

Judgment handed down in *R (Wills & Trust Independent Financial Planning Ltd) v Financial Ombudsman Service Ltd* [2026] EWHC 1566 (Admin)

Dan Squires K.C., sitting as a Deputy High Court Judge, has handed down judgment in *R (Wills & Trust Independent Financial Planning Ltd) v Financial Ombudsman Service Ltd* [2026] EWHC 1566 (Admin), a judicial review of a FOS decision.

[Ruth Bala](#) acted for the partially successful claimant, instructed by Damian McPhun at Edesia Law.

The claimant (“W&T”) is a financial planning firm. In July 2018 W&T had issued their investors, the Booths, with a letter announcing the establishment of a discretionary management firm (“Trust DFM”) Trust DFM was stated to be “wholly owned by the same staff shareholders who own [W&T]”, a statement which was true at the time, but later became false. Following W&T’s recommendation, the Booths appointed Trust DFM with effect from 1 September 2018. On 8 October 2023, the Booths terminated their relationship with W&T and moved to another financial adviser, Strategic Solutions Financial Planners (“Strategic Solutions”).

The Ombudsman found that the July 2018 letter contained a misrepresentation and an unsuitable recommendation. He found that if the Booths had been informed of the true position, they would have moved their Portfolio elsewhere in September 2018, rather than in October 2023. He awarded redress to be calculated as the difference between the ‘actual value’ of the Booths’ Portfolio at the date of payment (the “Settlement Date”) and its ‘fair value’ (the value the Portfolio would have had at the Settlement Date if invested on 1 September 2018 in funds that performed in line with a benchmark index).

Grounds 1-4 were dismissed, but W&T succeeded on Ground 5, which concerned quantum.

A consequence of the Ombudsman’s approach to redress was that the amount awarded would depend on how the Booths’ Portfolio performed *after* they had moved their investments to Strategic Solutions in October 2023. W&T argued that it was irrational to require it to pay compensation in a way which depended on post-October 2023 decisions over which it had no control and which were unrelated to the failures found by the Ombudsman.

FSMA s229(2) and DISP 3.7.2 R permitted the Ombudsman to award such amount as he “considers” fair compensation for loss or damage; whether or not a Court would award such compensation. In *R (Options UK Personal Pensions LLP) v FOS* [2024] EWCA Civ 541 at §75, Asplin LJ had held that what constitutes “fair” compensation for loss and damage pursuant to 229(2) FSMA is “not circumscribed in any way”. Nonetheless, the Ombudsman’s discretion on redress is not unlimited; Dan Squires K.C emphasised the use of the word “compensation” within s229(2) (§101).

FOS defended its method on the basis that the present portfolio would never have existed absent the unsuitable communication in July 2018. It said that its method was necessary to reflect the “compounding” of the Booths’ losses. The Court rejected this: such losses could be reflected by calculating the Booths’ loss as at October 2023, then awarding benchmark returns on that sum, or compensatory interest (§116).

Irrationality has two related, but distinct aspects, *R (The Law Society of England and Wales) v The Lord Chancellor* [2018] EWHC 2094 (Admin) followed. The first relates to the outcome of the decision: whether it falls outside the range of decisions open to a reasonable Ombudsman. The second relates to the process of reasoning and whether there is a logical or methodological flaw in that process (§18(vi)). Here, the Ombudsman’s decision was irrational in the second sense (§118).

Ground 1, which was dismissed, was a rationality challenge to the Ombudsman’s interpretation of the scope of the Booths’ complaint. It failed because there were references to a lack of “active management” by W&T in correspondence accompanying the complaint form. However, the Court did observe that the Ombudsman lacks a general power to investigate wrongdoing or poor practices where those were not referred by an eligible complainant. The Ombudsman could not lawfully receive an expression of dissatisfaction by a complainant about a financial service provider doing X, then in the course of its investigation decide to investigate the financial service provider for doing Y, being some other poor practice identified by the Ombudsman but not raised in the complaint (§51).

The Judge also considered the application in the context of a FOS judicial review of section 31(2A) of the Senior Courts Act 1981 (mandating the High Court to refuse relief upon judicial review if it appears to the Court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred). *Obiter*, the Judge did not consider that the “outcome” can be regarded as simply FOS’s upholding of the complaint. The basis on which the complaint is upheld is also an element of the “outcome” (§121).

Judgment available here: [W T v FOS](#).