
INFORMATION NOTE

Financial ombudsman system in the United Kingdom

Summary

- *In the United Kingdom (UK), the Financial Services and Markets Act 2000 provides for the establishment of the Financial Ombudsman Service (FOS) as an out-of-court alternative for resolving consumer financial disputes. FOS is governed by a board of nine non-executive directors, with its jurisdictions covering most financial products and services provided in or from the UK.*
- *Eligible complaints handled by FOS cover only those submitted by private individuals or private micro-enterprises with an annual turnover of less than two million Euros (HK\$21.6 million) and fewer than ten employees.*
- *FOS receives no funding from the UK government, nor does it charge complainants for using the financial ombudsman scheme. Instead, it is funded primarily by a combination of annual levies and individual case fees payable by firms subject to FOS's jurisdiction.*
- *FOS will first try to settle the financial disputes informally through mediation or conciliation. In cases where informal settlement is not accepted by both parties, FOS's adjudicator will produce a formal adjudication. Either party is free to reject the adjudication and asks for the case to be determined by an ombudsman.*
- *Neither the firm under complaint nor the complainant can appeal against an ombudsman's determination. If the determination is accepted by the complainant, it is binding on both parties. If not, the complainant can take court action against the firm under complaint.*
- *Where a complaint is determined in favour of the complainant, the ombudsman's determination may include a money award up to £100,000 (HK\$1.2 million), an interest award, a cost award, and/or a direction to take "just and appropriate steps" (e.g. a formal apology or a change of decision).*

- *FOS has entered into a Memorandum of Understanding with the financial regulator (Financial Services Authority) to set out the operationally independent relationship between them. The Financial Services and Markets Act 2000 also requires FOS's board members and the panel of ombudsmen to be appointed on terms that secure their independence.*
- *FOS is overseen by Parliament. It is also subject to scrutiny by the Financial Services Authority and an independent assessor, judicial review by the court and obligation to meet information accessibility by the public.*
- *FOS has carried out regular surveys to gauge the views of consumers and financial services firms regarding the way in which it handles disputes. Both groups are positive about the existing financial ombudsman scheme.*

1. Background

1.1 Shortly after the collapse of Lehman Brothers in September 2008, the Financial Secretary requested the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) to submit reports on their observations, lessons learned and issues identified during the process of investigating the received complaints regarding the Lehman Brothers Minibonds. The Financial Secretary received the said reports from HKMA and SFC at end-2008, with both suggesting the need to consider the establishment of a dispute resolution scheme for the financial industry in Hong Kong. In response, the Financial Services and the Treasury Bureau announced on 9 February 2010 to conduct a three-month consultation to solicit public views on the establishment of a financial dispute resolution centre in Hong Kong.

1.2 The purpose of this information note is to provide the Panel on Financial Affairs with background information on the development of the Financial Ombudsman Service (FOS) in the United Kingdom (UK), thereby facilitating the Panel's deliberation on the establishment of a financial dispute resolution centre in Hong Kong.

1.3 FOS was incorporated in 1999 as a statutory body to administer the financial ombudsman scheme in the UK. Since then, FOS has grown into the largest financial ombudsman service in the world¹, with a budget of £60 million (HK\$730 million²) and an average staff size of 865 people in 2008-2009. During that financial year, FOS handled 789 877 initial enquiries and complaints from consumers, and resolved 113 949 cases through the dispute resolution mechanism of its panel of adjudicators and ombudsmen.

2. Development of the financial ombudsman system in the United Kingdom

2.1 The financial ombudsman system was first established in the UK in 1981, when a number of insurance companies founded the Insurance Ombudsman Bureau as an industry-funded, out-of-court dispute resolution scheme for complaints lodged by policyholders. Under the system, policyholders could refer their unresolved complaints to an independent ombudsman so that their cases could be judged impartially and free of charge.

2.2 The ground-breaking Insurance Ombudsman Bureau was followed by the establishment of similar schemes in other segments of the financial sector, including the Banking Ombudsman and the Building Societies Ombudsman in 1986, and various ombudsman schemes covering the investment industry afterwards.

