

THE FOS FILES

Recorded Statements and Systemic Concerns in Ombudsman Decision-Making

A Review of Procedural Fairness, Transparency and Public Law Compliance

With Particular Reference to Recorded Remarks Attributed to Emma Peters – Ombudsman

Prepared by:

Meridian Legal Services

Date:

6 May 2026

For Consideration by Regulators, Parliament and Legal Representatives

1. Executive Summary.

This paper examines concerns arising in relation to the handling of fractional timeshare complaints by the Financial Ombudsman Service (“FOS”), with particular focus on issues of **procedural fairness, decision-making integrity, and compliance with established public law principles.**

The matters addressed arise from a combination of:

- statements attributed to a senior FOS official, Emma Peters, made during a meeting on 28 January 2026 for which a contemporaneous recording exists and can be produced;
- an observable pattern in the progression and outcome of a defined cohort of complaints; and
- procedural features of the FOS’s recent correspondence and evidential handling.

The recorded statements are said to include:

- that complainants represented by professional advisers may have been “coached or coerced”;
- that such perceived influence is being taken into account when assessing complaints; and
- that complaints submitted following judicial clarification in May 2023 may be regarded as “bandwagon” claims.

Individually, such remarks may be capable of explanation. However, when considered alongside the observed pattern of:

- favourable investigator assessments,
- prolonged delay, and
- subsequent rejection at Ombudsman stage,

they give rise to a broader question as to whether a **distinct evaluative framework may be operating at the final stage of determination.**

The central concern identified in this paper is not confined to the correctness of individual outcomes. Rather, it is whether the **process by which those outcomes are reached remains compliant with the legal obligations governing the exercise of a statutory adjudicative function.**

In particular, the issues identified engage:

- the prohibition on **fettering discretion**, as established in *Padfield v Minister of Agriculture* [1968] AC 997;
- the requirements of **procedural fairness and transparency**, as articulated in *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531;
- the obligation to consider relevant evidence and disregard irrelevant considerations; and
- the principle that decision-makers must approach each case without **pre-formed assumptions or apparent bias.**

The potential significance of these issues is amplified by their **systemic dimension**. If the approach described is being applied across a defined class of complaints, the implications extend beyond individual determinations to the **integrity of the decision-making framework itself.**

Further concerns arise in relation to:

- the use of **anonymous or unattributed correspondence** advancing serious allegations;
- uncertainty regarding the treatment of **contemporaneous evidential material**, including recordings; and
- the absence of clear and attributable reasoning in certain communications.

Taken together, these matters give rise to a question which lies at the heart of this paper: whether the current handling of these complaints reflects a process grounded in individualised assessment, or one in which generalised assumptions may be influencing outcomes.

This paper does not purport to reach final findings of fact.

Its purpose is to identify issues which, on their face, are capable of engaging:

- regulatory scrutiny by the Financial Conduct Authority;
- parliamentary oversight; and
- potential legal challenge by way of judicial review or related proceedings.

The issues identified are of a nature which, if substantiated, may affect:

- the reliability of individual determinations;
- the perceived independence and impartiality of the FOS; and
- public confidence in the statutory redress scheme as a whole.

Accordingly, these matters **require clarification and careful examination**, including consideration of whether an independent review of the relevant decision-making processes is warranted.

2. Scope and Purpose.

This paper addresses concerns arising in connection with the handling of fractional timeshare complaints by the Financial Ombudsman Service (“FOS”), with particular focus on issues of **procedural fairness, decision-making integrity, and compliance with established public law principles**.

The matters considered are not isolated or theoretical. They arise from a combination of:

- statements attributed to a senior FOS official, Emma Peters;
- observable patterns in the progression and outcome of a defined cohort of complaints; and
- procedural features relating to correspondence, attribution, and evidential treatment.

Taken together, these matters are capable of raising questions as to whether the approach being applied to such complaints remains consistent with the statutory function of the FOS.

2.1 Purpose of the Paper

The purpose of this document is to provide a **structured and reasoned analysis** of those issues, and to assess whether they are capable of engaging established public law principles, including:

- the lawful exercise of discretion and the prohibition on fettering;
- the requirement of procedural fairness and transparency; and
- the obligation to determine each complaint on its individual merits.

The focus is not on the correctness of individual outcomes, but on the **process by which those outcomes are reached**, and whether that process is operating within lawful bounds.

2.2 Nature of the Analysis

This paper does not purport to reach final findings of fact.

Rather, it identifies matters which, on their face, are capable of engaging **regulatory, parliamentary, and judicial scrutiny**.

Where reference is made to statements or practices, this is done:

- on the basis that such matters have been reported and, in certain instances, contemporaneously recorded;
- without prejudice to any further explanation that may be provided by the FOS; and
- for the purpose of assessing whether the issues identified are capable of affecting the **lawfulness of the decision-making process**.

2.3 Scope of Material Considered

The analysis is informed by the following categories of material:

- recorded statements made during a meeting on 28 January 2026, which are said to reflect the approach taken to certain complaints;
- observed patterns in complaint handling, including the progression from investigator findings to Ombudsman determinations;
- correspondence issued by the FOS, including communications advancing serious allegations without attribution to named decision-makers; and
- evidential considerations, including the treatment of contemporaneous documentation and recordings relevant to the underlying complaints.

