R (on the application of Chancery (UK) LLP) v FOS[1]: Tax Mitigation Schemes and FOS Jurisdiction

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1. Within the backdrop of considerable political and public opposition to schemes which are designed wholly or predominantly for the avoidance or mitigation of tax, HMRC has, in recent years, substantially increased its enforcement activity in relation to these schemes. There have been a number of high profile HMRC challenges to schemes whose participants have included, amongst others, celebrities and athletes who would (presumably) have preferred that their names were not being associated with aggressive tax mitigation. The recent introduction of the follower notice and accelerated payment regime[2] will no doubt facilitate HMRC's enforcement activities in this area.

2. Where HMRC successfully challenges the validity of a scheme, scheme participants are often required to return the challenged tax benefit, together with not insignificant statutory interest (and potentially penalties), within a short period of time, or risk the application of further statutory interest and penalties. As most of the schemes are substantially leveraged, not only will the participants lose their anticipated tax benefit, but direct loss is also likely to emanate from their borrowing commitments. In addition to such loss, it is axiomatic that the participants could have utilised the money that they contributed to the failed scheme to produce a fiscally more advantageous result and that the full loss sustained would need to account for such loss.

3. Where a scheme has been successfully challenged, in whole or in part, and a participant has sustained loss, there appear to be three (self-evident) options available to scheme participants:

   (a) Accept the loss and lick your wounds;

   (b) Issue a claim, individually or collectively with others, against the professional adviser(s) that recommended the scheme and perhaps even the scheme promoters; and

   (c) Issue a complaint to the professional adviser(s) that recommended the scheme and thereafter, if unsatisfied with the adviser's response (which is, invariably, almost

[1] [2015] EWHC 407 (Admin).
[2] Part 4 of the Finance Act 2014.

always the case), through the complaint and compensation channels administered by the Financial Ombudsman Service ("**FOS**")[3].

4. This paper is chiefly concerned with the latter option, although some of the issues which arise in *Chancery* touch upon subject-matter which will also be relevant to civil proceedings. Of those who choose to pursue either form of redress, it is fair to say that a large number are opting for the FOS. Whether as a result of its relative anonymity or its non-risk (and non-cost) jurisdiction (or, more likely, a combination thereof), the motivation for choosing to pursue redress for failed tax mitigation schemes within the FOS is sufficiently strong that complainants are often willing to compromise alleged loss which vastly exceeds the £150,000 which can be awarded by the FOS[4]. This was, indeed, the position of the complainant in *Chancery*.

5. Where a tax mitigation scheme has been successfully challenged and a complainant, like Sir Ian Robinson in *Chancery*, decides to pursue a complaint within the consumer-friendly jurisdiction of the FOS, for obvious reasons, it is preferable for the respondent to kick the complaint into touch on jurisdictional grounds, rather than to leave the matter to be determined by the FOS on a substantive/merits basis. It is well known that the FOS operates limitation rules which are similar to those employed in civil proceedings[5]. Where limitation can properly be raised, this should be the first port of call for respondents. To date, this has been the area where respondents have had the greatest success.

6. Where limitation cannot assist, other jurisdictional arguments are often employed. This was precisely what occurred in *Chancery*. Up until *Chancery*, no reported decision had ever considered the interaction of tax mitigation schemes and the FOS' wider jurisdiction. The implications of the decision are potentially far-reaching, not least because some of the arguments raised by the respondent/claimant, had they been accepted, would have represented a fatal blow to the future consideration by the FOS of complaints relating to tax mitigation schemes.

7. In blunt terms, an average member of the public might find it rather unsatisfactory if they were made aware that a participant in a failed tax mitigation scheme could seek compensatory refuge within the protective umbrella of the FOS. This is especially so when one considers that almost all of the participants in tax mitigation schemes are, as one would expect, high net worth

[3] A great number of these complaints are being issued by claims management companies on behalf of individual complainants.
[4] It is established law that a complainant who accepts an award of the FOS cannot subsequently pursue a claim for the balance of the alleged loss (*Clark v In Focus Asset Management* [2014] EWCA Civ 118, overruling Cranston J at first instance and supporting, although not for the same reasons, the approach adopted by HHJ Pelling QC in *Andrews v SBJ Benefit Consultants* [2011] PNLR 577).
[5] DISP 2.8.1R and 2.8.2R.

individuals who could have been operating under little uncertainty about what they were trying to achieve. Tax mitigation was either the primary or only driver for participating in the scheme.