2.3 By the late 1990s, the efficacy of the banking and financial services regulatory regimes was called into question after the occurrence of a series of high-profile incidents. These included the insolvency of the Bank of Credit and Commerce International, the collapse of Barings and the pension mis-selling scandal³. In May 1997, the newly-elected Labour Government announced proposals for a sweeping reform of the UK's financial services legislation. A new era in financial regulation started on 1 December 2001 when the *Financial Services and Markets Act 2000 (FSMA 2000)* came into force. *FSMA 2000* provides for the formal establishment of the Financial Services Authority (FSA) as the single statutory regulator, tasked with the authorization and regulation of the financial services industry previously handled by nine regulatory bodies.

¹ See Hunt (2008).

² Based on the average exchange rate of HK\$12.16 per British pound in 2009.

³ In the late 1980s and early 1990s, many pension companies acted against the best interests of their consumers by advising them to switch from occupational pensions into lower-return personal pensions.

2.4 *FSMA 2000* also prescribes for the introduction of a free one-stop financial ombudsman service to replace the eight then existing financial dispute resolution schemes that had been criticized for their overlapping jurisdictions and confusing procedures⁴. The new ombudsman scheme is to provide an alternative to the courts whereby individual disputes between consumers and financial services firms could be resolved quickly and with minimum formality by an independent person on the basis of what is considered fair and reasonable in the circumstances.

3. Operation of the Financial Ombudsman Service

3.1 Schedule 17 of *FSMA 2000* requires FSA to establish a body corporate to operate the financial ombudsman scheme. To this end, FOS was incorporated in February 1999 and received its powers as the "scheme operator" provided for in Schedule 17 of *FSMA 2000* through the enactment of secondary legislation on 1 December 2001.

Jurisdictions of the Financial Ombudsman Service

3.2 FOS has three jurisdictions, namely:

- (a) the compulsory jurisdiction which applies to financial services firms authorized by FSA, and covers consumer complaints about FSA-regulated activities, consumer credit activities and certain other specified activities;
- (b) the consumer credit jurisdiction which automatically covers consumer credit complaints against firms with standard licences from the Office of Fair Trading⁵; and

⁴ According to Financial Services Authority (1997), these eight financial dispute resolution schemes "are different in several material ways. Some are compulsory, others voluntary. Some are set up under statute, others are based in contract. Some have been set up by the industry, others by regulators. And some use ombudsmen and others arbitrators. There are also significant differences between the schemes in terms of eligibility criteria, limits on awards, the availability of compensation for distress and inconvenience, time limits, terms of reference, bases for awards, procedures, funding, and governance arrangements. A common criticism of the current schemes has been that they present the appearance of a patchwork quilt and that consumers find this confusing."

⁵ If the licensee is also authorised by FSA, consumer credit complaints against it are covered by the compulsory jurisdiction.

- (c) the voluntary jurisdiction which applies to financial service firms chosen to join the financial ombudsman scheme on a voluntary basis. It covers complaints about certain specified activities of these participating firms that are not covered by the compulsory jurisdiction or consumer credit jurisdiction.

The jurisdictions of FOS enable it to cover most financial products and services provided in or from the UK. In particular, customers of over 100 000 firms⁶ that provide financial services are under the statutory protection of FOS should a dispute arise.

Legislative framework

3.3 The powers of FOS are set out in *FSMA 2000* and the *Consumer Credit Act 2006*. Further rules are made by FSA pursuant to powers stipulated under *FSMA 2000* to set out the complaints handling procedures and funding arrangements of FOS. These rules are listed in the "Dispute Resolution: Complaint (DISP)" section of FSA's Handbook⁷.

Financial Services and Markets Act 2000

3.4 Part XVI of *FSMA 2000* sets out the framework for the creation of a financial ombudsman scheme in the UK. In particular, it requires FSA to establish a single, compulsory ombudsman scheme for speedy and informal resolution of disputes between members of the public and regulated firms, and confers certain powers on the "scheme operator" for that purpose. *FSMA 2000* also prescribes the financial ombudsman to have compulsory and voluntary jurisdictions.

⁶ These comprise 21 000-plus retail firms regulated by FSA and 80 000-plus businesses with consumer credit licences issued by the Office of Fair Trading.

⁷ The FSA Handbook, issued by FSA, contains rules and regulations governing various areas of the financial services market (e.g. market conducts, conducts of business, training and competence, and dispute resolution). The FSA Handbook is divided into seven blocks, each containing several sourcebooks that provide the detailed rules and guidelines that must be followed. "Dispute Resolution: Complaint (DISP)" is one of the sourcebooks of Redress (Block 5).

