

Financial Ombudsman Office
Exchange Tower
E14 9SR

By email



28 July 2022

Dear Sir/ Madam,

CREATING A FUNDING MODEL FOR THE FUTURE - DISCUSSION PAPER

The Panel supports the commitment of the Financial Ombudsman Service to consider revisions to its funding model to provide the best service for its customers and welcomes the ideas set out in the discussion paper published on 14 June 2022.

We particularly wish to respond to your question 11:

Q11: 'Do you have evidence to demonstrate problematic behaviours from CMCs and do you think a charge from the Financial Ombudsman Service would prevent them?'

The problem of CMCs sending high volumes of template-based complaints and submitting spurious claims has been raised by the Panel on numerous occasions. We were therefore disappointed that the discussion paper does not recognise there is evidence of problematic behaviour by some CMCs, and we would be happy to discuss particular examples with the Ombudsman Service. This remains a key issue impacting on many smaller businesses, and also risks choking genuine complaints. While CMC claims have recently fallen in number with more complaints being raised through direct routes, there is the possibility that this problem will become more significant again when the upcoming Consumer Duty impacts in 2023.

We note that CMCs are subject to the same requirements as other businesses covered by the Ombudsman Service regarding case fees for claims against CMCs. The Ombudsman Service's existing powers to dismiss a complaint if considered frivolous or vexatious, is not in our view sufficient to disincentivise CMCs from making unmeritorious claims. Currently the costs to industry in Ombudsman Service fees and internal administration are significant compared to redress/compensation payments to customers and CMCs, which does not represent good value for customers or markets. The funding model should incentivise firms to undertake proper due diligence, minimise the number of complaints submitted to the Ombudsman Service and discourage poor conduct. CMCs which engage in high volume, speculative activity, should pay the case fee if the case is not upheld rather than the financial services firm. CMCs going directly to the Ombudsman Service without having given firms the opportunity to review first, may be discouraged from doing so if a cost was charged for such behaviour. We would support a change to the Financial Services and Markets Act 2000 to allow for such charges to be applied.

In response to your specific questions about case fees:

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

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 are supportive of your proposals to introduce a differentiated case fee model. As the number of claims brought by CMCs increases and the cost of fees continues to rise, firms are increasingly opting to seek settlements as the least worst option, particularly when it is perceived there are trends of types of cases being upheld in summary judgments. The excessive cost of case fees, and of settlements, is increasing the financial pressure on firms and creating perverse incentives. A differentiated case fee, such as a lower fee of perhaps £250 for more straightforward cases, with points of escalation for more complex complaints, would appear to provide a fairer more proportionate approach. We recognise the challenges in this exercise but encourage the Ombudsman Service to explore potential solutions and would welcome further engagement as viable options emerge.

Q5: Do you think we should charge different case fees according to the state a case has reached before it is resolved? Do you think this would create any unhelpful incentives?

We are supportive of the rationale and principle for charging different case fees according to the stage the case has reached, and the resources involved to investigate and resolve.

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

With regards to the proposition to differentiate case fees according to product type, it would be helpful to see a matrix of the criteria and the proposed products/services and associated costs to fully assess this approach and its impact so that an informed view can be determined.

We would be happy to discuss any of these points further.

Yours sincerely,

[signed]

Andy Mielczarek
Chair, FCA Smaller Business Practitioner Panel