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Dear Eiko

## **Financial Ombudsman Service consultation - Publishing ombudsman decisions: Next steps**

This is the Financial Services Consumer Panel's response to the Financial Ombudsman Service's consultation which sets out proposals for publishing final ombudsman decisions.

### **Overview**

The Consumer Panel strongly support the work of the Financial Ombudsman Service, which provides a vital dispute resolution service for consumers. We believe the publication of final decisions will enhance the role of the ombudsman service and benefit consumers by increasing the level of transparency around individual decisions. The Panel has long supported the need to increase transparency within financial services, as we believe transparency is an important tool in empowering consumers to make better decisions and protect their interests.

The Panel strongly support the ombudsman service's proposal to ensure that no individual consumers can be identified from the decisions published. We would be concerned if consumers were discouraged from making a complaint due to a fear that they could be identified through the publication of ombudsman decisions.

The Panel also support the ombudsman service's intention to undertake research to monitor what impact, if any, the publication of decisions has on a complainant. We encourage the ombudsman service to share the conclusions of this research and work with consumer groups and the industry to resolve any issues identified.

Given the large number of final decisions the ombudsman service can expect to publish each year, we believe it is important that consideration is given to how consumers will access and navigate their way through this information. We support the proposal to publish this information on the ombudsman service's website where we suggest the provision of a search facility, hyperlinks between different decisions

and a system to identify the most significant cases will help ensure this information is accessible for consumers.

### **Detailed questions**

***Q1: Do you agree with our overall approach? Are there other considerations we should bear in mind, in approaching the publication of our ombudsmen's final decisions?***

The Panel is supportive of the clause included in the draft Financial Services Bill to require the ombudsman service to publish ombudsman decisions. We believe this will benefit consumers through an increase in transparency and promote understanding of the ombudsman service. We welcome the ombudsman service's consultation on how to publish this information ahead of the Bill receiving Parliamentary approval. We hope this will enable the publication of decisions to begin shortly after the Bill is passed.

As we have outlined in our response to the remaining questions, we are very supportive of the ombudsman service's overall approach to publishing individual decisions. However, we believe greater consideration should be given to how consumers will access this information (see question 12). The Panel also believe that the ombudsman service should publish decisions by brand to enable consumers to access information about the financial firms with which they have an ongoing relationship (see question 6).

***Q2: Do you agree that we should not publish the views of adjudicators – instead limiting the publication of decisions to those made by our ombudsmen?***

The Panel accept, for the reasons outlined in the consultation, that it would not be appropriate to publish adjudicator decisions. However, we are aware that complaints about some products or services are typically settled by an adjudicator, such as complaints in relation to Payment Protection Insurance (PPI). Given only a small minority of some categories of complaints are subject to an ombudsman ruling, and therefore published under these proposals, we consider it important that the ombudsman service continue to publish details about all the complaints they receive in the Ombudsman News and Annual Reviews.

***Q3: Do you agree that our published reports on cases should not normally be specially commissioned summaries, but the actual determination made by the ombudsman (subject to the appropriate safeguards)?***

The Panel believe it is essential that consumers can understand the information published by the ombudsman service. Given ombudsman decisions are 'relatively brief and are designed to be accessible documents that can be readily understood by both the financial business and the consumer' we agree that actual determinations should be published.<sup>1</sup> However, we urge the ombudsman service to monitor carefully each decision published, where consumers can not be reasonably expected

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<sup>1</sup> Financial Ombudsman Service, *Transparency and the Financial Ombudsman Service*, September 2011

to understand the decision published, we suggest a summary of the case should be provided.

***Q4: Overall do you think our proposed approach strikes the right balances between transparency, protecting genuinely confidential information and the costs of implementation?***

In principle we feel the proposals strike a balance between transparency, protecting confidential information and the cost of publishing decisions. However, as we have outlined in our response to question 10, we believe the ombudsman service should closely monitor what effect the publication of decisions has on individual consumers.

***Q5: Do you think the steps we propose are sufficient to protect consumer identities and personal information – or are there other specific steps we should take?***

We strongly support the ombudsman service's proposal to take steps to ensure that no individual consumers can be identified from the information published. The Panel would be concerned if consumers were discouraged from making a complaint due to a fear that they could be identified through the publication of individual decisions. We believe it is essential that where consumers refer a complaint to the ombudsman service, they can be confident that their case will be managed in a professional and confidential manner.

***Q6: Do you agree that we should not seek to protect the identity of financial businesses? If you disagree, what other steps would you want us to take?***

The Panel agree that the ombudsman service should not seek to protect the identity of the financial business when publishing an ombudsman's decision. We are concerned that concealing this information would create additional cost, which would ultimately be borne by consumers, and undermine consumers' ability to understand the information published.

We believe that, by naming the individual firm involved in a case, the publication of decisions could act as an incentive for firms to ensure they are managing all complaints effectively. We are hopeful that the publication of ombudsman decisions will help drive a change in behaviour amongst some financial firms who are not giving sufficient priority to resolving consumer complaints. However, for this incentive to be effective, the Panel believe it is important that decisions are published by both brand and provider, which will ensure the information is more meaningful for consumers and easier for them to act on.

