"OMBUDSMEN WHO ARE AN AFFRONT TO THE RULE OF LAW"

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Anthony Speaight QC

The Financial Ombudsman Service is quite simply an affront to the rule of law.

The Legal Ombudsman is heading in the same direction.

STRUCTURE

Financial Ombudsman Service
The Financial Services and Markets Act ("FSMA") contains provision for a scheme under which disputes between clients and firms authorised persons, which have been authorised to provide financial services, "may be resolved quickly and with minimum formality" (s.225).

The jurisdiction of the scheme over authorised persons (who may be a huge corporation or a sole practitioner High Street IFA) is compulsory (FSMA s. 226).

There is also a voluntary jurisdiction. Of course, nobody has any complaint about that. If 2 parties wish FOS to act as their arbitrator, that is their choice.

Awards made by the scheme are enforceable as if a court judgment (FSMA s.229).

Schedule 17 provides that the Financial Services Authority ("FSA") is to establish a body corporate to exercise the functions. FSA duly established a scheme known as the Financial Ombudsman Service ("FOS").

The power to make rules for FOS is shared between FSA and FOS itself. FSA and FOS have promulgated rules entitled "Dispute Resolution: Complaints", which are commonly referred to as "DISP".

Under these rules FOS has jurisdiction to make binding awards of up to £100,000. The FSA has recently been consulting on its intention to raise that limit to £150,000 from 1 Jan 2012 -- an increase of about double what would have been needed to adjust for inflation.

The scheme is unbalanced in several respects:-

(1) There is no appeal against an award by a firm which is found liable. On the other hand, if a complainant's complaint is dismissed by FOS, he may bring the same complaint again in court.

(2) The rule-maker, FSA, has amongst its statutory objectives the protection of consumers.
This is not balanced by any objective to provide fairness for firms.

(3) The scheme is free to complainants. On the other hand, the DISP rules provide that the firm, against which a complaint is made, has to pay FOS's case fee, even if the complaint is dismissed. A District Judge in the Trowbridge County Court held that that was Wednesbury unreasonable. But in FOS v Heather Moor & Edgecomb [2009] 1 All ER 328 the Court of Appeal allowed FOS's appeal and held that the rule requiring the firm to pay a fee in respect of failed complaints was not unlawful or unreasonable.

Legal Ombudsman
Under Part 6 of the Legal Services Act 2007 there is established a body corporate called the Office for Legal Complaints ("OLC"). It is appointed by the Legal Services Board. It has 7 members, none a barrister, and none a judge. There are 2 solicitors, although one of those holds a senior position in FOS.

The OLC has power to make rules for a scheme which has now been established under the name the Legal Ombudsman.

The OLC also appoints a Chief Ombudsman and a number of assistant Ombudsmen.

A complainant must first use a respondent's own complaint procedure, in our case normally a chambers complaints system.

The Legal Ombudsman cannot take disciplinary action against a lawyer. Only the professional body can do that, in our case BSB. But if the Legal Ombudsman considers that a complaint raises both consumer issues and disciplinary issues, he can deal with redress himself first.

The Legal Ombudsman may direct the payment of compensation up to £30,000 (ss137(2), 138(1).

The Legal Ombudsman may also direct that the fees to which a respondent is entitled are limited to such sum as he specifies. This appears to involve a jurisdiction to order repayment of fees without any financial limit.

The current limit of £30,000 is subject to a ratchet which seems designed to ensure that it is adjusted upward:-

(a) The Lord Chancellor has power to adjust it, but seemingly only if he receives a recommendation under s.139(2).

(b) Such a recommendation may be made by any one of 3 bodies:

   the OLC
   the Legal Services Board
   the "Consumer Panel" -- a body set up under s.8 to represent consumers

(c) If any of those interested bodies recommends an increase, the Lord Chancellor must
either order it or publish his reasons for not doing so.

There is the same imbalance in the binding character of decisions -- binding and unappealable on lawyers, but a complainant is free to reject the decision and have a 2nd go in court.

Another imbalance is that there is a statutory prohibition on any publication of the name of a complainant in any kind of reporting, but no such prohibition as to the identity of a lawyer.

NOT GOVERNED BY ENGLISH LAW

Financial Ombudsman Service
FSMA provides in s.228(2):

A complaint is to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case.

