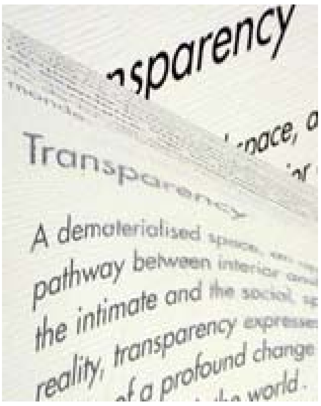
Financial Ombudsman Service

policy statement

our strategic approach to

transparency



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contents

an open and transparent organisation

1 The Financial Ombudsman Service attaches considerable importance to being an appropriately open and transparent organisation. We actively seek ways to further improve our transparency. We already publish extensive information about what we do and how we operate – all of which is available through our website [*www.financial-ombudsman.org.uk*].

2 This information includes, for example:

- the legislation and official documents underpinning the Financial Ombudsman Service, and a statement of our aims and values as an independent public body;
- the rules setting out how the Financial Ombudsman Service (and businesses providing financial services) should handle complaints, and explanations of how our process works;
- *guides* and *answers to frequently-asked-questions*, in sections tailored to the needs of consumers and to different types of financial businesses;
- details of the types of new complaints we receive and the outcomes for the different types of complaints we resolve (analysed each year in our *annual review*);
- explanations of our general approach to some particular types of complaint (summarised in *technical notes* and as case studies in *ombudsman news*, our regular newsletter);
- memoranda of understanding with other official bodies, and the procedures between us and the Financial Services Authority and Office of Fair Trading on cases that have wider implications;
- details about who our ombudsmen are and their backgrounds, how we are funded, how we spend our budget, our staff numbers, our productivity and our workload;
- details of the non-executive directors who make up our board, the terms of reference of the board's sub-committees, and our equality and diversity policy; and
- our service standards, the procedures for complaining about breach of these standards, and the terms of reference of our independent assessor.

review

3 Over the last year, we have been reviewing our strategic approach to transparency issues – in the light of our aims to be as open as possible about our work and governance and to ensure stakeholders understand our role and have confidence in our work.

4 In particular, we have re-examined:

- how far we should publish our approach to particular types of complaint;
- whether individual decisions should be published;
- whether we should publish complaint data on individual businesses;
- communication with relevant regulators; and
- whether there is more to be said on our organisation and funding.

5 We devote significant time and effort to liaising with our various stakeholders; but we thought it might encourage even franker discussion if stakeholders were able to express their views on transparency to a knowledgeable and independent third-party.

6 So, as part of the transparency review, we asked Lord Hunt of Wirral to talk to stakeholders and make recommendations – focused on transparency (and accessibility) – in order to help build consensus.

7 His report [*www.thehuntreview.com/updates/FOS_Report.pdf*] sets out the considerations on many key issues concerning transparency, and has been of considerable assistance in planning the way forward. This policy statement sets out decisions of principle that our board has now made on transparency issues.

8 These decisions will enhance the service we provide, by: restating our key roles, aims and objectives; publishing our approach to the cases we deal with; sharing more information about the outcome of our work; and providing more information about our governance.

9 In connection with any increased costs which necessarily arise, we note Lord Hunt reported that he "was heartened by the willingness of most industry respondents to bear an increased burden for an improved service".

10 Aspects of the implementation of these decisions – including their impact on resources and costs, and so their timing – will be covered in our next *corporate plan and budget*, published in January.

11 As we plan the implementation of these decisions, we will work with a consultative group representing both industry and consumers – and we will also publish in due course a separate discussion paper on some practical issues concerning the publication of complaint data.

background

12 Our published *corporate plan* explains our positioning (Lord Hunt's conclusion 1) – by reference to our key roles, our aims and our objectives. Our key roles are:

- resolving complaints – in a way that is impartial, fair, accessible, timely, informal, efficient and free-to-consumers – and to award fair redress where appropriate;
- encouraging the resolution of complaints before they reach the service, by providing clear information about our approach; and
- encouraging the elimination of the sources of financial complaints, by providing clear information about the lessons learned from our work.

13 These roles involve the ombudsman service in a number of important relationships, in addition to our relationship with those who use our services:

- as part of the statutory arrangements designed to underpin confidence in financial services, with H M Treasury and the Financial Services Authority;
- as part of the statutory arrangements designed to underpin confidence in consumer credit, with the Department for Business, Enterprise and Regulatory Reform and the Office of Fair Trading;
- as an alternative to the courts for resolving disputes, with the Ministry of Justice and the wider arrangements for the administration of justice;
- as a founder member of the financial redress network (FIN-NET) designed to increase confidence in the European single market in financial services, with the European Commission; and
- as a key member of the British and Irish Ombudsman Association, which validates and represents public-sector and private-sector ombudsman schemes in the UK and Ireland.

