



By email to: consultations@financial-ombudsman.org.uk

Financial Ombudsman Service
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3 August 2022

AFM Response to FOS Discussion Paper on 'Creating a funding model for the future'

1. I am writing in response to this consultation paper, on behalf of the Association of Financial Mutuals. The objectives we seek from our response are to:
 - Comment on the proposals, and their consequences for members of AFM and FOS.

About AFM and its members

2. The Association of Financial Mutuals (AFM) represents insurance and healthcare providers that are owned by their customers, or which are established to serve a defined community (on a not-for-profit basis). Between them, mutual insurers manage the savings, pensions, protection and healthcare needs of over 30 million people in the UK and Ireland, collect annual premium income of over £20 billion, and employ nearly 30,000 staff¹.
3. The nature of their ownership and the consequently lower prices, higher returns or better service that typically results, make mutuals accessible and attractive to consumers, and have been recognised by Parliament as worthy of continued support and promotion. In particular, FCA and PRA are required to analyse whether new rules impose any significantly different consequences for mutual businesses² and to take account of corporate diversity³.

¹ ICMIF, <https://www.icmif.org/publications/market-insights/market-insights-uk-2016> with updates from EY and AFM

² Financial Services Act 2012, section 138 K: <http://www.legislation.gov.uk/ukpga/2012/21/section/24/enacted>

³ <http://www.legislation.gov.uk/ukpga/2016/14/section/20/enacted>

AFM comments on the proposals

4. We are pleased to respond to this discussion paper, as indeed we have to similar Financial Ombudsman (FOS) papers on a regular basis. We empathise with the challenge FOS appears to have, in setting a clear long-term basis for funding its work.
5. As part of the regulatory family, FOS has the capacity to set its prices to cover its costs, without the commercial consequences which regulated businesses face. Regrettably the regulatory family has been veracious in raising fees in the current climate, and this is having a material impact of many businesses who are not able to raise their own prices in the same way.
6. AFM members tend to see very few complaints passed to FOS. In part this is because, as customer-owned businesses, they are more likely to work in the best interests of customers, and therefore offer fewer grounds for dissatisfaction. Also, where complaints do arise in the ordinary course of business, a mutual will always seek to produce a fair outcome.
7. In addition- for better or worse- because many AFM members tend to specialise in products with lower premiums, the significant costs of FOS now distort decision-making in firms: as we indicated in a recent response⁴, if a complaint relates to a £100 claim, there is no business sense in letting the case drift to FOS, and regardless of the validity of the complaint, many complaints are now settled in the customers' favour. In a mutual however, that means one individual profits unreasonably at the expense of their peers.
8. As we also stated in response to the latest budget proposals:

“As the introduction makes clear, FOS considers this is a pivotal year for the organisation, and for those of us that have worked with the Service throughout its 20 years, it is fair to say that this is not the first pivotal moment it has experienced. The challenge though is not to set a budget to ensure that the financial consequences of change are felt as little as possible, but to establish the right size for the organisation for the future, and to re-set finances to fit that.”

⁴ <https://financialmutuals.org/wp-content/uploads/2022/01/AFM-response-to-FOS-plans-and-budget.pdf>

9. We see welcome signs in this paper that the Service is alert to those concerns, and that it is exploring how it can manage its operations more efficiently. However, the tone of the consultation remains focused much more on good financial outcomes for FOS, rather than fair outcomes for consumers. Whatever commercial or political pressure the Service is under to reduce costs for large banks, it is iniquitous to push those costs onto smaller firms.
10. The challenge that FOS identified a number of years ago was that it had built an infrastructure to manage large volumes of PPI claims. The Service has more to do to come to terms with the changes in its priorities: certainly there is greater variability in the smaller volumes it now transacts, but instead of focusing purely on ways to maintain income streams in the face of a fall in demand for its service, FOS needs to think about how it can right size the business and find efficiencies in its operations. We regret that this discussion paper does not appear to recognise this, or to advance thinking very much.
11. We have responded to selected questions in the paper below, and would welcome the opportunity to discuss further the issues raised by our response.

Yours sincerely,



Martin Shaw
Chief Executive
Association of Financial Mutuals

Responses to selected questions

Q1: Do you agree with how we suggest building on our current principles and are there any other factors we should take into account?

We agree the current principles remain valid and important. With regard to the additional elements proposed, we are concerned that 'recovery of our total costs' allows for an open cheque book, and reduces the incentive on FOS to be as efficient as possible.

We would be interested to hear from FOS whether it considers that 'encourage firms to... resolve complaints quickly and fairly' justifies the risk that increasing case fees for low value complaints forces firms to settle complaints in the customer's favour purely to avoid the cost of a case going to FOS. As we mention above, a rational business will be unlikely to permit a complaint worth £100 to go to FOS with a case fee of £750 or more, except in specific circumstances. Those circumstances might be where there is an important principle at stake, or a risk of wider implications, though arguably individual resolution is not necessarily the best approach.