That section was held by the Court of Appeal in R (Heather Moor & Edgecomb) v FOS [2008] Bus LR 1486 to mean that a determination by FOS need not be in accordance with the law of England, provided it is fair and reasonable. In other words FOS has power to make a binding award against a firm for payment of up to £100,000, notwithstanding that the firm has committed no wrong under the law, and notwithstanding that the law would recognise no liability upon the firm.

FOS's own rules known as DISP provide:-

3.8.1(1) The Ombudsman will determine a complaint by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case.

FOS's approach is to develop its own law to govern consumer claims against financial advisers and providers. Mr Walter Merricks, who was until recently the Chief Ombudsman of FOS, has said in a public speech on 6 June 2001, and posted ever since by FOS on its website:-

We do not have to pretend to 'find' what the law is. We unashamedly make 'new law'.

He has made no secret of the fact that FOS decides cases on a basis different from the law of the land:-

Our fair and reasonable jurisdiction has attracted a fair amount of attention. It allows us to look beyond wording of the small print, to take into account the large print in the promotional materials, good industry practice, and, if necessary, adopt a modern and fairer approach where it is clear that the law has lagged behind.

Nobody doubts the sincerity of Mr Merricks' belief that his criteria are better than those of the
English law. The issue raised by the Applicant is whether in a democratic society governed by the rule of law changes to the law should be made other than by Parliament.

An example of how FOS does not follow the law of England is in respect of limitation. Financial advisers are currently facing claims about mortgage endowment sales dating back well over the 15-year long stop for negligence claims under the law.

Legal Ombudsman

It is even clearer that the law of England is not to govern the decision-making of the Legal Ombudsman. Section 137(1) of the Legal Services Act 2007 is worded almost identically to s.228(2) FSMA, but s.137(5) LSA then proceeds to add:

The power of the Ombudsman to make a direction [including payment of up to £30,000 compensation] is not confined to cases where the complainant may have a cause of action against the respondent for negligence.

NON PUBLICATION OF DECISIONS

Financial Ombudsman Service

FOS decisions have been observed to contain the same passages of text over and over again.

The explanation for this provided by Jane Sanders, a barrister who previously worked at FOS, is that standard text is provided by the FOS computer system. That system has been created so as to take a decision writer step by step through a tree of decision-making. She has written:

You input data onto Excellence (the all singing and dancing database designed to support adjudicators in the Endowment team) including the complainant's policy number, target maturity sum, basic sum assured, number of dependents, the complainant's age and other salient factors from the point of sale and press a button.

Voila! Excellence creates a template letter which, in the loosest way possible, was tailor made to the complainant's case. You then take further standard paragraphs, emailed to you from your mentor, for you to store on your system, and apply them depending on the type of case you have, and pad out the letter until you have something that was considered acceptable.

In 2007 FOS appointed Lord Hunt of Wirral to conduct a review of some of its procedures. In his Call for Evidence published in autumn 2007 he reported that in making its decisions FOS uses "a full computer-based knowledge management system called KIT (Knowledge and Information Toolkit)", which "consists of well over 100 separate notes, produced by senior FOS staff". The information is "layered" and covers such subjects as "products, sectors and more generic topics". (Hunt para 4.15).

There is nothing inherently wrong with the use of this computer-based decision-writing system. But it is a pity that it is not made publicly available. Presumably it contains FOS's "own law".
Another way for citizens to be able to predict the way in which FOS would be likely to determine rights and liabilities would be if FOS published its decisions. One can quite understand that complainants may prefer that details of their affairs are not published, and that financial authorised persons may prefer not to have their name published, especially when found liable. But the easy answer to those issues for decisions to be published, as court judgments occasionally are, in anonymised form.

There is a lot of talk from FOS about how much it values transparency, but the reality seems to me to be that it is a somewhat secretive organisation. For instance, Jane Sanders says:

> Whilst at FOS, I was told that I must reply, when challenged, that my qualifications have no bearing on the job at hand; I do the job at hand because FOS says I am competent to do so. Under no circumstances was I to reveal my qualifications. It was explained to me when I questioned what appeared to me to be a ridiculous stance that the position was that the training was so comprehensive that the background qualifications I held were of little consequence; this despite the fact that formal induction to the service is actually 1 week and you begin issuing views under a mentor a few short weeks later.

