

**SHARPER TEETH:**

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**THE CONSUMER  
NEED FOR  
OMBUDSMAN  
REFORM**

A **MoneySavingExpert** report  
for the All-Party Parliamentary  
Group on Consumer Protection

**November 2017**

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# SUMMARY

An ombudsman's job is to resolve complaints, effectively operating as a final referee between the complainant and the body being complained about. This is a crucial role for consumer protection.

This report shows that the Alternative Dispute Resolution (ADR) landscape that ombudsmen exist within is a complex maze, full of inconsistencies. Ombudsmen are not equal. Despite sharing a name, ombudsmen have different powers, and vary widely in effectiveness.

Key areas where ombudsmen differ include whether membership is compulsory, whether firms can be forced to cooperate, and what happens if companies do not comply. Much of this discrepancy comes from whether or not the ombudsman in question has some form of statutory basis. Many do not.

This uneven provision results in some consumers having positive experiences with ombudsmen, but for too many it is a frustrating waste of time. This was shown in our consumer survey results. Respondents self-selected to take part in the survey, so it is to be expected that the results would be a little more negative than in a non-self-selecting poll (as people who have a complaint to make were more likely to participate). Despite this, the results were stark:

- Our survey identified serious issues with firms not cooperating with ombudsmen and complying with their decisions (although ombudsmen gave a different view). Consumer responses indicated that the Financial Ombudsman Service's decisions are most likely to actually be put into action.
- The perception of impartiality was called into question by our survey, which found that the majority - 60% - thought the ombudsman was biased against them; 8% thought the ombudsman was biased towards them; and only 31% said the ombudsman was neutral.
- For only one ombudsman surveyed did the majority of respondents say that the decision was fair; for all others, more than 50% of their users said that the decision was unfair.

- On average, 53% of people who had used an ombudsman said they were put off using an ombudsman again, even a different one.

Our research also found:

- The current ombudsman landscape is complicated for consumers to navigate. In some sectors there are competing ADR schemes and in other areas there is a lack of ombudsman provision, or ombudsmen with few members.
- It can take too long to escalate a complaint to an ombudsman. The 8-week rule was created in a non-digital age, but in this digital age with instant credit-scoring and decisions, 8 weeks is simply too long and should be reduced.
- Even when a complaint reaches the ombudsman, consumers feel their complaints are dealt with slowly.
- Currently firms are required to say what the approved ADR scheme is in their sector even if they will not work with it, thus giving false hope to consumers. This rule is a farce.

This mixed bag of experiences with ombudsmen devalues the term, and means consumers cannot rely on them as they should be able to. While use of the word 'ombudsman' is restricted, we do not believe it is restricted enough. With the growth of ADR, ombudsmen should be regarded as the gold standard. Only those who meet that gold standard should be called ombudsmen.

These issues are not academic - they affect real consumers with real disputes. When ombudsmen fail, consumers lose: substantial reform is urgently needed.

## Comparative analysis of ombudsmen commonly used by consumers

The table summarises and contrasts ombudsmen’s powers and features. It should be read in conjunction with its explanatory notes in the Annex.

Ombudsman	Powered by	Decisions directly enforceable in court by statute	All firms/parts of sector must participate	Ombudsman Association member	Approved ADR entity
Financial Ombudsman Service	Statute	✓	✓	✓	✓
Legal Ombudsman	Statute	✓	✓	✓	-
The Pensions Ombudsman	Statute	✓	✓	✓	-
Local Government and Social Care Ombudsman	Statute	✗	✓	✓	-
Parliamentary and Health Service Ombudsman	Statute	✗	✓	✓	-
Housing Ombudsman Service	Statute	✗	✓ Social housing	✓	-
			✗ Private rented sector		
Energy Ombudsman	Underpinning statute	✗	✓	✓	✓
Ombudsman Services: Communications	Underpinning statute	✗	- Firms choose ADR scheme	✓	✓
The Property Ombudsman	Underpinning statute	✗	- Firms choose ADR scheme	✓	✓
The Furniture Ombudsman	Own rules	✗	✗	✓	✓
The Motor Ombudsman	Own rules	✗	✗	✓	✓
Consumer Ombudsman	Own rules	✗	✗	✓	✓
Removals Ombudsman	Own rules	✗	✗	✓	✓
RetailADR (formerly The Retail Ombudsman)	Own rules	✗	✗	✗ Formerly - resigned membership	✓

## **Recommendation 1: All ombudsmen need a statutory basis as a foundation**

- Ombudsmen should have statutory powers to ensure that firms are cooperative with processes and compliant with decisions that have real legal teeth.

## **Recommendation 2: Oversight of ombudsmen must be boosted**

- Relevant Government Departments, the Ombudsman Association and Companies House should work to make sure that the performance of ombudsmen is consistently higher.
- Particular focus should be paid to:
  - o the ease of complaining;
  - o the speed at which complaints are processed; and
  - o the perception of fairness among those who complain to ombudsmen.
- Ineffective ombudsmen must be stripped of the right to use the word in their title.
- There should be a form of 'fit and proper' approved-persons test for people in senior roles in ombudsmen. The Department for Business, Energy and Industrial Strategy could approve such persons.

## **Recommendation 3: The 8-week rule should be shortened and needs vital exceptions**

- Unless a deadlock letter is received, consumers generally need to wait 8 weeks before using an ombudsman (but it can be more).
- If the complaint is about debt issues, payday loans, credit brokers or black marks on credit files, then waiting 8 weeks could leave consumers in crisis.
- The 8-week rule was created in a non-digital age. But in this digital age with instant credit scoring and decisions, 8 weeks is simply too long. That time should be reduced to somewhere between 2-4 weeks - as a blanket rule across all ombudsmen.
- There should also be exceptions so people who are in crisis due to an unresolved complaint can escalate to an ombudsman sooner.

## **Aspiration: Comprehensive ombudsman membership in consumer sectors**

In an ideal world, all companies in consumer sectors would be members of an ombudsman.

This could be delivered through a single ombudsman for all consumer complaints, with every business serving consumers being a member; or having one ombudsman per sector, combined with a single body acting as a portal for all ombudsmen, and filtering complaints to the appropriate ombudsman behind the scenes.

However, this aspiration is far from being implemented; it would require radical, wholesale change. Until that happens, ombudsmen should be reformed to operate at a gold standard, truly distinct from other ADR providers.

# ABOUT MSE AND THIS REPORT

## About MoneySavingExpert.com

MoneySavingExpert.com is the UK's biggest consumer website dedicated to saving people money on anything and everything by finding the best deals, beating the system and campaigning for financial justice. It's based on detailed journalistic research and cutting edge tools, and has one of the UK's top 10 social networking communities.

## Context

In February 2017 MoneySavingExpert.com was formally asked by Richard Arkless MP, Chair of the All-Party Parliamentary Group (APPG) on Consumer Protection to produce a report for the APPG on the effectiveness of ombudsmen. The Chair of the APPG is now Yvonne Fovargue MP. The report would provide a review of the ombudsmen landscape and useful consumer insight to inform and assist the Group's own inquiry on the subject.

This is the final report. It was presented to the APPG on 1 November 2017 by Martin Lewis OBE, founder and executive chairman of MoneySavingExpert.com.

## Acknowledgements

We would like to thank Mike Dailly for his legal services during the production of this report. In addition, we are grateful for the cooperation and help of many organisations in the ombudsman and ADR world, including: Chartered Trading Standards Institute; Department for Business, Energy and Industrial Strategy; Financial Ombudsman Service; The Furniture Ombudsman; Housing Ombudsman Service; Legal Ombudsman; Local Government and Social Care Ombudsman; Money Advice Trust; The Motor Ombudsman; Ofcom; Ofgem; Ombudsman Association; Ombudsman Services and WA Communications; Parliamentary and Health Service Ombudsman; The Pensions Ombudsman; The Property Ombudsman; Removals Ombudsman and RetailADR (formerly The Retail Ombudsman).

## Scope of report

The report's scope is to assess the provision of ombudsmen in consumer sectors in the UK. Utilising the expertise of MoneySavingExpert.com as the leading consumer website in the UK, the report focuses on ombudsmen that the public can use as consumers. It does not attempt to include ombudsmen that deal with other types of complaints, such as the Prisons and Probation Ombudsman.

The Alternative Dispute Resolution (ADR) law is fundamental to the operation of ombudsmen, and an explanation of this area forms part of this report. There are many ADR providers approved under ADR regulations which are not ombudsmen, and do not call themselves such. These ADR providers are not a main focus of the research, and so feature in it to a lesser extent than ombudsmen.

## Methodology

A combination of qualitative and quantitative research methods were used:

- Desk research, including a review of various reports about ombudsmen in recent years, and information from ombudsmen's websites.
- Background discussions and on the record fact-checking with organisations mentioned in this report.
- Primary research in the form of an online survey conducted between 22 August and 11 September 2017. In total, 1,409 responses were recorded. Consumers were asked about their experiences with various ombudsmen that deal with consumer complaints. For the reasons outlined above, the survey focuses on ombudsmen, but there was space for consumers to submit their views on other similar services if they wished. Consumers also contacted us through social media and other means to share their experiences with us.
  - While surveyed, the Removals Industry Ombudsman Scheme results have not been included in any of the quantitative data because the number of respondents for this ombudsman was very low and not deemed statistically meaningful.

# Ombudsmen changes

## Local Government and Social Care Ombudsman

In June 2017, during the production of this report, the Local Government Ombudsman changed its name to the Local Government and Social Care Ombudsman.

It said it did this to “help people know that we look at complaints about all areas of adult social care - including privately arranged or funded care”<sup>1</sup> but nothing has changed about its work. In this report it is referred to as the Local Government and Social Care Ombudsman.

## The Retail Ombudsman

In July 2017, during the production of this report, the Retail Ombudsman resigned its membership of the Ombudsman Association and is now known as RetailADR. As a significant amount of data had already been collected on this former ombudsman and the findings aid understanding of the ombudsman sector as a whole, evidence about the Retail Ombudsman is still included in this report.

Consumer Dispute Resolution Limited (CDRL), which ran the Retail Ombudsman and runs RetailADR<sup>2</sup> said:

“... The decision to transition from ombudsman to non-ombudsman has been taken entirely by CDRL and has been made to allow the continued growth of our very successful ADR model, which has benefited and will continue to benefit both consumers and traders. Government therefore did not withdraw CDRL’s right to use the ‘ombudsman’ title and the relevant competent authorities that authorise CDRL under The Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015 have been supportive of the transition.”

<sup>1</sup> <http://www.lgo.org.uk/information-centre/news/2017/jun/new-name-for-the-local-government-ombudsman> Accessed 9/10/17.

<sup>2</sup> <https://www.theretailombudsman.org.uk/> Accessed 9/10/17.

## The Motor Ombudsman

The Motor Ombudsman was established in November 2016. This was made clear in the MoneySavingExpert.com consumer survey, in order to seek consumer experiences of this ombudsman only since that date.

## Ombudsmen mentioned in this report and abbreviated or shortened name

- Financial Ombudsman Service
- Legal Ombudsman
- Local Government and Social Care Ombudsman (LGSCO)
- Parliamentary and Health Service Ombudsman (PHSO)
- Pensions Ombudsman
- Housing Ombudsman Service
- Ombudsman Services: The Energy Ombudsman (Energy Ombudsman)
- Ombudsman Services: Communications
- Ombudsman Services: Property
- The Property Ombudsman
- The Furniture Ombudsman/ Dispute Resolution Ombudsman
- The Retail Ombudsman/ RetailADR
- The Motor Ombudsman
- Ombudsman Services: the Consumer Ombudsman (Consumer Ombudsman)
- Removals Ombudsman

## Disclaimer

The information, materials and opinions contained in this report are for general information purposes only, do not constitute legal advice and should not be relied on as such.

# INTRODUCTION

In an ideal world consumers would not experience problems with firms or other organisations they interact with. But when something does go wrong, consumers need to be adequately protected. It is always better if consumers and businesses can resolve problems between themselves, but if this has not worked, consumers need a route to seek a remedy. If found in favour of the consumer, that could be monetary redress, an apology or a practical solution.

While consumers can go to court, this is expensive, time-consuming and can be overwhelming. It is often not a realistic option. This is particularly the case when the problem is with a relatively low-cost product or service, as the costs would vastly outweigh any potential benefits. Against this backdrop, a system of Alternative Dispute Resolution (ADR) has developed as an alternative to going to court. Unlike courts, ADR providers can come to a decision based on fairness, as well as the law.

ADR encompasses a variety of different bodies that deal with complaints between individuals and organisations. Some ADR providers call themselves 'ombudsmen' - and even within this group there is diversity of powers, status in law, and consumer outcomes.

This report reviews the landscape of ombudsmen in the UK, seeking to provide a working understanding of:

- how ombudsmen fit into the bigger ADR picture
- the forms ombudsmen take
- the work ombudsmen do
- the powers ombudsmen have

In a key part of its research, MoneySavingExpert.com conducted an online survey of consumer experiences of ombudsmen. The results provided both a detailed and a high-level view of consumers' perceptions and experiences. The findings show there is a mixed experience of ombudsmen, but on balance the best performing ombudsman in our survey is the Financial Ombudsman Service, particularly when taking into account the consumer perception of its outcomes being put into action.

This report is intended to serve the specific purpose of informing the work of the All-Party Parliamentary Group on Consumer Protection in its forthcoming inquiry into the effectiveness of ombudsmen. As such, based on the evidence used in this report, we take the opportunity to make policy recommendations that the APPG may wish to consider.

# CHAPTER 1: SETTING THE ADR SCENE

The terms 'ombudsman' and 'ADR' are often used in the same breath, but they are not interchangeable. Ombudsmen are a form of ADR, but not all ADR providers call themselves ombudsmen. In order for this report to shed a spotlight on ombudsmen, it is essential to first understand the wider ADR scene they sit within.

## What is ADR?

ADR is an umbrella term which covers all routes to redress which do not involve going to court, including:

- mediation, where an independent third party helps the disputing parties to come to a mutually acceptable outcome;<sup>3</sup>
- arbitration, where an independent third party considers the facts and takes a decision that is often binding on one or both parties;<sup>4</sup> and
- conciliation, which focuses on what [the consumer] and the trader want and tries to find a way of solving the problem that... both [are] happy with.<sup>5</sup>

## Some ADR providers are approved 'ADR entities'

Many ADR providers have received a stamp of approval under EU law. These have been approved as meeting the requirements of Regulations by a designated 'competent authority' for their sector. This system is designed to hold them to a higher standard than other (non-approved) providers. This system is explained in more detail below.

