

## EXTENDING OUR JURISDICTION

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This paper:

- Summarises the current extent of the Financial Ombudsman Service's *compulsory* jurisdiction
- Summarises how the *compulsory* jurisdiction is likely to be extended to more firms when they become regulated by the Financial Services Authority (FSA)
- Summarises the current extent of the Financial Ombudsman Service's *voluntary* jurisdiction
- Consults about possible extension of the *voluntary* jurisdiction to: past events for some FSA-regulated firms; mortgage intermediaries; insurance intermediaries; and (later) some consumer credit firms

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For full details of the scope of the Financial Ombudsman Service's current jurisdiction, see:

- the Act: part XVI and schedule 17 of the Financial Services and Markets Act 2000 – available at <http://www.legislation.hmso.gov.uk/acts/acts2000/20000008.htm>
- the Transitional Order: The Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001 - available at <http://www.legislation.hmso.gov.uk/si/si2001/20012326.htm>
- the Rules: The 'Redress' section of the Financial Services Authority handbook – available at <http://www.fsa.gov.uk/handbook/BL4DISPpp/Disp/TOC.pdf>

# 1 INTRODUCTION

- 1.1 Before 1 December 2001 financial complaints were resolved under eight former complaint-handling schemes:
- five ombudsman schemes – the Banking, Building Societies, Insurance, Investment and Personal Investment Authority Ombudsman Schemes
  - three other schemes – the Financial Services Authority’s Complaints Investigator, the Securities and Futures Authority Complaints Bureau and the Personal Insurance Arbitration Service.
- 1.2 From 1 December 2001, when the main provisions of the Financial Services and Markets Act 2000 came into force, the eight former schemes were superseded by the Financial Ombudsman Service. The Financial Ombudsman Service has:
- a *compulsory* jurisdiction, which certain financial firms are legally required to join.
  - a *voluntary* jurisdiction, which certain financial firms can choose to join.
- 1.3 The Financial Ombudsman Service was established to provide a ‘one-stop’ service for financial complaints. So it is desirable that our jurisdiction should be extended to become as comprehensive as possible. But this needs to be done at a rate consistent with our ability to absorb the extra work.
- 1.4 The extent of the Financial Ombudsman Service’s *compulsory* jurisdiction is set by the government (which decides what activities should be regulated by the FSA) and by the FSA. The extent of the *voluntary* jurisdiction is set by us, subject to public consultation and the approval of the FSA.
- 1.5 In reviewing priority areas for expanding the *voluntary* jurisdiction, we have considered areas where:
- there is an obvious gap because, in respect of firms we already cover, there are some cases that we cannot consider
  - we could open the *voluntary* jurisdiction sooner to firms that are likely to come into the *compulsory* jurisdiction later
  - there are firms that are prepared to join, and significant benefits for consumers if those firms were covered.
- 1.6 The paper explains the scope of the compulsory jurisdiction, the scope of the voluntary jurisdiction and some proposals to extend the voluntary jurisdiction. The general extent of all of these, and how they apply to different types of firm, is illustrated in the appendix.

## 2 COMPULSORY JURISDICTION

### Current extent: events *before* 1 December 2001

2.1 The Financial Ombudsman Service's compulsory jurisdiction in relation to complaints about events *before* 1 December 2001 is established by the Act and the Transitional Order. It covers:

- Firms, and their activities, that were covered by any of the eight former complaint-handling schemes (listed in paragraph 1.1 of this paper) immediately before 1 December 2001
- whether or not those firms and activities are now regulated by the FSA

### Current extent: events *from* 1 December 2001

2.2 The Financial Ombudsman Service's compulsory jurisdiction in relation to complaints about events *from* 1 December 2001 is established by the Act and the Rules. It is limited to the activities of FSA-regulated retail firms, and their appointed representatives, but includes some of these firms' activities that are not regulated by the FSA.

2.3 It covers about:

- 9,500 'live' firms
- 18,500 'dormant' or 'dead' firms
- 31,000 appointed representatives of investment firms

2.4 The firms comprise:

- banks and building societies
- insurance companies and Lloyd's
- investment product-providers
- investment intermediaries

2.5 Broadly, it covers the following FSA-regulated activities carried out by those firms:

- accepting deposits
- providing insurance policies
- providing investment products
- arranging, and advising on, investment products

2.6 Additionally, it covers the following non FSA-regulated activities carried out by those firms:

- providing mortgages
- providing other loans (apart from point-of-sale credit)
- providing credit cards (but not storecards)
- providing ancillary banking services (e.g. cash machines)

## Likely future extensions to other firms

- 2.7 Additional firms are expected to become subject to the Financial Ombudsman Service's compulsory jurisdiction when the government makes their activities subject to regulation by the FSA:
- Credit unions: Those in England, Wales and Scotland – about 650 in all - will be covered from the beginning of July 2002.
  - Electronic money institutions: Some of these will be subject to regulation from 27 April 2002, but the regulatory regime does not come into full effect until 27 October 2002.
  - Residential first-mortgage\* lenders that are not banks or building societies: These were due to be regulated from autumn 2002. But that has now been deferred, probably until the second quarter of 2004.
  - Residential first-mortgage\* intermediaries: These are due to be regulated, probably from the second quarter of 2004.
  - Insurance intermediaries: These are due to be regulated, probably from the second quarter of 2004.

[\* Broadly, mortgage contracts subject to FSA-regulation will be first mortgages made or varied after the date of regulation where at least 40% of the property is for occupation by the borrower or a member of the borrower's immediate family.]

- 2.8 In each case, the Financial Ombudsman Service's compulsory jurisdiction would cover complaints about events from the date the firm became subject to regulation by the FSA. The compulsory jurisdiction is unlikely to cover events before the date the firm became subject to FSA regulation.

## National Savings and Investments

- 2.9 With effect from 9 May 2002 one of the Financial Ombudsman Service's ombudsmen has acted additionally as Adjudicator for National Savings and Investments under its current legislation. Cases are handled separately, because the Adjudicator's powers are different.
- 2.10 Furthermore, the government may consider whether National Savings and Investments should become subject to the Financial Ombudsman Service's compulsory jurisdiction. This would require amendment to primary legislation.

