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On 20 May 1997, the Chancellor of the Exchequer announced that the Government proposed to bring forward legislation to transfer responsibility for banking supervision to the Securities and Investments Board (SIB), and to replace the current system of self-regulation under the Financial Services Act with a new and fully statutory system, in which the SIB would become the single regulator. On 23 July 1997, the Chancellor of the Exchequer announced that the insurance supervisory functions carried out by the Insurance Directorate of the Department of Trade and Industry and the functions of the Registry of Friendly Societies, the Building Societies Commission and the Friendly Societies Commission would also be transferred to the new single financial regulatory body.

The new single regulator will be the Financial Services Authority (FSA), as the SIB has been renamed. This consultation paper is published by the FSA on behalf of the FSA and all the bodies for whose activities it will become responsible.

Comments are sought on the proposals set out in this consultation paper.

Comments should be made in writing to:

The Consultation Office
The FSA
Gavrelle House
2-14 Bunhill Row
London
EC1Y 8RA.

They should arrive by **18 February 1998**.

The FSA will assume that your response is not confidential unless you indicate otherwise.

Introduction and summary

Introduction

- 1 The Government has said that the protection of consumers of financial services will be one of the statutory objectives which are to be set for the Financial Services Authority ('FSA') in the new legislation. Effective procedures for handling consumer complaints about FSA authorised firms will have a key role to play in achieving that objective.
- 2 The purpose of this document is to seek views on the arrangements for complaints-handling which should apply to firms authorised by the FSA once the proposed financial regulatory reform bill comes into force, probably in late 1999. This date is referred to in this document as 'N2 date'.
- 3 Complaints-handling arrangements are in place for most of the firms¹ which are currently regulated or supervised by the nine organisations which are to form the FSA, but these vary in significant respects. The creation of the FSA provides an opportunity to consider whether changes are appropriate or necessary. Ministers have decided how they would like to proceed on some of the key issues and this paper discusses, against that background, how the existing arrangements should be rationalised.
- 4 As described in "Financial Services Authority: an outline", published on 28 October 1997, the FSA will acquire its powers in two stages. First, the Bank of England Bill will transfer from the Bank to the FSA responsibility for supervising banks, listed money market institutions and related clearing houses. This is likely to happen in about April 1998. Second, the proposed financial regulatory reform bill will create a new statutory regime under which the FSA will, in broad terms, acquire the regulatory and registration functions

¹ The term "firm" is used here to include businesses, societies and institutions.

currently exercised by the bodies listed in paragraph 12 below. This will take effect on N2 date.

- 5 Until N2 date, the assumption is that the current arrangements for resolving complaints between consumers and firms will continue to apply. The framework which is to operate after N2 date for handling complaints and resolving disputes between consumers and firms will be set out in the legislation. The arrangements which will be put in place are the subject of this consultation paper.

Summary of main issues

- 6 Ministers have decided in principle that:
 - (1) there will be a single financial services Ombudsman scheme; and
 - (2) membership of that scheme will be compulsory for firms which are authorised by the FSA.
- 7 These decisions, and the reasons behind them, are described in greater detail within this paper.
- 8 In the light of these decisions the FSA's proposals address the following areas:
 - (1) whether the compulsory complaints-handling scheme should apply to all firms for which the FSA will be responsible (paragraphs 54 and 55);
 - (2) which business activities should be covered by the scheme (paragraphs 56 to 68);
 - (3) which group or groups of consumer should be eligible to have their complaints dealt with by the scheme (paragraphs 69 to 74);
 - (4) whether awards by the Ombudsman should be binding and, if so, on whom, and how can awards be made enforceable in a way which is fair to the firm concerned (paragraphs 75 to 82);
 - (5) what should be the basis on which the Ombudsman judges whether to uphold a complaint (paragraphs 83 to 87);
 - (6) to whom should the scheme be accountable and what should be the scheme's governance arrangements (paragraphs 88 to 99);
 - (7) what links will the scheme need to have with the FSA (paragraphs 100 to 105);
 - (8) how should the scheme be funded (paragraphs 106 to 116);
 - (9) what interaction should there be between the scheme and the separate arrangements for compensating a default by a firm (paragraphs 117 to 126);

- (10) to whom should the consumer look for enforcement of an award (paragraphs 128 to 129); and
- (11) what powers will the Ombudsman need to have, and what procedures should he employ (paragraphs 130 to 135).

Consultation process and timetable

- 9 The responses to the proposals and questions set out in this paper will be taken into account in formulating the arrangements for complaints-handling in the new regulatory structure after N2 date. They will also, where appropriate, inform the content of the forthcoming legislation on regulatory reform.
- 10 We envisage that there will be further consultation during 1998 when the financial regulatory reform bill is published for consultation.
- 11 The FSA is also carrying out a separate but simultaneous consultation exercise on “Consumer Compensation”. As noted later in this paper, some aspects of complaints and compensation are inter-related.

The existing schemes and the case for change

The existing complaints-handling schemes

- 12 From N2 date the FSA will combine the regulatory and registration functions of the following bodies:

<i>Building Societies Commission</i>	Building societies
<i>Financial Services Authority (FSA) (formerly The Securities and Investments Board)</i>	Investment business (including responsibility for supervising exchanges and clearing houses)
<i>Friendly Societies Commission</i>	Friendly societies
<i>Insurance Directorate of the Department of Trade and Industry</i>	Insurance ²
<i>Investment Management Regulatory Organisation (IMRO)</i>	Investment management
<i>Personal Investment Authority (PIA)</i>	Retail investment business
<i>Registry of Friendly Societies</i>	Credit unions' supervision (and the registration and public records of building societies, friendly societies, industrial and provident societies and other mutual societies)
<i>Securities and Futures Authority (SFA)</i>	Securities and derivatives business
<i>Supervision and Surveillance Division of the Bank of England</i>	Banking supervision (including the wholesale money market regimes)

² Ministerial responsibility for this area is expected to transfer to HM Treasury shortly.

- 13 From that date the FSA will therefore be responsible for supervising the firms which those bodies currently authorise.
- 14 Complaints against the firms which carry out the business activities referred to above are currently handled by the following schemes:

<i>The Banking Ombudsman</i>	Banks ³
<i>The Building Societies Ombudsman</i>	Building societies
<i>The Investment Ombudsman</i>	Firms regulated by IMRO
<i>The Insurance Ombudsman</i>	Insurance companies and their tied agents ³
<i>The Personal Insurance Arbitration Service</i>	Insurance companies ³
<i>The PIA Ombudsman Bureau</i>	Firms regulated by PIA: life assurance companies and their agents, and independent financial advisers
<i>The SFA Complaints Bureau and Arbitration Service</i>	Firms regulated by SFA
<i>The FSA Direct Regulation Unit and Independent Investigator⁴</i>	Firms regulated by the FSA (formerly known as the SIB)

(Details of the individual schemes are set out at Appendices 1 and 2.)