## Some ADR providers are 'ombudsmen'

Among all ADR providers, some are ombudsmen:

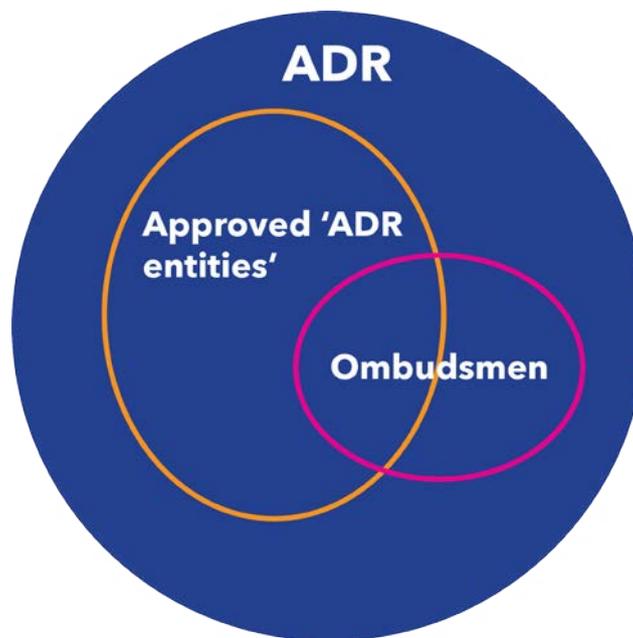
- these include some approved ADR entities, but
- there are approved ADR entities which are not ombudsmen;
- there are also some ombudsmen which are not approved ADR entities.

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<sup>3</sup> <https://www.gov.uk/government/publications/alternative-dispute-resolution-for-consumers/alternative-dispute-resolution-for-consumers>  
Accessed 9/10/17.

<sup>4</sup> Ibid.

<sup>5</sup> <https://www.citizensadvice.org.uk/consumer/alternative-dispute-resolution/settling-out-of-court/using-alternative-dispute-resolution-adr/>  
Accessed 9/10/17.



\*Image is not to scale

## ADR Regulations

In 2013 the EU passed ADR legislation<sup>6</sup> that aimed to improve the standard and consistency of ADR services offered in Member States. The provisions in the ADR Directive are “minimum harmonisation”, which means there is nothing to prevent the UK introducing greater protection and standards for consumers.<sup>7</sup>

For goods bought over the internet within the EU there is now an online dispute resolution (ODR) platform for any EU consumer to submit a complaint.<sup>8</sup> The ODR platform is a single portal intended to encourage cross-border purchasing by consumers across the EU.<sup>9</sup>

ADR legislation was transposed into UK law in 2015 through the ADR Regulations.<sup>10</sup> Two key changes the ADR Regulations brought in were to establish ‘competent authorities’ and to require businesses to give consumers information about ADR.

- **The ADR Regulations require businesses selling to consumers to inform them of an appropriate ADR entity** when the internal complaints process has been exhausted – but there is no compulsion in the Regulations for the firm to actually use (and therefore obey) an ADR scheme.

<sup>6</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF> Accessed 9/10/17.

<sup>7</sup> See paragraph 7.4 of the Explanatory Note to the 2015 ADR Regulations [http://www.legislation.gov.uk/ukxi/2015/542/pdfs/ukxiem\\_20150542\\_en.pdf](http://www.legislation.gov.uk/ukxi/2015/542/pdfs/ukxiem_20150542_en.pdf) Accessed 9/10/17.

<sup>8</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF> Accessed 9/10/17.

<sup>9</sup> The ODR Platform is here: <https://ec.europa.eu/consumers/odr/main/?event=main.home.show> Accessed 9/10/17.

<sup>10</sup> The ADR for Consumer Disputes (Competent Authorities and Information) Regulations 2015 and the ADR for Consumer Disputes (Amendment) Regulations 2015 were in full effect from 1 October 2015.

- **The ADR Regulations established ‘competent authorities’ to approve ADR schemes** and monitor their standards according to specified criteria.

These competent authorities approve ADR entities if they meet the requirements<sup>11</sup> of the Regulations, but must also withdraw approval if sufficiently serious issues emerge.

The ADR Regulations do *not* compel ADR providers to be approved by a competent authority but the intention is that ADR providers will choose to be approved as a sign of their quality. Approval might then mean that businesses and consumers would all be more willing to use them.

The requirements to be an approved ADR entity include:

- **being accessible** online and offline, and via the EU’s ODR;
- **having expertise, independence and impartiality**, including employing ADR officials (including managers) with enough experience to be competent;
- **having a prescribed conflict of interest procedure**, so that where possible another ADR handler or ADR entity is used;
- **being transparent**, including publicising information about being approved as an ADR entity, types of disputes that can be dealt with, producing an annual report, and exchanging best practice with other ADR entities;
- **being effective**, without obligation to have a lawyer, free of charge or available for a nominal fee, and notifying the parties of the outcome within 90 days (but this can be extended in complicated cases);
- **being fair**, which includes:
  - o giving parties a reasonable amount of time to express their view;
  - o providing each party with the documents provided by the other party upon request;
  - o informing the parties they do not *need* legal advice but *can* seek advice, representation or assistance from a third party;
  - o notifying the parties of the outcome and the reasons for it;
  - o participation does not prevent the possibility of seeking redress through court proceedings;
  - o telling the parties that the ADR entity may come to a different solution than a court might; and
- **legality**, including that the solution is only binding if the consumer accepts it.

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<sup>11</sup> See, in particular, Schedule 3 [http://www.legislation.gov.uk/uksi/2015/542/pdfs/ukxi\\_20150542\\_en.pdf](http://www.legislation.gov.uk/uksi/2015/542/pdfs/ukxi_20150542_en.pdf) Accessed 11/10/17.

## Competent Authorities and the ADR schemes they have approved

The table below shows competent authorities in the UK and the ADR schemes they approve. Many, but not all, approved ADR entities are also ombudsmen.<sup>12</sup>

Competent Authority	Approved ADR schemes	
<b>Regulated Sectors</b>		
Financial Conduct Authority (FCA)	Financial Ombudsman Service	
Ofgem	Ombudsman Services: the Energy Ombudsman	
Ofcom	Ombudsman Services: Communications Communications and Internet Services Adjudication Scheme (CISAS). Part of the Centre for Effective Dispute Resolution (CEDR)	
Legal Services Board	<i>No approved ADR scheme. The Legal Services Board can only approve the Legal Ombudsman. While the Legal Ombudsman did begin this process, it then withdrew its application following a consultation in 2015. The Legal Ombudsman is therefore not an approved ADR entity.<sup>13</sup></i>	
Civil Aviation Authority <sup>14</sup>	Centre for Effective Dispute Resolution (CEDR) Consumer Dispute Resolution Limited (Aviation ADR) The CAA also lists ADR schemes based outside the UK on its website.	
Gambling Commission <sup>15</sup>	ADR Group Bacta ADR service Centre for Effective Dispute Resolution (CEDR) eCOGRA IBAS Jennifer Gallagher (Lindsays)	National Casino Forum - Independent Panel for Casino Arbitration ProMediate (UK) Limited Tattersalls Committee
National Trading Standards Estate Agency Team <sup>16</sup>	The Property Ombudsman Ombudsman Services: Property Property Redress Scheme	
<b>Unregulated sectors (all other sectors)</b>		
Chartered Trading Standards Institute <sup>17</sup>	ABTA Furniture Ombudsman The Motor Ombudsman (Motor Codes) National Conciliation Service NetNeutrals OIAHE Ombudsman Services RECC Retail Ombudsman The Property Ombudsman The Association of Chartered Certified Accountants (ACCA) BVRLA CEDR ProMediate	Independent Appeals Service Trustmark Waterways Ombudsman Federation of Master Builders HF Resolution Ltd trading as the Property Redress Scheme NI Law Society Independent Football Ombudsman RICS Removals Industry Ombudsman Scheme Kent ADR Law Society of Northern Ireland (Dispute Resolution Service) Bus Users STAR

<sup>12</sup> There are also some ombudsmen which are not approved ADR entities. These are generally statutory ombudsmen such as the PHSO.

<sup>13</sup> There is also no approved ADR scheme for legal service complaints in Scotland, complaints are made through the Scottish Legal Complaints Commission: <https://www.scottishlegalcomplaints.org.uk/news/2015/slcc-statement-on-adr-directive.aspx> Accessed 10/10/17.

<sup>14</sup> <https://www.caa.co.uk/Passengers/Resolving-travel-problems/How-the-CAA-can-help/Alternative-dispute-resolution/> Accessed 10/10/17.

<sup>15</sup> <http://www.gamblingcommission.gov.uk/for-gambling-businesses/Compliance/General-compliance/ADR/Approved-ADR-providers.aspx> Accessed 10/10/17.

<sup>16</sup> <http://www.powys.gov.uk/en/licensing-trading-standards/national-trading-standards-estate-agency-team/alternative-dispute-resolution-adr> Accessed 10/10/17.

<sup>17</sup> Information supplied by Chartered Trading Standards Institute on 20/6/17.

# CHAPTER 2: FEATURES AND POWERS OF OMBUDSMEN

As we have seen, ombudsmen exist within the bigger ADR picture. They may or may not be approved ADR entities, but all seek to resolve complaints independently between consumers and organisations (generally private businesses or public sector bodies). However, not all ombudsmen are the same; this chapter gives an overview of their features, categorisation and powers.

## The term 'ombudsman' is protected

A key distinction between ombudsmen and other ADR providers comes from the protection of the term 'ombudsman' by Companies House acting on behalf of the Secretary of State for Business, Energy and Industrial Strategy. This restricts which bodies can use this word in their title, or trade as an ombudsman.

To meet the Companies House criteria,<sup>18</sup> ombudsmen must either:

- be a statutory complaints organisation; or
- be a non-statutory body:
  - certified as a provider of Alternative Dispute Resolution by a competent authority (see Chapter 1);
  - with a proven track record in dispute resolution in the relevant complaints area, normally for at least 12 months; and
  - holding Ombudsman-level membership of the Ombudsman Association.

See the report findings in Chapter 7 for an analysis of how this protection is not strong enough, and the recommendations section for how to boost the protection offered by ombudsmen.

## Some ombudsmen hold statutory powers

Statutory powers are held by some ombudsmen. This is either because those ombudsmen were created by statute or because their powers were created by statute and then delegated to them.

<sup>18</sup> <https://www.gov.uk/government/publications/incorporation-and-names/incorporation-and-names#sensitive> and <https://www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government>  
Accessed 9/10/17.

In some sectors, ombudsmen do not hold any statutory powers.

This can be understood through the Ombudsman Association's classification<sup>19</sup> of how ombudsmen are established:

1. Statutory ombudsmen
2. Ombudsmen underpinned by statute (these are technically non-statutory, because they are not established by statute but they do exercise powers that come from statute)
3. Voluntarily set up ombudsmen (these are non-statutory)

Each of these methods of establishment is explained below, with examples.

## Statutory ombudsmen

These ombudsmen are established by and get their powers from an Act of Parliament.<sup>20</sup> Their powers are therefore tailored to their own sector and they hold statutory duties to use them. The Ombudsman Association says that, typically, the statute "provides a framework of powers" which means that the ombudsman and/or its regulator can make detailed rules about jurisdiction, process and powers without needing to update the statute.<sup>21</sup>

Companies House does not *require* statutory ombudsmen to be members of the Ombudsman Association, although they usually are in practice.

Examples of statutory ombudsmen, their powers and funding include:

### Financial Ombudsman Service (FOS)

- Set up under the Financial Services and Markets Act 2000 (as amended)
- Binding decisions if accepted by consumer

<sup>19</sup> <http://www.ombudsmanassociation.org/about-methods-of-establishment.php> Accessed 10/10/17.

<sup>20</sup> In practice, the Act may create another body to establish the ombudsman. For example, the Legal Services Act created the Office for Legal Complaints which in turn established the Legal Ombudsman. <http://www.legalombudsman.org.uk/downloads/documents/publications/Scheme-Rules.pdf> Accessed 5/6/17.

<sup>21</sup> <http://www.ombudsmanassociation.org/about-methods-of-establishment.php> Accessed 10/4/17.

- Compulsory membership for regulated firms<sup>22</sup>
- Can award compensation for financial or other loss up to £150,000 plus interest and costs, or other action that is 'just and appropriate' (whether or not a court could order those steps to be taken)<sup>23</sup>
- Can require information from parties. If this is not complied with, the courts can be notified and could find the party in contempt
- Funded by an industry levy

### **What consumers say about the Financial Ombudsman Service**

 *"Financial Ombudsman Service was faultless and fast for me with a Section 75 claim that was being "sidestepped" by the provider. Letter from Financial Ombudsman and settled in 72 hours job done" Steve via Facebook.*

 *"Dealing with the Financial Ombudsman has been an extremely frustrating experience Granted, our case is a complex one that depended on the outcome of a judicial review, but even so, the case has been in process for more than 4 years and the FOS still refuses to give us any timescales for resolution. In fact, they refuse to give specific answers to any questions; they simply tell us (over and over) that they appreciate how disappointing it must be for us to be left in the dark for so long." via MSE survey.*

 *"Financial Ombudsman is an example of how to run the service..." Rob, via MSE survey.*

 *"We used the Financial Ombudsman. Very quick response and prompted the other party into action and ultimately resolving a 2 year dispute [...] Just getting the Ombudsman involved was a trigger enough." via MSE survey.*

<sup>22</sup> The FOS says the financial businesses it covers include: businesses that are regulated by the Financial Conduct Authority (FCA) to provide retail financial services or credit-related activities; some businesses that were regulated in the past (which may not now appear on the FCA's register); some businesses that are based outside the UK and are not regulated by the FCA; and some businesses that provide financial services and products that are "branded" under other companies' names. [http://www.financial-ombudsman.org.uk/faq/answers/complaints\\_a2.html](http://www.financial-ombudsman.org.uk/faq/answers/complaints_a2.html) Accessed 5/6/17.

<sup>23</sup> <https://www.handbook.fca.org.uk/handbook/DISP/3/7.html> Accessed 10/10/17.

## Legal Ombudsman <sup>24</sup>

- Set up under the Legal Services Act 2007
- Compulsory membership
- Binding decisions if accepted by consumer
- The outcome can require:
  - o an apology
  - o compensation up to £50,000 (plus interest)
  - o things to be put right (and paid for)
  - o action in favour of the consumer (and it paid for)
  - o a specified amount for costs
  - o fees to be limited
- Can require information from parties. Ultimately, this can be enforced through the High Court on any party
- The vast majority of funding is from a levy which is paid to the Legal Services Board by approved regulators of service providers. In some circumstances, it also charges case fees to the service providers it has investigated

### ***What consumers say about the Legal Ombudsman***

 *"Felt Legal Ombudsman did not fully read our story and did not explain fully their decision. They went in favour of solicitor. We were misled by our solicitor." via MSE survey.*

 *"I was very disappointed with the Legal Ombudsman. I made a complaint about a lawyer I had hired after I had exhausted all options to resolve the situation with the law firm. After a very stressful case I wanted transparency on my final invoices as I hadn't received them. I felt sure a third party would support this but the service was very biased from the beginning and the tone of all correspondence was heavily weighted in favour of the lawyer. I felt scared and intimidated so eventually I pulled my claim and was left feeling there was no impartiality at The Legal Ombudsman." Clare, via MSE survey.*

<sup>24</sup> See Rules made by the Office for Legal Complaints under the powers given to it by the Act <http://www.legalombudsman.org.uk/downloads/documents/publications/Scheme-Rules.pdf> and [http://www.legislation.gov.uk/ukpga/2007/29/pdfs/ukpga\\_20070029\\_en.pdf](http://www.legislation.gov.uk/ukpga/2007/29/pdfs/ukpga_20070029_en.pdf) Accessed 9/10/17.

