

Senator David Bushby
Chair
Senate Economics References Committee
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

28 June 2012

Dear Senator

Senate inquiry into the post-GFC banking sector Response to comments about Financial Ombudsman Service

We have become aware that an undated submission made to the inquiry by Mr Greg Cadwallader contains comments about the Financial Ombudsman Service (“FOS”). This letter sets out our response to those comments. We have no objection to this letter being made public.

Information about FOS

FOS commenced operations on 1 July 2008. It is an independent dispute resolution scheme that was formed through the consolidation of three schemes:

- the Banking and Financial Services Ombudsman (“BFSO”);
- the Financial Industry Complaints Service (“FICS”); and
- the Insurance Ombudsman Service (“IOS”).

On 1 January 2009, two other schemes joined FOS, namely:

- the Credit Union Dispute Resolution Centre (“CUDRC”); and
- Insurance Brokers Disputes Ltd (“IBD”).

FOS is an external dispute resolution (“EDR”) scheme approved by ASIC. Membership of FOS is open to any financial services provider carrying on business in Australia including providers not required to join a dispute resolution scheme approved by ASIC. Replacing the schemes previously

operated by BFSO, FICS, IOS, CUDRC and IBD, FOS provides free, fair and accessible dispute resolution for consumers unable to resolve disputes with financial services providers that are members of FOS.

Members of BFSO, FICS, IOS, CUDRC and IBD are now members of FOS. The members of those schemes included:

- BFSO – credit providers, mortgage brokers, payment system operators, Australian banks and their related corporations, Australian subsidiaries of foreign banks and foreign banks with Australian operations;
- FICS – life insurance companies, fund managers, friendly societies, stockbrokers, financial planners, pooled superannuation trusts, timeshare operators and other Australian financial services providers;
- IOS – general insurance companies, re-insurers, underwriting agents and related entities of member companies;
- CUDRC – credit unions and building societies;
- IBD – insurance brokers, underwriting agents and other insurance intermediaries.

FOS and its predecessor schemes have over 20 years experience in providing dispute resolution services in the financial services sector, and it is estimated that FOS covers up to 80% of banking, insurance and investment disputes in Australia.

FOS provides services to resolve disputes between member financial services providers and consumers, including certain small businesses, about financial services such as:

- banking;
- credit;
- loans;
- general insurance;
- life insurance;
- financial planning;
- investments;
- stock broking;
- managed funds; and
- pooled superannuation trusts.

As well as its functions in relation to dispute resolution, FOS has responsibilities to identify and resolve systemic issues and obligations to make certain reports to ASIC. FOS also monitors compliance with a number of industry codes of practice.

FOS is a not for profit organisation that provides services free to consumers. FOS is funded by its members, which are financial services providers. A significant proportion of our funding is from case fees, and the fees paid by a financial services provider reflect the number of disputes in which it is involved and the stages to which they progress.

FOS is governed by a board with an independent chair and:

- four “industry directors” appointed based on their expertise in and knowledge of the financial services industry, independence and capacity and willingness to consult with the industry; and
- four “consumer directors” appointed based on their expertise in consumer affairs, knowledge of issues pertaining to the industry, independence and capacity and willingness to consult with consumer organisations.

Response

Mr Cadwallader’s submission alleges that FOS is not independent. This response explains that FOS meets standards imposed under legislation to ensure that it is independent of the financial services industry and provides high quality dispute resolution services. The standards dictate our organisation’s structure and many aspects of our processes.

FOS is approved by ASIC to operate as an EDR scheme under the *Corporations Regulations 2001* and the *National Consumer Credit Protection Regulations 2010*. Those regulations require ASIC to take the following considerations into account when deciding whether to approve an EDR scheme:

- accessibility;
- independence;
- fairness;
- accountability;
- efficiency;
- effectiveness; and
- any other matter ASIC considers relevant.

ASIC’s Regulatory Guide 139 *Approval and oversight of external dispute resolution schemes*¹ (“RG 139”) explains the requirements that an EDR scheme has to meet to obtain and maintain ASIC’s approval. FOS meets the requirements under RG 139. To continue to operate, FOS has to continue to meet these requirements and maintain ASIC’s approval.

RG 139 includes requirements to ensure that an EDR scheme is independent of the industry that funds the scheme. Examples of the requirements to ensure independence are:

- the decision making processes and administration of a scheme must be independent of the industry;
- a scheme must be a legal entity in its own right;
- a scheme must have an overseeing body with responsibility to oversee the operations of the scheme and to preserve the independence of the scheme and of the dispute resolution processes;
- a scheme’s overseeing body must ensure that the scheme has sufficient resources to perform its functions;

¹ Available on www.asic.gov.au under “Publications”.

- membership of a scheme's overseeing body should comprise –
 - equal numbers of consumer and industry appointees and
 - an independent chair;
- a scheme must not allow members a power of veto in relation to amendments to its constitution or Terms of Reference; and
- a scheme must consult with stakeholders about the development of its Terms of Reference and proposed amendments to them.

We meet the requirements for independence in RG 139. This is a key criterion for approval of an EDR scheme by ASIC. Our decision making in disputes is independent of industry.

Mr Cadwallader's submission alleges that FOS is not independent by stating:
"It's a little-known fact that the Financial Ombudsman Service **Ltd** is a company wholly owned and controlled by financial institutions. Therefore the Commonwealth Bank, being a part-owner, has full control over decisions made by the Financial Ombudsman Service **Ltd**."

The allegation is based on the fact that the members of the company Financial Ombudsman Service Limited are financial services providers. The requirements explained above ensure that financial services providers cannot influence our decision making in regard to disputes, however.

If you would like us to clarify any aspect of this response or provide more information, we would be happy to do so.

Yours sincerely

Shane Tregillis
Chief Ombudsman