### 3 VOLUNTARY JURISDICTION: EXISTING EXTENT

- 3.1 The Financial Ombudsman Service's voluntary jurisdiction is established by the Rules made under section 227 of the Act. It covers some complaints that are not covered by the compulsory jurisdiction.
- 3.2 It covers events both before and after the firm concerned joined the voluntary jurisdiction. As with the compulsory jurisdiction:
- There are time limits within which complaints must be brought to the ombudsman – broadly, six years from the event or (if longer) three years from when the complainant could reasonably have known there was cause for complaint.
  - Complaints are determined by reference to what the ombudsman considers fair and reasonable in all the circumstances of the case – taking into account any relevant law, regulations, regulators' rules and guidance and standards, relevant codes of practice and (where appropriate) what the ombudsman considers to have been good industry practice at the relevant time.

#### Members of former schemes

- 3.3 There are some firms that were members of one of the eight former complaint-handling schemes but are not now regulated by the FSA. These include:
- bank and building society subsidiaries that do not accept deposits but only provide mortgages, loans or credit cards
  - a small number of insurance intermediaries
- 3.4 Since 1 December 2001 these firms have been covered by:
- the *compulsory* jurisdiction (under the Transitional Order) in relation to complaints about events *before* 1 December 2001
  - the *voluntary* jurisdiction (if they join) in relation to complaints about events *from* 1 December 2001
- 3.5 There are 39 such firms, all of whom were invited to join the voluntary jurisdiction in order to cover complaints about events from 1 December 2001. So far 10 have joined. Some of the others have indicated that it is not appropriate to join, because they no longer deal with retail business.

#### Mortgage lenders

- 3.6 Most mortgages are provided by banks and building societies, which are covered by the Financial Ombudsman Service's compulsory jurisdiction. But

about 10% (by value) of mortgages are provided by other lenders that are not currently regulated by the FSA. As mentioned in chapter 2, firms providing residential first mortgages will become subject to FSA regulation (and the Financial Ombudsman Service's compulsory jurisdiction) in due course – probably in 2004.

- 3.7 Since 1 December 2001, in order to provide comprehensive coverage of mortgage complaints, the Financial Ombudsman Service's voluntary jurisdiction has been open to mortgage lenders that are not banks or building societies. It is not limited to residential first mortgages. It covers all mortgages – including buy-to-let, commercial and second mortgages.
- 3.8 36 such firms were invited to join the voluntary jurisdiction. So far 21 have joined. The rest, if they are subscribers to the Mortgage Code, are currently covered by the Mortgage Code Arbitration Scheme referred to in chapter 5.

### UK-focused EEA insurers and banks

- 3.9 Ordinarily, both the compulsory and voluntary jurisdictions of the Financial Ombudsman Service are limited to activities carried on from an establishment in the United Kingdom (UK). But from 1 April 2002, following a previous consultation launched in November 2001, the voluntary jurisdiction was extended to a restricted range of activities carried on from outside the UK.
- 3.10 These are the provision of general insurance or banking (including mortgages, loans and credit cards) by firms in the European Economic Area, using their European regulatory 'passports' to direct services at the UK. This extension accommodates, in particular, Ireland-based insurers that provide insurance cover only for UK residents.

## 4 VOLUNTARY JURISDICTION: PAST EVENTS

- 4.1 All FSA-regulated retail firms are covered by the Financial Ombudsman Service's *compulsory* jurisdiction for events from 1 December 2001 (or, if later, the date they became FSA-regulated). But coverage of earlier events in respect of FSA-regulated retail firms is complex and incomplete.
- 4.2 As a result of the Transitional Order, the *compulsory* jurisdiction covers earlier events before 1 December 2001 if:
- the firm was a member of one of the eight former complaint-handling schemes immediately before 1 December 2001; and
  - the earlier events relate to activities that would have been covered by the relevant former complaint-handling scheme.
- 4.3 As an incidental result of the rule changes mentioned in paragraph 3.9, the *voluntary* jurisdiction was extended to cover earlier events before 1 December 2001 (or, if later, the date the firm became FSA-regulated) if:
- they relate to one of the following activities: accepting deposits; providing general insurance policies; providing mortgages; providing other loans (apart from point-of-sale credit); providing credit cards (but not storecards); and providing ancillary banking services (e.g. cash machines); and
  - the activity would not have been covered by any of the eight former complaint-handling schemes by which the firm was covered immediately before 1 December 2001.
- 4.4 Neither the compulsory nor voluntary jurisdictions covers activities that:
- were regulated from 1 December 2001 or later (apart from accepting deposits and providing general insurance policies); and
  - would not have been covered by any of the eight former complaint-handling schemes by which the firm was covered immediately before 1 December 2001.
- 4.5 So, for some of the firms that we already cover, we cannot consider complaints about earlier events of the type described in paragraph 4.4. This is an area where there is an obvious gap, and scope for confusion.
- We could fill that gap by extending the voluntary jurisdiction to cover earlier events of the type described in paragraph 4.4 - assuming the relevant firms would volunteer to join.
  - To ensure firms knew what they were signing up to, the regulated activities concerned would have to be restricted to those regulated at the date the firm joins the voluntary jurisdiction.

**Question A**

Should the Financial Ombudsman Service's voluntary jurisdiction be opened up to cover complaints about earlier events of the type described in paragraph 4.4?

**Question B**

How many firms would be likely to join the voluntary jurisdiction as a result? We would welcome expressions of interest from any such firms that would volunteer to join.

## 5 VOLUNTARY JURISDICTION: INTERMEDIARIES

- 5.1 This is an area where we could open the *voluntary* jurisdiction sooner to firms that are likely to come into the *compulsory* jurisdiction later. There would be advantages to consumers, as firms will recognise:
- Mortgage intermediaries: Around half of all mortgage applications are submitted to lenders through intermediaries, who play an important role in advising consumers which loan product to choose.
  - Insurance intermediaries: Insurance intermediaries play a large role in selling, renewing and administering insurance, and in processing claims. Some products are badged in a way that leads the consumer to think that the intermediary is the insurer.