“The Legal Ombudsman closed ranks in order that a solicitor’s office could not be seen to have failed to comply with the Supply of Goods and Services Act 1982 and by non-compliance of this act were then further negligent in the mistakes and errors in not finalising my case. The Ombudsman decision was that I was out of time in my complaint, something I dispute due to the nature of the case.” Derek, via MSE survey.

## The Pensions Ombudsman<sup>25</sup>

- Set up under the Social Security Pensions Act 1975, as inserted in that act by the Social Security Act 1990 (and since consolidated)<sup>26</sup>
- Compulsory membership
- Investigate complaints about pension administration and can also consider complaints about the actions and decisions of the Pension Protection Fund and about some decisions made by the Financial Assistance Scheme<sup>27</sup>
- Binding decisions on both parties
- Outcome can require:<sup>28</sup>
  - o telling someone to make good a financial loss
  - o directing a certain action
  - o paying compensation for any non-financial injustice, such as distress or inconvenience caused
- Pension Schemes Act gives it the power to require production of information or documents; and also to certify to the Court that a party is in its view obstructing its investigation without lawful excuse. The Court can then consider making a contempt of court finding<sup>29</sup>
- Funded by a grant-in-aid from the Department for Work and Pensions, which is largely received from a levy on industry

<sup>25</sup> <https://www.pensions-ombudsman.org.uk/wp-content/uploads/Framework-Documents-2014-FINAL-.pdf> and <http://www.legislation.gov.uk/ukpga/1993/48/part/X/enacted> Accessed 11/10/17.

<sup>26</sup> <http://discovery.nationalarchives.gov.uk/details/r/C15927> Accessed 11/10/17.

<sup>27</sup> <https://www.pensions-ombudsman.org.uk/about-us/> Accessed 11/10/17.

<sup>28</sup> <https://www.pensions-ombudsman.org.uk/guidance/putting-things-right/> Accessed 11/10/17.

<sup>29</sup> Email communication 4/8/17.

### **What consumers say about the Pensions Ombudsman**

 *"The Pension Ombudsman service is very slow and bureaucratic. One part of my complaint was tardiness by the pension authority. The ombudsman was even slower in coming to a decision." via MSE survey.*

 *"I felt the Pensions Ombudsman was only interested in agreeing completely with the pension company who I had made the complaint about, even though the Inland Revenue also felt the same as I did. She said they were wrong... but I continued to fight, and actually eventually received double what had originally been quoted by the pension company, also due to Inland Revenue's assistance. This however took well over one year to fight, and I could have given up on many occasions. The fact that my State Pension, under the "new" scheme was reduced due to my private pension, meant that I would have been many thousands of pounds out of pocket, if I had accepted what [the Ombudsman] told me to accept. She was completely on the side of [the pension company]... I would not recommend using the Pensions Ombudsman..." Paul via MSE survey.*

 *"No evidence that they understood the issue being raised and heavy bias in favour of the administrators who repeatedly provided poor, incorrect benefit information leading to financial loss for me." via MSE survey.*

## Ombudsmen underpinned by statute

Unlike statutory ombudsmen, ombudsmen underpinned by statute are not established by law, but their regulator has given them powers which come from specific pieces of legislation. This means that, perhaps counter-intuitively, some non-statutory ombudsmen do exercise statutory powers.

These are private ombudsmen founded independently and generally operating as private companies on a non-profit basis.

As these are not statutory ombudsmen, in order to use the name 'Ombudsman', Companies House requires these to be approved ADR entities and members of the Ombudsman Association.<sup>30</sup>

Examples of ombudsmen underpinned by statute include:

### The Energy Ombudsman

- Underpinned by the Consumers, Estate Agents and Redress Act 2007 (CEARA) as approved by Ofgem
- Compulsory membership
- Binding decisions, if the consumer accepts<sup>31</sup>
- May decide that a service or a practical action is needed such as removing incorrect charges; an apology is required; or a financial award up to £10,000
- Ombudsman Services says that participating companies have to submit a case file within 14 days of being requested otherwise the case will be worked on based on the information available, and it is therefore in the interests of both parties to support their case with evidence. Ombudsman Services notes that "...it would be more likely for Ombudsman Services to find in the consumer's favour if a company failed to submit a file or provide relevant information on request"<sup>32</sup>
- Of the total number of case files, 71% are received in Energy<sup>33</sup>
- Funded by an annual subscription fee and a case fee<sup>34</sup>

<sup>30</sup> See para 1.86: <https://www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government> Accessed 9/10/17.

<sup>31</sup> <https://www.ombudsman-services.org/docs/default-source/Factsheets/about-os-energy-factsheet.pdf?sfvrsn=10> Accessed 10/10/17.

<sup>32</sup> Email communication 29/6/17.

<sup>33</sup> Ibid.

<sup>34</sup> Email communication 12/6/17.

### What consumers say about the Energy Ombudsman

- “Energy Ombudsman dealing with Scottish Power (SP) complaint. Due to high number of complaints they are dealing with for this company the ombudsman was very lenient with SP. Extended SP’s response time 3 times so I waited months for a response. Left me wondering why I bothered using the ombudsman at all.” via MSE survey.
- “Energy Ombudsman finally got British Gas to pay attention, answer my query about appalling transfer of supplier exercise and I was awarded £75, had become a point of principle, but I have better ways to spend my time to get £75! However without the Ombudsman the case would have gone on for ever!” via MSE survey.
- “Excellent service - got answers and action (from Scottish Power) when I couldn’t. Reduced my stress considerably.” via MSE survey.
- “The Energy Ombudsman is toothless, useless, and completely biased towards the energy firms and is not fit for purpose.” via MSE survey.

### Ombudsman Services: Communications

- Underpinned by the Communications Act 2003 and approved by Ofcom
- Firms must be a member of either this scheme or CISAS
- Binding decisions,<sup>35</sup> if the consumer accepts
- May require an apology; an explanation of what went wrong; a practical action to correct the problem; a financial award up to £10,000<sup>36</sup>
- As with the Energy Ombudsman, Ombudsman Services says that participating companies have to submit a case file within 14 days of being requested or the case will be worked on based on the information available. It is therefore in the interests of both parties to support their case with evidence. Ombudsman Services notes that “...it would be more likely for Ombudsman Services to find in the consumer’s favour if a company failed to submit a file or provide relevant information on request”<sup>37</sup>

<sup>35</sup> <https://www.ombudsman-services.org/docs/default-source/Factsheets/about-os-communications-factsheet.pdf?sfvrsn=12> Accessed 9/10/17.

<sup>36</sup> <https://www.ombudsman-services.org/sectors/communications/resolutions> Accessed 10/10/17.

<sup>37</sup> Email communication 29/6/17.

- Of the total number of case files, 67% are received in Communications<sup>38</sup>
- Funded by an annual subscription fee and a case fee<sup>39</sup>

### **What consumers say about Ombudsman Services: Communications**

 *“Ombudsman Services: Communications completely failed to address my specific complaint and made up things to support their position. This was acknowledged on appeal, but the decision remained the same. I understand that if the ombudsman fails to rule in your favour, you naturally will be upset and have a negative view. But my particular situation, I believe they showed attributes of maladministration on how they dealt with my complaint. To the point that I feel they made a decision and attempted to fabricate the evidence to fit this view. Unfortunately this meant they had to make up the facts. This was raised on appeal and acknowledged, but the outcome remained the same. If they can’t take a fair and balanced view on a complaint, then they shouldn’t accept the case. I now have to take my complaint to the small claims court and have every intention of raising my experience of the Ombudsman with my local MP as my experience has shown they are not fit for purpose.”*  
Keith, via MSE survey.

 *“The Communications Ombudsman found in my favour against BT but sanctioned only half of the compensation I sought. I tried to be reasonable with my compensation claim but I am left wondering whether the Ombudsman simply went for 50% of my claim and that I should have over-egged it to get the reasonable sum.”* Charlie, via MSE survey.

 *“The Communications Ombudsman made things happen. Up until that point our complaints to the communications company in question were completely ignored, to the point where they denied having received letters that had been sent by recorded delivery. We were never asking for compensation or anything unreasonable from the communications company, just an acknowledgement that they were incorrect and an apology. After the Communications Ombudsman got involved, this happened.”*  
via MSE survey.

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<sup>38</sup> Ibid.

<sup>39</sup> Email communication 12/6/17.

 *"Uploading documents on Communications Ombudsman site not the easiest. Great service though: exceedingly helpful" via MSE survey.*

## The Property Ombudsman (TPO)

- Underpinned by the Consumers, Estate Agents and Redress Act 2007 (CEARA) and the Enterprise and Regulatory Reform Act 2013, and approved by National Trading Standards Estate Agency Team<sup>40</sup>
- A limited company
- The company has three parts: TPO Council; the Office of the Ombudsman; TPO Board. The Ombudsman is accountable to TPO Council<sup>41</sup>
- The TPO says: *"When an agent signs up with TPO they agree to abide by the Ombudsman's Terms of Reference and the TPO Codes. Both documents set out an agent's obligations to fully cooperate with a formal investigation. By necessity, this includes providing all the information we require in order to conduct an investigation. If an agent does not comply, the decision will likely go against them on the basis they have no evidence to support their position..."*<sup>42</sup>
- The TPO says that it automatically checks for compliance with its decisions, and where members do not implement its decisions, they are referred to a Disciplinary and Standards Committee (DSC), which has the power to impose sanctions or expel a business from the scheme. Expulsion means that firms are *"named and shamed in the trade and local media"*,<sup>43</sup> and cannot join another redress scheme until they have acted as directed by the Ombudsman. It also notes that trading without redress is illegal for English and Welsh property agents
- Decisions can be to take (or stop taking) specified action; that a formal apology is made; that a financial award of up to £25,000 in compensation is made<sup>44</sup>

<sup>40</sup> See <https://www.tpos.co.uk/2-uncategorised?start=36> and <http://www.powys.gov.uk/en/licensing-trading-standards/national-trading-standards-estate-agency-team/ombudsman-redress-schemes/> Accessed 9/10/17.

<sup>41</sup> [https://www.tpos.co.uk/images/documents/corporate-reference-policy-and-procedures/TPOE31-3\\_Terms\\_of\\_Reference\\_A5.pdf](https://www.tpos.co.uk/images/documents/corporate-reference-policy-and-procedures/TPOE31-3_Terms_of_Reference_A5.pdf) Accessed 9/10/17.

<sup>42</sup> Email communication 27/6/17.

<sup>43</sup> Email communication 16/6/17.

<sup>44</sup> [https://www.tpos.co.uk/images/documents/corporate-reference-policy-and-procedures/TPOE31-3\\_Terms\\_of\\_Reference\\_A5.pdf](https://www.tpos.co.uk/images/documents/corporate-reference-policy-and-procedures/TPOE31-3_Terms_of_Reference_A5.pdf) Accessed 10/10/17.

### **What consumers say about The Property Ombudsman**

 *“Property ombudsman is a complete waste of time, I’ve done your survey and explained in full. They can’t even impose sanctions!!” @freefalling2 via Twitter.*

 *“The Property Ombudsman is a members’ club funded by subscription from its members. As such it is unlikely to find against a member, especially a big player” via MSE survey.*

As shown above, the power to approve ombudsmen (or other ADR) schemes underpinned by statute has been delegated by Parliament to the relevant regulators, who then approve one or more schemes in their respective sectors. These ombudsmen have powers derived from statute which are therefore in excess of other ADR providers.

The regulator’s role is to ensure that the scheme complies with the underpinning statute. As described in Chapter 1, it also acts as the competent authority to approve the ombudsman (as well as potentially other ADR schemes) under the ADR regulations.

Regulators may approve a single ombudsman scheme, or more than one. For example, in the energy sector, Ofgem has approved only Ombudsman Services: The Energy Ombudsman, which is underpinned by the Consumers, Estate Agents and Redress Act 2007. All energy suppliers must be signed up to this ombudsman.

In the communications sector, Ofcom has approved two services: Ombudsman Services: Communications and CISAS. Both services are underpinned by the Communications Act 2003, but only Ombudsman Services uses the term ‘ombudsman’ in its name, and accordingly only it is a member of the Ombudsman Association. Firms in this sector can choose between the two options.

Likewise, in the property sector, the National Trading Standards Estate Agency Team has approved one ombudsman and two ADR schemes.

## 'Voluntarily' established ombudsmen in non-regulated sectors

As these are not statutory ombudsmen, Companies House requires that they are approved ADR entities (in this case, by the Chartered Trading Standards Institute, which is the competent authority for non-regulated sectors).

They are also all members of the Ombudsman Association (see Chapter 3 for more details), which is also a Companies House requirement for non-statutory ombudsmen.

Examples include:

- The Furniture Ombudsman
- The Motor Ombudsman
- Consumer Ombudsman
- Removals Ombudsman
- The Retail Ombudsman (now known as RetailADR, and is no longer an OA member)

In addition to ombudsmen, there are also many other ADR providers in the non-regulated sectors.

### *What consumers say about ombudsmen in non-regulated sectors*

 *"**Consumer Ombudsman** is totally ineffective. They will only consider applications where the companies are registered with them yet there are very few of these. Their website states they will contact companies who are not registered with them to see whether they will work with the Ombudsman service to resolve complaints but in my case they didn't without any explanation as to why. In my experience they are utterly useless and ineffective and not fit for purpose." Derek via MSE survey.*

 *"The main problem I have with the like of the **Consumer Ombudsman** is that they seem quite powerless. Not much point complaining to them if there's nothing they can do to change or correct the issue" via MSE survey.*

-  **"Furniture Ombudsman** - complete waste of time. The person to whom I spoke several times kept saying she could see why I was complaining and thought I had a good case, then said her bosses told her they couldn't enforce anything so not to bother with it any more. I was, and still am, very cross with them." via MSE survey.
-  **"The Furniture Ombudsman** is a waste of time. I've had three sofas from [a furniture shop] and hassle for 14 months now and they rejected my complaint and said the company are doing all they can." Shane, via Facebook.
-  **"The Motor Ombudsman** ruled in my favour [...] still waiting for the garage to accept the ruling. They are given 10 days in which to respond but they are still in talks with the ombudsman. The garage owe me over £10k in damages." Emily via MSE survey.
-  **"The Motor Ombudsman** was completely biased towards the motor company and kept suggesting that since they are "trained professionals" they are truthful and are unable to make a mistake. They will not refer to their own "code of conduct" when taking cases. They have taken over 4 months to come to a resolution and did not keep to their waiting times for responses. I have been given a quote of over £3000 by the motor company for damages that were not present when they had checked the vehicle, though were present after they had carried out repairs. This is even when I clearly had a solid case using their own records as proof of their misconduct or mistakes. I have disagreed with their decision and am looking to take it further." Suraj, via MSE survey.
-  **"The Retail Ombudsman** refused to handle a complaint [with a company] as they are based abroad, but all their complaint policies refer back to the Retail Ombudsman, claiming they were a member. The ombudsman wasn't even interested in pursuing them to stop this claim..." Antony, via MSE survey.
-  **"The Retail Ombudsman** was useless, as the company... had not signed up to the scheme, therefore the Ombudsman could do nothing..." via MSE survey.