3.5 Schedule 17 of *FSMA 2000* further maps out the essential aspects of the operation of the financial ombudsman scheme. FSA is required to set up a company (i.e. FOS) to operate and administer the scheme. That company should have a chairman, a board of directors and "a panel of persons, appearing to it to have appropriate qualifications and experience, to act as ombudsmen for the purposes of the scheme". Schedule 17 of *FSMA 2000* also requires the "scheme operator" to:

- (a) report annually to FSA and publish its report;
- (b) adopt a budget, approved by FSA, for each of its financial years;
- (c) make rules for the consumer credit and voluntary jurisdictions on the following aspects: complaints handling by financial services firms, activities covered, eligible complainants, time limits, limits on awards, and levies to cover the establishment and operation of these jurisdictions; and
- (d) make rules for the compulsory, consumer credit and voluntary jurisdictions on ombudsman procedures, awards of costs and interest, and case fees.

Consumer Credit Act 2006

3.6 The *Consumer Credit Act 2006* extends the jurisdictions of FOS to cover consumer credit licensees. In particular, Section 59 of the Act extends the remit of FOS – effective from 6 April 2007 – to cover unresolved disputes about the consumer-credit activities of firms with a standard consumer credit licence issued by the Office of Fair Trading.

Organization structure

3.7 FOS is governed by a board consisting of the chairman and eight directors drawn from a wide range of business, financial and consumer expertise⁸. The board meets 10 times a year. All board directors are appointed by FSA and the appointment of the chairman requires the approval of HM Treasury. The term of office of a director is three years and can be re-appointed for a period up to seven years. The term of office of the chairman of the board is five years. Reappointment of the chairman by FSA requires approval by HM Treasury, and the chairman can serve for no more than 10 years from the time of the initial appointment.

⁸ According to the Memorandum of Association of FOS, the board shall consist of not less than six and not more than 15 members.

3.8 Board members should not represent any particular group or sector as they are appointed based on public interest. Such arrangement is to ensure that the board as a whole can draw on a wide range of experience, knowledge and skills. In addition, all board directors are "non-executive" in the sense that they do not involve in considering individual complaints. The roles of the board of directors are to:

- (a) determine the overall strategy of FOS;
- (b) ensure that FOS is properly resourced and able to carry out its work effectively and independently;
- (c) formulate and adopt internal rules, subject to FSA's approval;
- (d) appoint the ombudsmen (including the chief ombudsman) on terms consistent with their independence. The board also appoints an independent assessor dealing with complaints about the level of service provided by FOS;
- (e) prepare a draft annual financial budget for FSA's approval; and
- (f) prepare and publish annual reports.

Panel of ombudsmen

3.9 While the board of directors is the governing body of FOS, the chief ombudsman is responsible for the day-to-day functioning of the organization (akin to a chief executive role). The chief ombudsman leads the senior executive team and is accountable to the board for the performance of FOS as a whole. In addition to the executive functions, the chief ombudsman is tasked with handling casework and external relationship.

3.10 There are two principal ombudsmen reporting to the chief ombudsman⁹ and one of them, the decision director, manages the teams of ombudsmen, co-ordinates their work and ensures the consistency of approach and decisions across all areas of FOS casework. The other principal ombudsman is responsible for strategic planning, legislation and rules, and relations with the UK government, regulators and the European Commission.

⁹ In addition to the two principal ombudsmen, other senior executive staff members reporting to the chief ombudsman include operations, finance and IT, business planning and assurance, communications and human resources directors, plus the company secretary.

3.11 The decision director is assisted by four lead ombudsmen, who are respectively responsible for the following major areas of FOS's casework – banking and credit, insurance, endowment, and investment/mortgages. They lead over 30 ombudsmen working in these casework areas and keep in touch with the stakeholders in their responsible sectors. FOS appointed a fifth lead ombudsman in March 2009 as the head of practice responsible for coordinating, consolidating and documenting information and guidance on casework policy issues and the ombudsman's approach to decision making.

3.12 The panel of ombudsmen is supported by a body of adjudicators who try to resolve a dispute informally between the consumer and financial services firm concerned. In addition, there is an early dispute resolution unit – the Customer Contact Division – which processes all initial enquires and complaints brought to FOS before passing them to adjudicators for investigation if necessary.

