Response by the Credit and Investments Ombudsman to the Interim Report by the Ramsay EDR Review Panel

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Contents

Executive summary

1. The Credit and Investments Ombudsman (**CIO**) rejects the Interim Report's recommendation that CIO and the Financial Ombudsman Service (**FOS**) should be replaced by a single non-statutory ombudsman scheme.

2. The Interim Report (**Report**) does not confirm in any way that the proposed single ombudsman scheme is capable of dealing with major banking and insurance scandals of the kind which caused public outrage, invited the scrutiny of numerous parliamentary inquiries, prompted calls for a Royal Commission and, most relevantly, spurred the Government to commission this review in the first place.

3. According to the economic analysis by ACIL Allen Consulting (see **Appendix 1 and Appendix 2**):

   (a) The proposal to introduce a single ombudsman scheme is not supported by economic analysis, sound argument or evidence. The Report does not demonstrate any cost benefits to replacing CIO and FOS with a single scheme.

   (b) None of the perceived problems identified in the Report would be addressed by introducing a single scheme. In fact, a single scheme would create problems that do not currently exist.

   (c) A single scheme would see the loss of the benefits the existing two schemes currently provide: price competition, service quality comparison, pressure to keep costs down, and innovate with better processes and services.

   (d) A monopoly not-for-profit organisation, such as the single ombudsman scheme being proposed, can cause the same amount of economic damage as a monopoly for-profit organisation, by charging more and spending the proceeds on bloated staff numbers, excessive executive compensation, lavish offices and other wasteful spending – as well as providing poor service.

4. It is painfully ironic that the major banks are the big winners of a review specifically commissioned to address the scandals attributed to them:

   (a) The major banks, who are members of FOS, will benefit from a single ombudsman scheme because their ombudsman costs will be subsidised by the influx of more than 23,000 smaller financial firms (who are presently members of CIO) being forced to join a single scheme.

   (b) Smaller and more innovative financial firms, including fintech disrupters, operating on thinner margins and not having the benefits of scale and incumbency, will be least able to absorb or pass on any increased cost that may result from an inefficient single scheme monopoly.

   (c) The major banks, invariably the largest generators of complaints, also benefit from a single scheme because the scheme will tailor its processes to deal with their large volume of complaints, at the expense of smaller financial firms.

5. It is therefore not surprising that the existing two ombudsman schemes are strongly supported by industry associations (representing the interests of competitors to the major banking incumbents), as well as individual firms (including leading fintechs seeking to disrupt the Australian financial services landscape to the benefit of consumers). They understand that the proposed single scheme will damage the prospects for increased competition in financial services and will lack the checks and balances that apply to a statutory scheme.

6. It is disappointing that the Report places little or no weight on submissions made by these industry bodies in support of the two ombudsman scheme model. Their members represent about 97% of the entire financial services industry and are a crucial source of competition to the major banks.

7. The Report is also silent on how the creation of a single scheme will lead to lower costs, greater efficiencies and better outcomes. Almost all the submissions made by industry to the Review expressed concern that a single scheme monopoly would lead to higher costs, inefficiencies and poorer outcomes – advice which was totally ignored by the Review Panel.

8. The proposed single ombudsman scheme would be far less accountable and transparent than a statutory scheme to its stakeholders. A statutory scheme is subject to important checks and balances and, in the absence of these, the only check on the broad discretions and powers of a non-statutory scheme is the existence of two ombudsman schemes operating in the same sector in competition with each other.

9. The Report fails to examine the potential deleterious effect of the market monopoly it is proposing, and whether and, if so, how the vaunted benefits of the proposed single ombudsman monopoly outweigh the loss of benefits of a competitive market in financial services dispute resolution.

10. A single ombudsman scheme will not be in the interests of CIO's 23,000 members, 97% of which are sole traders and small businesses. FOS may also have small members, but that segment is not the focus of their work – 85% of all complaints dealt with by FOS are about large members who receive more than 100 complaints a year.

11. Small businesses will be no better off under a single ombudsman scheme which lacks the appropriate powers and expertise to deal effectively with their complaints. The Australian Small Business and Family Enterprise Ombudsman (**ASBFEO**) or a small business tribunal should be empowered to investigate and adjudicate small business disputes that are outside the existing jurisdictional limits of ombudsman schemes or, alternatively, to investigate and adjudicate ALL small business disputes, to the exclusion of the existing schemes.

12. It continues to be necessary for credit representatives to be members of an ASIC-approved ombudsman scheme. The failure of Timbercorp and Great Southern Plantation, and the devastating financial losses incurred by a multitude of investors in schemes promoted by their representatives, is a potent reminder of why representatives should be required to join an ASIC-approved ombudsman scheme. More accessible, expedient and cost effective redress would have been available to those investors had their authorised representatives been required to join an ASIC-approved EDR scheme. The same mistake should not be made by exempting credit representatives from joining an ASIC-approved ombudsman scheme.

Introduction

CIO rejects the Interim Report's recommendation that CIO and FOS should be replaced by a single non-statutory ombudsman scheme.

The recommendation fails to address the problems for which the review was commissioned, but provides a solution for which no problem has been established.

Financial scandals untouched

The Report is conspicuously silent about whether the proposed single ombudsman scheme is capable of dealing with the major banking and insurance scandals that have occurred since 2009[1]. These caused public outrage, invited the scrutiny of numerous parliamentary inquiries, prompted calls for a Royal Commission and, most relevantly, spurred the Government to commission this review in the first place

We note that the scandals occurred in areas where FOS presently enjoys a virtual monopoly.

Accordingly, the Final Report should provide a detailed commentary as to:

(a) how effective FOS was in dealing with those of the scandals that were within its jurisdiction and in relation to which it received complaints, and

(b) how the proposed single ombudsman scheme, even with increased monetary limits, would deal with such scandals any differently from FOS.

[1] https://www.theguardian.com/australia-news/ng-interactive/2016/apr/29/timeline-banking-scandals-in-australia-since-2009

No economic analysis

The Report does not consider the potential deleterious effect of the market monopoly it is proposing.[2] Indeed, there is not a single reference to 'monopoly' anywhere in the Report.

In failing to do so, the Report does not examine whether, and if so how, the vaunted benefits of the proposed single ombudsman monopoly outweigh the loss of benefits of a competitive market in financial services dispute resolution.

The Financial System Inquiry (**FSI**) considered that all financial system participants have roles and responsibilities in engendering confidence and trust in the financial system to facilitate economic growth[3]. Central to the FSI's philosophy is the principle that the financial system should be subject and responsive to market forces, including competition[4].

Yet the Report does not consider the issue of competition between CIO and FOS in the wider economic sense or the role each scheme plays in the broader financial system. It relies instead on the flawed view that 'dispute resolution is not a competitive market'[5] because it is financial firms and not consumers that have the choice of which industry ombudsman scheme to belong to.[6]

This misses the point entirely: firstly, financial firms will pass on any increase in the cost of operating a single ombudsman scheme to all consumers, not just consumers who lodge complaints; and secondly, financial firms are also users (and consumers) of ombudsman services[7].

[2] For example, the tendency for monopolies to engage in price discrimination between members and expense preference behaviour. See page 25 for explanation of expense preference behaviour.

[3] http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf

[4] Ibid.

[5] Australian Securities and Investments Commission submission to the EDR Review Issues Paper, page 39

[6] Paragraph 5.27 of the Interim Report

[7] The Terms of Reference of the Review specifically refers to the 'needs of users, including consumers and industry'.

An economic analysis by ACIL Allen Consulting commissioned by CIO (**Appendix 1**) concluded that:

- A single scheme would see the loss of the benefits which the existing two ombudsman schemes[8] currently provide: price competition, service quality comparison, pressure to keep costs down and to innovate with better processes and services.
- Unlike a conventional monopoly where buyers can walk away if the quality of the service is low or prices charged by the monopolist are high, financial firms will have no choice but to remain members of the monopoly ombudsman scheme given scheme membership is mandatory.
- Even worse, not only will financial firms not be able to vote with their feet by leaving the monopoly scheme, they will not be able to do anything about high charges and poor service by voting in a new board. This is because the boards of CIO and FOS are not voted in by members.
- This is not a problem under the current two scheme model because competitive tension between CIO and FOS means that they have to be responsive and accountable to financial firms who can credibly threaten to take their membership to the other scheme. It would be disastrous if there was only a single scheme.
- A monopoly not-for-profit organisation can cause the same amount of economic damage as a monopoly for-profit organisation by charging more and spending the proceeds on bloated staff numbers, excessive executive compensation, lavish offices and other wasteful spending – as well as providing poor service.
- Because a single ombudsman monopoly will not be constrained by competitive pressures as to what it can charge financial firms, ASIC may have to step in and become a price regulator, something it has no expertise in.
- Any jurisdictional overlap between CIO and FOS presents an opportunity for the two schemes to compete with each other to achieve better outcomes in relation to similar issues. This has been demonstrated by CIO on several occasions. For

[8] All references to the two ombudsman schemes are references to CIO and FO, being the only two schemes approved by ASIC to operate in the Australian financial services sector. CIO makes no comment about the Superannuation Complaints Tribunal (SCT)

example, although CIO and FOS both deal with credit disputes, it was CIO's initiative to deal with financial hardship complaints that motivated FOS to do the same, and this resulted in both CIO and FOS assisting consumers and financial firms to resolve thousands of cases involving financial hardship.