The features of these ombudsmen include:

- Voluntary membership - firms can choose whether they want to participate. If they do not, the consumer may have to take their dispute to court or abandon it
- Under Ombudsman Association rules, decisions must either be binding or there should be a 'reasonable expectation' of compliance
- Voluntary ombudsmen told us that firms do engage and cooperate with them:
  - o The Furniture Ombudsman said the voluntary nature of its scheme *"helps to ensure that membership tends to attract businesses who are serious about doing the right thing. The positive effect of this is that members are willing to engage with us about cases and to take on board our advice... **We would describe co-operation and engagement with registered businesses as high** (emphasis added)".<sup>45</sup> In its annual report, the Furniture Ombudsman says *"there were no instances of non-compliance in 2016"*<sup>46</sup>*
  - o The Motor Ombudsman said that its terms and conditions state that accredited businesses must give it relevant information, although they can ask for it to not be disclosed to the other side, for example if it is commercially sensitive. The Motor Ombudsman said that *"co-operation is excellent"* and that it has *"never had a business outright refuse to provide something we ask to see"*<sup>47</sup>
- Decisions could require:
  - o an apology;
  - o an explanation of what went wrong;
  - o a practical action to correct the problem; and/or
  - o a financial award.

The Ombudsman Association says that these ombudsmen are established by trade associations but governed independently and with a minority business representation among the directors.<sup>48</sup>

<sup>45</sup> Email communication 27/6/17.

<sup>46</sup> Furniture Ombudsman 2016 Annual Review, p.7. [https://www.thefurnitureombudsman.org/\\_documents/The-Furniture-Ombudsman-Annual-Review-2016.pdf](https://www.thefurnitureombudsman.org/_documents/The-Furniture-Ombudsman-Annual-Review-2016.pdf) Accessed 11/10/17.

<sup>47</sup> Email communication 28/6/17.

<sup>48</sup> <http://www.ombudsmanassociation.org/about-methods-of-establishment.php#vol> Accessed 10/10/17.

The Ombudsman Association points out similarities to the statutory model in terms of the appointment of ombudsmen, and the existence of an independent board to safeguard their independence, but key differences are:

- firms' membership of these ombudsmen is voluntary; and
- even when approved the competent authority's role is limited to checking the ombudsman's compliance with the requirements of the ADR Regulations. It does not also have a regulatory role, as with other sectors.

The Ombudsman Association points out that these ombudsmen's rules about jurisdiction, process and powers are set in their own constitutions and rules, which may be supplemented by an industry code of practice.

## Comparative analysis of ombudsmen commonly used by consumers

The table summarises and contrasts ombudsmen’s powers and features. It should be read in conjunction with its explanatory notes in the Annex.

Ombudsman	Powered by	Decisions directly enforceable in court by statute	All firms/parts of sector must participate	Ombudsman Association member	Approved ADR entity
Financial Ombudsman Service	Statute	✓	✓	✓	✓
Legal Ombudsman	Statute	✓	✓	✓	-
The Pensions Ombudsman	Statute	✓	✓	✓	-
Local Government and Social Care Ombudsman	Statute	✗	✓	✓	-
Parliamentary and Health Service Ombudsman	Statute	✗	✓	✓	-
Housing Ombudsman Service	Statute	✗	✓ Social housing	✓	-
			✗ Private rented sector		
Energy Ombudsman	Underpinning statute	✗	✓	✓	✓
Ombudsman Services: Communications	Underpinning statute	✗	- Firms choose ADR scheme	✓	✓
The Property Ombudsman	Underpinning statute	✗	- Firms choose ADR scheme	✓	✓
The Furniture Ombudsman	Own rules	✗	✗	✓	✓
The Motor Ombudsman	Own rules	✗	✗	✓	✓
Consumer Ombudsman	Own rules	✗	✗	✓	✓
Removals Ombudsman	Own rules	✗	✗	✓	✓
RetailADR (formerly The Retail Ombudsman)	Own rules	✗	✗	✗ Formerly - resigned membership	✓

# CHAPTER 3: OMBUDSMAN ASSOCIATION

The Ombudsman Association is the professional association for ombudsmen. Its Executive Committee is composed of members,<sup>49</sup> making it a self-regulatory system.

Although membership is voluntary, non-statutory ombudsmen must be members to meet the Companies House criteria for using the protected word in their title.

The Ombudsman Association says that an ombudsman's role is to investigate the complaint, and "resolve, determine or make recommendations."<sup>50</sup> Its principles state that the primary role of ombudsmen must be to handle complaints about maladministration; unfair treatment or poor service or other inequitable conduct.

The Ombudsman Association argues that if there are ombudsmen 'competing' for members in a particular sector this can create confusion for the public and result in less public confidence.<sup>51</sup>

The criteria for members of the Ombudsman Association are summarised below.<sup>52</sup>

## Summary of Ombudsman Association criteria for recognition of ombudsmen

The Ombudsman Association says its criteria have been drawn up with the different forms of ombudsmen in mind, and will be applied flexibly.

1. There must be 'visible and demonstrable' **independence** of ombudsmen from those who they investigate.
2. The Ombudsman should be impartial, proceed **fairly** and act in accordance with the principles of natural justice. They must take into account what is fair, good practice, inequitable conduct and maladministration.
3. Ombudsmen must be "adequately staffed and funded" to be **effective** and **expeditiously investigate** and resolve complaints. They should also have straightforward procedures and it should be **free to complain**.

<sup>49</sup> <http://www.ombudsmanassociation.org/the-ombudsman-association.php>, <http://www.ombudsmanassociation.org/docs/Updated-OA-Rules.pdf> and <http://www.ombudsmanassociation.org/association-objects.php> Accessed 9/10/17.

<sup>50</sup> <http://www.ombudsmanassociation.org/docs/BIOA-Rules-New-May2011-Schedule-1.pdf> Accessed 9/10/17.

<sup>51</sup> <http://www.ombudsmanassociation.org/dev/about-methods-of-establishment.php> Accessed 10/10/17.

<sup>52</sup> <http://www.ombudsmanassociation.org/docs/BIOA-Rules-New-May2011-Schedule-1.pdf> Accessed 9/10/17.

Ombudsmen's decisions or recommendations should either be **binding**, or there should be a "**reasonable expectation**" of compliance. If the decision or recommendation is not complied with, ombudsmen "should have the power to publicise, or require the publication of such non-compliance at the expense of those investigated".

4. The existence of a scheme, what it does, and what complainants can expect should be **open and transparent**. Publicly available information should include a clear explanation of the legal constitution, governance and funding arrangements, as well as the jurisdiction, powers and method of appointment of the ombudsman. Ombudsmen are "entitled" - but not required - to publish anonymised reports of investigations.
5. The ombudsman, staff and any governing body should be seen to be responsible and **accountable** for their actions.

#### What is not included in the Ombudsman Association criteria

1. There is **no general requirement for ombudsmen to have comprehensive coverage of businesses or organisations operating in a sector**.
2. There is **no requirement to publicly list the members** of the scheme.
3. The criteria **do not specify the length of time** an ombudsman should need to deal with a complaint, although this is a factor that competent authorities do consider under the ADR regulations.

# CHAPTER 4: THE DISTINCTION BETWEEN OMBUDSMEN AND ADR

Protection of their title by Companies House means ombudsmen have a special status, set apart from other ADR providers.

We approached key stakeholders to ask each how they define the word 'ombudsman' and how they are different from ADR in general. Responses included:

## The Ombudsman Association:

"We would define an ombudsman as an organisation that meets our membership criteria.<sup>53</sup> An ombudsman is a form of ADR, in the same way that mediation or arbitration is - it is an alternative to the courts. However there are many different forms of ADR. We would argue that an ombudsman adds greater value than other forms of ADR, such as adjudication or mediation, by not only providing individual redress but also in identifying and addressing systemic issues, and in providing feedback to the organisations in jurisdiction that can then be used to improve services. Three areas in which ombudsman schemes are recognised as providing 'more' include around: advice and sign posting; recommendations for improvement; and provision of data for use by enforcement and regulatory agencies."

## Financial Ombudsman Service:

"Ombudsman schemes are a type of alternative dispute resolution (ADR). As an ombudsman scheme we are guided by the principles that we are an independent service set up to make decisions that we consider to be fair and reasonable in all the circumstances as quickly and as informally as possible. The Ombudsman Association is a professional association for ombudsmen and other types of complaints handlers. It sets out the common principles that help to define what an ombudsman is on its website here."<sup>54</sup>

<sup>53</sup> The response linked to: <http://www.ombudsmanassociation.org/docs/OA-Rules-Schedule-1.pdf> Accessed 9/10/17.

<sup>54</sup> The response linked to: <http://www.ombudsmanassociation.org/about-the-role-of-an-ombudsman.php> Accessed 9/10/17.

## The Retail Ombudsman:

"We follow and subscribe to the ombudsman criteria and explanations of what an ombudsman is and does set out by Ombudsman Association. Generally, an ombudsman scheme is a 'form' of ADR, not an alternative."<sup>55</sup>

## The Legal Ombudsman:

"An ombudsman is a complaints handling service that offers an independent assessment to consumers who are not happy with the direct handling of their complaint. Following an in-depth review of the details of a given case, a decision will be made as to whether the consumer has received poor service. We do not offer ADR services but are still an alternative route for seeking redress."<sup>56</sup>

When taken together, the responses above indicate that the distinction between ombudsmen and other ADR is based on the former being members of the Ombudsman Association, and that ombudsmen also work to address systemic problems they identify.

## A working definition of ombudsmen under the current system

Basing the definition of an ombudsman heavily on membership of the self-regulatory Ombudsman Association feels circular and unsatisfactory, so a working definition of what ombudsmen currently are in practice, and how they fit into the ADR picture would be:

*Ombudsmen consider complaints from consumers against businesses, or other organisations. The body being complained against needs to be a member of the ombudsman (which may or may not be optional), or in some other way obliged to participate.*

<sup>55</sup> This comment was given by email on 15/6/17, before The Retail Ombudsman became RetailADR.

<sup>56</sup> Email communication 11/9/17.

*Ombudsmen can request information from both parties and then use this to make an impartial decision. Ombudsmen will base their decisions on the law, but will also seek to achieve an equitable outcome.*

*Ombudsmen's decisions are not legal decisions and do not set a legal precedent. Consumers are generally free to accept or reject them, and can still go to court for a decision if they do not accept the ombudsman's decision.*

*Ombudsmen's decisions can be binding. In the case of non-compliance a sector regulator might be able to enforce compliance, or some ombudsmen's decisions can be enforced in court.*

*Unlike other ADR providers, to comply with Companies House rules, ombudsmen must either be set up by Parliament, or be a member of the self-regulatory Ombudsman Association, certified by a competent authority and have been working in their sector for over a year.*

*In addition, ombudsmen may work with complained about organisations in order to help them address issues that are leading to complaints. Wider than this, some ombudsmen also work with regulators and other stakeholders in order to work to address systemic issues.*

The flexible character of this working definition highlights the diversity that exists in how ombudsmen are formed, the weight of their decisions, the powers that they hold and the work that they do.

# CHAPTER 5: THE PROCESS OF COMPLAINING TO AN OMBUDSMAN

How a complaint is taken to an ombudsman varies, but there are many shared features as well as some differences in the detail:

1. Consumers must complain to the business or organisation first. Ombudsmen are not a first port of call – they are a place to go when things have not been resolved by talking to the business or organisation in question first, so the internal complaints procedure needs to have been exhausted.
2. When a complaint can be started with an ombudsman varies, for example:
  - a. For **financial, energy, communications, legal, retail, motor** and other consumer issues, either:
    - i. after **8 weeks**, the consumer can take their complaint to the ombudsman (or other ADR), **or**
    - ii. if the business has issued a ‘final response letter’ (also known as a ‘deadlock letter’), and the consumer is still not satisfied, the consumer can use this to start their complaint with the ombudsman at that point (which may be sooner than 8 weeks)
  - b. The Furniture Ombudsman<sup>57</sup> says it will only deal with complaints once the internal complaints process has been used or **three months** has passed (whichever is sooner).
  - c. For the Local Government and Social Care Ombudsman, there has to have been no response ‘within a reasonable time’, which it says usually means **12 weeks** but may be longer for social care complaints.<sup>58</sup>
  - d. For the Parliamentary and Health Service Ombudsman, complaints about UK Government departments and other UK public organisations must be **referred to it by an MP**. The complainant still needs to have exhausted the internal complaints process and be unhappy with the final decision.<sup>59</sup>
3. The ombudsman investigates complaints it thinks are within its remit, requesting information from the parties involved. Ombudsmen may take evidence only online or in writing. Some will also discuss complaints by telephone, but they usually do not take evidence in person. During this process, ombudsmen may try to first resolve the issue informally by ‘brokering’ a solution acceptable to all parties.

<sup>57</sup> <http://www.thefurnitureombudsman.org/faq-resources/frequently-asked-questions/> Accessed 15/4/17.

<sup>58</sup> <http://www.lgo.org.uk/make-a-complaint> Accessed 11/10/17.

<sup>59</sup> <https://www.ombudsman.org.uk/making-complaint/before-you-come-to-us> Accessed 11/10/17.

- The Motor Ombudsman said:

“Sometimes, we can see that there is an amicable resolution which we can propose to get things sorted - or it may have been that a fair offer has already been made, and we can encourage both sides to agree to this offer.”<sup>60</sup>

- The Furniture Ombudsman said:

“Our dispute resolution includes a process of conciliation and in some instances an adjudication... Our conciliation process is designed to resolve cases informally bringing the parties together through 3rd party dialogue with our team of qualified ombudsmen. This is a highly flexible mechanism and may include arriving at a solution that is both fair and practical. We resolve most of the cases that we look at in this way and we find it works well for the kinds of disputes that we most commonly look at.”<sup>61</sup>

- Ombudsman Services said:

“All cases are reviewed to see if there is an opportunity for early resolution, which we would aim to have completed within five working days. Early resolutions tend to focus on simple actions and low value goodwill gestures, with remedies being able to be implemented within our normal standard of 28 days.

“During the investigation stage we would look to see if we can achieve a mutually acceptable settlement - this normally occurs when there is no dispute on any of the facts of a complaint from both parties.

“We also allow participating companies to resolve a case prior to it being allocated to an investigation officer.”<sup>62</sup>

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<sup>60</sup> Email communication 29/6/17.

<sup>61</sup> Email communication 27/6/17.

<sup>62</sup> Email communication 29/6/17.