8. On the one hand, the Government, and in turn HMRC, are challenging such schemes, and on the other, the FOS to date has shown little appetite for relinquishing its jurisdiction full-stop in relation to such schemes. In doing so, it could be argued that the FOS is indirectly encouraging the deployment of tax mitigation schemes. It is these arguments which, in the main, inspired the jurisdictional challenges in *Chancery*.

The Facts

9. The claimant was a firm of chartered accountants. It had advised Sir Ian Robinson (the interested party in the proceedings[6]) to participate in a film finance scheme known as a Prescience Media 1 LLP ("**Prescience**"). In addition to Prescience, the interested party had participated in five other film finance schemes. The interested party made a total capital contribution of approximately £2.3m, made up of a combination of personal and loan capital. Prescience operated in a similar way to the numerous other film finance schemes which have been created and marketed. In his judgment, Ouseley J described the key features of such a scheme in the following way:

Tax incentives for the production of films were contained in the Finance Acts of 1992 and 1997. One feature of the relief enabled expenditure on production of a film to be written off upon its completion, which produced losses in the early years of its life. This characteristic of losses in the early years of trading enabled tax payers to mitigate income tax, using those losses. The 2007 Income Tax Act permitted an individual to offset those losses against income in the year of the loss or in the three previous years. This form of relief was known as 'sideways relief'...This could be used to generate large refunds of tax paid such that a significant loss in year 1 of a film scheme could be carried back to cover most of the general income for the previous three years. The avoided tax would be deferred and repaid in later years...The typical film scheme involved a limited liability partnership...being set up to produce, distribute, finance and exploit the film. This LLP would be financed by individual members making a capital contribution typically consisting of 20% cash and 80% loan finance...The interest paid on the borrowing would be eligible for tax relief as well. The tax repayment in the light of those percentages would provide a tax repayment, at 40% tax rate, double the cash contribution[7].

10. The availability of 'sideways' tax relief to Prescience members was eventually challenged by HMRC, and scheme members were invited to a reach a settlement with HMRC whereby tax relief would only be permitted in respect of the cash contributions but not contributions financed

[6] An interested party who took no active part whatsoever in the proceedings.
[7] At paras 11 and 12.

by way of loan capital. As the loan capital represented the major contribution, scheme members were left with a substantial balance of unclaimed losses which could not be set against tax from other sources. The terms of the settlement were such that the envisaged tax effect of participation in Prescience was substantially eroded.

11. Through a claims management company known as Rebus Investment Solutions Ltd ("**Rebus**")[8], the interested party issued a complaint with Chancery alleging, amongst other things, that an investment in Prescience was unsuitable for his requirements and should never have been recommended to him. The interested party's complaint was predicated on Prescience being characterised as an unregulated collective investment scheme ("**UCIS**") despite being described, in the scheme literature and the documentation produced by the claimant, as a trading partnership. The distinction is an important one because a trading partnership falls outside of the ambit of the FOS' compulsory jurisdiction but a UCIS falls squarely within it. Unsurprisingly, therefore, the claimant responded to the interested party that his complaint could not be upheld because, amongst other things, Prescience was a trading partnership and not a UCIS.

12. Rebus eventually referred the interested party's complaint to the FOS. In its reply to the FOS, the claimant (acting through its solicitors) raised more refined jurisdictional arguments which can broadly be separated into the following three categories:

(a) The complaint effectively related to the provision of tax advice, which was not a matter over which the FOS could exercise its compulsory jurisdiction;

(b) In any event, Prescience was not a UCIS because the participants (and, in particular, the interested party) had day-to-day control over the management of the property. As s.235(2) of the Financial Services and Markets Act 2000 ("**FSMA**") stipulates that a CIS can only subsist where the arrangements are such that the participants do not have day-to-day control over the management of the scheme property (whether or not they have the right to be consulted or to give directions), if the claimant was correct on the day-to-day control issue, then this would have been sufficient to dispose of the complaint; and

(c) The FOS should exercise its discretion not to consider the complaint and allow the interested party to pursue his complaint through civil litigation (if so inclined) because: (i) The alleged loss was well in excess of the FOS' compensation limit of £150,000; (ii) The claimant wanted the opportunity to challenge the interested party's evidence

[8] One of a number of complaints management companies that have targeted, and offered their services (which typically involves little more than the provision of a pro forma letter of complaint and liaising with the respondent to the complaint and the FOS), to the participants of failed tax mitigation schemes.

through cross-examination and expert evidence; and (iii) The interested party had the means to pursue an action through the courts rather than the FOS.

