

# Is it time for a new financial services tribunal?

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A new article published in *Capital Markets Law Journal* argues that consumers and banks could benefit from the creation of a quick and inexpensive financial services tribunal, modeled on the Employment Tribunals, to resolve substantial disputes between banks and small and medium sized companies.

The paper argues currently the English High Court is very successful at resolving wholesale financial markets disputes. The Financial Ombudsman's Service is good at resolving consumer's low-value financial disputes. But there is a large gap in the mid-market area, where disputes between financial institution and small and medium enterprises fall.

The paper argues that the gap could be filled by a specialist [financial services](#) tribunal, modeled on the Employment Tribunals. At low cost these platforms have successfully leveraged the high-value English Bench and Bar to supply quality dispute resolution and law creation to the markets they serve

The article maintains that financial institutions in England could make money through this reform because international demand for credit supplied from England would increase due to increased business from mainland Europe (dispute resolution is cheaper in the rest of Europe and businesses may currently be avoiding English financial services due to high dispute resolution cost). The paper also maintains that the financial services industry would save money by increased efficiency that will

come from the tribunal providing definitive interpretations of regulations that regulators do not currently produce. Definitive rulings of the tribunal on the meaning of regulations could reduce cost of compliance and remove the barrier such costs create to innovation and growth.

Small and medium sized enterprises have been vocal in their push for a fairer means of redress for consumers from banks for alleged violations regarding the selling of complex financial products. The paper appeals directly to the banks to support a specialist, quick and inexpensive financial services tribunal to resolve substantial disputes between banks and their customers, modeled on the Employment Tribunals.

Employment Tribunals, the public bodies in England and Wales and Scotland with jurisdiction to hear many kinds of disputes between employers and employees, were created due the Industrial Training Act 1964. The paper argues that those tribunals, the first forum where women could bring sex discrimination claims, moved employment culture on from common law notions of 'master and servant' - still the language of labor markets in the 1960s - to the culture we know today; Financial Services Tribunals could have the same positive effect on banking culture.

Parliament is scheduled to debate these proposals on January 18.

"The financial services industry is not so foolish to think that everyone is going to love it all the time," said the paper's author, Richard Samuel. "But thankfully it is sensitive to the danger of alienating the support of small and medium sized businesses, a key political constituency on which the policies necessary for the industry's success depend. The cost of losing trust amongst its natural support would be high indeed. Is this an element of the cost-benefit analysis that the industry should perform when considering the merits of offering small businesses access to

justice through a common law tribunal? It is for the industry to decide."

**More information:** Richard Samuel, The FCA has now listened: Banks, it is in your interests to listen too, *Capital Markets Law Journal* (2017). [DOI: 10.1093/cmlj/kmx043](https://doi.org/10.1093/cmlj/kmx043)

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