- The Report does not suggest that fairness is lacking with either of the two schemes, only that there could be 'more fairness' with a single scheme. However, no explanation is given as to why it considers a single scheme would enhance fairness. The truth is that a monopoly scheme would have little or no incentive to act fairly towards its stakeholders because there would be no or fewer consequences for not doing so.
- Because monopolies, by definition, do not face any competitive pressures, they have less incentive to be transparent (unless required by law or a regulator).
- This is not to say that it is impossible for efficiencies to be realised between the existing schemes. To the extent that this does not compromise competitive processes, schemes can share information and offer common guidance material to consumers. If there are gaps in coverage, they should be filled by the schemes individually deciding to expand their coverage within the limits allowed by the law, (i.e. not by schemes agreeing between themselves to divide the market).

No evidence of problems cited

The Report found that CIO and FOS perform well against the Review's own core principles. Indeed, the Report praised the schemes as having:

> '…shown themselves to be innovative and adaptive to changes in the financial system, changes in consumer expectations, and changing products and services'[9].

In other words, there is no market failure, dysfunction or failure of regulation of the kind that prompted the United Kingdom to bring together twelve schemes[10] to establish a single statutory scheme, the UK Financial Ombudsman Service (**UK FOS**).

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[9] http://treasury.gov.au/~/media/Treasury/Consultations%20and%20Reviews/Reviews%20and%20Inquiries/2016/Review%20into%20EDR/Key%20Documents/PDF/EDR_interim.ashx

[10] Some industry and institutionally specific, some for different products

It is difficult to see how any of the perceived deficiencies of CIO and FOS are of such severity and consequence as to warrant the replacement of these well-performing schemes with a single ombudsman scheme.

While CIO, being a strong advocate for continual reform and reassessment, readily accepts that there is always room for improvement (the capacity for which is often best revealed by comparing the two existing schemes against each other), we do not consider that the Report has made a case for a single non-statutory ombudsman scheme.

The Report proposes a single scheme because:

> 'the current framework gives rise to problems, including consumer confusion, difficulties in achieving comparable outcomes and unnecessary duplication.'

These reasons are not supported by the facts. We explain why below:

1. <u>No consumer confusion</u>

   There is no empirical evidence of consumer confusion as to which ASIC-approved ombudsman scheme consumers should take their complaints.

   ASIC's own submission notes that there is a lack of evidence of consumers being 'shopped around schemes or potentially never getting to the scheme that can help them'.[11]

   Indeed, consumer confusion is not evident because:

   (a) ASIC's Regulatory Guides 139 and 165 require financial firms to notify their clients of the EDR scheme to which they belong,[12]

[11] Australian Securities and Investments Commission, submission to EDR Review Issues Paper, paragraph 168, page 41.

[12] RG 139.6, 139.9 and 139.19 - http://download.asic.gov.au/media/1240742/rg139-published-13-june-2013.pdf, RG 165.91, 165.97 and 165.107 - http://download.asic.gov.au/media/3285121/rg165-published-2-july-2015.pdf

(b) many of the prescribed documents which legislation requires to be sent to consumers must set out the contact details of the ombudsman scheme of which the financial firm is a member,[13]

(c) each scheme's website has a comprehensive search function identifying whether the financial firm being complained about is a member of the scheme, and

(d) finally, even if a consumer approaches the wrong scheme, both CIO and FOS have a 'no wrong door' policy – each scheme will transfer phone calls to the other when an inquiry has been misdirected and, under a Memorandum of Understanding between CIO and FOS, each scheme transfers complaint files to the other in the rare event of an incorrect lodgement.[14]

The Report opines that it is unsatisfactory for a consumer to have to pursue the same dispute through two different schemes. This may occur, according to the Joint Consumer Group submission[15], where:

- a mortgage broker is in one scheme and lender in another;
- a debt collector is in one scheme and the credit provider in another.

In relation to mortgage brokers and lenders, consumers seldom have to pursue their complaint through multiple schemes. In the overwhelming majority of cases, the consumer's claim relates to either the mortgage broker's conduct or the lender's, but not both. While the consumer may be confused as to whether their complaint should be directed against the broker or the lender, the scheme that receives the complaint will ensure that the complaint is made against the correct respondent.

If at all it becomes necessary for a complaint to be transferred to the other scheme, CIO and FOS have an established practice for transferring complaints

[13] National Credit Act 2009. In relation to financial hardship: sections 72(4)(b)(iii), and 177B(4)(b)(iii); in relation to enforcement proceedings: 88(3)(g) and 179D(2)(f); and in relation to Credit Guides: sections 126(2)(e)(ii), 149(2)(e)(ii), 113(2)(h)(ii), 136(2)(h)(ii), 127(2)(e)(ii), 150(2)(e)(ii), 158(2)(h) and 160(3)(f)(ii).
[14] http://www.cio.org.au/cosl/assets/File/MOU-between-COSL-and-FOS-Securitisation-Only.pdf
[15] Joint Consumer Group submission to the Review, page 55

directly to the other so consumers are not inconvenienced by having to lodge a new complaint with the other scheme.

In relation to debt collectors and credit providers, the example cited in the Joint Consumer Submission is misconceived. Either the collector is agent of the credit provider, in which case only the credit provider is the relevant subject of a complaint, or the debt has been assigned to the collector or debt purchaser, in which case only the collector or the debt purchaser is the relevant subject of the complaint.

Consequently, neither of the scenarios cited above provide a basis for suggesting that multiple schemes cause consumer confusion.

2. <u>Comparable outcomes at the expense of innovation</u>

We are not aware of any statistical or substantial evidence of substantive differences in consumer outcomes between CIO and FOS.

Indeed, the Report itself concedes that 'it is difficult to make an assessment of the extent to which the current system produces inconsistent outcomes for consumers'[16] We note that both schemes must satisfy the requirements of ASIC's Regulatory Guide 139 which promotes minimum standards across ombudsman schemes to achieve "parity of schemes and equal treatment of complaints".[17]

Notwithstanding, it is not possible for ombudsman schemes to evolve, innovate and go beyond their minimum jurisdiction if they consistently produce only comparable outcomes, whether within the single scheme or as between the two schemes.

By way of illustration, CIO would never have been able to extend its jurisdiction to deal with financial hardship complaints or complaints where legal proceedings had commenced (both initiatives being enormously beneficial to consumers),

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[16] Paragraph 5.14 of the Interim Report
[17] ASIC Regulatory Guide 139.35(b)

had it been constrained to only produce outcomes similar to those produced by FOS at that time.

The idea that there is something problematic with one scheme providing more appropriate outcomes, better service or a superior process is illogical. This is the natural pathway to continuous improvement that is inherent in any properly functioning market. The inferior scheme will be forced to improve and may become a leader in certain areas, creating a virtuous cycle of ongoing improvement.

Competition and comparative discipline drives the sort of innovation necessary to adapt to changing circumstances and markets.

Uber, for example, would not have come about if regulation mandated a single taxi operator.

In any event, by their very nature, ASIC-approved ombudsman schemes have more latitude than the Courts to fill gaps and devise appropriate remedies by, for example, taking into account fairness and good industry practice when deliberating the merits of a dispute.

An ombudsman scheme may also arrive at different outcomes on separate but similar cases because each complaint turns on its own individual facts and on each consumer's specific personal and financial circumstances. Accordingly, the 'right' outcome in one complaint will not automatically be the right answer in other similar cases.

It follows that comparable outcomes may not be practically achievable because even when complaints are similar and involve similar products, each complaint necessarily turns on its own particular facts and on the consumer's unique personal and financial circumstances. [18]

[18] The Interim Report suggests that 'A complaints resolution framework should ensure that consumers receive comparable outcomes, both procedurally and substantively. Consumers who have similar

It is for precisely for this reason that a scheme's decision does not create a binding precedent and a scheme is not strictly bound by its previous decisions.

3. <u>No unnecessary duplication</u>

The Report suggests that competition between ombudsman schemes leads to unnecessary duplicative costs and an inefficient allocation of resources for industry and for the regulator.

With respect, that is akin to saying that Australia would be better off with a single provider of financial services or a single supermarket operator.

Any benefit gained by removing duplication will be more than offset by increased bureaucracy and a lack of accountability to stakeholders – a common trait amongst monopolies.

ASIC's supervisory costs are unlikely to decrease in the absence of competitive tension between the schemes. The existing two scheme model obviates the need for ASIC to closely monitor efficiency, innovation, jurisdictional reach and ombudsman fees.

Not having the benefit of an alternative scheme to draw on, ASIC may need to devote more resources to identify deficiencies and limitations in the single scheme and examine what improvements and innovations are necessary or desirable. The natural tension between the two existing ombudsman schemes has helped drive innovation and improvements, and has provided ASIC with leverage and 'soft' influencing tools when selecting one ombudsman scheme's approach as its preferred position.[19]

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complaints (for example, in relation to substantively similar financial products) should receive similar outcomes, whether these complaints are resolved by the same or different bodies'.

[19] For example, see ASIC Consultation Paper 172: EDR jurisdiction over complaints when members commence debt recovery legal proceedings - Paragraphs 5 and 10(b).

Appendix 2 compares a single ombudsman scheme monopoly to that of the existing two ombudsman scheme model in terms of the Review's own core principles of Efficiency, Equity, Complexity, Transparency, Accountability, Comparability of Outcomes and Regulatory Costs.

Other users ignored

The Report confines its consideration of competition issues to the complaining customer only. This is contrary to the Terms of Reference of the Review which specifically refers to the 'needs of users, including consumers and industry'[20].

