

UK Finance response to FOS Our future funding consultation

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UK Finance is the collective voice for the banking and finance industry. Representing more than 250 firms, we act to enhance competitiveness, support customers and facilitate innovation.

Introduction

When the FOS consulted on its strategic plans and budget in December 2018, many stakeholders reflected on the strengths of its existing levy-plus-case-fee model. There was interest too in exploring the possibility of a risk-based levy.

Since then, we understand that the FOS has considered these options in light of changing demands on its service, feedback received, and the funding principles it previously established.

The FOS is now proposing what it thinks, given all these factors, is a practical and fair way forward.

Summary Comments

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

We agree that the FOS's funding arrangements should create as much certainty and stability as possible and avoid unnecessary complexity, administration and cost.

We support the funding principles set out, including that funding should be fair and those firms who generate greater workload for the service should pay a higher share of the costs.

We have some concerns that the proposed 50:50 split approach is unlikely to be seen in each organisation, depending on each firm's complaints volumes. It will be important that the funding model adopted is proportionate in the round and that the transitional arrangements for implementing the new model help to mitigate the impact on those firms which are most effected.

Our responses to the consultation questions below reflect a broad range of views across our membership and are provided with the objective of assisting the FOS in achieving a good balance between the competing priorities and trade-offs inherent in the scheme's funding design.

UK Finance and our members value our engagement with the FOS in the pursuit of improved customer outcomes and we set out some suggestions as to how this engagement could be strengthened.

We trust that this response is useful and we would be happy to discuss this submission in more detail if that would be helpful. Please contact Peter Tyler, Director of Conduct and Savings Policy, at peter.tyler@ukfinance.org.uk in the first instance to discuss further.

Please see our response to the CP's questions below.

Question 1

Our planning assumptions reflect our expectation that our service will be smaller in the future, and that our overall cost to the sector will significantly fall. Are you aware of anything that might affect this expectation – for example, issues that could create significant demand for our service?

It is not clear what factors the FOS has considered when making its planning assumptions although we agree with the central assumption that the service is likely to be smaller going forward.

We are aware that CMCs are looking at other products, for example, Packaged Bank Accounts, mortgage reversion rates and payday loans after the PPI time bar. Following the FCA's discussion paper on a potential Duty of Care and the subsequent feedback statement the FCA will consult in Q4 2019 on how to strengthen and clarify firms' responsibilities to customers, including consideration of whether a potential private right of action for Principles breaches may be appropriate. If the FCA did pursue this route, it could open up new avenues for CMCs.

Some additional themes which could have an impact on the FOS in the future include: complex fraud cases, in part due to high profile media activity and increased consumer awareness, and the Citizens Advice super-complaint about a perceived 'customer loyalty penalty' following its submission to the Competitions and Markets Authority.

The Contingent Reimbursement Model for authorised-push-payment fraud also has the potential to increase complaints from both customers and third parties as customer awareness increases.

These cases are by their nature often complex which is likely to necessitate additional initial and ongoing training for FOS staff.

Question 2

Do you have any further insight into the different types of complexities apparent in complaints?

Although our members have indicated that they do not consider the vast majority of the complaints they receive as inherently complex, we acknowledge that new regulations and other industry developments can add to the complexity of complaint investigation and resolution. Examples of this that we are beginning to see now and may see in the future include vulnerable customer considerations, complex fraud cases and open banking.

We agree that more complexity in complaint referrals is an important consideration but equally we encourage the FOS to adopt a more flexible attitude towards complex complaints which might give the appearance of being mass complaints. If firms are paying for more complex complaint referrals

and decisions, there is an expectation that firms (and if necessary, the FOS) should not adopt a “one size fits all” approach where a firm has evidence of such apparent mass complaints bearing crucial differences in characteristics and types of evidence from a published “FOS view”.

In addition, different complaints require different elements of knowledge and specialism depending on the type of financial product and goods or services funded. This often requires reliance on external experts, and we would expect the FOS to adopt a similar approach to assist with its understanding.

