

# **THE FOS FILES**

## **Executive Briefing**

### **Ombudsman in Question:**

Recorded Remarks and Concerns Over Bias, Predetermination and Fairness.

### **An analysis of statements attributed to Emma Peters – Ombudsman**

And their implications for the integrity of complaint adjudication

### **Accompanying White Paper:**

#### **The Financial Ombudsman Service and Fractional Timeshare Complaints**

*A Review of Procedural Fairness, Decision-Making Integrity and Public Law Compliance*

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### **For Consideration by:**

- Financial Conduct Authority
- Parliamentary Committees

- Legal and Regulatory Stakeholders

# Ombudsman in Crisis: Recorded Remarks Raise Questions of Bias, Predetermination and Fairness

A senior official at the Financial Ombudsman Service is facing mounting scrutiny after recorded remarks suggested that entire categories of consumer complaints may be treated with inherent suspicion, raising the prospect that decisions in a substantial body of long-running financial disputes have been influenced by assumption rather than evidence.

The comments, attributed to Emma Peters during a January 2026 meeting for which a contemporaneous recording exists, go to the heart of the Ombudsman's statutory duty to act independently and fairly. They raise a question that cannot readily be confined to individual cases: whether outcomes in a defined class of complaints may have been shaped by an approach that departs from case-by-case adjudication.

## The Meeting That Raises Fundamental Questions

On 28 January 2026, representatives of the Ombudsman Service met with legal professionals acting in a substantial cohort of fractional timeshare complaints, many of which have been under investigation for close to a decade.

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

According to those present, Ms Peters made three statements of particular significance.

First, that after years of handling such complaints, the Service had formed the view that complainants represented by professional advisers had been "coached or coerced".

Second, that this perception was now being taken into account when assessing those complaints.

Third, that complaints submitted after May 2023—following judicial clarification of the law—could be regarded as consumers "jumping on the bandwagon".

Taken together, those statements do not describe isolated observations. They describe a **reasoning framework** capable of influencing how a defined class of complaints is approached.

## From Evidence to Assumption

The Ombudsman's statutory role is to determine complaints on what is "fair and reasonable in all the circumstances".

That role is inherently fact sensitive. It requires the assessment of evidence, not the application of presumptions.

If complainants are regarded with suspicion because they are professionally represented, a factor extraneous to the merits of their claims is being introduced into the evaluative process.

If complaints are discounted because they arise after judicial clarification, a lawful and predictable consequence of that clarification is being treated as a basis for scepticism.

Neither proposition is easily reconciled with the requirement to determine each case individually.

**"If a statutory decision-maker begins from the premise that certain complainants are less credible before their evidence is even assessed, the issue is no longer one of judgment, but of whether the process itself can lawfully stand."**

## Judicial Clarification—and Its Consequences

The reference point for the "bandwagon" remark is the decision in *R (Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd* [2023] EWHC 1069 (Admin), in which the court upheld the Ombudsman's general approach to fractional timeshare lending complaints.

Such judgments do not suppress claims. They clarify the legal framework within which they may be brought.

An increase in complaints following such a ruling is neither surprising nor improper. It is the predictable effect of legal certainty.

To characterise that increase as opportunistic risks displacing legal principle with institutional perception.

## The Legal Fault Line: Predetermination

The law draws a clear distinction between guidance and predetermination.

In *Padfield v Minister of Agriculture* [1968] AC 997, it was established that discretionary powers must be exercised in accordance with the statutory purpose and not constrained by rigid or irrelevant considerations.

A decision-maker may develop experience. They may not allow that experience to harden into assumptions that shape outcomes in advance.

If the reasoning attributed to Ms Peters reflects the approach being applied in practice, the issue is not merely that decisions may be open to challenge.

It is that the **method by which those decisions are reached may itself be legally defective.**

## **A Pattern That Demands Explanation**

These concerns acquire greater force when considered alongside a pattern emerging across a defined cohort of cases:

- favourable findings at the investigator stage,
- prolonged delay,
- followed by rejection at the Ombudsman level.