In April 2008 Lord Hunt recommended that FOS should select and publish some of its decisions in full, but anonymised form to show the relationship between the broad principles applied to resolution of cases -- which should also be published -- and their application in practice. He also recommended that FOS "commission and publish regular academic analysis of the full range of Ombudsman decisions alongside future independent reviews". The current Chief Ombudsman has recently been reported as saying she favours more publication, but so far as I can discover there is still not a single full decision on the FOS website, and no sign of academic analysis.

Although there is nothing in FSMA to require FOS to publish decisions, it does mention a register of decisions. FSMA s.229(8) provides for a FOS money award to be enforceable through the courts "in accordance with Part III of schedule 17", which states:

> A money award, including interest, which has been registered in accordance with scheme rules may --

> (a) if a county court so orders in England and Wales, be recovered by execution issued from the county court (or otherwise) as it were payable under an order of that court

(emphasis added)

FOS's own rule called DISP 3.9.15 used to provide:

> The Ombudsman must maintain a register of each money award and direction made.

A couple of years ago Mr Joseph Egerton, a consultant who has given expert evidence on financial services matters, called at FOS and asked to inspect the register. He was told it did not
exist. Not long after the rule about a register disappeared from the rule book.

This means that there might be some difficulty in a person who has received a money award from FOS enforcing it through the courts. But in most cases this will cause little problem. A decision of the Financial Services and Markets Tribunal in May 2008 held that FSA was justified in withdrawing authorisation from any approved person who did not pay a FOS award, even though in that case there had been an enforcement action commenced in court which resulted in the action being by consent dismissed.

FOS has claimed that it fulfilled this requirement because its decisions were held in electronic form on an internal database. In \( R(\text{Heather Moor and Edgecomb Limited}) v \text{FOS} \) this argument did not impress Lord Justice Rix, who said,

\[
I \text{ have my doubts whether such an internal database amounts to a 'register' properly so called. A register is an official list or record. It may be that it can be kept in any form, but I suspect that it needs to be open to public inspection.}
\]

(Judgment paragraph 90)

Lord Justice Laws agreed with Lord Justice Rix (judgment paragraph 91).

**Legal Ombudsman**

The Legal Ombudsman has recently consulted on whether it should publish decisions, and if so, whether they should be anonymised. The consultation seems very open-minded. However, whilst recognising a general transparency factor in favour of publication, it does not mention at all the virtue of accessibility and predictability in jurisdiction which is not governed by English law.

**NO ORAL HEARINGS**

The law of England is that a professional regulator should order an oral hearing where there is a disputed issue of fact which is central to an adjudicator's assessment and which cannot fairly be resolved without an oral hearing: per Clarke LJ in \( R v \text{ Law Society ex p Thompson} \) [2004] 1 WLR 2522 para 45-46.

**Financial Ombudsman Service**

DISP rule 3.2.13 permits FOS to hold an oral hearing, and seeks to give the impression that such a hearing will be held whenever such would be required by the European Convention on Human Rights.

The reality, however, is that FOS hardly ever permits an oral hearing. This was revealed by Mr Tony Boorman, FOS Principal Ombudsman and Decisions Director at a seminar convened by the Council on Tribunals on the subject "The Use and Value of Oral Hearings in the Administrative Justice System". He said that FOS would allow a hearing in only 1 out of 10,000 cases. The report records him saying:-

\[
* \text{What about hearings? Because processes are so flexible oral hearings can be}
\]
held, but chances are very slim. Only 1 oral hearing for every 10,000 cases.

* In what circumstances? A hearing, though exceptional, would be held if it was thought that a case would be particularly hard fought. In some circumstances it might be better for the FOS to have a hearing in-house as opposed to letting the matter go on judicial review to the Administrative Court.

* May also decide, off own bat, that a hearing would assist with identifying facts of case or making a judgment about the reliability of the evidence that is being presented.

It is hard to reconcile the FOS attitude there revealed with a proper quasi-judicial approach, and it would defy belief if the suggestion were advanced by FOS (which it does not really seem to be) that in only 1 in 10,000 cases could oral evidence assist in a just determination of liability or causation.