### Mortgage intermediaries

- 5.2 If a lender covered by the Financial Ombudsman Service gives advice about its own mortgages, that advice is already covered. But the activities of mortgage intermediaries, advising about mortgage loans to be provided by others, are not covered by the Financial Ombudsman Service at present.
- 5.3 Those mortgage intermediaries that deal with residential first mortgages are due to be regulated by the FSA, probably from the second quarter of 2004. That is likely to bring them into the Financial Ombudsman Service's *compulsory* jurisdiction at that time. A borrower's complaint against a mortgage lender and intermediary jointly could then be dealt with together.
- 5.4 The Council of Mortgage Lenders (CML) represents most mortgage lenders. The Mortgage Code Compliance Board (MCCB) monitors compliance by lenders and intermediaries that have signed up to the Mortgage Code. The MCCB has registered about 13,000 mortgage intermediary firms and 150 mortgage lenders.
- 5.5 We have discussed with both bodies the possible advantages of anticipating events – by opening the Financial Ombudsman Service's *voluntary* jurisdiction to mortgage intermediaries at an earlier date, perhaps in late 2002. This could cover all mortgage intermediaries, not just those dealing with residential first mortgages.
- 5.6 At present, the Mortgage Code Arbitration Scheme – which currently deals with about 100 cases per year – covers mortgage intermediaries and mortgages lenders that are not banks or building societies. MCCB has recently consulted about a change to its rules, which could lead to the Financial Ombudsman Service becoming a recognised complaint-handling scheme.

- 5.7 If the Financial Ombudsman Service opened its voluntary jurisdiction to mortgage intermediaries, the MCCB (as part of its Registration Rules) might require mortgage intermediary firms and mortgages lenders that are not banks or building societies to join the voluntary jurisdiction. But that is a matter for the MCCB rather than the Financial Ombudsman Service.

**Question C**

Should the Financial Ombudsman Service's *voluntary* jurisdiction be opened up to mortgage intermediaries within the next year, in advance of their becoming subject to the *compulsory* jurisdiction in 2004?

**Question D**

How many mortgage intermediary firms, covering how many customers, would be likely to volunteer to join the voluntary jurisdiction?

## Insurance intermediaries

- 5.8 Generally, the activities of insurance intermediaries are not covered by the Financial Ombudsman Service at present. There are a few exceptions:
- If a bank or building society arranges insurance cover for a banking customer, that is already covered as an 'ancillary banking service'.
  - Insurance-broker members of the former Insurance Ombudsman Scheme can also be covered and, so far, 2 have joined.
- 5.9 Insurance Intermediaries are due to be regulated by the FSA, probably from the second quarter of 2004. That is likely to bring them into the Financial Ombudsman Service's *compulsory* jurisdiction at that time. A consumer's complaint against any insurance company and intermediary jointly could then be dealt with together. Similar arrangements will be taking place elsewhere in Europe (Directive of Insurance Mediation).
- 5.10 Additionally, it is expected that the sale of long-term care insurance will become an FSA-regulated activity at the same time. Intermediaries who sell long-term care insurance, and many outside the industry, are keen to see confidence-building measures put in place before then. Early participation in the Financial Ombudsman Service could play a part in reassuring consumers.
- 5.11 The General Insurance Standards Council (GISC) is a self-regulatory body for insurers and insurance intermediaries. Its members include about a quarter of the 20,000 insurance intermediary firms, but (because its membership includes a significant number of large firms) those members probably deal with more than half the relevant business.
- 5.12 We have discussed with the GISC the possible advantages of anticipating events - by opening the Financial Ombudsman Service's *voluntary* jurisdiction to insurance intermediaries at an earlier date, perhaps in late 2002 or in 2003. This could cover all insurance intermediaries, whether or not they are members of the GISC, including those outside the scope of the Directive (for example, those selling ancillary holiday insurance).

- 5.13 If the Financial Ombudsman Service opens its voluntary jurisdiction to insurance intermediaries, it would then be for individual insurance intermediary firms to decide whether to join. Alternatively, the GISC might ensure its members joined the voluntary jurisdiction by changing its rules so that the Financial Ombudsman Service became the only GISC-recognised complaint-handling body for insurance intermediaries.
- 5.14 When the Insurance Ombudsman Scheme was opened up to insurance intermediaries, only a handful joined. And the Financial Ombudsman Service is already available to them, as members of a former scheme. But, with compulsory participation in the Financial Ombudsman Service on the horizon, some firms may now be keen to participate sooner. So we would welcome an indication of how many more insurance intermediary firms would be likely to volunteer to join.

**Question E**

Should the Financial Ombudsman Service's *voluntary* jurisdiction be opened up to insurance intermediaries within the next year or so, in advance of their becoming subject to the *compulsory* jurisdiction in 2004?

**Question F**

How many more insurance intermediary firms, covering how many customers, would be likely to volunteer to join the voluntary jurisdiction?

## Funding and rules

- 5.15 Extending the Financial Ombudsman Service's voluntary jurisdiction to mortgage intermediaries, insurance intermediaries or both would require appropriate arrangements for funding. These are dealt with in chapter 7. It would also require rule changes. Draft rule changes are dealt with in chapter 8.
- 5.16 It will not matter if the scope of the voluntary jurisdiction for mortgage and/or insurance intermediaries is wider than the scope of regulation. But it will defeat the object if it is narrower. So the rules setting the extent of the voluntary jurisdiction cannot be finalised until the government has finalised the scope of regulation for mortgage and insurance intermediaries.
- 5.17 The government has published the following provisional timetable for setting the scope of regulation:
- mortgage intermediaries: consultation paper was published in February 2002; legislation to be laid in parliament in June 2002
  - insurance intermediaries: consultation from July 2002 (following finalisation of the European directive); legislation to be laid in parliament in October 2002
- 5.18 Firms covered by the voluntary jurisdiction agree to follow procedures equivalent to those required by the FSA's rules about in-house complaint-

handling by FSA-regulated firms. Broadly, unless the problem is solved by close of business on the next business day:

- within 5 days: the firm must send an acknowledgement
- within 4 weeks: the firm must send *either* a final response, confirming the customer can go to the ombudsman if still dissatisfied, *or* a holding response explaining why the firm needs more time
- within 8 weeks: the firm must send a final response – and, even if no final response is sent, the customer can go to the ombudsman if still dissatisfied

## Impact

5.19 Consumers appear to find ombudsman schemes more attractive than some other forms of dispute resolution. This, coupled with a transparent in-house complaints-handling regime, could lead to more complaints being pursued all the way. If all mortgage and insurance intermediaries joined the voluntary jurisdiction:

- Based on the number of mortgage complaints we receive at present, our best guess is that mortgage intermediaries would produce up to 600 cases in a full year. That would be less than 10% of the cases currently handled by our banking and loans division.
- Based on the number of insurance complaints we receive at present, our best guess is that insurance intermediaries would produce up to 650 cases in a full year. That would be less than 10% of the cases currently handled by our insurance division.