***Q7: Do you agree with our planned approach to the identities of third parties – including other financial businesses, professionals, other representatives and third-party businesses?***

We support the ombudsman service's proposal to remove details about third-parties involved in a case if this information might help identify the consumer that is complaining. As we have outlined in our response to question 5, we believe it is essential that the publication of decisions does not discourage consumers from making a complaint.

***Q8: Do you agree that we should reserve the right not to publish certain decisions – or to exempt information in other exceptional circumstances?***

We agree that the ombudsman service should reserve the right not to publish a decision in exceptional circumstances. We believe it is important for the ombudsman service to establish clear criteria for when a decision will not be published and expect the non-publication of decisions to be the exception rather than the norm.

***Q9: Are there other considerations about safeguarding personal information that are not covered in this paper and that we need to take into account?***

We are not aware of any other considerations about safeguarding personal information.

***Q10: What impacts do you believe publication of decisions as we propose will have – on consumers, financial businesses and on our service?***

The Panel believe the publication of final decisions will enhance the role of the ombudsman service and benefit consumers by increasing the level of transparency around individual decisions. However, it is important that the publication of ombudsman decisions should not undermine the ombudsman service's vital role as an independent adjudicator of consumer complaints.

The Panel strongly support the proposal to undertake consumer research to monitor what impact, if any, the publication of decisions has on a complainant. We suggest this research should be conducted every two years and hope the ombudsman service will be willing to share the conclusions. We believe it is important that the ombudsman service work with consumer groups and other stakeholders to resolve any issues identified by the research.

***Q11: Do you agree with our approach to the timing of publication? If not, when should decisions be published and why?***

The Panel support the proposal to publish decisions shortly after they are issued. We agree that any unnecessary delay to the publication of decisions would increase the risk of uncontrolled releases of information. This could create confusion amongst consumers and the industry, undermining many of the benefits of publishing final decisions such as the increase in transparency and accountability of a decision.

***Q12: Do you agree with our approach to the form of publication?***

We support in principle the ombudsman service's proposals for publishing decisions on their website. However, we note from the consultation that in excess of 17,000 cases were resolved by the ombudsmen in 2010/11, a figure which is expected to grow. Given the large number of final decisions the ombudsman service can expect to publish, it is important that proper consideration is given to how this is presented to ensure that consumers are easily able to access this information.

To ensure this information is accessible, the Panel believe it is important to ensure there is an adequate search facility to enable consumers and other users to easily search the published decisions including by type of complaint, by brand and by provider. We also suggest that there should be links between related decisions. For example, anyone viewing a decision about a PPI complaint should be able to access similar complaints from the same webpage. A number of commercial websites, such as Amazon.co.uk, manage this process well by identifying other products which might be of interest.

In addition to creating links between different decisions, we also believe it is important that the ombudsman service provide links from summary cases published in the Ombudsman News or data included in the Annual Review to individual cases. Any individual looking to access information about ombudsman decisions is likely to start by referring to the summary publications which are available. We suggest it is important that there are links between the different data publications to enable the full benefits of publishing decisions to be realised.

As well as ensuring the published decisions are easily searchable and links between individual decisions are provided, we believe the ombudsman service could establish a rating or starring system to help consumers identify different decisions. A similar process is adopted for the publication of Commissioners' decisions on appeals from tribunals. The Commission manages around 4,000 appeals each year. The majority do not cover points of legal principle or unusual facts and are therefore categorised as 'unstarred decisions'. Where an individual Commissioner considers a case to be of interest, perhaps because this is the first decision under a new regulation, the case is 'starred'. The Commission publishes about 80-100 starred decisions each year. The ombudsman service could adopt a similar system to help consumers identify the most significant cases.

Finally, the Panel support the proposal to provide access to paper copies of final decisions, which will help ensure all consumers, including those without internet access, can view this information.

***Q13: Do you have any comments on when we should start publication of decisions – and what are your views on past decisions?***

We believe the ombudsman service should start publishing decisions as soon as practically possible. We recognise that the actual timetable will be dictated by the approval of the draft Financial Services Bill, but hope the ombudsman service will be in a position to publish decisions shortly after the Bill is passed.

Although we can see benefits of publishing past decisions, we agree that, for reasons of cost and data accessibility, only future decisions should be published. Although a large number of historical cases will be of interest to consumers, we recognise that the ombudsman service has published a summary of cases through their Ombudsman News.

***Q14: Do you agree that we should adopt the same approach across all of our jurisdictions – and specifically do you agree we should cover our voluntary jurisdiction in the same way as our compulsory (FSA/FCA) jurisdiction and our consumer-credit jurisdiction?***

We support the ombudsman services' intention to publish decisions made under their voluntary jurisdiction.

Yours sincerely,

Adam Phillips  
Chairman