Members have seen a number of customers raise additional complaint points when they have referred the case to the FOS (as their previous case was not upheld as per the first final response letter) which in turn leads to further investigations and a second final response letter and another chargeable complaint being relayed to the ombudsman and further fees.

Question 3

- a) To what extent do you support our wider work to help prevent complaints and encourage fairness?***
- b) Do you have any further suggestions about what more we could do, or ideas for working together with us?***

We support the FOS’s wider work to help prevent complaints and think there is scope for this to be strengthened.

Our members work closely with the FOS to apply learnings from case outcomes and to drive improved and consistent outcomes for customers. Members contribute at an industry level via UK Finance to work with the wider industry and share best practice, however some members feel more can be done with the FOS to improve engagement and to encourage fairness across the industry and for customers.

Some members think that engagement with firms on the plan and approach being adopted for complex fraud cases was not effective and the new approach could have been better clarified at the outset. This resulted in inconsistencies leading to poor customer journeys. Our recommendation would be that a clear and open approach from the outset would achieve benefits for all parties, with improved planning opportunities for firms, mitigating impacts on customers and the wider industry.

Using the complex fraud situation as an example, the FOS has made a huge step change in how it considers and adjudicates on these cases. Our view is that engagement around this could have been vastly improved. One member reports that it was notified by an adjudicator in early 2018 that cases of this nature were being held whilst the FOS considered its approach and, aside from an Ombudsman news publication in August that year, there was no further engagement with the firm until the FOS had reached its conclusions and begun to share its revised considerations and decisions. Due to the significant change the industry has experienced in what the FOS now expects of firms and the revised information they now consider when making its assessment, we would have expected deeper engagement with members and UK Finance throughout that process.

We also think the FOS should work with the banking and finance industry to achieve a greater focus on the right outcome being achieved. This will support the rebuilding of trust within the industry and apply pragmatism to appropriate levels of redress for distress and inconvenience being awarded given the broad parameters within the industry.

We recognise that ongoing training and empowerment of front-line staff within member firms to identify and resolve matters of concern before they become a complaint is necessary to ensure

that the customer benefits from the best possible outcome (i.e. their concern is addressed promptly and there is no need for a complaint to be made).

Easier online access to information from the FOS, about general complaint situations and scenarios and how the FOS might consider investigating them, would help firms get it right first time and prevent FOS complaints. There are some concerns that the current “ombudsman decision” tool and case studies on the website can be difficult to navigate to get to the right answers. Early sight of key trends and decision reversals would be useful to prevent a build up of cases. Greater transparency on the consistency of FOS decisioning would also be welcome.

The team at the FOS which engages pro-actively with firms is viewed very positively. Perhaps sharing anonymised complaints / cases to a similar level of detail to SME staff in industry sectors would support collective learning and raising standards of complaints handling and increase understanding of the FOS’s expectations and criteria.

We would like to see more done to demonstrate to customers that CMCs are potentially an unnecessarily costly way to raise complaints, recognising that for some customers, they are helpful. Directing customers away from CMCs when their services are unnecessary should improve customer outcomes.

Question 4

To complement the work we’ve already done to improve our efficiency, we’d welcome your ideas for how we could work in partnership to deliver additional savings in future. Do you have any suggestions?

Members have seen improvements in efficiencies achieved through improved communication channels now that the majority of correspondence is undertaken via e-mail.

We would encourage greater use of artificial intelligence and automation.

Question 5

To what extent do you agree or disagree that our levy and case fee income should be rebalanced, so there’s a broadly 50:50 split?

We note that one of the key funding principles behind the proposals is that funding should be proportionate and would query whether this principle will be borne out when looking at the impact on individual firms, as a 50:50 split is unlikely to be seen in each organisation, depending on each firm’s complaints volumes.