The scope of this paper is confined to these matters and does not extend to a comprehensive review of all aspects of FOS operations.

2.4 Limitations

The analysis is subject to certain limitations.

In particular:

- it does not have access to the full internal policies or decision-making guidance of the FOS;
- it does not assess the merits of individual complaints; and
- it proceeds on the basis of material currently available, which may be supplemented or clarified.

Accordingly, the observations made are directed to identifying **issues requiring clarification**, rather than reaching definitive conclusions.

2.5 Central Question

The scope of this paper is directed toward a single, overarching question:

whether the handling of fractional timeshare complaints reflects a process grounded in **individualised, evidence-based adjudication**, or whether there are indications that **generalised assumptions or institutional approaches may be influencing outcomes**.

2.6 Intended Outcome

The purpose of this paper is not adversarial.

It is to:

- promote **clarity and transparency**,
- facilitate **informed scrutiny**, and
- support the maintenance of **confidence in the statutory redress framework**.

Where concerns arise that the integrity of a decision-making process may be affected, it is in the interests of all parties—including the FOS itself—that those concerns are **identified, examined, and, where appropriate, addressed**.

3. Background

3. Background

This section provides the factual and legal context necessary to understand the issues identified in this paper. It outlines:

- the statutory role of the Financial Ombudsman Service (“FOS”);
- the nature of fractional timeshare complaints; and
- the significance of recent judicial consideration of the FOS’s approach to such complaints.

3.1 The Role and Function of the Financial Ombudsman Service

The FOS is established under Part XVI of the Financial Services and Markets Act 2000 as a statutory dispute resolution body responsible for resolving complaints between consumers and financial firms.

Its function is distinct from that of a court. It is not required to determine disputes strictly in accordance with legal rights and obligations. Instead, it is required to determine complaints on the basis of what is **“fair and reasonable in all the circumstances of the case.”**

However, the exercise of that function is not unconstrained.

As a body performing a public function, the FOS is subject to established principles of public law.

In particular, it must:

- act **fairly and impartially**;
- exercise its discretion **lawfully and in accordance with statutory purpose**;
- take into account **relevant considerations and disregard irrelevant ones**; and
- avoid both **actual bias and the appearance of bias**.

The requirement to determine complaints individually is central to the statutory scheme. The FOS is not permitted to apply rigid or predetermined criteria that would displace the need for case-by-case assessment.

3.2 Fractional Timeshare Complaints

Fractional timeshare complaints typically arise from the sale and financing of holiday ownership products, often involving:

- long-term financial commitments;
- complex contractual structures; and
- allegations of inadequate disclosure or misrepresentation during the sales process.

These complaints frequently involve:

- allegations that consumers were not provided with sufficient information about the nature, cost, or risks of the product;
- disputes concerning the relationship between the supplier and the lender; and
- questions as to the fairness of the lending arrangements themselves.

A significant number of such complaints have been under consideration by the FOS for extended periods, in some cases approaching a decade.

The complexity of these cases, combined with their volume, has resulted in a substantial and identifiable cohort of complaints progressing through the FOS process over an extended timeframe.

3.3 The Ombudsman Process

The FOS complaint-handling process typically involves two stages:

1. **Investigator Stage**

An investigator reviews the complaint and issues an initial assessment.

2. **Ombudsman Stage**

If either party disagrees with the investigator's view, the matter may be referred to an Ombudsman for a final determination.

The Ombudsman's decision represents the final stage of the FOS process.

While the Ombudsman is not bound by the investigator's findings, the process is ordinarily understood to involve:

- a reconsideration of the same material; and
- the application of consistent principles of fairness and reasonableness.

Accordingly, significant divergence between investigator assessments and Ombudsman determinations, particularly across a defined cohort of cases, may give rise to questions as to whether:

- different evaluative criteria are being applied at the final stage; or
- additional factors are influencing the outcome of those determinations.

3.4 Judicial Consideration of the FOS Approach

The approach of the FOS to fractional timeshare complaints was considered by the Administrative Court in *R (Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd* [2023] EWHC 1069 (Admin).

In that case, the Court examined whether the methodology adopted by the FOS in determining such complaints was legally permissible.

The Court confirmed that:

- the FOS is entitled to adopt a broad, fairness-based approach;
- it is not confined to strict legal analysis; and
- its methodology, in general terms, was capable of being lawful.

However, that conclusion was subject to an important qualification.

The lawfulness of the FOS's approach depends on the continued application of **individualised decision-making**. The Court did not endorse the application of:

- blanket assumptions;
- rigid policies; or
- predetermined outcomes.

The requirement remains that each complaint must be determined on its own facts.

3.5 Post-Judgment Context

Following the decision in *Shawbrook*, it is foreseeable that:

- consumers who consider themselves affected may seek to bring complaints in reliance upon the clarified legal position; and
- the volume of complaints within this category may increase.

This is a recognised consequence of judicial clarification.

