.

Participants discussed the problem of EEA firms doing business in the UK on a services basis only, that the FSA can't require to join the FOS. This is potentially a big problem for consumers due to the growth of the internet. Participants said that: FOS must act as a channel for consumers to be able to access EU firm's complaints bodies FSA must continue drive to set high minimum standards for redress mechanisms across the EU.

Must find a way to make firms put warnings on their sites

Consumer education is needed to warn consumers about not having access to the FOS with these firms.

Workshop D: the complaints process

Firms' complaints handling

Participants agreed with proposals in the consultation paper that:

- there should be one overarching rule for complaints handling by firms; and
- firms should not be admitted to use the FOS until they have a basic system of complaints handling.

Firms should develop good training for their staff on handling complaints. This should also help to avoid defensiveness and get staff to take responsibility.

Firms should also develop good arrangements for handling complaints from people with disabilities and for whom English isn't their first language.

Expectations of the Ombudsman

Participants agreed that:

- there should be an obligation on the Ombudsman to notify the FSA of trends. This is absolutely necessary to prevent a major scandal/mis-selling. A formal gateway must be established between the FOS and FSA.
- The FOS should be open minded about provision of the service to disadvantaged complainants. They should consider language barriers. They should also take the best practice from other schemes in terms of consumer friendliness and adopt these.

Attendance

Margaret Doyle	Policy and Development Officer	Advice Services Alliance
Gretel Jones	Consumer Affairs Policy Officer	Age Concern England
Marion Poole	General Secretary	Association of Friendly Societies
Hilary Whitaker	Chairman	Bromley & District Consumers Group
Julia Westall		Bromley & District Consumers Group
Gregory Hunt	Scheme Development Manager	Chartered Institute of Arbitrators
Phil Telford	Senior Policy Researcher	Consumers' Association
Delroy Corinaldi		Consumers' Association
Alan Street	Director	Consumer Congress
Jan Smith	Head of Business Development	Consumer Credit Counselling Service
Samantha Mitchell	Senior Research Officer	Consumers in Europe Group
Richard Knight	Trading Standards Officer	Essex County Council Trading Standards
Stephen Lynch	Head of Fair Trading	Essex County Council Trading Standards
Barbara Saunders	Chairman	Financial Services Consumer Panel
Colin Brown	Vice-Chairman	Financial Services Consumer Panel
Gerry Lanchin	Member	Financial Services Consumer Panel
Jane Vass	Member	Financial Services Consumer Panel
Jean Gaffin	Member	Financial Services Consumer Panel

Joan Harbison	Member	Financial Services Consumer Panel
Yvonne Gallacher	Member	Financial Services Panel
Brian Landers	Deputy Chairman	Financial Ombudsman Service
Helena Weisner	Director	Financial Ombudsman Service
Andrea Konrath		FSA, Consumer Relations Division
Denise Burford		FSA, Consumer Relations Division
Pamela Crowe MHK	Chairman	Isle of Man Office of Fair Trading
Peter Dunkley	Manager, Advice & Education	Leicester City Council, Consumer Protection Service
Tony Northcott	Lead Officer	London Borough of Sutton, Trading Standards Office
Jan Ferrari	Assistant Director	Money Advice Trust
Colin Thompson	Chief Executive	Money Management Council
John Moysey		Money Management Council
Marie Jennings	Chairman	National Federation of Consumer Groups
Pam Swingler		National Federation of Consumer Groups
Gill Evans	Assistant Director	Office of Fair Trading
Robert Crawford	Head of Service Quality	Royal Bank of Scotland
Hamid Gazem	Senior Trading Standards Officer	South Ayrshire Council
Sophie Gumpel		WHICH? Magazine
Teresa Fritz	Principal Researcher	WHICH? Magazine

About the Financial Services Consumer Panel

The Financial Services Consumer Panel was established by the Financial Services Authority (FSA) to advise the FSA Board on the interests and concerns of consumers and to report on the FSA's effectiveness in meeting its consumer protection and public awareness objectives. There are eleven members of the Panel representing a broad range of consumer interests. The Panel is independent of the FSA – it can raise its own concerns, initiate its own research and publish its own reports.