- 15 The schemes operated by the Banking Ombudsman, the Building Societies Ombudsman and the Insurance Ombudsman, and the Personal Insurance Arbitration Service, have been set up by the industries concerned and are referred to in this paper as “industry-led”. The other schemes have been set up by the regulators operating under the Financial Services Act 1986 (‘FS Act’).
- 16 An indication of the volume of complaints handled by these bodies in 1996/97 is provided at Appendix 3.

The case for change

- 17 These schemes are different in several material ways. Some are compulsory, others voluntary. Some are set up under statute, others are based in contract. Some have been set up by the industry, others by regulators. And some use ombudsmen and others arbitrators. There are also significant differences between the schemes in terms of eligibility criteria⁵, limits on awards, the

³ Participation in these schemes is voluntary.

⁴ Only a very small number of firms is now regulated directly by the FSA; for the most part, complaints-handling is carried out by the PIA Ombudsman on the FSA’s behalf.

⁵ i.e. the types of consumer who are entitled to use the complaints arrangements.

availability of compensation for distress and inconvenience, time limits, terms of reference, bases for awards, procedures, funding, and governance arrangements.

- 18 A common criticism of the current schemes has been that they present the appearance of a patchwork quilt and that consumers find this confusing. Whilst we welcome the recent initiatives which have been undertaken by the various Ombudsmen to streamline their operations within the constraints of the current system, the inception of the new regulatory system creates an opportunity to tackle these issues more fundamentally.
- 19 Ministers have therefore decided that they would like to see the various Ombudsmen and arbitration schemes consolidated into a single ombudsman scheme. That is the starting point for this paper. It will however be for Government to decide the legislative provisions necessary for the single scheme, taking into account the FSA's assessment of the responses to this paper. It is likely that many of the detailed arrangements will be set out in the rules of the scheme.
- 20 In the following section we set out what we consider to be the key objectives of complaints-handling arrangements.

Objectives of complaints-handling arrangements

- 21 Effective procedures for handling complaints about FSA-authorised firms will have a key role in delivering adequate consumer protection.
- 22 Where consumers are dissatisfied, their main priority is to seek redress through the complaints mechanism, usually in the form of monetary compensation or remedial action of some kind.
- 23 We believe that, as now, the mechanism should place the onus on the firm itself to attempt to resolve the complaint in the first instance, within a specified period of time. We therefore expect that firms will be required to have appropriate complaints-handling arrangements, and to require their staff to comply with them.
- 24 Where, however, the firm is unable to resolve a complaint itself, we believe it is important that independent complaints-handling arrangements be available to consumers. We see the principal aim of those arrangements as being to provide consumers who seek redress with an informal, quick and user-friendly alternative to the courts. The regulator will, however, have an interest in whether the complaint itself indicates the need for supervisory or disciplinary action of some kind.
- 25 In our view the arrangements should be:
 - comprehensive in their coverage;
 - accessible to consumers;
 - fair and impartial as between both parties (i.e. consumers and firms);
 - capable of making binding decisions;
 - consistent in the approach to the provision of redress;
 - transparent and accountable;
 - flexible, simple and prompt;

- efficient, with appropriate minimum performance standards;
- able to provide appropriate feedback to the regulator.

IV Key issues and proposals

Introduction

- 26 As explained above⁶ the inconsistent coverage of the existing complaints arrangements – both in terms of the firms and the areas of business covered – is one of the weaknesses of the current system. The creation of a new regulatory system provides an opportunity to look at how to secure comprehensive coverage, for complaints purposes, of all FSA firms and of all the activities for which the FSA has regulatory or supervisory responsibility.
- 27 As indicated above, Ministers have decided in principle that there will be a single, compulsory financial services ombudsman scheme.
- 28 This gives rise to a number of significant issues which can be summarised as follows:
- (1) What should be the scope, in terms of business, of the complaints-handling scheme?
 - (2) How, in the context of a compulsory scheme, can awards be made binding on firms, in a way which is fair to them?
 - (3) Should the complaints-handling scheme be independent of, or the direct responsibility of, the FSA, and what should the governance arrangements be?
 - (4) What should the complaints-handling process be?
- 29 These issues are largely inter-dependent. The most significant, and therefore the most appropriate point to start from, is the structure of the new arrangements.

⁶ See paragraphs 17 to 20.

Structure

Number of schemes

- 30 Whilst the existing schemes perform well individually, one of the chief criticisms of the present system, as noted above⁷, is its complexity in the eyes of consumers – the so-called “patchwork quilt”. There are currently eight main schemes covering the areas which will be encompassed by the FSA⁸, quite apart from the separate schemes relating to the firms currently regulated by the Recognised Professional Bodies⁹.
- 31 A key objective is therefore to simplify the existing structure by reducing the number of schemes. Ministers share this view and have decided that there should be a single scheme, and that this should be based on an ombudsman model.

Single Scheme

- 32 Whilst there would only be one scheme this could, nevertheless, have separate departments relating to the different areas of business, namely investment business, banking and building society business, and insurance. These would broadly follow the lines of the existing schemes, thus enabling their strengths to be preserved.
- 33 The main attractions from a consumer perspective would be those of simplicity, accessibility and consistency. Consumers would deal with what was visibly a single ombudsman service, with only one entry point for all complaints, so that once the complaint had been submitted, it would be allocated to the relevant department.
- 34 From the scheme’s point of view it would be possible to deal much more satisfactorily with cases involving more than one firm or type of firm, since the service would span the various jurisdictions which are currently distinct and separate.
- 35 We would aim to build on the strengths of the existing arrangements. In particular, we would want to ensure that the close, personal involvement which many of the existing Ombudsmen have in the handling of complaints was not lost. We believe that the departmental approach outlined above would be helpful in this respect. It might, for example, be appropriate to have a separate ombudsman at the head of each department, overseen by the senior Financial Services Ombudsman.

⁷ See paragraphs 17 to 20.

⁸ Listed at paragraph 14 above.

⁹ As to which, see paragraphs 66 to 67 below.

Rationalisation instead of unification

- 36 We have considered whether the desired degree of rationalisation could be achieved other than by unification.
- 37 For example, the existing schemes covering investment business could have merged (this might have been necessary in any event) whilst the other schemes might have remained as they are currently. There might also have been a case for mergers between some or all of those other schemes.¹⁰ However, the extent to which this was practicable or desirable would have ultimately been a matter for the individual schemes to decide.
- 38 This alternative approach would have been evolutionary rather than revolutionary. However, the industry-led schemes¹¹ would need to have been formally “recognised” (as is the case now with the Building Societies Ombudsman’s scheme¹²) in accordance with criteria prescribed in the legislation.
- 39 From a consumer’s perspective, this route would not have achieved the degree of harmonisation and simplicity inherent in a single scheme. Cost savings and administrative benefits might also have been harder to achieve, and it would have been less easy than in a single scheme to deal with boundary issues between schemes. An artificial single entry point for complaints would also have had to be created.
- 40 The main disadvantage, however, is that there would have continued to be a multiplicity of schemes, some covering broadly similar territory, which would have left a number of the perceived drawbacks of the current schemes in place.

