

Financial Services Consumer
Panel response to
CP 04/12*** FSMA 2 Year
Review, Financial
Ombudsman Service

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Financial Ombudsman Service

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FSMA 2 Year Review: Financial Ombudsman Service

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Summary

The Financial Services Consumer Panel strongly supports the service provided by FOS which we believe works well. We recognise that there are issues to be addressed in relation to cases with wider implications and overall we support the proposals put forward in the Paper to deal with these. However we are opposed to the introduction of any appeal mechanism which could, we believe, jeopardise the successful operation of the Ombudsman service.

Introduction

The Consumer Panel's overriding desire in this review is that any change does not make bringing a complaint to FOS more intimidating, time consuming or costly than under the present arrangements. We think that the existing procedures work well, providing consumers with a speedy and easily understood process for achieving a decision. That said, we recognize that there is an issue over cases with wider implications and we welcome the proposals for dealing with them in a clearer and more streamlined way. We do not think there should be any further rights of appeal.

Regulatory input or action: before or instead of an ombudsman decision

Q1: Why is the wider implications process seldom used? Is it because there are few wider implications cases, because they are difficult to identify, or some other reason? Where wider implications cases are identified, does this happen early enough? If not, how could they be identified earlier?

The Panel is not in a position to comment on the nature and number of wider implications cases. However, where wider implications cases are identified, we believe that the proposals in paragraph 3.19 of the paper to have nominated individuals within FOS and FSA as points of contact will help to identify cases earlier, by making it much clearer who should be notified.

Q2: Does this approach [set out in paragraphs 3.13 to 3.17] clarify the circumstances in which FSA believes it should consider a wider implications referral? If not, what remains unclear? Are other criteria FSA should consider? Is the proposed approach here likely to be too narrow? If so, what cases would this rule out that would cause difficulty? Should FSA take a different approach?

The paper sets out the circumstances in which FSA may become involved in wider implications cases, together with other factors it takes into account when making a decision. We believe this does provide the necessary clarification. We would suggest that another circumstance in which the FSA may wish to get involved and which is not included in the Paper, is where FOS has made consistent decisions about the same issue but the industry refuses to recognise the decisions in other similar cases and requires consumers to prove each case to FOS. It may then be appropriate for the FSA to step in to oblige firms to settle without going to FOS.

Q3: Does this [the approach set out in paragraphs 3.18-3.20] clarify who can (and should) identify wider implications cases? Would the proposal for nominated individuals facilitate this? Are there any practical barriers that need to be overcome?

We agree that these paragraphs will clarify who can and should identify wider implications cases. However this must be a two stage process. First a decision must be taken as to whether a case does have wider implications and then a decision must be made as to whether the FSA will become involved. We support the nomination of individuals within FSA and FOS as points of contact for wider implications cases, but it is not clear from this paper whether it is expected that the nominated individuals would decide if the case had wider implications for somebody else. We feel that whoever does make these decisions should be available to receive representations from industry and consumers in an open and accessible way.

The nominated individuals must be sufficiently well publicised on an on-going basis for this channel of communication to work.

Q4: Would these changes [proposed in this Chapter] improve the wider implications arrangements between FSA and FOS? If not, what changes would you propose? Should the information be provided more widely than to industry and consumer bodies? Should it be summarised in FSA's annual report and/or on its website?

We think these changes would improve the wider implications arrangements between FSA and FOS. We believe that it would be appropriate for information about wider implications issues to be publicised more widely through the press and on the FSA website.

Other input to wider implications cases: where FSA does not become involved

Q5: Is such a process for channeling contextual information to FOS needed [paragraphs 4.1-4.11]? If so, is anything further needed? In what circumstances would the process be useful? Would it enable FOS to make a better informed decision? Would it affect public perception of FOS' independence? Would it be fair to the parties to the case?

The Panel welcomes the proposal and will be interested to see how it will work in practice. The Panel would be pleased to accept an invitation from FOS to act as a 'nominating body' for the purposes of seeking input from the consumer perspective on cases with wider implications.