All consumers, not just those who lodge complaints, are users of ombudsman schemes. If, for example, ombudsman schemes are costly, over-compensate complainants, entertain unmeritorious complaints or use their discretions and powers inappropriately, consumers in general will suffer because financial firms will inevitably pass on their costs to them, or they may ration the availability of financial products or withdraw from certain segments of the market.

Further, smaller and more innovative financial firms who do not enjoy the benefits of scale and incumbency will be least able to absorb or pass on these costs. This will have a significant effect on their ability to compete with larger operators.

The report also fails to acknowledge or take into account the vast weight of evidence provided to it by industry that a single ombudsman scheme will be anti-competitive and will lead to higher costs, greater inefficiencies and poor customer outcomes. This is particularly troubling given that the cost of dispute resolution is borne by industry – not by the consumer making the complaint.

We call on the Review in the formulation of its final report to acknowledge this weight of evidence, and to undertake a thorough analysis of the impact of a single scheme monopoly on financial firms.

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[20] http://www.treasury.gov.au/ConsultationsandReviews/Reviews/2016/Review-into-Dispute-Resolution-and-Complaints-Framework/Terms-of-Reference

Misunderstanding scheme choice

The Report declares that it is difficult to quantify the value that choice provides to financial firms and that the inherent duplication involved in having multiple schemes performing essentially the same function is inefficient and imposes costs on financial firms and, ultimately, consumers[21].

The Report concludes that competition between industry ombudsman schemes is 'not appropriate' and does not provide the most effective outcomes for all users[22]. It relies, in part, on ASIC's view that competition between ombudsman schemes does not enhance consumer outcomes because:

> 'the potential for firms to seek to switch to a lower cost scheme … is undesirable from a policy perspective and can inhibit innovation or efforts of schemes to extend beyond the minimum jurisdiction'[23].

With respect, ASIC has no basis for suggesting that a scheme might not innovate or go beyond the minimum jurisdiction, presumably for fear of losing members to the other scheme. ASIC is well aware that both CIO and FOS have, over the years, introduced innovations and gone beyond their minimum jurisdictions on a number of occasions irrespective of any potential loss of members. We discuss this later (see page 18).

ASIC also fails to consider the issue of competition between CIO and FOS in the wider economic context. This is surprising given the FSI recommended, at ASIC's own request, that its mandate should include a requirement to 'take competition issues into account as part of its core regulatory role.'[24]

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[21] Paragraph 5.40 of the Interim Report

[22] Paragraph 5.28 of the Interim Report

[23] Paragraph 160 of ASIC's submission to the EDR Review Panel: http://www.treasury.gov.au/~/media/Treasury/Consultations%20and%20Reviews/Consultations/2016/Review%20of%20the%20financial%20system%20external%20dispute%20resolution%20framework/Submissions/PDF/Australian_Securities_and_Investments_Commission.ashx

[24] Recommendation 30 of the FSI: http://fsi.gov.au/publications/final-report/chapter-5/strengthening-competition/

In contrast, the recent comprehensive 18-month review by the New Zealand Ministry for Business, Innovation and Employment found no evidence that the multiple scheme model caused consumer detriment or that it did not deliver the right consumer outcomes[25].

The Report suggests that where it is financial firms (but not consumers) who have a choice of ombudsman scheme for dispute resolution, it is not clear that competitive tension drives innovation and better outcomes for consumers.

CIO does not suggest that financial firms having a choice as to which scheme to belong drives innovation and better outcomes for consumers.

Rather, the fact that two ombudsman schemes exist in competition with each other has prompted each scheme to evolve and innovate so as to provide better outcomes for consumers, a core objective of ombudsman schemes. So for example, the existence of two schemes in the sector has allowed consumer advocates and the regulator to use leverage on one scheme to adopt the innovations of the other.

The Report also suggests that competition between schemes could 'result in a reluctance for schemes to accept disputes that go beyond the minimum jurisdiction, an outcome not beneficial to consumers'[26].

There is no factual basis for this.

One only has to look at the best practice initiatives introduced by CIO which repeatedly and significantly extended the minimum jurisdiction prescribed by ASIC's RG139, by, for example:

(a) dealing with financial hardship complaints, even in relation to non-regulated loans (this crucial initiative led to a major change in the complaint profiles of

[25] NZ MBIE, Review of the Operation of the Financial Services Providers (Registration and Dispute Resolution) 2008 and the Financial Advisers Act 2008: Issues Paper, November 2015, p 34.

[26] Paragraph 5.27 of the Interim Report

both CIO and FOS - financial hardship complaints have historically made up around 30% of disputes received by CIO and FOS),

(b) requiring a financial firm to discontinue or not commence enforcement action while the complaint is open with CIO (this is 25% of all complaints CIO receives),

(c) dealing with financial hardship complaints even when legal proceedings have commenced (this is 10% of all complaints CIO receives), and

(d) dealing with complaints received after default judgment has been entered in certain circumstances.

Indeed, CIO's Independent Review concluded that CIO:

> 'has been an innovator and policy leader in the area of consumers confronting financial hardship and has developed its own very successful approach to dealing with financial hardship complaints'[27]

and that

> 'there is no doubt that CIO has done some fine work for consumer rights and has in some cases been bolder than others in acting in the public interest'.[28]

Our experience is that more mature financial firms understand the value of a third party facilitating the resolution of a dispute which may not otherwise be resolved, so being expansive regarding jurisdiction maximises the opportunities for those outcomes.

It is noteworthy that even the Joint Consumer Submission accepts that competition between schemes 'drives innovation and improved consumer outcomes'[29]. What it

[27] Page 4: http://www.cio.org.au/cosl/assets/File/Independently%20Review%202012%20(The%20Navigator%20Group).pdf

[28] Page 13: http://www.cio.org.au/cosl/assets/File/Independently%20Review%202012%20(The%20Navigator%20Group).pdf

[29] Joint Consumer Group, submission to the EDR Review Issues Paper, page 53.

does not accept is that this is solely attributable to competition; rather it contends that there are 'stronger drivers for change and innovation within EDR schemes', including consumer movement advocacy, policy development and periodic independent reviews.

However, each of these other drivers can only operate optimally if there is more than one scheme. For example, the periodic independent reviews of each scheme have routinely compared one scheme against the other, and in doing so, recommended one scheme implement particular improvements seen in the other.[30]

Comparisons with an ombudsman scheme that operates outside the financial services sector are not as meaningful or relevant because CIO and FOS are the only two industry schemes that are subject to ASIC's Regulatory Guides 139 and 165.

In terms of corporate governance, for example, the prescribed composition of the CIO and FOS boards is notably different from that of the Telecommunications Industry Ombudsman[31], and any comparison between the schemes in relation to governance issues is of limited value.

Consumer advocates have on numerous occasions, as part of their advocacy, pressured one ombudsman scheme to adopt a consumer-friendly innovation that has been introduced by the other scheme. Without the existence of two ombudsman schemes in the sector, consumer advocates would be denied significant leverage to influence outcomes.

It is no coincidence that FOS adopted CIO's consumer protection initiatives only after CIO had introduced them. Notwithstanding their indignant assertions to the contrary, there is simply no evidence to contradict this.

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[30] See, for example, FOS' Independent Review 2013, pages 25 (para 3), 39 (para 3), 44 (last para), 60 (second last para), 75 (para 5), 76 (para 3), 132 (last para) and 133 (second last para): https://www.fos.org.au/custom/files/docs/independent-review-final-report-2014.pdf

[31] The TIO Board is required to be composed of three independent directors (one who is also the Independent Chair), four consumer directors and four industry directors, whereas CIO and FOS' boards must comprise one independent chair and equal numbers of consumer and industry directors.

With respect, it is absurd to suggest that scheme competition is a bad thing on the basis that:

> 'while one scheme may innovate and experiment with a change, it takes a significant amount of time for the other scheme to follow, if they do at all'[32].

Why is it preferable for all consumers to lose out just because one scheme is lagging behind? The reality is that consumer advocacy would be far less successful in prompting an ombudsman scheme to innovate if there was no other scheme in the sector to point to.

Equally, as both schemes are subject to ASIC oversight, the adoption of innovations in one scheme by the other could easily be sped up by providing ASIC with more specific powers to allow it to compel performance where the schemes do not comply with benchmarks – as recommended by this Review.

Industry views largely ignored

Rather than being evidence-based, the Report relies unreasonably, and places inappropriate weight, on submissions that are grounded in anecdotal evidence, case studies and untested assertions.[33] Other submissions are bereft of empirical data[34] or are self-serving[35].

Regrettably, the Report draws heavily on the Joint Consumer Submission despite the fact that less than 5% of consumers lodging complaints with CIO and FOS are represented by consumer advocates and financial counsellors.

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[32] Joint Consumer Group, submission to the EDR Review Issues Paper, page 53.

[33] This is particularly true of the Joint Consumer Submission to the EDR Review. The submission simplistically opposes competition between the schemes 'as a matter of principle' and does not offer a balanced view of the schemes, electing instead to only focus on the perceived failings of CIO

[34] ASIC's submission to the EDR Review that competition between Ombudsman schemes does not enhance consumer outcomes is not supported by any empirical data.

[35] The Australian and New Zealand Ombudsman Association's (ANZOA's) policy position on competition among ombudsman schemes is also unsupported by evidence and conveniently ignores the efficiencies and innovations that healthy competition brings.

In contrast, the Report places little or no weight on the fact that twelve industry bodies representing an estimated 97% of industry have supported the existing arrangements, with or without modifications.

The report fails to appreciate that these bodies and individual firms, including a leading fintech, represent a crucial source of competition to the major banking incumbents.

