



Financial Ombudsman Service – Differential case fees

UK Finance response to the
Financial Ombudsman
Service Consultation

Introduction

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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 Daniel.ryall@ukfinance.org.uk in the first instance to discuss further.

Executive Summary

Differential case fee model options

Members broadly support the principle of a differentiated case fee model, but views differ on how it should be designed and implemented. The clearest preference is for a stage-based approach, which is seen as simpler, more transparent and less open to perceptions of bias than outcome-based differentiation. A smaller number of firms favour a combined model (stage and outcome), arguing it could create stronger incentives for early resolution and fair complaint handling, though many stress that this option would be harder to implement and would require significant safeguards.

By contrast, there is little support for outcome-based fees alone, with members consistently highlighting the risks of perceived bias, unfair consequences for nominal changes in redress, and erosion of trust in FOS impartiality. For this reason, outcome-only models are not viewed as viable.

Members also flagged a series of operational considerations that will be critical to get right. These include;

- Clear and consistent definitions of case stages.
- How withdrawn, ineligible, or time-barred complaints would be treated.
- The interaction with the proposed registration stage.

- Robust governance to prevent tactical behaviour or gaming of the system.

Extending the proactive settlement window (with many preferring a return to the piloted 21-day period) was seen as a practical safeguard to support early resolution.

In addition, some members raised residual concerns about what would happen if the model did not generate the expected level of income. They noted that the consultation paper hints at the possibility of further fee increases in such a scenario, which they felt would be short-term in nature and unwelcome.

FOS Billing Arrangements

On billing, most members expressed reservations about quarterly billing in advance, citing risks around forecasting accuracy, reconciliation challenges, and additional administrative burdens. These concerns were particularly acute in the context of a new and untested fee model, where forecasting would be especially difficult. While a small number of firms – mainly those already within group billing arrangements – saw benefits in terms of budget predictability, the majority view is that the current monthly system works well and should be retained.

Members were more supportive of the proposals to move from a free case count to a monetary allowance, recognising it as a fairer and more consistent approach that better aligns with a differentiated model. The proposed £2000 allowance was generally seen as a sensible baseline, though members recommended it should be reviewed annually to ensure it remains fair and proportionate.

On the proposals to remove the 5% tolerance for firms in the group fee arrangement, views were mixed. While some saw this as a simplification, others queried whether the replacement process would truly reduce complexity once reconciliations are factored in.

Finally, most firms raised no objection to reducing the time limit for case fee disputes to six months, if processes for raising and resolving disputes are made more transparent and misdirected complaints are attributed correctly.

Consultation questions

- 1. What do you think of the proposal to differentiate case fees based on case stage, where cases closed earlier in our complaint journey would attract lower fees than those closed later in our complaint journey?**
 - ▶ Members broadly support the principle of differentiated case fees based on stage, recognising that cases resolved earlier in the complaints process generally require less time and operational effort, and that fees should therefore reflect the resources used. Many highlighted that this approach

could incentivize early and fair resolution, align costs with effort, and reduce the burden on firms and FOS.

- ▶ Some members, particularly larger firms, emphasise the need for caution and noted that for larger firms the number of proactive settlements is minimal compared to overall complaint volumes, meaning the cost benefit of early-stage fee reductions may be limited, especially given that uphold rates are typically lower than reject rates. They also suggested that cases that are withdrawn should attract minimal or no fee.
- ▶ Members highlighted practical considerations around defining case stages, the interaction with future changes such as the registration stage, how fees might be adjusted according to complexity or operational burden, and stressed the importance of clarity on scope. In particular, members felt it would be unfair to charge for cases that are out of jurisdiction, duplicate, time barred, withdrawn with minimal work undertaken, abandoned, undergoing court proceedings, or already upheld by the firm. Members urged FOS to set out transparently how these scenarios will be treated under the new model, as current practices are seen as unfair.

2. What risks do you foresee with the introduction of differentiated case fees based on case stage? Do you feel these risks can be sufficiently mitigated?

- ▶ Members identified a range of risks with a stage-based charging model, though many felt they could be mitigated with strong governance, clear definitions and transparency.
- ▶ Several firms cautioned that the model could be weaponized by claimant representatives or complainants, either by escalating cases speculatively to drive settlements or pushing them to later stages to increase costs for firms. Larger firms also noted the risk that fee structures may distort behaviour, with businesses feeling pressured to settle prematurely to avoid higher fees potentially undermining fair outcomes, and therefore the intent of the service.
- ▶ Other risks highlighted included inconsistency in how cases are managed between stages and unpredictability of revenues and costs. Members suggested safeguards such as closer monitoring of CMC driven escalations and differentiated treatment of consumer versus CMC referrals, alongside clear fee structures, FOS oversight of settlement fairness, and robust governance.
- ▶ Firms also pointed to operational considerations, including the need for clearer case tracking through the FOS portal and consistency across case

handlers. Some noted that extending the 14-day response window for proactive settlements raised in FOS's 2025-26 Plans & Budget would give firms a more reasonable opportunity to resolve cases early. A key distinction would be to ensure it is measured by stage, and not purely by duration as factors affecting complainants and respondents' ability to contribute to the FOS' investigation could impact case fees, with many members supporting a return to the previously piloted 21-day period. They noted this would be particularly valuable in complex cases or during peak holiday periods (e.g. Christmas), where meeting a strict 14-day deadline can be challenging.

