



# Mass claims: ADR/regulation



In UK financial services



# Who am I?

Retired Chief Ombudsman  
**Financial Ombudsman Service in UK**

Member of Supervisory Board  
**Legal Ombudsman in UK**

Member of network committee (chairman 2011-12)  
**International Network of Financial Ombudsmen**

Advised in 20+ countries worldwide, including for  
**The World Bank, European Commission and USAID**



# Financial ombudsmen worldwide

Financial ombudsmen (sometimes under other names) in -

United Kingdom  
USA  
Taiwan  
Trinidad and Tobago  
Saudi Arabia  
Senegal  
Slovakia  
South Africa  
Spain  
Swaziland  
Switzerland  
Sweden  
Pakistan  
Peru

Poland  
Netherlands  
New Zealand  
Norway  
Malaysia  
Malta  
Lithuania  
Luxembourg  
Kazakhstan  
India  
Ireland  
Italy  
Hungary  
Germany

Greece  
Finland  
France  
Denmark  
Canada  
Chile  
Czech Republic  
Belgium  
Bosnia & Herzegovina  
(Republika Srpska)  
Botswana  
Armenia  
Australia  
Austria



# Previous financial ombudsmen in UK

- ★ 1980s:  
separate industry-based voluntary schemes:
  - insurance
  - banking
  
- ★ 1990s:  
separate regulator-based schemes:
  - investment advice
  - investment management



# Financial Ombudsman Service

- ★ 2000: established by law
- ★ single combined scheme
- ★ later extended to new areas
- ★ compulsory for 100,000 financial businesses



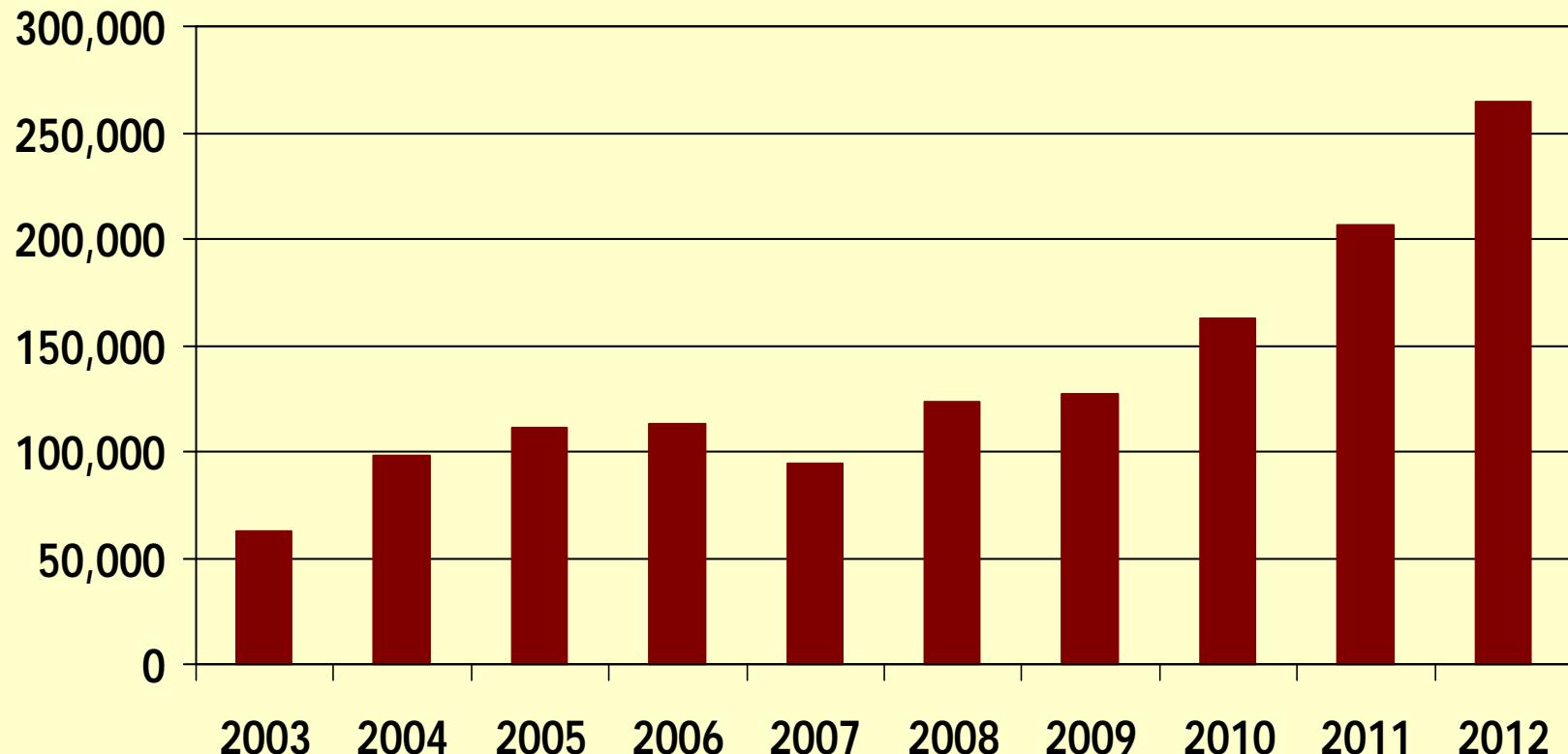


# FOS process and powers

- ★ Enquiries (1,000,000+ per year)
- ★ Cases (250,000+ per year)
- ★ Mediation
- ★ Recommendation
- ★ Decision, binding if consumer accepts
- ★ Up to 150,000 GBP / 180,000 EUR
- ★ Publish data on named businesses
- ★ [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)