An increase in complaints following such a decision does not, of itself, indicate opportunism or lack of merit. Rather, it reflects:

- the availability of a clearer legal framework; and
- the ability of consumers to assess their position with greater certainty.

Accordingly, the timing of a complaint, in and of itself, is not ordinarily a relevant indicator of its validity.

3.6 Relevance to the Issues Identified

The matters set out above provide the context within which the concerns identified in this paper arise.

In particular:

- the requirement for **individualised decision-making**;
- the significance of the **Ombudsman stage as the final determination**; and
- the legal framework clarified in *Shawbrook*

are directly relevant to the issues raised in Section 1.

Where concerns arise that:

- categories of complainants may be treated with inherent scepticism;

- complaints may be assessed differently by reference to timing; or
- outcomes at Ombudsman stage diverge systematically from earlier findings,

those concerns must be considered against this background.

In this context, any indication that complaints are being approached through generalised assumptions, or that outcomes may be influenced by factors extraneous to the merits of individual cases, raises issues that extend beyond individual determinations to the integrity of the statutory scheme itself.

4. Factual Findings

4. Factual Findings

This section sets out the factual matters upon which the concerns identified in this paper are based.

The matters described are presented:

- as reported and understood at this stage;
- without prejudice to any further explanation that may be provided by the Financial Ombudsman Service (“FOS”); and
- for the purpose of identifying issues capable of engaging legal and regulatory scrutiny.

4.1 Recorded Statements (28 January 2026 Meeting)

On 28 January 2026, a meeting took place between representatives of the FOS and legal representatives acting in a substantial cohort of fractional timeshare complaints.

A contemporaneous recording of that meeting exists and can be produced.

During that meeting, statements were made by Emma Peters which are understood to include the following:

- that, after a prolonged period of handling such complaints, the FOS had formed the view that complainants represented by professional advisers may have been “coached or coerced” in the presentation of their complaints;
- that this perceived coaching or influence was being taken into account when assessing such complaints; and

- that complaints submitted following May 2023, after judicial consideration of the FOS’s approach, could be regarded as consumers “jumping on the bandwagon”.

These statements are material insofar as they indicate:

- how certain categories of complainants may be perceived; and
- the potential factors being taken into account in the assessment of complaints.

4.2 Observed Pattern in Complaint Outcomes

In addition to the statements set out above, an observable pattern has been identified across a defined cohort of complaints.

That pattern is characterised by:

- initial assessments at investigator stage which are favourable, or broadly supportive of the complainant’s position;
- prolonged periods during which complaints remain unresolved; and
- subsequent rejection at Ombudsman stage upon escalation.

While divergence between investigator assessments and Ombudsman determinations is not, in itself, unusual, the consistency of this sequence across a substantial number of cases gives rise to a question as to whether:

- different evaluative criteria may be applied at the final stage; or
- additional factors are influencing the outcome of those determinations.

4.3 Timing of Complaints

It is further observed that a significant number of complaints within the cohort were submitted following the decision in *R (Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd* [2023] EWHC 1069 (Admin).

The statements attributed to Ms Peters suggest that the timing of such complaints may be regarded as relevant, including by reference to the characterisation of such complaints as “bandwagon” claims.

This is material insofar as it may indicate that:

- the timing of a complaint is being treated as a factor in its assessment; and
- complaints arising after judicial clarification may be approached differently from earlier complaints.

4.4 Representation of Complainants

The matters identified also engage the role of professional representation.

The statements attributed to Ms Peters indicate that:

- complainants represented by professional advisers may be regarded as having been influenced in the formulation of their complaints; and
- such perceived influence may be taken into account when assessing credibility.

This is relevant to the extent that it suggests that:

- the presence of professional representation may be treated as a factor affecting the evaluation of a complaint; and
- complainants within that category may be approached with a degree of inherent scepticism.

4.5 Correspondence and Attribution

Concerns also arise from the manner in which certain communications have been issued by the FOS.

In particular:

- correspondence advancing serious allegations, including assertions of dishonesty or misleading submissions, has been issued from generic or directorate-level email addresses; and
- such correspondence has not been attributed to a named Ombudsman or identifiable decision-maker.

It is understood that the FOS has indicated that such communications reflect the collective views of senior personnel and may continue to be issued without individual attribution.

This is material insofar as it:

- limits the ability of affected parties to identify the source of the allegations; and
- reduces transparency in the decision-making process.

4.6 Treatment of Evidential Material

During the meeting of 28 January 2026, it was indicated that contemporaneous evidence, including recordings of the original sales process, would be considered where available.

Such evidence may be of particular relevance in complaints involving:

- allegations of misrepresentation; and
- disputes as to what was said or disclosed at the point of sale.

There is, however, concern that:

- the role and weight of such evidence is not being consistently reflected in outcomes;
and
- the approach to such material may lack clarity.

4.7 Collective Significance of the Findings

Individually, each of the matters set out above may admit of explanation.

However, when considered collectively, they give rise to a broader question as to whether:

- complaints within this category are being approached through a consistent and individualised assessment; or
- a set of generalised assumptions or evaluative factors may be influencing outcomes at Ombudsman stage.