We are in agreement with the funding principles set out, including that funding should be fair and those firms who generate greater workload for the service should pay a higher share of the costs. This should create incentives for firms to work harder to prevent complaints from arising and improve complaint handling when they do occur. Currently, case fees are based on the number of cases that are referred to the FOS, but the levy is based on a range of factors relating to the size of the business, and this does not take into account complaints volumes. Therefore, the proposal to increase the proportion of overall funding that comes from the levy, will inevitably mean that the link between volumes of cases and proportion of the overall cost borne by each firm will become diluted.

There is a risk that this could lead to those firms who have fewer complaints, subsidising firms who have a greater volume of complaints and generate more referrals to the FOS. Rebalancing levy and case fee income at industry level means that firms who generate fewer complaints are likely to move further away from a 50:50 split than they are today. In practice, this means that firms with fewer complaints may become responsible for funding a greater share of the FOS’ overall income

than they do today, despite the fact they may not generate additional demand for its services. This appears to be contradictory to one of the stated aims of these proposals and means that the impact of the FOS becoming a smaller and refocused service may not be shared proportionately across the industry.

Some members have expressed disagreement with the points outlined by the FOS to justify the proposed move to a 50:50 split which include:

- The FOS asserts that reducing its reliance on income from case fees will help it to manage the continued trend toward complexity in complaints as PPI subsides. However, with PPI complaints subsiding it is unclear how the FOS anticipates an increase in complex cases and from where?
- with current and anticipated PPI claim volumes to the end of August deadline, we do not anticipate the FOS being able to clear these ahead of its 2020/21 financial year and therefore any change to FOS funding arrangements should be effective from 2021/22 instead.

We would welcome further clarity on the below points relating to the existing levy and fee:

- What are the projected cost increases for the next 5 years?
- What costs are covered by the current levy?
- How is the existing case fee of £550 broken down/utilised to cover existing costs (e.g. does this meet only adjudicators / ombudsman case costs)?
- What is the FOS's current and proposed breakdown of its staff resourcing costs (e.g. contractor v. permanent staff)?
- What is the current segmentation of complaints between standard and complex cases?
- What modelling has the FOS undertaken?

There are questions as to how the proposed change will be managed to minimise any large escalations in the levy to be paid.

For example, as PPI complaints decrease across this financial year, how can it be maintained that it will be a 50:50 split between case fees and the levy, especially when there are businesses who sell multiple products and new businesses whose product base is growing and therefore complaints could increase as well?

Similarly, it is not clear how the 50:50 split would be calculated. Will it be on projected complaints? Will the shortfall be carried over into the following year if these projected figures are not reached by a company who is paying a larger fee than others or vice-versa?

We would have expected that if the levy increases, the case fees would reduce; it is unclear why the cost of the levy would increase, yet the case fee be maintained at the current level. It is not clear from the consultation paper what additional service customers or firms would receive for the inferred increase in cost.

We agree that increased reliance upon the levy will give more certainty to the FOS and enable a more sustainable service to be provided to customers and firms. In such circumstances we would expect sufficient agility to be built into the levy-setting mechanism such that it reflects past business but also makes allowance (perhaps on a sliding scale) for firms which withdraw from higher risk sectors.

We see some merit in the FOS undertaking a further review of the case fee structure, to incentivise effective complaint handling at firm level whereby cases where the FOS upholds in the firm's favour should be eligible for some form of rebate or future discount.

One suggestion is to reference FOS referrals in the last 3 years (excluding PPI) to establish tiers for the fixed case fee.

Question 6

In refining our proposal, we carefully considered different funding options – including different types of risk-based models. Do you have any thoughts about alternative approaches to overcoming the obstacles we identified, in ways that are consistent with our funding principles?

In order to address the potential unfairness that we have identified above, consideration could be given to factoring the metric of 'complaints per thousand customers ratio' into the levy calculation, alongside the existing factors. This metric is well known and understood in the industry, in the context of complaints reporting and publication, and so it would be fairly straight forward for firms and the FOS to use this data in relation to the levy.

Such an approach would meet the FOS's stated objectives in building a new approach which fully aligns to its funding principles as it is:

- Fair and proportionate, in that the firms that generate the most complaints bear a higher proportion of the costs.
- Drives positive behavioural incentives across the market and does not create an incentive for the FOS to reach a particular outcome.
- Is transparent, easy to understand and simple to administer as it is an existing and well-understood metric.