This failure flies in the face of the FSI's strongly held view that:

> "the innovative potential of Australia's financial system and broader economy can be galvanised by taking action to ensure policy settings facilitate future innovation that benefits consumers, businesses and government."[36]

Surprisingly, the Report has also chosen to ignore previous findings of the Productivity Commission:

(a) that the mandated introduction of a single scheme, like the UK Financial Services Ombudsman, is not warranted[37], and

(b) that, after examining the cost per contact/case/dispute reported by each scheme, the differences 'do not appear to be scale-related', suggesting that the existence of two or more schemes does not add to unnecessary and inefficient costs to EDR services in the form of inefficient duplication of infrastructure, resources, services or information systems[38].

[36] Financial System Inquiry Final Report, page 144

[37] Page 207 http://www.pc.gov.au/inquiries/completed/consumer-policy/report/consumer2.pdf

[38] Productivity Commission's Review of Australia's Consumer Policy Framework, page 207 - http://www.pc.gov.au/inquiries/completed/consumer-policy/report/consumer2.pdf

Absence of checks and balances

While the Report has looked at ombudsman scheme models operating overseas, it does not indicate how any of these support its proposal for a single ombudsman scheme in Australia.

There is no precedent anywhere in the developed world for a single *non-statutory* ombudsman scheme for financial services, as is being proposed[39]. And for good reason.

1. Accountability

   Such a scheme would be far less accountable than, for example, UK FOS. This statutory scheme, established by the UK Parliament, is subject to some important checks and balances:

   - UK FOS' decisions are subject to judicial review[40].
   - Its regulator, the Financial Conduct Authority, appoints directors to its board. (Interestingly, the chairman and directors are not appointed to represent individually the interests of any particular group or sector.[41])
   - Its budget is approved by the regulator so it is accountable for how it uses and accounts for its resources.
   - Its funding arrangements are similar to CIO's. The amount of levy that each financial firm pays ranges from around £100 a year for a small firm of financial advisers to over £300,000 for a major bank or insurance company. A group charging account fee applies for the largest financial firm groups (the ten or so that account for over 70% of UK FOS' caseload)

[39] A single scheme is contrary to international trends in financial services alternative dispute resolution: France has three financial services schemes dealing with different product groups, banking, investment and insurance respectively. Germany has eleven schemes with cross-cutting jurisdictional cleavages across product types and institutional structures. Italy has three, cross-cutting along product lines, as does Spain.

[40] Judicial review on the merits as well as the process is available for decisions of UK FOS, but this has rarely occurred.

[41] http://www.financial-ombudsman.org.uk/faq/answers/research_a2.html

to ensure that its workload is paid for on a more financially stable basis – by the financial firms whose customers use it most.[42]

- There are reduced incentives for complaint escalation and less encouragement for firms to settle unmeritorious disputes to avoid case fees. A flat £550 complaint fee applies, and then only after the first 25 cases. Less than 1% of financial firms are charged case fees.[43]

- The amount UK FOS can award for compensation is substantially lower than Australia's CIO and FOS. Compensation in the UK is limited to a maximum of £150,000, excluding interest and costs.[44]

By contrast, the single non-statutory ombudsman scheme being proposed by the Report has none of the checks and balances that apply to UK FOS. Without these safeguards, there would be little by way of accountability to stakeholders, particularly financial firms who are required to fund the scheme so it is available to consumers without charge.

The existing ombudsman schemes, CIO and FOS, already occupy a unique position in the dispute resolution landscape and enjoy broad discretions and powers, in that:

- their decisions are binding on the financial firm if accepted by the consumer and these are generally not judicially reviewable by the courts[45],

- unlike a court which must decide cases according to law and precedent, CIO and FOS are not bound by their previous decisions, are able to decide a dispute on grounds of fairness and industry good practice, and are not bound by any legal rule of evidence – this gives the schemes a good deal of

[42] http://www.financial-ombudsman.org.uk/publications/technical_notes/QG1.pdf
[43] http://www.financial-ombudsman.org.uk/publications/technical_notes/QG1.pdf
[44] http://www.financial-ombudsman.org.uk/publications/technical_notes/compensation.html
[45] Their terms of reference are contractual in nature and bind the scheme and its members. The courts will not generally interfere with the scheme's exercise of powers under the terms of reference which members have subscribed and agreed to be bound by except, for example, where procedural fairness has not been observed or the scheme's decision is so unreasonable that no reasonable decision-maker could have formed it.

latitude in deciding cases and exercising discretions and powers without having to be unduly concerned about judicial review,

- not being a court or tribunal, neither CIO nor FOS can subpoena documents, take evidence on oath, cross-examine witnesses or investigate criminal fraud – yet they are able to adjudicate complaints where a claim for loss is up to $500,000 or the debt recovery or debt related small business dispute is up to $2,000,000 (with a proposal to increase that to $10,000,000), and

- not being a statutory scheme, neither CIO or FOS are subject to the Freedom of Information Act 1982.

In the absence of the sorts of checks and balances that apply to a statutory scheme like UK FOS, the <u>only</u> check on the broad discretions and powers of CIO and FOS is the existence of two schemes operating in the same sector in competition with each other.

2. <u>Price regulation</u>

The proposed single scheme monopoly can quickly evolve into a burgeoning and expensive bureaucracy. UK FOS, although dealing with complaints from a population almost three times larger than Australia, employs about 5,000 staff (see **Appendix 3** for breakdown of staff headcount) and has an operational income of £226.5 million from levies and case fees.

ASIC may find itself in the position of a price-regulator because a single scheme monopoly may engage in price discrimination between different financial firms or expense preference behaviour, both of which would have a significant impact on small financial firms in particular.

The expense preference theory maintains that an organisation that possess market power and in which ownership is separate from control, will, through the decisions of its managers, show a preference for expenses rather than profit. In particular, it posits that managers have positive preference for staff expenses, management salaries and funds available for discretionary use. The theory postulates that monopoly organisations with managerial discretion will hire more staff and/or pay higher managerial salaries than will firms in more competitive markets.[46]

Detrimental effect on small financial firms

Having a single ombudsman scheme will not be in the interests of CIO's 23,000 members, 97% of which are sole traders and small businesses. They will lose an industry-specific ombudsman scheme that has the particular knowledge, expertise and history of successfully resolving disputes in their sector.

The Report does not accept this argument on the basis that FOS also has a large number of small members.

However, the fact is at least 77% of all complaints 'accepted' (and many more received) by FOS are about banks and insurance companies[47], not small members.

Only 7 CIO members receive more than 100 complaints per year. These make up only 43% of the complaints CIO receives. By contrast, 47 FOS members receive more than 100 complaints per year. These make up 85% of all complaints FOS deals with.[48]

It is therefore reasonable to conclude that while FOS may have small members, that segment is not the focus of their work.

We note that as recently as November 2016, the House of Representatives Standing Committee on Economics found that:

> 'Australia's banking sector is an oligopoly. The major banks have significant market power that they use to protect shareholders from regulatory and market developments.[49]'

[46] Managerial Discretion and Expense Preference Behaviour, Robert Y Awh and Walter J Primeaux, Jr.
[47] FOS's Annual Review 2015-16, page 60.
[48] FOS's Annual Review 2015-16, page 22. The 845 complaints where the FSP had not yet been determined were not included in our total calculation.
[49] http://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/Four_Major_Banks_Review/Report

It is not surprising then that the major banks support the creation of a single ombudsman scheme since a consolidation of the two existing ombudsman schemes into a single mega scheme will have little or no impact on their profitability:

(a) The cost of having complaints heard by an ombudsman scheme is not a significant cost to the major banks. It is, however, for smaller financial firms who operate on much thinner margins. Costs impede the ability of smaller financial firms to compete on price, especially in the early stages of their development[50].

(b) The major banks have larger margins which enable them to settle claims on a commercial basis, even those without merit. Smaller firms generally do not have the resources to settle unmeritorious complaints.

(c) The major banks have 'deep pockets' to pay off claimants to avoid the inconvenience of having to deal with disputes going to the ombudsman scheme. Smaller firms, on the other hand, are likely to feel financially blackmailed into settling unmeritorious claims in order to avoid further complaint fees.

It is not without irony that the major banks will be the big winners of a review specifically commissioned to address the scandals attributed to them.

(a) The major banks, invariably the largest generators of complaints, benefit from a single ombudsman scheme because it will tailor its processes to deal with their large volume of complaints, at the expense of smaller financial firms.

(b) The major banks, who are members of FOS, also benefit from a single ombudsman scheme because their EDR costs will be subsidised by the influx of thousands of smaller financial firms who are presently members of CIO.

(c) Smaller and more innovative financial firms, including fintech disrupters, operating on thinner margins and not having the benefits of scale and

[49] See for example the submission to the Review by Tyro Payments, a fintech and a FOS member.

incumbency, but fiercely competing on price, will be least able to absorb or pass on any increased cost that may result from an inefficient single scheme monopoly. In the short term, larger incumbents operating with wider margins can absorb these costs and, in the longer term, take advantage of diminished market competition (from the withdrawal of smaller operators unable to absorb the increased costs) and pass these costs on to consumers.

It is not surprising therefore that industry associations (representing the interests of competitors to the major banking incumbents) and individual firms made submissions in favour of the present two scheme regime. These submissions included a leading fintech seeking to disrupt the Australian financial services landscape to the benefit of consumers[51]. They understand that the proposed single ombudsman scheme will damage the prospects for increased competition in financial services and will lack the checks and balances that apply to a statutory scheme.