4. Ombudsmen will issue a decision. In general, they aim to do this in three months, but can take longer:
  - a. Approved ADR entities (including for energy, financial, communications, and retail sectors) are supposed to issue a decision within 90 days, but can take longer.
  - b. The Legal Ombudsman aims to resolve complaints within 3 months (but, again, says it can take longer). In its comments to MoneySavingExpert, the Legal Ombudsman said: "... [It is] difficult to establish an average length of time for complaint-handling, as the complexity of cases varies a great deal and this has a profound effect on timeliness. Nevertheless, in 2015/16, 88-94% of cases in our legal jurisdiction and 98-100% of cases in our CMC jurisdiction were handled within 180 days."
  - c. The Furniture Ombudsman website says its process "could take in the region of three months" if it is a particularly complex or serious case, but it told MoneySavingExpert that the latest figure from 2016 was "37 days to resolve/close a case".
  - d. RetailADR (formerly The Retail Ombudsman)<sup>63</sup> says it aims to process all complaints within 60 days, and added that it does this in most cases.
  - e. Many cases take significantly longer than 3 months. For example, more than 130,000 payment protection insurance (PPI) cases were on hold at the Financial Ombudsman Service waiting for new FCA rules on the Plevin case to come into force. Following multiple consultations, these rules came into force on 29 August 2017. In the financial year 2016/17 the Financial Ombudsman Service said it resolved 65% of complaints within 3 months, or 83% of complaints that did not involve PPI.
5. It is a criteria of Ombudsman Association rules that ombudsmen's decisions are binding on their member firms, or there's a reasonable expectation they will be implemented. The Findings chapter shows that this often isn't the consumer's experience in practice.
6. Ombudsmen may also issue recommendations to the business in order to address the causes of any problems identified.

<sup>63</sup> <https://www.retailadr.org.uk/how-to-complain-about/retail-complaints-in-store-online-help-advice/> Accessed 11/10/17.

### **What consumers say about the process of complaining**

 *"Financial Ombudsman acknowledged receipt of complaint, said they'd be in touch in about 2 months when they have contacted other party, but still waiting for contact after 3 months!" via MSE survey.*

 *"[Parliamentary and Health Service Ombudsman] process is appalling. They make every attempt to dismiss your complaint. They only actually investigate a small minority of complaints referred to them. They misunderstand or misrepresent facts. They make silly factual errors (e.g. dates of their own phone calls). They do not allow you to comment on draft decisions (as the LGO does). They are very bad at investigating complaints into their own service - it took almost a year for them even to start looking at ours."*  
*Martin via MSE survey.*

# CHAPTER 6: MEMBERSHIP, COMPLIANCE, CONSISTENCY AND REGULATORS

## Membership transparency

Current ombudsmen are transparent about the firms that they cover, which is particularly important when firms don't have to sign up as members.

**The Financial Ombudsman Service** makes clear that it covers businesses regulated by the FCA to provide retail financial services or credit-related activities, and links to the FCA's register of these businesses. It also explains that there are certain other types of businesses that it covers.<sup>64</sup>

**The Legal Ombudsman** makes clear that it can deal with complaints about "solicitors; barristers; licensed conveyancers; cost lawyers; legal executives; notaries; patent attorneys; trade mark attorneys; law firms and companies providing legal services such as some accountants" and that these firms should tell consumers about the Legal Ombudsman when they take on a case.<sup>65</sup>

**Ombudsman Services** makes available lists of all the participating companies in its schemes (covering energy, communications, property and consumers).

**The Furniture Ombudsman** lists its members on its website. It also operates the Dispute Resolution Ombudsman and said that this "provides the same services as the Furniture Ombudsman but is branded more broadly to try to prevent consumers being confused about what categories of products and services we can look at..."<sup>66</sup> The language used here is crucial, as the Dispute Resolution Ombudsman does not have compulsory membership of firms. Therefore, while the categories of products and services might apply, if the firm is not signed up, there is still scope for consumer confusion.

<sup>64</sup> [http://www.financial-ombudsman.org.uk/faq/answers/complaints\\_a2.html](http://www.financial-ombudsman.org.uk/faq/answers/complaints_a2.html) Accessed 11/10/17.

<sup>65</sup> <http://www.legalombudsman.org.uk/?faqs=what-is-a-legal-service-provider> Accessed 11/10/17.

<sup>66</sup> Email communication 7/6/17.

**The Property Ombudsman** has a searchable database of members.<sup>67</sup>

**The Motor Ombudsman**<sup>68</sup> has 4 codes:

- Service and Repair Code, with a searchable directory of accredited garages
- New Car Code, with a list of accredited businesses (which it states covers 99% of all new cars sold in the UK each year)
- Vehicle Warranty Products Code, with a list of accredited businesses
- Vehicle Sales Code, with a searchable directory of accredited garages

Membership of the **Removals Ombudsman** is voluntary, but it does act as ombudsman for all firms signed up to the National Guild of Removers and Storers (NGRS) trade association. The NGRS has a searchable database of members on its website.<sup>69</sup>

In non-regulated sectors, firms do not have to join either an ombudsman or other ADR scheme, which results in patchy provision, as shown below.

## Membership sign-up when it's not compulsory

In non-regulated sectors firms do not have to sign up for ADR or to an ombudsman. For example, despite the huge number of businesses which could choose to sign up to an approved ADR scheme, only 27 firms have signed up to the Consumer Ombudsman.<sup>70</sup> Even when taken with the potential for firms to use other ADR schemes, this number seems very low.

## Organisations can sometimes choose between competing schemes

In some areas, firms or other ADR scheme members choose which service to sign up to. For example, in the communications sector, Ofcom has approved two schemes, so firms choose between Ombudsman Services: Communications or CISAS.

<sup>67</sup> <https://www.tpos.co.uk/find-a-member> Accessed 11/10/17.

<sup>68</sup> <https://www.themotorombudsman.org/consumers/our-codes-of-practice> Accessed 15/4/17.

<sup>69</sup> Email communication 11/10/17.

<sup>70</sup> <http://consumer-ombudsman.org/about-us/participating-companies> Accessed 11/10/17.

A recent report on *Bailiff Reform*<sup>71</sup> by seven debt advice agencies and other charities noted that when individuals have a problem with a bailiff, the body they have to escalate their complaint to depends on the creditor. The report recommends a free, clear, transparent and accessible complaints procedure be put in place that is applicable to all kinds of bailiff. In addition, the report highlights the lack of independent regulation of the bailiff industry, and recommends that this is introduced in tandem with a single complaints procedure. The organisations which produced the report are: AdviceUK, Christians Against Poverty, Citizens Advice, Money Advice Trust, StepChange Debt Charity, The Children’s Society, Z2K.

### Ombudsmen’s compliance information

Compliance information from a number of ombudsmen is shown below.<sup>72</sup> In all cases, ombudsmen said that the number of decisions not implemented is very low.

Ombudsman	Compliance information from Ombudsman
Financial Ombudsman Service	<ul style="list-style-type: none"> <li>“... (it is) very rare that businesses do not comply with our decisions”</li> </ul>
Energy Ombudsman	<ul style="list-style-type: none"> <li>Remedies implemented within 28 days - 88%</li> <li>Remedies implemented outside of KPI - 12%</li> <li>Remedies not implemented - 1%</li> </ul>
Ombudsman Services: Communications	<ul style="list-style-type: none"> <li>Remedies implemented within 28 days - 83%</li> <li>Remedies implemented outside of KPI - 15%</li> <li>Remedies not implemented - 2%</li> </ul>
The Property Ombudsman <sup>73</sup>	<ul style="list-style-type: none"> <li>Of all complaints reviewed during 2016, 1.7% were referred to its Disciplinary and Standards Committee (DSC) for Code breaches and failure to pay an award</li> <li>This represents 61 cases out of 3553 complaints reviewed in 2016</li> <li>DSC intervention caused 65% of these firms to settle (up from 63% in 2015).</li> </ul>

<sup>71</sup> See interactive website and full report: <https://www.bailiffreform.org> Accessed 9/10/17.

<sup>72</sup> The information is either taken from public documents or websites or was supplied to MoneySavingExpert for the purpose of this report.

<sup>73</sup> [https://www.tpos.co.uk/images/TPO\\_Annual\\_Report\\_2016\\_FINAL\\_WEB\\_LINKS.pdf](https://www.tpos.co.uk/images/TPO_Annual_Report_2016_FINAL_WEB_LINKS.pdf) Accessed 11/10/17.

The Furniture Ombudsman	<ul style="list-style-type: none"> <li>• “Compliance with our decisions is very high”</li> <li>• This may be because membership is voluntary</li> <li>• Its rules set out that non-compliance is to be reported to the appropriate enforcement authority (which is usually Trading Standards) in order for them to take the appropriate action</li> </ul>
The Motor Ombudsman	<p>TMO said, since it was introduced in November 2016:<sup>74</sup></p> <ul style="list-style-type: none"> <li>• “There has been no non-compliance with the adjudications or final decisions”</li> <li>• “We take non-compliance very seriously - and if we can see a business is not prepared to comply, either with a decision or with responding to a complaint, we can issue penalty points and apply sanctions including suspension and expulsion.”</li> </ul>

## Ombudsmen support increased consistency

When asked by MoneySavingExpert whether more consistency across the board would be useful, most ombudsmen agreed it would be. The Retail Ombudsman (as it was known) suggested that being regulated by a statutory organisation is needed. The Furniture Ombudsman suggested that ombudsmen should be required to pass a fit and proper persons test.

The Retail Ombudsman said:

“Yes there needs to be far more consistency between ombudsman schemes which will only be achieved if they are properly regulated by a statutory organisation. At present, we only have Ombudsman Association which is run by ‘ombudsman’ which cannot be desirable.”

Ombudsman Services said:

“There is a strong case for more consistency across the board. Gaps and inconsistencies in the provision of advice and information across regulated sectors lead to a landscape which is confusing for consumers to navigate. [...] It is also important to have a consistent definition for an ombudsman, which schemes must adhere to in order to be able to describe themselves as ombudsman schemes...”

<sup>74</sup> Email communication 28/6/17.

The Furniture Ombudsman said:

“It is our belief that all ombudsman schemes should be held to account. In addition to a consistent approach to service standards... we believe that all office holders should be of good standing and required to pass a fit and proper standards test. Although there are some legal safeguards over the use of the title Ombudsman, we believe that these need strengthening.”

The Property Ombudsman said:

“Consistency varies from sector to sector. Where multiple ombudsmen and ADR schemes operate within the same sector, there is always the distinct possibility of inconsistency of process and inconsistency of decision.”

However, the Legal Ombudsman said:

“We... have no detailed information on the processes for other ombudsman organisations and as such we have no basis to make a judgement [on whether more consistency across the board would be useful].”

## The relationship of ombudsmen with their regulators

The role of regulators is important to statutory ombudsmen and those underpinned by statute. Where companies do not cooperate well with ombudsmen, or do not implement the ombudsman's decisions, this can be disclosed to the regulator which could potentially take action. If membership of the ombudsman was then revoked, this could be a breach of their right to operate in a sector where being a member of an ADR scheme is compulsory.

For example, Ombudsman Services said that in the communications sector:

"Communication companies operate in a regulated market. A key part of that regulation is embodied in the 2003 Communications Act, which requires the company to be a member of an Alternative Dispute Resolution scheme and to abide by its rules. Failure to abide by the binding remedies can result in membership being revoked.

"In the event that companies do not come into compliance and membership is revoked, Ombudsman Services will bring this to the attention of Ofcom who may take enforcement action. Should Ofcom take enforcement action, it has powers to impose sanctions, including penalties of up to 10% of relevant turnover."<sup>75</sup>

Similarly, in the energy sector, Ombudsman Services said:

"If remedies are not implemented within 28 days we will contact the participating company to find out why. On occasions companies will request an extension if they cannot deliver the remedy within 28 days (this usually occurs if they need to rely on a supplier for delivery), although the majority of remedies are completed within the time. If we have any concerns about a company this would be escalated within the company and in turn to Ofgem."<sup>76</sup>

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<sup>75</sup> Email communication 29/6/17.

<sup>76</sup> Email communication 29/6/17.

Commenting more generally, the Legal Ombudsman said:

“We provide feedback to approved regulators about numbers and types of complaints in their specific areas. In a more general sense, we gather insights and write reports on wider recommendations for improvement of services to help avoid complaints, providing case studies and recommendations for first-tier complaints-handling. Our Chief Legal Ombudsman also does extensive work on feeding back to the profession through regular meetings and speaking engagements.”<sup>77</sup>

The Financial Ombudsman Service said:

“We share lots of information with the FCA, including data on all our cases, but we generally only share individual decisions if there is a particular reason to, for example if the issues raised are new and novel or if we’re concerned with the business’ behaviour.”<sup>78</sup>

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<sup>77</sup> Email communication 11/9/17.

<sup>78</sup> Email communication 10/10/17.

# CHAPTER 7: CONSUMER EXPERIENCE AND FINDINGS

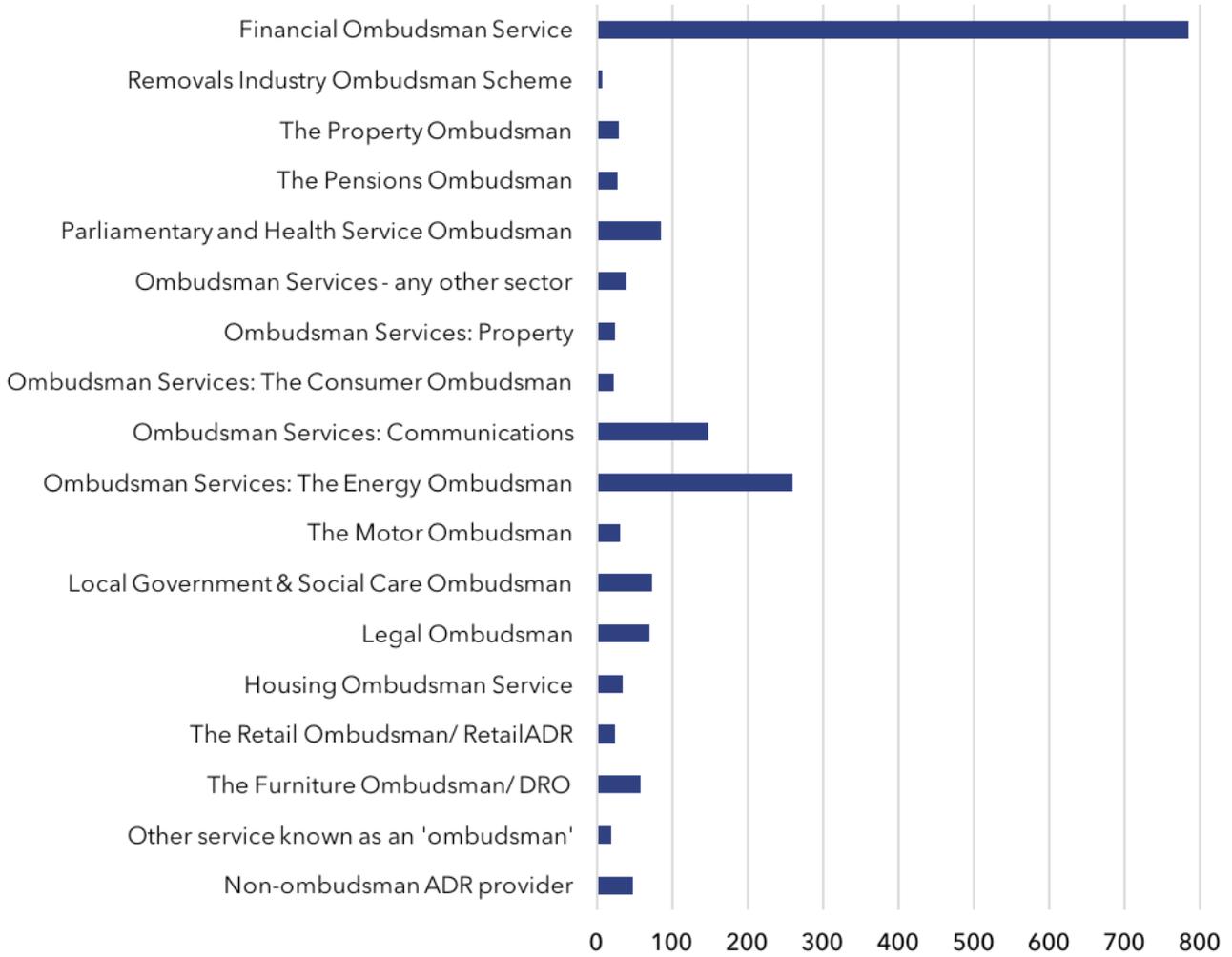
This chapter contains the quantitative results of the consumer experience survey, as well as further qualitative comments. Respondents to our consumer survey self-selected to take part, therefore, it is to be expected that the results would be a little more negative than in a scientific poll, as people who have a complaint to make tend to be more likely to fill in online forms. However, the results are striking. They are presented in this chapter with the report findings.