14 We aim to:

- provide fair, consistent, authoritative and persuasive outcomes to complaints, and be recognised as an expert organisation in consumer dispute resolution;
- be demonstrably accessible and impartial, and give a good standard of customer service to consumers and financial businesses;
- have well-trained and highly-motivated staff, be efficient, effective and flexible, and make good use of technology;
- coordinate our work with associated regulatory and dispute-resolution bodies, so far as consistent with our independent roles;
- be open about our work and governance, and ensure stakeholders understand our role and have confidence in our work; and
- provide a comprehensive service covering, as far as practicable, activities that consumers identify as financial.

15 Our objectives are to:

- continuously improve our processes and systems, so that they remain capable of delivering a cost-effective redress service which meets ever-rising expectations;
- manage staff and other resources so as to provide an efficient and effective service, irrespective of future fluctuations in numbers and types of cases;
- 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
- secure wider public benefits by using our expertise and resources to enhance and extend accessible and effective dispute resolution for financial services and products.

how far we publish our approach to particular types of complaint

16 As mentioned above, our key roles include: encouraging the resolution of complaints before they reach the service, by providing clear information about our approach; and encouraging the elimination of the sources of financial complaints, by providing clear information about the lessons learned from our work.

17 Publishing details of our approach is welcomed by financial businesses and consumers who wish to resolve disputes quickly themselves, along the lines which we would have adopted, without actually having to refer them to us for resolution.

18 But sometimes industry voices suggest that publishing our approach might amount to quasi-regulation, and that it might undermine the Financial Services Authority's move towards more principles-based regulation – despite most of our case decisions not turning on interpretation of rules.

19 The existence of the ombudsman service to deal with individual consumer complaints, and to provide redress when things have gone wrong, enables the Financial Services Authority to focus its regulatory resources in a risk-based, outcome-focused way.

20 Inevitably, the approach we take in deciding particular cases may have wider effects on the conduct of financial businesses. The same is true of the approach taken by the courts. But it is not suggested that the courts are quasi-regulators or that their approach should not be published.

21 Lord Hunt has established that the consensus is in favour of publishing as much as possible about our processes and our approach to individual types of case – whilst avoiding publication of material that could facilitate fraud – and we intend to proceed along these lines (Lord Hunt's conclusion 34).

22 This is a large task, which will require considerable care and additional resources. So it will be necessary to proceed incrementally over time. But our goal is to publish increasing amounts of material.

23 This can evolve into a comprehensive online digest of our processes and approach (Lord Hunt's conclusion 34). And, where appropriate, our decisions in individual cases can refer to this publicly available material – rather than having to set out our approach in every individual decision (Lord Hunt's conclusion 37).

24 Our published material will continue to focus on how we have approached the kinds of complaints that we have actually received – rather than what financial businesses should do in general, which is a matter for the regulators.

25 For that reason, we do not propose to publish what our approach might be to hypothetical future cases (Lord Hunt's conclusion 35). But we will continue to provide informal assistance to interested parties as new issues emerge, and also to raise issues of potential concern with regulators, industry bodies and consumer bodies.

26 And we will continue to support other initiatives to publish material that may help towards minimising future disputes (such as the *stakes in the ground* initiative from the Association of Independent Financial Advisers) where the material is appropriately validated (Lord Hunt's conclusion 61).

whether individual decisions should be published

27 We resolve around 100,000 cases per year. Most of these are resolved by mediation or recommendation, but around 8,000 go on to decision by an ombudsman using our formal legal powers.

28 Ombudsman decisions are sent in writing to the consumer and financial business involved. But, following the practice we inherited from the sectoral ombudsman schemes that we replaced, we do not routinely publish individual ombudsman decisions.

29 Because ombudsman decisions are not routinely published, they are not the subject of informed comment and academic analysis in the same way as happens with the published decisions of the courts – though we do publish anonymised case studies in *ombudsman news*.

30 We have considered whether, in the interests of openness, we should publish *all* ombudsman decisions. But the consensus (amongst both industry and consumer bodies) appears to be that, in view of the number of routine decisions, it would be more helpful to publish only selected leading decisions which illustrate key principles (Lord Hunt's conclusion 39).

31 In the courts, usually the major source of information for the future is not the full transcript of the judgment itself but rather a summarised law report – extracting the overall principles from the detail of the particular case.