“Membership” of the Scheme

- 41 As already mentioned,¹³ some of the current schemes have compulsory membership requirements; others are voluntary. (The term “membership” is used here to indicate that a firm is either a member of, or obliged to comply with, the rules of a complaints-handling scheme.)
- 42 The schemes which have a compulsory membership requirement are:
- (1) those operated by IMRO,¹⁴ PIA¹⁵ and the SFA¹⁶ (which are obliged under the FS Act to have effective arrangements for the investigation of

¹⁰ For example the schemes covering banks and building societies, and the separate schemes relating to insurance.

¹¹ These are referred to in paragraph 15.

¹² See paragraph 58.

¹³ See paragraph 17.

¹⁴ The Investment Ombudsman.

¹⁵ The PIA Ombudsman Bureau.

¹⁶ SFA’s in-house conciliation service and out-of-house Arbitration Service.

complaints against the firms they regulate and which require those firms to obey the schemes' rules);

- (2) that operated by the FSA (which has a similar obligation under the FS Act and which requires the firms it regulates, under its conduct of business rules, to co-operate with its complaints-handling mechanism); and
- (3) that relating to building societies which are obliged by the Building Societies Act 1986 to be members of a scheme recognised by the Building Societies Commission, in accordance with criteria set out in that Act; (in practice the Building Societies Ombudsman is the only recognised scheme for building societies).

43 The schemes with a voluntary membership are the Banking Ombudsman, the Insurance Ombudsman and the Personal Insurance Arbitration Service. Most banks and insurance companies have joined their respective schemes.

44 The creation of a new single regulator provides the opportunity of looking at whether a mix of compulsory and voluntary schemes is appropriate. In our view, it is important to ensure that customers of firms authorised by the FSA are dealt with fairly and that they have a proper opportunity for securing appropriate redress where those firms have let them down. We do not believe that adequate consumer protection can be achieved consistently and comprehensively across the FSA constituency unless all firms are required to belong to an appropriate complaints-handling scheme.

45 Ministers share this view and have decided that membership of a complaints-handling scheme should be compulsory.

46 This would formalise the position of those firms which have currently chosen to join a voluntary scheme (i.e. most banks and insurance companies) and it would plug the gap in respect of the small number of firms which have not voluntarily joined those schemes.

47 The following sections consider the nature of the proposed single scheme and some of the other issues which flow from a compulsory membership requirement.

Ombudsman or arbitration

48 Ministers believe that the proposed compulsory complaints-handling regime should be based on an ombudsman approach rather than on arbitration. We share that view.

49 One of the main differences between these two processes is that, in deciding a complaint, an ombudsman can bind the firm whilst leaving complainants free to pursue their claim before the courts if they so wish, whereas an arbitration

can only take place where *both* parties agree in advance to be bound by the arbitrator's decision.

- 50 Another significant difference is the basis on which awards can be made. An arbitrator's award is normally based on the legal rights and duties of the parties to the dispute. Ombudsmen are able to base their judgements on what is "fair and reasonable in all the circumstances". This allows them to go beyond the strict legal position and take account of codes of conduct and general standards of good industry practice, as well as the specific conduct of business rules to which a firm may be subject. Ombudsmen are not generally bound by previous decisions or by rules of evidence.
- 51 The procedures used by arbitrators and ombudsmen also differ significantly. Arbitration procedures are governed by the Arbitration Acts and therefore tend to be more formal and legally based. An ombudsman, on the other hand, generally has discretion to be flexible in the procedures which he or she adopts. These can range from advice, conciliation and informal recommendations, through to formal adjudications, although the extent to which the different schemes currently make use of these different processes – and the relative emphasis on them – varies. In some schemes, for example, the availability of a formal binding award is at the ombudsman's discretion.
- 52 Both of these approaches serve useful purposes in different contexts. For the most part arbitration mechanisms are used as a backstop to an in-house conciliation service, whereas the ombudsman schemes generally provide a more comprehensive service.
- 53 Ministers and the FSA both favour the ombudsman approach, because we believe it has the merit of greater flexibility, user-friendliness and relative speed.

Jurisdiction and scope

The firms to be covered

- 54 The creation of a new single regulator creates a strong public expectation that there will be a comprehensive complaints-handling regime for all firms authorised by the FSA. It will be important to avoid inconsistency of treatment and uncertainty for consumers about when they can complain.
- 55 The FSA's view is that the constituency of the proposed new complaints-handling arrangements should, as far as possible, mirror the scope of the authorisation requirement, and should therefore apply to:
- firms conducting investment business,
 - deposit-taking firms, such as banks and building societies,
 - insurance companies and friendly societies, and

- all other firms which are *authorised* under the new legislation.¹⁷

Q1 Do respondents agree that the compulsory complaints-handling regime should, as far as possible, apply only to firms authorised by the FSA?

The activities to be covered

- 56 There are various options for defining the activities conducted by FSA- authorised firms which should be brought within the scope of a compulsory complaints-handling regime. The main options which we have considered are:
- (1) only those activities which are subject to conduct of business regulation;
 - (2) only those activities which require FSA authorisation;
 - (3) all activities;
 - (4) specified activities only.

Only those activities which are subject to conduct of business regulation

- 57 Broadly speaking, some of the firms which are to be authorised by the FSA will be subject to prudential supervision only,¹⁸ and some will be subject to specific requirements about how they must conduct their business.¹⁹ One option might therefore be to limit the scope of the compulsory scheme to activities which are subject to conduct of business regulation.
- 58 However, we do not believe that this limitation is desirable since it would leave the firms which are subject only to prudential supervision (most of which are currently subject to voluntary complaints-handling arrangements) outside. It would also result in a reduction in the overall level of compulsory cover provided by the present system in respect of the building societies. Although not subject to conduct of business regulation, building societies are nevertheless required under the Building Societies Act 1986 to belong to a complaints scheme recognised by the Building Societies Commission, which can look into complaints relating to services “provided for individuals in the ordinary course of business”.²⁰ Thus there is already a precedent for requiring firms to submit to complaints-handling arrangements in respect of activities which are not subject to conduct of business rules (and are not, strictly speaking, activities for which authorisation will be required).

¹⁷ The qualification of “authorisation” is important. We consider that some firms which otherwise come within the FSA’s remit should be excluded from the compulsory arrangements. For example, the (mostly non-financial) mutual societies which are at present merely registered at the Central Office of the Registry of Friendly Societies will not be authorised by the FSA, and should therefore fall outside these arrangements.

¹⁸ i.e. supervision which is concerned with the safety and soundness of the firm or institution (including *inter alia* whether its senior management is fit and proper, and whether the firm itself meets minimum standards of financial adequacy as to capital and solvency).

¹⁹ although they will also be prudentially supervised.

²⁰ Section 83 of the Building Societies Act 1986, as inserted by Section 34 of the Building Societies Act 1997.

