



Association of Mortgage Intermediaries' response to FOS plans and budget and future strategy consultation

This response is submitted on behalf of the Association of Mortgage Intermediaries (AMI) and the Association of Finance Brokers (AFB). AMI is the trade association representing over 80% of UK mortgage intermediaries. AFB sits within AMI and represents second charge (formerly secured loan) brokers.

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. AMI members also provide access to associated protection products. AFB members also provide access to unsecured products.

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

Our view

AMI is grateful to be able to provide a response to the consultation, however we feel that some aspects of the proposals should be re-considered, and any proposals delayed until the financial year 2021/22 when the outlook on PPI will be clearer. This will then allow FOS to make a more informed decision on their funding requirements.

We appreciate the need for FOS to re-balance their funding structure but consider the proposals of reducing the free number of cases, increasing the levy and increasing the case fee to take effect in one year to be unfair. Our response to this consultation explores the reasons why in greater depth.

The lack of detailed financial modelling also raises concerns over whether there will be a cost transfer occurring between the best and worst performing firms and the proposals do little to encourage poorer performing firms to change their approach to complaint handling. We do not want to see FOS moving away from the 'polluter pays' model but these proposals seem to suggest that this shift may be occurring.

The proposal to increase the case fee to £650 applicable for complaints closed after 1 April 2020 (as opposed to complaints received after this date) is wholly unfair as the timescale for adjudication is often with FOS and not the firm in question. A simpler, fairer and more transparent approach would be to apply this to any complaints received after 1 April 2020. To include this within a consultation with a response window of 6 weeks (with this timeframe falling over the Christmas and New Year holiday) does not give firms and respondents enough time to consider the changes and implications; especially when a complaint submitted to FOS from 16 December 2019 onwards (the date of the consultation publication) may have a case fee of £650 applicable, despite, at the time of writing, the consultation still

being open. The Government's 'Code of Practice on Consultation' states (under Criterion 2) that "consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible" and given the insufficient time frame for this consultation, we reserve the right to make additional representations should other factors become evident.

We are disappointed by the lack of engagement from FOS on this consultation compared to, for example, the review of the FSCS funding run during 2016 and 2017 where the FCA, FSCS and the industry shared their thinking to deliver a solution. Our suggestion would be for FOS to consult more directly with the various industries within an open forum debate, rather than asking for views but then analysing the feedback behind closed doors.

Overall, it appears that levy paying firms are receiving less yet being asked for significantly more. It also raises serious questions around whether the FOS Board have a lack of operational oversight, as it appears that the PPI mis-selling debacle has masked a significant increase in FOS' overheads where the PPI case fees have subsidised a huge cost transformation within the organisation. We encourage comments from the FOS Board on this point.

Questions

1. What do you think about our projections for the volumes of complaints we'll receive and resolve in 2019/20?

It is disappointing that the projections for resolved complaints are overall 18% lower than the 2018/19 actual figures, as FOS was set up to resolve complaints quickly to allow both sides to 'move on'. This may be causing consumer dissatisfaction because fewer complaints being resolved may equate to increased resolution wait times (evidenced through consumer reviews on TrustPilot as well as whistle-blower comments published in the press in December 2019).

Whilst it is appreciated that the complexity of complaints has influenced this, and the whistle-blowing claims have been disputed to state that 80% of claims are resolved within six months, it would be useful for data to be published in this consultation as to how long it takes for complaints to be resolved (particularly for the different financial products or services). Whilst general figures on resolution times, simply split into including and excluding PPI, was supplied in FOS' 2017/18 funding consultation, this data appears to have been omitted from this consultation paper in recent years.

We understand that this data can be found in FOS' ADR annual activity report and FOS' annual review document but people may not know where to find this information and it would be useful for FOS to provide more detailed data i.e. average resolution times per financial product/service (rather than % settled within 3 months) and for FOS to provide commentary as to whether these resolution times are higher or lower than the previous year, to allow for comparison. We are aware that FOS aims to meet the 90-day standard for giving an answer about complaints, as set out in the EU Directive on ADR, but would appreciate more granularity in this area along with more regular updates - especially as the FOS website states currently (as of 21 January 2020) that for mortgage complaints it is taking around 4 months for a complaint to be allocated and then a further initial assessment within 90 days thereafter.

We feel that the figure for complaints about CMCs is likely to be higher than budgeted for in the period 2019/20. This is based on the comments made in the consultation about how firms have notified FOS that they're handling extremely high volumes of PPI complaints and that financial businesses are taking longer than usual to consider customer's complaints. Consumers are more likely to lodge a complaint against CMCs if there are extended delays, particularly given that the PPI deadline was at the end of August 2019.

2. What's your perspective on the trends we've identified in 2019/20?

We feel that the trends identified are what we are aware of as a trade association.

3. Are there other trends you're seeing, or any insights you have, that you think we should take into account for the rest of 2019/20?

