UK Finance response to the FOS 'Our 2023/24 plans and budget Consultation paper'

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Sent via email to: consultations@financial-ombudsman.org.uk

UK Finance is the collective voice for the banking and finance industry. Representing around 300 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

We welcome the opportunity to respond to this consultation and given the subject matter, have consulted widely across our membership to attain views from a broad range of firms, with different business models and customer bases.

Our high-level views and responses to the consultation questions are set out below and we would be happy to discuss this submission in more detail if that would be useful. Please contact Kevin.Ennis@ukfinance.org.uk in the first instance to discuss further.

Executive Summary

- UK Finance agree that FOS should be put on a sustainable financial footing with its costs covered by the funding model and we welcome the decision to freeze the FOS levy and case fee at the same level as last year. However, we believe that, going forward, there is a strong argument for reducing both the Compulsory Levy and/or the Case Fee.
- With regard to expectations on volumes and trends, we agree with the Banking and Credit Complaints identified within the consultation paper, and we make particular reference to the increasing activity of third-party representation regarding fraud and affordability complaints and the potential for their engagement in complaints relating to the Consumer Duty.
- Early indications from members are that there is limited evidence to date that the rise in the cost of living has materially impacted complaints volumes that are specific to the cost of living. Members have, however, noted an increase in customer support contact, in particular with regard to mortgage products. This may, in time, lead to an increase in complaints.
- We would welcome the FOS providing more regular insights regarding the themes of complaints they are upholding on a more regular basis and grouping complaints into root causes with early insight on any statistically significant uptick in complaint volumes.
- Members would welcome further engagement with FOS to ensure there is a consistent interpretation of the Consumer Duty between firms and FOS – this will be vital for the successful implementation of the Duty.

- It is also important that complaints relating to events prior to 31 July 2023 – the date that the Duty enters into force - not be subject to the new Consumer Duty rules. We welcome confirmation from both the FOS and the FCA that these will not apply retrospectively.
- As referenced below, it is disappointing to note that the FOS do not intend to progress changes to charge case fees for professional representatives such as CMCs. We believe that this proposal would help to deter high volumes of speculative complaints from such firms.
- Members have identified the following priority areas to support FOS in its drive for efficiencies and improvement of timeliness:
    - technology - the Digital Portal is a top priority for both customers and firms;
    - backlog – we welcome the aspiration to deal with new cases on average within six months and would encourage the same standard be applied to the backlog cases too;
    - harmonising team structures – we support FOS developing new service standards geared to maintaining the quality of FOS decisions by harmonising team structures that have specialist teams set up for specific complaint areas;
    - professionally represented complaints – adopt a 'triage' approach which could include an assessment of generic versus specific complaint points, inclusion of full customer testimony and specific evidence to support the matter being complained about; and
    - communications supporting interpretation - interpretation is necessarily subjective and it would be beneficial to find ways to ensure that all stakeholders have the same understanding of what "good" looks like and, conversely where improvements are necessary.
- We would welcome more consultation and engagement of the industry as part of the Wider Implications Framework. We believe the Framework would be more effective if it included processes for firms to raise issues of concern.

Response to the Consultation Questions

Question 1. What volumes and trends should we expect to see in complaints?

1. We agree with the general Banking and Credit Complaints trends identified within the consultation paper and would make the following additional comments:
    - Fraud and Scams complaints are likely to continue to account for a significant proportion of the banking and credit complaints, given the high media profile of this activity and the level of sophistication and social engineering that underpins this criminal activity. Of note is that members are already seeing evidence of more third-party representation regarding fraud complaints (e.g. Solicitors & Claims Management Companies (CMCs)) and this is expected to be more common going forward.
    - The proposed regulations from the Payment Services Regulator (PSR) on greater protection for consumers against Authorised Push Payment (APP) scam losses are likely to result in a significant reduction in this type of complaint. Once effective, it is anticipated that complaints will be limited to situations such as determination of whether the gross negligence threshold (the criteria for a refund to be declined) has been met.
    - Lending related complaints post-completion are more likely given the impact of the changing economic environment and the resulting rise in interest rates This may, for example, present challenges for borrowers coming to the end of a fixed term which may then also lead to arrears management activities being undertaken and subsequent complaints.
    - The outcome of the FOS' rulings on Standard Variable Rate (SVR) complaints is relevant in that if FOS reject the complaints currently in their pipeline, lending complaint volumes

from CMCs should reduce when compared with 2021/22. However, there may be an increase in FOS referrals from customers. This increase however is not likely to be sufficient to offset the anticipated reduction in CMC driven SVR related complaints.

