

Discussion paper on *Enhancing Consumer Protection, Reducing Regulatory Restrictions and Call for Evidence: Investigation into Will-Writing, Estate Administration and Probate Activities*

Memorandum from the Financial Ombudsman Service

4 November 2011

Summary

The Financial Ombudsman Service welcomes the Legal Services Board's recognition of the benefits of access for consumers to an ombudsman scheme. We are working closely with our colleagues in the Legal Ombudsman to minimise the difficulties that can already arise from our differing powers where our jurisdictions currently overlap, particularly in relation to ABSs.

We believe that it is in the public interest to ensure that any extensions to ombudsman coverage are made as part of an integrated and aligned redress landscape which is coherent and understandable by both consumers and businesses, and which provides clear boundaries in order to minimise overlaps and gaps – and we would welcome the opportunity of early discussions if extensions are under contemplation.

About the Financial Ombudsman Service

The Financial Ombudsman Service was established under the Financial Services and Markets Act 2000 to resolve, independently, quickly and with minimum formality, disputes between consumers and businesses providing financial services, as an alternative to the courts. As with the Legal Ombudsman, we are required to decide cases on the basis of what is fair and reasonable in the circumstances. We handle more than a million enquires and more than 200,000 new cases per year.

The regulatory landscape

As noted in the discussion paper, consumers do not usually understand the distinction between reserved and unreserved legal activities and may enter into transactions believing they have access to an ombudsman when that is not the case. The Legal Services Board's proposal to consider extending the scope of the Legal Ombudsman's jurisdiction is recognition of the benefit of access to an ombudsman scheme, and we welcome this.

But a key issue is whether the ombudsman's jurisdiction should be based on the entity or the activity involved. For example, the Legal Ombudsman has an entity-based jurisdiction over authorised legal practitioners, which covers their unreserved legal activities; while the Financial Ombudsman Service has an activity based jurisdiction over businesses carrying out activities regulated by the Financial Services Authority or covered by an individual consumer credit licence issued by the Office of Fair Trading.

This already creates gaps and overlaps, with some activities of authorised legal practitioners already falling within the jurisdictions of both the Legal Ombudsman and the Financial Ombudsman Service – with significantly differing time limits and award limits applicable. And, as the Financial Ombudsman Service already covers complaints against financial businesses acting as executors/administrators/trustees and complaints against banks providing will-writing services, there is potential for further confusion and overlaps.

It is not clear from the discussion paper whether the Legal Services Board contemplates that any extensions to the jurisdiction of the Legal Ombudsman should be entity or activity based. We would welcome early discussions on this issue. We are keen to help ensure an ombudsman landscape with clear boundaries that minimises gaps and overlaps and is coherent and clear for consumers and business, as well as being cost-effective in operation.

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