Funding arrangement

3.13 FOS receives no funding from the UK government, and nor does it charge complainants for using the financial ombudsman scheme. Instead, FOS is funded primarily by a combination of annual levies and individual case fees payable by firms subject to FOS's jurisdiction.

3.14 Financial services firms covered by the financial ombudsman scheme are required to pay a general levy each year to finance the scheme. The amount of the annual levy payable depends on the size of the firm and the industry sector to which it belongs. The levy varies from £100 (HK\$1,216) for a small business to £300,000 (HK\$3.6 million) for a large company. In addition to the annual levy, financial services firms are also required to pay a flat-rate standard case fee for each complaint investigated by FOS. Invoices for case fees are sent out at the end of the month in which the complaints are closed. The standard case fee is adjusted each year after consultation with the industry, and is presently set at £500 (HK\$6,080). Each firm is entitled to three "free" cases so that individual case fees are only payable for the fourth and subsequent complaints. Case fees are payable whether the complaint is upheld or not.

3.15 In 2008-2009, FOS derived £46.1 million (HK\$560.6 million) or 70% of its total income from case fees paid by financial services firms for cases closed. The general annual levy accounted for another £19.3 million (HK\$234.7 million) or 29% of the total income received by FOS during the financial year¹⁰.

4. Complaints handling and dispute resolution procedures

Receiving complaints

4.1 Consumer complaints are initially processed by the Customer Contact Division. The complaints can be made by telephone, in writing and through the FOS website. Complainants must complete a complaint form in order to access the financial ombudsman service. When such a form is received, FOS will make an initial assessment of the following before accepting the complaint for investigation:

- (a) whether the complaint comes under the jurisdiction of FOS;
- (b) whether the complaint has been made within the procedural time limits;
- (c) whether the complaint has been made by an eligible complainant; and
- (d) whether the complaint should be dismissed without consideration of its merits.

Procedural time limits

4.2 FOS will not consider a complaint unless the complainant submits the complaint to the firm concerned in the first instance. This allows the opportunity for the firm to settle the case through its internal complaints handling procedure, thereby minimizing the number of unresolved complaints to be referred to FOS. The consumer could refer the case to FOS only when the firm has issued a final response letter¹¹, or failed to do so within a period of eight weeks.

¹⁰ During 2008-2009, FOS derived £0.4 million (HK\$4.9 million) or 0.1% of its total income from publications, interest receivable and other revenues.

¹¹ The final response letter sets out the position of the firm in relation to the complaint, including any offer it will make to settle the complaint. It also informs the consumer of the right to refer the dispute to FOS within six months if he or she is unhappy with the outcome.

4.3 As to time limits for consumers bringing a complaint to FOS, FOS cannot consider a complaint if the complainant refers the case to it:

- (a) more than six months after receiving the final response letter from the firm under complaint; or
- (b) more than six years after the occurrence of the complained event (or more than three years after awareness of the cause for complaint).

Eligible complainant

4.4 Complaints can be made by, or on behalf of, customers who are:

- (a) private individuals; or
- (b) micro-enterprises with an annual turnover of less than two million Euros (HK\$21.6 million¹²) and fewer than ten employees.

Complaints dismissed without consideration of its merit

4.5 The FSA Handbook lists 17 circumstances where a complaint may be dismissed without consideration of its merits. For example, FOS may dismiss a complaint if:

- (a) the complainant has not suffered financial loss, material distress or material inconvenience;
- (b) the complaint is frivolous or vexatious;
- (c) the complaint does not have any reasonable prospect of success;
- (d) the firm under complaint has already made an offer of compensation that FOS considers to be fair and reasonable, and the offer is still open for acceptance;
- (e) the complaint would be better dealt with by court proceedings or a comparable independent complaints scheme or dispute resolution process; or
- (f) the complaint is about investment performance.

¹² Based on the average exchange rate of HK\$10.82 per Euro in 2009.

Handling complaints

4.6 If the complaint is eligible, consumer consultants at the Customer Contact Division are allowed to resolve simple cases (simple misunderstandings, requests for second opinion, etc.) on their own. Any case that cannot be handled by them will be transferred to a team of adjudicators for resolution. At this point, the case becomes a chargeable case, meaning that the firm under complaint will be charged a case fee when the case is closed.