### **Question G**

If all *mortgage* intermediaries were covered by the voluntary jurisdiction, how many cases per year would be likely to result?

### **Question H**

If all *insurance* intermediaries were covered by the voluntary jurisdiction, how many cases per year would be likely to result?

5.20 If all mortgage and insurance intermediaries joined the voluntary jurisdiction, there would be a significant administrative impact for the Financial Ombudsman Service in taking on:

- up to 13,000 mortgage intermediary firms – even with the assistance of the MCCB
- up to 20,000 insurance intermediary firms – even with the assistance of the GISC in respect of some of them.

5.21 Matters may be simplified, or might be made more complicated, by an element of crossover. Some of the mortgage intermediary firms will also be insurance intermediary firms. Some that are either, or both, will also be

known to us already for other activities – such as investment advisers covered by our compulsory jurisdiction.

## 6 VOLUNTARY JURISDICTION: CONSUMER CREDIT

### Existing partial coverage

- 6.1 As mentioned in chapter 2, the Financial Ombudsman Service's *compulsory* jurisdiction already covers FSA-regulated firms for some activities that are not regulated by the FSA:
- providing mortgages
  - providing other loans (apart from point-of-sale credit)
  - providing credit cards (but not storecards)
  - providing ancillary banking services (e.g. cash machines)
- 6.2 Additionally, the Financial Ombudsman Service's *voluntary* jurisdiction already covers some other firms. Non FSA-regulated members of any of the eight former complaint-handling schemes are covered for similar activities. Mortgage lenders are covered for providing mortgages.
- 6.3 Most consumer-credit activities require the firm to hold a licence from the Office of Fair Trading (OFT) under the Consumer Credit Act 1974. The legislation is currently being reviewed by the Department of Trade and Industry.
- 6.4 Some OFT-licensed firms are covered by the Financial Ombudsman Service (for example, as banks or building societies, or as members of one of the eight former complaint-handling schemes) but very many are not. This means:
- From the firms' viewpoint, there is no equality. Some firms are covered by the Financial Ombudsman Service. Some are not. But they are all competing with one another in the consumer-credit market.
  - From the consumers' point of view, there is confusion. They are not clear which types of firm are covered by the Financial Ombudsman Service and which are not. And some of the potentially most vulnerable consumers do not have access to the Financial Ombudsman Service.
- 6.5 Some consumer-credit firms are members of bodies such as the Finance and Leasing Association, Consumer Credit Trade Association and the Finance Industry Standards Association. All three of these bodies have a code of practice and two offer access to an arbitration service.
- 6.6 Nevertheless, consumer credit is an area where there may be firms that wish to join the Financial Ombudsman Service's voluntary jurisdiction, and significant benefits for consumers if those firms were covered.

### Possible future extension of coverage

- 6.7 The Financial Ombudsman Service's *voluntary* jurisdiction could be opened to those consumer-credit firms that are not already covered by the *compulsory*

jurisdiction and are prepared to join. In view of the large number of consumer-credit firms, that would have to be staged, in order to ensure the Financial Ombudsman Service was not overwhelmed.

- 6.8 There are about 150,000 firms with consumer-credit licences. It is difficult to be certain how many are lenders, brokers who arrange loans, debt adjusters, debt counsellors, debt collectors, credit-reference agencies or some combination of these – though it is believed that most are brokers who arrange loans. And there are also group licences that cover some activities of many thousands more of accountants and solicitors.
- 6.9 A prudent approach would be to start by opening the voluntary jurisdiction to some clearly definable area of consumer credit. Because the Financial Ombudsman Service’s jurisdiction is based on rules identifying particular types of activity, that area would have to be clearly definable as an activity – rather than, for example, by membership of a particular trade body.
- 6.10 There would be little point in opening up the voluntary jurisdiction in respect of any particular activity unless a significant number of firms operating in that area were prepared to join. So we are interested in receiving expressions of interest from firms, or groups of firms, engaged in some clearly definable consumer-credit activity.
- 6.11 If expressions of interest are widespread, we might choose the starting area on the basis of where access to the ombudsman would provide consumers with most benefit. We are interested to receive views about what those areas are, and why. Arguably, it would be better to start with lenders, rather than loan arrangers.
- 6.12 In considering where access to the ombudsman would provide consumers with most benefit, it is important to remember the nature of our role. Our role is to act as an alternative to the courts for the resolution of individual complaints. It is not our role to make rules for firms, to fix (or reduce) interest rates or to foster competition. These are matters for others.

**Question J**

We would welcome expressions of interest in joining the voluntary jurisdiction from individual consumer-credit firms, or groups of such firms, that are not already covered by the Financial Ombudsman Service – coupled with suggestions about the clearly definable activity that might be covered.

**Question K**

If expressions of interest from consumer-credit firms are widespread, which clearly definable area(s) of consumer credit would benefit most from giving consumers access to the Financial Ombudsman Service, and why?

**Section 75**

- 6.13 Section 75 of the Consumer Credit Act may apply where there is a debtor-creditor-supplier agreement – for example, where a customer uses a credit card to buy goods or services from a supplier. It makes the creditor (for

example, the credit-card issuer) equally liable with the supplier for any breach of contract or misrepresentation.

- 6.14 The result is that consumer-credit firms may receive complaints that are not about the credit supplied by the firm but about the goods or services supplied by a third party – paid for with that credit. If the Financial Ombudsman Service's voluntary jurisdiction were extended to storecards and/or point-of-sale credit, there is a significant risk that it might be inundated with complaints that were not financial complaints at all – but disputes about goods and services supplied by a third party.
- 6.15 The Rules (in *DISP* 3.3.1) already provide that the ombudsman may (but does not have to) decline to deal with a complaint on a number of specified grounds. It would be necessary to add one – so that, in appropriate cases, the ombudsman may decline to deal with a complaint which is primarily about the goods or services financed by the credit but supplied by a third party.

