Association of Mortgage Intermediaries' response to FOS plans and budget consultation 2023/24

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 for the opportunity to respond to this consultation. We kindly request that FOS considers the points made in this section alongside the answers to the set consultation questions, as we do not feel the questions asked by FOS allow us to fully articulate the views of the firms we represent.

Overall, we are broadly supportive of the budget consultation in particular the decision to freeze the levy and case fees at the 2022/23 rates. Last year AMI voiced concerns that the significant reduction in free cases from 25 to three will have a disproportionate impact on mortgage networks and larger firms. We would be keen to see the background impact modelling that FOS will have used to arrive at this decision – especially as we consider that with backlogs cut, there should be capacity to operate with more free cases.

Furthermore, the 'midpoint' figure for projected complaints used to set the budget (183k) looks to be on the lower side of the range of possible outcomes (i.e. a straightforward 'midpoint' between the range given – 157k and 220k – would be 189k). It is difficult to make an informed judgement on the projections without transparent insight into how this figure has been arrived at. Whilst we appreciate the full workings may be too technical to share with a general audience, any additional insight as to how numbers were arrived at would be useful.

At this time, we would appreciate more clarity on the size and scope of the complaints backlog. The levy was increased in previous years to help fund the transformation programme and tackle backlogs, so we feel it would be appropriate for stakeholders to receive updates on the timescale to clear the remaining backlog. It would be beneficial to have a breakdown of the ages of the complaints as well. AMI requests that FOS publicly provides more detailed data on the age of cases in the backlog, split into less than 6 months, 6 months to 1 year, 12 to 18 months, 18 to 24 months, 24 to 36 months, and 36 months plus. Clarity that the ageing is based on date of receipt rather than allocation to a case handler would be welcome, together with an indication of what sectors these complaints relate to.

We remain concerned as to whether findings on some of these older cases may create new precedent. There might be the need for more root cause analysis in firms and the risk of firm failure if the cost of compensation exceeds their capital resources. We would welcome analysis of the risks of further consequent calls on the Financial Services Compensation Scheme, delayed by the backlogs in FOS.

Questions

Projected demand

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**

We have provided comments in relation to mortgage intermediaries and associated advice areas only.

The cost-of-living crisis and mortgage market pricing volatility is likely to contribute significantly to 2023/24 complaint figures in part compounded by the threshold for a complaint being 'any expression of dissatisfaction'. We feel it is a reasonable conclusion that there will be higher numbers of dissatisfied consumers reckoning with interest rate increases now their fixed deals are ending, many of whom might question why they were not guided to 5 year or longer initial term products.

Also, the coming year could see consumers on 'riskier' products such as variable rate or self-build etc. arguing they should never have been sold the product as they are now realising the risks and struggling with costs, despite being made aware of the risks at outset.

This does not mean such complaints are likely to be upheld – our view is that should brokers have documented client needs and conversations accurately, the rationale for any fixed-rate deal entered into should be well-supported, even if some customers come to regret their choices after the fact. Consumer preference for the cheapest deal and flexibility over longer-term certainty is a standard aspect of the fact find discussion. But it does further call into question the rationale for the small number of free complaints – as in order to ascertain that the complaint has no real substance, it will need to go to an investigator to review the full file – at which point the firm loses one of its free cases or incurs a £750 fee.

Another factor to consider is the impact of the AR regime on networks and their principal firms. Principals are now required to collect more data on complaints on their ARs to comply with the new regime, and so will be compelled to impress on ARs the importance of accurate recordkeeping and reporting. This may mean that more complaints enter the system in networks than in smaller DA firms where there's more discretion for firms to resolve complaints or expressions of dissatisfaction 'off the record'. Consumers are encouraged to escalate to FOS if they are not satisfied with the way a firm has handled a complaint, so not only are networks disproportionately penalised by the small free cases allowance, they are also more likely to be reporting, logging and progressing complaints through the system than their DA counterparts.

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?**

Consumer Duty is a fundamental shift for firms and its impact on those firms and consumers is likely to be felt for a considerable length of time. We anticipate that during this transition period we could see a short-term increase in complaints.

With regard to the cost-of-living crisis we agree that it is a reasonable assumption that consumers tolerance for loss relating to their finances will be low. Additionally, there is no downside for consumers to bring complaints to FOS so whilst we aren't suggesting any changes to FOS policy, we may need to brace for an uptick in complaints stemming from customer dissatisfaction relating to current mortgage interest rates.