13. The adjudicator tasked with considering the complaint agreed with the claimant's arguments and concluded that the FOS could not consider the complaint. As was his right, the interested party referred the matter further up to an Ombudsman. The Ombudsman issued a provisional decision on jurisdiction which concluded that, contrary to the views expressed by the adjudicator, the FOS did have jurisdiction. His position was reaffirmed in his final decision on jurisdiction.

14. The Ombudsman's position on jurisdiction can be summarised as follows:

(a) Day-to-day control was a question of fact to be determined on the basis of the reality of how things operated and not just on the scheme documents alone. There was a distinction to be drawn between activity and day-to-day control. Even though the interested party had performed over 300 hours of work in connection with the business of Prescience[9], such commitment went to activity and not day-to-day control (or effective control). More particularly, the Ombudsman was of the view that Prescience (and, as a consequence, most if not all film schemes) were designed in a such a way that any activity requirements were principally aimed at overcoming HMRC anti-avoidance measures. The Ombudsman was of the view that effective control was in the hands of the film industry professionals appointed by Prescience. In these circumstances, there was no day-to-day control and, therefore, Prescience was a UCIS and the interested party's complaint fell within its compulsory jurisdiction;

(b) As to the question of tax advice and jurisdiction, the Ombudsman ruled: "*Tax advice as such is not a regulated activity and so does not come within the scope of our compulsory jurisdiction. That is not however the end of the matter. Tax advice and investment advice are by no means mutually exclusive...An investment arrangement may qualify for special tax treatment and so may be considered and recommended for tax reasons. If however the investment is a type of investment that is a specified investment under [FSMA], the advice [will] be regulated investment advice*". If Prescience was a UCIS, investment advice was given (even if such advice was given in association with tax advice); and

(c) As to the last-ditch arguments that the FOS should exercise its discretion to stand itself down and let the interested party pursue his complaint via civil litigation, the

[9] Which included analysis of film projects, reading scripts, reviewing the key personnel involved and hours on learning about the film industry as a whole. The interested party also visited locations, film sets and screening of films.

Ombudsman: (i) Was not prepared to prevent the interested party from pursuing his complaint simply because the value of his alleged loss vastly exceeded the limit of compensation that could be awarded by the FOS; and (ii) Did not feel that the issue of day-to-day control involved factual issues which could only be determined fairly in the more formal court process.

15. The claimant was not prepared to wait for the FOS to reach a substantive decision on the merits of the interested party's complaint, and decided to judicially review the FOS' final decision on jurisdiction. Such a pre-emptive challenge underscores not only the concern clearly held by the claimant about the consumer-friendly nature of FOS decision-making, but also the scale of the complaints faced by the claimant[10]. The jurisdictional arguments raised in *Chancery* were of wider relevance to the other complaints made against the claimant.

The Decision

Can the FOS determine the limits of its own jurisdiction?

16. There was substantial argument in the judicial review about the extent of the FOS' powers to determine the limits of its own jurisdiction.

17. The claimant contended, relying heavily on the decision of Wilkie J in *R (Bluefin Insurance Services Ltd) v FOS*[11], that it was not open to the FOS to determine the limits of its own jurisdiction, and that the factual and legal issues which determined whether or not a complaint fell within the FOS' compulsory jurisdiction were for the court to decide for itself, and not for the FOS to decide on the basis of a reasonable judgment, which might be wrong, let alone on the basis of what was fair and reasonable. The FOS, on the other hand, relying heavily on the decision of Sales J in *R (Bankhole) v FOS*[12], argued that this was not a case which could be properly categorised as turning on a judgment or precedent jurisdiction (i.e. a hard-edged question with only one right answer, capable of being determined conclusively only by the court), and that the FOS was empowered to determine (subject, of course, to the application of traditional bases of judicial review) the extent of its jurisdiction having regard to the applicable statutory framework. The distinction is an important one and one which goes primarily to the ease with which a jurisdictional decision by the FOS can be challenged by way of judicial review (i.e. can the decision only be challenged if it is shown to be unreasonable, even if it is wrong, or is it simply sufficient, as argued by the claimant, that the decision was wrong, even if the FOS acted reasonably in arriving at its decision).

