Memorandum of Understanding between
the Information Commissioner's Office and
the Financial Ombudsman Service Limited

Background

1. This memorandum of understanding provides a framework for the relationship between the Financial Ombudsman Service Limited (the FOS) and the Information Commissioner's Office (the ICO).

2. In particular, it provides for effective cooperation and communication between the FOS and the ICO in relation to matters of mutual interest and ensures that areas of potential overlap are covered and dealt with appropriately.

3. The FOS and the ICO will monitor the operation of this memorandum and will review it initially after one year of coming into force, and subsequently from time to time as necessary.

4. This memorandum is a statement of intent that does not give rise to legally binding obligations on the part of either the FOS or the ICO.

Function and powers of the FOS

5. FOS was established by the Financial Services Authority (FSA) to operate the Ombudsman Scheme established under Part XVI of the Financial Services and Markets Act 2000, as amended by the Consumer Credit Act 2006 (FSMA).

6. The scheme's statutory objective is to resolve certain disputes quickly and with minimum formality. Where an ombudsman determines a complaint, the ombudsman must do so by reference to what is, in the ombudsman's opinion, fair and reasonable in the circumstances of the case.

7. The scheme is available to private individuals, small businesses, registered charities and trustees. It has three jurisdictions:-

   - a compulsory jurisdiction covering complaints against FSA authorised firms (and those authorised at the relevant time) arising from activities regulated by the FSA (and some activities which could be);
   - a consumer credit jurisdiction covering complaints against standard licence holders licensed by the Office of Fair Trading about certain consumer credit activities under the Consumer Credit Act 2006; and
   - a voluntary jurisdiction covering complaints not arising from regulated activities or which arise out of certain transactions pre-dating regulation.

8. The ombudsman has power to dismiss a complaint without considering its merits on a number of grounds set out in the scheme rules. These include where the ombudsman considers that it would be more suitable for the matter to be dealt with by a court, arbitration or another complaints scheme and where the ombudsman is satisfied that there are other compelling reasons why it is inappropriate for the complaint to be dealt with under the FOS scheme.

9. The ombudsman may refer a complaint to another complaints scheme where he considers that it would be more suitable for the matter to be determined by that scheme and the complainant consents.

10. Where the ombudsman upholds a complaint, he can award fair compensation for economic and non-economic loss or damage up to £100,000 (plus interest) and/or direct the firm or licensee to take such steps in relation to the complainant as the ombudsman considers just and appropriate. Compensation for non-economic loss or damage can cover:-

- pain and suffering; or
- damage to reputation; or
- distress or inconvenience.

The FOS' information sharing powers

11. Under the Financial Services and Markets Act 2000 (Disclosure of Information by Prescribed Persons) Regulations 2001, the FOS and members of the panel of ombudsmen are permitted to disclose information received by them for the purposes of, or in discharge of, their functions under FSMA, in order to enable or assist them to perform those functions. They are also permitted to disclose such information to the FSA for the purpose of enabling or assisting the FSA to discharge any of its public functions. These regulations do not apply to confidential information under section 348 of FSMA.

12. Under the scheme rules, so long as he has regard to the parties' right of privacy, the ombudsman may disclose information to the FSA or any other body exercising regulatory or statutory functions for the purpose of assisting that body or the FOS to discharge its functions.

Function and powers of the ICO

13. The ICO is the UK's independent public body set up to promote public access to official information and protect personal information.

14. The ICO enforces the Data Protection Act 1998 (DPA), the Freedom of Information Act (FoIA), the Privacy and Electronic Communications Regulations and the Environmental Information Regulations. It maintains the public register of data controllers under the DPA and approves publication schemes adopted by public authorities under the FoIA.

15. The ICO carries out assessments as to whether the processing of personal data is likely to be in compliance with the DPA. Where the ICO is satisfied that any of the data protection principles have been breached, an enforcement notice can be served, requiring that an organisation takes specific steps to ensure compliance.

16. It is an offence for any current or former member of the ICO staff to disclose information obtained by or furnished to the ICO relating to individuals or businesses without lawful authority.

Overlap of complaint handling functions

17. The ICO and the FOS recognise that certain complaints referred to the FOS may involve suspected breaches of the DPA (or of any other law in respect of which the Information Commissioner has enforcement powers). They also recognise that certain complaints referred to the ICO may involve activities within the jurisdiction of the FOS. The ICO and the FOS therefore agree that such complaints should be handled according to the following principles.

18. The fact that a complaint, or part of a complaint, referred to the FOS could also be considered by the ICO under its powers to investigate alleged breaches of the DPA will not preclude the FOS from dealing with such a complaint in accordance with its usual procedures and from making an award of compensation, where appropriate. The complainant could, in any event, also refer the alleged breach of the DPA to the ICO.

19. Therefore, in cases where:

- a complaint is referred to FOS which involves personal data or information issues that cannot be dealt with by FOS or, otherwise, where the ombudsman decides that the complaint should be dismissed, or
- a complaint could be considered by the FOS but the ombudsman considers that it would be more suitable for the matter to be dealt with by the ICO

the FOS will either inform the complainant that he may refer the matter to the ICO or the FOS may, with the complainant's consent, refer the complaint directly to the ICO.

20. The FOS will, where necessary for the resolution of a complaint, confer with the ICO on the application or interpretation of the Data Protection Act (or of any other law in respect of which the Information Commissioner has enforcement powers). Where there is a complaint by, or any request for advice from, an individual in relation to rights under the DPA, or a matter relates to the monitoring or compliance with any information or enforcement notice issued by the Information Commissioner under the DPA (or any order or similar measure issued by the Information Commissioner under any other law in respect of which the Information Commissioner has enforcement powers) the FOS will refer the matter to the ICO.

21. In addition, subject to any relevant restrictions on the disclosure of confidential information, if any evidence comes to light, during the investigation of a complaint by the FOS, of the likelihood of a criminal offence under the DPA, the FOS will notify the ICO.

22. However, where the FOS concludes that there has been maladministration relating to or mishandling of personal information, the FOS may take account of this in resolving the complaint, without informing the ICO. Examples might include:

- a failure to update customer details, or
- an accidental disclosure of personal data.

23. Where the ICO receives a complaint involving financial services issues, the ICO will either inform the complainant about the FOS or refer the complaint to the FOS with the complainant's consent but may still deal with the data protection issues raised.

Issues with wider implications

24. Subject to any relevant restrictions on the disclosure of confidential information, if the investigation of an individual complaint or a number of similar complaints by the FOS gives rise to concerns that there are serious shortcomings in a business's compliance with, or general understanding of, the DPA, the FOS will confer with the ICO and report any trends.

General cooperation between the FOS and the ICO

25. Subject to legal restraints and at their discretion, the FOS and the ICO will exchange information about matters of general principle and of general or specific importance arising out of and relevant to the exercise of their respective functions. The ICO may rely on the legal basis set out in s59(2)(e) DPA when the disclosure is necessary in the public interest. In particular, the FOS and the ICO agree to provide each other with regular updates about matters of mutual interest and to meet at regular intervals to discuss activity in general. In sharing information, the FOS and the ICO will comply with the DPA and all other relevant law.

Contact

26. In relation to the exchange of information and the operation generally of this memorandum, the relevant points of contact are:-

FOS – Policy and Research Unit – 020 7093 5586

ICO – Data Protection Practice Team (Private Sector) – 01625 545700

May 2008

Signature removed

David Smith
Deputy Commissioner
Information Commissioner's Office

Signature removed

David Thomas
Corporate Director and Principal Ombudsman
Financial Ombudsman Service