It would be helpful for FOS to increase the publication of data on the value of decisions made: eg what proportion are at £0, under £200, £200 to £750, £750 to £2,000, £2,000 to £10,000, over £10,000, or similar.

Q2: Do you agree with our option of changing the CJ levy to recover fixed overheads?

We do not agree this is the right methodology for setting the CJ levy. In reality, a small proportion of fixed costs are dedicated to services that benefit all fee payers. The likelihood is that this approach would increase the levy paid by the firms that generate fewest, if any, complaints.

The rationale for this proposal is unconvincing, and it appears to be a camouflaged way of shifting the balance further between levy and case fee.

Q4: Should we retain our single, flat case fee or do you support a differentiated case fee model?

Q5: Do you agree that we should charge different case fees according to the stage the case has reached before it is resolved? Do you consider this would create any unhelpful incentives?

At its launch, FOS was described as a 'cheap and cheerful' alternative to the courts. For it to continue to meet that description it is important that it does not start to replicate the costs of alternative dispute resolution mechanisms, including

the courts. Otherwise, firms might be tempted to pursue those alternatives, which could disrupt the FOS budget assumptions.

The cost of handing a case may vary for many reasons, not all of which are to do with the product or the firm, and it is important that FOS considers options: for example, to improve case handling and efficiency, or to recognise those circumstances where the individual review of cases is less appropriate than resolution en masse in FCA.

Equally, just as consumers should have unfettered access to FOS, we consider that the adjudicator review offers an important safeguard to firms (and consumers) that a case can be appealed. Any attempt to alter this right, by charging firms more for taking up their legislative right, would be wrong.

Q6: Do you agree that we should vary case fees according to the type of product the complaint relates to? If you agree, do you think we should also introduce fees that are chargeable according to case stage?

We do not agree. There are many factors other than the type of product which affect the cost of resolving a case. The fact that some products require more effort to resolve is not a reason to alter the overall principles of FOS: a low value product may be more complex to fit with legislative requirements, or less familiar for FOS staff, but extra cases fees would simply exacerbate the low profitability of the product, and at the extreme cause firms to raise prices or withdraw products from the market.

The example given of banking products versus pensions and investments is not valid: the period since the 2008/09 financial crisis has shown that banks were making excessive profits from many products, whilst pensions and investment providers were not censured in the same way.

It would be preferable for FOS to recognise its role as 'putting things right for customers that are unfairly treated', and in recognising the scale of harm that consumers suffer, rather than seeing its first priority as being to cover its costs and widen its cost base away from the largest banks.

Q8: Do you agree that an initial fee at conversion will protect us and levy payers from the risk of not recovering costs for completed work?

We can see an argument for pre-funding complaints work, but we conclude it is not in the customers' best interests. Pre-funding removes the incentive for FOS to resolve complaints within its service standards. For cases that FOS takes over 12 months to resolve, particularly from smaller intermediary firms, there is a greater risk that the firm will be less able to settle the complaint and/ or compensate the customer.

Q9: Do you agree that a time limit of 12 months to claim for overpayment of fees provides firms with a sufficient opportunity to make any claim for repayment?

We don't consider the case made for this change is persuasive.

Q12: Would you like us to consider introducing differentiated fees based on case complexity in future? How should complexity be defined and how could fees based on complexity be applied most effectively?

We covered this in our earlier response.

Q13: Would you like us to consider offering discounts for cases resolved in batches in future, or do you think that fees based on the stage a complaint reaches would have the same impact? What would be an appropriate minimum and maximum number of complaints to form a batch?

We don't see that offering discounts for batch resolution, and altering fees based on the stage a complaint reaches in any way amount to the same thing. We have stated reasons for not welcoming the latter. With regard to the former we assumed that the group arrangements already in place permit some level of saving for the largest fee payers. The danger with too much discounting for firms that receive large volumes of complaints is that it removes part of the incentive for them to reduce levels, and also paints FOS as taking a regressive approach to fee policy (i.e. small businesses pay a larger fee than bigger firms).

Q14: Would you like us to introduce supplementary fees for firms which are uncooperative and how do you define 'uncooperative'?

We are not convinced that it is the role of FOS to determine when a firm is uncooperative and whether to impose a fine in such circumstances. FOS has a clear MoU with FCA, which should motivate it to pass on details of problem firms to FCA supervisors, and to be satisfied that the intelligence they pass to supervisors will be considered in FCA's usual activities. FCA may not have discharged this responsibility fully or effectively in the past, but its own budget and business priorities emphasis it will be giving much greater focus to early intervention.

Q15: Do you agree that these options should not be taken forward or should we reconsider any of them – and if so, why?

We agree that these ideas do not merit further work at this time.