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XX January 2024

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

Dear Sir / Madam,

Financial Services Consumer Panel response to Financial Ombudsman Service Consultation: Our 2024/25 plans and budget

The Financial Services Consumer Panel (the Panel) is an independent statutory body. We represent the interests of individual and small business consumers in the development of policy and regulation of financial services in the UK. Our focus is predominately on the work of the FCA, however, we also look at the impact on consumers of other bodies' activities and policies where relevant to the FCA's remit. We are responding to this consultation because the Financial Ombudsman Service is a key member of the regulatory family that works closely with the FCA to ensure that consumers get adequate redress for harm caused by FCA-regulated firms. Part of our own vision for financial services regulation is that consumers should get prompt and commensurate redress and the Ombudsman Service plays a vital role in this.

The Panel welcome the opportunity to respond to the Financial Ombudsman Service's (the Ombudsman Service's) consultation on its annual plan and budget for 2023/2024.

Alongside our response to the specific questions listed (which can be found in Annex A below), the Panel would like the Ombudsman to consider the following:

- FOS must consider the inevitable complaints volume and trends arising due to the ongoing cost-of-living crisis. As consumers continue to change their behaviour, this will affect complaints.
- FOS services must remain free and easy to access for all (including those that use digital channels and those that do not) and allow access to complainants in the way that best suits them without any reduction or delay in service quality, speed and efficiency.
- The Panel welcomes the plan to reduce the time taken to resolve 90% of cases from six months to five and would encourage the FOS to go even further. The Panel agree that improving the efficiency of processes and digital access is key to this. However, this must not be at the cost of providing consumers with the choice of contact method that suits them to deliver the same level of efficiency, speed and outcomes.
- In our response to previous consultations¹, The Panel has stressed the need for the FOS to use its own enhanced digital capabilities programme to improve the sharing of insights within the regulatory family. Speeding up the sharing process allows quicker action to be taken against firms that are failing to deliver good outcomes for consumers. It also enables a faster and more efficient collection and sharing of data which will allow repeated harms as well as emerging issues to be identified more quickly and communicated to FCA for use in its supervisory and enforcement work. Over time, this should help to drive up standards. The Panel

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https://www.fs-cp.org.uk/sites/default/files/final_fscp_response_financial_ombudsman_service_annual_plan_and_budget_20220131.pdf

are supportive of FOS developing a data strategy in order to enable the best use of the unique data collected by FOS. The Panel also agree that this work needs to go hand-in-hand with consistent and clear communications with consumers.

- The Panel welcome the plan to step up work aimed at prevention of harms. This is a fundamental role for FOS and requires working very closely with the wider regulatory family. The ability to deliver on this may be dependent upon the funding model, for example by ensuring that the levy on the industry is used to target communications to the industry and to consumers aimed at preventing harm arising in the first place and in particular that complaints about similar types of harmful activity across the sector are reduced over time. The Panel would like to see clearer identification of harmful activities which drive similar complaints and targets set for reductions in those areas. FOS has an important role in using its data to improve its own performance and also to drive improved performance within the financial services sector.
- The Panel welcome the emphasis on case fees reflecting the 'polluter pays' principle as this should be a corner stone of any redress mechanism.

Yours sincerely,

Helen Charlton

Chair, Financial Services Consumer Panel

Annex A - Questions

Question 1 – What volumes and trends should we expect to see in the following areas?

- a. Banking and credit**
- b. Insurance**
- c. Investments and pensions**
- d. SME volumes, CMC volumes and funeral plans?**

The Panel agree with the FOS' assessment of trends it may see in its casework and how future complaint volumes are likely to change, particularly in key areas such as insurance and banking and consumer credit.

As explained in our response to FOS Annual Plan and Budget 2023/24² the Panel still expect there to be an increase in cases related to the cost-of-living crisis and would encourage FOS to consider the time-lag between the impacts on consumers as harms begin to arise. There will inevitably be a time-lag due to complaints making their way through the complaints process and reaching FOS, this means it is likely that cost of living related complaints will be seen in 2024-2025.