As the PPI deadline has now passed, AMI is aware that CMC firms are seeking new areas of business with one area of focus being historic mortgage sales, e.g. interest only mortgages which are now coming to maturity. We suggest that FOS provides adequate feedback on those CMC firms with low overturn rates or high levels of vexatious claims.

4. Do you have any views about how our new CMC and SME jurisdictions have been operating?

We feel it is sensible that FOS decided to house their CMC operations in Coventry, to avoid conflicts of interest. This presumably also generates a cost saving, compared to if these employees were working out of a London premises.

In FOS' 2019/20 'Strategic Plans and Budget' document one of the justifications for increasing the levy was so that FOS could "invest in [their] service and build capacity, including the new SME and CMC jurisdictions". Last year there was clear justification as to why the levy needed to be increased and these jurisdictions are also now embedded into FOS, so arguably costs in this area will be more static. This year's consultation paper does not go into such detail. Also, FOS is yet to have a full year's data for CMC and SME claims so, again, increasing the levy at a time when there is incomplete data upon which to base income decisions, seems unfair to all levy paying firms. This is further justification as to why FOS should delay and review the proposals to be implemented in 2021/22.

5. Do you have any other feedback about our year so far?

No comment.

6. What do you think about our projections for the volumes of complaints we'll receive and resolve in 2020/21?

The complaints about CMCs forecast for 2020/21 are likely to be higher than envisaged, as AMI is aware that CMCs are looking for new areas of business now that the PPI deadline has passed. However, we are aware that at present many of these are not developing into tangible complaints but, should this change, an increase in CMC activity in this area could result in an increase in complaints against CMC firms.

PPI uncertainty is likely to continue until end of 2020/start of 2021, as acknowledged in the consultation paper. FOS seem to have struggled to resolve as many complaints in 2019/20 as they'd set out to achieve and we think that the 2020/21 consultation forecast of 290,000 total resolved complaints is probably too high (especially as complaints are anticipated to become more complex in the 2020/21 financial year and therefore may take longer to resolve).

7. What are your views on the challenges we're facing in PPI – including your expectations around the timing and volumes of referrals to us?

This is covered in the response to question 6.

8. What are your views on the potential for complaints volatility in short-term lending?

No comment.

9. Are there other trends, themes or complexities you're aware of, or any insights you have, that you think we should take into account as we plan for 2020/21?

Our view is that FOS needs to have a deeper consideration of potential regulatory changes. Whilst the consultation acknowledges this to a limited extent (such as the mention of the FCA's work into general insurance pricing), there are many other areas of potential regulatory change that could affect consumer demand for FOS' services:

- The Citizen's Advice super-complaint into loyalty penalty (which includes links to the FCA paper on general insurance pricing practices). The CMA have published an update in January 2020, with a further update likely in July 2020 and as one of their proposals is for regulators to publish the size of the loyalty penalty in key markets and for each supplier, should this come into effect there could be an increase in complaints as the data becomes widely available to consumers.
- Open Finance - the FCA's Call for Input paper suggests that developments in Open Finance could impact FOS in terms of complexity/determining who is culpable as they state: "a platform managing multiple financial products may be under different obligations in respect of different aspect of its business and an appeal to the Financial Ombudsman Service may only cover certain aspects of the overall service".
- Increased focus on vulnerability (as firms focus more on this, consumers become more aware and may challenge firms on behaviour and culture through formal complaints).

10. What are your views on our plans to resource and develop our service in 2020/21?

It is positive that FOS is taking steps to become a business that embraces flexible and smarter working practices. However, whilst buildings and floor space have been released presumably resulting in savings (2020/21 budget shows reduction in premises and facilities costs compared to previous year) there must be further savings that can be made by re-locating more staff outside of London. FOS have confirmed in this consultation that there will be investment in the training academy for new investigators, so once new joiners are sufficiently trained it surely is not as important as to where they are based geographically and suggests that options for premises outside of London could be explored further.

It has been indicated previously (July 2019 consultation) that the cost saving to FOS of reducing the free cases to 10 would provide FOS with additional case fee income of £4.5m, however AMI feels that FOS ought to not reduce the 'free' cases levels as drastically as proposed and look to make savings in other areas. For example, reducing the 'free' cases from 25 to 20 would give an additional case fee income of £1.3m (and a reduced impact on firms compared to current proposal) and then to achieve the equivalent cost saving, FOS ought to review their budget for contractor costs. We do not understand how a service which has stated that the end of the PPI mis-selling scandal is firmly in sight can increase expenditure on contractors (2019/20 latest forecast £70.6m, 2020/21 budget £70.9m) when this figure should surely decrease – especially as FOS have said previously that the levels of PPI complaints was the reason that they employed contractors and that they expect a smaller service in the future.

11. What are your views on our proposed budget and funding arrangements for 2020/21?

One of FOS' principles is that funding is proportionate and we do not feel that moving to 60:40 split in levy and case fees achieves this. It moves away from a 'polluter pays' model, where the firms that are mitigating risk and handling customer complaints satisfactorily are effectively subsidising the firms that are poor performers, and this cannot be in the best interest of consumers.

