

SIR CHRISTOPHER KELLY, CHAIRMAN, FOS.

Speech to AIFA Dinner on 29 November 2005

I am delighted to be invited here this evening to say a few words about the Financial Ombudsman Service and its interactions with Independent Financial Advisers. I am even more delighted before I begin to record, on behalf of the Service, a warm welcome to your new Director General Chris Cummings. I should say how much I and my colleagues were saddened that illness prevented David Severn from continuing in post. We wish him a speedy and sustained recovery.

Most of you will be familiar with our work and where it fits in to the regulatory framework. But some of you may know us better than others. So you will forgive me if I remind you of where we come from. Like the FSA, we did not spring fully formed into the world when the Financial Services and Markets Act came into force in 2001, 4 years ago this week. Ombudsmen in financial services had been around for a long time before that.

The first ombudsman scheme for financial services was in fact brought into being 25 years ago as a voluntary initiative by the insurance industry. Its origin had nothing to do with Government. But the insurance companies involved knew that the initiative would have no credibility unless consumer bodies gave it their support. So they approached the National Consumer Council, and the negotiations that followed produced the first private sector ombudsman model. Schemes covering investment, banking and other financial services followed.

From the beginning therefore the ombudsman schemes resulted from a partnership between industry and consumer interests, embodied in independent institutions; and the key features of original schemes - independent, private dispute resolution, a free service for consumers, holding a balance between consumer and industry interests and fair and reasonable adjudication outside the court system - remain the same today.

So does one of the key purposes of the scheme - to help maintain the confidence of consumers

in the financial system. We hope that, despite the occasional irritation, your firms can see our service as potentially adding value to your own. If you are faced with a disappointed customer to whom you are trying unsuccessfully to explain why you are not to blame for his or her disappointment, you can refer them to the Ombudsman for an independent and impartial view.

What has changed in the last few years is that we are now dealing with many more complaints. Over four times as many - from 25,000 in our first year to an expected 115,000 this year. We now employ around 1,000 staff.

I once made the mistake, soon after taking over as Chairman, of saying to the chief executive of one of the other trade associations that I thought the Ombudsman was a nice little organisation. She looked at me as if I was mad. She may have been partly right. Certainly we are no longer little. I am bound to say that that is not our own fault, nor what we desire. Our ambition must be to see us becoming small but perfectly formed once again. Achieving that objective will, however, depend on improvements by firms in handling customer complaints.

Ideally that would also result in considerably less business for complaints handling firms, though unfortunately that particular cat might now have been well and truly let out of the bag.]

That said, it is worth saying a little about what our experience of the individual advice sector has been. It is not entirely what you might have expected if you were to believe some of the more lurid stories in the trade press.

The facts tell a very different story. Our experience is that the tabloid focus on disgruntled, confrontational, mis-selling IFAs is completely unrepresentative of the huge majority of hard-working professionals keeping their heads down and performing a valuable service for clients.

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Indeed, on the whole, the Financial Ombudsman Service's experience tells a remarkably positive story for IFAs. Despite the significant role you have in the selling of financial products, the number of complaints we receive that are about IFAs is modest. Even in areas like pensions, less than a quarter of the cases we receive are about IFAs. Overall just 14% of all the complaints we receive are against independent advisers.

In contrast the top 10 financial services groups account for nearly two thirds of our work.

On outcomes the IFA sector can tell an equally positive story. In the present financial year to date, only around 20% of all cases against IFAs were upheld. So in 4 out of 5 cases involving Independent Financial Advisers we found in favour of the firm. In contrast the uphold rate for other sectors was over 30%.

Put another way, out of every 100 cases from all sources coming to the Ombudsman we find in favour of the complainant in only about 30 of them; and only 3 of those cases will concern Independent Financial Advisers. This statistic is the more remarkable in the context of the amount of business conducted by IFA firms.

For mortgage endowments – the subject matter of two thirds of our cases - the picture is even clearer. Here we uphold over 40% of the complaints raised against providers and lenders. For IFAs the rate of upheld cases is less than half that.

