

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 Sprska)**

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

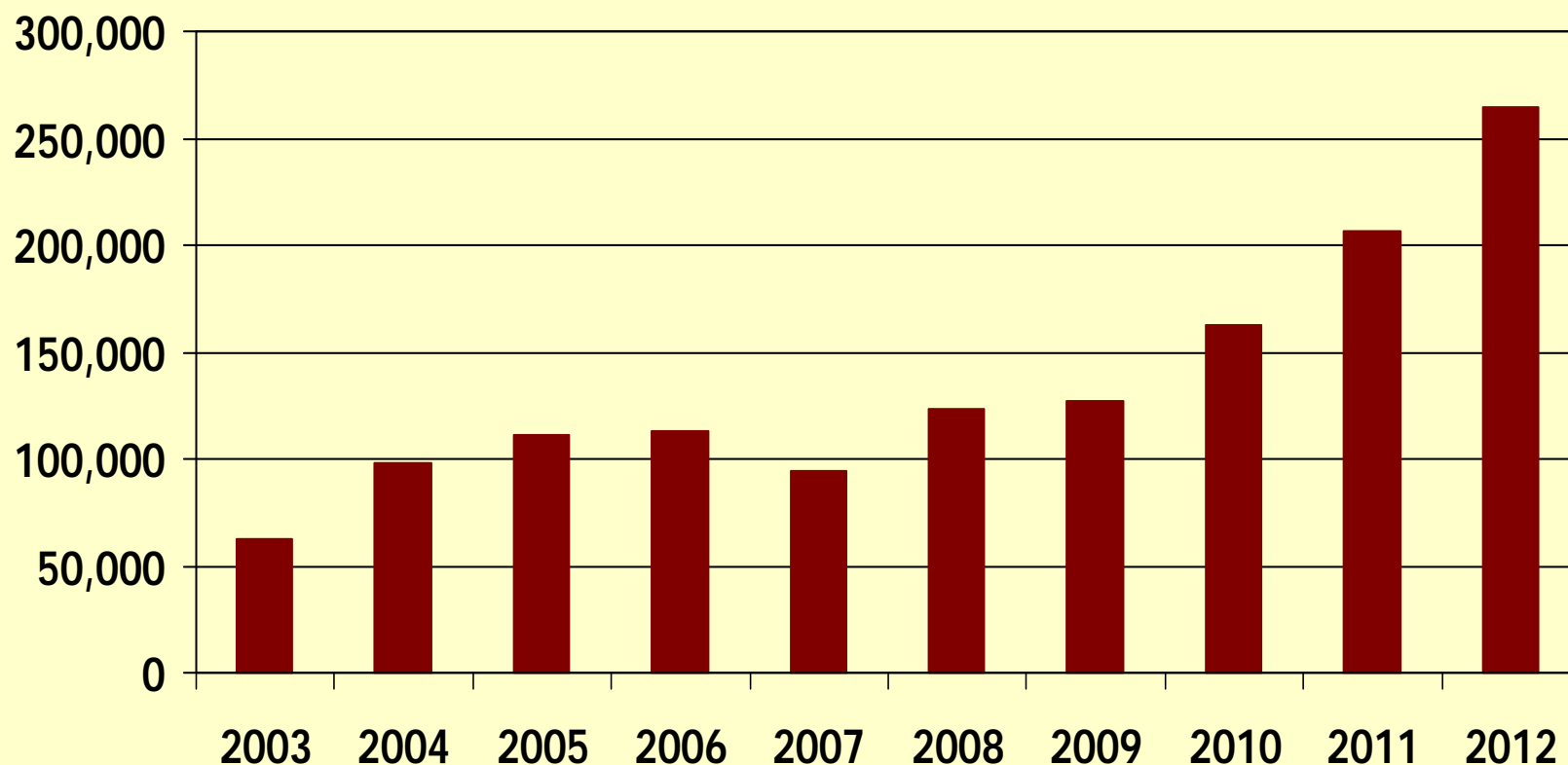
- ★ 2000: established by law
- ★ single combined scheme
- ★ later extended to new areas
- ★ compulsory for 100,000 financial businesses