## 7 FUNDING

### Existing arrangements

- 7.1 The Financial Ombudsman Service's financial year runs from 1 April. From 1 April 2002:
- One half of the Financial Ombudsman Service's costs in relation to the compulsory jurisdiction is to be recovered by a levy on firms, payable in advance.
  - The other half is to be recovered by a fee per case (£360 for 2002/3), payable when the case is closed.
- 7.2 The principle of combining a levy with a case fee was inherited from the former ombudsman schemes, and was adopted by the Financial Ombudsman Service following public consultation. The levy reflects the benefit the financial services industry derives from consumer confidence being underpinned by the existence of an ombudsman scheme.
- 7.3 The levy is calculated by:
- taking one half of the budgeted cost of the Financial Ombudsman Service
  - dividing that among the different industry blocks (which are based on those used by the FSA) in proportion to the resources needed to handle the number of complaints they produce
  - dividing each industry block's share amongst the firms in that block, identified from the FSA's register, based on the firms' relative size and market share
- 7.4 The case fee is calculated by:
- taking the other half of the budgeted cost of the Financial Ombudsman Service
  - dividing that by the budgeted number of case closures.
- 7.5 Similar arrangements apply in relation to the voluntary jurisdiction, where the identity of the firms covered is already known and it is currently possible to draw direct parallels with the firms in the compulsory jurisdiction.
- 7.6 Fuller information about the existing arrangements and their development is available in consultation paper 119 (<http://www.fsa.gov.uk/pubs/cp/119/index.html>) and the associated feedback statement (<http://www.fsa.gov.uk/pubs/policy/ps119/index.html>).

## Future arrangements

- 7.7 The pattern for the compulsory jurisdiction is likely to remain broadly the same - though we may eventually consult about the possibility of differential case fees (based on the stage at which a case is resolved). The same is true for existing areas of the voluntary jurisdiction – and analogous ones, such as FSA-registered firms signing up to the voluntary jurisdiction to cover earlier events.
- 7.8 But it is difficult to apply the existing pattern to new areas of the voluntary jurisdiction, such as mortgage intermediaries and insurance intermediaries, at this stage.
- If we do not know how many firms from a particular sector will join, well before the financial year begins, it will be virtually impossible to calculate a levy.
  - To simplify matters for all concerned, we base our industry blocks (and method of calculating firm size and market share) on those used by the FSA. These have not yet been fixed for mortgage and insurance intermediaries.
- 7.9 By the second quarter of 2004 we should be able to identify a stable population of firms in these new sectors and the FSA industry blocks will have been fixed. Until then, we propose to set the levy for mortgage and insurance intermediaries at £0 and recover the whole of the cost of dealing with their complaints by means of a special case fee. In order to recover the same amount as would be raised by a normal levy plus a normal case fee, the special case fee will be double the standard case fee (making the special case fee £720 for 2002/3).
- 7.10 But there may be organisations that want to bring a substantial number of firms into the voluntary jurisdiction, and prefer the normal levy plus standard case fee pattern. If so, we would be prepared to use that pattern for those firms, provided the organisation could provide us with sufficiently robust information on which to base a normal levy - so we could be assured that the normal levy plus standard case fee would produce the same as the special case fee.

### **Question L**

Is it agreed that, until 31 March 2004, the costs associated with mortgage intermediaries and insurance intermediaries should be recovered by a £0 levy plus a special case fee equivalent to double the standard case fee?

### **Question M**

Is it agreed that we should revert to the normal levy plus standard case fee basis in respect of a block of firms where the organisation bringing in the firms wants us to do so, and provides us with sufficiently robust information on which to base a normal levy?

## 8 DRAFT RULES

- 8.1 The following draft rules are based on those that apply from 1 April 2002, following the extension of the voluntary jurisdiction to cover EEA insurers and banks directing activities at the UK. Proposed new or amended text is underlined. Text that it is proposed to delete is ~~struck-out~~.
- 8.2 As the rules form part of the FSA handbook, the overall format is set by the FSA. Accordingly:
- *Firms* means FSA-regulated firms. Firms that are not FSA regulated but are covered by the Financial Ombudsman Service's voluntary jurisdiction are called *VJ participants*.
  - To avoid renumbering existing rules, additional rules are given modified numbering. For example, where an existing rule is numbered 1.1, a new rule inserted before it would be numbered 1.-1 and a new rule inserted after the existing rule would be numbered 1.1A.

### Extent of jurisdiction

- 8.3 Extending the voluntary jurisdiction to earlier complaints in relation to FSA-regulated firms that are not already covered (see paragraph 4.4) would be dealt with by changes along the lines of those in *DISP 2.6.9 R(2A)* and *DISP 2.6.10A G* (below).

#### **Question N**

Are there any drafting points concerning *DISP 2.6.9 R(2A)* and *DISP 2.6.10A G* about earlier complaints in relation to FSA-regulated firms that are not already covered?

- 8.4 Extending the voluntary jurisdiction to mortgage intermediaries would be dealt with by changes along the lines of those in *DISP 2.6.9 R(1D)* and *DISP 2.6.9C G* (below).
- 8.5 *DISP 2.6.9C G* is based on the wording in the draft Financial Services and Markets Act 2000 (Regulated Activities)(Amendment)[No.2] Order 2002 in H M Treasury's 'Regulating Mortgages' consultation document of February 2002. But it covers all mortgages, not just residential first mortgages, in line with the Financial Ombudsman Service's existing jurisdiction in relation to mortgage lenders.

#### **Question P**

Are there any drafting points concerning *DISP 2.6.9 R(1D)* and *DISP 2.6.9C G* about mortgage intermediaries?

- 8.6 Extending the voluntary jurisdiction to insurance intermediaries would be dealt with by changes along the lines of those in *DISP 2.6.9 R(1E)* and *DISP*

2.6.9D G (below). *DISP* 2.6.9D G is based on the wording of the draft European Directive of Insurance Mediation.

**Question Q**

Are there any drafting points concerning *DISP* 2.6.9 R(1E) and *DISP* 2.6.9D G about insurance intermediaries?