- As a general point, many of the themes identified apply equally to SMEs as well as consumers, e.g. fraud and scams; fixed rate lending pricing, with associated property security valuations and affordability generally as impacted by the economic environment.
- Finally, there is also the potential for complaints around government business loan schemes to increase and we may see disputes around the taking of personal guarantees.

2. Consumer Duty is expected to have an effect on complaints volumes leading into 2024 when it comes into force (for new and existing products) on 31 July 2023. At this point, it is difficult to estimate the full impact on the expected volume of complaints following implementation. Complainants (including third party representatives) may reference a specific element of the Duty as the cause of the complaint or make a generic complaint for overall breach of the Duty itself.
3. In this regard, firms may experience increased CMC activity in the Consumer Duty complaint space as CMCs seek to diversify and grow their income streams to recoup lost income resulting from the introduction of the FCA compensation/fee cap which took effect from the end of March 2022. We anticipate CMCs (and legal firms acting in this capacity) will want to use complaints and FOS escalations to explore any weaknesses/opportunities the Consumer Duty provides them.
4. It is vital that CMCs are held accountable for their regulatory obligations, including their own compliance with the Consumer Duty, to ensure they are properly investigating complaints before they are submitted so firms and the FOS are not inundated with high volumes of speculative complaints and to enable resource to be focussed on meritorious complaints. We welcome the recent FCA letter to CMCs - 'Portfolio Strategy: Claims Management Companies (CMCs) - which reinforces relevant regulatory requirements for CMCs (including Consumer Duty) and highlights a key concern for FCA being a failure by CMCs 'to investigate the existence and merits of each element of a potential claim'.
5. Noting the above, it is disappointing to note that the FOS do not intend to progress changes to charge case fees for professional representatives such as CMCs. With the possibility of increasing complaint volumes from third part firms, we believe that this proposal would help to deter further inappropriate behaviour.

Question 2. What novel issues or trends may we see in 2023/24? Particularly, what impact do you think the rising cost of living will have on complaints volumes

6. As context, further increases in interest rates in 2023 and inflationary pressures within the wider economy are likely to impact complaint levels. Early indications from members are that there is limited evidence to date that the rise in the cost of living has materially impacted complaints volumes that are specific to the cost of living. It is noted, however, that financial stress may lead to increased relationship management time and the need for enhanced customer support. Some members have already noted an increase in such customer contact. These customers are, for example, asking for lower interest rates, new products or temporary help with the increases in mortgage payments.
7. In terms of service standards, there is also potential (as referenced above) for cost-of-living pressures to result in more demand for support or action from firms and this may increase the level of dissatisfaction if the outcome is not in line with customers' expectations and/or the outcome is not delivered as quickly or effectively as they would like. This may be evident in interactions such as:
    - declined loans;

- the waiving of early repayment charge or penalties attached to fixed term savings products;
- moving their lending commitments or savings products between products and providers;
- borrowers coming off low fixed rates who are used to a low- rate environment and are unhappy with the higher rates now on offer, those who are looking to remortgage but unable to meet affordability requirements or where borrowers seek to challenge decisions to lend that were made previously based on information known at that time.

8. For mortgage products, this could be further exacerbated by a potential decrease in property values, which may also lead to an increase in complaints for new lending applications following valuation outcomes if property prices do fall in 2023.

9. In the context of the changing interest rate environment, a member has noted increased complaints in 2022 in relation to product terms/conditions where customers with existing fixed bonds/ISAs etc requested a switch to higher rates without any restrictions/early closure charges being imposed. With interest rates likely to continue rising in the short-medium term, it may be that this trend in complaints will rise for some firms.

10. As a result of the increasing cost of living, more consumers are demonstrating at least one characteristic of vulnerability (as per the latest extract from FCAs 2022 Financial Lives survey). There is also potential for some complaints to at least become more complex in nature as more customers present with more complex vulnerabilities as highlighted in the FCA 'Dear CEO letter June 2022. Members also advise that some customers do not disclose vulnerabilities until the case has gone to the FOS and that the case would be considered through a different lens if the consumer had disclosed their full circumstances. Checking if this has been considered at an early stage may help speed up complaints resolution for all parties.

11. As a general point, customers who previously may not have thought to complain may do so going forward and more complainants may challenge money awards/levels of redress. There is also an increased media narrative about escalation of complaints to FOS as customers have 'nothing to lose'. Noting this, it would be helpful if FOS could highlight their uphold rates more prominently to help inform customers of the merits or otherwise of pursuing a complaint which has already been subject to a redress offer from the firm.

Question 3. What more can we do to share insight to prevent complaints and unfairness from arising?