Small business jurisdiction

CIO and FOS are extremely effective in dealing with 'Mum and Dad' complaints. Indeed, about 94% of the complaints lodged with CIO and FOS are lodged by individuals.

However, given both schemes lack the powers of a statutory scheme, their ability to deal fairly and effectively with small business loans is limited, even if their monetary limits and compensation caps were to be expanded.

For example, unlike a statutory scheme, neither CIO or FOS can subpoena documents, verify discovery by affidavit, summon witnesses, take evidence on oath, cross-examine witnesses on the statements or documents they have given, or investigate criminal fraud.

[50] The FSI was of the view that: 'For the financial system, technology-driven innovation is transformative. New business models, products and services are emerging, driving competition and changing the way users interact with the system.' (Financial System Inquiry Final Report, page 143)

Small business and complicated loans involving large sums of money are more appropriately dealt with by a tribunal.

Further, the single ombudsman scheme being proposed would not be able to deal with complaints about commercial credit providers[52] as they are not required to be licensed, and so not obliged to join an ASIC-approved ombudsman scheme.

The Report rejects CIO's recommendation that Australian Small Business and Family Enterprise Ombudsman (**ASBFEO**) or a small business tribunal should be empowered to investigate and adjudicate small business disputes that are outside the existing jurisdictional limits of EDR or, alternatively, to investigate and adjudicate ALL small business disputes, to the exclusion of the existing schemes.

CIO's position is consistent with the recommendation of the Parliamentary Joint Committee Inquiry into the Impairment of Customer Loans[53] that, in order to address the vulnerability of small business and commercial borrowers, the ASBFEO act as a small business loans dispute resolution tribunal where gaps in the appropriate dispute resolution schemes remain.

We also note that the ASBFEO and a number of Coalition parliamentarians have also advocated a tribunal for small business.

Credit representatives

It continues to be necessary for credit representatives to be members of an ASIC-approved ombudsman scheme for the following reasons:

1. Under the National Credit Act, a licensee's liability for its credit representative's conduct is limited to conduct that relates to a credit activity, as that term is defined in section 74(a) of the Act. If the conduct being complained about does not relate to a credit activity, any liability for loss cannot be sheeted to the licensee (Australian Credit Licensee or **ACL**). Unless the credit representative is a

[51] who do not also offer consumer credit

[52] http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/customer_loans/Report

member of an ASIC-approved ombudsman scheme in its own right, the consumer's only recourse is through the court system.

Conduct in relation to the following products or services are not credit activities for the purpose of the National Credit Act:

(a) consumer leases for a fixed term of four months or less or for an indefinite period,

(b) credit or leases provided to small businesses,

(c) credit provided to purchase commercial property like farm land, retail property or warehouses, and

(d) other services like budget monitoring, debt management, credit repair, property spruiking and (unlicensed) financial advice.

2. A complaint against a credit representative can be and often is made years after the occurrence of the event that gave rise to the complaint, typically because the loss suffered was not evident or had not materialised until then. By this time, the licensee may no longer be a member of the scheme because it no longer engages in regulated credit activity, engages only in non-regulated activity, has ceased trading and exited the industry, has become insolvent, has ceased to exist or cannot be located.

   In these circumstances, CIO looks to the credit representative to address the complaint and provide redress where appropriate. This is only possible if the credit representative is a member of the scheme.

3. If the event giving rise to the complaint occurred when the credit representative was a credit representative of, say, Licensee A, but the consumer raises the complaint only after the credit representative has become the credit representative of, say, Licensee B, Licensee B is not responsible for the credit representative's prior conduct as representative of Licensee A (section 76(3)(d)). But Licensee A is. However, if Licensee A is no longer a member of the scheme for any reason, the scheme can still look to the credit representative to accept responsibility for the complaint and provide such redress as may be appropriate.

If the credit representative is not, or is not required to be, a member of an ASIC-approved ombudsman scheme, the consumer's only recourse is through the court system.

4. CIO has also encountered cases where a finance broker has provided financial advice without holding an Australian Financial Services (**AFS**) licence or having been appointed an authorised representative of an AFS licensee. Obviously the (ACL) licensee of the credit representative is not responsible for the conduct of the credit representative in these circumstances because the provision of financial advice is not a credit activity. However, if the finance broker is a credit representative member of CIO, the scheme will hold them to account for any loss that may be suffered as a result of the advice.

5. If the complaint relates to an event that took place before the National Credit Act commenced, the ACL licensee of the credit representative is not responsible for the credit representative's conduct. In these circumstances, CIO looks to the credit representative to address the complaint and provide redress where appropriate. Obviously, unless the credit representative is, or is required to be, a member of an ASIC-approved ombudsman scheme, the consumer's only recourse is through the court system.

6. CIO can also join a credit representative to a complaint if the ACL licensee is not in possession of information relevant to the complaint in circumstances where the credit representative is no longer a credit representative of the ACL licensee.

We note that while AFS licensees are required to join an ASIC-approved ombudsman scheme such as CIO or FOS, financial advisers who are appointed authorised representatives are not.

This is in stark contrast to the National Consumer Credit Protection Act 2009, under which credit representatives of ACL licensees are required to join an ASIC-approved ombudsman scheme.

The cases of Timbercorp and Great Southern Plantation, both of which have now gone into liquidation, clearly illustrate the need for authorised representatives to be also required to join an ASIC-approved ombudsman scheme.

Both these companies are said to have paid representatives commissions of 10% or more to sell their managed investments to unsuspecting investors, many of whom had been encouraged to borrow against the equity of their home to invest in these products. Because the licensees had gone into administration, the only recourse for these hapless investors was to seek compensation from their representatives through the court system - a lengthy and expensive process.

More accessible, expedient and cost effective redress would have been available to consumers had the authorised representatives been required, under Chapter 7 Corporations Act, to join an ASIC-approved EDR scheme.

Similarly, CIO has not been able to deal with complaints where the AFS licensee has gone into administration and their authorised representative (a financial adviser who may have provided inappropriate advice to the consumer) is not, and is not required to be, a member of an ASIC-approved ombudsman scheme.

Consequently, CIO is strongly of the view that it is absolutely necessary for credit representatives to continue to be required to be members of an ASIC-approved ombudsman scheme.

Other comments

CIO supports the following recommendations of the Report:

1. that each scheme establishes an independent assessor whose role would be to investigate complaints by users.
2. that debt management firms should be required to be a member of a scheme, and
3. that ASIC's oversight powers in relation to industry ombudsman schemes should be enhanced by providing ASIC with more specific powers to allow it to compel performance where the schemes do not comply with benchmarks.

CIO also supports the introduction of an industry funded last resort compensation scheme.

ACIL ALLEN CONSULTING

APPENDIX 1

REPORT TO
CREDIT AND INVESTMENTS OMBUDSMAN

23 JANUARY 2017

ECONOMIC ANALYSIS OF THE RAMSAY INTERIM REPORT

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CONTENTS

1 INTRODUCTION

1.1 Context

The **Review of the financial system external dispute resolution and complaints framework Interim Report** (the Ramsay Interim Report, RIR) was published on 6 December 2016. This review was intended to consider the functionality of Australia's External Dispute Resolution (EDR) framework, and assess whether changes to this framework are required.

EDR in the financial system is addressed through industry specific dispute resolution schemes, namely the Credit and Investments Ombudsman (CIO), the Financial Ombudsman Service (FOS), and the Superannuation Complaints Tribunal (SCT). CIO and FOS address financial, credit and investment disputes, while the SCT is responsible for superannuation disputes.

Both CIO and FOS have been approved to operate as EDR schemes by the Australian Securities and Investments Commission (ASIC), and are responsible for a minimum jurisdiction as set out in ASIC RG 139. A large majority of disputes lodged under both schemes (94 per cent) are lodged by individuals, the remaining minority by small businesses. Their powers are similar, both ombudsmen use flexible models of dispute resolution and generally resolve disputes through negotiation and conciliation processes.

FOS manages a much larger volume of disputes per year than CIO. FOS received 34,095 disputes over the 2015-16 financial year, as compared to CIO's 4,760. While there is substantial overlap in the member base of both ombudsmen, the FOS member base includes insurers, which are not a focus for CIO. CIO has a larger number of small members as compared to FOS. In 2015-16, CIO reported that it had 22,973 members, 97 per cent of which were sole traders, partnerships, or small businesses. FOS reported 13,576 members over the same period, 87 per cent of which were classified as "small" or "very small".

These differences in membership base impact the types of disputes handled by each organisation. CIO tends to address disputes related to mortgages, credit cards, debt purchase or collection, and motor vehicle financing. FOS, on the other hand, has a focus on credit disputes and general insurance disputes – together, these comprise 70 to 80 per cent of disputes handled by the ombudsman.

One of the primary recommendations of the RIR is the formation of:

"A single industry ombudsman scheme for financial, credit and investment disputes (other than superannuation disputes)".

This report disputes the Ramsay view that the establishment of a single Ombudsman scheme to replace CIO and FOS would be beneficial to the sector and consumers generally. The RIR presents no convincing evidence, or no evidence at all, to support its conclusions that having two industry ombudsman schemes is inefficient and confusing.

By implication, the RIR assumes that the ombudsman industry is a natural monopoly, but it presents no evidence in support. The RIR ignores the significant cost of having a monopoly scheme, a cost which is particularly significant in this case because membership of an ASIC-approved Ombudsman scheme is mandatory for anyone who engages in a ‘credit activity’ or provides a ‘financial service’. Thus, unlike the case of a conventional monopoly where buyers can walk away if the quality of the service is low or prices charged by the monopolist are high, financial firms will have no choice but to remain members of the monopoly ombudsman scheme.