The ombudsman landscape is uneven, inconsistent and, frankly, illogical. If it were to be set up today, it seems highly unlikely the current system would be opted for. The consumer experience is often poor, which deters people from wanting to use an ombudsman again.

**Context: most survey responses were about financial, energy and communications ombudsmen**

Most of the respondents to the survey described their experiences with the Financial Ombudsman Service, with approaching 800 respondents on average per question. The next most commonly responded about were the ombudsmen for energy and communications (both part of Ombudsman Services), and the Parliamentary and Health Service Ombudsman. In total, there were 1,409 respondents to the survey.

### Average number of responses per question



## **Finding 1: Poor ombudsman experiences are undermining the system**

The powers and features of ombudsmen vary significantly and problematically. This includes:

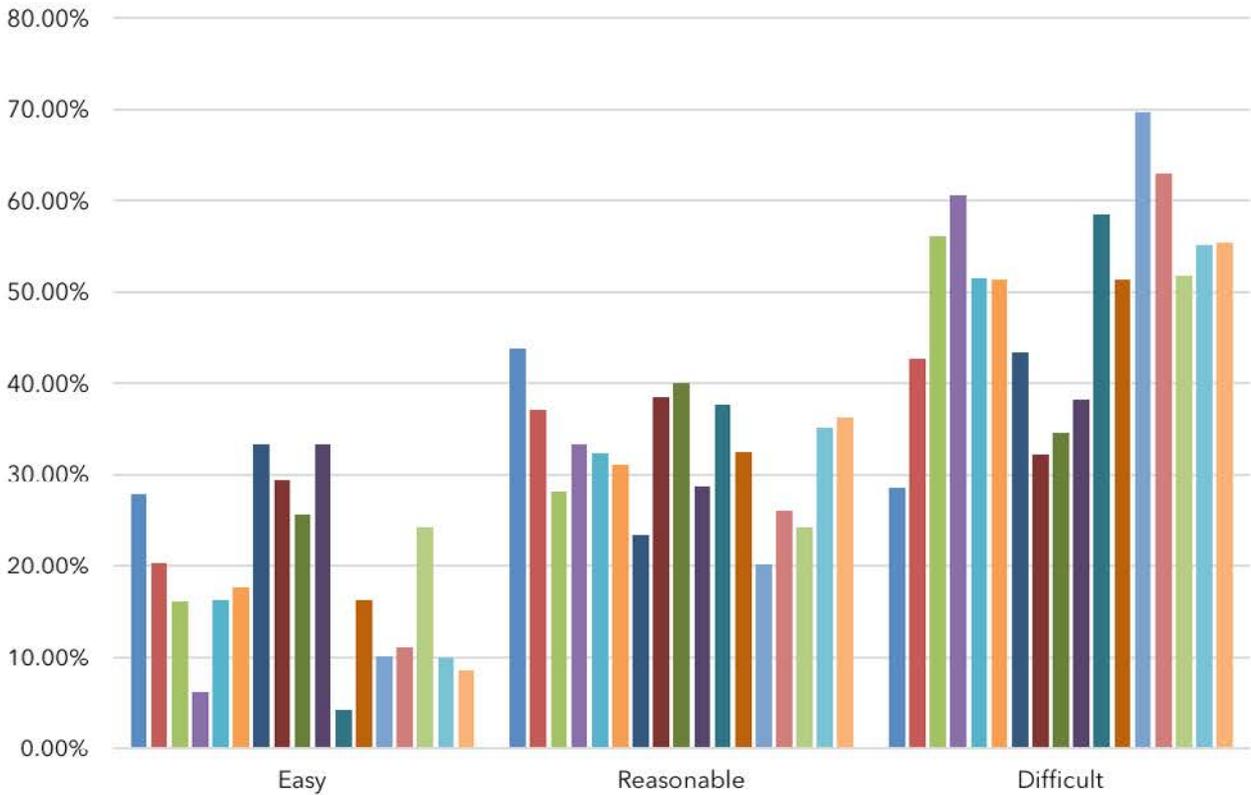
- whether membership is compulsory
- whether firms can be forced to cooperate
- what happens if companies decide not to comply.

Many of these variations stem from whether or not the ombudsman has some form of statutory basis, or whether they are set up 'voluntarily'. These variations, along with other factors, are resulting in, at best, a mixed bag of consumer experiences of ombudsmen.

### **Complaining is often difficult**

Far too many complainants report that the process of complaining to the ombudsman is difficult. For no ombudsman surveyed did the majority of respondents say that the complaint processes were easy or reasonable.

### How would you describe the process of complaining to the ombudsman?

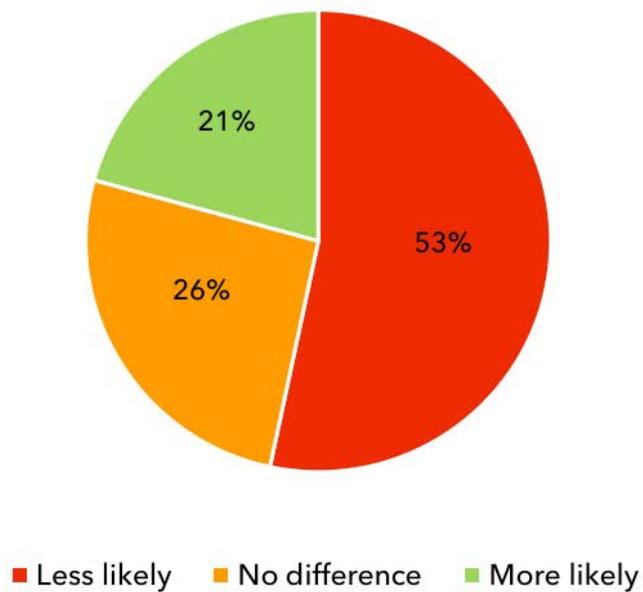


- Financial Ombudsman Service
- The Furniture Ombudsman/ DRO
- The Retail Ombudsman/ RetailADR
- Housing Ombudsman Service
- Legal Ombudsman
- Local Government & Social Care Ombudsman
- The Motor Ombudsman
- Ombudsman Services: The Energy Ombudsman
- Ombudsman Services: Communications
- Ombudsman Services: The Consumer Ombudsman
- Ombudsman Services: Property
- Ombudsman Services - any other sector
- Parliamentary and Health Service Ombudsman
- The Pensions Ombudsman
- The Property Ombudsman
- Other service known as an 'ombudsman'
- Non-ombudsman ADR provider

## Ombudsmen put people off escalating complaints again

On average, 53% of complainants said that their experiences with ombudsmen made them less likely to use one again.<sup>79</sup>

Has your experience with an ombudsman affected how likely you are to use an ombudsman again if you need to (even if it's a different one)?



<sup>79</sup>To calculate these figures the averages for all ombudsmen used in the results were given equal weighting. The result for 'Non-ombudsmen ADR provider' was not included in the calculation. Percentages have been rounded to whole numbers.

### Overall, ombudsmen give a poor service

Our survey asked ombudsmen users to describe their overall experience with the ombudsman. The table is ranked by 'Great' - but the highest score is just 30%. Even worse, the majority of almost all ombudsmen users said their experience was poor.

Overall, how would you describe your experience with the ombudsman?			
	Great	OK	Poor
The Motor Ombudsman	30%	4%	67%
The Energy Ombudsman	27%	29%	45%
Ombudsman Services: Communications	23%	26%	50%
Ombudsman Services - any other sector	23%	11%	66%
Financial Ombudsman Service	22%	24%	54%
Consumer Ombudsman	22%	6%	72%
The Property Ombudsman	21%	21%	58%
Legal Ombudsman	18%	9%	73%
Other service known as an 'ombudsman'	17%	22%	61%
Ombudsman Services: Property	17%	4%	79%
The Retail Ombudsman/ RetailADR	14%	23%	64%
The Pensions Ombudsman	12%	8%	80%
The Furniture Ombudsman/ DRO	11%	15%	74%
Non-ombudsman ADR provider	10%	21%	69%
Local Government & Social Care Ombudsman	10%	11%	79%
Parliamentary and Health Service Ombudsman	6%	12%	82%
Housing Ombudsman Service	3%	9%	88%

*Percentages are rounded to whole numbers.*

Ultimately, this 'mixed bag' collection of complaint experiences of ombudsmen devalues the term, and deters consumers from escalating their complaints in future. Consumers are once bitten, twice shy; this situation is undermining their protection.

## Finding 2: Compliance with ombudsman processes and decisions is poor

The landscape of ombudsmen is extremely confusing. It is simply too complicated for consumers to find the right ombudsman to deal with their complaint, which creates an obstruction at the beginning of the consumer's path to resolution. In some sectors there are competing ADR schemes and in other areas there is a lack of ombudsman provision, or, particularly in unregulated sectors, firms which do not sign up in the first place.

Currently, firms are required to say what the approved ADR scheme is in their sector even if they will not work with it, thus giving false hope to consumers. This is farcical and in many ways it is counter-productive.

### *What consumers say about membership of ombudsmen...*

 *"Retail Ombudsman were awful. Claimed they had jurisdiction over a clothing shop but actually didn't. #useless" @jr9502 via Twitter.*

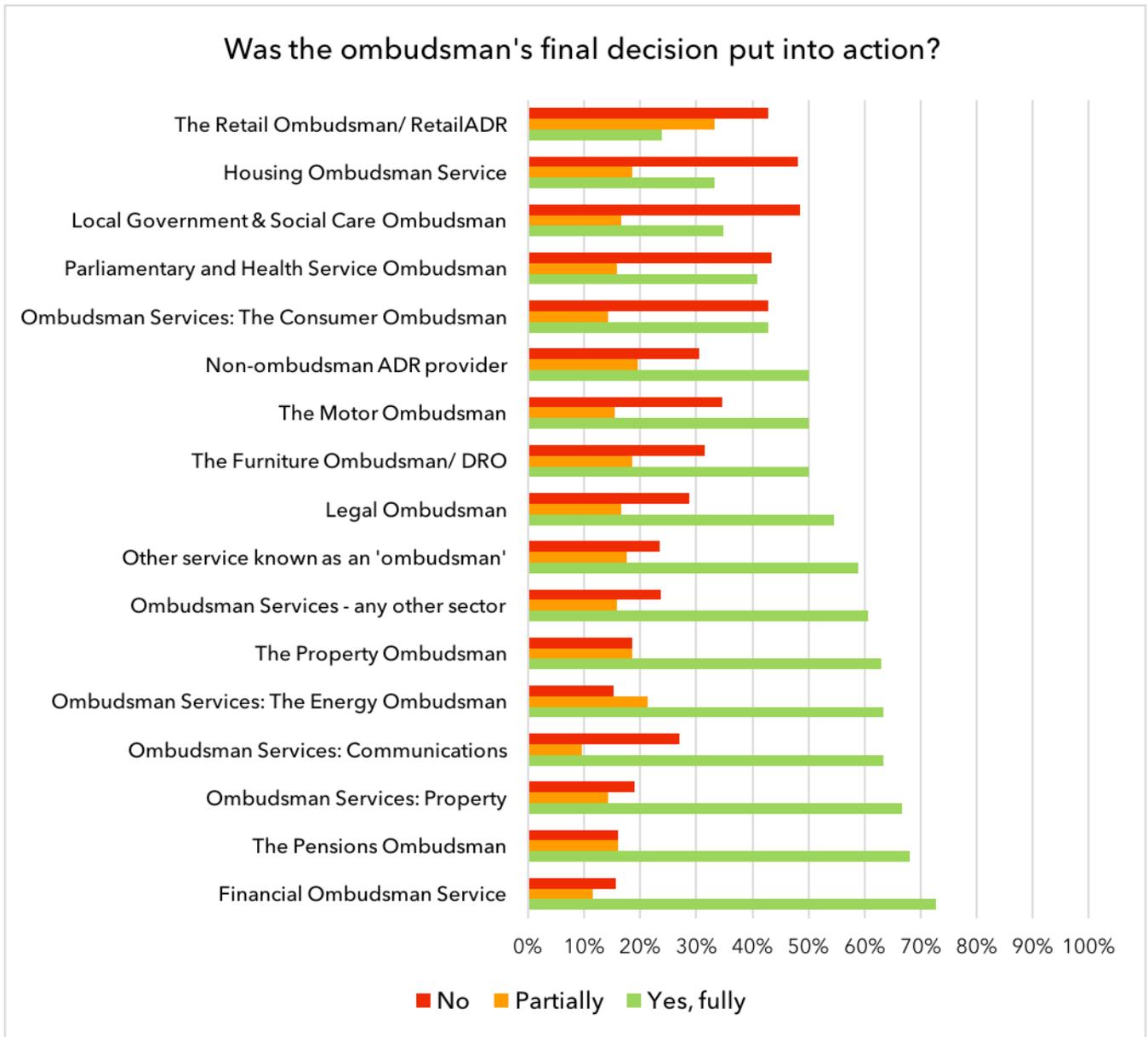
### *What consumers say about preventing future problems...*

 *"The LGO [LGSCO] appears to lack the ability or "teeth" to motivate change and help prevent recurrences of the same issue for others." via MSE survey.*

Ombudsmen say that they have high levels of compliance with their decisions, and that firms cooperate with them. Our evidence from consumers told us that this is not always the case: in many cases firms do not cooperate with ombudsmen during the complaint, and then do not comply with decisions.<sup>80</sup>

The top three performing ombudsmen on the question of whether the final decision was put into action were: the Financial Ombudsman Service; the Pensions Ombudsman; and Ombudsman Services: Property.

<sup>80</sup> Consumer responses did suggest that cooperation and compliance with decisions varies significantly between ombudsmen.



**What consumers say about compliance with the process**

“... Submitted a complaint a year ago, [the] Trust said they would answer my questions, but haven't, despite emailing to get a response with no reply from them. I contacted the Ombudsman who said they can't do anything until the Trust give a reply and they can't pressure them to reply, even though it has been that length of time. I was told it was my complaint therefore I would have to do the chasing behind the Trust for a reply, which is pretty unfair. How many years will it take to get an answer?” MSE survey response about the Parliamentary and Health Service Ombudsman.