We appreciate that previously FOS had had income made up of mainly case fees vs the levy and it is anticipated that case fees will drop as the PPI deadline has passed, however we feel that it is too early to make such significant changes when the landscape post-PPI is still somewhat unknown. AMI made sensible alternative suggestions within our response to the FOS July 2019 consultation paper, but these were ignored with no opportunity provided to discuss these ideas further in an open debate environment.

Also, the 2019/20 consultation included a useful graph which showed how FOS proposed to use the extra levy raised. Given the significant proposed increase to the levy this year, **we would like to understand why this was not included this year and for the breakdown to be provided for the year 2020/21 so that firms can see where the levy funds will be spent.**

Our view is that the levy should be increased gradually, as such a large hike will affect many small-medium firms. Many of our member firms are dealing with increases to their PII premiums (which can be attributed to the increased FOS award limit of £350,000) as well as frivolous and vexatious claims brought on by third parties such as CMCs. These claims result in costs as when a DSAR is made to a firm that has PII, costs are incurred immediately as information needs to be validated through lawyers. As the fee is typically below the policy excess it is, therefore, a true cost to the business.

This also links to the reduction in the number of free cases, which will be detrimental to many of our member firms and to consumers. AMI does not agree with this change, as we feel it is inappropriate to change the free case levels at a time when the sector is experiencing significant interest in historic sales from numerous CMCs. Some members also report that some PI insurers are withdrawing cover on the back of letters from CMCs, demonstrating the extent of the problem which can be crippling for small to medium firms as without the PI cover they cannot trade. Having the 25 free cases gives firms the confidence to fight any frivolous claims.

Allowing a case to go to FOS will help to ensure a fair and balanced outcome, which may then give firms the evidence needed to mitigate any concerns to PI insurers if the complaint is not upheld. Reducing the free case fee allowance could have a detrimental effect on consumers, as if firms decide to settle for lower than the case fee (to avoid using a free case) consumers are not benefitting from firms being able to review previous similar complaints to learn lessons about how they could improve their own processes and complaints handling.

Also, the benefit of free cases falls to the Directly Authorised (DA) firm and not the Appointed Representative (AR). This results in the larger network firms having disproportionately fewer free cases per business but there is no provision in this consultation for them to join a group arrangement and benefit from the economies of scale that this brings.

We understand that firms pay the levy based on the industry block and this calculation is based on the budgeted costs and numbers of FOS staff required to deal with the volume of complaints which FOS expects to receive about the firms in each industry block. However, for firms that are proactive at mitigating and managing complaints (e.g. through customer service levels or complaints process) the fact that they must pay a higher levy than in 2019/20 and are seeing free case fees reduced, seems unfair.

AMI appreciates that the case fee needs to be increased to £650 given that over the past seven years it has remained at £550 despite inflationary pressure, however it does not understand why this change was only communicated in the November 2019 document 'response to feedback' (the July 2019 consultation paper stated that it would be 'around £550'). Whilst £650 is not significantly more than £550, the fact that the December 2019 consultation states that the case fees "will apply to all cases closed after 1 April 2020, regardless of when the case was referred to us" means that firms who, for example, had a complaint referred to FOS today, could already be paying the increased amount despite the consultation being open. In addition, the timescale for adjudication is often with FOS not the firm. This seems unreasonable and our suggestion is that the increased case fee of £650 should only apply to cases referred to your service after 1 April 2020.

In addition, it is noted that £10m has been budgeted for 2020/21 for 'contingencies', whereas the latest forecast for 2019/20 was £5m. **Please provide clarification on what falls under 'contingences' and why FOS envisages that this expenditure will double in the financial year 2020/21.**

12. Is there anything else you think we need to take into account as we develop our future strategy?

Covered in answer to question 9.

13. Do you agree with our proposed strategic priorities?

We agree that it is important to prepare for the future, especially in the area of technology as Open Banking and Open Finance is likely to develop and, as noted by FOS, technology can 'increase the speed and scale at which things can go wrong'. It is important that FOS can keep abreast of developments in the industries that they look after so that they can proactively manage their resources and provide an efficient service to the consumers that they serve.

FOS needs to ensure they are embracing technology within their operations, for example by offering a 'live chat' service to customers so they can obtain an update on their complaint. This type of 'real time' communication is key in the current fast paced, digitalised world that FOS operates in and is a service that many consumers will expect. Offering this communication channel may also reduce the time and resources spent on administration as less customers may phone or email for an update if this option is available.

Our member firms appreciate engagement from FOS, especially on how to prevent complaints in the first place. However, we note that the last 'Ombudsman News' publication was August 2019 (we understand that the content and design is being reviewed but it has been 5 months since it was last published) and we feel that a more regular monthly or bi-monthly publication is important to keep firms informed, engaged and focused on claims handling. Also, the last Insight Report that is published on FOS' website is from November 2015 and we feel it is important for FOS to revive these types of publications as they are useful information to assist our member firms. For example, a FOS Insight Report into vulnerability would be valuable to our member firms.