
*Association of Mortgage Intermediaries' response to FCA CP18/31:
Increasing the award limit for the Financial Ombudsman Service*

This response is submitted on behalf of the Association of Mortgage Intermediaries (AMI). AMI is the trade association representing over 80% of UK mortgage intermediaries.

Intermediaries active in this market act on behalf of the consumer in selecting an appropriate lender and product to meet the individual consumer's mortgage requirements. Our members also provide access to associated protection products.

Our members are authorised and regulated by the Financial Conduct Authority (FCA) to carry out mortgage and insurance mediation activities. Firms range from sole traders through to national firms and networks, with thousands of advisers.

Response

We are concerned that this paper does not appear to recognise the original purpose of the Financial Ombudsman Service (FOS). FOS was set up to cater for cases that could be dealt with speedily and by using dispute resolution techniques to gain agreement. Cases above these levels were deemed to be more appropriate for legal decisioning in courts based on contract law. By more than doubling the compensation limit the FCA has lost sight of this and not adequately consulted on this fundamental change. When the industry supported the innovative introduction of the safety nets of FOS and the Financial Services Compensation Scheme (FSCS) it was important that these were limited by scope and the scale of compensation. Continual expansion of both risks users of financial services taking less responsibility for their actions and decisions.

We are disappointed that the regulator appears to lack balance in the regular expansion of remit as we continue to see a widening of scope every time any "harm" is identified without any reflection on whether this is appropriate or with sufficient justification. There is no evidence to support the FCA's perceived harm that "it would be unfair if [...] 2 complainants that had suffered the same harm were treated differently by a firm because one was more valuable to the firm than the other". Further there is no correlation between this hypothetical behaviour and why increasing the limit to £350,000 would address this. The overarching consideration of whether and by how much the claims limit is increased should be in line with FOS's purpose, not driven by estimates of how many claims are paid above the limit. This over-reliance and focus on data analysis, assumptions and theories results in a siloed and ultimately flawed approach detached from reality.

The questions in this paper are based on the presumption that any disagreement requires supporting data in order to be valid. This is not the first time an FCA consultation has been communicated in this way and as a result we fear that this absence of an inward-looking regulator means that this will be another consultation in name only. Since it is the FCA and FOS that hold the individual and aggregated data it is an implicitly unfair challenge to the market.

We consider that there might be some sectors which merit a higher award limit such as pensions and SME business claims, however we do not consider that such a significant expansion could be applied to mortgages and other existing jurisdiction complaint areas.

We are also concerned that this significant change in award values will lead to ultimate pressure to change the limits under the FSCS. This potential creep in awards would be wrong and further risks good firms having to pay ever escalating compensation for the activities of the minority of poor firms.

Questions

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?

No. The starting point of these proposals is concerning. The three factors that have been considered to form the basis of these proposals are not the appropriate metrics, as FOS's purpose has been ignored. There has been no explanation of why the FCA believes it is appropriate for these estimated high value complaints to have been included in FOS's remit and not by the courts, instead perceiving that where a consumer is not fully compensated through FOS this must mean there is a "shortfall" and that the limit should be increased to accommodate large loans.

When the industry supported the innovative introduction of the safety nets of FOS and FSCS it was important that these were limited by scope and the scale of compensation. Continual expansion of both risks users of financial services taking less responsibility for their actions and decisions.

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?

No. The analysis has been too narrow and too many assumptions made to warrant these proposals as proportionate. The claim that consumers could be losing out on "around £113 million per year" is not substantiated.

Q3. Do you agree with our assumptions about the volume and value of high value complaints that might be referred to the ombudsman service by newly-eligible SMEs? If not, are you able to provide any data to support your view?

This question is inappropriate. The overall limit should not be driven by larger SMEs.

Q4. Do you agree with us that, for the reasons given, the number of high value complaints that are not currently made to the ombudsman service because of the award limit is unlikely to be significant? If not, are you able to provide any data to support your view?

We agree.

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?

No. Increasing the limit so dramatically changes the purpose of FOS. Accessing dispute resolution for such significant cases on a fair and reasonable basis rather than a proper legal dispute procedure through the courts is inappropriate.

Just because there are examples of higher claims being paid out does not warrant a radical increase to the FOS limit. Even most of the respondents who agreed to the extension of FOS eligibility to include larger SMEs did not support an increase to the limit, with only three suggesting that it should be that high. Relying purely on estimated statistics is not a sufficient justification to change the regulatory remit.

It was always considered that higher value disputes with complex arguments should be the subject of legal remedy rather than FOS.

We consider that there might be some sectors which merit a higher award limit such as pensions and SME business claims, however we do not consider that such a significant expansion could be applied to mortgages and other existing jurisdiction complaint areas.

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?

There is no evidence to suggest another one-off increase would be "confusing for complainants" but that a limit that changes each year and which depends on when the act or omission occurred (as per the structure in Figure 1 on page 5) would instead be more understandable. We are disappointed that the reasonings behind each proposal are inconsistent, as they appear to change to suit the FCA's wishes.

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?

Yes.

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?

No. Not only is this a complex and confusing proposal, but a core principle of regulation is its forward application; significant changes should not be backdated. This is a substantial change in the regulatory approach with the wider impact this has on firms not understood.

Any changes to the limit should be regarding acts or omissions from 1 April 2019 onwards only. We would support increasing the award limit to £160,000 in respect of acts or omissions on or after 1 April 2019, to be adjusted in accordance with CPI.

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?

No. See our answer to question 8.

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 believe this is reasonable but there should be clarification of which month's CPI will be used.

Q11. Do you agree with our assessment of the impact of our award limit proposals on the ombudsman service?

It is asserted that the limit change should make no difference to the work done in assessing a complaint. However it must be the case that where the scale of the award is more than double existing levels the pressure from both sides will be significant and the use of "fair and reasonable", rather than a legalistic view, changes the landscape significantly. We consider this will involve more FOS referrals and a less balanced approach over time, enshrining a different philosophy at FOS.

Q12. Do you agree with our assessment of the impact of our award limit proposals on the professional indemnity insurance market?

PII remains a limited and complex market. We are concerned that we will not understand the impact on insurance of these changes until 12 to 18 months after implementation, therefore potentially too late. A more gradual shift must be seen if at all.

Q13. Do you have any analysis or evidence to present in relation to how the costs of professional indemnity insurance (PII) might change if the ombudsman service's award limit is raised to £350,000?

No comment.

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

No, for reasons covered elsewhere.

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

The significant disconnect between the amount a consumer might be awarded by FOS then leading to a firm failure, for the consumer to only receive a fraction of an award under the FSCS risks consumer backlash. This is a further reason not to increase the FOS limit to £350,000.

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?

No. There should not be a significant increase to the overall limit based on the value of specific products. If the regulatory approach now considers that consumers should be covered by FOS regardless of whether it is appropriate, this should not extend to all products.

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?

Yes, for reasons covered elsewhere.

Q18. Do you agree with our view that the award limits for the ombudsman service and the FSCS should not be aligned?

Yes. As the two schemes have entirely different purposes it would be inappropriate to link award limits.

However we are concerned that this significant change in award values will also lead to ultimate pressure to change the limits under the FSCS. This potential creep in awards would be wrong and further risks good firms having to pay ever escalating compensation for the activities of the minority of poor firms.

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

No, for reasons covered elsewhere.