[10] There were 80 active complaints against the claimant before the FOS at the time of the judicial review proceedings.
[11] [2014] EWHC 3413 (Admin).
[12] [2012] EWHC 3555 (Admin).

18. In the result, Ouseley J determined this issue in such a manner that represented a compromise between the parties' contentions. Whilst he was clearly of the view that it was ultimately for the court to decide whether the FOS has acted with or without jurisdiction, this did not mean that the FOS did not have an important role to play in the fact-finding analysis and the initial decision-making process. On this point, Ouseley J held:

I accept the proposition that the FSMA should not be construed so as to make the FOS master of the limits of its jurisdiction, right or wrong[13]*. It is for the Court to decide whether it has acted with or without jurisdiction. It cannot act without jurisdiction simply because its error was reasonable. It is a matter of statutory construction as to how the limits of its jurisdiction are resolved: what decisions are challengeable only on traditional judicial review grounds and what decisions require a different approach, whether one in which the court decides the law, finds the facts and applies the law to the facts, deciding whether the FOS' decision was simply right or wrong and considering new evidence if it wishes, or one in which the Court decides the meaning of the words at issue, and the FOS finds the facts and applies the correct meaning in law to them as a matter of its own reasonable judgment, or one in which the Court decides, on the facts found by the FOS, whether the application of the law to them is correct rather than reasonable. Of course, the fact finding is subject to review on traditional grounds. In my judgment, as a matter of statutory construction, it is the last approach which applies here.*[14]

19. Ouseley J was keen to emphasise that the role of primary fact-finding was vested in the FOS and not the courts. To this end, he observed: "*Given that the FOS provides an informal but specialist dispute resolution, with its own rules, it is my view that Parliament cannot have intended that the High Court should act as primary fact finder on jurisdiction issues, especially since those issues will often overlap with merits issues, as they do here. Two bodies would otherwise be involved in considering the same issues, but on potentially different evidence...So I consider that the FOS must be the fact finder and that its fact finding is reviewable only on traditional grounds*"[15].

20. As to the practical implications of his decision on this point, Ouseley J had the following to say:

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[13] On this point, Ouseley J further held (at para. 68): "*...where the issue goes to jurisdiction in the first place, the leeway would have to be more clearly expressed to give the decision-maker such scope for deciding the limits of a statutory construction, or else the leeway would have to be obviously related to those matters which Parliament would have intended to leave for its judgment, such as on procedural matters or the exercise of its discretion not to hear a case within its jurisdiction".*

[14] At paras 66 and 67. Later in his judgment, Ouseley J proffered the following practical justification for the approach he adopted (at para. 73): "*The issues facing the FOS here do not arise exclusively before the FOS. It would not be right to have a decision on a complaint before the FOS going one way on such an issue, and a decision in a civil action going the other way on what might be an action by a person who could have made such a complaint in relation to precisely the same scheme but who chose to go by action instead*".

[15] At para. 70.

...I emphasise that I am not suggesting that the FOS should not decide on jurisdiction, if it is an issue, at the outset. That may be the end of the complaint or of the issue. However, although it is for the FOS to consider jurisdiction at the outset, if it decides that it has jurisdiction where that is contested, it may need to keep the question of jurisdiction open throughout the course of the decision-making process. The issue may not be closed by the final jurisdiction decision...Where jurisdiction has been and continues to be disputed, the FOS must consider any evidence and argument which goes to his jurisdiction, until the conclusion of the case, and he should identify that in his decision. Second, there is obviously scope for considerable overlap between some jurisdictional issues and some merits issues...This tells strongly but not necessarily in favour of the Court's intervention waiting until the final merits decision, when all the facts are found...There is a further qualification: the issue of jurisdiction is not one for the fair and reasonable assessment of the FOS: the FOS is right or wrong. The overlap between the factual issues which go to jurisdiction and which go to merits should not obscure that.[16]