Activities requiring FSA authorisation

- 59 This option would build on the previous one, by broadening the scope of the scheme to include those activities which are not subject to conduct of business regulation but which would nevertheless require authorisation by the FSA, e.g. deposit-taking. Whilst this has its attractions, in that the scope of the scheme would match that of the FSA's regulatory remit, it would not replicate the scope of the existing schemes. We therefore believe that this option would also be too restrictive.

All activities

- 60 At the other end of the spectrum, the compulsory complaints regime could cover **all** business activities conducted by all FSA-authorised firms.
- 61 The main attraction of this option is that it is comprehensive. It would meet the *prima facie* expectation that all complaints against those firms which the FSA authorises will be subject to a complaints-handling process.
- 62 However, it would lead to a scheme with an extremely wide remit and to one which would be well beyond the regulatory scope of the FSA (e.g. covering estate agency activity where this was conducted by an FSA-authorised firm). As such, it could give consumers a misleading impression of the extent of the FSA's own powers.

Specified activities only

- 63 A fourth option is a half-way house between the last two options. The scope of the compulsory regime would go beyond those activities which require FSA authorisation but would be limited in some defined way to activities which relate to financial services. We consider it important, for example, that the scheme should cover activities (such as mortgage-lending and retail banking services to private customers and small firms) which do not require FSA authorisation but which are nevertheless covered already by the existing schemes.
- 64 We share Ministers' preference for this option because it preserves the coverage afforded by the existing schemes, but enables the new scheme to be confined to handling financial services-related complaints.
- 65 This option could be achieved, either by:
- (1) expressly defining those activities which would be covered; or
 - (2) expressly defining those which should not.

Recognised Professional Bodies ('RPBs')

- 66 Ministers intend the financial regulatory reform bill to give the FSA responsibility for the authorisation of members of professional bodies carrying on investment business (for example, accountants and solicitors). The RPBs are currently required to have complaints arrangements in place covering their members' investment business. Some of them also handle complaints about the activities which their members carry out in the context of their particular profession.
- 67 In line with the principle outlined at paragraph 55 above, we expect such firms to be subject to the jurisdiction of the proposed Ombudsman. However, the professional bodies would continue to handle complaints concerning their mainstream professional activities. The bodies concerned are currently being consulted about the implications arising out of Ministers' intention, and we shall be giving further thought to this area in the light of that consultation.

Non-FSA firms

- 68 Finally, it must be recognised that, depending on which of the above options is chosen, some activities might fall within the compulsory complaints regime when conducted by FSA-authorized firms, but would in any event fall outside when conducted by other firms.

Q2 Views are invited on the scope of the compulsory complaints-handling regime and on how this should be expressed.

Eligibility criteria

- 69 The existing schemes generally restrict those who are eligible to complain to those who have or who have had a customer relationship with the firm concerned.²¹ The customers of any firm vary considerably in terms, for example, of circumstances and experience. Inevitably some customers are better able to look after themselves than others, and are better able to understand the nature of the services and products that are being provided for them.
- 70 In the judgement of the FSA, the complaints arrangements should be designed primarily to assist those who are least able to sustain financial loss, and who do not have the resources to pursue their claims before the courts. We therefore suggest that the FSA's complaints procedures should be available only to private individuals, unincorporated bodies, partnerships and small companies.²² (This mirrors the eligibility criteria proposed in the FSA's separate

²¹ Paragraph 133 also proposes time limits within which complainants should lodge their complaint.

²² This would exclude from eligibility those companies which meet any two of the following three criteria: (1) a balance sheet total above ECU 2.5 million; (2) net turnover above ECU 5 million; (3) more than 50 employees.

paper on “Consumer Compensation” which in turn conforms with criteria in the relevant European directives.)

- 71 Entities which were authorised by the FSA would themselves be able to use the complaints arrangements (provided that they fulfilled the relevant eligibility criteria) unless their complaint related to the area of business for which they were themselves authorised.
- 72 For a complaint to be eligible a complainant would have to allege that financial loss and/or distress and inconvenience had been suffered, as a result of the conduct of an FSA-authorised firm. The complaint would also have to fall within the relevant time limits:²³
- 73 We also believe that there should be a limit on the size of awards. The majority of existing schemes are unable to make an award above £100,000. We propose that a £100,000 limit is appropriate (unless, as in some schemes now, the firm agrees to waive this maximum) and that any award for distress and inconvenience should be limited to £1,000.
- 74 The FSA’s view is that complaints falling outside these criteria, such as the larger commercial disputes, should not be covered by the compulsory complaints-handling scheme. There are already alternative dispute-resolution mechanisms available to firms for dealing with these.

Q3 Should the regime be restricted to complaints from private individuals, unincorporated bodies, partnerships and small companies?

Q4 Are the proposed limits on awards appropriate?

Enforceability of awards and basis for them

- 75 There are two main issues which arise from the decision to move to a compulsory complaints-handling regime. These are:
- (1) how firms can be required to be bound by awards in a way which is fair; and
 - (2) the basis upon which awards should be made.

Enforceability of awards

- 76 The extent to which the existing complaints mechanisms are capable of making awards which are binding on firms and complainants varies across the system.²⁴

²³ See paragraph 133 below.

²⁴ See Appendix 1.

- 77 We believe that the proposed new Ombudsman arrangements must be capable of making a binding award against a firm where a complaint has been upheld and where other means of achieving a settlement (for example, through conciliation) have failed. If possible, however, the complainant's right to pursue his claim before the courts should remain intact.
- 78 Where a compulsory scheme seeks to make awards legally binding on one or both of the parties, some significant natural justice issues arise. There are, for example, certain minimum requirements of fairness which domestic law, and also the European Convention on Human Rights, will require the scheme to afford.
- 79 For instance, Article 6 of that Convention requires that any mechanism involving the determination of "civil rights and obligations" must provide a right to a fair trial. The Article also lays down specific requirements in relation to such cases. Our understanding is that, because of its compulsory nature and its ability to make binding awards against firms, the proposed new scheme would have to comply with these requirements since the scheme would be regarded as determining those firms' civil rights and obligations. In this sense it would in effect be performing a judicial or quasi-judicial function, akin to that of a disciplinary tribunal or court.
- 80 This means that within the overall process there would have to be a stage or stages with the following features:
- the parties would have the right to have the proceedings conducted in public;
 - the parties could be legally represented if they so wished;
 - where appropriate, witnesses could be called and would be open to cross-examination; and
 - the decision would be published, with reasons.
- 81 These protections could be afforded either as part of the Ombudsman's own procedures for handling a complaint, or in the form of a separate appeal against the Ombudsman's decision to an independent statutory tribunal. We regard it as essential, however, that we should give effect to these requirements in a way which, so far as possible, retains the benefits of the ombudsman process in terms of its user-friendliness, flexibility and speed.
- 82 We believe that this can best be achieved by building these safeguards into the Ombudsman's internal procedures rather than providing for a separate, formal appeals process. Whilst we recognise that this may cause delay to those relatively few cases which reach the formal award stage, we nevertheless believe that the requirements can be incorporated in a way which will not undermine the overall effectiveness of the scheme. This would mean that the Ombudsman's awards would be final and binding on firms, subject only to judicial review.