This will not only expose them to high – in theory, infinitely high — membership fees, but poor service as well. Even worse, not only won’t they be able to vote with their feet by leaving the monopoly scheme, they won’t be able to do anything about high charges and poor service by voting in a new board. The boards of both the CIO and FOS are *not* voted in by members. They are self-replicating, with the existing boards appointing new members. This is not a problem under current arrangements because members of the two schemes can credibly threaten to take their membership to the other scheme. But it would be a huge problem if there was a monopoly scheme. Members would be stuck with the monopoly.

The following chapter discusses in detail why a monopoly scheme is a bad idea and the arguments of the RIR.

2 CRITIQUE OF THE RAMSAY INTERIM REPORT

2.1 Introduction

In 1935, the great English economist John Hicks wrote that:

"The best of all monopoly profits is a quiet life".[1]

By this he meant that apart from the high prices that monopolies can charge (on which see more below), because monopolists, by definition, don't face any competitive pressures, they can take it easy. They don't have to think about keeping their costs down,[2] they don't have to innovate and they don't have to think about pleasing their customers.[3] This is especially so if competition is thought of, correctly, as a process rather than an outcome (the usual depiction of competition in economics textbooks).[4]

The RIR recommends a single ombudsman scheme to replace the FOS and CIO ombudsman schemes, thereby creating a monopoly ombudsman scheme for financial, credit and investment disputes (apart from superannuation disputes, which would be carved out, and would have its own ombudsman scheme). As argued in this chapter, this is a bad idea, for two reasons:

1. The RIR attempts to fix problems that don't exist.
2. A monopoly ombudsman scheme will create real problems.

This chapter presents a detailed critique of the RIR findings, but before that discusses the in-principle problem with a monopoly ombudsman scheme.

[1] J. R. Hicks, Annual survey of economic theory: The theory of monopoly, *Econometrica,* Volume 3, Number 1, Jan., 1935, p. 8.

[2] The organisational slack associated with monopoly is known as X-inefficiency – more resources are used to produce a given level of output than when competitive pressures are present: Leibenstein, Harvey (1966), "Allocative Efficiency vs. X-Efficiency", American Economic Review, 56 (3): 392–415

[3] The quiet life hypothesis was tested directly 50 years later. A paper published in the Journal of Health Economics in 1986 (G Yen and L Benham "The best of all monopoly profits is a quiet life" Dec, 5(4):347-53, compared the life expectancy of bankers, an industry in which competition was constrained by regulations during the period examined, with the life expectancy of their counterparts in less regulated industrial firms. Bankers had a lower age adjusted mortality rate.

[4] Competition as a process is a fundamental tenet of Australian competition law and practice: Maureen Brunt (1990), "Market Definition Issues in Australian and New Zealand Trade Practices Litigation" 18 *Australian Business Law Review* 86-128.
"Competition is a process rather than a situation. Dynamic processes of substitution are at work. Technological change in products and processes, whether small or large, is ongoing and there are changing tastes and shifting demographic and locational factors to which business firms respond. ... effective competition is fully compatible with the existence of strictly "limited monopolies" resting upon some short run advantage or upon distinctive characteristics of product (including location). Where there is effective competition, it is the on-going substitution process that ensures that any achievement of market power will be transitory."

2.2 What's wrong with a monopoly ombudsman

The essential problems with monopolies are well-known, and don't need a huge amount of elaboration here.[5] As the Trade Practices Tribunal put it in the seminal QCMA decision over 40 years ago, monopolies "give less and charge more".[6] That is, they charge higher prices, produce less than is socially desirable, and at a lower quality. This means not just a transfer of resources (income) from buyers to the monopolist, but a loss to society as a whole.

The analysis of monopolies is usually done for commercial entities that aim to maximise their profits. Ombudsman organisations are not profit-making organisations. Does this mean that there is nothing to be worried about from a monopoly ombudsman? Not at all.

A monopoly not-for-profit organisation can cause the same amount of economic damage by charging more and spending the proceeds on bloated staff numbers, excessive executive compensation, lavish offices and other wasteful spending – as well as providing poor service. There will be no accounting profits, but there will be monopoly rents, and it is monopoly rents that matter.[7]

The societal losses stemming from ordinary monopolies are stemmed to an extent because buyers, normally, don't have to buy the products of the monopolists. A confectionary producer might have a monopoly on chocolate making, but people don't have to eat chocolates. Furthermore, a confectionary producer charging high prices or making low quality chocolates faces the threat of entry into its market from alternative chocolate makers.

None of this applies to a monopoly ombudsman, for several reasons.

First, membership of an ASIC-approved Ombudsman scheme is mandatory for anyone who engages in 'credit activity' or provides a 'financial service'.[8] At present, with two ombudsman schemes, a financial firm that is dissatisfied with the service it receives from one scheme can move to the other scheme. Obviously this won't be possible if the two schemes are replaced by one, as proposed by the RIR. This means that the monopoly scheme will be able to reduce the quality of its services and charge whatever membership fees it likes.[9]

The situation will be analogous to a pharmaceutical manufacturer that has monopoly control of a drug that people with certain conditions have to take. There is no upper limit to the price that is charged,[10] until and unless regulators step in. It would be a terrible outcome if ASIC had to step in and regulate the membership fees of the monopoly ombudsman. ASIC has no expertise as a price regulator of monopolies. Even regulators that do have expertise as price regulators of monopolies, such as the ACCC, struggle with the task.

Second, there would be no possibility of entry by an alternative ombudsman offering a better deal. The single ombudsman proposed by the RIR would be a monopoly.

Third, the governance of the monopoly ombudsman would preclude a majority of dissatisfied members from replacing the board of directors and ultimately the management. Board members of CIO and FOS are not elected by members. They are appointed by the existing boards. This is not a problem whilst competitive tension between CIO and FOS means that the organisations have to be

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[5] West, Edwin G. "monopoly." The New Palgrave: A Dictionary of Economics. First Edition. Eds. John Eatwell, Murray Milgate and Peter Newman. Palgrave Macmillan, 1987.

[6] Re Queensland Co-Op Milling Association Limited and Defiance Holdings Limited (QCMA) (1976) 8 ALR 481; (1976) ATPR 40–012

[7] http://www.palgraveconnect.com/esm/doifinder/10.1057/9781137294678.0435.

[8] See s47(1)(i) of the National Consumer Credit Protection Act 2009.http://www.austlii.edu.au/au/legis/cth/consol_act/nccpa2009377/s47.htmland s912A(2)(b) and 1017G(2) of the Corporations Act 2001 http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/s912a.html.

[9] Ordinarily there is an upper limit on the price that a rational monopoly will charge. That will be the price that maximises its profits. At higher prices, the revenue it will lose from lost sales will exceed the revenue it gains from higher prices. However, this presupposes that the monopolist will lose sales from higher prices. In situations where buyers cannot leave the market (i.e. the price elasticity of demand is very small, maybe even zero) there is effectively no upper limit to a price that can be charged by a profit-maximising (or rent maximising) monopolist. Economics textbooks teach that a monopolist will set its price on the elastic portion of its demand curve, because this is where its profits are maximised. This price will be higher than that charged in a competitive market, but it will not be infinitely high. However, this analysis presupposes that an elastic portion of the demand curve exists. In the textbooks, the demand curve is drawn as a straight line, and in this case the elastic portion of the demand curve does exist. But this is just an assumption. In cases where the buyer has to purchase the product, demand is always inelastic, and there is no finite maximum price because the monopolist can always make more profit by charging ever-higher prices.

[10] Which is exactly what happens: https://hbr.org/2016/07/price-gouging-and-the-dangerous-new-breed-of-pharma-companies, https://www.theguardian.com/business/2016/sep/21/novum-pharma-acne-cream-aloquin-price-gouging.

responsive and accountable to members, but that responsiveness and accountability would disappear once the competitive tension disappears.

Fourth, because members of the monopoly ombudsman would have nowhere to go, the monopoly ombudsman would be free to be a price discriminating monopolist, which would be even worse for members than a conventional monopoly.[11] A price discriminating monopolist charges different prices to different people, according to their willingness and capacity to pay, with the objective of transferring as much economic 'surplus' from the customers to itself. FOS and CIO already charge different membership fees to different members, so the precedent is set.[12] However, as is well recognised in competition economics and law, price discrimination in a competitive market situation is usually benign but price discrimination by a monopolist is anti-competitive.

Fifth, it is necessary to discuss the concept of natural monopoly. An industry is a natural monopoly when its output can be produced at least cost by one firm (or organisation in a non-commercial setting). One of the reasons the RIR recommends a monopoly ombudsman is that it will save money.

Implicitly, Ramsay assumes that the finance and credit ombudsman industry is a natural monopoly. The intuition is simple: one CEO, one board etc, has to be cheaper than two. But this reasoning is not just simple, it is simplistic and false. Just because some overheads will be saved by replacing the two schemes with a single scheme doesn't mean that costs overall will be lower. Removing some overheads says nothing about what will be happen to variable costs if CIO and FOS are replaced by a single ombudsman scheme, and that is what counts in determining whether there are enduring economies of scale. If that were not the case, then the implication is that all firms in every industry should merge to save on overheads. Plainly that is an absurd proposition.

It is not straightforward to demonstrate the existence of a natural monopoly because this involves a counterfactual. But the RIR does not even try. It cites a submission by ASIC which asserts that a reduction in the number of EDR schemes has in the past resulted in economies of scale and improvements in efficiency because resources could be shifted around to areas experiencing higher dispute volumes.