Tax vs Investment Advice

21. Relying on the scheme documentation, the documentation produced by the claimant for the interested party before he joined Prescience, the Perimeter Guidance in the FCA Handbook, *R (London Capital Group) v FOS*[17] and the decision of the First Tier Tribunal (Tax) in *Acornwood LLP v HMRC*[18], the claimant argued that an important distinction was to be drawn between the provision of tax advice and investment advice, and that the former did not fall within the jurisdictional competences of the FOS. The argument is an important in the context of tax mitigation schemes where it is clear that the participants have little or no expectation of ever realising an 'investment' return from their participation in the scheme. Indeed, film finance schemes, like most other tax mitigation schemes, are designed with the principal aim of generating instantaneous losses so that loss relief can be claimed. On any view, participation in a tax mitigation scheme such as a film finance scheme can hardly be viewed as a traditional investment. The importance of the claimant's argument should not be understated: if the claimant was correct, then the vast majority of FOS complaints relating to tax mitigation schemes would fall outside of the FOS' compulsory jurisdiction. If accepted, the argument had the potential to be a get out of FOS jurisdiction free card.

22. Unfortunately for the claimant, Ouseley J was of the view that there could be no sharp distinction between tax and investment advice in this context. On this point, he held:

[16] At paras 75 and 76.
[17] [2013] EWHC 2425 (Admin).
[18] [2014] UKFTT 416 (TC). This case involved the Icebreaker tax mitigation schemes and was widely publicised at the time because the scheme members included members of the pop group Take That. The Icebreakers schemes were similar to Prescience (and other film schemes), but included an additional layer of artificiality and circularity which made them particularly aggressive tax mitigation schemes.

...tax advice may or may not be or include investment advice. There is no necessary sharp distinction requiring advice to be pigeonholed as one or the other, nor could such a distinction be sensibly drawn where there are mixed reasons behind advice...There is no dominant purpose test. To the extent that advice about an investment is investment advice it is a specified activity...The dominant purpose of the advice may be tax avoidance but it can still be investment advice... Where there is a risk that advice is unsound tax advice or that the scheme will not achieve its tax avoidance aim, and so where the sole or primary purpose of putting money into the vehicle may fail, I do not see why there can be no underlying investment in the tax avoidance vehicle about which specified advice may be given. Even if here the dominant purpose of the advice was tax avoidance, money was invested, repayable loans were taken out, returns were to repay the loans. The advice was to put money into a scheme. There are plenty of investments in which tax considerations will play a part and perhaps the most dominant part. The investment does not have to be for a profit in order for advice to be a specified activity...[19]

23. As a result, Ouseley J was of the view that the FOS had not erred in its approach to whether, if tax avoidance had been the purpose of Chancery's advice, it was also investment advice.

Was Prescience a UCIS?

24. The claimant's principal UCIS argument was that the members of Prescience had day-to-day control and, therefore, Prescience did not meet the statutory test for a CIS. Not only had the interested party dedicated a significant amount of time performing various tasks in relation to Prescience[20], but the scheme documentation clearly referred to the scheme as trading partnership and not a CIS. In these circumstances, the claimant argued that an adviser should not be held responsible for advising on a scheme that, on the face of the scheme documents, was never intended to operate as a CIS. The following principles can be distilled from the available case law on the meaning of day-today control:

(a) The term is minded towards identifying who is or will be 'minding the shop' on a day-to-day basis[21];

(b) The fact that one or more investor might have a right to be consulted or give directions did not mean that they had control over the management of the property. It is relevant to consider both what happens when the investment is in place and whether the necessary control is shouldered by those who will be contributing to the investment;

[19] At paras 93 and 94.
[20] He was, in fact, the Chairman of Prescience for a period of four years.
[21] *Russell-Cooke Trust Co v Elliott* (2001) (unreported), per Laddie J.

(c) It is necessary for each member to have day-to-day control in order for an arrangement not to be a CIS[22]. The existence of day-to-day control could not be answered by reference to the activities of one member[23] (a scheme, therefore, remains a CIS even if some participants have day-to-day control); and

(d) Day-to-day control was an issue not just to be resolved on the basis of the scheme documentation, but also by considering what happened in practice[24].

25. Ouseley J was not persuaded by the claimant's argument that the CIS assessment, vis-a-vis an adviser and a client, should not involve a consideration of how the scheme operated in practice. In support of his position, the judge pointed to the statutory language which defines a CIS and, in particular, the "*purpose **or effect***" wording in s.235(1) FSMA. In his judgment, the judge was of the view that the statutory language makes the practical operation of the scheme relevant to show its nature.

26. As to the case-specific issue of whether Prescience was a CIS, the judge was of the view that the FOS was not wrong in concluding that Prescience was a CIS because not all of the participants had day-to-day control. Like the FOS, the judge was of the view that there was a material distinction to be drawn between activity and control.