3. What do you think of the proposal to differentiate case fees based on case outcome, where cases that are not upheld would attract lower fees than those cases which are upheld?

- ▶ No member expressed clear support for outcome-based fees as a preferred model. However, many acknowledged their potential benefits in theory, noting they could be seen as fairer, more closely aligned to the 'polluter pays' principle, and an incentive for firms to resolve complaints correctly in the first instance. Some also felt outcome-based fees might work in combination with stage-based fees creating a more balanced approach. Several noted that this structure already works well in the representative space and could be extended to consumer cases provided FOS decisions remain consistent and predictable.
- ▶ However, members also highlighted risks, with some firms strongly opposed to the approach. Key concerns included the perception that higher fees for upheld cases might incentivise FOS to find in favour of complainants, and the need to address anomalies in how outcomes are recorded (for example cases where redress only changes within the same award band but are still logged as an overturn). A few also questioned whether fee differentials would truly reflect the investigative work required in all cases.

4. What risks do you foresee with the introduction of differentiated case fees based on case outcome? Do you feel these risks can be sufficiently mitigated?

- ▶ Firms identified significant risks with outcome-based fees, the most prominent being the perception, or reality, of bias, with concerns that FOS could be incentivized, consciously or unconsciously, to uphold more complaints in order to generate higher fee income. This could undermine trust in the fairness and independence of the service, particularly if 'soft' upholds - where the only change is an uplift in compensation - are treated

the same as substantive overturns. Members also cautioned that this could lead to an erosion of trust in FOS impartiality and is viewed by some as an unnecessary approach to achieving a fairer process. Some warned this model could distort firm behaviour, encouraging premature settlements to avoid higher fees, even where there are good merits to reject the complaint. Others highlighted the risk of unfair financial penalties where complaints are upheld for reasons other than the primary allegation, such as only a nominal increase in compensation.

- ▶ Others flagged the risk of unpredictable revenues for both firms and FOS, creating financial planning challenges and potentially driving more frequent repricing. Additional risks noted included increased forecasting, budgeting and reconciliation complexity, which firms felt would be difficult to mitigate and could drive unintended behavioural shifts in complaint handling. Mitigants suggested publishing aggregate data and reviewing how changes to distress and inconvenience awards are recorded.
- ▶ While firms saw merit in the principle, they stressed the risks are harder to manage than with stage-based fees and would require robust safeguards.

5. If in favour of differentiation, do you think we should differentiate by case stage, case outcome or both?

- ▶ Several members preferred differentiation solely by case stage, viewing it as simpler, transparent and easier to administer. They felt this would avoid the risk of perceived bias of outcome-determined fees and would align more closely with proposals for registration stage, while still encouraging quicker resolutions. Several members stressed that outcome-based differentiation risks undermining the FOS impartiality, creating unnecessary complexity, and imposing unfair financial penalties in cases where redress is nominal or only incrementally increased. For these reasons, they considered a stage-based model to be the fairest and safest option.
- ▶ A smaller number favoured a combined model, seeing it as the fairest approach because it best reflects the complexity and effort involved in resolving complaints. They argued that linking both stage and outcome would promote positive behaviours, incentivise early and fair resolution, and ensure those generating the most work contribute proportionately, even if the model would be more complex to administer. Supporters of this approach noted that it could give firms greater scope to reduce costs by both reducing overturns and increasing early settlement, though they cautioned it would be much harder to implement safely than stage-based differentiation. Some suggested a phased approach could be considered – starting with stage-based differentiation and later moving to a combined

model once complexities and risks around outcome-based fees have been worked through.

- ▶ A few firms, included some of the larger respondents, expressed caution and said they could not support any option at this stage. They highlighted a lack of clarity on how FOS would apply fees, how costs would be split in represented cases, and how predictability would be ensured across common complaint types.
- ▶ Overall, views were mixed and often dependent on firm size, business model, FOS exposure and uphold rates. More members leaned towards stage-based differentiation as the most workable option in the short term, with some open to exploring a combined model if robust safeguards are developed and complexities addressed. A small number could not support any option without further clarity on fee structures and application.

6. Do you agree with the change from a free case count allowance to a monetary allowance? If you prefer an alternative approach, why do you consider that proposed alternative approach to be simpler and fairer than the current or proposed approach?