Who is on the Panel?

Barbara Saunders (Chairman)

Barbara is a public interest member of the PIA Board. She is an independent consumer consultant and past Chairman of the Council of the Insurance Ombudsman Bureau. Among other public and professional appointments she is a Non-Executive Director of the St Albans and Hemel Hempstead NHS Trust and a member of the Architects Registration Board.

Colin Brown (Vice Chairman)

Colin is an independent consultant specialising in consumer affairs. Previously Deputy Director of Research at Consumers' Association and Senior Fellow at the Policy Studies Institute, he has over 20 years' experience of social and consumer research.

Jean Gaffin

Jean is Chairman of the Advisory Committee on Telecommunications for Disabled and Elderly People that provides advice to the telecommunications regulator, OFTEL, and a Non-Executive Director of Harrow & Hillingdon Healthcare NHS Trust. She has extensive experience of working on behalf of vulnerable consumers. Previous positions include: the Executive Director of the National Council for Hospice and Palliative Care Services and Chief Executive of Arthritis Care.

Yvonne Gallacher

Yvonne is Chief Executive of Money Advice Scotland, which was set up by the Scottish Consumer Council. She has over 10 years experience of consumer credit/money advice issues and of working with vulnerable consumers in a variety of roles, including debt counsellor, trainer and manager. She is Co-Director and Secretary of the Government funded Lead

Body for Advice, Guidance, Counselling & Psychotherapy (CAMPAG). Yvonne is a member of the Scottish Consumer Council.

Joan Harbison

Joan is Chief Commissioner of the Equality Commission for Northern Ireland. She was Chair of the Commission for Racial Equality for Northern Ireland from its inception in 1997 and is a former Chairman and member of the Executive Committee of the Northern Ireland Association of Citizens' Advice Bureaux. She has held a number of public appointments including being Vice Chairman of the Eastern Health and Social Services Board and the Northern Ireland Standing Advisory Commission on Human Rights and was a founding former member of the Human Fertilisation and Embryology Authority.

Noel Hunter

Noel is County Trading Standards Officer for Warwickshire. A National Council member of the National Consumer Council, he also chairs the Management Board of the Institute of Trading Standards Administration and is an adviser to the Local Government Association.

Gerald Lanchin

Gerry is a Vice President of the National Federation of Consumer Groups. He is a former Under Secretary of the Consumer Affairs Division of the Department of Trade and Industry and author of "Government and the Consumer". His involvement in consumer protection includes being a former Council Member of Consumers' Association and of Consumer Congress Committee. He was the first chairman of the Direct Mail Services Standards Board and a member of the Data Protection Tribunal for 10 years.

Nick Pearson

Nick is the National Money Advice Co-ordinator for the Federation of Independent Advice Centres. A career spent in advice organisations including the National Association of Citizens' Advice Bureaux where he was manager of the Money Advice Support Unit, he has particular experience of credit, debt and personal finance issues and of working with vulnerable consumers.

Richard Smethurst

Richard is Provost of Worcester College, Oxford University; he chairs the Training Standards Panel of IMRO, of which he is a non-executive Director. He has served as an economic adviser in Whitehall, and the Monopolies and Mergers Commission, where he was Deputy Chairman. Richard lectures widely on financial and economic topics to businessmen and adult education groups. He is President of the National Institute of Adult Continuing Education.

Jane Vass

Jane is an independent consumer researcher specialising in financial services. She was previously Head of the Financial and Economic Research Group at Consumers' Association and is still author and editor of a number of Consumers' Association publications in addition to other research, including work for the National Consumer Council. Her current committee memberships include: Council of the Ombudsman for Estate Agents, the Inland Revenue Tax Law Rewrite Project Consultative Committee and the FSA Training Advisory Panel.

Dave Watts

Dave is a partner in a media business which is involved in publishing, editing and journalism - personal finance plays a large part in this. He is a former editor of "Which?" and "Money Which?" and former Assistant Director of Consumers' Association. He was also a policyholder representative on the Insurance Brokers Registration Council for nine years.

How to contact the Panel

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