 “[The Retail Ombudsman] couldn’t proceed with my complaint until I received confirmation from the retailer that they’d made their final decision. The retailer would not put this in writing, stalling my complaint and making it impossible for me to take it further.”  
via MSE survey.

### **What consumers say about compliance with the decision**

 “The Energy Ombudsman were helpful and ruled in my favour. [The energy company] have never completed the actions and still owe me money. The ombudsman have not been successful in following this up and I have given up contacting the Ombudsman and [the energy company]. My complaint started Feb 2016!” via MSE survey.

 “Even though he ruled in our favour, we still were unable to get the money we were owed.”  
MSE survey response about the Financial Ombudsman Service.

### Finding 3: Consumers perceive bias and unfairness

#### Ombudsmen seem biased (towards the other party)

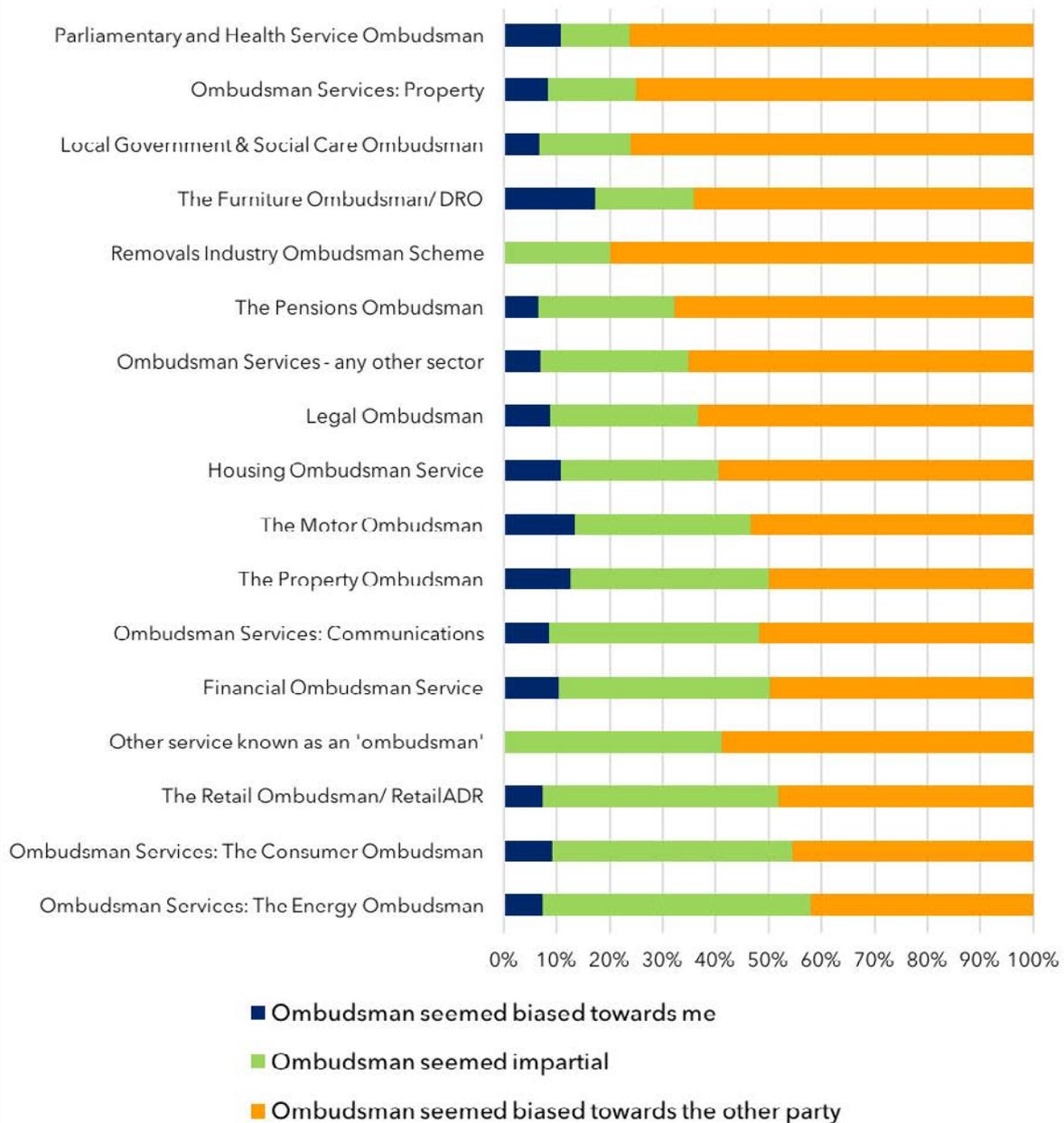
Ombudsmen should deal with complaints impartially, but in our survey of ombudsmen users, on average, 60% said that the ombudsman seemed biased towards the other party.<sup>81</sup>

How would you describe the ombudsman's handling of your complaint?	
Ombudsman seemed biased towards me	8%
Ombudsman seemed impartial	31%
Ombudsman seemed biased towards the other party	60%

And for all but one ombudsman surveyed, less than half of users said it seemed impartial. For the Energy Ombudsman, the best performer on the question, this figure was still just 50.6%.

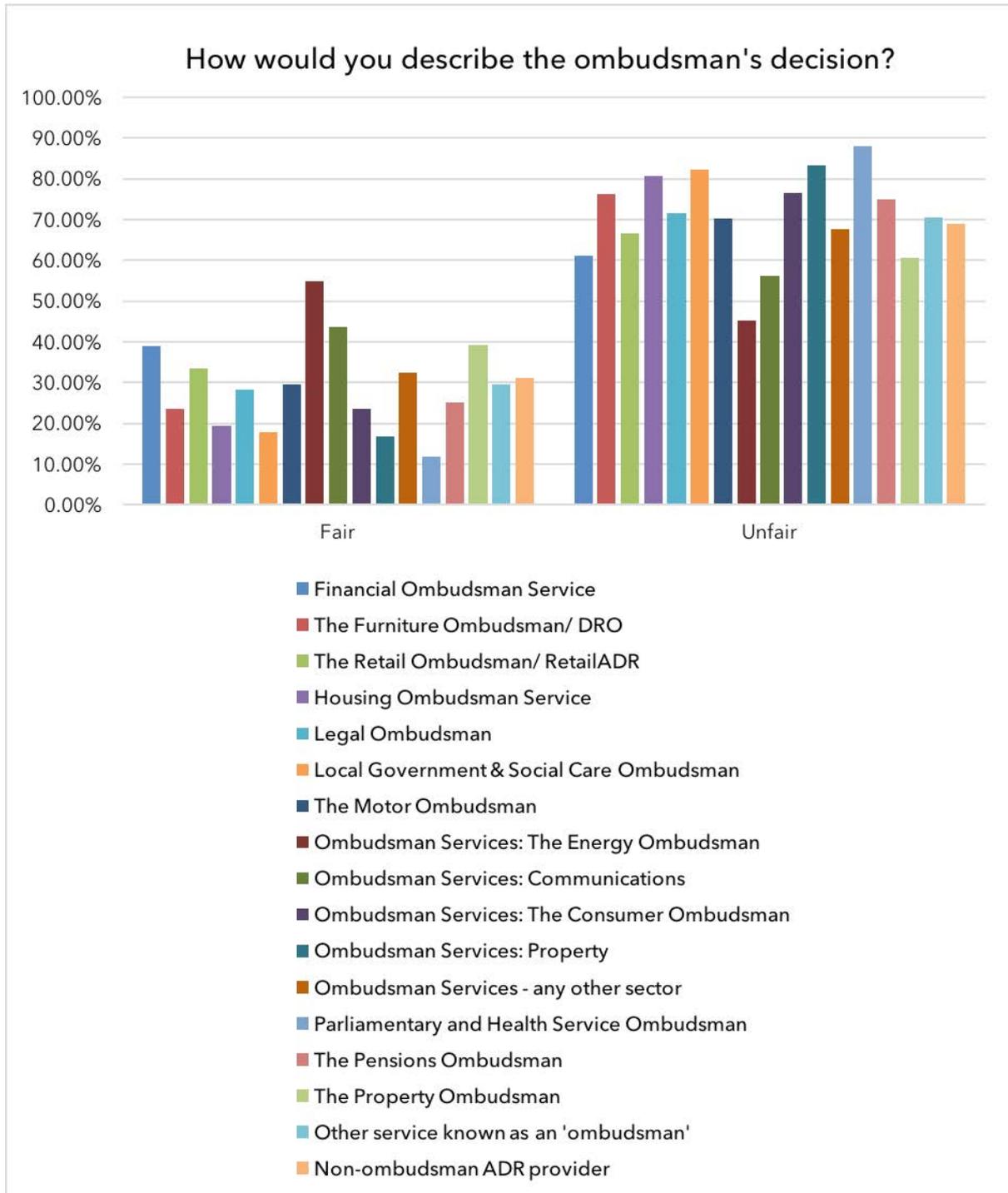
<sup>81</sup> To calculate these figures the averages for all ombudsmen used in the results were given equal weighting. The result for 'Non-Ombudsman ADR provider' was not included in the calculation. Percentages have been rounded to whole numbers which is why the total is 99%.

## How would you describe the ombudsman's handling of your complaint?



### There is a corresponding impression of unfairness

Along with bias, (un)fairness is also perceived to be an issue - with the majority of almost all ombudsmen users polled thinking that the decision was unfair. Again, only the Energy Ombudsman scored above 50%, with 54.9% saying the decision was fair.



### **What consumers say about the neutrality of ombudsmen and fairness**

-  *"I found the Local Government Ombudsman totally biased from the start in favour of Local Authority." via MSE survey.*
  
-  *"The Furniture Ombudsman was very partial towards the supplier and took [the] supplier's opinion as final and expert advice!!" via MSE survey.*
  
-  *"The Housing Ombudsman allowed the Housing Association to continue with the second stage of their complaints procedure 18 WEEKS after my response, when they should have responded within 14 days. There is clearly a bias here." via MSE survey.*
  
-  *"Energy Ombudsmen decision was fair but they didn't check the actions they imposed were carried out. I emailed to say this but email was ignored. When I phoned they said case was closed. Very unimpressed" Deborah, via MSE survey.*

### **Finding 4: Complaints are dealt with too slowly**

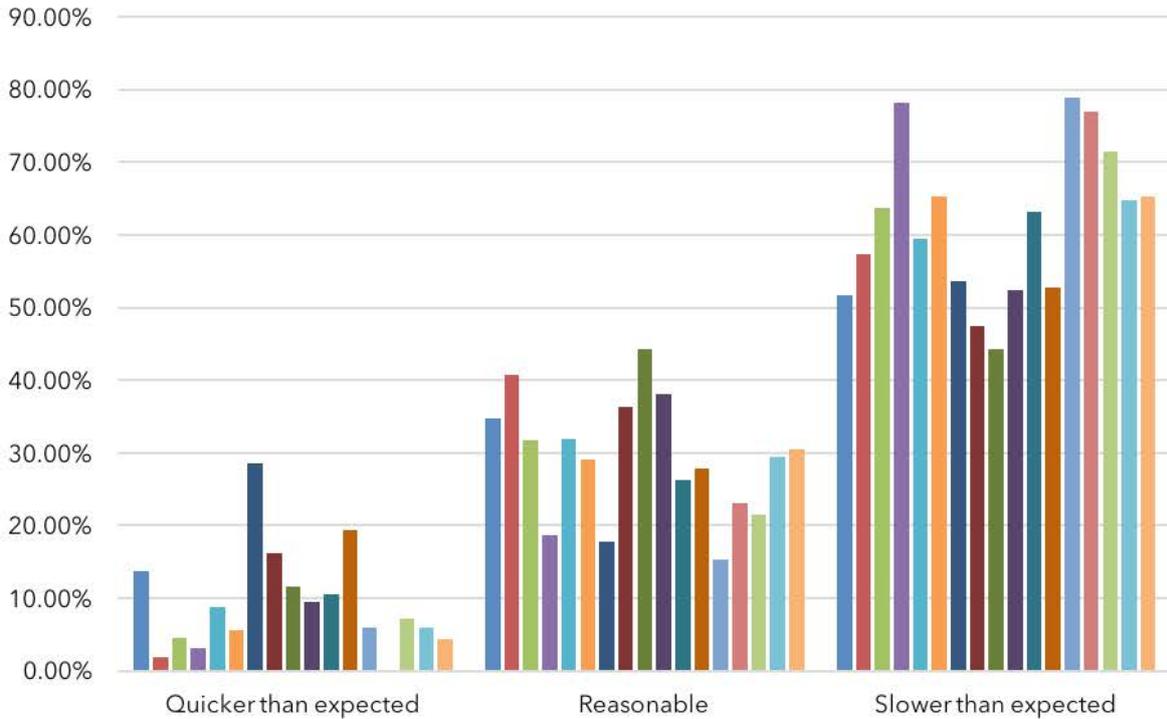
When the passage of time is worsening a problem, waiting 8 weeks to go to an ombudsman could be particularly problematic (and the wait to go to the Local Government and Social Care Ombudsman could be even longer).<sup>82</sup> This could be particularly relevant if the problem is regarding debt issues, payday loans, credit brokers or black marks on someone's credit file. In these circumstances, waiting 8 weeks could leave consumers in crisis.

In general, when the complaint reaches ombudsman level, it is not dealt with at satisfactory speed. On average, 61% of consumers in our survey said that their complaint was dealt with slower than expected; 29% said it was reasonable; and only 10% felt it was dealt with quicker than they had expected.<sup>83</sup>

<sup>82</sup>The LGSCO says a reasonable amount of time for escalating a complaint is 12 weeks.

<sup>83</sup>To calculate these figures the averages for all ombudsmen used in the results were given equal weighting. The result for 'Non-ombudsman ADR provider' was not included in the calculation. Percentages have been rounded to whole numbers.

### Taking into account the nature of your complaint, how would you describe the time taken by the ombudsman to deal with it?



- Financial Ombudsman Service
- The Furniture Ombudsman/ Dispute Resolution Ombudsman
- The Retail Ombudsman/ RetailADR
- Housing Ombudsman Service
- Legal Ombudsman
- Local Government & Social Care Ombudsman
- The Motor Ombudsman
- Ombudsman Services: The Energy Ombudsman
- Ombudsman Services: Communications
- Ombudsman Services: The Consumer Ombudsman
- Ombudsman Services: Property
- Ombudsman Services - any other sector
- Parliamentary and Health Service Ombudsman
- The Pensions Ombudsman
- The Property Ombudsman
- Other service known as an 'ombudsman'
- Non-ombudsman ADR provider

### **What consumers say about the speed of using ombudsmen**

-  *"I found the Financial Ombudsmen very slow, I had to be chasing them very often to get any updates." via MSE survey.*
-  *"Our primary issue with the Property Ombudsman (henceforth TPO) was that the process is set at the exact same timescale regardless of the issue at hand. I can entirely understand the logic behind being openly fair in allowing the exact same time for the company being taken to the Ombudsman to provide information, but our problem was actually that we presented a very cut and dried case (that was acknowledged as such by our case handler). Nonetheless, it was still 6 months between our initial approach of TPO and the actual "decision" (which was never actually delivered due to the company concerned going out of business before the decision was made).*

*"In simple cases that are open and obvious breaches of the TPO standards and/or the law (both, in our case) it should be possible for the initial case handler to flag this fact on receipt of both sets of evidence, channelling the case into a fast-track file. I can imagine that an expert would have read through the evidence in our case (conservatively, this would have taken 30-40 mins) and instantly known the outcome, seeing as the breaches of the TPO standards and contract law were flagrant and laid out clearly.*

*"As a result, all told our case should only have taken a few hours to resolve, but despite this being the case and despite it surely being clear to the case handler that this time frame was likely, the case still had to join the full queue and wait for months to even be reviewed."*  
*Edd, via MSE survey.*

# RECOMMENDATIONS FOR GOLD STANDARD OMBUDSMEN

When consumers go to an ombudsman, they have already had a problem that has not been solved. It is an ombudsman's job to sort out the dispute fairly, but for consumers to be able to rely on the ombudsman system, substantial reform is needed.