In particular, the combination of:

- statements suggesting inherent scepticism toward certain complainants;
- the apparent relevance of timing; and
- a consistent pattern of outcomes

raises the possibility that the decision-making process may be influenced by considerations not limited to the merits of individual cases.

In circumstances where such factors are capable of influencing outcomes across a defined cohort of cases, the issue ceases to be confined to individual determinations and instead engages the integrity of the decision-making process as a whole.

5. Legal Framework

5. Legal Framework

This section sets out the legal principles relevant to the matters identified in Sections 1–4.

Although the Financial Ombudsman Service (“FOS”) is not a court, it is a statutory body exercising adjudicative functions. As such, it is subject to **established principles of public law**, which govern the lawful exercise of discretion.

The principles outlined below provide the framework against which the concerns identified in this paper must be assessed.

5.1 Statutory Function and Discretion

The FOS is required to determine complaints on the basis of what is **“fair and reasonable in all the circumstances of the case.”**

This confers a broad discretion.

However, that discretion:

- is **not unfettered**;
- must be exercised in accordance with the purpose of the statutory scheme; and
- remains subject to judicial oversight.

The breadth of the discretion increases, rather than diminishes, the importance of ensuring that it is exercised:

- rationally;
- consistently with statutory purpose; and
- without reliance on irrelevant or impermissible considerations.

5.2 Fettering of Discretion

A fundamental principle of public law is that a decision-maker must not **fetter the exercise of discretion**.

This principle was authoritatively stated in *Padfield v Minister of Agriculture* [1968] AC 997.

In that case, the House of Lords held that:

- discretionary powers must be exercised so as to **promote the policy and objects of the statute**; and
- a decision-maker must not adopt an approach which **precludes proper consideration of individual cases**.

A decision-maker may develop policies or general approaches.

However, such policies must not:

- become rigid rules;

- exclude relevant considerations; or
- dictate outcomes without regard to the individual facts of a case.

Where a decision-maker approaches cases on the basis of:

- pre-formed assumptions; or
- generalised views about categories of claimants,

there is a risk that discretion is being unlawfully fettered.

5.3 Procedural Fairness

The requirement of procedural fairness is a core principle of public law.

In *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531, the House of Lords confirmed that fairness requires:

- that a person affected by a decision has an opportunity to make meaningful representations;
- that they are informed of the substance of the case they must answer; and
- that the decision-making process is conducted in a manner that is fair in all the circumstances.

Fairness is context-dependent, but it generally requires:

- transparency in reasoning;
- clarity as to the basis of decision-making; and
- the ability of affected parties to understand and respond to adverse findings.

Where allegations of misconduct or dishonesty are advanced, fairness will ordinarily require:

- that such allegations are clearly articulated; and
- that their source and basis are identifiable.

5.4 Relevant and Irrelevant Considerations

A decision-maker must:

- take into account all **relevant considerations**; and
- disregard **irrelevant considerations**.

A failure to do so may render a decision unlawful.

Relevant considerations are those which bear upon:

- the merits of the case; and
- the statutory purpose of the decision-making function.

Irrelevant considerations include:

- factors which are not logically connected to the merits of the complaint; or
- assumptions which are not grounded in evidence relating to the individual case.

The introduction of such considerations into the decision-making process may result in:

- distorted reasoning; and
- outcomes that do not reflect the proper exercise of discretion.

5.5 Bias and Predetermination

Decision-makers must approach each case with an **open mind**.

The law distinguishes between:

- legitimate experience and expertise; and
- impermissible predetermination.

A decision-maker may draw upon experience.

However, they must not:

- allow that experience to crystallise into fixed assumptions; or
- approach cases with a closed or pre-judged view.

Even where actual bias is not established, the **appearance of bias** may be sufficient to undermine the lawfulness of a decision.

This includes circumstances in which:

- categories of claimants are treated differently; or
- credibility is assessed on the basis of generalised assumptions rather than individual evidence.

5.6 Duty to Consider Evidence

A lawful decision-making process requires proper consideration of the evidence.

This includes:

- identifying relevant material;
- giving it appropriate weight; and
- ensuring that conclusions are based on the evidential record.

A failure to consider relevant evidence, or to give it proper weight, may render a decision:

- irrational; or
- legally unsafe.

This is particularly important in cases involving:

- disputes as to what occurred during a transaction; and
- the availability of contemporaneous records or recordings.

5.7 Transparency and Accountability

Transparency is an essential feature of lawful decision-making.

Where a public body exercises adjudicative functions, it must ensure that:

- decisions are accompanied by intelligible reasoning;
- the basis of conclusions is clear; and
- responsibility for decision-making is identifiable.

A lack of transparency may:

- impair the ability of affected parties to understand or challenge decisions; and
- undermine confidence in the process.

Similarly, accountability requires that:

- those responsible for advancing serious allegations or conclusions are identifiable; and
- the decision-making process is open to scrutiny.

5.8 Application of the Legal Framework

The principles set out above provide the framework within which the matters identified in Section 4 must be considered.

In particular, they require consideration of whether:

- discretion is being exercised without fettering;
- decisions are reached through a fair and transparent process;
- relevant evidence is being properly considered; and
- conclusions are free from bias or predetermination.