Q6: Is there a role for the Industry Liaison Groups, and what changes to their terms of reference would be needed? Do consumer groups prefer their existing bilateral arrangements with FOS, or is there a role for a Consumer Liaison Group? Alternatively, should there be a special panel, with industry and consumer members?

Should this be agreed, it would be essential that whatever the arrangement, consumers would have an equal input to industry.

Q7: In what circumstances would a test case be helpful? What would be the advantages and disadvantages? Should FOS issue guidelines about the circumstances in which it would consider a test case approach?

The Panel would be unhappy if test cases became too prevalent as this could lead to long delays in the resolution of cases and would undermine the underlying rationale of the Financial Ombudsman Scheme. However, we appreciate that there may be circumstances where the legal uncertainties are such that the firm, the consumer and the ombudsman agree that a case should be taken as a 'test' case. We think that FOS should issue guidelines about the circumstances in which it would consider a test case approach. We would expect the complexity of the issue and the number of consumers affected to be among the factors taken into consideration when deciding whether a test case approach would be appropriate.

Review of cases by external appeal: after an ombudsman decision

Q8: If the wider implications process is improved, as proposed in Chapters 3 and 4 of the Paper, is an appeal mechanism needed? If so, why? Has anything relevant changed since FSMA was passed? Is the problem simply that firms do not like some case outcomes? If not, what specific problems would an appeal mechanism solve?

Irrespective of whether the wider implications process is approved, we do not think that an appeal mechanism is needed. No evidence has been given showing an un-met need for it. It would dissuade some consumers from going to FOS in the first place, introduce delays and further complexity and in some ways increase uncertainty whilst an appeal was being processed. Paragraph 1.11 of the Paper stresses the need for FOS to "provide a quick and informal dispute-resolution service" and we would not want to see this jeopardised. The judicial review makes ample allowance for review where the law may have been misapplied. An extra layer of Appeal, which of its nature would have to be open to all, would undermine FOS and add to costs. It is also hard to see how a panel, however constructed, could import more wisdom than that which has developed in FOS. It is particularly important not to move to a more case-law approach and this point is made in paragraph 5.6 of the Paper. We endorse the proposals for improving the wider implications process. We do not think there have been any relevant changes since FSMA was passed.

Q9: Do firms want appeals? Do consumers want appeals? If so – for what types of cases, why and to whom? How would it be decided how many cases, and which ones, should go to appeal? How often might an appeals body reach a different conclusion from the Ombudsman, and why? Should the appeal decision apply to other consumers?

We do not think that a further appeal would be wanted by consumers who, although unsatisfied with a FOS decision, already have a number of hurdles in taking their complaint first to the company, and then to FOS. This is more demanding than the legally-advised and professional staff of companies seem to appreciate.

About the Financial Services Consumer Panel

The Financial Services Consumer Panel was established by the Financial Services Authority (FSA) in December 1998 to ensure that consumers' interests are represented in the development of the regulation of financial services. The Panel is independent of the FSA so that it can: advise the FSA on policy as it evolves, monitor the FSA's effectiveness in meeting its statutory objectives towards consumers, review developments in financial services where they impact on consumers, and publicly report its findings and recommendations. It can raise its own concerns and has resources to carry out its own research.

Who is on the Panel?

Ann Foster (Chairman)

Ann has over twenty-five years experience in the consumer movement. During that time she has worked at the National Consumer Council and has been Director of the Scottish Consumer Council. She has also served on various government advisory and expert groups on a range of subjects. Recently Ann has been a member of the Health Professions Council and of Postwatch, the Consumer Council for Postal Services. She is also a Council member of the Royal National Lifeboat Institution and member of its fundraising committee.

Dianne Hayter (Vice Chairman)

Dianne is on the board of the National Consumer Council and was, until 2004, on the board of the National Patient Safety Agency. She was formerly the Chief Executive of the Pelican Centre (a cancer charity). Before that she had periods as the Director of Corporate Affairs for the Wellcome Trust, Chief Executive of the European Parliamentary Labour Party, Director of Alcohol Concern, General Secretary of the Fabian Society, a journalist and trade union research officer. She is a member of the Labour Party and on their National Executive Committee. She is currently also a research student at Queen Mary College, London.