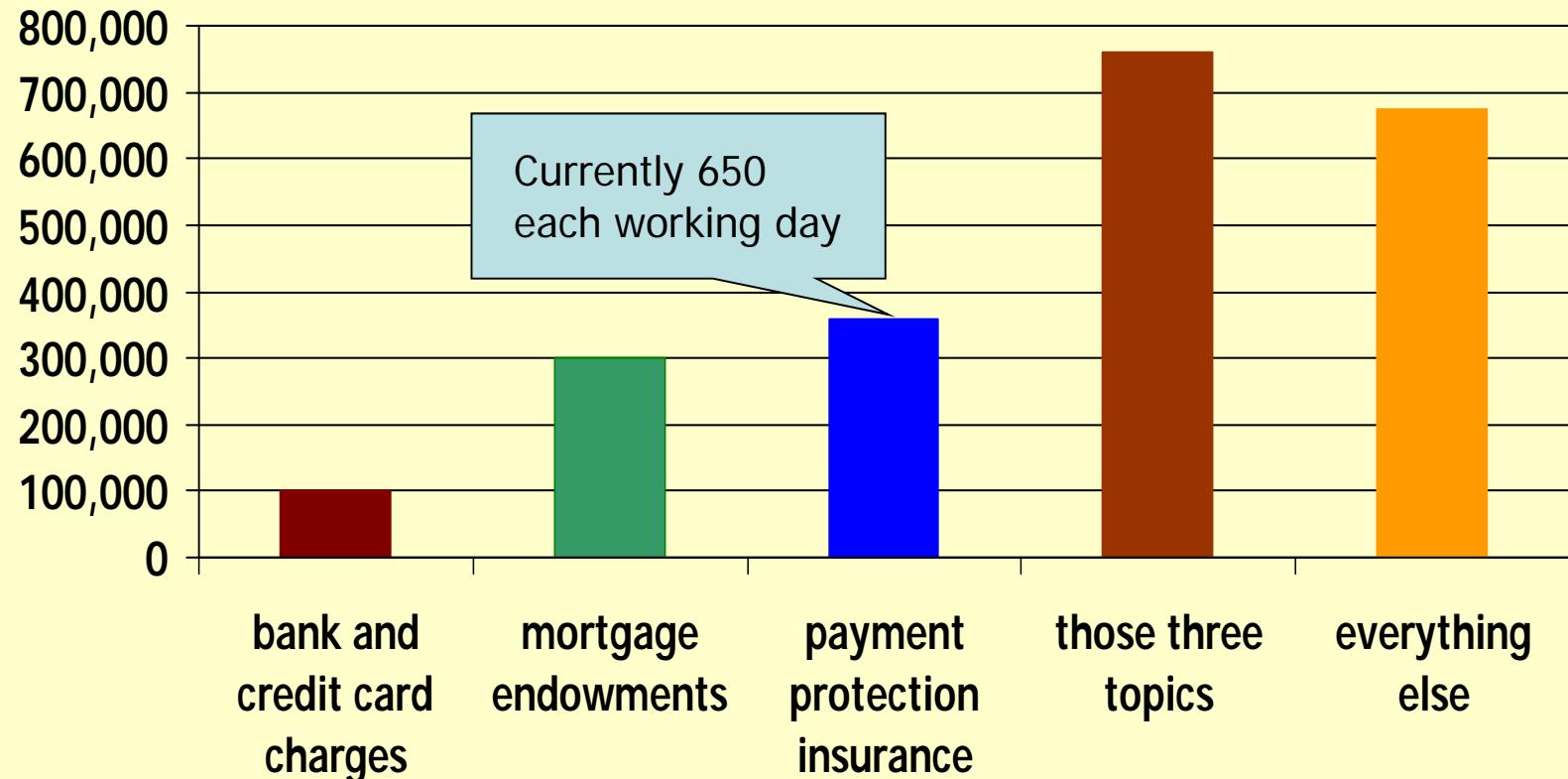
# New FOS cases in the last 10 years





# Impact of mass claims

Out of > 1,400,000 cases in last 10 years





# 'Lead cases' and 'spreadsheets'

## Lead cases

- ★ Identify 'clean' typical case(s)
- ★ Progress as lead case(s)
- ★ Put other (follow-on) cases on hold
- ★ Decide lead case(s)
- ★ Then ask parties how follow-on cases differ
- ★ Works well on standard contract clauses
- ★ But cannot deal with individual 'suitability'

## Spreadsheets

- ★ Simplify communication (only)



# Collective actions / schemes

## 2008

- ★ Civil Justice Council proposed collective actions generally. Government did not favour.

## 2009

- ★ Government proposed, in financial services, collective actions + consumer redress schemes

## 2010

- ★ Consumer redress schemes adopted, and collective actions dropped



# Potentially conflicting legal objectives

## Regulator

Fair result across the market for those who apply (and maybe who don't)

## Ombudsman

Fair redress in the circumstances of the individual case for those who complain



# Consumer redress scheme

- ★ Regulator considers:
  - widespread problem exists
  - a court would award redress
- ★ Regulator can require businesses:
  - to take various steps and
  - issue a redress determination
- ★ Consumer can appeal to ombudsman, who decides if business has done what the regulator required



# Consumer redress scheme

**Across market/single financial business**  
Public accountability by regulator  
Ombudsman applies scheme result

## Inside scheme

Specified result for  
those who apply  
(and maybe  
those who don't)

## Outside scheme

Fair redress in the  
circumstances of the  
individual case for  
those who complain



# Experience to date

## Single-business schemes

- ★ Mortgage interest rate variation
- ★ Investment fund management

## Across-market scheme

- ★ Investment fund sales

## Informal scheme

- ★ Cash-machine (ATM) withdrawals

## Meanwhile

- ★ FOS still wading through PPI cases





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