These recommendations would go towards creating a system of ombudsmen where all operate at a gold standard. When a dispute resolution service does not meet these standards, it should not operate as an 'ombudsman'.

## **Recommendation 1: All ombudsmen need a statutory basis as a foundation**

- Ombudsmen should have statutory powers to ensure that firms are cooperative with processes and compliant with decisions that have real legal teeth.

## **Recommendation 2: Oversight of ombudsmen must be boosted**

- Relevant Government Departments, the Ombudsman Association and Companies House should work to make sure that the performance of ombudsmen is consistently higher.
- Particular focus should be paid to:
  - o the ease of complaining;
  - o the speed at which complaints are processed; and
  - o the perception of fairness among those who complain to ombudsmen.
- Ineffective ombudsmen must be stripped of the right to use the word in their title.
- There should be a form of 'fit and proper' approved-persons test for people in senior roles in ombudsmen. The Department for Business, Energy and Industrial Strategy could approve such persons.

### **Recommendation 3: The 8-week rule should be shortened and needs vital exceptions**

- Unless a deadlock letter is received, consumers generally need to wait 8 weeks before using an ombudsman (but it can be more).
- If the complaint is about debt issues, payday loans, credit brokers or black marks on credit files, then waiting 8 weeks could leave consumers in crisis.
- The 8-week rule was created in a non-digital age. But in this digital age with instant credit scoring and decisions, 8 weeks is simply too long. That time should be reduced to somewhere between 2-4 weeks - as a blanket rule across all ombudsmen.
- There should also be exceptions so people who are in crisis due to an unresolved complaint can escalate to an ombudsman sooner.

### **Aspiration: Comprehensive ombudsman membership in consumer sectors**

In an ideal world, all companies in consumer sectors would be members of an ombudsman. This could be delivered through a single ombudsman for all consumer complaints, with every business serving consumers being a member; or having one ombudsman per sector, combined with a single body acting as a portal for all ombudsmen, and filtering complaints to the appropriate ombudsman behind the scenes.

However, this aspiration is far from being implemented; it would require radical, wholesale change. Until that happens, ombudsmen should be reformed to operate at a gold standard, truly distinct from other ADR providers.

# OTHER DEVELOPMENTS

- A Consumer and Markets Green Paper was included in the Queen's Speech on 21 June 2017. The topics covered are expected to include ADR.
- In May 2016, the then Department for Business, Innovation and Skills made a Call for Evidence which covered problems with the provision of ADR and whether the criteria for using the word 'Ombudsman' should be strengthened.<sup>84</sup> As of 9 October 2017 a Government response has yet to be published.
- Citizens Advice published its report on *ADR Confusion, gaps, and overlaps*<sup>85</sup> in April 2017. It found that the landscape is confusing, that it is not designed with consumers' needs in mind, and that it is hampered by a lack of good-quality data.
- A Public Services Ombudsman for England draft bill was published in the 2016-17 Parliament. Chris Skidmore MP, Minister for the Constitution wrote in the foreword to the bill that:  
*"The Ombudsman's reach will be broad, extending to Government departments and a range of other public bodies in the UK, local government, adult social care, and the NHS in England. The core role of the Ombudsman will continue to be the investigation of complaints where a public body has not acted properly or fairly or has provided a poor service. We will also give the Ombudsman a wider and more explicit role in championing improvements in complaints handling and promoting good practice."*<sup>86</sup>
- Ofcom is required to keep under review its approval of ADR schemes. In March 2017 it consulted<sup>87</sup> to ask for stakeholders' comments about the operation of Ombudsman Services and CISAS. An Ofcom response statement has yet to be published as of 9 October 2017.
- In September 2017, Ofcom published a Review of the *General Conditions of Entitlement* statement and consultation, including for *ADR Complaints Handling and Access to ADR*.<sup>88</sup>

<sup>84</sup> <https://www.gov.uk/government/consultations/improving-the-consumer-landscape-and-quicker-switching-call-for-evidence> Accessed 9/10/17.

<sup>85</sup> <https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/consumer-policy-research/consumer-policy-research/confusion-gaps-and-overlaps/> Accessed 9/10/17.

<sup>86</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/575921/draft\\_public\\_service\\_ombudsman\\_bill\\_web\\_version\\_december\\_2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/575921/draft_public_service_ombudsman_bill_web_version_december_2016.pdf) Accessed 9/10/17.

<sup>87</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/adr-review-17> Accessed 9/10/17.

<sup>88</sup> See Chapter 11, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/106397/Statement-and-Consultation-Review-of-the-General-Conditions-of-Entitlement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/106397/Statement-and-Consultation-Review-of-the-General-Conditions-of-Entitlement.pdf) Accessed 9/10/17.

# ANNEX - EXPLANATORY NOTES ON COMPARATIVE ANALYSIS TABLE

These notes should be read in conjunction with the comparative analysis table of ombudsmen commonly used by consumers on page 32.

While most ombudsmen say their rules are binding, the table has been assessed and analysed based on what is most likely to happen in situations of non-compliance, as well as the likely deterrent on firms. Decisions of the Financial, Legal and Pensions Ombudsmen are directly enforceable in court by statute as if they were a judgment or order of the court. This compares to other ombudsmen whose decisions cannot be directly enforced in court, and where there is no sector regulator to push for compliance, or deter non-compliance in the first place. For some ombudsmen, the best they appear able to do in practical terms could be to expel the firm from membership of the ombudsman, and publicise this.

Decisions of the **Financial Ombudsman Service** are equivalent to the order of a court in the UK in terms of section 229 of the Financial Services and Markets Act 2000 (as amended) and in particular paragraph 16 of Schedule 17 of the Act. Its members are also regulated by the FCA, which is a powerful combination.

Decisions of the **Pensions Ombudsman** are directly enforceable in the UK courts by virtue of section 151 of the Pensions Schemes Act 1993.

The **Legal Ombudsman** has explained that its decisions can be enforced in court both by the Ombudsman itself and also by consumers.

Its decisions are directly enforceable in English courts by virtue of section 141 of the Legal Services Act 2007. As noted in Chapter 1, the Legal Ombudsman began the application process to become an approved ADR entity, but following consultation, later withdrew. It is therefore not an approved ADR entity.

The Law Society has issued guidance<sup>89</sup> which notes that following the “unexpected withdrawal” of the Legal Ombudsman’s application to become a certified ADR approved body, solicitors must still comply with the government regulations.

<sup>89</sup> <http://www.lawsociety.org.uk/support-services/advice/articles/changes-to-client-care-information-and-leo-time-limit/> Accessed 26/9/17.

This means solicitors have to provide clients with information on the Legal Ombudsman as the statutory complaints scheme for solicitors and comply with the ADR regulations. That is, tell the client that they cannot settle the complaint; provide details of a relevant, approved ADR entity (not the Legal Ombudsman); and tell the client whether they intend to use it.

**LGSCO** says its recommendations to make councils or care providers put things right are not legally binding. It does not have power to enforce them through the courts. If not complied with, LGSCO says it will ensure they make public notices to inform people of the reason and hold them to account through publicising their actions. It also said that its maladministration findings are binding and can only be challenged through Judicial Review in the courts.

The **Housing Ombudsman** has mandatory membership for all bodies registered with the Homes and Communities Agency. This is most housing associations, as well as local housing authorities with stock (even if managed by an Arms-Length Management Organisation). It can include for-profit organisations as well as non-profit.<sup>90</sup> Landlords and agents from the private rented sector can sign up to the scheme voluntarily.<sup>91</sup> The Housing Ombudsman has confirmed its "determinations cannot be enforced in court."

**Parliamentary and Health Service Ombudsman** said its "decisions are not enforceable in court."

**The Furniture Ombudsman** said "it may be possible for a consumer to enforce a decision".

This ombudsman said consumers may take non-compliance matters to the civil Courts to seek enforcement under the Consumer Protection from Unfair Trading Regulations 2008. However, it added that it would ultimately be for the judge to decide eligibility and remedy, although "it is likely that a judge would rely on the findings of the Ombudsman". The Furniture Ombudsman added that it would support a consumer with enforcement action, and that the Courts have upheld its decisions.

<sup>90</sup> <http://www.housing-ombudsman.org.uk/about-hos/membership/mandatory-membership> Accessed 17/10/17.

<sup>91</sup> <http://www.housing-ombudsman.org.uk/about-hos/membership/voluntary-membership/> Accessed 17/10/17.

The Furniture Ombudsman also said that non-compliance could be breach of contract, as members of its scheme have entered into a contract, and that a remedy could be sought in the Courts and a possible injunction, but “as a matter of law, it is not possible for a third party to seek to enforce a breach of contract if they themselves are not a party to it...”<sup>92</sup>

**The Property Ombudsman** noted that agents must be a member of a scheme. If they do not comply with a scheme decision, they could be expelled and could then be trading illegally. It added that TPO case reviews have been used as evidence in court.<sup>93</sup>

**RetailADR** said if a member did not comply with a decision and the consumer took that member to court, the court could take RetailADR’s determination into account and the consumer could run an estoppel argument on the basis that the trader had agreed to be bound by the ADR decision. It also said that RetailADR could take legal action to enforce the decision due to the breach of contract.<sup>94</sup>

**The Motor Ombudsman** stated, clearly: “The court is a higher authority than an ombudsman, and therefore they still have the power to make their own ruling.”<sup>95</sup>

**The Removals Ombudsman** said that its rulings are not enforceable in court, but judges may give them some consideration.<sup>96</sup>

The **Ombudsman Association** website states that, for voluntary ombudsmen, “Typically, the rules about jurisdiction/process/powers are set in the constitution and rules of the ombudsman scheme, possibly supplemented by an industry code of practice.”<sup>97</sup>

**Ombudsman Services** has told MoneySavingExpert that in **Energy, Communications** and also for the **Consumer Ombudsman** (a voluntary scheme), the consumer can enforce its decisions in court because member firms sign a deed poll with Ombudsman Service, and this contract confers potential rights to consumers which can be enforced in English courts in terms of the Contracts (Rights of Third Parties) Act 1999. Ombudsman Services also said this “specifically states that

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<sup>92</sup> Email communication 11/10/17.

<sup>93</sup> Email communication 5/10/17.

<sup>94</sup> Email communication 5/10/17.

<sup>95</sup> Email communication 5/10/17.

<sup>96</sup> Email communication 5/10/17.

<sup>97</sup> <http://www.ombudsmanassociation.org/about-methods-of-establishment.php> Accessed 18/10/17.

these rights to enforcement cover any financial award made and/or any other remedy [...] in the ombudsman's decision."<sup>98</sup>

Ombudsman Services also said that, technically, it can enforce its own decisions in the courts - but it has never done this (preferring to use other routes such as escalating the issue to the regulator or trade body, or using its own expulsion process which "would usually result in the remedy being implemented").

In addition, Ombudsman Services noted its Remedy Implementation Policy<sup>99</sup> which is specific to energy. Under this policy, companies that do not implement the remedy are charged additional fees. After 57 days, Ombudsman Services tells the consumer that they can open a new complaint to address the failed implementation of the original remedy. Ombudsman Services will also tell the consumer that the Deed Poll between Ombudsman Services and the energy company entitles the consumer "to pursue the energy company through court". The policy also states that Ombudsman Services offers financial support to do this, and may also notify the regulator.

However, in energy, Ombudsman Services confirmed that "... the legislation does not specifically state that suppliers must comply with the redress scheme's decisions; rather that Ofgem must ensure that the scheme's own arrangements ensure its decisions can be enforced."<sup>100</sup>

Similarly, Ombudsman Services said that "... for the Consumer Ombudsman, the enforceability of decisions must come from the scheme's own arrangements with participating companies (in this case the Deed Poll)."<sup>101</sup> What the consumer is relying on here is the Deed Poll contract between Ombudsman Services and the business.

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<sup>98</sup> Email communication 13/10/17.

<sup>99</sup> <https://www.ombudsman-services.org/docs/default-source/website-content/energy-remedy-implementation-policy.pdf?sfvrsn=14> Accessed 14/10/17.

<sup>100</sup> Email communication 17/10/17.

<sup>101</sup> Email communication 17/10/17.

Ofcom's approved ADR schemes include **Ombudsman Services: Communications**. Ofcom said that if a provider does not comply, the customer should refer to the ADR scheme, which will seek to resolve it. If, following this, the company still does not comply, the ADR scheme can refer this to Ofcom, who can take action against it. Alternatively, under the Communications Act 2003, consumers can ask for Ofcom's permission to take the matter to court themselves - to force the provider to comply with the ADR scheme's decision.<sup>102</sup>

As Ombudsman Services explained, "the Communications Act 2003 ('the 2003 Act') confers powers upon Ofcom to set 'general conditions' that all communications providers must abide by when providing services. General Condition 14 pertains to ADR and places specific obligations upon all communications providers to comply with a 'dispute procedure'... Therefore, if the company fails to implement Ombudsman Services' decision it would be in breach of this Condition (which is underpinned by the 2003 Act)."<sup>103</sup>

### **In summary**

For the purposes of the table on page 32, we have concluded that decisions of the Financial Ombudsman Service, Legal Ombudsman and Pensions Ombudsman are directly enforceable in court i.e. the Ombudsman's decision is the equivalent of a judgement or order of the court (simply to be enforced).

In contrast, decisions of Ombudsman Services are enforceable in terms of the Deed Poll contract, which can confer rights to third party consumers in terms of the Contracts (Rights of Third Parties) Act 1999. They are not directly enforceable or equivalent to a court order, in stark contrast to the position for the Financial Ombudsman Service, Legal Ombudsman and Pensions Ombudsman. The complainant needs to raise their case and prove their breach, and these can be defended of course.

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<sup>102</sup> Email communication 9/10/17.

<sup>103</sup> Email communication 17/10/17.

For clarity, a complaint decision of Ombudsman Services: Communications is not the equivalent of a judgement or order of the court, but can be enforced like the Deed Poll and third party contract rights. There is also the ability to enforce it in terms of Section 104 of the Communications Act 2003, which states a consumer has to get consent from Ofcom to raise court enforcement proceedings, but that the breach of the ADR condition only gives them a right to bring a court action claiming their loss - they would need to prove that loss in court, and section 104(3) makes provision for a defence.

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