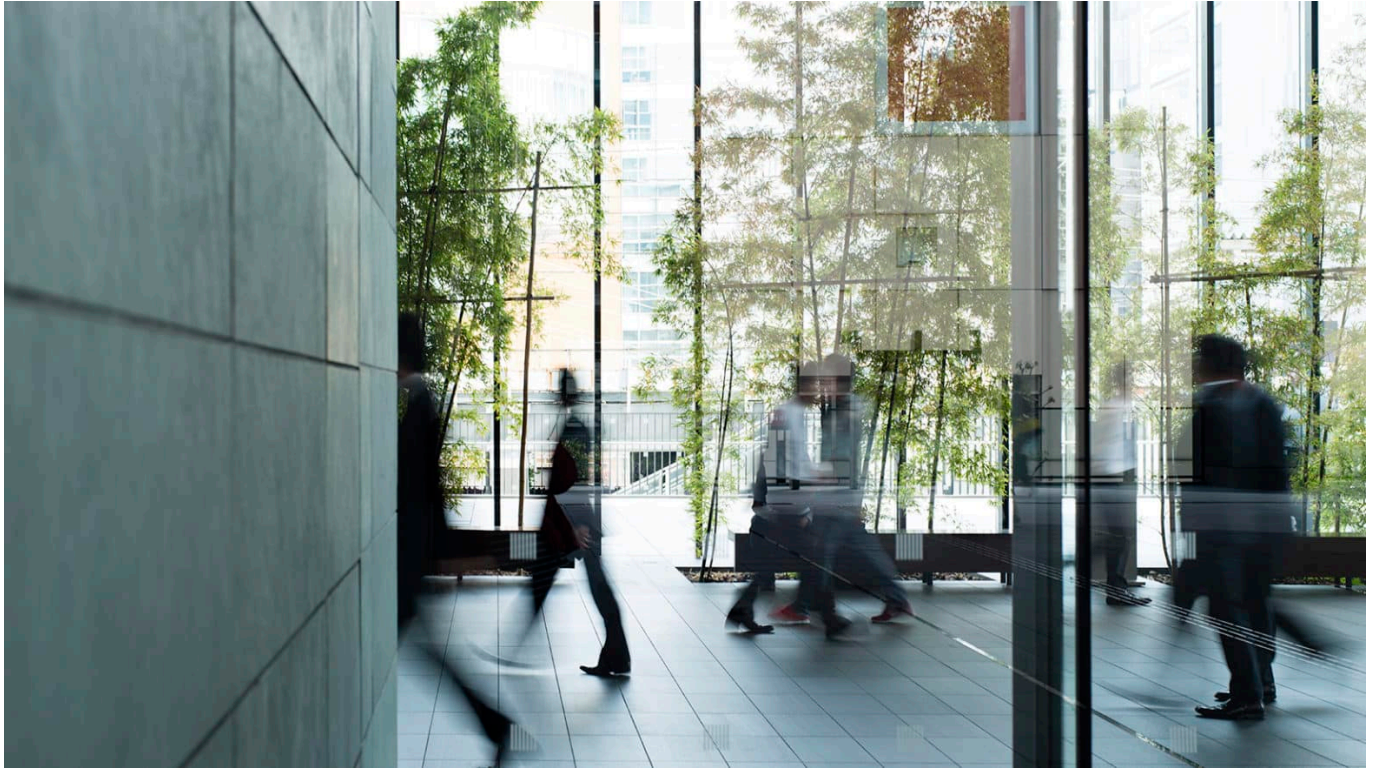


Financial Ombudsman Service v Common Law



One of the defining features of the legal system of England and Wales is the doctrine of precedent. This principle requires judges to follow the judgments of judges in higher courts, where the case has similar facts and issues.

The principle has been relied upon for hundreds of years. It helps create certainty, clarity and, above all, predictability – the very foundation of the English common law. Moreover, when there is a dispute (such as in financial negligence cases) individual advisors and companies are aware of the particular rules that must be followed and, perhaps more importantly, the consequences of failing to do so.

However, the Financial Ombudsman Service ('FOS') is not subject to this doctrine. Instead, it can rely on its own opinion on what is fair, just and reasonable; its decisions cannot be appealed (except through judicial review, and only then on the grounds that no reasonable ombudsman could have reached the same decision); and it is not required to follow the precedents it has set.

What are the advantages of the FOS?

Compared to the common law, the decisions of the FOS are anything but clear, certain and predictable. However, there is a clear cost-benefit for its creation, particularly in respect of consumers of financial services that are of low value but high importance.

The FOS is easily accessible for consumers and provides an alternative dispute resolution ('ADR') option. Parties can save significant time and costs by making a claim to the FOS, compared to undertaking the traditional court route. In addition, as of 1 April 2019, the FOS' power to award compensation has increased by more than double to £350,000.



Need for reform?

Despite the inconsistent (and sometimes contradictory) judgments of the FOS, there has been a reluctance to bring in a new, low-cost and specialist tribunal to resolve claims against financial businesses and their customers. Arguably, this is a result of those at the top of the financial markets influencing the industry trade body, UK Finance. Big banks typically benefit from the uncertainty of the FOS in commercial or retail markets. It is more advantageous for the more powerful party to settle claims through the FOS in private than resolve the dispute in a public court in accordance with the law.

Despite its weaknesses, the FOS remains an accessible and affordable method of ADR for financial negligence disputes. While impossible to guarantee the outcome of a FOS complaint, our professional negligence team can provide expert advice and opinions on the merits of your claim.

If you would like to discuss a potential financial negligence claim, then please contact a member of our [professional negligence team](#).



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