This is not to say of course that we always agree. There are those cases where, after careful consideration of the facts and the circumstances at the time, the ombudsman will conclude that things did not go as they should.

But in most cases we resolve matters with the firm and the complainant informally and amicably. Most of our cases are agreed through our process of guided mediation where we propose a settlement for agreement by both parties. We do not exercise our formal powers under the Act lightly. In only a very small proportion of our cases – no more than 5% - do we use the formal powers of the ombudsman to require a firm to pay compensation.

But this wider balanced picture can of course be difficult for the individual adviser to see. Not least because each year the large majority of IFAs will have no complaints raised against them with us at all. Even for that minority that do have complaints referred, most will have only one or two cases raised a year.

It is also understandable that complaints should be experienced very differently by small firms than by large.

Small firms do not have the same luxury of distance from their customers as larger firms with customer care departments and deep corporate pockets. If a complaint is made against your firm it will feel very personal. It will often be about what you have done (or not done) – not what has happened in just another department of a large organisation where an apology and a compensation cheque is easy to dispense.

To make matters worse those in smaller firms often feel disempowered and unable to handle a client's complaint in the way they would like, as the matter is in the control of their PI insurer and its lawyers. Even those supported by a network can feel somewhat on their own when it comes to a complaint against them.

So we have been listening carefully to the views of the sector. We have made changes to address concerns; and we are looking to improve further our ways of working to reflect the particular needs of smaller firms.

In particular we have provided better information and guidance to firms about our process and procedures when they are involved in a complaint. Our web-site provides guidance on our approach to a wide range of complaint issues relevant to IFAs and our technical help team and outreach programme speaks to 100s of firms every year, not least through AIFA events. We certainly do not hide in our Docklands bunker. We want advisers to engage with us and talk to us directly, rather than to believe some of the more extreme urban myths about us.

Our aim is to help you avoid complaints where possible and where they do arise to guide you through our process so you can express your side of the story clearly, calmly and effectively.

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Any speech about the ombudsman service to a roomful of IFAs that fails to include a word or two about fees might leave the audience rather surprised. No one likes paying fees. However good value the service we offer – and I believe it is good value - I can hardly expect our invoices to be greeted with smiles from contented and happy fee payers. I speak from bitter experience.

But like taxes, there is a certain amount to be raised to fund our scheme and we have to find the way of raising it that operates fairly and causes the least resentment. We have greatly improved the regime for small firms, but I am far from satisfied that we have yet got it right. The system that applies equally to firms both large and small that was designed at N2 may no longer be appropriate – at least for small firms - and I want to explore the case for a fundamental change. So in tandem with the FSA reaching conclusions about its review of the FSCS levy we will want to be talking to you about our own charging arrangements. I do not yet know what changes might be possible. But by way of example one of the options we will certainly want to look at for small firms is to increase our general scheme levy – at present only £25 per approved person – and do away with the £360 case fee altogether.

Of course we may find immovable obstacles in our way, or you may eventually tell us that the present system is the least worst option, and no change would be best. But at least we will have tried.

I want to conclude what I see as a really encouraging development. In responding to a complaint, the majority of IFAs will not be sure how their peers were conducting business at any point in time, and find it difficult to articulate what reasonable industry practice would have been at the time. So it would seem sensible to record what good industry practice is today, with a view to helping firms not only now but in the future when it comes to responding to a complaint. That would mean that future ombudsmen will have solid evidence to which to refer in trying to resolve disputes in five or ten years' time. This is the aim of an ambitious initiative that AIFA has launched under the title "stakes in the ground". I am told that this project has the support of the other main trade associations and moves to get this project under way are well on track. I am very heartened

by this development and would like to record my support for it.

The Financial Ombudsman Service exists to underpin confidence in financial services for firms and for consumers. The availability of independent advice is widely recognised as a vital component of a thriving and competitive sector. Our activity is part of the backdrop against which firms and consumers are, we hope, able to derive justified confidence in fair dealing in a fair market. We recognise that we have challenges across a wide spectrum of sectors. But if we can work with financial firms, and understand each other better, we will all be in a position to offer a better service to those for whom we both work – the consumers of financial services, your clients.

Thank you for listening to me.