The Panel would also like to highlight the following:

- The current economic conditions will inevitably lead to more consumers experiencing financial difficulties and resulting harms, including a potential increase in financially vulnerable customer across complaint types.
- With the current economic conditions and the cost-of-living crisis, there has been a higher demand³ for credit. According to research conducted by Ipsos, 1 in 4 consumers used their credit card for essentials in response to the cost of living. Changing consumer behaviour in response to the current economic conditions is likely to give rise to changes in complaint numbers and types. This is something the FOS should be anticipating in relation to volumes and trends. This can also be evidenced in the FCA's review⁴ of outcomes for borrowers in financial difficulty.
- With wide reports of rising insurance premiums, the FOS should anticipate increased volumes in this area. (For note, the Panel is conducting research in this area and intends to share the data with the FOS for information).
- It is important that FOS apply the requirements with the aims and ambitions of the Consumer Duty, which the Panel believe to be the cornerstone of regulation. The Duty will have a significant impact on the Ombudsman Service and the Panel expect the Duty (if implemented correctly) to reduce the number of complaints reaching the Ombudsman Service in the long term, but there will also be new complaints around firms' compliance with the Duty. It is important the Ombudsman Service work closely with the FCA to ensure they resolve complaints in a way that is consistent and joined up with the FCA's regulatory approach.

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

The Panel agree with the Ombudsman Service's assessment of Buy Now, Pay Later (BNPL) as a likely trend. We would encourage FOS to work closely with the FCA to ensure they

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https://www.fs-cp.org.uk/sites/default/files/final_fscp_response_to_fos_annual_plan_and_budget.pdf

³ <https://www.ipsos.com/en-uk/quarter-britons-are-using-credit-cards-essentials-while-9-10-worry-about-cost-living-country-whole>

⁴ <https://www.fca.org.uk/publication/research/borrowers-in-financial-difficulty.pdf>

resolve complaints in a way that is consistent and joined up with the FCA's regulatory approach.

The Panel recognise the difficulty of predicting what cases may come to the FOS in the immediate future, both in terms of volumes and complexity. Given the trends seen during the Covid-19 pandemic, and the potential for cost of living-related complaints associated with short-term lending, pensions, scams and so on, it is important that the FOS does not underestimate future complaints and is ready to respond should actual complaints begin to diverge from forecasts.

As well as the harm caused during the pandemic which many consumers are still recovering from, consumers are now facing a cost-of-living crisis. Recovery is increasingly looking as if it will be 'K shaped', where there is likely to be two groups of consumers who each face different risks:

1. Those on low/variable income – who may borrow at unaffordable levels, lose access to existing credit lines and struggle to access debt help
2. Those with more resources which they were prepared to put at increasing risk – who are at increased risk of falling victim to scams/fraud and may invest in products which are not suitable for them

We recommend the FOS monitor issues around insurance, namely the significant increases in premiums at renewal (which may widen any loyalty premium) and secondly changing dynamics around claims with (a) claims taking longer to process (b) repairs taking longer to be completed and (c) due to both previous issues, write-offs in car insurance becoming more frequent.

Another emerging area we recommend FOS monitor is equity release. The Panel has undertaken research⁵ that indicates the need for further work to understand the scope and nature of likely consumer concerns.

Given the current financial stress on consumers, the Panel would emphasise the need for efficiency and speed as any delayed resolution can significantly exacerbate the harms suffered and increase the loss being faced by consumers.

Question 3 – Should regulation of BNPL come into force, what types of complaints might we receive about these products?

The market for unregulated Buy Now Pay Later (BNPL) products has seen recent rapid growth, with the value of transactions using BNPL more than tripling in 2020⁶. While BNPL products can be helpful, the Panel has raised concerns about existing and potential consumer harm arising from widespread BNPL use. The Panel agree that some consumers may experience a time lag between using BNPL services and identifying the need to complain.

