

WORKING LIFE

# Financial Ombudsman Service in eye of a new storm

## Should the arbiter for businesses and banks be replaced or just strengthened?

James Hurley

December 3 2018, 12:01am, The Times



Paul and Nikki Turner were victims of the HBOS scam

CHRIS J RATCLIFFE FOR THE TIMES



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After years of bitter discord between small companies and financial institutions, there is agreement at last that business owners have scant access to justice when the relationship with their lender goes sour.

The Financial Conduct Authority, groups representing small employers, the government and even big banks have arrived at a consensus that business customers need somewhere independent to bring complaints when they feel that they've been mistreated.

Sadly, though, that's where the accord ends.

Small businesses can seldom afford to take legal action against a financier, and the lack of regulation of commercial lending means they are often left with nowhere to turn when they are mistreated. Compensation schemes set up and run by banks in recent years understandably lack the trust of victims because of the conflict of interest at their heart.

Among the banking industry and government, the preferred solution is an extension of the role of the Financial Ombudsman Service, Britain's financial arbiter, so that hundreds of thousands more small companies have access to its dispute resolution facilities. Yet the Treasury select committee and representatives of small companies, including the all-party parliamentary group on Fair Business Banking, believe a new financial services tribunal should be created.

As it stands, the ombudsman — the largest organisation of its type in the world — can help only the smallest of companies. Those with fewer than ten staff and a balance sheet of up to £2 million can get an independent view on their complaint and the ombudsman can compel financial organisations to pay compensation of up to £150,000. About one in three complaints from small businesses to it are upheld.

From April next year, the service will be extended so that companies with annual sales below £6.5 million and fewer than 50 staff, or an annual balance sheet below £5 million, will gain access to it and the reward limit will rise to £350,000. On Friday, UK Finance, the banking industry trade body, said that seven leading banks were willing to fund the cost of going even farther, so that companies with sales of up to £10 million should be able to access a specialist ombudsman service, preferably run by the FOS. Under this extension, planned for September 2019, the award limit would rise to £600,000.

This year, the FOS was battered by a Channel 4 documentary, which suggested that poorly trained staff with little grasp of financial products were ruling whether or not claims should be upheld. It also has been claimed that it unduly favours banks in decisions to speed up its work. Despite highlighting some shortcomings, a subsequent independent review of the ombudsman service's work concluded that it provided an effective solution. Many small business owners are unconvinced and the parliamentary business banking group says the ombudsman has a track record of "dubious decisions".

Nikki Turner, a victim of a bank fraud with experience of complaining to the service, says: "The idea of extending the remit of FOS, which doesn't have a good track record and is already stretched to the point of collapse, is doomed to failure." Ms Turner, a director of SME Alliance, a group representing small businesses, added that even the higher compensation level would be inadequate for many of her members.

Larry Berkovitz, owner of a small Essex-based property development company, asked the ombudsman to intervene over

what he saw as inadequate redress for damaging derivatives products mis-sold to him by his bank. The ombudsman rejected Mr Berkovitz's complaint, with its decision influenced by a document provided by the bank it would not allow the businessman to see, citing commercial sensitivity. "I don't want to make accusations about collusion, but this sort of behaviour makes people suspicious," he said. "It makes a mockery of fairness."

The ombudsman service says that it invokes such a rule only in "limited circumstances", but Abhishek Sachdev, chief executive of Vedanta Hedging, a financial advisory service for businesses, said he had regularly come across this issue. "There is opacity," he said. "They rely on things that banks show them. Transparency is critical."

Other issues include the fact that the ombudsman does not have the power to compel witnesses, take evidence under oath or test evidence by cross-examination. Since the service is more used to dealing with issues such as payment protection insurance than complex small business complaints, there are question marks, too, over how its expanded remit would be resourced. The service has about 350 ombudsmen and 1,670 case-handlers to investigate cases and make decisions. It says it does not measure how many work on small business cases. The FCA is recommending a "dedicated team of 20 SME investigators" is deployed.

Despite its shortcomings, Mr Sachdev agrees with the idea of a beefed-up Financial Ombudsman Service, so long as its processes are modified. "It is pragmatic . . . Of course I would like something like a tribunal, but the amount of time, energy, willpower and resource to create something from scratch means it is too difficult. I have issues with FOS, but they have also done a lot of good."

