

Extract referring to the John Calland case from:

“OMBUDSMEN WHO ARE AN AFFRONT TO THE RULE OF LAW”

Talk to the Professional Negligence Bar Association by Anthony Speaight QC

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

- a. By summer 2005 there was in existence what a FOS official described as a "long standing agreement" between FOS and FSA under which FOS would solicit complaints from investors, whose identities were suggested to FOS by FSA, but who had not previously intimated any complaint against a firm.
- b. The arrangement between FOS and FSA was sufficiently well established for there to be a standard form of letter for use by FOS in soliciting complaints.
- c. FOS's readiness to comply with FSA's wishes was such that FOS invited the submission of FOS Complaint Forms from investors who had never complained to a firm, even though FOS was well aware that its own rule DISP 2.3.1 provided that FOS could not entertain a complaint unless and until the investor had first complained to the firm, and either the firm had given a final response or 8 weeks had elapsed.
- d. The standard practice of FOS, when FSA identified to it an investor from whom FSA wanted a complaint to be solicited, was for FOS to send the investor a partly completed FOS Complaint Form, on which FOS had typed entries not only for such formal matters as name and address but also for details of the complaint which the investor was making. This was done even in cases in which the investor had given no intimation of the nature of any complaint it wanted to make. Furthermore the language used by FOS in pleading the complaint could be in terms which would mean little to a layman: an example of such FOS language was "FSA D firm methodology pension review".
- e. In a decision dated 6 December 2006 Mr Michael Barnes CBE, the FOS Independent Assessor, upheld Mr Calland's complaint, and stated that the above-mentioned complaints against Mr Calland's firm "were in effect solicited".
- f. Despite Mr Barnes' decision, and despite having been made aware that FOS staff were operating this arrangement with FSA, neither the Chairman of the FOS Board nor the FOS Chief Ombudsman have expressed any disapproval or reservation about it.
- g. FSA considers that information about communications between FSA and FOS relating to specific cases, namely those considered "difficult", should be withheld even from the firm in question. Not only would the withholding of any information possessed by FOS of potential relevance to a case which FOS was determining be a breach of the rules of natural justice; but the attitude of mind on the part of financial regulators revealed by this desire for secret communications evinces a lack of understanding of the requirement for genuine FOS independence.