Users of BNPL are a diverse group. Some may be in vulnerable circumstances and may lack a full understanding of the consequences of entering into BNPL agreements. Digital marketing has already been identified as a source of potential harm in this market and the Panel's own research into high-cost credit has shed light on the fact that digital advertising in financial services already targets vulnerable customers, many of whom are also likely to be targeted with BNPL products.

⁵ <https://www.fs-cp.org.uk/consumer-panel-research-makes-case-development-tools-and-guidance-later-life-lending>

⁶ <https://www.ft.com/content/ddb2e207-2450-4ca8-bad0-871290d80ea7>

As mentioned in our response⁷ to the FOS' consultation on the 2022/23 annual plan and budget, the Panel strongly support consumers being able to complain to FOS about BNPL products when they are brought within the regulatory perimeter. This will likely have significant impact on the FOS' complaint numbers and resourcing to address these complaints.

Question 4 – Do you agree that the service standards we have set out will help our customers? Are there areas where you think we should be more ambitious?

The Panel agree that the service standards set out will help customers. Alongside those set out by the FOS, the Panel would encourage FOS to consider the following:

- FOS must be adequately funded to be best prepared for changes in the financial services landscape including new products and services, innovations in delivery, the Consumer Duty, and crucially external influences on firm conduct and consumer behaviour.
- FOS services must remain free and easy to access for all and allow access to complainants in the way that best suits them without any reduction or delay in service quality, speed and efficiency. We assume the 'Net Easy' score is similar to Net Promoter, calculated as those that find the FOS easy to deal with less those that don't. For the FOS to be effective it needs to be easy to deal with and known for being easy to deal with. The Panel would suggest that a target for the Net Easy Score of 50 is too low and would encourage the FOS to focus on the drivers of this outcome and address identified issues. The Panel is concerned that consumers will not progress valid claims through the FOS if they believe it is too difficult to do so which may also drive volumes to CMCs, where the consumer pays for an outcome that the FOS would have delivered for free.
- It is important that FOS are equipped to deliver the desired service standards – this involves ensuring staff are correctly and adequately trained to deal with complaints from varying sectors and to deal with vulnerable customers.

Question 5 – What more can we do to share insight to prevent complaints and unfairness from arising?

The Panel, in response to previous consultations⁸, has stressed the need for the FOS to use its own enhanced digital capabilities programme to improve the sharing of insights within the regulatory family. Speeding up the sharing process allows quicker action to be taken against firms that are failing to deliver good outcomes for consumers. It also enables a faster and more efficient collection and sharing of data which will allow repeated harms as well as emerging issues to be identified more quickly and communicated to FCA for use in its supervisory and enforcement work. Over time, this will help to drive up standards. The Panel are supportive of FOS developing a data strategy in order to enable the best use of the unique data collected by FOS. The Panel also agree that this work needs to go hand-in-hand with consistent and clear communications with consumers.

In addition to a data led approach, the Panel would expect the FOS to be able to leverage the move toward Subject Matter Experts handling cases to create an ability for these SMEs to spot, share and discuss emerging issues collaboratively and raise for further analysis.

⁷ https://www.fs-cp.org.uk/sites/default/files/final_fscp_response_financial_ombudsman_service_annual_plan_and_budget_20220131.pdf

⁸ https://www.fs-cp.org.uk/sites/default/files/final_fscp_response_financial_ombudsman_service_annual_plan_and_budget_20220131.pdf

Question 6 – Have we captured the right priority areas in our transformation programme to drive both an improved customer experience and value for money?

and

Question 7 – What other areas should we consider in our transformation programme?