2.6 To which activities do the rules apply?

**The Compulsory Jurisdiction**

- 2.6.1 R** The *Ombudsman* can consider a complaint under the *Compulsory Jurisdiction* only if it relates to an act or omission by a *firm* in the carrying on of one or more of the following activities (unless the provision described in *DISP* 2.6.3G applies):
- (1) *regulated activities*;
  - (2) lending money secured by a charge on land;
  - (3) lending money (other than *restricted credit*);
  - (4) paying money by a *plastic card* (other than a *store card*);
  - (5) the provision of ancillary banking services (see *DISP* 2.6.6G); or activities ancillary to them (see *DISP* 2.6.2R).
- 2.6.2 R** The activities in *DISP* 2.6.1R include any ancillary activities, including advice, provided by the *firm* in connection with those activities.
- 2.6.3 G Under article 3 of the *Ombudsman Transitional Order*, the *Ombudsman* can also consider a *relevant new complaint* under the *Compulsory Jurisdiction* where it relates to an act or omission of a *firm* which was, immediately before *commencement*, subject to a *former scheme*, provided that:
- (1) the act or omission occurred in the carrying on by that *firm* of an activity to which that *former scheme* applied; and
  - (2) the complainant is eligible and wishes to have the complaint dealt with under the new scheme.
- 2.6.4 G The carrying on of an activity in *DISP* 2.6.1R includes offering, providing or failing to provide and administering or failing to administer a service in relation to the activities covered by that rule. This includes the manner in which a *firm* has administered its business, provided that the business is an activity subject to the jurisdiction of the *Financial Ombudsman Service*.
- 2.6.5 G Complaints about acts or omissions by a *firm* include complaints about acts or omissions in respect of activities for which the *firm* is responsible (that is the activities of their *appointed representatives*).
- 2.6.6 G For the purposes of *DISP* 2.6.1R(5), ancillary banking services include, for example, the provision and operation of cash machines and safe deposit boxes.

**2.6.7 R A complaint about an *authorised professional firm* cannot be handled under the *Compulsory Jurisdiction of the Financial Ombudsman Service* if it relates solely to a *non-mainstream regulated activity* and can be handled by a *designated professional body*.**

2.6.8 G A complaint about a *non-mainstream regulated activity* conducted by an *authorised professional firm* will be handled by the relevant *professional body*.

### The Voluntary Jurisdiction

**2.6.9 R The *Ombudsman* can consider a complaint under the *Voluntary Jurisdiction* only if it is not covered by the *Compulsory Jurisdiction* and it relates to an act or omission in the carrying on of one or more of the following activities by a *VJ participant*:**

- (-2) *general insurance business*;**
- (-1) accepting deposits;**
- (1) lending money secured by a charge over land;**
- (1A) lending money (other than *restricted credit*);**
- (1B) paying money by a *plastic card* (other than a *store card*);**
- (1C) the provision of ancillary banking services;**
- (1D) acting as an intermediary for a loan secured by a charge over land;**
- (1E) acting as an intermediary for *general insurance business*;**
- (2) a financial services activity carried on after *commencement* and which had been covered by a *former scheme* in so far as the *VJ participant* was a member of that *former scheme*, in respect of that activity, immediately before the *commencement day*;**
- (2A) an activity which was a *regulated activity* when the *VJ participant* joined the *Voluntary Jurisdiction*, but which was not a *regulated activity* at the time of the act or omission;**

**or activities ancillary to them (see *DISP 2.6.11R*).**

2.6.9A G A complaint may be covered by the *Voluntary Jurisdiction* under one or more of the subparagraphs of *DISP 2.6.9R*.

2.6.9B G *DISP 2.6.9R(1C)* ('the provision of ancillary banking services') includes the activities referred to in *DISP 2.6.6G*.

2.6.9C G *DISP 2.6.9R(1D)* ('acting as an intermediary for a loan secured by a charge over land') includes:

- (1) making arrangements for a borrower or potential borrower to enter into, or vary the terms of, a loan secured by a charge over land;
- (2) making arrangements with a view to a borrower or potential borrower who participates in the arrangements entering into a loan secured over land; and
- (3) advising a borrower or potential borrower on the merits of entering into, or varying the terms of, a loan secured by a charge over land.

2.6.9D G *DISP 2.6.9R(1E)* ('acting as an intermediary for *general insurance business* includes introducing, giving information, proposing or carrying out work preparatory to the conclusion of, or in concluding, contracts of *general insurance business* or reinsurance, or assisting in the administration and performance of such contracts, in particular in the event of a claim. But customers of reinsurance intermediaries are unlikely to be *eligible*

complainants.

- 2.6.10 G *DISP 2.6.9R(2)* enables complaints about *VJ participants* which, immediately before the *commencement day*, were members of one of the *former schemes* replaced by the *Financial Ombudsman Service* to be dealt with under the *Voluntary Jurisdiction*. This is in respect of the financial services activities for which the *VJ participant* was previously covered but excludes complaints which fall into the *Compulsory Jurisdiction* as *relevant complaints*. So the complaints which are covered by *DISP 2.6.9R(2)* are only those which arise out of acts or omissions occurring after the *commencement day*.
- 2.6.10A G *DISP 2.6.9R(2A)* enables a *firm* that is subject to the compulsory jurisdiction for *regulated activities* to become a *VJ participant* in order to cover complaints about earlier events relating to those activities before they became *regulated activities*.
- 2.6.11 R The activities in *DISP 2.6.9R* include any ancillary activities, including advice and any ancillary *long-term insurance*, provided by the *VJ participant* in connection with those activities.**
- 2.6.12 R A complaint subject to these rules which is not covered by the *Compulsory Jurisdiction* can be considered by the *Ombudsman* even though it relates to an act or omission that occurred before the *VJ participant* was participating in the *Financial Ombudsman Service*, and whether the act or omission occurred before or after the *commencement day*, either:**
- (1) if the complaint could have been dealt with under a *former scheme*; or**
  - (2) as a consequence of the agreement of the *VJ participant* in *DISP 4.2.5R*.**
- 2.6.13 G The provisions of *DISP 2.6.12R* are made under the power in subsections 227(13) and 227(14) of the *Act*. Those subsections allows for a complaint relating to an act or omission occurring either before *commencement* or before the *VJ participant* joined the *Voluntary Jurisdiction* (or both) to be dealt with under the *Financial Ombudsman Service* ~~provided the *VJ participant* agrees~~. Under subsection 227(13), the act or omission must, ~~however,~~ be one which could have been dealt with under a *former scheme*. Under subsection 227(14), the *VJ Participant* must agree; but that agreement is provided by *DISP 2.6.12(2)R* and *DISP 4.2.5R*. Where complaints in this category are not already covered by the *Compulsory Jurisdiction* as *relevant complaints*, they can, therefore, be included in the *Voluntary Jurisdiction* under *DISP 2.6.12R*.
- 2.7 The territorial scope of the jurisdiction of the Financial Ombudsman Service
- 2.7.1 R The territorial scope of the jurisdiction of the *Financial Ombudsman Service* covers complaints about the activities of a *firm*, an *appointed representative* or a *VJ participant* carried on from an establishment in the *United Kingdom*.**

