



# MISSING: Financial Ombudsman in Asia

*Since 2001 in the United Kingdom individuals and businesses with less than 10 employees have had the benefit of the Financial Ombudsman Service (FOS). This allows such persons to make complaints about a variety of financial products and services and receive up to £150,000 in compensation, exclusive of interest and costs, should they be successful. Aside from Malaysia, which launched a similar initiative in 2016, it is a service which is non-existent in Asia.*

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**T**HE UK FOS AROSE OUT OF A SERIES OF VOLUNTARY INITIATIVES and now has statutory functions deriving from the Financial Services and Markets Act 2000 (FSMA). The FOS is overseen by a board of non-executive directors appointed by the UK's financial regulator, the Financial Conduct Authority (FCA); the Chairperson of this board is appointed with approval of the Government Treasury.

The wide scope for the subject of financial product complaints includes bank accounts, pensions, mortgages, loans and credit cards. The FOS also receive complaints relating to retail financial services and credit related activities undertaken by businesses regulated by the FCA, some previously FCA regulated firms, and a few foreign companies.

Funding for the FOS comes from the would-be subjects of complaints. These businesses pay an annual levy as well as a case fee if they are the subject of a complaint, though a company's first 25 complaints in a year are dealt with for free. The FOS considers this a primary benefit for businesses as the levy is far cheaper than any potential legal costs should a complaint escalate into litigation.

The FOS is intended to benefit both consumers and the businesses it seeks to challenge. It is designed to

give consumers protection and a degree of reassurance by attempting to level the complaints playing field. It is also cheaper alternative to commencing litigation. For businesses, aside from being cheaper than defending litigation, they consider it provides a good media retort if a consumer has gone public but not used the FOS; the service is there for them to complain to, why have they not. Additionally, it is considered that consumers are often more accepting of decisions that have not gone their way if decided by an impartial adjudicator, rather than directly from the company they feel aggrieved by.

However, making a complaint to the FOS is a last resort. Internal complaint procedures should be exhausted first.

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This makes sense; the Ombudsman is designed to be an overarching, impartial, complaints adjudicator, offering a further chance for redress, as an alternative to com-





mencing litigation, if no success is had at ground level. Indeed the FOS considers they are in a unique position to be able to determine decisions using initiative which does not have to be derived directly from the law; they are not subject to the same restrictions as judges.

The FOS reports that they resolve two thirds of complaints within three months. In the year 2016/17 nearly 1.4 million enquiries were received, with over 300,000

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new complaints made, and a similar number resolved. 10% of these resolutions were legally binding decisions. This is a further key benefit of the FOS; if the decision is accepted by the complainant it can be enforced in court. Further, the decisions of the FOS are publically available, thus providing clear incentive for cooperation from the industry.

Additionally, the legislation supporting the FOS gives the FCA power to use non-payment of an FOS decision as a reason to cancel a company's permission to work within the regulated sector, or a reason to seek individual enforcement against senior persons who are 'knowingly concerned' of breaches of FOS decisions.

In January 2018, the FCA determined that Foreman Financial Services Limited (FFSL) had breached key FCA principles, in failing to pay compensation due under an FOS decision. The complainant had been separately advised, by someone not authorised to give pensions advice, to transfer his entire pension pot to a Self-Invested Personal Pension, which would allow investment into a particular property. However the FOS found that FFSL failed to give suitable advice and merely followed the third party's recommendation. When FFSL then failed to pay the compensation, both the FOS and the FCA requested payment a number of times. When no payment was made the FCA produced a Final Notice, and found that FFSL had also breached other Principles of Business and relevant sections of FSMA, which in some cases could call into question a firm's continuing ability to exist. This example is likely to be indicative of



the growing interplay between the FCA and FOS; the advice to the industry is therefore that FOS decisions should be taken seriously.

This presents a seemingly idyllic scenario; the consumers and the industry benefitting simultaneously to deal with complaints and compensation, with the weight of the regulator behind it, without recourse to taxpayer's money. However, as with any such service, the FOS is not resistant to its own complaints and negative publicity. In recent years there has been negative press coming from FOS employees who claim they have been told to prioritise rejection rather than acceptance of consumer complaints, with rejection rates reported as high as 80%. There has been general discontent at the lack of ability to appeal an FOS decision and last month the FOS was infiltrated by an undercover journalist, the recording of which was broadcast on prime time TV in the UK. This appeared to show that some employees had undergone grossly inadequate training and were resorting to search engines to help them understand various financial products before advising on com-

plaints. Nevertheless, it seems that despite negative publicity the UK model can be effective, shown by the approximately 300,000 cases resolved last year. Additionally, following a nationwide scandal in 2011, involving millions of UK consumers being mis-sold Payment Protection Insurance, the FOS reports that PPI remains the subject of over 50% of its complaints and they have had to upscale their operation as a result, taking on 50 more Ombudsmen, thus showing the reactivity of the service.

The FCA has now published a consultation about expanding the ability to complain to companies with less than 50 employees, and within certain turnover limits. There are also now similar services across Ireland, Australia, New Zealand, South Africa, India, Italy, Greece, Finland, Norway, Sweden, Denmark, Belgium, the Netherlands, France, Switzerland, Mexico, and as mentioned, Malaysia.

The general conclusion would therefore be that the model works, the criticisms are not impossible to address and as such it remains to be seen whether any other Asian countries will follow suit. ■