4.7 After accepting the case for investigation, the adjudicator concerned will consider the facts and merits of the complaint and determine the best way to proceed. Normally, he or she may attempt to resolve the case informally between the two parties by mediation, conciliation, or informal recommended settlement. Where this is not appropriate or possible, the adjudicator will seek to resolve the complaint by issuing a provisional assessment of the case.

4.8 The provisional assessment takes the form of a letter which expresses the adjudicator's understanding of the nature of the complaint, and states whether he or she is minded to uphold or reject the complaint and the reasons that underline the decision. If the complaint is upheld, the provisional assessment will indicate the scale of compensation that the adjudicator considers appropriate. The provisional assessment will be sent to both parties who must respond within the specified time limit. They may accept the provisional assessment as the conclusion of the case. Alternatively, either party can request for the case to be reviewed and determined by an ombudsman.

Issuing determinations

4.9 When an ombudsman becomes directly involved in a case, he or she will first carry out an independent review of the complaint. He or she may conduct an investigation before issuing the determination. In the course of the investigation, the ombudsman will give both parties an opportunity to make representation. If necessary, the ombudsman may conduct a hearing and direct both parties to submit evidence¹³.

¹³ In some circumstances, the ombudsman may issue a provisional decision before making the final determination. One reason for this arrangement is to give the parties a final opportunity to comment if the determination is significantly different from the outcome of the earlier assessment. A final decision is issued after considering their views and any further submissions from them.

4.10 The determination of an ombudsman must be made in writing, signed with reasons. A final decision by the ombudsman ends the complaints handling process in FOS. Neither the firm under complaint nor the complainant can appeal against an ombudsman's determination by asking for their case to be referred to another ombudsman. If the complainant accepts the determination, it is binding on both the complainant and the firm concerned. If rejected by the complainant, it is not binding on either party. The complainant can take court action against the firm under complaint.

Basis of ombudsman's decision

4.11 An ombudsmen renders his or her decision on a complaint on the basis of what is considered "fair and reasonable in all circumstances of the case"¹⁴. The FSA Handbook has specified the following matters which an ombudsman should take into account in determining what is fair and reasonable:

- (a) relevant laws and regulations, regulators' rules, guidance and standards, and codes of practice; and
- (b) where appropriate, what FOS considers to have been good industry practice at the relevant time¹⁵.

Awards by the ombudsman

4.12 Where a complaint is determined in favour of the complainant, the ombudsman's determination may include one or more of the following:

Money award

4.13 The ombudsman can make a money award deemed fair compensation for financial loss, pain and suffering, damage to reputation, and distress or inconvenience. A money award by the ombudsman can be enforced through the court by process of execution as if it were a county court judgement.

¹⁴ See FSA Handbook DISP 3.6.1.

¹⁵ According to James & Morris (2003), the fair and reasonable criterion provides for the capacity of the ombudsman to "transcend strict legal rules and draw upon a range of extra-legal standards in a manner that usually operates to the benefit of the consumer".

4.14 The maximum money award that an ombudsman can make is £100,000 (HK\$1.2 million). If the ombudsman considers that fair compensation requires payment of a larger amount, he or she may recommend the firm under complaint to pay the balance. However, the firm is not bound to comply.

Interest award

4.15 An interest award provides for the amount payable under the money award to bear interest at a given rate from the date specified in the award.

Cost award

4.16 A cost award is an amount the ombudsman considers to be fair to cover some or all of the costs reasonably incurred by the complainant in respect of the complaint. On the other hand, *FSMA 2000* does not provide for an award of costs against the complainant to account for the firm's costs. However, complainants may be required to contribute to the costs of the financial ombudsman scheme if their conduct is improper or unreasonable, or the complainant is responsible for unreasonable delay.

Direction

4.17 The ombudsman is empowered to issue a direction to order a firm to "take such steps in relation to the complainant as the [o]mbudsman considers just and appropriate¹⁶". These steps may involve the offering of a formal apology, a change of decision or the reappraisal of an administrative action. The ombudsman's direction may be forced, at the behest of the complainant, in the same manner as an injunction¹⁷.

¹⁶ See FSA Handbook DISP 3.7.11

¹⁷ FOS does not regulate financial services, nor is it a professional regulatory body. Hence, it will not take any disciplinary action against a financial services firm or individual practitioner against whom a complaint has been upheld.