Q5 Views are invited on whether it is preferable to aim to meet the requirements of Article 6 (ECHR) within the Ombudsman process or in the form of a full right of appeal to an independent statutory tribunal.

Basis of awards

- 83 The move to a compulsory ‘membership’ requirement also has significant implications in terms of the basis on which awards can be made.
- 84 The basis for awards varies between the different business sectors. In the investment business area, the FS Act regulators require the firms they regulate to comply with conduct of business rules, and the relevant complaints schemes have regard to whether these rules have been breached when deciding whether a particular complaint should be upheld. Those schemes also take account of whether applicable codes of conduct have been observed.
- 85 In the deposit-taking and insurance areas, firms are subject only to prudential supervision (where the regulator or supervisor is concerned with the “safeness and soundness” of the institution as a whole). Complaints against prudentially supervised firms (for example banks, building societies and general insurance companies) are decided by the relevant Ombudsman by reference to standards of good industry practice and relevant codes of conduct drawn up by the industries themselves. In the current system, these firms have (with the exception of building societies) voluntarily agreed to allow an Ombudsman to make awards against them on this basis.
- 86 We have given careful thought to the basis upon which, in the context of a compulsory membership requirement, awards can be made against those firms which are not subject to FSA conduct of business regulation, and in particular how the existing voluntary codes could be given effect for complaints purposes, without altering their current status.
- 87 We believe that this is best achieved by allowing the scheme to apply such codes for redress purposes where they are considered to be relevant. This would mean that a code could be applied by the Ombudsman in its own right, or as evidence of a more general basis for awarding redress, for example, that the firm had treated the consumer unfairly or inappropriately.²⁶

Q6 Do respondents agree with the approach proposed above?

²⁶ The Highway Code offers a useful model in that, whilst a breach of that code does not of itself give rise to a liability, it can nevertheless be taken into account in determining whether a driver has, for example, driven without due care and attention.

Accountability and governance

- 88 This section deals with the governance arrangements and accountability of the scheme. It is clear that a careful balance will need to be struck between various potentially conflicting imperatives, for example the need for the scheme to have operational independence, the need for it to be accountable and the need for it to have appropriate links with the FSA. Whatever arrangements are decided upon, the Ombudsman must be kept free from interference or influence by any other party in the way in which he performs his duties in resolving complaints.
- 89 We have already noted that the scheme will play an important part in the fulfilment of the FSA's consumer protection objective.²⁷ Important issues for consideration here are: who should have responsibility for appointing the Ombudsman, for setting his terms of reference and for the funding of the scheme; and to whom should the Ombudsman be accountable.

Current position

- 90 Within the current system, the schemes set up by the FS Act regulators generally have governance arrangements involving their Boards, which reflect the fact that they are subject to a statutory (albeit delegable) requirement to have "effective arrangements for the investigation of complaints" in respect of the firms they regulate.
- 91 The industry-led schemes, on the other hand, generally have a two-tier management structure, comprising a board (whose members are entirely drawn from the industry) and a council which has a majority on it of consumer or public interest representatives. Broadly speaking, the role of the board is to agree the budget and levy funds from the members. The council provides an independent layer of authority between the Ombudsman and the industry. Its main duties are to appoint the Ombudsman; to set and update his terms of reference; to monitor the operation of the scheme and to secure adequate funding from the Board.

Future arrangements

- 92 A key issue here is who should have responsibility for the overall effectiveness of the scheme.
- 93 Although there are a number of different ways in which the scheme might be configured, we consider that the two main options are:
- (1) a scheme with a separate board, or

²⁷ See paragraph 1.

(2) direct accountability to the FSA.

Separate Board

- 94 Under this option, the scheme could be set up as a separate organisation with its own Board, independent of the FSA. Its chairman would be appointed by the FSA with the approval of HM Treasury. The members would be appointed by the FSA alone. They would be appointed in the public interest and would aim to blend industry experience and a wider consumer perspective. The Board would appoint the Financial Services Ombudsman (FSO) and, in conjunction with the FSO, the sectoral ombudsmen. The Board would recommend funding and changes in scheme rules to the FSA Board which would retain ultimate responsibility for them. All other operational matters would be for the FSO and the Board.

Direct accountability to the FSA

- 95 Under this option the Ombudsman's Office could still be set up as a separate organisation, but the Ombudsman would be accountable for the overall effectiveness of his procedures to the FSA. The FSA (or perhaps a committee of the FSA Board) could be responsible for the Ombudsman's appointment and for the scheme's terms of reference. It would also have responsibility for ensuring that the scheme was properly funded to fulfil its functions, and would collect the necessary funds.
- 96 The fact that the FSA is set up by Parliament and answerable directly to Ministers and through them to Parliament – unlike the self-regulating organisations, or the voluntary organisations, which run the current schemes – could arguably be sufficient to demonstrate its independence. In addition the Ombudsman would deliver to the FSA Board and publish an annual report on the performance of his functions.

Other options

- 97 There are of course a number of variations on these two options which would draw to a greater or lesser extent on the different elements referred to above.
- 98 The FSA will inevitably have a strong interest in the overall effectiveness of the scheme, since the resolution of complaints is an integral part of its consumer protection objective. As noted in paragraphs 100 to 105 below, it will also have a specific need for feedback from the Ombudsman process to inform its own regulatory activities.
- 99 Ministers have indicated a preference for option (1) as a means of securing the scheme's independence from both firms and practitioners. It would also ensure that the Ombudsman's decision on individual cases would be made entirely independently of the FSA, while ensuring that the FSA retained appropriate responsibility for determining the scope of the scheme within the constraints

set out by the legislation and for ensuring that the scheme was run economically.

Q7 Respondents are invited to express their views on the options for the governance arrangements of the scheme set out above.

Interaction between complaints handling and regulatory processes

- 100 Whatever the governance arrangements, good information sharing arrangements between the FSA and the Ombudsman will be essential.
- 101 First, complaints are an important source of regulatory information. They can provide valuable early warnings of problems in particular firms or sectors, with particular products or with particular regulatory requirements. They may indicate the existence of a more widespread, systemic problem which requires the FSA's attention.
- 102 Existing schemes vary in their information-sharing arrangements. Some make explicit provision for feedback to the regulator (for example, the current schemes covering investment business) and others (such as the Banking Ombudsman, the Building Societies Ombudsman and Insurance Ombudsman) do not.
- 103 We therefore propose that the Ombudsman should be required to make available to the FSA information about the cases he is considering, and to provide other case-related information on request. Whilst some of this information is likely to be provided routinely, he should also be required to alert the FSA when information comes to his notice which in his view appears to disclose the commission of a serious regulatory breach.
- 104 Conversely there is a need to provide for information flows from the FSA to the Ombudsman. For example, some, but not all, of the existing schemes have a provision under which the regulator can notify the Ombudsman where it is taking disciplinary action against a particular firm. This enables the Ombudsman to decide whether he wishes to stay his investigation of a complaint against that firm pending the resolution of the regulator's disciplinary proceedings. This is especially relevant where the outcome of the disciplinary case is likely to result in an award of compensation which would, in itself, satisfy a particular complainant.
- 105 Another important issue is the question of the interaction between the complaints process and the FSA's enforcement and supervision functions. The FSA may, for example, decide to take enforcement action as a result of issues disclosed during the course of the Ombudsman's investigation, although natural justice would require that the FSA's action be based on its own investigation rather than on that of the Ombudsman.