- ▶ Firms agreed with moving from free case count allowance to a monetary allowance, seeing it as a fairer and more consistent approach that better aligns with a differentiated fee model. Members noted this will allow respondents to utilise the case fee allowance more effectively by proactively resolving cases. In addition, assuming a differential case fee based on outcome is introduced, it will mean that where speculative complaints are referred it won't have as big an impact on the respondents case fee allowance and would make billing more predictable and easier to manage. Larger firms felt it would improve budget planning compared to a fixed number of cases.
- ▶ Some members emphasise the need to calibrate the allowance carefully, so smaller firms are not disproportionately impacted, while one firm suggested tying the allowance to uphold rates from the previous year. This would reward firms and get complaint handling right first time by allocating them a larger free allowance, further incentivizing fair outcomes and reducing referrals to FOS.
- ▶ There was broad consensus that a monetary allowance is simpler, more scalable and more aligned with the future fee model than the current free case count structure.

7. Do you think the indicative monetary allowance level of £2,000 for both respondent businesses and professional representatives is a reasonable equivalent to the current free case count?

- ▶ Most firms agreed that the proposed £2000 allowance is a reasonable and fair equivalent to the current free case count, noting that it broadly aligns with the value of three free cases under the existing model. Members saw this is a sensible baseline that fits with a differentiated free structure and provides consistency across both respondent businesses and professional representatives. They recommend an annual review to maintain fairness and relevance.
- ▶ One firm suggested that while £2000 is acceptable, an alternative approach that rewards good complaint handling (as they set out in their earlier response) would be preferable.
- ▶ Overall, the £2000 figure was considered an appropriate and broadly supportive benchmark for replacing the current free case count.

8. Are you in favour of moving to quarterly billing in advance for respondent businesses and professional representatives with higher volumes of complaints?

- ▶ Most firms expressed reservations about quarterly billing in advance, highlighting risks around forecasting accuracy, reconciliation challenges, and the potential for firms to be charged for cases that are later withdrawn or deemed ineligible. Several noted that introducing this change alongside a new fee structure would be particularly difficult, as forecasting would be unreliable before the new model is embedded. Firms also stressed that advanced billing could create additional administrative burdens rather than reduce them, particularly for those with established oversight processes.
- ▶ However, a small number of firms noted they were comfortable with advance billing, reflecting their existing arrangements. They highlighted benefits such as improved case flow predictability and alignment with internal budgeting processes, provided that robust and timely statements are available through the FOS portal.
- ▶ The majority view was that the current system works well and quarterly billing in advance would add complexity with any benefits likely to accrue more to FOS than to firms.

9. Do you agree that a forecast of 25 cases to be closed per year is the right threshold to trigger quarterly billing in advance?

- ▶ Most firms could not give a definitive view on the threshold as they do not support the principle of quarterly billing in advance. Several respondents reiterated concerns from the previous question, noting that the proposal offers limited benefit to firms and would be difficult to forecast accurately.
- ▶ Some firms highlighted that the threshold is more relevant to smaller firms with fewer FOS cases and therefore had limited impact on their own operations. One firm queried how many businesses would fall within this category, noting it would be helpful to understand the distribution before forming a view. Another firm confirmed that their volumes would exceed the threshold, while others stated that the proposal was not especially material for larger firms, but raised no objections in principle.
- ▶ Feedback suggests that clarity on the number and type of firms affected would be needed before respondents could fully assess whether the proposed 25 case threshold is appropriate, it was also suggested that FOS review the threshold following implementation of the changes to reassure itself it is the right threshold.

10. Do you agree with the proposal to remove the 5% tolerance for firms currently in the group fee arrangement and substituting with the free case monetary allowance?

- ▶ Most firms did not provide a strong view on this proposal, with several noting it was not directly applicable to them. One firm observed that the benefit of a 5% tolerance would vary depending on the case volumes. Where volumes are high, the tolerance could be more advantageous to firms, but a monetary allowance would provide a more consistent and level playing field across the board while also helping to incentivise better complaint handling at the outset.
- ▶ Some members also highlighted the importance of forecasting, noting that case volumes are influenced by external factors which cannot always be predicted. They queried whether the proposed replacement process – with adjustments in year and credit/debit reconciliations at year end – would in practice deliver simplification, particularly for firms already within the group fee arrangement. However, others felt that if this approach is workable at scale it could be a fairer and more transparent model.

11. What do you think of our proposal to reduce the time limit for disputing case fees to six months if we introduced billing quarterly in advance for more firms?

- ▶ Most firms agreed or raised no objections to the proposal, noting that fee disputes are infrequent and a six-month window would generally be sufficient.
- ▶ However, one firm highlighted the importance of tying the dispute window to the billing date rather than case closure to avoid disadvantaging firms that challenge fees regularly in line with billing cycles.
- ▶ Another firm stressed that the process for raising and resolving disputes must be made more transparent and responsive, and that misdirected complaints - particularly with Sponsor Service Payment Providers/agents - should be redirected to the correct party to ensure fees are fairly attributed.
- ▶ Firms also requested further clarity on how reconciliation and dispute resolution processes would work under differentiated fee models, to ensure consistency and fairness.

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