32 So we propose to seek independent academic input, to assist us in validating the selection of cases to be reported and in producing case reports that focus on the key principles (fuller than the case studies currently published in *ombudsman news*) but with a link to an anonymised copy of the full decision (Lord Hunt's conclusion 40).

33 We intend to integrate these case reports with our evolving online digest of our processes and approach (referred to above). And we will encourage academic analysis of our published approach and decisions (Lord Hunt's conclusion 39).

34 This material will continue to be supplemented by regular issues of *ombudsman* news, which is available online as well as in hard copy. But as the online digest develops, *ombudsman news* can increasingly include news about it, tasters and links (Lord Hunt's conclusion 43).

whether we should publish complaint data on individual businesses

35 We currently publish data about the complaints that are referred to us, and their outcomes. This is analysed by the different products and types of financial businesses involved. But we do not publish complaints data that identifies individual businesses.

36 Because of their market share, the largest businesses inevitably provide the majority of cases we receive. But there is a significant and consistent difference in the number of cases, and the proportion upheld, between some large businesses and others.

37 We agree with Lord Hunt that there is no reason of principle to withhold information about individual businesses (Lord Hunt's conclusion 45) – both numbers of cases and the proportion upheld. Indeed, publication could help both consumers and better businesses.

38 So we plan to start publishing this data during 2009. A separate discussion paper, to be published in due course, will explain more fully what data we could publish and the associated practical issues that need to be resolved first (Lord Hunt's conclusion 49).

39 One practical issue is that we will need the resources to produce and validate the data. In a separate proposal, the Financial Services Authority has issued a discussion paper [*www.fsa.gov.uk/pubs/discussion/dp08_03.pdf*] about publishing complaint data – but that is data provided by the businesses themselves.

40 And we also need to consider how the publication of our data may affect the way in which financial businesses approach complaints that are, or may be, referred to us – and the impact this may have on our workload.

41 Our overall approach will be to be open about the data which we hold, but we do not consider it consistent with our impartial role to comment separately on the overall performance of individual businesses. So we do not plan to adopt suggestions that we should issue awards or 'wooden spoons' (Lord Hunt's conclusions 47 and 48).

communication with relevant regulators

42 As mentioned above, we coordinate our work with relevant regulatory bodies, so far as that is consistent with our independent roles (Lord Hunt's conclusion 54). We have published memoranda of understanding – whose contents we keep under review – with the Financial Services Authority (FSA), Office of Fair Trading (OFT), Information Commissioner and Banking Code Standards Board (Lord Hunt's conclusions 58 and 60).

43 Our key relationships are with the FSA, as regulator of the financial services firms covered by our compulsory jurisdiction, and the OFT, as regulator of the licensees covered by our consumer credit jurisdiction – and we share a process with them for cases which have wider implications.

44 It is important to recognise that Parliament has given all three bodies their own independent roles and specific objectives – and their particular priorities are driven by those differing roles and objectives.

45 So far as practicable, we coordinate communication on the management of major issues where the regulator is involved (Lord Hunt's conclusion 57). And we work with the FSA to coordinate communication on various of its initiatives such as *principles-based regulation* (including the role of *industry guidance*), *treating customers fairly* and the *retail distribution review* (Lord Hunt's conclusions 55 and 56).

46 But, as Lord Hunt said, some of the challenges that the ombudsman service has faced necessarily emerge from the action, or inaction, of regulators – and there is a need to find generic regulatory (or, if necessary, statutory) solutions to issues which have the potential to generate complaints in large volumes.

47 We communicate with regulators (particularly the FSA) extensively about all kinds of issues from large to small. Many of these concern the history or conduct of individual businesses or groups of businesses, or the early stages of policy development. It is appropriate for much of this communication to be in private.

48 But we recognise that there is a case for increasing the amount of formal 'on the record' communication (Lord Hunt's conclusion 52) – particularly where we are setting out our response to matters which are the subject of public consultation, or where we consider that we are being asked to resolve matters which would be more appropriate for regulatory action (Lord Hunt's conclusion 51).

49 Webpages [*www.wider-implications.info*] shared with the FSA and OFT set out the wider-implications process and details of cases in which it has been applied. Broadly the process involves three parts:

- The relevant regulator and the ombudsman service agree whether or not the issue has wider implications and whether or not the process should be applied.

- The relevant regulator decides whether or not it should take regulatory action to resolve the situation (in whole or in part).

- If the relevant regulator does not resolve the whole situation, the ombudsman service decides whether to seek wider input in relation to individual cases.

50 Any change to the process would need to be agreed by all three organisations (Lord Hunt's conclusion 53). But we are sympathetic to making the process simpler and clearer:

- We (or some third party) could formally draw a potential wider-implications matter to the attention of the relevant regulator and invite it to consider regulatory action.