FOS's practice is utterly at variance with what was promised by the government. On 30 November 1999 Miss Melanie Johnson MP, Economic Secretary to the Treasury, said to the House of Commons committee considering the Financial Services and Markets Bill in relation to a proposed amendments to what has now become section 228 and Schedule 17 of the Act,

> It is perfectly possible to operate the [FOS] scheme effectively while also protecting the parties' ECHR rights. Firms and complainants that bring disputes to the ombudsman will be able to exercise their right to a fair and public hearing. The option of a judicial review will be open to both firms and consumers once the ombudsman’s decision has been taken, which ensures that all parties will be heard. Article 6(1) stipulates that in the determination of civil rights and obligations, everyone is entitled to a fair and public hearing by an independent and impartial tribunal. The scheme will provide for a hearing to be held if one is requested by a party to the complaint. We do not believe that the scheme will be legalistic. We expect the right to a fair hearing to be exercised frequently. (emphasis added)

Legal Ombudsman
We shall have to wait and see how the Legal Ombudsman handles cases in which the facts are disputed. But one does not get much cheer from the remarks of the Chief Legal Ombudsman in "The Barrister" this month:-

> Out go the formal exchange of statements and the backstop of an oral hearing... Instead the new system will be inquisitorial, rather than adversarial, with an emphasis on informality: evidence sought by telephone and email as much as via written statements

There is nothing inherently wrong with an inquisitorial process, though one must not overlook that the whole system is handling complaints by a person, a client, not an enquiry into professional propriety. But an inquisitorial system still ought to comply with the rules of natural justice, one of which is that a person must hear the case against him. I commend the decision of
HHJ Bowsher in *Discain v Opecprime* [2000] BLR 402; a construction adjudicator telephone one party without recording the conversation or reporting it to the other; the judge held this a breach of natural justice.

In the same article we read:

*The Ombudsman usually deliberately eschews the word 'client' when describing the individual to whom the service was provided, preferring 'consumer' or even 'customer'.*

So I am sorry, but not surprised, that he considers there to be "a cultural collision" with barristers.

**NOT INDEPENDENT AND IMPARTIAL**

**Financial Ombudsman Service**

There is a close structural connection between FSA and FOS, which is indicative of FSA being in a superior position to FOS:-

a. The chairman and directors of FOS are appointed by, and liable to be removed from office by, FSA: FSMA sched 17 para 3(2).

b. FOS and its Chief Ombudsman report to FSA on the discharge of their functions: FSMA sched 17 para 7.

c. FSA approves the budget of FOS: FSMA sched 17 para 9.

d. Those of the rules of FOS which are made by FOS require the approval of FSA: FSMA sched 17 para 14(7).

On 11 July 2002 FOS entered into a Memorandum of Understanding with FSA, under which it was agreed that FSA and FOS would maintain a strong and constructive relationship and would exercise their responsibilities in a complementary fashion. This Memorandum has been more recently re-issued in similar terms. This has increased the appearance of FOS being other than independent of FSA.

The unhealthy closeness between FOS and FSA is manifested by the experience of Mr John Calland, a retired independent financial adviser.

a. By summer 2005 there was in existence what a FOS official described as a "long standing agreement" between FOS and FSA under which FOS would solicit complaints from investors, whose identities were suggested to FOS by FSA, but who had not previously intimated any complaint against a firm.

b. The arrangement between FOS and FSA was sufficiently well established for there to be a standard form of letter for use by FOS in soliciting complaints.
c. FOS's readiness to comply with FSA's wishes was such that FOS invited the submission of FOS Complaint Forms from investors who had never complained to a firm, even though FOS was well aware that its own rule DISP 2.3.1 provided that FOS could not entertain a complaint unless and until the investor had first complained to the firm, and either the firm had given a final response or 8 weeks had elapsed.

d. The standard practice of FOS, when FSA identified to it an investor from whom FSA wanted a complaint to be solicited, was for FOS to send the investor a partly completed FOS Complaint Form, on which FOS had typed entries not only for such formal matters as name and address but also for details of the complaint which the investor was making. This was done even in cases in which the investor had given no intimation of the nature of any complaint it wanted to make. Furthermore the language used by FOS in pleading the complaint could be in terms which would mean little to a layman: an example of such FOS language was "FSA D firm methodology pension review".

e. In a decision dated 6 December 2006 Mr Michael Barnes CBE, the FOS Independent Assessor, upheld Mr Calland’s complaint, and stated that the above-mentioned complaints against Mr Calland’s firm "were in effect solicited".

f. Despite Mr Barnes' decision, and despite having been made aware that FOS staff were operating this arrangement with FSA, neither the Chairman of the FOS Board nor the FOS Chief Ombudsman have expressed any disapproval or reservation about it.

g. FSA considers that information about communications between FSA and FOS relating to specific cases, namely those considered "difficult", should be withheld even from the firm in question. Not only would the withholding of any information possessed by FOS of potential relevance to a case which FOS was determining be a breach of the rules of natural justice; but the attitude of mind on the part of financial regulators revealed by this desire for secret communications evinces a lack of understanding of the requirement for genuine FOS independence.

