

Telephone: 020 7066 9346

Email: enquiries@fs-cp.org.uk

2 February 2023

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

Dear Sir / Madam,

Financial Services Consumer Panel response to Financial Ombudsman Service Consultation: Our 2023/24 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 cost of living crisis. As consumers change their behaviour, this will affect complaints.
- 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.
- The Panel welcome the plan to invest to make it easier for consumers and businesses to contact the FOS. 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 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 agree that this work needs to go hand-in-hand with consistent and clear communications with consumers.

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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

- 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 impacted by 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. We also welcome the decision to remove free cases for businesses inside the FOS's group account fee arrangements but question the reasons for retaining three free cases for all other businesses.

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, including Payment Protection Insurance (PPI)**
- c. **Investments and pensions**
- d. **Other, including SME volumes, CMC volumes and funeral plans?**

The Panel 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 2023-24.

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, leading to a potential increase in financially vulnerable customers across complaint types.
- With the current economic conditions and the cost-of-living crisis, there has been a higher demand² 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 pressures. 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 review³ of outcomes for borrowers in financial difficulty.
- As outlined elsewhere in this response, given the current financial stress on large numbers of consumers (including SMEs), the Panel would emphasise the need for efficiency and speed as any delayed resolution can significantly exacerbate the impact of harms faced by consumers. Prompt complaint resolution can make the difference between a SME continuing to trade, or closing for business (after which no award can be made).
- It is important that FOS take account of the Consumer Duty proposed by the FCA, 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 it is likely there will also be new complaints around firms' compliance with the Duty. It is important the Ombudsman Service work closely with the FCA to prepare for this change and ensure they resolve complaints in a way that is consistent and joined up with the FCA's regulatory approach.
- The Panel agree with the FOS' predictions on increasing complaints about frauds and scams. We believe that whilst this is very likely, it is also one of the most unpredictable trends as increased consumer vulnerability often leads to an increase in scams and fraud suffered by consumers.
- The Panel would also like to flag the possibility of more complaints/redress for small businesses adversely affected by cost of living pressures.

² <https://www.ipsos.com/en-uk/quarter-britons-are-using-credit-cards-essentials-while-9-10-worry-about-cost-living-country-whole>

³ <https://www.fca.org.uk/publication/research/borrowers-in-financial-difficulty.pdf>

The Panel would like to ask if FOS will be tracking complaint areas of interest such as economic abuse or complaints related to protected characteristics? If so, the Panel would be keen to engage with FOS on these insights.

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?

See also our response to Q1 above. 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.

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.

The Panel agree with the Ombudsman Service's assessment of fraud and scams as a likely trend. Increasing volumes and sophistication of scams and fraud are likely to drive an increase in consumer victims and this coupled with the cost-of-living loss worsens the risk to overall trust in financial services.

Evidence⁴ has shown that more UK adults are seeking private healthcare in response to ongoing pressures on the NHS. Bupa, Aviva and Vitality, three of the largest insurers in the UK, have collectively added 480,000 new customers since the beginning of 2022⁵. Therefore, another novel trend that may be seen in 2023/24 is around possible medical insurance complaints.

Question 3 – What more can we do to share insight to prevent complaints and unfairness from arising?

The Prevention agenda is key – particularly in light of the introduction of the Consumer Duty during 2023. With a properly funded prevention strategy and by working closely with financial firms and the FCA the volume of cases coming to the Ombudsman should reduce.

The Panel encourages the FOS to make greater use of sharing its messages publicly via its consumer-facing stakeholders such as MoneySavingExpert, Citizens Advice, StepChange and MaPS to name a few. It is also important that the insights the FOS shares with firms and the Financial Conduct Authority are acted on promptly, minimising the need for consumers to have to bring a complaint to the FOS, particularly as we know that consumers are generally reluctant to bring complaints and may not be aware of protections. The Panel would like to see how the collection of data on complaints can be used to monitor and improve complaints handling by firms and prevent complaints arising in the first place.

The Panel urge greater transparency around what FOS is doing to work with the FCA on the application of the DISP Rules. In the FOS Funding Model consultation, it says: 'It has been suggested that we should charge additional fees to financial businesses which do not work constructively with us. As we are not a regulator, it is not our role to penalise firms, but DISP 1.4.4R does require financial businesses to cooperate fully with the Financial Ombudsman Service and to comply promptly with any settlements or awards made by it'.

⁴ <https://www.bmj.com/content/376/bmj.o566>

⁵ <https://www.telegraph.co.uk/global-health/science-and-disease/nearly-half-a-million-take-private-health-insurance-2022-nhs/>

The Panel would be interested to hear more from FOS on their experience of the application of DISP Rules.

The Panel is concerned about the increasing wait times for consumer complaints to be resolved, especially given that many are likely to be in more vulnerable situations due to the Covid-19 pandemic. While we welcome measures to reduce wait times, we are concerned that this specific proposal to temporarily amend the approach to publishing firm-specific outcome data for proactively settled complaints would result in:

- Unfair outcomes for consumers
- Consumers continuing to wait an unacceptable amount of time for complaints to be resolved satisfactorily
- The masking of important capacity issues within the Ombudsman service which still need to be addressed
- The loss of transparency around important data, including uphold rates, which provide an indication of how firms treat customers when handling complaints
- The loss of important insights from Ombudsman investigations, which could include:
 - New types of complaints being brought to the Ombudsman as a result of the Covid-19 pandemic
 - New types/changing levels of complaints due to the cost-of-living crisis

Question 4 – Do you agree with our funding proposals?