Where concerns arise in relation to any of these matters, they are capable of engaging:

- regulatory oversight; and

- judicial scrutiny

Where the application of these principles is called into question across a defined class of cases, the issue is not confined to individual decisions, but extends to the lawfulness of the decision-making framework itself.

6. Analysis

6. Analysis

This section considers the matters identified in Sections 4 and 5 and assesses whether, taken together, they are capable of engaging the legal principles governing the exercise of the Financial Ombudsman Service (“FOS”)’s statutory function.

The analysis proceeds on the basis that:

- the factual matters described are accurate as reported; and
- the legal principles set out in Section 5 are applicable.

6.1 Approach to Categories of Complainants

The statements attributed to Emma Peters indicate that complainants represented by professional advisers may be regarded as having been “coached or coerced”, and that this perception may be taken into account when assessing complaints.

If such an approach is being applied in practice, it gives rise to a number of concerns.

First, the presence of professional representation is not, of itself, a reliable indicator of the credibility or validity of a complaint. Treating it as such risks introducing an **irrelevant consideration** into the decision-making process.

Second, where such a perception is applied across a category of complainants, it may amount to the adoption of a **generalised assumption** which displaces the requirement for individual assessment.

Third, the application of such an assumption risks affecting the evaluation of evidence before it is considered on its merits.

In those circumstances, the issue is not simply one of weight or emphasis. It is whether the decision-making process is being influenced by a factor which is **extraneous to the statutory task**.

6.2 Timing of Complaints

The statements attributed to Ms Peters further suggest that complaints submitted following judicial clarification in May 2023 may be regarded as “bandwagon” claims.

If the timing of a complaint is being treated as indicative of its legitimacy, this raises additional concerns.

As set out in Section 3, an increase in complaints following judicial clarification is a recognised and legitimate consequence of that clarification. It does not, of itself, bear upon the merits of any individual complaint.

Accordingly, treating the timing of a complaint as a factor affecting its credibility risks:

- introducing an **irrelevant consideration**; and
- applying a form of **pre-judgment** to a defined category of cases.

Such an approach would be difficult to reconcile with the requirement that each complaint be determined on its individual facts.

6.3 Divergence Between Investigator and Ombudsman Outcomes

The observed pattern of:

- favourable investigator assessments;
- delay; and
- subsequent rejection at Ombudsman stage

requires careful consideration.

While divergence between stages is not inherently problematic, the consistency of this sequence across a defined cohort raises the possibility that:

- a **different evaluative framework** may be applied at the Ombudsman stage; or
- additional considerations may be introduced at that stage which are not present earlier in the process.

If the latter is correct, the question arises as to whether those additional considerations are:

- relevant to the merits of the complaint; and
- consistent with the statutory function of the FOS.

Where a consistent divergence aligns with the types of assumptions identified in Sections 6.1 and 6.2, the inference that a **systemic approach** may be operating becomes more difficult to dismiss.

6.4 Fettering of Discretion

The combination of:

- assumptions relating to representation;
- assumptions relating to timing; and
- a consistent pattern of outcomes

raises the question of whether discretion is being exercised in a manner that is effectively constrained by **pre-formed views**.

If decision-makers approach complaints on the basis that:

- certain categories of complainants are inherently less credible; or
- certain categories of complaints are inherently less meritorious,

then the discretion conferred by statute may be, in substance, **fettered**.

This is not because formal rules have been adopted, but because the decision-making process may be influenced by assumptions which operate as **informal but effective constraints**.

Such an approach would be inconsistent with the principles identified in *Padfield v Minister of Agriculture* [1968] AC 997.

6.5 Procedural Fairness and Transparency

The issues identified in relation to correspondence and attribution also engage the requirement of procedural fairness.

Where serious allegations are advanced:

- without attribution to an identifiable decision-maker; and
- without clear articulation of the basis upon which they are made,

there is a risk that affected parties are unable to:

- understand the case they must answer; or
- respond effectively to it.

This is particularly significant where allegations concern:

- dishonesty; or
- the integrity of submissions.

In such circumstances, fairness would ordinarily require:

- clarity as to the nature of the allegation; and
- transparency as to its source and basis.

The absence of such features may give rise to concerns under the principles identified in *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531.

6.6 Treatment of Evidence

The role of contemporaneous evidence, including recordings, is central to many of the complaints under consideration.

If such evidence is:

- not consistently considered; or
- not given appropriate weight,

there is a risk that decisions are not based on the full evidential record.

This, in turn, may affect:

- the rationality of the decision; and
- its legal robustness.

The absence of clarity as to how such evidence is treated further contributes to concerns regarding the transparency of the process.

6.7 Systemic Dimension

Individually, each of the matters identified above may be capable of explanation.

However, when considered collectively, they give rise to a broader question as to whether:

- the issues identified are **isolated**; or
- they reflect a **systemic feature** of the decision-making process.

The alignment between:

- the recorded statements;
- the observed pattern of outcomes; and
- the legal concerns identified

suggests that the latter possibility cannot be dismissed.

Where concerns arise at this level, the issue is no longer confined to individual determinations.