The Last-Ditch Arguments

27. These arguments were never likely to succeed, either before the FOS or on judicial review. As these arguments are premised on the refusal by the FOS to exercise its discretion not to determine a complaint falling within its jurisdiction (a matter which is not jurisdictional fact or precedent fact), the public law threshold required the FOS' decision to have been irrational.

28. Although the judge was not prepared to determine that the FOS' refusal to exercise its discretion in relation to the interested party's complaint came even close to the irrationality threshold, he did have some sympathy for the claimant's general concern "*about the large number of claims, pursued at no or very little cost risk to the complainants, leading to sizeable compensation awards on a rough and ready basis, with the facts not analysed properly, in decisions lacking the rigour which a High Court Judge should bring*"[25]. Despite such sympathy,

[22] *FSA v Fradley & Woodward* [2005] EWCA Civ 1183, per Arden LJ.
[23] *Asset land Investment plc v FCA* [2014] EWCA Civ 435.
[24] *Russell-Cooke* and *Secretary of State for Business Innovation and Skills v Sky Land Consultants plc* [2010] EWHC 399 (Ch) (per David Richards J). See also *Andrew Brown v Innovatorone plc* [2012] EWHC 1321 (Comm) (per Hamblen J) and *Asset Land* in the Court of Appeal.
[25] At para. 133.

there was little that the judge could do in circumstances where the FOS had not exercised its discretion irrationally.

Conclusions

29. *Chancery* illustrates the difficult task faced by those who have recommended clients to participate in failed tax mitigation schemes (or, more accurately, their professional indemnity insurers). Complaints to the FOS are increasing in number. Unless the respondent to such a complaint can rely on limitation or other clear-cut jurisdictional arguments, the FOS will seize and consider the complaint on its merits. The result in *Chancery* empowers the FOS to continue considering complaints of this nature, regardless of public perception and Government/HMRC initiatives to curb aggressive tax mitigation.

30. *Chancery* has, at the very least, provided some clarity on the boundaries of FOS jurisdiction in this area (even if those boundaries are wide and almost limitless). Although the decision leaves open the possibility that some other schemes, which might be more closely aligned with the artificiality and circularity of the Icebreaker schemes, could be considered so far removed from a specified investment that any advice proffered in respect of them could not be considered investment advice, even this might not be sufficient to ground a jurisdictional challenge.

31. *Chancery* also goes some way to dispelling a jurisdictional challenge based upon the scheme not satisfying the statutory ingredients of a CIS. The interested party in this case had clearly dedicated a substantial amount of time on scheme activities, but this was not in itself sufficient. It is unlikely that there will be many other complaints where the day-to-day control arguments could be stronger than they were in relation to the interested party. Perhaps more importantly, it is unlikely that any other film finance schemes (or other similar tax mitigation schemes) will have been designed in a materially different way to Prescience, at least in so far as trying to avoid the regulatory consequences of a CIS.

32. There are other important aspects of the decision in *Chancery* which will be of general application to both FOS complaints and civil proceedings. Perhaps one of the most unsatisfactory aspects of the decision (and the line of authorities which have considered the point) relates to the focal date for the CIS assessment. Where a complaint or a claim is between an adviser and an investor, it is unclear why the adviser should be responsible for advising on a CIS in circumstances where this only becomes clear once the scheme is operational. At the point of tendering advice, the adviser only has the scheme documentation and cannot control the eventual operation of the scheme if it substantively departs from the scheme documentation. Although Ouseley J and the FOS were both clear that Prescience

would have been characterised as a CIS on the basis of the scheme documentation alone[26], there will be circumstances where an adviser unwittingly finds that a scheme that he genuinely (and for good reason) characterised as a trading partnership is subsequently determined to be a CIS, based not upon the content of the scheme documentation but on the ultimate operation of the scheme.

33. The message for now is quite clear. Complaints emanating from failed tax mitigation schemes will increase and, at this time, there is no generic fatal blow that can be used as a jurisdictional argument. The story might not, however, end there. The claimant has appealed the decision, and the appeal will be heard by the Court of Appeal over two days in March 2017. It may well, therefore, still be the case that the jurisdiction of the FOS in relation to tax mitigation schemes is reigned in.

11 April 2016

[26] If this is the case, this will no doubt be the case with most if not all film finance schemes, because the scheme documentation is often very similar.