We have concerns that there may be more CMCs looking to take aim at financial service firms through a Consumer Duty lens as well as cost-of-living angle. This could also feed through to an increase in complaints against CMCs (which is within FOS's jurisdiction). We share the FCA concern over how well some CMC's assess the quality and integrity of their claims.

As raised in the last response, we feel it would be valuable for FOS to gather data (or analyse existing data) on the validity of complaints brought by CMCs. The last consultation claimed there was no evidence to support industry reports of high levels of vexatious complaints brought by CMCs, even though no real analysis or data collection was evidenced. We would appreciate a clarification of the term 'vexatious' – as perhaps industry and regulators define this term differently? We continue to be concerned that where the firm has advised the consumer that the complaint is outside of "scope", the firm is charged even where FOS accepts the firms' assertion.

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

We feel that there is a continuing need for FOS to proactively share their insight with trade bodies, such as any unexpected upticks in complaints volumes in sector-specific advice areas. This would give bodies like ourselves the opportunity to intervene early in potential problem areas and communicate learning points with broker firms.

Given the overall potential for the cost-of-living crisis to drive more complaints, FOS should be mindful of complaints that are valid but misdirected, either because the firm receiving the complaint is the first point of contact (e.g. a broker, where the issue was really caused the by the lender), or because the party responsible is outside FOS' jurisdiction, e.g. a solicitor or surveyor. This reinforces the need to clarify what is meant by 'vexatious' and for FOS to acknowledge that firms can be unfairly made to bear the costs of investigating a complaint that doesn't meet the 'vexatious' definition. Is there scope for 'misdirected' complaints to be transferred to the responsible party where possible with costs passed onto them if upheld?

FOS and its stakeholders could lose beneficial insight obtained from complaints reaching the service as firms may feel under greater pressure to settle at or near to the £750 case fee. Many mortgage intermediary firms regularly review published Ombudsman decisions to help inform their complaints handling processes and to keep abreast of any complaint trends, however the reduction in the number of free cases could have the unintended consequence of increasing complaint volumes, as firms are not benefitting from the foresight that previous published complaints provide.

Projected funding

4. Do you agree with our funding proposals?

We are broadly supportive of the proposals and rationale, in particular we are supportive of the freezing of levy and case fees at the 2022/23 rates.

Echoing the sentiments of our previous budget response last year we would still seek to challenge the number of free cases. We feel it would be appropriate to re-visit last year's discussion that the free cases should be a minimum of 10, as this is what FOS consulted on pre-pandemic and we are now, for the most part, out of the pandemic. FOS should consult on a range of free cases from 3-25 and show financial modelling.

We continue to have concerns regarding the decision to offer only three free cases at a time when Consumer Duty is being introduced. Whilst the FCA has stated that Consumer Duty should reduce number of complaints a firm receives in the long term, there is likely to be a time lag as firms navigate the complexities of Consumer Duty.

With FOS currently holding over six months of reserves due to higher income and lower costs, we feel it could be challenged that this surplus shows there is scope to increase the number of free cases offered.

Our draft budget

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

It is good to see costs falling vs. forecasts, with the savings being made through driving efficiencies, however we would query the rationale behind freezing the case fees and the CJ levy and keeping the free case number at three if this contributes to the 2023/24 surplus being £8.8M (compared to the 2022/23 surplus of £5.6M) especially when the 2022/23 surplus was expected to reduce significantly.

The proposed budget does not adequately explain the need to limit the number of free cases to three and as we have previously stated we are deeply concerned about the wider impact this reduced number of free cases could have on firms.

We are supportive of the specialisms within FOS and feels it's positive to see a reduction in contractor budget.

Projected costs

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

We feel the backlog of cases should continue to be a priority going forward, not only for the consumers and firms involved but it would be good to see the FOS resources allocated for other tasks.

We agree that the utilisation of digital portals will bring benefits to FOS, consumers and firms and look forward to their implementation.

Finally, we would appreciate updates on the following areas:

- Consumer Duty case studies – when can we expect these to be released? https://www.moneymarketing.co.uk/news/fos-to-publish-case-studies-on-consumer-duty-later-this-year/)
- Wider Implications framework – will we be hearing more from this group on Consumer Duty? (More info: https://www.financial-ombudsman.org.uk/who-we-are/work-other-organisations/wider-implications-framework)
- The Past Ombudsman Decision search tool could do with some improvements to allow firms to easily locate sector-specific (e.g. mortgage advice-related) and Consumer Duty related complaints. This will become even more valuable as we firms implement the new regime and adapt their approach based on data as part of the 'iterative process' the FCA expects to use.