This approach would go some way to measuring the propensity for firms to call upon the FOS' services and ensure that a firm's volume of complaints has a direct impact on its share of the levy, in addition to case fees being based on the volume of cases referred to FOS. Therefore, there would be an incentive for firms to reduce complaints across both factors that make up its overall contribution to the FOS' funding, not just on the case fee side.

There is precedent for this elsewhere in the regulatory fees and levies regime, where firms are given a risk-weighting as part of the annual FSCS levy. This means that those firms who have a higher likelihood of failing and calling upon the FSCS, pay a greater proportion of its funding, and it would be reasonable to take a similar approach for FOS funding, using the 'complaints per thousand customers' ratio, rather than a risk-weighting.

Where a firm and the FOS agree a standard Remediation Programme involving high volumes and a redress model, there should be flexibility for the FOS to agree a lower-case fee given the significantly lower volume of cases likely to be subject to its detailed review.

It would be useful to define/outline if a material change in complaints forecast i.e. 'new PPI' would trigger a different model as more weighting to the levy may lead to shortfalls if complaints ramp up.

Question 7

a) To what extent do you agree or disagree with our proposal to reduce the “free” case threshold for non-group account fee firms from 25 to 10?

b) To what extent do you agree or disagree with our proposal to reduce the “free” case threshold for groups within the group account fee arrangement from 125 to 50?

In the context of the FOS considering how to fund a smaller service in a fair and sustainable way, we broadly agree with the proposal.

We agree that to maintain a level of reserves there needs to be a decrease in free cases, however, this could be on a staggered reduction, rather than the current proposal which decreases the number of free cases in one move. This may affect those smaller businesses, especially if there is an increase to the levy.

In addition, customer complaints which are not upheld could be excluded from a firm's free case threshold count.

Some members have expressed reservations about the effects of reducing the free case threshold given past experience where some CMCs pay little regard to the underlying facts and evidence of a case before issuing complaints against firms. Where there is clear evidence that a CMC is issuing complaints without due regard to the evidence and facts, the FOS charging structure should accommodate the ability to charge penalty fees to CMCs which operate in this manner in an attempt to raise complaint threshold standards overall.

Question 8

To what extent do you agree or disagree that we should look to maintain a level of reserves of six months' operating income or higher?

The majority of our members agree that an operating reserve should be maintained and that at least six months' operating income seems reasonable. We would however expect this to be modelled on Operating Income excluding revenue generated by PPI.

We understand that the nature of the business can change and mass claims can rise from as little as a system outage and there may be a need to grow the business at a rate to support incoming complaints. It may be better to stagger the increase over 2 years to minimise impacts on smaller firms (i.e. budget for a 3-month operating reserve year 1 and extend to 6 months in year 2)

Other members disagree and cite that it is unclear why this is now necessary, given that the FOS has operated effectively with three months' operating income for a number of years.

Question 9

Do you have any comments about the timing for implementing any changes to our funding model that arise from this consultation?

It is difficult for firms to assess the exact impacts of the proposals on their business until the FCA consults on fees and levies for 2020/21. If there were to be a significant impact, our view is that the changes to the levy should be phased to allow firms to plan for changes to funding requirements going forward. Our preference would be for the FOS to avoid implementing changes mid-financial year; and that as much notice as possible is provided.

Timing should also reflect the point at which any backlog of PPI complaints is expected to drop away from projections.

Question 10

Do you have any additional feedback about our future funding, or the proposals presented here?

One suggestion is that companies should be able to raise to the FOS situations where the customer is using their referral rights and the fact the company will be charged £550 if their complaint is raised to the FOS as a way to manipulate the outcome of their complaint and to obtain the goodwill gesture that they believe they should be issued based on their circumstances. We do not believe this will impact upon the investigation of the facts of any case, but it may assist the FOS in having a broader understanding of the particular circumstances/motivations of individuals raising complaints.

Ends