Legal Ombudsman
No grounds for complaint at present.

HOW THESE FEATURES AFFRONT THE RULE OF LAW

From first principles
The law might say that I have the right to hold a placard outside the railings of the RCJ, but no such right immediately outside St Stephen's entrance to the Palace of Westminster: in that case I
know where I can, and cannot, go with my placard. But a law which stated that placards can lawfully be held only at such places as the some public official subsequently might hold to be fair and reasonable would give me no right at all.

Similarly, if my right to my possessions is watered down to mean only a right to hold them until the Legal Ombudsman decides it is fair and reasonable for me to pay them to somebody else, then I have no "right" in a true sense to my possessions at all.

This conclusion is reinforced by the fact that there is no appeal, and the fact that the vagueness of the subjective ("in the opinion of the ombudsman") fair and reasonable criterion makes any judicial review of a FOS decision on the merits of a case for all practical purposes impossible.

**In English common law**

In *R v Misra* [2005] 1 Cr App R 328 Judge LJ referred to the principle of legal certainty and continued:-

"The principle enables each community to regulate itself: 'with reference to the norms prevailing in the society in which they live. That generally entails that the law must be adequately accessible -- an individual must have an indication of the legal rules applicable in a given case -- and he must be able to foresee the consequences of his actions ...' (SW v United Kingdom, CR v United Kingdom (1995) 21 EHRR 363)

In *R v Rimmington* [2006] 1 AC 459 Lord Bingham of Cornhill recalled what Jeremy Bentham wrote in 1792 about the judges of that era:-

> When your dog does anything you want to break him of, you wait till he does it, and then beat him for it. That is the way you make laws for your dog.

(para 33)

Lord Bingham said that the domestic law of England & Wales had over the last 2000 years set its face firmly against "dog-law".

**In Strasbourg jurisprudence**

In *The Sunday Times v United Kingdom* the European Court of Human Rights said:-

"In the Court's opinion, the following are two of the requirements that flow from the expression 'prescribed by law'. Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able -- if need be with appropriate advice -- to foresee, to a degree which is reasonable in the circumstances, the consequences which a given action may entail."

(paragraph 49)
In *SW v United Kingdom* (1995) 21 EHRR 363 the Court repeated the same principle:

".... That generally entails that the law must be adequately accessible -- an individual must have an indication of the legal rules applicable in a given case -- and he must be able to foresee the consequences of his actions ....'"

**In the views of leading jurists**

In "The Rule of Law" (Allen Lane 2010) Lord Bingham suggests 8 principles as the ingredients of the Rule of Law. They include:

1. The law must be accessible, and so far as possible intelligible, clear and predictable

2. Questions of legal right and liability should ordinarily be resolved by the application of the law and not the exercise of discretion

Professor Finnis suggests the following meaning in "Natural Law and Natural Rights" (Oxford 1980 page 270):

A legal system exemplifies the Rule of Law to the extent (it is a matter of degree in respect of each item on the list) that (i) its rules are prospective, not retroactive, and (ii) are not in any other way impossible to comply with; that (iii) its rules are promulgated, (iv) clear, and (v) coherent one with another; that (vi) its rules are sufficiently stable to allow people to be guided by their knowledge of the content of the rules; that (vii) the making of decrees and orders applicable to relatively limited situations is guided by their knowledge of the content of the rules; that (viii) the making of decrees and orders applicable to relatively limited situations is guided by rules that are promulgated, clear, stable, and relatively general; and that (viii) those people who have authority to make, administer, and apply the rules in an official capacity (a) are accountable for their compliance with rules applicable to their performance and (b) do actually administer the law consistently and in accordance with its tenor.

Professor Sir Neil MacCormick makes the same point in "Rhetoric and the Rule of Law" OUP 2005:

*Where the Rule of Law obtains, the government of a state ... is carried on within a framework laid down by law. ... Where the law prevails, you know where you are, and what you are able to do without getting yourself embroiled in civil litigation or in the criminal justice system.

