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The response of the Advice Services Alliance to the Hunt Review of the Financial Ombudsman Service January 2008

1 Advice Services Alliance

1.1 The Advice Services Alliance (ASA) was established in 1980, and is the umbrella organisation for independent advice networks in the UK. Currently, our full members are:

- adviceUK
- Age Concern England
- Citizens Advice
- DIAL UK (the disability information and advice service)
- Law Centres Federation
- Shelter
- Shelter Cymru
- Youth Access

1.2 Our aims are to:

- champion the development of high quality information, advice and legal services
- ensure that people are not denied access to such services on account of lack of means, discrimination or other disadvantage
- encourage co-operation between organisations providing such services
- provide a forum for the discussion of issues of common interest or concern to advice organisations

1.3 On behalf of members, we respond to government initiatives relating to advice and the legal system. We represent the advice sector in discussions with government bodies and other organisations. We produce policy and discussion papers, and undertake research. We host policy forums for our members and run occasional seminars and conferences. We provide training, information and guidance to members and advice agencies.

Full Members: [Adviceuk](#) [Age Concern England](#) [Citizens Advice](#) [DIAL UK](#) [Law Centres Federation](#)
[Shelter](#) [Shelter Cymru](#) [Youth Access](#)

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- 1.4 ASA welcomes the opportunity to submit comments to the Hunt Review. We are not a consumer organisation, nor do we have specific data or evidence which is relevant to financial services provision. However, we would like to make some brief comments on the principle of openness and transparency.
- 1.5 We have not asked our member networks to comment on this submission, and we anticipate that some of our members will respond separately.

2 How accessible is the FOS?

- 2.1 ASA has no specific comments to make on this Review question. On the whole, we believe that the FOS works hard to make its service as accessible as possible, and to ensure that consumers are aware of their complaint options. The FOS Customer Contact Division provides a helpful point of first contact for potential complainants, and is a good model for other independent dispute resolution schemes in this respect.

3 Can FOS information make the market work better?

- 3.1 In principle, ASA supports the publication of information about FOS decisions. The arguments put forward in the Hunt Review paper set out the complex issues very clearly. There are two key arguments in favour of publication:
- It would enable some external scrutiny of the quality and consistency of FOS decision-making
 - It would give consumers greater information about performance of financial services providers, and enable more informed decision-making
- 3.2 ASA believes that the Local Government Ombudsman provides a helpful model for practice in this area. With full LGO reports, complainants remain anonymous but the local authority is identified. As well as this, each year a letter is sent to every local authority from the LGO, outlining complaints trends in that authority during the year, identifying poor performance and systemic problems, and suggesting areas for improvement. This seems similar to FOS practice (4.27), except that the LGO reports and letters are in the public domain. ASA believes there are good reasons for publishing this information in the case of FOS data.
- 3.3 However, one concern that is raised about the LGO is that far too many cases are settled informally, without a full investigation or report. The decision about whether a case is 'resolved' at this stage rests with LGO staff, and some complainants feel that poorly performing local authorities can therefore avoid public naming and shaming. This is not a straightforward issue when considering the potential consequences of publication of FOS data. For example, publishing adjudications and ombudsman decisions and identifying the businesses involved may encourage more businesses to resolve disputes through the 'guided mediation' stage of FOS process. Would this be an advantage or a disadvantage for consumers? On the one hand it could give consumers added bargaining power in negotiating appropriate redress. On the other hand, more settlement negotiations would take place away from any public scrutiny. As a safeguard, it would be important to guarantee the consumer's right to decide whether or not to accept a proposed settlement at that stage. If the complainant is

not happy, they should continue to have the right to request an adjudication, as is now the case in the FOS procedure. Consumers should be encouraged to seek independent advice on their options, especially where significant sums of money are concerned. Where independent advice is likely to be disproportionately expensive, the consumer's decision will be heavily dependent on the advice of the FOS caseworker. It is therefore important to continually evaluate and improve internal FOS quality assurance: ideally there should also be some provision for transparency and scrutiny of mediated agreements.

- 3.4 However, ASA remains unpersuaded by the argument that decisions should not be published at all on the grounds that publication could distort the actions of businesses (4.7) or might have 'odd' incentive effects (4.26).
- 3.5 Another concern which has been raised about the FOS is that there is no external appeal process to challenge final ombudsman decisions by the FOS. ASA believes that there needs to be finality to the FOS decision-making process. However, it is important that judicial review of FOS procedures should continue to be available, and the FOS should make it clear on their website that this is an option. As well as the possibility of JR, the Ministry of Justice is currently consulting on which bodies should be included in an extended jurisdiction for the Freedom of Information Act. ASA believes that there is a good case for the FOS to be required to respond to FOI requests, providing there are sensible commercial safeguards.
- 3.6 Finally, it is important to clarify the different roles of the Financial Services Authority and the FOS when it comes to tackling bad practice in financial services providers. It is vital that clear and unambiguous information about this is provided for consumers and advisers.