Complaints handling statistics

4.18 In 2008-2009, FOS's Customer Contact Division received 399 918 telephone enquiries and 389 959 written enquiries from customers, of which 127 471 were diagnosed as cases and were transferred to adjudicators and ombudsmen for further dispute resolution work¹⁸. A total of 113 949 cases were settled as a result, involving an average cost of £508 (HK\$6,177) per case resolved¹⁹. Of the total number of cases resolved in 2008-2009, 92% or 105 275 cases were settled informally by adjudicators via means of mediation, recommended settlements and adjudications. Another 8% or 8 674 cases were resolved by ombudsmen through formal determination.

5. Independence of the Financial Ombudsman Service

5.1 FOS has entered into a Memorandum of Understanding (MOU) with FSA to set out the operational framework for the relationship between them. The MOU stipulates general co-operation, information sharing and consultation between FSA and FOS, as well as designating the separate role and distinct functions of these two organizations. In particular, FSA operates as the single financial regulator to regulate and supervise providers of financial services. FOS, on the other hand, resolves individual disputes as an alternative to the civil courts.

5.2 *FSMA 2000* provides for further safeguard of FOS's independence. Schedule 17 of *FSMA 2000* stipulates that whilst all FOS's board members are persons appointed and liable to removal from office by FSA, the terms of their appointment must be structured in such a way so as to secure their independence from FSA in the operation of the financial ombudsman scheme. In particular, the power to remove a director shall not be exercisable on any ground which relates directly or indirectly to the resolution of complaints.

5.3 Schedule 17 of *FSMA 2000* also requires the panel of ombudsmen to be appointed on terms that secure their independence. As such, FSA, HM Treasury and even the board of FOS cannot attempt to influence or interfere with the decision that the ombudsmen make in relation to complaints. The outcome of complaints, to be determined on their merits, is by virtue of Section 228 of *FSMA 2000* vested exclusively in the ombudsmen.

¹⁸ For comparison, FOS dealt with 259 848 telephone enquiries and 154 874 written enquiries in its first year of operation (2001-2002), which together resulted in 31 347 cases being transferred to the case-handling teams for investigation.

¹⁹ The average cost is calculated by dividing the total costs before financing charges and any bad debts by the total number of closed cases.

6. Accountability arrangements for the Financial Ombudsman Service

6.1 As an independent statutory body, FOS is subject to oversight by Parliament. The chairman of the FOS board may be required to present evidence to an appropriate Parliamentary Select Committee. During 2008-2009, FOS handled 608 parliamentary enquiries and 155 ministerial questions and requests for questions. Furthermore, FOS is subject to scrutiny by FSA and an independent assessor, judicial review by the court and obligation to meet information accessibility by the public.

Financial Services Authority

6.2 The major accountability arrangements between FSA and FOS are as follows:

- (a) FOS is governed by a board whose members are appointed by FSA;
- (b) FOS and the chief ombudsman must each submit an annual report to FSA on the discharge of their respective functions. Copies of the reports are made available to HM Treasury and Parliament; and
- (c) FOS's annual budget must be approved by FSA.

Independent assessor

6.3 FOS has put in place arrangements to handle complaints made by both consumers and financial firms against services it provides. These arrangements cover matters such as FOS's investigative process, staff behaviour, and delay and failure to answer reasonable questions. The complaints are dealt with by the in-house Service Review Team, which will investigate the cases and offer redress (e.g. an apology or a compensation payment) to the complainants if required. If the complainant remains dissatisfied after FOS's response, he or she can refer the case to an independent assessor.

6.4 The independent assessor is appointed by the board of FOS, entrusted with carrying out a final review of complaints against the services FOS provides²⁰. If the independent assessor considers that the complaint against FOS's services should be upheld in whole or in part, he or she may recommend to the chief ombudsman that FOS makes an apology or pays appropriate compensation.

Judicial review

6.5 While there is no mechanism for appeal against the determination made by an ombudsman, the complainant or the firm under complaint not satisfied with the decision may seek judicial review by the court. Judicial review does not re-examine the decision in terms of the individual facts and merits of the dispute itself. Instead, it will focus on the way in which the ombudsman has arrived at the decision, for example, whether he or she has handled the matter with due process and applied the law correctly.