The Panel are pleased to see that FOS has invested in modernising operations in order to provide better value for money. Other areas of priority are set out below:

- The Panel agree that the reshaped casework team structure should also focus on sharing relevant insights with the regulatory family. This will help the FCA especially to identify firm misconduct and intervene at the right time.
- The Panel believes the FOS process should be as simple and stress free as possible which includes considering whether the criteria applied to claims are fair. As such the Panel would encourage FOS to 'mystery shop' itself to truly understand the consumer experience and how easy it is to deal with and compare this to analysis of CMCs to ensure the FOS is easier, simpler and quicker to deal with.
- As said, the Panel welcome the digitisation of the experience for consumers and more analysis should be done on the consumer experience data available to ensure this delivers the intended improvements for all.
- There should be an emphasis on improving the prevention agenda, The Panel agree that FOS can resolve cases faster and prevent complaints from arising by sharing insight 'with businesses, professional representatives and the wider regulatory ecosystem' and this has real potential to improve outcomes for consumers.
- We expect firms to proactively resolve complaints before consumers need to seek recourse through the Ombudsman, and act promptly as required by the FCA's DISP complaint handling rules. Firms should at all times engage with the FOS.
- The Consumer Duty aims to 'drive a cultural reset'⁹ in the financial services sector and fees for uncooperative behaviour would provide a good incentive for firms to improve their behaviour and therefore drive cultural change.
- Although unlikely to be included in the definition of 'uncooperative', we would also like to see the FOS being clearer about action it takes in response to repeated complaints about the same firm as well as repeated complaints and evidence of harm across different parts of the sector. Only more efficient and faster use of its data on complaints can achieve this.

Overall, the transformation programme with the FOS must have the consumer at its heart.

Question 8 – Do you agree with the level and rationale behind our proposed funding changes for 2024/25, both in relation to the compulsory jurisdiction (CJ) and voluntary jurisdiction (VJ)?

The Panel largely agrees with the approach being adopted. Whilst there may not be a case to implement differential case fees currently, the Panel would expect FOS to keep this under review.

With regard to the reduction in fees the panel would encourage the FOS to increase the percentage of funding coming from case fees further to ensure that the polluter increasingly pays (rather than align the split to the FOS's overhead/variable cost split). The Panel would hope that well run, consumer focused firms, would benefit from reduced

⁹ <https://www.fca.org.uk/publication/consultation/cp21-36.pdf> p102

FOS complaints, therefore reduced FOS fees and will pass these savings onto Consumers in lower costs and enhanced service.

Question 9 – Do you agree with our proposal to adopt the FCA’s widened definition of ‘relevant business’ when reporting data and calculating the VJ levy? If not, why not?

The Panel agrees.

Question 10 – Do you agree with our other proposed changes to the FCA handbook in relation to FEES 5.5B and DISP 4.2.6R, which sets out which parts of FEES apply to VJ participants? If not, why not?

The Panel agrees.

Question 11 – Do you agree that our proposed use of surplus reserves in 2024/25 is appropriate?

The Panel agrees that the FOS should use their reserves strategically to smooth out funding requirements however would encourage the FOS to use relevant scenarios to forecast whether the level of reserves remains appropriate and adopt a flexible approach should anything change.

Question 12 – Do you support our proposed budget for 2024/25?

The Panel believes that the FOS must be funded in such a way and to such a level that it is able to handle complaints efficiently, and deal with increasing complexity. This will ensure consumers get redress and good service in a timely manner. The cost of operating the FOS is indicative of the harm occurring in financial services.

Question 13 – Do you feel we are offering value for money? If not, where do you think we could improve?

The Panel agree that there is a limit on the level of transformation that is achievable in any one year and support plans to hold reserves to spread this investment over three years to support successful execution.

The Panel are however concerned that the FOS operating cost base will be intentionally higher than income for more than one year. In certain future scenarios this could leave FOS in a position where they have limited ability to invest in areas that will deliver value for money. The Panel accept that the more accurate FOS incoming demand forecasts are, the more accurately they can plan workforce needs however, there are situations that cannot be anticipated with certainty and the Panel would encourage the FOS to consider this carefully.

In terms of delivering value for money, in all such scenarios, the Panel would encourage the FOS to ensure it has the right balance of Time (elapsed time to clear each case), Quality (of its work, such as ease of use etc) and Resourcing levels and skills to ensure the consumer receives the best outcome for the level of FOS spend.

