



Assistant Treasurer

Ms Michelle Rowland MP
Member for Greenway
PO Box 686
SEVEN HILLS NSW 1730

16 JUN 2015

Dear Ms *Michelle* Rowland

Thank you for your correspondence originally directed to the Treasurer, concerning the claims by Mr Russell Cousins of Bank Victims Pty Ltd about the conduct of the Financial Ombudsman Service (FOS). Your correspondent has been referred to me as I have portfolio responsibility for this matter.

I wish to thank Mr Cousins for drawing our attention to his article, as published on the Bank Victims Pty Ltd website on 12 January 2015, which raises a number of concerns about the transparency, independence and integrity of FOS and its relationship with ASIC and the major banks.

Mr Cousins stated a concern with how FOS is funded and the degree to which it is independent from the major banks and other financial institutions. While FOS' members are indeed financial service providers – such as major banks and insurance companies – only a small portion of FOS's funding is from the annual membership fees of the financial service providers. Mr Shane Tregillis, Chief Ombudsman, FOS, stated at a hearing in February 2014, as part of the Senate Economics Reference Committee's inquiry into the performance of Australian Securities and Investment Commission (ASIC), that membership fees comprise only around 20 per cent of FOS' budget. The remainder of FOS' budget comes from case fees.

The case fees paid by a financial service provider reflect the number of disputes it is involved in and the stages the disputes progress to before a resolution is reached. As case fees are not insignificant and increase based on the time to resolution, providers have a reasonable incentive to both: handle disputes before they are escalated to FOS and engage with FOS when a dispute is escalated to them, to resolve it in manner that is timely and beneficial to all parties.

Mr Cousins was also concerned with FOS' level of transparency. FOS maintains its transparency through the publication of information on its website, an Annual Review and annual reporting to ASIC on matters such as systemic issues (as mentioned by Mr Cousins in his article). While FOS is committed to transparency, it has a duty to protect the privacy of all parties to the disputes it handles – consumers, consumer advocates and financial service providers – and therefore FOS may only publish limited information about certain matters.

Additionally, under its ASIC terms of approval, FOS must commission regular independent reviews of its operations and procedures. FOS' most recent independent review by Melbourne-based consultancy, Cameronralph Navigator, was commissioned in July 2013. On 12 March 2014, the FOS Board of Directors (the Board) released the findings of the independent review, which made 33 recommendations aimed at improving the timeliness, organisational design, fairness, accountability, efficiency and effectiveness of FOS.

On 4 December 2014, after a public consultation, FOS announced that a number of changes to its terms of reference had been formally approved – by both the Board and ASIC. These changes were the result of the implementation of a number of recommendations from the review that were aimed at reducing the time taken to resolve disputes and increase engagement with both financial service providers and other FOS stakeholders.

Mr Cousins further mentioned that only limited information was published about FOS' referral of systemic issues to ASIC. In FOS' 2013-14 Annual Review, it is stated that FOS' systemic issues team received 1,903 referrals from the FOS dispute handling teams. Of these, around 162 possible systemic issues were referred to financial service providers and 54 definite systemic issues were resolved and reported to ASIC, leading to around \$75 million being refunded to customers. The Annual Review also states that 11 cases of serious misconduct were reported to the ASIC in 2013-14. More detail on these systemic issues can be found in the FOS 2013-14 Annual Review, which is available on the FOS website at: www.fos.org.au/publications/annual-review/.

Mr Cousins also stated that there was a lack of information about FOS' Board of Directors. The Board is comprised of both consumer representatives and financial services industry representatives. At the time of writing, only one current board member (Ms Jennifer Darbyshire) is an employee of a big four bank. To maintain the independence and integrity of cases and decisions, the Board does not get involved in the detail of any case and FOS decisions are independent of any interference from the Board. Information on the Board is available on the FOS website at: www.fos.org.au/about-us/our-board/.

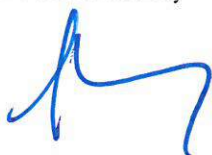
Mr Cousins has also questioned FOS' relationship with ASIC. On 20 June 2013, the Senate referred an inquiry into the performance of the Australian Securities and Investments Commission to the Senate Economics References Committee (the Committee) for inquiry and report. The Committee tabled its final report on 26 June 2014. The final report contained a number of recommendations for improving the performance of ASIC, including specific recommendations concerning ASIC's oversight of FOS. In its October 2014 response, the Government noted these recommendations, stating that they were a matter for FOS and that they may be better addressed by FOS' review of its terms of reference (which has now been finalised, as outlined above).

Furthermore, in this context, Mr Cousins may be interested to know that the Financial Systems Inquiry (FSI), which published its final report in December 2014, recommended strengthening ASIC's funding and powers. Specifically, the recommendation seeks to strengthen the Australian Credit Licence and Australian Financial Services Licence (AFSL) regimes so ASIC can deal more effectively with poor behaviour and misconduct. The recommendation also includes increasing the maximum civil and criminal penalties for contravening ASIC legislation to act as a credible deterrent for large firms. The Government has been consulting on the FSI recommendations and will respond in due course.

I commend Mr Cousins' thorough investigations of the issues and I wish to inform him that this Government is committed to a fair, open and honest banking and financial system that is subject to appropriate regulatory controls, to the benefit of all Australians.

I trust this information will be of assistance to Mr Cousins.

Yours sincerely



JOSH FRYDENBERG