This is not convincing, for three reasons. First, economies of scale need to be demonstrated case by case, not by reference to other, possibly not comparable cases. Second, the ability to move resources would be constrained by the ability of staff working in one area (e.g. banking) to move to another (e.g. insurance). The cost of training staff to work in multiple areas, so they can handle different types of disputes as the need arises, would offset any economies of scale cost savings. Third, as a matter of logic, if it is efficient to have one dispute resolution scheme because of economies of scale, why not combine all the ombudsman schemes (financial, telecommunications, energy and water, parliamentary ombudsman etc)? Clearly, there are limits even hypothetically to the efficiency benefits of combining schemes.

The RIR has not demonstrated *at all* that there would be cost benefits to replacing FOS and CIO with a single scheme.

Finally, the RIR, at paragraphs 5.26 and 5.27, makes the argument that competition between schemes is of limited benefit because only financial firms, not consumers, have the choice of schemes, which implies that a scheme might provide a service that is valued by firms, not consumers.

There are two responses that can be made. First, financial firms are stakeholders as much as consumers in ombudsman services. Ombudsman schemes have the objective of resolving disputes between consumers and financial firms, not to be advocates for consumers. Second, if two competing schemes don't provide a good service to consumers, the situation is likely to be even worse with one scheme. It is logically possible that financial firms will shop around to find a scheme that appears to favour financial firms over consumers, but any apparent bias against consumers won't be helped by having only one scheme.

[11] https://en.wikipedia.org/wiki/Price_discrimination
[12] Ramsay Interim Report, para 4.56 and para 4.117.

2.3 Indirect effects of a monopoly ombudsman

Indirectly, a monopoly ombudsman is likely to harm competition in financial services and thus consumers of financial services. As discussed above, a monopoly ombudsman is likely to have bloated costs which will lead to higher membership and complaint fees, and will also be able to exercise monopoly power which will separately lead to higher fees. Large financial institutions will be able to absorb these fees much more easily than small players like fintechs who operate on fine margins. Large financial institutions, who already have a competitive advantage over their smaller rivals, will therefore gain even more of a competitive advantage.

Furthermore, a monopoly ombudsman is unlikely to be as rigorous in assessing the merits of complaints as an ombudsman that operates in a competitive setting. For large financial institutions, settlement of complaints of dubious merit is likely to be shrugged off as a cost of doing business, which they can afford especially given the public relations costs to them of unsettled complaints in the light of recent well-publicised cases. In contrast, the cost to small financial institutions of unmeritorious complaints will be high.

These are risks that occur in any dispute resolution system but the risks are heightened in a monopoly system. In a competitive system by contrast, the performance of the ombudsman is under more scrutiny and they have more incentive to make correct decisions.

2.4 The UK Financial Ombudsman Scheme

It might be argued that the UK Financial Ombudsman Scheme (UK FOS) is an example of a single ombudsman scheme that appears to work well[13]. However, UK FOS is highly regulated with many checks against the misuse of monopoly power; such checks are absent from what is recommended by the RIR.

FOS UK, being a statutory scheme (although industry funded), seems to have a lot more checks and balances. For example, its decisions are subject to judicial review, the regulator appoints directors and approves its budget and it has a relatively low monetary limit.

2.5 Summary of Ramsay Report findings

The RIR outlines its findings against the seven review principles:

1. **Efficiency**, which refers to the ability of schemes to resolve disputes in terms of coverage, powers, resources, flexibility, and other factors;
2. **Equity**, which relates to procedural and substantive fairness, and ease of access;
3. **Complexity**, which discusses the ease with which users can access ombudsman services;
4. **Transparency**, which relates to the way funding, processes, and decisions occur;
5. **Accountability**, which refers to how schemes are regulated and accountable to users;
6. **Comparability of outcomes**, in that similar products should result in similar outcomes for users; and
7. **Regulatory costs**, which indicates that the minimum cost should be borne by the regulator to achieve an adequate outcome.

This section analyses in some detail the arguments found in the RIR for a monopoly ombudsman scheme for financial, credit and investment disputes against these principles. In summary, the arguments in the RIR are unconvincing because they are not supported by sound argument or evidence. The table on page 145 of the RIR summarises the arguments against the status quo and those for a single industry ombudsman scheme. In what follows, frequent reference will be made to those summaries.

[13] http://www.financial-ombudsman.org.uk/

2.5.1 Efficiency

Argument against the status quo: efficiency compromised by jurisdictional overlaps, delays in resolving some disputes.

Argument for a single ombudsman scheme: economies of scale, ability to shift resources where needed, enhance coverage across the framework, review scheme's powers and remedies, removes jurisdictional overlap.

Assessment

Arguments for cost efficiency for a single ombudsman were analysed in Section 2.2 above and found to be lacking logical and factual support; likewise arguments about resource shifting.

Gaps in coverage can be addressed by expanding the scope of either CIO's or FOS' jurisdictions, or both; they don't need a monopoly scheme to be addressed. The absence of coverage for certain issues can exist with a monopoly scheme, which would lack the incentive to expand its coverage (the 'quiet life' problem).

Overlaps are not a problem. It is desirable to have two schemes each of which can address similar issues;[14] competition between schemes would work by seeing which scheme is best at addressing these issues.

2.5.2 Equity

Argument against the status quo: consumer confusion.

Argument for a single ombudsman scheme: reduced consumer confusion, more accountability, more fairness for users.

Assessment

It is hard to see how consumers can be confused. With two schemes, the dispute will be heard by the scheme of which the financial firm being complained about is a member.

Fairness in dispute resolution occurs when both sides have an equal opportunity to put their case and the person adjudicating the dispute treats both parties equally. It is not obvious why a single scheme would enhance fairness; on the contrary, a monopoly ombudsman would have less incentive to act fairly because there would be few(er) consequences of not acting fairly.

2.5.3 Complexity

Argument against the status quo: consumer confusion

Argument for a single ombudsman scheme less consumer confusion

Assessment

As with the arguments around equity, it is hard to see how consumer confusion could arise. Consumers will take their complaint to the scheme of which the financial firm is a member.

If they don't do so already, financial firms should make it clear in communications to consumers which is the ombudsman to whom they should take their dispute.

[14] According to the RIR, based on 2015-16 dispute numbers, 70 per cent of disputes (28,333 disputes) occurred in areas in which the two schemes experienced jurisdiction overlap.

2.5.4 Transparency

Argument against the status quo: competition between schemes may provide incentives to minimise financial disclosure, which reduces financial transparency.

Argument for a single ombudsman scheme: more transparency.

Assessment

The arguments made on this issue in the RIR are not clear at all, but they appear to be that because a single scheme by definition won't have any competitors, and so won't have to compete on price, this will increase the incentive to be transparent about its operations, costs etc.

If this is the argument, then it is wrong. Because monopolies, by definition, don't face any competitive pressures, they don't have to be transparent to anybody about anything (unless a regulator forces them to be transparent). On the other hand, if schemes have to compete for members, competitive pressures will force them to disclose how they are operating. The members will want know how their money is being spent. The members of a mandatory monopoly scheme will also want to know how their money is being spent, but the monopoly will be under far less pressure to tell them, because the members won't be able to do anything about it if they don't like what they hear. This will be especially so under the RIR proposals because the members won't be able to vote out board members.

2.5.5 Accountability

Argument against the status quo: lack of consistency of reporting between schemes makes it difficult to compare the schemes and monitor their effectiveness.

Argument for a single ombudsman scheme: more accountability as existing accountability mechanisms and regulatory oversight are strengthened.

Assessment

If inconsistent reporting between schemes is a problem, it is a problem that can be fixed without replacing the schemes with a single ombudsman scheme. Consistent reporting for both schemes can be achieved by adopting common standards and by regulation. This should not be a difficult problem to fix. Investors can compare the financial performance of different companies in the same industry because they have comparable reporting according to accounting standards and are subject to the same Corporations law. The same ought to be analogously true for members and potential members of the ombudsman schemes.

2.5.6 Comparability of outcomes

Argument against the status quo: different processes and criteria for decision making across the schemes compromises comparability of outcomes.

Argument for a single ombudsman scheme: increased comparability of outcomes due to greater consistency in processes and procedures.

Assessment

These arguments do not make a lot of sense. One of the desirable features of competition between schemes is that the processes are different, and one of the criteria that potential members can use when choosing between schemes is which has the processes they prefer. Innovative processes are something that should be encouraged, not criticised. The RIR itself says (at para 5.14) that "it is difficult to make an assessment of the extent to which the current system produces inconsistent outcomes for consumers". No doubt this is true, because each case is different in its own way, which makes comparisons of outcomes between cases heard by the different schemes very problematic.

The RIR says (at page 97) that consumers should expect a comparable process and similar outcomes regardless of the scheme they access. The veracity of this statement depends on what is meant by "comparable". Should they be able to compare the process they got using one scheme with what they would have got if they had used the other scheme? Yes. Should they expect identical or even very similar processes? No. Or no more than they should expect similar processes from loan applications to two different competing banks. Processes can be different between competitors. Should they expect similar outcomes regardless of the scheme they access? Ideally, if one thinks of the dispute resolution process as one which finds the objective truth of the matter, yes. But the RIR provides no convincing evidence that the system does lead to inconsistent outcomes.

2.5.7 Regulatory costs

Argument against the status quo: currently duplicative costs for ASIC as it oversees two schemes, lower overheads.