- 2.7.1A R** The territorial scope of the jurisdiction of the *Voluntary Jurisdiction* of the *Financial Ombudsman Service* also covers complaints about activities specified in DISP 2.6.9R (-2), (-1), (1), (1A), (1B) and (1C) or activities ancillary to them carried on from an establishment elsewhere in the *EEA* if the following conditions are met:
- (1) the activity is directed wholly or partly at the *United Kingdom* (or part of it);
  - (2) contracts governing the activity are, or (in the case of a potential customer) would have been, made under the law of England and Wales, Scotland or Northern Ireland; and
  - (3) the *VJ Participant* has notified appropriate regulators in its Home State of its intention to participate in the *Voluntary Jurisdiction*.
- 2.7.1B G DISP 2.7.1A R (1) covers activities which the *VJ participant* conducts with the intention that some or all of the customers relating to that activity should reside in the *United Kingdom*.
- 2.7.2 G *The Compulsory Jurisdiction:*
- (1) covers *firms* (including *appointed representatives*) operating from an establishment in the *United Kingdom*, including *incoming EEA firms* and *incoming Treaty firms* which qualify for authorisation under Schedule 3 (EEA Passport Rights) or Schedule 4 (Treaty Rights) to the *Act*; but
  - (2) does not cover complaints which concern business conducted by branches of *firms* outside the *United Kingdom* or by *EEA firms* operating in the *United Kingdom* on a services basis from outside the *United Kingdom*.
- 2.7.3 G *The Voluntary Jurisdiction:*
- (1) covers *VJ Participants* operating from an establishment in the *United Kingdom*;
  - (2) also covers complaints that concern business conducted by *VJ participants* operating elsewhere in the *EEA* but only in relation to the activities specified in DISP 2.6.9R (1) to (6) subject to the conditions in DISP 2.7.2R (1) to (3).
- 2.7.4 G A complaint can be dealt with under the *Financial Ombudsman Service* irrespective of whether the complainant lives or is based in the *United Kingdom*.

## Funding

- 8.7 The proposed funding changes are explained in chapter 7: They require two additional funding rules and two additional industry funding blocks. The *special case fee* referred to is £720 for 2002/3, as opposed to the *standard case fee* of £360 for 2002/3.
- 8.8 The reference to an organisation which 'covers' a significant number of *VJ participants* is intended to include all types of organisations – including self-regulatory organisations and membership organisations.

**4.2.15 R** Subject to 4.2.16R, any case fee for which a VJ participant falling into either industry block 5V (mortgage intermediaries) or industry block 6V (insurance intermediaries) becomes liable before 1 April 2004 will be the special case fee, instead of the standard case fee.

**4.2.16 R** If an organisation which covers a significant number of VJ participants who would otherwise fall into either industry block 5V (mortgage intermediaries) or industry block 6V (insurance intermediaries) and FOS Ltd both agree in writing:

- (1) the organisation will pay a general levy calculated by FOS Ltd for the VJ participants covered by that organisation as if they were in a separate industry block; and
- (2) the VJ participants covered by the organisation will pay the standard case fee.

### Voluntary Jurisdiction Tariff

	<b>Industry block</b>	<b>Tariff base</b>	<b>Levy</b>	<b>Case fee</b>
5V	<u>Mortgage intermediaries</u>	<u>Not applicable</u>	<u>£0</u>	<u>£720</u>
6V	<u>Insurance intermediaries</u>	<u>Not applicable</u>	<u>£0</u>	<u>£720</u>

#### **Question R**

Are there any drafting points concerning the funding rules?

## 9 SUMMARY OF QUESTIONS

### **Question A**

Should the Financial Ombudsman Service's voluntary jurisdiction be opened up to cover complaints about earlier events of the type described in paragraph 4.4?

### **Question B**

How many firms would be likely to join the voluntary jurisdiction as a result? We would welcome expressions of interest from any such firms that would volunteer to join.

### **Question C**

Should the Financial Ombudsman Service's *voluntary* jurisdiction be opened up to mortgage intermediaries within the next year, in advance of their becoming subject to the *compulsory* jurisdiction in 2004?

### **Question D**

How many mortgage intermediary firms, covering how many customers, would be likely to volunteer to join the voluntary jurisdiction?

### **Question E**

Should the Financial Ombudsman Service's *voluntary* jurisdiction be opened up to insurance intermediaries within the next year or so, in advance of their becoming subject to the *compulsory* jurisdiction in 2004?

### **Question F**

How many more insurance intermediary firms, covering how many customers, would be likely to volunteer to join the voluntary jurisdiction?

### **Question G**

If all *mortgage* intermediaries were covered by the voluntary jurisdiction, how many cases per year would be likely to result?

### **Question H**

If all *insurance* intermediaries were covered by the voluntary jurisdiction, how many cases per year would be likely to result?

### **Question J**

We would welcome expressions of interest in joining the voluntary jurisdiction from individual consumer-credit firms, or groups of such firms, that are not already covered by the Financial Ombudsman Service – coupled with suggestions about the clearly definable activity that might be covered.

### **Question K**

If expressions of interest from consumer-credit firms are widespread, which clearly definable area(s) of consumer credit would benefit most from giving consumers access to the Financial Ombudsman Service, and why?

