



James Tallack
Financial Conduct Authority,
12 Endeavour Square,
London E20 1JN

14 December 2018

Dear James,

AFM Response to FCA CP18/31, Increasing the award limit for the Financial Ombudsman Service

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 as they affect AFM members and their customers.
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 £19.6 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>

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>

4. We welcome the opportunity to respond. Our members see a relatively low proportion of complaints compared to the industry as a whole, and the number of decisions overruled by the FOS is also much lower. That said, where an adjudicator looks at the merits of a case in isolation, as customer-owned businesses, it is important for our members to consider the wider implications of any decision. For example, paying a particularly high award to one customer, when the decision is relatively subjective or complex, may have consequences for a wider set of policyholders.
5. We have answered the specific 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

Answers to selected questions raised in the consultation

Q1: Do you agree with our estimate of the volume of high value complaints, including the assumptions we have made? If not, are you able to provide any data to support your view?

We consider this is a significant change to the remit of the FOS and were disappointed that the evidence base is surprisingly limited. The small sample of cases, and the limited data available suggests either that FOS is unable to provide the information required from its systems, or that FCA has undertaken a superficial view only of the data available.

To illustrate, the contention in paragraph 2.9 that “we think they are unlikely to have the resources to pursue a complaint against a firm through the legal system”, indicates that no evidence has been sought on this.

Equally, the scale of an award of up to £350,000 suggests a relatively small proportion of the population is affected, and that in most cases where a consumer or firm complains about investment or pension mis-selling (for example), that complainant will be likely to be much more affluent than the average FOS complainant. This should be an important consideration for the FCA and FOS: there is a growing tide against regulating for the middle classes in favour of supporting the disadvantaged and vulnerable; for example, in November 2018, the Women and Equalities Minister announced that “the UK government will shift its attention away from getting professional women on to major company boards and instead focus on championing low-paid and unemployed women”⁴.

We consider FOS should equally increase its focus on ensuring that vulnerable and less affluent consumers are treated fairly. In paragraph 2.26 FCA implies long-term investment (and insurance) products tend to be purchased by people that rely on them for income in retirement, who are therefore unlikely to have high disposable income, and more evidence on these assumptions would be helpful.

In paragraph 2.10 FCA state “we have not analysed the resources available to individual consumers”, or of businesses with a turnover of less than £6.5 million. We think this is an important omission. Additionally, where the assumption that SMEs with turnover below £6.5 million would not have the resources to pursue a claim in the courts, it is worth highlighting that most of the firms that FCA regulates are equally constrained in their capacity to pay large claims.

FCA assumes firms, in particular intermediaries, will be able to extend their PI cover to fund such claims. However, this overlooks that not all firms can get cover- including some small providers and many AFM members. Small providers report PI premiums are very expensive already, and should there be a need to claim, they probably become completely unaffordable, with a higher FOS awards limit.

⁴ <https://www.ft.com/content/f6a45cf4-ed90-11e8-8180-9cf212677a57>

Q2: Do you agree with our estimate of the value of high value complaints, including the assumptions we have made? If not, are you able to provide any data to support your view?

As we comment above, the data presented by FCA is very limited in nature. The estimate of 2,000 cases, worth £113 million, is therefore very difficult to assess, based on such limited analysis. The data provided in chart 3 for example, is based on just 40 complaints reviewed over two years, and making planning assumptions drawn from such a small sample is not likely to be reliable. We question for example how many of the 40 cases reviewed were- for example- SIPPs, and therefore how representative the figures in paragraph 2.32 are.

We do not think the profile of claims reviewed by ombudsmen is representative of all those viewed by adjudicators: firms are more likely to seek a referral to an ombudsperson if the value is higher.

Q5: Do you agree with our proposal to increase the ombudsman service's award limit to £350,000 for complaints about acts or omissions by firms on or after 1 April 2019?

Q6: Do you agree with our proposal to automatically adjust, in line with general price inflation, the ombudsman service's award limit for complaints about acts or omissions on or after 1 April 2019 every year from 2020 onwards?

Q7: Do you agree that the measure of general price inflation used to automatically adjust the ombudsman service's award limit for complaints about acts or omissions on or after 1 April 2019 should be the CPI?

As we comment above, the evidence base for the proposed award level is limited, and we are not inclined to agree with the proposal without more research.

We agree that future award limits are increased annually, and that CPI is an appropriate basis for this.

Q8: Do you agree with our proposal for a one-off adjustment, reflecting general price inflation between 2015 and 2019, to the ombudsman service's award for complaints about acts or omissions by firms before 1 April 2019?

Q9: Do you agree with our proposal to automatically adjust every year from 2020 onwards, in line with general price inflation, the ombudsman service's award limit for complaints about acts or omissions before 1 April 2019?

Q10 Do you agree that the measure of general price inflation used for both the proposed one-off and automatic adjustments to the ombudsman service's award limit for complaints about acts or omissions on or after 1 April 2019 should be the CPI?

We agree with these proposals, and that they set a fair and reasonable basis for the future.

Q14 Do you agree with our assessment of the impact of our award limit proposals on individual firms?

Q15 Do you agree with our assessment of the impact of our award limit proposals on the Financial Services Compensation Scheme?

As mentioned earlier, the analysis of firms' ability to pay claims based on PI limits, neglects that this is not an appropriate solution for smaller providers.

Q16 Do you agree with our decision to rule out having different award limits for different types of complaint or complainant? If not, why do you think there should be different limits?

Q17 Do you agree with our view that there should be a limit to the amount of compensation the ombudsman service can require firms to pay to complainants? If not, how –if at all – would the ombudsman service's approach to dispute resolution need to change for it to be able to require firms to pay any amount of compensation?

We consider there should be a standard level of award as this will help consumers better understand the limits available.

Q19 Do you agree with the costs, benefits and transfers we have identified? If not, please explain why.

We were surprised that there is not more empirical evidence for FCA's proposals. The sample of cases reviewed by FCA was small (40) and where these were also broken down into relevant products (eg SIPPs) the foundation evidence is particularly small and therefore not guaranteed to be reliable.

The absence of data on larger cases referred to the courts rather than the FOS, also indicates that there is potential for an absolute number of larger value complaints dealt with by the FOS, and it is equally possible that some consumers will be more inclined to pursue a complaint given the scale of potential loss.

We also consider costs will increase, both at FOS and in firms. Where the scale of award provided by FOS increases, firms are more likely to challenge adjudicator decisions, leading to more referrals to ombudsmen. Firms are also more likely to take on legal advisors in defending claims and this will increase costs. Where FOS are making larger awards and receiving more legally constructed responses by firms, they will inevitably have to increase further the quality of decision making, and this was covered in depth in chapter 3 of the Lloyd report published in July 2018.

We do not agree with the suggestion that the proposed increase in FOS award limit will increase competition. In our assessment, smaller organisations, such as AFM members, will be more wary of insuring larger risks, and this is likely to reduce the range of products available to consumers.

The statement in paragraph 19 of Annex 3, which suggests there is not likely to be a significantly different impact on mutual societies, is wrong in our view. Where a mutual makes a decision to extend compensation to one customer, it is likely to be at the cost of

all other customers, given there are no shareholders to pass on the cost to. Where mutuals are also not-for-profit organisations, the impact of larger payouts and associated administration costs is not absorbed by reducing profit but by reducing returns to, or increasing prices for, customers.