

# FOS:SOS for BIBA Webinar

New rules for SMEs from 1 April 2019



## FINANCIAL OMBUDSMAN SERVICE

### New rules for SMEs from 1 April 2019

To qualify: Businesses must have an annual turnover of **less than £6.5m**.

The SME must also satisfy **one** (and only one) of the conditions below:

- It employs fewer than 50 employees
- It has a balance sheet below £5m



## Surprising consequences

- If a property owner has portfolio with a valuation of £40m but a turnover of only £5m and 10 staff. Still qualifies for FOS
- If a building contractor has a turnover of £4m and a balance sheet of £1.5m but staff of 100. Still qualifies for FOS



## Employees

- How are “employees” defined?
- What about subcontractors?
- How are part-time staff counted?



# Balance Sheet

- What does a “balance sheet” figure really mean?
- Associated companies



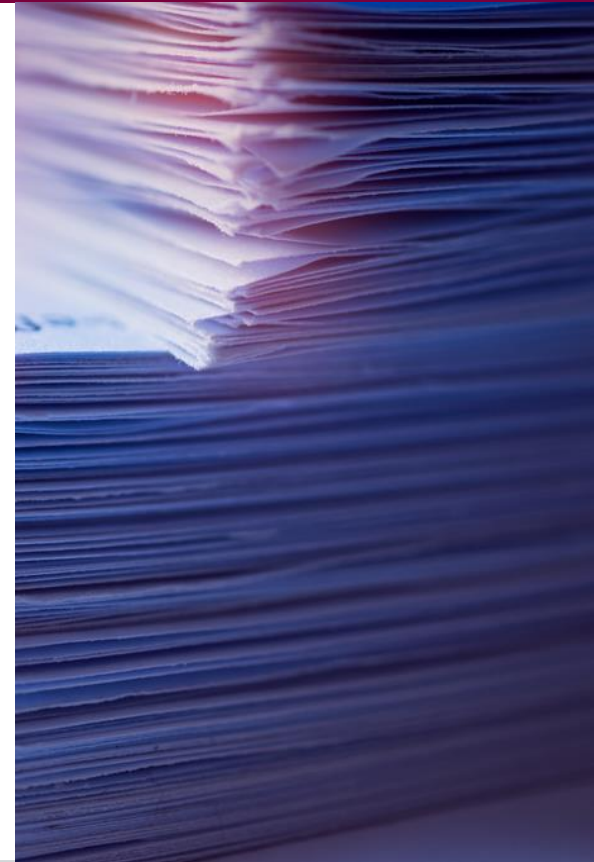
# Turnover

- If the claim is against the broker (or other commission-based business) how is “turnover” defined?



## New award limit of £350k

- This applies to all claims from 1 April 2019.
- Transitional arrangements for older matters





# Lloyd's Policies

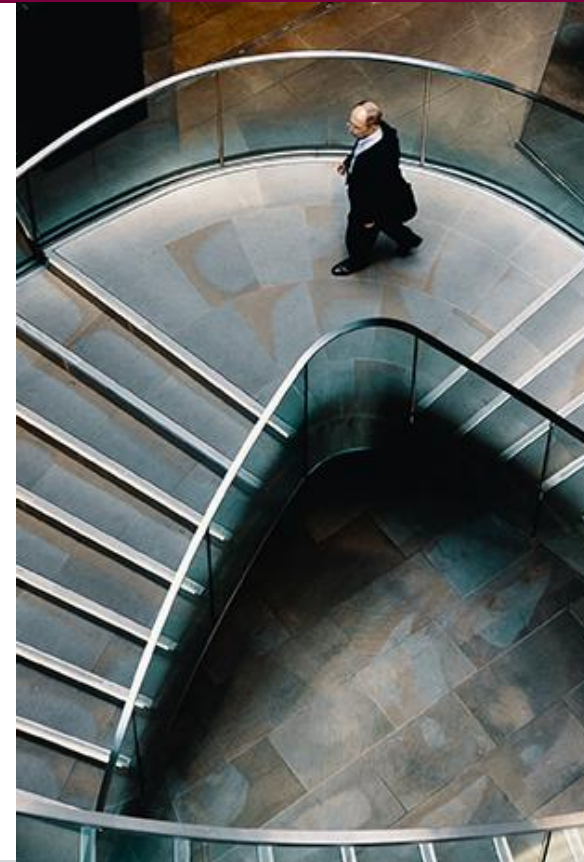
- Role of the Committee of Lloyd's Complaints prior to FOS referral
- Time limits





## Discussion points

- Liability insurances and problems with late notification. Insurer prejudiced?
- Voidance arising out of nondisclosures not causative of the loss
- Fair presentation. Was there enough to put the insurer “on enquiry” to seek additional information



## Claims in excess of the £350k FOS limit

- Is it advisable to use the FOS at all?
- Accepting an FOS award and attempting to sue for the balance
- Clark & another and In Focus Asset Management & Tax Solutions Ltd v Financial Ombudsman Service  
*re second bite of the cherry and res judicata*



## The broker's position

Brokers need a rigid process and timescale for dealing with declined claims.

Points to consider:

- How to challenge the repudiation and whether the FOS will be suitable
- Some clients might make a formal complaint against the broker
- Process to decide what matters constitute circumstances for PI
- Ensure that all client complaints are handled in the right way

## Contact details

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