**Question L**

Is it agreed that, until 31 March 2004, the costs associated with mortgage intermediaries and insurance intermediaries should be recovered by a £0 levy plus a special case fee equivalent to double the standard case fee?

**Question M**

Is it agreed that we should revert to the normal levy plus standard case fee basis in respect of a block of firms where the organisation bringing in the firms wants us to do so, and provides us with sufficiently robust information on which to base a normal levy?

**Question N**

Are there any drafting points concerning *DISP* 2.6.9 R(2A) and *DISP* 2.6.10A G about earlier complaints in relation to FSA-regulated firms that are not already covered?

**Question P**

Are there any drafting points concerning *DISP* 2.6.9 R(1D) and *DISP* 2.6.9C G about mortgage intermediaries?

**Question Q**

Are there any drafting points concerning *DISP* 2.6.9 R(1E) and *DISP* 2.6.9D G about insurance intermediaries?

**Question R**

Are there any drafting points concerning the funding rules?

## APPENDIX

The main provisions of the Act came into force from 1 December 2001. FSA-regulation is to be extended to residential-first-mortgage lenders and intermediaries, and insurance intermediaries in quarter 2 of 2004.

This annex illustrates the main permutations of the Financial Ombudsman Service's jurisdiction in respect of events:

- before 1 December 2001
- from 1 December 2001 until quarter 2 of 2004
- from quarter 2 of 2004

It does not cover all the possible permutations. An institution may change its activities and become, or cease to be, an FSA-regulated firm.

It distinguishes the:

- compulsory jurisdiction
- voluntary jurisdiction
- possible extensions to the voluntary jurisdiction proposed in this paper

**Events before  
1 December 2001**

**Events from  
1 December 2001**

**Events from  
quarter 2 of 2004**

### **1: institutions covered by one of the former schemes on 30 November 2001**

The 'former schemes' referred to are the eight former complaint-handling schemes listed in paragraph 1.1 of this paper.

Compulsory jurisdiction	Compulsory jurisdiction	Compulsory jurisdiction
Institutions that: <ul style="list-style-type: none"> <li>– were covered by one of the former schemes on 30 November 2001 and</li> <li>– are FSA-regulated firms from 1 December 2001.</li> </ul> For example: all building societies; many banks and insurance companies; most investment product-providers and investment intermediaries		

Compulsory Jurisdiction	Voluntary Jurisdiction	Compulsory Jurisdiction
Institutions that: <ul style="list-style-type: none"> <li>– were covered by one of the former schemes on 30 November 2001 and</li> <li>– will be FSA-regulated firms from Q2 2004 as residential mortgage lenders.</li> </ul> For example: some bank and building society subsidiaries that do not accept deposits but provide residential first mortgages.		

<b>Events before 1 December 2001</b>	<b>Events from 1 December 2001</b>	<b>Events from quarter 2 of 2004</b>
<b>Compulsory Jurisdiction</b>	<b>Voluntary jurisdiction</b>	<b>Compulsory Jurisdiction</b>
<p>Institutions that:</p> <ul style="list-style-type: none"> <li>– were covered by one of the former schemes on 30 November 2001 and</li> <li>– will be FSA-regulated firms from Q2 2004 as mortgage/insurance intermediaries for example: a few mortgage/insurance intermediaries</li> </ul>		

<b>Compulsory Jurisdiction</b>	<b>Voluntary jurisdiction</b>	<b>Voluntary jurisdiction</b>
<p>Institutions that:</p> <ul style="list-style-type: none"> <li>– were covered by one of the former schemes on 30 November 2001 but</li> <li>– are not due to be regulated by FSA.</li> </ul> <p>For example: some bank and building society subsidiaries that do not accept deposits but provide credit cards or personal loans.</p>		

## **2: institutions not covered by one of the former schemes on 30 November 2001**

<b>Voluntary jurisdiction</b>	<b>Compulsory jurisdiction</b>	<b>Compulsory jurisdiction</b>
<p>Institutions that:</p> <ul style="list-style-type: none"> <li>– were not covered by one of the former schemes on 30 November 2001 and</li> <li>– are FSA-regulated firms for accepting deposits or providing general insurance policies.</li> </ul> <p>For example: some banks and insurance companies; Lloyd's.</p> <p>The position is similar for credit-unions (but from 1 July 2002 rather than 1 December 2001) and electronic money institutions (from the date they become FSA-regulated firms rather than 1 December 2001).</p>		

<b>Not yet covered - see proposal in section 4</b>	<b>Compulsory jurisdiction</b>	<b>Compulsory jurisdiction</b>
<p>Institutions that:</p> <ul style="list-style-type: none"> <li>– were not covered by one of the former schemes on 30 November 2001 and</li> <li>– are FSA-regulated firms (other than for accepting deposits or providing general insurance policies).</li> </ul> <p>For example: some investment firms.</p>		

<b>Voluntary jurisdiction</b>	<b>Voluntary jurisdiction</b>	<b>Compulsory Jurisdiction</b>
<p>Institutions that:</p> <ul style="list-style-type: none"> <li>– were not covered by one of the former schemes on 30 November 2001 and</li> <li>– will be FSA-regulated firms from Q2 2004 as residential mortgage lenders</li> </ul> <p>For example: residential first mortgage lenders that are not banks or building societies.</p>		

<b>Events before 1 December 2001</b>	<b>Events from 1 December 2001</b>	<b>Events from quarter 2 of 2004</b>
Not yet covered - see proposal in section 5	Not yet covered - see proposal in section 5	<b>Compulsory Jurisdiction</b>
<p>Institutions that:</p> <ul style="list-style-type: none"> <li>- were not covered by one of the former schemes on 30 November 2001 and</li> <li>- will be FSA-regulated firms from Q2 2004 as mortgage/insurance intermediaries</li> </ul> <p>for example: most mortgage/insurance intermediaries.</p>		
Not yet covered - see proposal in section 6	Not yet covered - see proposal in section 6	Not yet covered - see proposal in section 6
<p>Institutions that:</p> <ul style="list-style-type: none"> <li>- were not covered by one of the former schemes on 30 November 2001 and</li> <li>- are not due to be regulated by FSA.</li> </ul> <p>For example: some consumer credit firms that provide credit cards or personal loans.</p>		

**END**