Argument against the status quo: reduced costs for ASIC, reduced costs for members because there would only be one board etc.

Assessment

It is not clear that ASIC's costs would be lower because dealing with one big complex organisation could be more expensive than two simpler organisations. But even if ASIC's costs were lower, this is a trivial argument, unless the amount of money to be saved would be very large, which is highly unlikely.

Overhead costs are not regulatory costs.

2.6 Conclusion

A monopoly is bad for the people who buy services from the monopoly and bad for society as a whole. This is especially so when buyers have no choice but to purchase services from the monopoly, which would be the case if CIO and FOS were to be replaced by a single scheme.

The RIR has not made out a good case for a single ombudsman scheme. The problems it identifies as associated with having two schemes are non-problems.

No actual problems it identifies would be helped by having a single scheme and a single scheme would create problems that don't currently exist. A single scheme would see the loss of the benefits that currently exist from having two schemes: price competition, service quality competition, pressure to keep costs down, and pressure to innovate with better processes and better services.

This is not to say that it is impossible for efficiencies to be realised between the schemes. To the extent that this does not compromise competitive processes, schemes can share information and offer common guidance material to consumers. If there are gaps in coverage, they should be filled by the schemes individually deciding to expand their coverage within the limits allowed by the law, (i.e. not by schemes agreeing between themselves to divide the market). There is no need to replace the schemes to create a monopoly ombudsman and it should not happen.

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APPENDIX 2

REVIEW'S CORE PRINCIPLES	PROPOSED SINGLE SCHEME MODEL	EXISTING TWO SCHEME MODEL
Efficiency	The Report appears to treat a single scheme as being synonymous with efficiency. It is not. For example, it does not follow that overall costs will be lower just because some overheads will be reduced. Removing overhead costs do not affect what will happen with variable costs (eg. wages). Only variable costs determine whether there will be enduring economies of scale. If that were not the case, then by implication, all firms in every industry should merge to reduce overheads. That is an absurd proposition. The Report's claim that a single scheme would permit the reallocation of resources as priority areas shift is not persuasive. For example, the ability to move resources is constrained by the ability of staff working in one area (e.g. banking) to move to another (e.g. insurance). The cost of training staff to work in multiple areas, so they can handle different types of disputes as the need arises, would offset any economies of scale cost savings.	Any jurisdictional overlap presents an opportunity for the two schemes to compete with each other to achieve better consumer outcomes in relation to similar issues. This has been demonstrated by CIO on several occasions. For example, although CIO and FOS both deal with credit disputes, it was CIO's initiative to deal with financial hardship complaints that motivated FOS to do the same, and this resulted in both CIO and FOS assisting consumers and financial firms to resolve thousands of cases involving financial hardship. The two existing schemes are nimbler and more progressive than a large bureaucracy susceptible to a silo mentality that can reduce efficiency and contribute to the demise of a productive culture. The existing two scheme model allows each scheme to benchmark itself against the other in terms of innovation and performance levels, both of which benefit consumers and financial firms. Without the stimulus of this comparative discipline, turnaround times, service levels, innovation and continuous improvement would suffer, and there would be less incentive to keep costs in check and run the scheme efficiently.

Equity	The Report does not suggest that fairness is lacking with either of the two existing schemes, only that there could be 'more fairness' with a single scheme. However, no explanation is given as to why it considers a single scheme would enhance fairness. The reality is that a monopoly scheme would have little or no incentive to act fairly towards its stakeholders because there would be no or fewer consequences for not doing so. The single non-statutory scheme being proposed would have less, not more, accountability to stakeholders than the present two scheme model. This is because a non-statutory scheme would have none of the checks and balances that apply to a statutory scheme like UK FOS. It will be inequitable for larger financial firms to benefit from the introduction of a single scheme – their EDR costs will be subsidised by an influx of thousands of smaller financial firms who are presently members of CIO being forced to join a single scheme.	There is no evidence of consumer confusion. (see Complexity below) The Report does not suggest that fairness is lacking with either of the two schemes. In terms of accountability, the existence of two schemes operating in the same sector has provided an effective check on the broad discretions and powers of CIO and FOS. Fairness and equity cut both ways. Given EDR membership is mandatory and financial firms bear the entire operating cost of the scheme (so that it is available without charge to consumers), it is reasonable and fair that financial firms are given a choice of ASIC-approved schemes.
Complexity	The Report is premised on the untested assumption that there would be less complexity with a single scheme. However, the fact is that a bureaucratic business structure is more likely to make decision-making more difficult and complex, producing slower decisions. Multiple layers of management often result in disconnection between different levels and different areas within the	There is no evidence of consumer confusion or complexity as to which of the two schemes consumers should take their complaints. ASIC's own submission notes that there is a lack of evidence of consumers being 'shopped around schemes or potentially never getting to the scheme that can help them'. This is consistent with the review by the New Zealand Ministry for

	business and ultimately become a limiting factor for the scheme.	Business, Innovation and Employment, that found no evidence that the multiple scheme model caused consumer detriment or that it did not deliver the right consumer outcome.
Transparency	Because monopolies, by definition, do not face any competitive pressures, they have less incentive to be transparent (unless required by law or a regulator). In any event, transparency in the context of a single scheme is of limited value if stakeholders have no other comparable scheme with which to compare it. Further, transparency is only truly meaningful if stakeholders who are dissatisfied with the scheme's performance can do something about it (or can otherwise hold the scheme to account). Without an alternative scheme, transparency itself won't lead to improvement.	All CIO's membership and complaint fees are published on its website and are therefore transparent to stakeholders. Each scheme is obliged to lodge its financial statements at a public registry and send these out to members annually so they know how their levies are being spent. Transparency is more meaningful and is enhanced by the existence of two schemes because it allows financial firms to compare costs, service levels, timeliness and performance generally.
Accountability	A non-statutory single scheme, as being proposed, will lack the critical checks and balances that apply to statutory schemes like UK FOS. A single scheme, being a monopoly not-for-profit organisation, can cause economic damage by charging more and spending the proceeds on bloated staff numbers, excessive executive compensation, lavish offices and other wasteful spending (variable costs). Even though there may be no accounting profits, it is likely that there will be monopoly rents. (Monopoly rent is a	The only check on an existing scheme's broad discretions and powers is the existence of an alternative scheme operating in the same sector. If inconsistent reporting between schemes is a problem, this can be easily fixed without replacing the schemes with a single ombudsman scheme. Consistent reporting for both schemes can be achieved by adopting common reporting standards and by regulation. Scheme choice promotes transparency and accountability by allowing stakeholders to compare the performance levels and improvements of each scheme against the other.

	return enjoyed by a monopolist in excess of that which could be otherwise achieved in a competitive market). Inefficiencies inherent in a single scheme monopoly (eg. engaging in expense preference behaviour) will result in increased operating costs. These are passed on to financial firms who will, in turn, pass these on to consumers by way of higher fees and interest. This is to the detriment of all consumers of financial services, not just consumers who lodge complaints.	The existence of two schemes results in schemes being more accountable for costs and provides an effective check on levies imposed on financial firms.
Comparability of outcomes	Comparable outcomes within a single scheme will not promote innovative ideas or encourage a scheme to evolve and go beyond its minimum jurisdiction. Consistently producing only comparable outcomes will hinder continuous improvement to the detriment of stakeholders.	The Report itself concedes that 'it is difficult to make an assessment of the extent to which the current system produces inconsistent outcomes for consumers'. The fact that two schemes exist in competition with each other has prompted each scheme to evolve and innovate so as to provide better outcomes for consumers. It is not possible for ombudsman schemes to evolve, innovate and go beyond their minimum jurisdiction if they consistently produce only comparable outcomes, whether within the single scheme or as between the two schemes.
Regulatory costs	Some overheads may be reduced by removing the duplicative costs of ASIC overseeing two schemes, but that does not mean that costs overall will be lower. This will depend on the variable costs. In any event, overhead costs are not regulatory costs. ASIC's costs may not be lower because dealing with a large complex scheme can be more	Any benefit gained by removing duplication will be more than offset by increased bureaucracy and a lack of accountability inherent in monopolies. The natural tension between the two existing ombudsman schemes has helped drive innovation and improvements, and has provided ASIC with leverage and 'soft' influencing tools when selecting one

	expensive than two simpler schemes. But even if ASIC's costs were lower, the amount of money to be saved is unlikely to be large. ASIC may find itself in the position of a price-regulator (something it has no experience in) because a single scheme monopoly can engage in price discrimination between different financial firms or expense preference behaviour. Not having the benefit of an alternative scheme to draw on, ASIC may also need more resources to identify what improvements, innovations and cost controls may be necessary or desirable.	ombudsman scheme's approach as its preferred position

APPENDIX 3

UK FOS headcount by department. Total: almost 5,000[54]

Department	Headcount
Chief executive office	14
Communications and customer insight	54
Decisions	315
Knowledge and Approach	10
Legal and Jurisdiction Department	19
Ombudsman	217
Ombudsmen Operations	41
Quality and Service Improvement Department	28
Executive Team	8
Finance Performance and Property	62
Finance and performance	39
Property	23
HR and organisational development	81
Information Technology	80
New Services	60
Operations	2,696
Casework Operations	805
CCD	181
Functional Planning Department	23
Managed Operations	40
Operations Directorate	1
Operations Support	115
Policy Department	19
Strategic Service Development	8

Correct as at March 2015

[54]Not including cases about payment protection insurance mis-selling by Britain's banks https://www.moneymarketing.co.uk/fos-cuts-600-staff-2016/