Question 14 – Do you consider that FOS should exercise the power given to charge professional representatives? If not, why not?

and

Question 15 – If this power is exercised, what is your view of the likely impact of a fee for professional representatives on overall complaint volumes and types submitted to the FOS?

and

Question 16 – If this power is exercised, to help shape our Equality Impact Assessment, do you think there are any potential impacts of charging professional representatives on different groups of complainants, for example vulnerable groups and those with protected characteristics? If so, how do you think these could be mitigated?

The Panel agree with the FOS' early view that the definition should not include friends and family who are providing personal support to a complainant as being within the scope of the new charging arrangements.

In relation to exercising the power given to charge professional representatives, the Panel are of the view that consumers who want to bring a complaint to FOS should feel confident that they can do so directly, without charge, and keep 100% of any award made. Around 20%¹⁰ of FOS cases have been brought by a professional representative who do not pay a fee for using FOS but are able to gain economic benefit – often through reducing a customer's redress. We are therefore supportive of charging a fee to 'other persons of a specified description' as it may lead to fewer consumers using these services and therefore receiving 100% of their redress payment.

We anticipate that charging these bodies will have some impact on overall complaint volumes and types submitted to the FOS. Based on consumer awareness, more consumers may decide to complain to the FOS directly than previously as they will get 100% of the redress being paid to them. This will however be dependent on consumer awareness.

Whilst complaint style is likely to be impacted (consumers may have more questions/need further support from FOS staff in order to be able to successfully submit a complaint) and this may result in more workload for the FOS (such as communication between consumers and FOS staff) which could increase the workload on case officers – the Panel believes the net result (more direct claims, fewer CMC handled claims, potential higher FOS workload) to be a positive outcome.

However, the Panel would also encourage the FOS to consider how this might impact vulnerable consumers who may need to make use of CMCs, or other organisations, as they are simply unable to complete the complaint on their own. Therefore, the FOS needs to ensure that the new rules continue to allow for not-for-profit organisations to support vulnerable consumers in making such claims.

Lastly, the Panel would encourage the FOS to consider consumer complaint levels about CMCs and other such organisations – a fee for these organisations is likely to be passed down to the customer as firms seek to get a 'cut' of the customer's redress. This may lead to further issues such as consumers complaining about the amount of redress received or the firms handling of their complaint.

Question 17 – If this power is exercised, how do you think the regulatory system could address/avoid professional representatives passing on the fee to consumers?

and

Question 18 – If this power is exercised, what other factors should we consider when evaluating charging professional representatives?

Under the Consumer Duty, there is an obligation for firms to ensure consumers are receiving value for money. If fees are passed onto consumers, this would impact how much value (or perceived value) they are receiving for their money. The FOS should work with the FCA to ensure the obligations under the Consumer Duty are clear to both firms

¹⁰ <https://www.financial-ombudsman.org.uk/files/324385/Financial-Ombudsman-Service-Plans-and-Budget-Consultation-2024-25.pdf>

and consumers and that the current regulations relating to CMC fees are adapted and refined if required.

Question 19 – If this power is exercised, do you agree with our initial thoughts to provide the same level of free cases (three) as for respondent firms?

The Panel agree with the consistent approach however believe that the practice of offering 'free' cases, is not appropriate and reduces the incentive for firms to do the right thing in the first place. The Panel believes that the practice of offering 'free' cases needs more detailed consideration to assess what impact the practice has on the ability of the FOS to incentivise behaviour change and fund all the work it needs to do (not just in terms of case handling but also increased work around prevention, sharing of insight, consumer communications and outreach, and the other priorities listed by FOS). An important part of this consideration will be the environment the FOS is operating in, which is to an extent unpredictable in terms of case volumes and 'new' issues that may generate additional work in all of the FOS' workstreams.

Question 20 – If this power is exercised, what do you think of the potential pricing options, or the proposed fees, for charging professional representatives?

No comment.

Question 21 – If this power is exercised, what preparations will professional representatives need to make? And what is the timescale that it will take to implement such preparations?

No comment.