Individually, such outcomes may admit of explanation.

Collectively, and when read in light of the recorded statements, they raise the possibility that **a different evaluative framework is being applied at the final stage.**

That is not a conclusion. It is an inference.

But it is an inference that calls for a clear and evidence-based explanation.

## **The Trigger Point: Systemic Approach**

The significance of that pattern is not merely statistical. If it reflects a consistent divergence between investigator findings and Ombudsman determinations within a defined class of cases, it raises the possibility that **a distinct evaluative framework is being applied at the final stage of decision-making.** Where such a framework aligns with the reasoning attributed to Emma Peters, the issue ceases to be one of individual outcomes and becomes one of a **systemic approach.** In those circumstances, scrutiny would not be confined to any single determination, but to whether the **decision-making process itself is operating on a lawful basis across the cohort.**

## **Anonymous Allegations and the Question of Fairness**

Concerns extend beyond decision-making into the Service's conduct in correspondence.

Serious allegations, asserting dishonesty and misleading submissions, have been advanced against legal representatives. Yet those allegations have been issued from generic, unattributed email addresses.

The Ombudsman Service has confirmed that this reflects a collective institutional position and will continue.

For a body exercising quasi-judicial functions, that approach presents an obvious difficulty.

In *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531, the courts emphasised that fairness requires a person to understand the case they must meet.

Implicit in that requirement is accountability: the ability to identify the decision-maker responsible.

The absence of attribution is not merely procedural. It limits scrutiny of how serious allegations are formulated and advanced.

## Evidence and Its Role

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

Such evidence may be central in disputes involving complex financial products.

There is now concern that this approach is not being consistently reflected in outcomes.

If relevant evidence is being discounted or insufficiently weighed, the implications again extend beyond individual determinations to the integrity of the process.

## Individual Responsibility, Institutional Threshold

What gives these concerns particular force is that they are not framed in abstract or inferred from outcomes alone. They arise from **identified statements attributed to Emma Peters in the course of a professional engagement, bearing directly on how a defined class of complaints is approached**. Where a decision-maker articulates reasoning that appears to discount categories of complainants by reference to representation or timing, the issue is not confined to institutional culture. It becomes a question of whether the approach being applied is **compatible with the obligations inherent in the exercise of a statutory adjudicative function**. In such circumstances, the focus necessarily shifts from individual decisions to the **sustainability of the decision-making framework itself**, and whether it can properly command confidence if those exercising it are, or are perceived to be, proceeding from pre-formed assumptions rather than the evidence in each case.

## Regulatory and Parliamentary Implications

These matters are capable of engaging scrutiny by the Financial Conduct Authority and relevant parliamentary bodies.

They raise issues of:

- procedural fairness,
- lawful exercise of discretion,
- and the operational independence of a statutory redress scheme.

Previous scrutiny involving figures such as Zahida Manzoor has already highlighted concerns regarding transparency within the Service.

The present issues, if substantiated, extend beyond transparency to the **lawfulness of the approach**.

## The Point of Consequence

If the statements attributed to Ms Peters are accurate, they do not describe an isolated misjudgement.

They describe a potential shift in approach, one in which credibility and legitimacy may be influenced by factors external to the merits of the case.

That is not simply a matter of internal policy.

It is a matter of legal compliance.

For complainants, many of whom have waited years for resolution, the implications are immediate.

For the Ombudsman Service, they are systemic.

Its authority depends not on enforcement powers, but on confidence: confidence that it will act impartially, transparently, and without preconception.

If that confidence is undermined, the consequences will not be confined to a single category of complaints.

They will extend to the standing of the institution itself.

## The Question That Now Arises

The issue is no longer whether these concerns are serious.

It is whether they can be sustained without independent scrutiny.

If the reasoning described reflects the approach being taken, then the question is not simply whether decisions are right or wrong.

It is whether they are **safe**.

And that is a question that regulators, and, if necessary, the courts, may ultimately have to answer.