The Democratic Unionist Party is among those who still believe a tribunal is needed. Jim Shannon, a DUP MP, said his concern over UK Finance's exclusion of the tribunal is "compounded by

the legitimate concerns of many SMEs about the independence of past bank-led redress processes”.

**Comment: Tribunal would not be the best option for companies**

Ten years on from the onset of the financial crisis, we continue to feel the aftershocks (John Glen writes). While we have made many significant changes there is more the industry needs to do to rebuild its reputation, particularly among small businesses.

Voluntary compensation schemes for companies who suffered at the hands of a restructuring scandal at RBS and the fraud at HBOS Reading were the right thing to do, but banks need to do more for all small businesses and I'm glad the industry has recognised this.

This week UK Finance, the banking trade body, announced that the sector will set up an independent scheme to give small businesses the chance to resolve a past complaint with their bank where it has not already been dealt with by an existing scheme. This is a step in the right direction.

There are those who have argued that a new financial services tribunal needs to be established to handle disputes between banks and small businesses. I understand why some might find this approach appealing, but I do not believe this would be in the interest of business. Tribunals make decisions in accordance with the law, which means the government would need to start regulating lending to small businesses for the first time in our economy's history. The likely result would be higher costs, fewer products and, ultimately, reduced access to credit for small businesses.

Simon Walker, the former director general of the Institute of Directors, came to the same conclusion in his recent review of dispute resolution. He highlighted the fact that an ombudsman can make decisions based on what is “fair and reasonable” even when no law has been broken, as well as it being quicker and cheaper for small companies than a tribunal.

Some have justifiably challenged the current ombudsman approach, claiming that some businesses who are too large to go to the Financial Ombudsman Service (FOS), are also too small to have access to dedicated legal resources, meaning they are less likely to be able to take a bank to court. But that is exactly why there are plans to expand access to the FOS to more than 99 per cent of businesses in April, an extension which will give businesses a free, quick and impartial route for resolving a dispute with their bank. It is also why the banking industry has now agreed to set up a voluntary ombudsman scheme to give larger businesses — with a turnover of up to £10 million — the opportunity to deal with a banking dispute without the expense of going to court.

This ombudsman-led approach will ensure that small businesses are able to challenge the banks for their past mistakes, while also protecting them in the future — and without the added costs of a tribunal. That’s why I believe it is the best approach to rebuild trust between business owners and their bankers.

*John Glen is economic secretary to the Treasury and City minister*

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A

**Andrea Willows** · 6 DAYS AGO

As someone who has been well and truly scammed by natwest/rbs grg I beleive the only way forward is a tribunal which should have the powers to deal with historic complaints even if they have allegedly been dealt with by the totally incompetent FOS

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Report

C

**Challenger** · 6 DAYS AGO

The FOS has the reported track record of dubious decisions. Further it tends towards box-ticking - has there been a process rather than looking at the whole i.e. what is the fairness of the steps undertaken within the process. It is in danger of becoming increasingly irrelevant by being perceived to act as a collaborator with the financial services industry.

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J

**James Bilclough** · 6 DAYS AGO

There is no argument other than the government and banks do not want to give SME's the justice they are entitled to. SME's were done over like a kipper by the banks with the support of the government....daylight robbery and criminal

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M

**MrGB** · 6 DAYS AGO

John Glen knows the true reason why the Treasury won't allow Tribunals: they'd open the floodgates to some very large historic claims, the result of which is that the banks would need recapitalising again - especially the insolvent basket case, RBS.

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**Toby Mory** · 3 DECEMBER

FOS isn't fit for purpose under its current remit, so extending its scope to cover business customers would be disaster. The functional capabilities, aptitude, competence & ethos of FOS is a joke - that isn't funny.

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Report

**Wayzgoose** · 3 DECEMBER

As a small business owner I have made two complaints to the Financial Ombudsman, in my view although the staff are competent and helpful, the Service lacks the clout to make Banks and others respond and rectify.

The first complaint was about our Bank using increased risk as the reason to justify an arbitrary significant increase in our overdraft rate. The FOS did not have the authority to require the Bank to demonstrate how they calculated this risk. I demonstrated to both the FOS and the Bank the risk had in fact reduced (although effectively the risk was zero as both Directors were required to personally guarantee the facility).

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