It becomes a question of whether the **framework within which decisions are made remains consistent with the requirements of public law.**

6.8 Summary of Analysis

The analysis set out above does not seek to reach definitive conclusions.

However, it identifies a number of matters which, taken together, are capable of giving rise to concerns that:

- decision-making may be influenced by **generalised assumptions**;
- discretion may be subject to **informal constraints**;
- relevant evidence may not be consistently considered; and
- the process may lack sufficient **transparency and accountability.**

Each of these matters engages established principles of public law.

Their combined effect is to raise a question as to whether the decision-making process, as applied to this cohort of complaints, is operating within **lawful bounds.**

Where such concerns arise in relation to a defined class of cases, the issue is not whether individual decisions can be defended, but whether the process by which they are reached can properly be sustained.

7. Regulatory Implications

7. Regulatory Implications

The matters identified in this paper are capable of engaging the oversight responsibilities of the Financial Conduct Authority (“FCA”), as well as the broader framework of parliamentary scrutiny applicable to the Financial Ombudsman Service (“FOS”).

While the FOS operates independently in the determination of individual complaints, it forms a central component of the statutory consumer redress system. As such, concerns

regarding the integrity of its decision-making processes are not confined to the FOS itself, but extend to the effectiveness of the regulatory framework as a whole.

7.1 Role of the FCA

The FCA is responsible for:

- establishing and maintaining the FOS scheme;
- ensuring that it operates effectively; and
- safeguarding confidence in the system of consumer redress.

Although the FCA does not intervene in individual complaint determinations, it retains an interest in:

- whether the scheme is operating as intended; and
- whether its processes are consistent with statutory requirements and public law principles.

Accordingly, where concerns arise that the decision-making framework of the FOS may be affected by:

- systemic assumptions;
- issues of procedural fairness; or
- limitations in transparency or accountability,

those concerns fall within the scope of the FCA's oversight function.

7.2 Confidence in the Redress System

The effectiveness of the FOS depends not only on its formal powers, but on **public confidence** in its independence and impartiality.

Consumers must be able to rely on the expectation that:

- complaints will be assessed fairly;
- decisions will be based on the merits of the individual case; and
- the process will be transparent and accountable.

Where concerns arise that:

- certain categories of complainants may be approached with inherent scepticism; or
- outcomes may be influenced by factors extraneous to the merits of the case,

there is a risk that confidence in the system may be undermined.

Such a loss of confidence has implications beyond the complaints themselves, affecting:

- the perceived legitimacy of the FOS; and
- the broader system of consumer protection within which it operates.

7.3 Systemic Risk

The potential significance of the issues identified is amplified by their **systemic dimension**.

If the matters described in this paper are:

- isolated, their impact may be limited;
- systemic, their implications may extend across a substantial number of cases.

In the latter scenario, concerns arise not only in relation to individual determinations, but to:

- the consistency and reliability of outcomes; and
- the integrity of the decision-making framework itself.

This, in turn, may give rise to:

- increased challenges to Ombudsman determinations;
- uncertainty for both consumers and firms; and
- pressure on the regulatory system to respond.

7.4 Transparency and Accountability

The issues identified in relation to:

- unattributed correspondence; and
- the absence of identifiable decision-makers

also engage broader concerns regarding transparency and accountability.

In a statutory redress scheme:

- decisions must be capable of scrutiny; and
- the basis upon which conclusions are reached must be clear.

Where these features are absent or limited, there is a risk that:

- affected parties are unable to understand or challenge decisions effectively; and
- confidence in the fairness of the process is diminished.

These are matters which may properly attract regulatory and parliamentary attention.

7.5 Parliamentary Oversight

The FOS is subject to scrutiny by parliamentary committees, including those concerned with:

- financial services; and
- consumer protection.

Where concerns arise that:

- a statutory body may not be operating consistently with its intended function; or
- issues of transparency and accountability are present,

such matters may fall within the scope of parliamentary examination.

This is particularly so where the issues identified:

- affect a defined class of complaints; and
- raise questions as to the integrity of the decision-making process.

7.6 Implications for Stakeholders

The issues identified in this paper have potential implications for a range of stakeholders.

For consumers:

- there is a risk that complaints may not be assessed solely on their merits.

For financial firms:

- there may be uncertainty as to the consistency and predictability of outcomes.

For the FOS:

- there is a potential impact on its perceived independence and credibility.

For the regulatory system:

- there is a question as to whether the redress framework is operating as intended.

7.7 Summary of Regulatory Implications

The matters identified in this paper do not require immediate conclusions.

However, they are capable of giving rise to concerns that:

- the operation of the FOS scheme may warrant closer examination;
- confidence in the system of consumer redress may be affected; and

- further clarification may be required as to how complaints within this category are assessed.

Where questions arise as to the integrity of a statutory decision-making process, the issue is not confined to those directly affected, but extends to the effectiveness of the regulatory framework as a whole.

8. Potential Grounds of Challenge

8. Potential Grounds of Challenge

The matters identified in this paper are capable of giving rise to legal challenge in appropriate circumstances.

This section does not assert that any individual decision is unlawful. Rather, it identifies the **types of legal issues which may arise** if the concerns outlined in Sections 4–7 are substantiated.