FOS process and powers

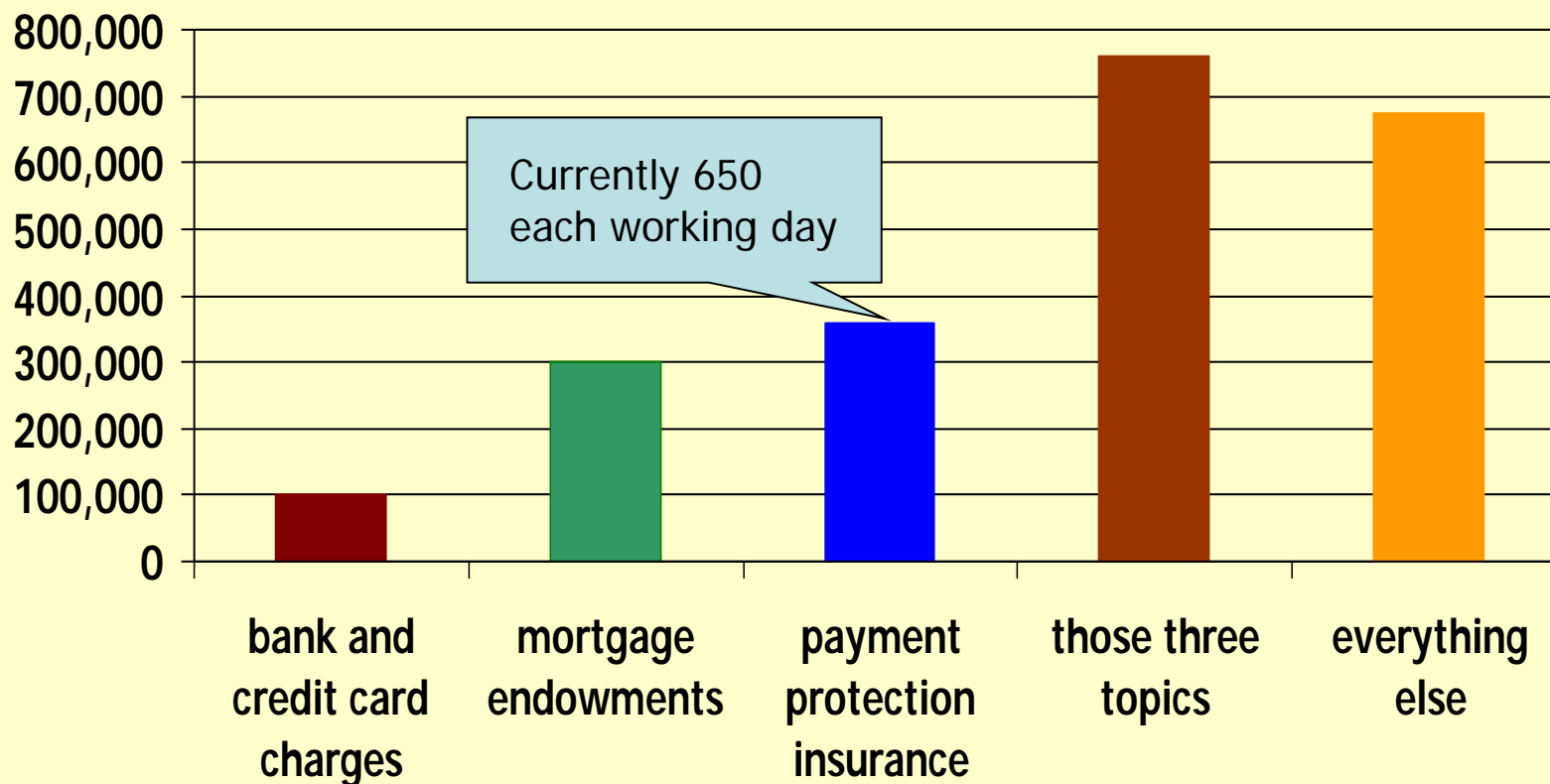
- ★ Enquiries (1,000,000+ per year)
- ★ Cases (250,000+ per year)
- ★ Mediation
- ★ Recommendation
- ★ Decision, binding if consumer accepts
- ★ Up to 150,000 GBP / 180,000 EUR
- ★ Publish data on named businesses
- ★ www.financial-ombudsman.org.uk

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



Mass claims: ADR/regulation



In UK financial services