The 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 driven by the ongoing impact of Covid-19 and the deepening cost of living crisis. The sustainability of the FOS should be the main goal and its funding composition should therefore be reviewed periodically.

Any funding proposals must incentivise firms to improve their own handling of complaints, as this yields benefits, in terms of the overall costs of the service, while also improving service to consumers through lower waiting times and lower number complaints coming to FOS.

The Panel is therefore supportive of the polluter pays principle and would lean towards increasing the case fee where possible, but we are supportive of an overall greater balance between levy-based and case fee funding. We have set out here our concerns about the decision not to increase the levy and would seek assurances that this will not reduce the ability of the FOS to improve its preventative work and the promotion of consumer awareness of protections and the service itself.

It is important that the FOS maintains the skill and knowledge of its expert staff who are handling increasingly complex cases and, that the FOS is addressing complaints in a timely manner as stated above. It must be effectively funded to do this.

The Panel believe that the practice of offering 'free' cases, even if reduced in the way proposed, is not appropriate and reduces the incentive for firms to do the right thing in the first place. The FOS 2022-23 budget consultation⁶ estimated that 'even after the reduction in free cases around 69% of firms will still not pay a case fee'. As a result, 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 Ombudsman Service 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

⁶ <https://www.financial-ombudsman.org.uk/files/323909/Financial-Ombudsman-Service-Plans-and-Budget-2022-23.pdf>

communications and outreach, and working more closely and effectively with the rest of the regulatory family). An important part of this consideration will be the environment the Ombudsman Service is operating in, which is to a large extent unpredictable in terms of case volumes and 'new' issues that may generate additional work in all the FOS workstreams. The Panel's view is that subject to the safeguards on costs incurred as a result of any 'frivolous or vexatious' claims (which are rare), every complaint referred to the Ombudsman Service should be funded by a case fee payable by the firm.

The Panel would also encourage FOS to consider the following:

- FOS should be doing more to incentivise good behaviour amongst firms. We are concerned that the proposals in this consultation around 'free cases' alongside the temporary changes to outcomes reporting seriously undermine this incentive. Below we suggest some actions the Ombudsman Service could take to address this.
- We would like to see the Ombudsman Service use the insights it gathers from complaints volumes and uphold rates to publish key performance indicators (KPIs) on how firms are treating consumers. These KPIs should be simple, updated regularly and capable of being understood by consumers so that they can drive consumer decision making. We believe this goes hand-in-hand with the FCA's aim to be more outcomes-focused and publish progress metrics, which will help ensure a consistent message across the regulatory family.
- The Ombudsman Service should seek to rely more heavily on reputational tools to drive good behaviour, increasing its focus on clear external communications. Focus should especially be given to incentivising firms which are causing unreasonable delays for consumers to resolve issues more quickly. A potential option for this would be to charge such firms additional fees/penalties for delays and failures to cooperate, and make consumers aware of these additional costs and the reasons for them.
- The Ombudsman Service may also consider differential fees based on the number of complaints received proportionate to the size of a firm's customer base. Firms with a higher proportion of complaints relative to the size of their customer base, and also where firms repeatedly cause delay or are late in their responses to consumers and the Ombudsman Service, should be charged higher fees. Again, this difference in fee level and the reasons for it should be clear to consumers so that they can make use of the information to inform their decision making about which products and firms to engage with. The cost sharing mechanism used in the water industry could be a good model to consider here.
- The Ombudsman may also consider transparency within their proposals. Employing KPIs and reputational tools are important in driving good behaviour, but being open about where consumers are experiencing harm and seek redress is in keeping with the principle of transparency.

We acknowledge that the Ombudsman Service does a great deal of important work other than case-handling and that this is not funded through case fees. As a result, there should be less emphasis on case fees and more on a levy on industry. This will deliver a more stable funding basis for the Ombudsman Service.

Question 5 – Do you support our proposed budget for 2023/24?

The Panel believe that the cost of FOS services must be reviewed at all levels to ensure that firms who burden the service pay for the costs and have the following questions in relation to the proposed budget for 2023/24:

1. Whether this takes into account the inevitable increase in claims related to the cost-of-living crisis? (See our response to Question 1 for more information)
2. Whether the proposed budget will be sufficient enough to adequately fund what is needed to increase FOS' work on prevention?

Question 6 – As we deliver our transformation programme to drive efficiencies and improve timelines, are there any areas we should prioritise?

The Panel believe that the Ombudsman's wider societal benefit should be recognised within the new funding structure. It is an opportunity for the FOS to dedicate resource in this area to help prevent future consumer harm and build on productive stakeholder relations.

Areas of priority are set out below:

- 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 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 is 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.
- The Panel would question whether freezing the levy on the sector at this stage is the right decision. The FOS' preventative work and the promotion of consumer awareness of protections and the service itself does not generate any case fees. While we recognise that there are impacts of the cost-of-living crisis on the financial situation many firms are in, there is an overriding need to ensure that FOS is able to deliver on its key role of identifying consumer harms early, using its data and insight quickly and efficiently to prevent harms occurring which increases consumer confidence in the sector, reduces complaints and in turn reduces the financial burdens on firms.
- 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'⁷ 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 a more efficient and faster use of its data on complaints can achieve this.
- The Panel would also encourage the Ombudsman to do more to manage the expectations of consumers seeking redress through the Ombudsman. This would be beneficial to consumers as well as the Ombudsman and may lead to improvements in customer satisfaction scores for both upheld and non-upheld cases.

⁷ <https://www.fca.org.uk/publication/consultation/cp21-36.pdf> p102