- If the relevant regulator does not resolve the whole situation, the ombudsman service could still decide whether to seek wider input in relation to individual cases.

51 Lord Hunt expressed some views about the roles of the FSA-sponsored Financial Services Practitioner and Consumer Panels in invoking regulatory action, and about the FSA and OFT setting time limits for making regulatory decisions (Lord Hunt's conclusion 53). These are matters for the FSA and OFT to consider.

whether there is more to be said on our organisation and funding

52 We plan to publish a record of the meetings of our Board and of its committees (Lord Hunt's conclusion 50). And we intend to publish more details of the work of our service review team, which provides the initial stage of our process for handling complaints about the ombudsman service (Lord Hunt's conclusion 32).

53 We already publish the annual report from the independent assessor – already appointed by a 'Nolan'-based process (Lord Hunt's conclusion 32) – who provides the final stage of the process for handling complaints about us. And our board already responds, in our annual review, to the independent assessor's recommendations (Lord Hunt's conclusion 50).

54 Our board attaches particular importance to quality and consistency – and the board's quality committee oversees the integrity of the relevant systems. Delivery of quality and consistency is embedded in our processes, rather than treated as a completely separate issue. But quality and consistency are separately audited by our quality team, which reports to the chief ombudsman

55 In the light of new challenges, including the limited use of outsourcing to assist with peaks in workload, we have actively reviewed (with expert external assistance) our quality and consistency processes, and the auditing of them – in order to be satisfied that our systems provide an appropriate level of assurance for our board and stakeholders (Lord Hunt's conclusion 11).

56 We plan to strengthen our quality and consistency systems by expanding the team responsible for auditing quality and consistency, as well as the team responsible for producing the digest of our processes and approach. We also plan to provide an element of ongoing independent external guidance to the quality team.

57 Following an earlier discussion paper [*www.fsa.gov.uk/pubs/discussion/dp06_02.pdf*] and subsequent feedback statement [*www.fsa.gov.uk/pubs/discussion/fs07_02.pdf*] on funding, issued jointly with the FSA, volatility in the number of cases referred to us means that we have been unable to proceed as quickly as we wish in reshaping our funding.

58 Each year's budget and funding is the subject of specific consultation, and approval by the FSA, but we are sympathetic to a move towards increasing the number of 'free' cases and not charging case fees where a case is found to be out-of-jurisdiction, even after investigation (Lord Hunt's conclusion 70).

59 The joint discussion paper on funding explained why we did not consider that case fees should be related to the outcome of the case, and we note that Lord Hunt agrees that the dangers of such an arrangement would outweigh the claimed benefits (Lord Hunt's conclusion 69).

60 We do not favour the suggestion of charging a higher case fee for 'enforced deadlock' cases (where the financial business has not issued a final response within 8 weeks). Imposing sanctions for delays in complaint-handling is a matter for the regulator (Lord Hunt's conclusion 71).

61 Nor do we favour the suggestion of charging differential case fees for 'assessment' and 'investigation' cases. This would be complex and not necessarily fairer. The financial business pays the case fee, but the consumer's approach may determine how easily the complaint can be resolved (Lord Hunt's conclusion 72).

62 Our board is already committed to commissioning an independent external review of the Financial Ombudsman Service every three years. The results of the reviews commissioned in 2004 [*www.financial-ombudsman.org.uk/publications/pdf/kempson-report-04.pdf*] and 2007 [*www.thehuntreview.com/updates/FOS_Report.pdf*] were published promptly.

63 The next independent external review is due to be commissioned in 2010. We will talk to stakeholders nearer the time about what the focus of that review should be. And we expect to publish the results of that review also (Lord Hunt's conclusions 63 and 64).

in conclusion

64 The decisions of principle set out in this paper will set our direction of travel on transparency for the next few years. Some involve expanding things we already do. Others are new. Many will take time to implement fully – not least because of the resource implications – but the end result should include:

- reinforcing understanding of our independence, key roles, aims and objectives;
- developing an online digest of our processes and approach;
- supporting that by publishing selected decisions;
- developing *ombudsman news* as one gateway to this enhanced information;
- encouraging academic study of our processes, approach and decisions;
- publishing business-specific data on cases received and uphold rates;
- increasing the transparency of our dealings with relevant regulators;
- reviewing the wider-implications process;
- publishing a record of our board meetings;
- strengthening our existing quality and consistency systems;
- keeping our funding model under review; and
- continuing to commission an independent external review every three years;

whilst continuing to ensure that our work on transparency does not change our basic approach of impartiality and fairness to all parties.