There cannot be a Rule of Law without rules of law.... Values like legal certainty and legal security can be realized only to the extent that a state is governed according to pre-announced rules that are clear and intelligible in themselves. (p.12)"
The Convention requires the Rule of Law

An order that a person make a payment to another of a sum of money as large as 100,000 involves a determination of his civil rights and obligations. Both Article 6 and Article 1 of Protocol 1 of the Convention are engaged.

As to Article 6, in *Golder v UK* [1979-80] 1 EHRR 524 the Court held that it should be interpreted in the light of the reference to the "rule of law" in the Preamble to the Convention:

"One reason why the signatory Governments decided to 'take the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration' was their profound belief in the rule of law. It seems both natural and in conformity with the principle of good faith to bear in mind this widely proclaimed consideration when interpreting the terms of Article 6(1) according to their context and in the light of the object and purpose of the Convention."

(para 34).

The Court held that this was reinforced by the facts that the Statute of the Council of Europe referred in two places to the rule of law, and by article 31(3)(c) of the Vienna Convention. The Court continued:

"Were Article 6(1) to be understood as concerning exclusively the conduct of an action which has already been initiated before a court, a Contracting State could, without acting in breach of that text, do away with its courts, or take away their jurisdiction to determine certain classes of civil actions and entrust it to organs dependent on the Government. Such assumptions, indissociable from a danger of arbitrary power, would have serious consequences which are repugnant to the aforementioned principles and which the Court cannot overlook."

(*Golder* paragraph 35)

As to Article 1 of Protocol 1, although I am not aware of any case at the European Court of Human Rights where it has been directly held that that Article implies the Rule of Law, one can establish that it does so imply by referring to case-law on Articles 8 and 10, since:-

(a) There are similar expressions in article 8(2) ("... except such as is in accordance with the law ...") and in article 10(2) ("... subject to such formalities, conditions, restrictions or penalties are prescribed by law ..."). It is reasonable to think that the concept of "law" is the same in each case.

(b) That contention is strengthened by the fact that in the French text of the Convention the wording is identical in Article 8(2), Article 10(2) and in First Protocol Article 1:-

*Article 8(2):* ... *autant que cette inerence est prevue par la loi ...*
Article 10(2): ... restrictions ou sanctions prevues par la loi ...

First Protocol Article 1: ... conditions prevues par la loi ...

(c) In *The Sunday Times v United Kingdom* [1979] ECHR 1, (no.6538/74) it was stated by the Court at paragraph 48 of the judgment that the Court must interpret Article 8 and the First Protocol Article 1 so as to reconcile them as far as possible.

(d) In *Malone v UK* [1985] 7 EHRR 14 the Court held that the expression "in accordance with the law" (or "prevue par la loi" in the French text) implied a law compatible with the rule of law.

"The Court would reiterate its opinion that the phrase 'in accordance with the law' does not merely refer back to domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention. The phrase thus implies -- and this follows from the object and purpose of Article 8 -- that there must be a measure of legal protection in domestic law against arbitrary interferences by public authorities with the rights safeguarded by paragraph 1."

(para 67)

Therefore, the First Protocol Article 1 should also be interpreted so that the expression "conditions provided by law" requires a domestic law whose quality is compatible with the rule of law.

In the House of Lords it has been suggested by Lord Hoffmann in *R(Alconbury Ltd) v Environment Secretary* [2003] 2 AC 295 at paragraph 73 that Article 1 of the First Protocol implies the rule of law.

**Other convention requirements**

Both the traditions of the common law and the Convention, of course, requires an independent and impartial tribunal, and an open hearing.

Article 6 also states in express terms:

*Judgment shall be pronounced publicly*

**The current position at Strasbourg**

In *Heather Moor and Edgecomb Limited v UK* in September 2010 the European Court of Human Rights called on the UK government to answer questions on whether FOS complied with "the criteria of foreseeability and accessibility that are implicit in the rule of law", whether the FOS decision should have been delivered publicly, and as to the absence of an oral hearing.
SUMMARY
Financial services professionals are now subject in an unbalanced process to unappealable decisions arrived at by the application of a so-called law, which has not been made by Parliament or any democratic body, and unpredictable policies. The process is secret; hearings non-existent; and challenge to evidence forbidden. There are doubts as to the independence of the tribunal. There is no public judgment.

Lawyers are coming under a system with some of the same characteristics.

ANTHONY SPEAIGHT Q.C.

4 Pump Court, Temple, EC4
aspeaight@4pumpcourt.com