Information accessibility by the public

6.6 FOS publishes annual reports, giving complaints statistics, information on the types and categories of complaints investigated and outcomes. In addition to the annual reports, FOS also publishes anonymous case studies in Ombudsman News, a magazine produced every six to eight weeks with specific case summaries and items of general interest. Furthermore, FOS maintains a website providing the public with a wide range of information, such as news and updates, fact sheets, technical briefing notes and a section especially for businesses covered by the financial ombudsman service.

6.7 On 15 September 2009, FOS published for the first time details of the numbers of complaints made, and the percentage of complaints upheld, against *named* financial services providers. The above arrangement marks a departure from the previous practice, where the FOS published details of the numbers and outcomes of cases, but not in relation to individual firms. The new proposals are driven by the view that such information may help financial markets work more effectively, and that transparency may help improve the performance of financial services firms by giving them strong incentives to make visible, public progress.

²⁰ Under the term of reference, the independent assessor cannot consider whether FOS was right to uphold or reject a dispute between the consumer and the financial services firm.

7. Review of the performance of the Financial Ombudsman Service

7.1 In December 2003, the board of FOS commissioned the Personal Finance Research Centre of Bristol University to carry out an independent assessment of the work of the organization. The review report, published in July 2004, described the operation of FOS in detail and concluded with the "overall view that the Financial Ombudsman Service is a thoughtful, well-managed organization that is doing a good job under difficult circumstances²¹."

7.2 In addition to the above independent review, FOS carries out a regular survey of customer satisfaction. The survey result, as quoted in FOS's 2008-2009 annual report, indicates the following consumers' views on the FOS services:

- (a) 69% think that FOS handles complaints efficiently and professionally (14% disagree);
- (b) 63% think that FOS gets to the bottom of complaints and deals with the issues thoroughly (23% disagree);
- (c) 61% think that FOS decisions are fair and unbiased (20% disagree);
- (d) 37% think that the complaints are resolved in an acceptable length of time (47% disagree); and
- (e) 63% think that FOS provides a good dispute resolution service for consumers (25% disagree).

²¹ In 2007, FOS commissioned Lord Hunt to carry out an independent review focusing on the openness and accessibility of FOS's service to its wide range of customers and stakeholders. The core foundation of a "fair and reasonable" decision, no appeals and no charge for complaints were all approved by Lord Hunt. Nevertheless, the Hunt Review made 73 recommendations to further improve the service, including the recommendation for greater openness about the data held by FOS.

7.3 Meanwhile, FOS also conducts regular surveys to gauge the views of financial services firms regarding the way in which it handles disputes and the extent to which it accommodates their particular needs and concerns. The survey result, as quoted in the FOS's 2008-2009 annual report, indicates the following:

- (a) 55% think that the financial services industry can have confidence in the ombudsman service (19% disagree);
- (b) 38% think that FOS service is good value for businesses which pay the levy/case fees that fund FOS (26% disagree);
- (c) 62% think that FOS's decisions on cases are fair and unbiased (15% disagree);
- (d) 41% think that FOS's decisions are consistent (28% disagree); and
- (e) 66% think that FOS provide a good dispute resolution services for businesses (14% disagree).

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24 February 2010
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References

1. ADRnow. (2009) *Financial Ombudsman Service*. Available from: http://www.adrnow.org.uk/go/SubSection_15.html [Accessed February 2010].
2. Blair, M., Walker, G. & Pruves, W. (eds) (2009) *Financial Services Law*. 2nd ed. New York, Oxford University Press.
3. Financial Ombudsman Service. (2007) *Consumer fact sheet on what a "final decision" by an ombudsman means*. Available from: http://www.financial-ombudsman.org.uk/publications/factsheets/final_decision.pdf [Accessed February 2010].
4. Financial Ombudsman Service. (2008) *Consumer Credit Business and the Ombudsman*. Available from: http://www.financialombudsman.org.uk/publications/introduction_consumercredit.pdf [Accessed February 2010].
5. Financial Ombudsman Service. (2009) *Consumer fact sheet on how we deal with your case*. Available from: http://www.financial-ombudsman.org.uk/publications/factsheets/how_we_deal_with_your_case.pdf [Accessed February 2010].
6. *Financial Ombudsman Service*. (2010) Available from: <http://www.financial-ombudsman.org.uk/default.htm> [Accessed February 2010].
7. Financial Ombudsman Service. (2010a) *Guide for businesses*. Available from: http://www.financial-ombudsman.org.uk/publications/guides_for_firms.htm [Accessed February 2010].
8. Financial Ombudsman Service. (2010b) *Our consumer leaflet: your complaint and the ombudsman*. Available from: <http://www.financial-ombudsman.org.uk/publications/consumer-leaflet.htm> [Accessed February 2010].
9. *Financial Services and Markets Act 2000. Chapter 8*. Office of Public Sector Information. Available from: http://www.opsi.gov.uk/ACTS/acts2000/ukpga_20000008_en_1 [Accessed February 2010].