Q8 Respondents are invited to comment on arrangements for sharing information between the Ombudsman and the FSA.

Funding

- 106 This section deals with how the scheme should be funded. It focuses on how the cost of the scheme should be allocated among FSA firms. The question of who should be responsible for determining the budget of the scheme is closely related to the issue of governance and is discussed earlier in this paper.²⁸
- 107 The current position varies across the existing schemes. Some are funded directly from general regulatory membership fees (SIB, IMRO and SFA). Others, particularly those which handle high volumes of complaints, such as the PIA Ombudsman and Insurance Ombudsman schemes, have a combination of a general levy on members (variously based on regulatory membership fees, assets and numbers of retail customers, etc.) and case fees. The ratio of general levy to case fees varies, but the emphasis is generally on case fees, which reflect the usage of the scheme.

Funding the scheme

- 108 There are therefore three basic options for funding an FSA scheme:
- (1) to treat the costs of the scheme as simply another part of the regulatory function and to allocate this across all authorised firms (possibly *pro rata* to their FSA fees); or
 - (2) to levy all the costs only on those firms which generate complaints business (i.e. through the use of case fees only); or
 - (3) to fund the scheme through a mixture of (1) and (2) above.
- 109 We do not consider it appropriate for the entire cost of the scheme to be allocated across all firms *pro rata* to FSA annual fees. This would take no account of usage of the scheme and would not encourage firms to settle complaints at their own in-house stage. It would also penalise those firms whose customers would not be eligible to make a complaint to the Ombudsman.
- 110 On the other hand, we believe that it is impractical and inappropriate to fund an Ombudsman scheme by case fees alone. These could be unacceptably high and, in any case, the existence of an effective complaints scheme arguably confers a general benefit on all relevant firms, for which they can reasonably

²⁸ See paragraphs 88 to 99.

be expected to pay in some measure. Some advance funding by the FSA would almost certainly be needed each year, and reliance on case fees would make budgeting uncertain and difficult.

- 111 A third option would be to fund the scheme through a combination of a “standing charge” (perhaps related to FSA annual fees) and case fees based on usage. Whilst the decision on the exact split between the two would be a matter for the body responsible for governing the scheme, this option would be supported in principle by the FSA.

Case fees

- 112 The existing schemes do not generally charge complainants a case fee for handling a complaint and we do not consider it appropriate to introduce a charge for complainants. Therefore, if case fees are to be charged at all, they would fall, as now, on the firm.
- 113 The next question is whether a firm should be charged a case fee in every case, regardless of the outcome. This has a potential for unfair pressure to be brought to bear on the firm. For example, a consumer might insist on pursuing a complaint before the Ombudsman, even where it had no merit or where a reasonable offer of redress had been made. Where the sum claimed was less than the case fee which the Ombudsman would charge the firm, it might be in the commercial interests of the firm to settle the claim at the earlier stage, even though the claim was not merited.
- 114 It could therefore be argued that it would be unreasonable for a firm to pay a case fee where the complaint is decided in its favour, and that a fee should only be levied if a complaint was upheld. However, the justification for charging a case fee irrespective of outcome is that it takes the Ombudsman the same time to investigate a case whether it is upheld or not. Linking the levying of a fee to outcome might also create difficulties where, for example, a complaint was only upheld in part, and it would make financial planning for the scheme more difficult.

Possible exemptions from fees

- 115 Case fees could impose a disproportionate burden on certain types of small firms. We would therefore welcome views on whether there should be exemptions for small firms where the effect on them of case fees could be disproportionate. Views are also invited on whether firms whose activities could not give rise to an eligible complaint should be excluded from the funding arrangements.
- 116 We would also welcome views on whether a case fee should take the form of a flat fee, be related to the time and effort actually expended on a particular case or to the award made, and whether it should be subject to a maximum limit.

Q9 Do respondents agree that the funding for the scheme should be provided by a combination of a standing charge on all FSA-authorized firms and case fees?

Q10 If case fees are to be levied, on what basis should this be done?

Interaction with compensation arrangements

- 117 There is a link between the complaints-handling arrangements and those covering compensation, since a liability to a customer arising from a complaint may be outstanding at the point of a firm's collapse and may even have contributed to the collapse. (We are simultaneously issuing a separate consultation paper on "Consumer Compensation" which contains proposals for the way that compensation arrangements should be established by the FSA.)
- 118 Under current arrangements an ombudsman may make an award to a consumer based on a number of elements, reflecting the wide range of situations where redress may be appropriate. Some awards are based on breaches of conduct of business rules, whilst others are based on breaches of codes of conduct. Awards may also include redress for distress and inconvenience.
- 119 Compensation arrangements, by contrast, have a more limited basis for calculation of payments. In particular, claims for negligence are only covered in the investment business sector at present. Moreover, the limits on individual payments to consumers established under existing compensation arrangements tend to be much lower than those established by ombudsman schemes.
- 120 Thus currently there will be occasions when a consumer may not receive from the compensation scheme the full amount of an ombudsman's award where the firm collapses before he has received payment. This raises the question of how, if at all, the FSA's arrangements for dealing with complaints should dovetail with arrangements for compensation.
- 121 We think that the three main issues here are:
- (1) whether complaints information and decisions reached by the Ombudsman prior to a failure should be available to the compensation scheme;
 - (2) whether the Ombudsman's awards should be automatically honoured – as to liability and quantum – by the compensation scheme; and
 - (3) whether the ceiling on individual claims should be the same in both areas.

- 122 As far as (1) above is concerned, we believe that it is desirable, in the interests of avoiding duplication of effort, for the work carried out by the Ombudsman in investigating a complaint to be available to the compensation scheme.
- 123 However, we are less convinced that it is appropriate to harmonise the complaints-handling and compensation processes in the ways envisaged in (2) and (3) above. There are, we believe, significant differences between the two processes.
- 124 Complaints-handling arrangements are concerned with providing redress in relation to a “live” firm and the Ombudsman’s awards are paid by the firm concerned. An award therefore needs to reflect the breadth of the relationship between the consumer and the firm, and we believe this justifies the wide scope available to ombudsmen at present.
- 125 A compensation scheme has, on the other hand, a very different purpose. It provides cover when an authorised firm fails. It is essentially designed as a back stop, not a complete safety net. A further distinguishing feature is that compensation claims are funded by firms other than the firm which collapses.
- 126 Because of these differences we believe that the narrower scope and lower limits for compensation awards noted above are justified. We therefore propose that, as far as possible, the work done to determine complaints should be available to the compensation scheme. We also think this scheme should be able, where appropriate, to rely on the Ombudsman’s awards, having due regard to differences in scope and the need for equity of treatment between claimants. Beyond this, however, we do not propose to harmonise the bases of calculation and the limits on individual payments under the two processes.