Such challenges would most likely arise by way of judicial review, given the statutory and public nature of the functions exercised by the Financial Ombudsman Service (“FOS”).

8.1 Fettering of Discretion

As set out in Section 5, a decision-maker must not fetter the exercise of discretion by applying rigid or predetermined criteria.

If complaints are approached on the basis that:

- certain categories of complainants are inherently less credible; or
- certain categories of complaints are inherently less meritorious,

there is a risk that the decision-making process is influenced by **pre-formed assumptions**.

In such circumstances, it may be arguable that:

- discretion is not being exercised on a case-by-case basis; and
- decisions are affected by an **unlawful fetter**, contrary to the principles established in *Padfield v Minister of Agriculture* [1968] AC 997.

8.2 Procedural Unfairness

The issues identified in relation to:

- unattributed allegations;
- lack of clarity in reasoning; and
- potential reliance on undisclosed assumptions

are capable of engaging the requirement of procedural fairness.

If a party is:

- unaware of the basis upon which adverse conclusions are reached; or
- unable to identify or respond to the reasoning applied,

there may be grounds to argue that the process is **procedurally unfair**.

Such arguments would draw upon the principles articulated in *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531.

8.3 Reliance on Irrelevant Considerations

If factors such as:

- the presence of professional representation; or
- the timing of a complaint

are treated as indicators of credibility or merit, this may give rise to the argument that:

- **irrelevant considerations** are being taken into account.

Conversely, if relevant evidence—such as contemporaneous recordings—is not properly considered, there may be a failure to take into account **relevant considerations**.

Either scenario may render a decision vulnerable to challenge.

8.4 Apparent Bias or Predetermination

If decision-making is influenced by:

- generalised assumptions about categories of complainants; or
- a perception that certain complaints are inherently less credible,

this may give rise to concerns regarding **apparent bias or predetermination**.

The test is not limited to actual bias, but whether:

- a fair-minded observer would conclude that there is a real possibility that the decision-maker approached the matter with a closed mind.

Where such a perception arises, the lawfulness of the decision may be called into question.

8.5 Irrationality and Evidential Deficiency

Where:

- relevant evidence is not properly considered; or
- conclusions are not supported by the evidential record,

there may be grounds to argue that a decision is:

- irrational; or
- not reasonably open to the decision-maker on the material available.

This is particularly significant in cases where:

- contemporaneous evidence is available but not determinative; or
- the reasoning underlying a decision is unclear.

8.6 Systemic Challenge

If the issues identified in this paper are found to apply across a **defined cohort of cases**, the potential for challenge is not limited to individual decisions.

In such circumstances, it may be arguable that:

- the decision-making framework itself is affected by unlawful features; and
- a broader challenge to the operation of that framework may be justified.

Such a challenge would not seek to re-litigate individual complaints, but to examine whether the **process as a whole** is operating within lawful bounds.

8.7 Practical Considerations

Any challenge would necessarily depend on:

- the specific facts of individual cases; and
- the availability of evidence demonstrating the application of the concerns identified.

However, the matters outlined in this paper are of a nature which may:

- inform the grounds upon which such challenges are advanced; and
- be relied upon in support of arguments relating to process and methodology.

8.8 Summary of Potential Grounds

The issues identified in this paper are capable of giving rise to arguments that decisions may be affected by:

- unlawful fettering of discretion;
- procedural unfairness;
- reliance on irrelevant considerations;
- apparent bias or predetermination; and
- irrationality or failure to properly consider evidence.

Whether such arguments succeed would depend on the facts of individual cases.

However, the presence of such issues, if established, would engage **well-established principles of public law**.

Where concerns of this nature arise, the question is not confined to whether individual decisions can be defended, but whether the process by which they are reached is capable of withstanding legal scrutiny.

9. Conclusions

9. Conclusions

This paper has examined a series of matters arising in connection with the handling of fractional timeshare complaints by the Financial Ombudsman Service (“FOS”).

Those matters include:

- statements attributed to a senior FOS official, Emma Peters;
- an observable pattern in the progression and outcome of a defined cohort of complaints; and
- procedural features relating to correspondence, attribution, and the treatment of evidence.

Individually, each of these matters may admit of explanation.

However, when considered collectively, they give rise to a question of broader significance: whether the handling of these complaints reflects a process grounded in **individualised, evidence-based adjudication**, or whether there are indications that **generalised assumptions or institutional approaches may be influencing outcomes**.

9.1 Central Issue

The central issue identified in this paper is not the correctness of individual determinations.

It is whether the **process by which those determinations are reached** remains consistent with:

- the statutory function of the FOS; and
- the requirements of established public law principles.

In particular, the matters identified are capable of engaging concerns that:

- discretion may be influenced by **pre-formed assumptions**;
- certain factors, including representation and timing, may be treated as indicators of credibility;
- relevant evidence may not be consistently considered; and
- the process may lack sufficient **transparency and accountability**.

9.2 Systemic Considerations

The potential significance of these concerns is amplified by their **systemic dimension**.

If the issues identified apply across a defined cohort of cases, they are not confined to individual determinations. They raise questions as to the integrity of the **decision-making framework itself**.

