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Lord Hunt of Wirral MBE
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16 January 2008

Dear Lord Hunt

**The Hunt Review:
The Independent Review of the Financial Ombudsman Service**

This is the Consumer Panel's response to the call for evidence to the independent review of the Financial Ombudsman Service. I am grateful to have had the opportunity to meet you and the All Party Group on Insurance and Financial Services to talk about the role played by the Ombudsman before submitting this formal response.

Overview

The Consumer Panel strongly supports the work of the Financial Ombudsman Service, which provides a vital dispute resolution service for consumers. We see this work becoming increasingly important as the FSA moves to a more principles-based regulatory regime where the meaning of "Treating Customers Fairly" in real situations is going to be less structured and tangible than in the current, more rules-based environment.

I have set out below the Panel's response to the key questions in the call for evidence, but in addition there are a number of more general points we would like to make.

The effectiveness of current FOS practice and the issues which arise from it

In 2006 the Panel undertook research* into the use of endowment claims handling firms. While the results of that research were focused on the work of the firms themselves, there was some evidence that consumers use endowment claims firms to save time and to help them through what they see as a complex process. While this may be a misconception on the part of many consumers, it does underline the need for the service that is delivered to be transparent and to be widely promoted in

* Published on the Consumer Panel's website December 2006, www.fs-cp.org.uk

a way that reassures those less confident about pursuing a claim, about the level of support offered by FOS. It is important that awareness of FOS is maintained and reinforced, particularly amongst those consumers needing particular help. FOS will need to have the promotional budget to do this.

Examples of good practice in other sectors which might be considered for FOS

The Advertising Standards Authority publishes its adjudications on a weekly basis. The basis of the relationship between businesses and the ASA and between FOS and financial services firms is different, of course, but the information provided is quite detailed and useful for consumers – although, as we have said in our response to question 11, consumers might find the possibility of wide publicity for their particular case quite daunting. Publication of the reasons for the decision is more important than personal details of the case.

No doubt consumers would find it helpful for telephone calls to FOS to be free, rather than charged at the local rate, perhaps with some evening and weekend availability.

The implications of any changes in practice for consumer and company behaviour and incentives

It would be easy to assume that greater access to information should lead inevitably to an assumption of greater responsibility by consumers. While clearly the purpose of greater transparency is better communication of key information in the expectation that it will be acted upon, there will always be some groups of consumers unable or ill-equipped to do that. We see a continuing need for a high level of support for those consumers without the capability to pursue their claims unaided, even where the breadth and quality of the information provided will assist many others to tackle the process themselves.

Practical issues which may need to be addressed in making any changes

An external factor to be taken into account would be any extension of designated public authority status under the Freedom of Information Act to the Ombudsman Service. We do not know if such a move is likely, but if it was it could change significantly FOS' approach to transparency/publication. The need for change might also be highlighted over time by the FSA's move to more principles-based regulation and the consequent greater demand for certainty outside a rules-based structure.

Questions

Q1: Are there potential improvements to the FOS' working methods at initial contact and subsequently which would improve its accessibility and help to secure fair outcomes for both businesses and complainants? Can any additional costs be justified? (para 3.3-3.11)

Some consumers view the FOS as part of the 'establishment' and are therefore nervous or frightened about getting involved with it. They will be worried about repercussions later on, how involved they will get in any process which they cannot

then get out of, and they will be suspicious that it always finds for the industry anyway. Some people find it difficult to complete the necessary paperwork without help. Unfortunately, for many of these people, a significant amount of personal reassurance and 'hand holding' will be necessary, which is where the complaints handling firms have scored. They make significant charges (typically 20% - 30% of any sum recovered) for their services.

Q2: Are there any particular improvements which would assist potentially vulnerable groups? (para 3.3-3.11)

Perhaps for those who lack the confidence or the time to do it themselves a more formal arrangement between FOS and the complaint handling firms should be developed. Greater access by phone 'out of hours' would help. There is also clearly another role here for any Generic Financial Advice Service. Energywatch, the electricity and gas consumer body which has a complaints handling function, has had a fair degree of success in reaching more disadvantaged people by use of local community groups.

Q3: How far is a material - or perceived - barrier to accessibility created by the eight-week period businesses are granted to resolve complaints before they can be considered by the FOS? (para 3.3-3.11)

This is likely to be seen by many people as an over generous length of time especially as FOS has now taken over credit complaints where 2 months extra interest will accrue, creating extra worry and distress before the FOS process can even begin. It is likely that consumers will already have had conversations with the firm to try and resolve matters before the complaint is logged and time begins to run.

Q11: Should the FOS publish all or some adjudication and/or formal ombudsman decisions? What reasons are there for or against publication? What practical issues (e.g. on selection criteria, anonymity, approach to summarising, regularity and form of publication) would arise and how should they be resolved? (para 4.4-4.11)

It is likely that some consumers would be put off complaining if their case was going to be publicised in a way which could identify them. This suggests that publication of the reasons for the decision are more important than personal details of the case – although we would not object to the firm being named - and that only cases that decide novel points should be published. Another reason for only publicising certain cases which decide new points of principle concerns the FOS remit. FOS is able to decide a matter on the basis of what is fair in ALL the circumstances of the case. Unlike the courts this means the FOS can take into account the situation and capability of the complainant. This may mean, for example, that a strict legal interpretation of the facts of a particular case can be overthrown by the incapacity of the complainant to understand the nature of the contract they signed. Publicising such a case may look like a change in the Ombudsman's approach to the legal position.

Q18: What level of information should the FOS put into the public domain about outcomes of cases by individual businesses? What would be the consequences? What should be withheld and why? (para 4.23-4.29)

A league table of firms' complaint records should be published, fairly balanced for total business transacted. We would also like to see information made available about firms that fail to pay FOS awards. The Panel has been advised that such occurrences are rare, but nevertheless we would like to see greater transparency in this important area. This is an issue we are currently discussing with the FSA.

Q20: What level of transparency should there be in communication between the FOS and the FSA and OFT?

The key point, we believe, is that communication should be effective. This does not necessarily mean that more transparency is essential, provided that all those third party stakeholders who need to be aware of particular issues have access to such information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Adam Phillips', with a long horizontal flourish extending to the right.

Adam Phillips
Vice Chairman
Financial Services Consumer Panel