Yvonne Gallacher, OBE

Yvonne is Chief Executive of Money Advice Scotland, set up in 1989 by the Scottish Consumer Council. She has over sixteen 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 has also lectured and co-authored a Guide to Money Advice in Scotland. Yvonne is presently a member of the Financial Capability Group and a member of the NCC Advisory Group. Yvonne is a recent past member of the Scottish Consumer Council.

Harriet Hall

Harriet is a solicitor with considerable experience of consumer policy and retail financial services. She is a former legal officer with the National Consumer Council, where she has worked on the needs of low income consumers, banking, credit,

mortgages, regulation of equity release and long-term care insurance, the Financial Services and Markets Bill and the proposed EU directive on distance selling of financial services.

John Howard

John is a journalist and broadcaster with extensive experience of consumer issues having been the principal presenter of the daily consumer programme on Radio 4 'You and Yours' and numerous other financial programmes on radio and television. He is a qualified solicitor and is a member of the Mortgage Code Compliance Board.

Vinod Kumar

Vinod is a social scientist with market research skills and extensive voluntary and public sector experience of policy analysis and research. Until recently, he was Head of Policy and Research at the Royal National Institute for Deaf People, and he has previously worked for the Commission for Racial Equality. Since his retirement, Vinod has been a Non-Executive Director of Barnet Primary Care Trust and a member of the Consumer Liaison Group of the Medical Research Council. Currently he is a patient representative on the Research and Advisory Committee of the National Institute for Clinical Excellence and on the Department of Health's advisory committee on consumer involvement in research.

Stephen Locke

Stephen is a National Consumer Council Board member and a member of the Committee of the premium rate communications services regulator, ICSTIS. He was previously a Director of the Transition Project setting up Ofcom, working on secondment from the Independent Television Committee where he had been the Director of Advertising and Sponsorship. Stephen has also worked at a senior level in management consultancy and in the consumer movement, as a Director of Research and Policy at the Consumers Association.

Nick Pearson

Nick has worked for AdviceUk since 1997 as National Debt Advice Co-ordinator; he also works as a part-time consultant to CPP Group on its new Financial Health product. With 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.

Adam Philipps

Adam has extensive experience of market research, including research into consumer financial products. He is Managing Director of Real Research, his own market research consultancy, and is a Council Member of ESOMAR (the world association of market research professionals), also chairing ESOMAR's Professional Standards Committee.

Paul Salvidge

Paul is a former senior civil servant with experience of regulatory work, employment law, competition, consumer protection, telecommunications, financial services and company law. He was previously Competition Policy and Consumer Affairs Director at the Department of Trade and Industry.

Robert Skinner

Robert has been Director General of the Money Advice Trust since April 2003. In this role he has responsibility for the running of National Debtline in Birmingham, the Trust's training activities and its traditional work as a fund-raising charity partner for the agencies working in the money advice field. Prior to joining the Trust, Robert spent over 25 years working for Barclays Bank and held a number of senior positions in the Private Banking and Corporate businesses. He has served as a Director of the Office of the Banking Ombudsman and as a member of the BBA Code of Banking Practice Review committee.

Richard Smethurst

Richard is Provost of Worcester College, Oxford University; previously a non-executive Director of IMRO, he chaired their Training Standards Panel. He has served as an economic adviser in Whitehall, and on the Monopolies and Mergers Commission, where he was Deputy Chairman.

Carol Stewart

Carol Stewart is a generalist adviser with Citizens Advice following her early retirement from UBS where she had been an executive director in Legal and Compliance. She was appointed to the Panel in June 2004.

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

Financial Services Consumer Panel
25 The North Colonnade
Canary Wharf
London
E14 5HS

Tel: +44 (0) 207 066 9346
Fax: +44 (0) 207 066 9711

Email: enquiries@fs-cp.org.uk
Website www.fs-cp.org.uk