12. Complaint Data: to support and maintain a focus on complaint reduction, firms and trade associations would benefit from more granular complaints data, particularly on service or cross-cutting issues such as fraud and scams. The current product focused taxonomy does not facilitate this type of analysis. It is also worth noting that some members use macro level complaint data as an indicator of future support needs, including increasing levels of financial difficulties.

13. It would also be helpful if FOS could:
    - summarise the themes of complaints they are upholding on a more regular basis and group complaints into root causes in a similar manner to the root cause approach used by firms - with early insight on any statistically significant uptick in complaint volumes and any new complaint types;
    - provide reasons for overturned decisions at an industry level (as opposed to individual cases);
    - share examples of Investigators' decisions in addition to Ombudsman rulings as the largest proportion of cases stop at that stage;

- engage with industry at an early stage on thematic issues before an approach is determined; and
- provide additional detail with regard to the backlog (was 90,000 cases as at December 2021) covering, for example, current and projected backlog figures and age profile and cohorts. We note the 2023/24 projected complaints number is 183,000. It would be helpful to understand what proportion of this figure represents backlog cases.

14. As referenced above, consistency between firms, the FCA and FOS in the interpretation of Consumer Duty is vital for its successful implementation. Members would welcome further engagement with FOS e.g. via calibration sessions to arrive at a common understanding of what "good" looks like across the key outcomes under the Duty.
15. It is also important that complaints relating to issues prior to 31 July 2023 will not be subject to the new Consumer Duty rules which both FOS and the FCA have confirmed will not be applied retrospectively.
16. FOS Communications – members would welcome a more detailed update on the progress being made on the FOS Action plan.

Question 4. Do you agree with our funding proposals?

17. UK Finance agree that FOS should be put on a sustainable financial footing – with costs covered by the funding model and welcome the decision to freeze the FOS levy and case fee at the same level as last year.
18. However, it should be recognised that whilst the levy remains flat, it was subject to a £10m increase last year and was supplemented by a further £11m from the reduction in the number of free cases. These changes, along with a reduction in the reserves to 3 months of operating income were designed to fund the transformation programme and increases in efficiency and productivity.
19. On the basis that this strategic investment is delivering the expected outcomes and noting that the proposed budget states that FOS will have a £9.9m operating surplus and retain reserves equivalent to seven months operating costs, we believe that, going forward, there is a strong argument for reducing both the Compulsory Levy and/or the Case Fee.

Question 5. Do you support our proposed budget for 2023/24?

20. UK Finance and its members support the principles which underpin the FOS budget and welcome the fact that the levy and case fee have not been increased, but as noted above, we are of the view that future FOS budgets and industry levy/case fees should reflect the efficiency and cost savings achieved through the transformation.

Question 6. As we deliver our transformation programme to drive efficiencies and improve timeliness, are there any areas we should prioritise?

21. Technology - the Digital Portal should be a top priority for both customers and firms and there is an expectation that this will also help with the reconciliation of complaints received by FOS compared to firms' records. It would also be helpful for FOS to explore the use of technology to support gathering of customer evidence, as this will reduce duplication and facilitate quicker decision making, particularly where data has been shared previously with FOS. The digital portal could also be used to capture FOS and firm internal reference numbers, which would support enhanced case tracking and remove the need for manual reconciliation processes.
    Members would welcome the opportunity to be engaged in the future development of the portal.

22. An effective Digital Portal is essential to support much-needed improvements in key areas such as:

- speed of resolution; and
- reconciliation of data between FOS and firms.

23. Backlog – we note that the next set of Action Plan initiatives for the second half of 2022/23 include an aspiration to resolve new cases on average within six months, where there are no external factors outside FOS' control. We welcome this and would encourage the same standard be applied to the backlog cases too as members are keen to see much quicker resolution of outstanding cases by FOS.

24. Members have an ongoing concern that FOS timescales for handling cases are not aligned to those in place within the industry i.e. resolution within eight weeks. Members would therefore welcome clarity that the six months referred to in this consultation is from date of receipt, not when FOS have all the information to hand.

25. Extended waiting times impact consumers, and this impact can be particularly acute if the individual is financially vulnerable. Backlogs also impact a firm's ability to take appropriate action/learn from mistakes (as per DISP requirement 13.2A) and there can be a significant financial cost to firms as the amount of compound interest payable on any redress is generally subject to the 8% statutory interest rate for the period when the complaint was waiting resolution. Whilst this is clearly a good outcome for the consumer, there is a strong view amongst members that firms are being penalised for FOS inefficiencies which is regarded as unfair and unreasonable.

26. Members note that in previous years the Business Plan consultation has provided a table on the speed of complaint resolution and whilst this could still be improved (from a transparency perspective) no information has been provided in the 2023/24 consultation paper. In the same way that FOS needs to understand the pipeline to be able to forecast complaint volumes and plan resourcing levels accordingly, members also have the same challenges. It would therefore be helpful if there could be greater transparency and visibility of the volume and age profile of the cases within the backlog, preferably at firm level or if not at industry level.