Q11 Respondents are invited to comment on these issues.

V General procedures

Introduction

- 127 In designing the detail of the scheme, the aim will be to combine the best aspects of the existing schemes within the construct of a single scheme. The final design of the scheme will be contained in the scheme's terms of reference and, where necessary, in the legislation. In any event, it will be necessary to take account of the issues described below.

Powers of the Ombudsman

- 128 We envisage that the Ombudsman would need to have the following powers:
- (1) a power to direct a firm to take remedial steps;
 - (2) a power to order a firm to pay the complainant compensation for financial loss (up to £100,000, with a discretion to exceed this limit if the firm agrees);
 - (3) a power to order the firm to pay compensation for distress and inconvenience (limited to £1,000);
 - (4) a power to call for information from the firm;
 - (5) a power to raise funds;³⁰
 - (6) a power to enforce his awards;³¹ and
 - (7) a power to exchange information with the FSA and others where relevant.

³⁰ depending upon which option was chosen for funding the scheme: see paragraphs 106 to 116 above.

³¹ again, depending on the option chosen: see paragraphs 131 to 132 above.

- 129 In reaching his decision, the Ombudsman should be able to take into account:
- legal principles;
 - any breach of legal obligations (including conduct of business rules where applicable);
 - any relevant code of conduct;
 - general standards of good industry practice;
 - whether the action complained of amounted to unfair treatment or maladministration; and
 - whether a complainant's reasonable expectations have been met.
- 130 We believe that it is desirable for the Ombudsman to be given a broad discretion as to his own procedures. It is, in our view, essential that the procedures be informal, flexible and speedy, avoiding, as far as possible, legalistic argument, lengthy oral hearings, extensive discovery of documents and delays which can sometimes occur in civil litigation. A flowchart is attached at Appendix 4 which shows, in summary form, the various stages which the Ombudsman process might employ.

Enforcement of awards

- 131 One issue is how the Ombudsman's awards should be enforced. There are essentially three options:
- (1) Enforcement by the FSA, either through its disciplinary process or through the courts;
 - (2) Enforcement by the Ombudsman himself: this would enable the Ombudsman to enforce his own awards in the courts (at the expense of the scheme); or
 - (3) Enforcement of the award as a debt by the consumer in the courts.
- 132 An important factor in determining which of these options is preferable will be the relationship between the FSA and the Ombudsman, which is discussed in more detail above³². The first option implies a close relationship between the two bodies. The second would strengthen the Ombudsman's independence and could provide a quicker means of securing redress for the consumer than using a disciplinary process (although it would not preclude the FSA's ability to take disciplinary action for the breach of its requirement to abide by the Ombudsman's award). We regard either of the first two options as preferable to leaving it to the consumer to enforce his own awards.

³² See paragraphs 88 to 99.

Time limits

- 133 Standardised time limits should be set for firms to resolve a complaint in the first instance, so that a complainant has the right to complain to the Ombudsman if the matter is not settled within a reasonable period of time. There will also need to be time limits for each stage of the Ombudsman process to avoid undue delays. As now, complainants should have to lodge their complaints with the Ombudsman within a specified time of the firm's final decision, if they remain dissatisfied, and within a specified time of the event which gives rise to the claim (or, if later, the date when they ought reasonably to have been aware of the problem).

Frivolous and vexatious complaints

- 134 Some, but not all, of the current schemes make explicit provision for the Ombudsman to exclude frivolous and vexatious complaints – or to reject them at an early stage. We believe that it will be important to include such a provision in relation to the proposed scheme.

Transitional arrangements

- 135 It will be essential to ensure that, at the time of the start of the new complaints-handling scheme, complaints which are already being considered by the existing schemes (or which are received later but relate to the earlier regime) can be handled by the new scheme. Appropriate safeguards to this effect will be put in place.

Q12 Respondents are invited to give their views on the issues mentioned above.

Appendix 1 Existing Schemes: procedures

	FSA ¹ Firms	IMRO Firms	PIA Firms	SFA Firms	Banks	Building Societies	Friendly Societies	Insurance Companies
Firm to resolve first?	Yes	Yes	Yes	Yes	Yes, if member of scheme	Yes	Yes, if member of scheme	Yes, if member of scheme
In-house conciliation? (i.e. by regulator)	Yes	No	No	Yes	No	No	No	No
Independent mechanisms: external	Independent Investigator	Investment Ombudsman	PIA Ombudsman Bureau (PIAOB)	Consumer (and Full) Arbitration Schemes	Banking Ombudsman	Building Societies Ombudsman	Some complaints go to IOB or PIAOB (See relevant columns)	<ul style="list-style-type: none"> Insurance Ombudsman Bureau Personal Insurance Arbitration Service
Membership compulsory or voluntary for firms?	Compulsory (for regulated business)	Compulsory (for regulated business)	Compulsory (for regulated business) and voluntary for non-regulated business	Compulsory (for regulated business)	Voluntary	Compulsory - subject to publicity option (see below)	Voluntary (except for investment business where complaints must go to PIAOB)	Voluntary (except for investment business)
Independent mechanism: procedure	<ul style="list-style-type: none"> (i) Further conciliation (ii) Arbitration if appropriate and both parties consent 	<ul style="list-style-type: none"> (i) Informal investigation & recommendation (ii) Adjudication may be offered 	<ul style="list-style-type: none"> (i) Conciliation (ii) Provisional assessment/recommendation (iii) Ombudsman decision 	Arbitration	<ul style="list-style-type: none"> (i) Conciliation (ii) Adjudication following investigation (iii) Final decision 	<ul style="list-style-type: none"> (i) Conciliation (ii) Formal investigation and adjudication 	-	PIAS: arbitration IOB: <ul style="list-style-type: none"> (i) Conciliation (ii) Provisional recommendation (iii) Ombudsman decision

¹ formerly known as the Securities and Investments Board

	FSA Firms	IMRO Firms	PIA Firms	SFA Firms	Banks	Building Societies	Friendly Societies	Insurance Companies
Decision binding on both parties or firm only?	Both parties (but only if both agree to arbitration)	Both parties (but only if both agree to adjudication)	Firm only (unless firm appeals to court on important precedents)	Both parties - if consumer seeks arbitration, firm must submit	Firm only	Firm only (but firm can opt for publicity 'let out' clause instead)	—	IOB - Firm only PIAS - Firm only
Basis for awards	Arbitration procedure	Recommendations - on fair and reasonable basis. May adopt any appropriate procedure	At Ombudsman's discretion based on laws, rules, codes of practice	Arbitration procedure	At Ombudsman's discretion - fair in all the circumstances, based on: • rule of law • general principles of good banking practice	At Ombudsman's discretion - fair in all the circumstances, having regard to applicable codes of conduct	—	IOB - fair and reasonable PIAS - procedural rules/law ABI codes/statements of insurance practice
Limits on individual awards	No	£100,000 (unless both parties agree to higher specified limit)	£50,000	Claims under £50,000: Consumer Arbitration Scheme Claims over £50,000: Full Arbitration Scheme	£100,000	£100,000	PIAOB/IOB limit where applicable (see relevant column)	IOB - £100,000 PIAS - £100,000
Distress/inconvenience payments possible?	Yes	Yes - up to £750	Yes - up to £750	Yes	Yes	Yes, but within above limit	—	IOB - yes PIAS - yes
Service free to complainant?	Yes	Yes	Yes	Yes, but £50 charge for using Consumer Arbitration Service (refundable if complaint succeeds)	Yes	Yes	—	IOB - yes PIAS - yes

* Some schemes reserve the right to award costs against complainant if he behaves unreasonably or causes unnecessary expense.