-
10. Financial Services Authority. (1997) *Consultation Paper: Consumer Complaints*. Available from: <http://www.fsa.gov.uk/pubs/cp/cp04.pdf> [Accessed February 2010].
 11. Financial Services Authority. (2009a) *Annual Review 2008/09*. Available from: <http://www.financial-ombudsman.org.uk/publications/ar09/ar09.pdf> [Accessed February 2010].
 12. Financial Services Authority. (2009b) *Corporate Plan & 2008/2009 Budget*. Available from: <http://www.financial-ombudsman.org.uk/publications/pb09/cpb-09-10.pdf> [Accessed February 2010].
 13. Financial Services Authority. (2009c) *The Full FSA Handbook*. Available from: <http://fsahandbook.info/FSA/html/handbook/> [Accessed February 2010].
 14. Financial Services and the Treasury Bureau. (2010) *Consultation Paper: Proposed Establishment of an Investor Education Council and a Financial Dispute Resolution Centre*. Available from: http://www.fstb.gov.hk/fsb/ppr/consult/consult_iec_fdrc.htm [Accessed February 2010].
 15. Fisher, J. et al. (2003) *The law of investor protection*. London, Sweet & Maxwell.
 16. House of Commons. (1999) *Financial Services and Markets Bill*. Research Paper 99/68. Available from: <http://www.parliament.uk/commons/lib/research/rp99/rp99-068.pdf> [Accessed February 2010].
 17. Hunt, D. (2008) *The Hunt Review: The Independent Review of the Financial Ombudsman Service*. Available from: http://www.thehuntreview.org.uk/updates/FOS_Report.pdf [Accessed February 2010].
 18. James, R. & Morris, P. (2003) The new Financial Ombudsman Service in the United Kingdom: has the second generation got it right? In: C. Rickett & T. Telfer (eds.) *International perspectives on consumers' access to justice*. Cambridge, Cambridge University Press.

-
19. Japan Financial ADR/Ombudsman Research Group. (2008) *A Model for a Financial ADR Organization and Measures for Its Realization*. Available from: http://www.npo-jmc.jp/Proposal_financialADR.pdf [Accessed February 2010].
 20. Personal Finance Research Centre of Bristol University. (2004) *Fair and reasonable: An assessment of the Financial Ombudsman Service*. Available from: <http://www.financial-ombudsman.org.uk/publications/pdf/kempson-report-04.pdf> [Accessed February 2010].
 21. Russell Reynolds Associates. (2009) *Position Specification: Chief Ombudsman, Financial Ombudsman Service*. Available from: <http://ea.russellreynolds.com/publicsector/jobSpecs/Financial%20Ombudsman%20Service%20chief%20ombudsman%20FINAL%2016%2009%2009.DOC> [Accessed February 2010].
 22. Russen, J. (2006) *Financial services: authorization, supervision, and enforcement: a litigator's guide*. New York, Oxford University Press.
 23. Slaughter and May. (2001) *A Guide to Financial Services and Markets Act*. Available from: http://www.slaughterandmay.com/media/39269/a_guide_to_the_fsma_2000.pdf [Accessed February 2010].
 24. Thomas, D. (2007) *Memorandum submitted to House of Lords Select Committee on Regulators*. Available on: <http://www.parliament.uk/documents/upload/Financial%20Ombudsman%20Service%20ONLINE.pdf> [Accessed February 2010].
 25. 馮聖中：《論金融服務與消費者保護之法律問題》，2006年，網 址：
http://etd.lib.stut.edu.tw/ETD-db/ETD-search-c/view_etd?URN=etd-0407109-183703-187 [於 2010 年 2 月登入]。