27. Harmonising team structures – we support FOS developing new service standards geared to maintaining the quality of FOS decisions by harmonising team structures that have specialist teams set up for specific complaint areas e.g. S75. Members see this as a key objective which should help lead to quicker outcomes for consumers and businesses alike.The introduction of specialist teams has strong support from Members. If this is combined with sector/product specific training, case handlers will be able to develop their knowledge and expertise, which should in turn improve the quality and consistency of FOS decisions. It also provides the opportunity for firms to build positive working relationships with a smaller team of FOS case handlers which would be mutually beneficial.

28. Members noted however that consideration will need to be given to how alignment between FOS specialist teams (e.g. Mortgages and Consumer Credit) can be maintained and how cross-cutting themes such as vulnerability, the consumer duty and redress levels are consistently delivered across the teams.

29. Wider Implications Framework – we recognise the importance of the Wider Implications Framework and the proposal within the current Financial Services & Markets Bill to place it on a statutory footing. However, as industry currently sits outside the formal governance of this Framework, members are therefore unable to provide their perspectives and our members are of the view that this limits the effectiveness of the Framework itself. A further point of consideration is the lack of independent assurance testing of the FOS outcomes – the introduction of which would be beneficial for all parties.

30. It would be helpful if we could see increasing evidence of consultation and engagement with the industry by the Framework to help clarify:

- how financial services firms can participate in the process going forward;
- how firms can raise issues of concern e.g. crypto;
- how the process addresses systemic issues beyond the failure of an individual firm and considers the impact on competition;
- what the determination process is once a wider implications issue has been identified;
- how this process meets the FOS' stated objective of increased engagement and collaboration on future complaint prevention;
- whether there is any mechanism for industry to constructively challenge the outcomes of the process; and
- communication– noting that the minutes from the Wider Implications Framework meetings are significantly redacted, how will decisions be communicated to firms.

31. Professionally Represented Complaints e.g. CMCs - FOS could also have an impact on the behaviours, quality and volume of complaints (and therefore help with efficiency, speed of outcome and value for money for the customer) by applying greater scrutiny to a complaint (made by a third party) by means of a 'triage' approach to complaints from such firms. This could include an assessment of generic versus specific complaint points, inclusion of full customer testimony and specific evidence to support the matter being complained about e.g. statements, key dates etc.

32. Consistency - members suggested that assigning a single point of contact to a complaint would help to eradicate duplication (e.g. requests for information), and consistency could also be enhanced if new technological solutions could provide case handlers with analysis of similar responses to the same firm and provide firms with root cause' analytics.

33. As noted above, capturing FOS and firm internal reference numbers (either digitally or manually) would support enhanced case tracking and remove the need for manual reconciliation processes. This could in turn free up resources, enabling firms and FOS to reallocate resource to focus on resolving complaints quicker.

34. Communications

- Good Outcomes: FOS effectively has the remit to adjudicate on whether firms have met the required 'standard' for outcomes-based regulation. This is clearly subjective and together we need to find ways to ensure that everyone has the same understanding of what 'good' looks like and conversely where improvements are necessary. FOS publishes Case Studies on the FOS website; these are very helpful, and firms would benefit from the publication of additional case studies.
- Ombudsman Decisions need to be supplemented by regular, easy to read 'push' communications which summarise emerging trends, the root causes, practice/policy gaps, a clear articulation of expectations to meet the required standard and the rationale. This type of actionable insight would enable firms to review their approach and quickly prioritise actions. "Good" should balance consumer and firm responsibilities fairly and financial services firms should not automatically be held to account for the failings of other sectors/actors e.g. Gambling.
- From a customer perspective, it would be helpful if FOS could do more to encourage customers to give the firm the opportunity to resolve complaints by highlighting the benefit for customers of engagement with the firm to seek to resolve their complaint.

- From a firm perspective, it had been FOS practice in the past to visit firms' complaints teams (by invitation) and talk about the FOS' thought process when assessing a case, the different things they consider, what their technical helpline can assist with etc. The FOS website is very informative but a face to face or video conference can help to bring things more to life (e.g. case studies, FAQs etc.). Perhaps this approach could be revisited as part of the development of FOS' engagement with firms and the industry via, for example, trade association and member meetings or webinars.
- The FOS could publish their expectations of claims referred to them by CMC and SRA firms who may refer complaints to FOS on a firm decline without any fresh evidence or rationale for referral – a practice that does not meet the requirements of the FCA Claims Management Conduct of Business sourcebook (CMCOB).

Ends