In such circumstances, the issue is not whether individual decisions can be justified on their own facts, but whether the process by which they are reached remains **capable of consistent and lawful application**.

9.3 Confidence and Legitimacy

The authority of the FOS rests on confidence in its independence, impartiality, and fairness.

Where concerns arise that:

- complaints may be approached with inherent scepticism; or
- outcomes may be influenced by factors not directly related to the merits of the case,

there is a risk that confidence in the system of consumer redress may be affected.

Such concerns, whether ultimately substantiated or not, are themselves of significance, as they bear upon the **perceived legitimacy** of the process.

9.4 Need for Clarification

This paper does not seek to reach final conclusions as to the lawfulness of any individual decision or the operation of the FOS more generally.

However, the matters identified are of a nature which **require clarification**.

In particular, it is necessary to establish:

- whether the statements described reflect an institutional approach or individual observations;
- whether the factors identified are being taken into account in practice; and
- whether the decision-making process is operating consistently with the requirements outlined in Section 5.

9.5 Overall Conclusion

The issues identified in this paper are not, on their face, trivial or technical.

They go to the **core of the decision-making process** within a statutory scheme designed to provide fair and independent resolution of disputes.

Where concerns arise that such a process may be influenced by:

- generalised assumptions;
- informal constraints on discretion; or
- limitations in transparency,

it is necessary that those concerns are:

- clearly identified;
- carefully examined; and
- addressed where appropriate.

The question raised by this paper is not whether individual decisions can be defended in isolation, but whether the process by which they are reached can properly command confidence as a lawful and impartial system of adjudication.

10. Recommendations

10. Recommendations

The purpose of this section is to identify **practical steps** which may assist in addressing the matters raised in this paper and in maintaining confidence in the integrity of the decision-making process within the Financial Ombudsman Service (“FOS”).

The recommendations set out below are framed in a manner intended to support:

- clarification of the issues identified;
- transparency in the operation of the scheme; and
- confidence in the fairness and independence of the process.

10.1 Clarification of Approach to Complaint Assessment

It is recommended that the FOS provide clear confirmation as to:

- whether factors such as **professional representation** are taken into account in assessing the credibility or merits of complaints;
- whether the **timing of complaints**, including those submitted following judicial clarification, is treated as relevant to their assessment; and
- the extent to which any such factors form part of the evaluative framework applied at Ombudsman stage.

Such clarification would assist in determining whether the concerns identified reflect:

- individual observations; or
- a broader approach to complaint handling.

10.2 Confirmation of Evidential Standards

It is recommended that the FOS clarify its approach to the treatment of evidence, in particular:

- the role and weight given to **contemporaneous documentation and recordings**;
- how such evidence is assessed in practice; and
- whether any guidance exists governing its consideration.

Given the central role such material may play in disputes concerning the sales process, clarity in this area is of particular importance.

10.3 Transparency and Attribution in Decision-Making

It is recommended that the FOS review its practices in relation to the issuance of correspondence advancing serious allegations.

In particular, consideration should be given to:

- ensuring that such correspondence is **attributable to identifiable decision-makers**;
- providing clear and reasoned explanations for conclusions reached; and
- maintaining a level of transparency consistent with the requirements of procedural fairness.

This would assist in ensuring that affected parties are able to:

- understand the basis of decisions; and
- respond appropriately where necessary.

10.4 Review of Decision-Making Consistency

It is recommended that consideration be given to conducting a **structured review of complaint outcomes** within the relevant cohort.

Such a review may include:

- analysis of the relationship between investigator assessments and Ombudsman determinations;
- identification of any patterns in divergence; and
- examination of the factors influencing outcomes at each stage.

The purpose of such a review would be to:

- ensure consistency in the application of principles; and
- identify any features of the process requiring clarification or adjustment.

10.5 Independent Review

Given the nature of the concerns identified, consideration should be given to the appointment of an **independent review** of the handling of fractional timeshare complaints.

Such a review could:

- assess whether the decision-making process is operating consistently with public law principles;
- examine the role of any institutional assumptions or approaches; and
- provide recommendations for ensuring continued compliance and confidence.

An independent review may be particularly appropriate where:

- concerns extend beyond individual cases; and
- questions arise as to the operation of the decision-making framework as a whole.

10.6 Engagement with the FCA

It is recommended that the matters identified in this paper be considered within the oversight framework of the Financial Conduct Authority.

In particular, the FCA may wish to consider:

- whether the FOS scheme is operating in a manner consistent with its intended function;
- whether further guidance or clarification is required; and
- whether the issues identified warrant supervisory or investigatory attention.

10.7 Ongoing Monitoring

Finally, it is recommended that the handling of complaints within this category be subject to **ongoing monitoring**, including:

- tracking of complaint outcomes;
- assessment of consistency over time; and
- continued review of decision-making practices.

Such monitoring would assist in:

- identifying emerging issues; and
- ensuring that any concerns are addressed at an early stage.

The purpose of these recommendations is not to challenge the independence of the FOS, but to ensure that the processes by which it exercises its statutory function continue to operate in a manner that is transparent, consistent, and capable of commanding confidence.