	FSA Firms	IMRO Firms	PIA Firms	SFA Firms	Banks	Building Societies	Friendly Societies	Insurance Companies
Governance arrangements (for independent mechanism)	Independent investigator appointed by FSA (Complaints referred by in-house unit where appropriate). Reports annually to FSA	Inv. Ombudsman appointed by IMRO Board. Inv. Omb Committee oversees effectiveness. Reports annually to IMRO Board	PIA Ombudsman appointed by separate PIAOB Council. Reports annually to PIAOB Council	Arbitration Schemes - Arbitration panel (and appeal panel) are independent of SFA. Reports annually	Ombudsman is responsible to an independent Council. Reports annually	BSC recognises BSO Scheme(s) under BS Act 1986 but has no power/function to deal with complaints itself and has no involvement in operation of scheme. Reports annually	—	IOB - Independent Board/Council. Reports annually. PIAS - run by Chartered Institute of Arbitrators
Governance arrangements (for in-house process)	Independent complaints commissioner	—	—	Independent complaints commissioner	—	—	—	—
Funding	Directly regulated businesses' fees	IMRO membership fees	<ul style="list-style-type: none"> Partly direct from PIA membership fees Partly from case fees (paid by firms irrespective of outcome) 	SFA membership fees plus £50 charge to complainants for Consumer Arbitration Scheme	Levy on member banks	Mixture of subscriptions and case fees	See PIAOB/IOB entry where relevant	IOB - members of scheme (case fees + levy) PIAS - members of scheme reimburse Institute for cost of arbitrator plus technical costs

Appendix 2 Existing Schemes: scope and jurisdiction

Scheme	Scope / Jurisdiction	Complainant Eligibility
SFA <ul style="list-style-type: none"> Complaints Bureau Consumer Arbitration Scheme Full Arbitration Scheme 	<ul style="list-style-type: none"> Complaints relating to SFA authorised business post 29 April 1988 which is not already the subject of litigation or arbitration For claims under £50,000. (Firms must submit to arbitration if complainant requests it) Claims falling outside Consumer Arbitration Scheme provided both complainant and firm agree 	<ul style="list-style-type: none"> Any customer of an SFA firm Private customers only Any customer of an SFA firm
IMIRO (Investment Ombudsman)	Any complaints alleging: <ul style="list-style-type: none"> Financial loss as result of IMIRO firm's 'permitted business' or investment business conducted by it whilst subject to the rules of SIB or SRO or RPB; and/or Distress and inconvenience arising from an IMIRO firm's administrative actions or omissions 	Customers of IMIRO firms Includes complaints by: <ul style="list-style-type: none"> a holder of units (or equivalent) in any CIS¹ of which an IMIRO firm is (or was at time of complaint) the operator or trustee; or a trustee or beneficiary of an OPS² but excludes market counterparties (specified in rules)
PIA (PIA Ombudsman)	Complaints about <ul style="list-style-type: none"> Investment business or any other business regulated by PIA Investments (under FS Act) or policies of insurance which constitute long term business under Insurance Companies Act 1982. 	Customers of PIA firms
FSA's Independent Investigator	Complaints about conduct of investment business by firms directly regulated by the FSA	Any person other than someone who carries on investment business of same kind as firm against which complaint is lodged.
Building Societies Ombudsman Scheme	Complaints about any service provided by societies for individuals in the ordinary course of business.	Individual customers of building societies. Partnerships, unincorporated bodies, and companies with turnover of less than £1m.

¹ Collective investment scheme ² Occupational pension scheme

Scheme	Scope / Jurisdiction	Complainant Eligibility
Friendly Societies	Friendly societies are not subject to a statutory requirement to belong to a recognised scheme (except where PIAOB applies). They may participate in IOB, and their non-investment business may also be covered - on a voluntary basis - by PIAOB.	Where PIAOB or IOB applies, see relevant entry.
Credit Unions	<ul style="list-style-type: none"> No statutory requirement for credit unions to belong to a scheme for the investigation of complaints. No voluntary schemes in operation. 	—
Other mutual societies (e.g. industrial and provident societies)	<ul style="list-style-type: none"> Registered, not authorised, by the Central Office of the RFS.¹ Cover a wide-range of mostly non-financial business. Some may belong to ombudsmen schemes in their own field of operations (e.g. Housing Associations). <p>(This category will fall outside the FSA's complaints arrangements.)</p>	—
Personal Insurance Arbitration Service	<ul style="list-style-type: none"> Disputes about scope, terms and application of an insurance policy. Modification or revocation of insured person's rights under an insurance policy. (Excludes disputes which can be pursued by PIA Ombudsman; disputes subject to legal, judicial or arbitral proceedings; disputes over £100,000 and insurance affected by employers for benefit of employees.) 	<ul style="list-style-type: none"> Insured person / entitled claimant under a UK policy insured in private capacity; or Entitled claimant under a life policy.
Insurance Ombudsman Bureau	Disputes relating to general insurance carried out by members and their tied agents	<ul style="list-style-type: none"> Private individuals Individuals covered by group schemes/policies
Banking Ombudsman	<p>Individual complaints about one or more of the following:</p> <ul style="list-style-type: none"> Banking services (including mortgages) Credit card services Executor and trustee services Advice and services relating to taxation, insurance and certain investments. 	<ul style="list-style-type: none"> Individuals Partnerships (unless all the partners are companies) Unincorporated bodies (unless all the members are companies). Small companies (i.e. with annual turnover of less than £1m).

¹ Registry of Friendly Societies

Appendix 3

Existing schemes: caseload volumes

The following table shows the number of complaints handled by the various schemes in 1996/97.

Scheme	Number
Banking Ombudsman	550
Building Societies Ombudsman	1400
IMRO / Investment Ombudsman	330
Insurance Ombudsman: general business	3300
investment business (now handled by PIAOB)	2750
PIA Ombudsman Bureau ¹	3400
Personal Insurance Arbitration Service	60
SFA Complaints and Arbitration Service	800
SIB (now the FSA) ²	20
Total	12610

¹ Not including those directed through the Insurance Ombudsman.

² The handling of most complaints against firms directly regulated by the FSA is sub-contracted to the PIAOB and is included in the total for that body.

Appendix 4

Proposed complaints-handling process

