



Association of
Mortgage Intermediaries

Association of Mortgage Intermediaries' response to BEIS Reforming Competition and Consumer Policy 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.

Response

Our response focuses predominantly on proposals related to alternative dispute resolution (ADR). We have therefore answered a selection of appropriate questions.

AMI members as FCA regulated firms operate in an industry where ADR is mandatory and the Financial Ombudsman Service (FOS) is the sole ADR provider for financial services complaints. Most complaints received by our members are resolved within a few days. However, where the complaint is complex, a number of people may be involved in establishing the facts and preparing any response. This will then usually require closer to the current eight week allowance. As part of a mortgage intermediary firm's final response to a complainant, it must supply the complainant with details of FOS and highlight that if they remain dissatisfied, they are able to refer their complaint to the service. AMI members also contribute to FOS' income through an annual levy and case fees (payable from the 26th complaint). For these reasons, AMI and its members have an active interest in the ADR service provided by FOS and its performance.

The mortgage intermediary sector recognises the important role FOS play in a complex market like financial services. It brings benefits to not only consumers but also firms, who value the ability to have disputes reviewed independently and impartially. Whilst FOS' decisions do not set legal precedent, firms can extract 'lessons learned' from cases to improve their own complaint handling processes and inform future complaint decisions.

However, we are deeply concerned about proposals contained within the consultation to halve the timeframe firms have to deal and respond to a complaint from eight weeks to four weeks, at a time when FOS wait times for a determination are increasing, particularly in complex cases.

Whilst reducing the timeframe for firms to deal with complaints may enable consumers to take their complaint more quickly to FOS, it does not guarantee a prompt resolution once it has reached the service. We understand FOS is committed to reducing the backlog and overhang of cases from previous years, however we are yet to see evidence that this has been addressed and controlled.

The most recent FOS data AMI has access to¹ shows that as of 28 May 2021 there were 112,833 cases at FOS that had been open in excess of three months, 61,967 in excess of six months, 16,884 in excess of 12 months and 3,882 in excess of 24 months. To compare to 26 November 2020 figures², there were 56,348 open cases that were more than six months old. This equates to circa 10% increase in cases open for more than six months in just six months, a trajectory that causes us significant concern.

It is futile to speed up complaint timeframes on one hand for a consumer to experience delays should they decide to refer their complaint to FOS. The unintended consequence is that consumers could become frustrated by the ADR process and become apathetic and disengaged, potentially diminishing the importance and perceived value of FOS as an ADR provider and negatively impacting the integrity of the financial services sector.

Mortgage intermediary advice complaints can be complex and require detailed review by firms. We are concerned that halving the timeframe will result in firms being unable to conclude their complaint handling without consideration of the full facts, with complaints referred into FOS prematurely. This has the potential to inundate FOS with complaints that under the current eight week timeframe could have been finalised competently and fairly at a firm level, without the need to involve an ADR service.

We strongly believe that the upper limit of eight weeks should be maintained for complaints handled by financial services firms (this includes mortgage intermediary firms). The consultation spans multiple sectors with vastly different characteristics that influence and impact the type and nature of complaints made by consumers and we do not believe that government should implement a blanket reduction in timeframes. We suggest further consultation via FCA and/or FOS. The proposed changes are likely to create significant challenges at both a firm and FOS level and require careful consideration between FCA as the sector regulator and FOS as the ADR provider, alongside wider input from industry stakeholders.

Q60. Should sector regulators' civil consumer enforcement powers under Part 8 of the EA 02 be reformed to allow for enforcement through an administrative model? What specific deficiencies do you expect this to address?

If this enables the FCA to act against poorly behaving firms operating at the edge of the regulatory perimeter, we are supportive. The high profile failure of London Capital Finance (LCF), as an example, highlighted deficiencies with how the FCA regulates firms that operate in and outside the perimeter, such as where a firm is regulated but the activity it is undertaking is unregulated.

¹ <https://www.telegraph.co.uk/money/consumer-affairs/catastrophic-failure-complaints-watchdog-keeps-savers-waiting/>

² <https://committees.parliament.uk/publications/4495/documents/45268/default/>

AMI's view is that the failures of the likes of LCF, Connaught and Woodford were a result of the FCA's inability to supervise and enforce effectively, despite having all the required regulatory powers to supervise, investigate early, act and potentially prevent further harm. We understand sufficient significant market intelligence regarding the risks and conduct of these firms was supplied to the regulator, in some cases years before they failed, but was not acted upon.

These failures have an effect on the Financial Services Compensation Scheme (FSCS) and subsequently the FSCS levy that AMI members contribute to annually. With the combined costs of FCA, FOS and FSCS nearly reaching £2bn per annum any measures that incentivise the FCA to use its full range of enforcement powers is welcomed.

Q65. What more can be done to help vulnerable consumers access and benefit from Alternative Dispute Resolution?

If a consumer decides to refer their dispute to FOS and is faced with long wait times to allocate a case handler, this could exacerbate existing vulnerabilities or result in the emergence of new vulnerabilities. The FCA's definition of vulnerability is 'customers who, due to their personal circumstances, are especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care'. If we apply this same definition to FOS, it could improve its level of care and help consumers benefit from ADR by reducing its complaint allocation and handling times.

We feel the current requirement for FCA regulated firms to signpost consumers to FOS if they remain dissatisfied with the outcome of their complaint is sufficient to help vulnerable consumers access the ADR service. Mortgage intermediary firms send a copy of the FOS standard explanatory leaflet (required by FCA complaint handling rules) in paper copy or if the customer has complained by e-mail, the complainant can be sent a link to the online version. Therefore, consumers with specific needs (such as if they lack digital capability or have visual needs) are not excluded and are still able to access the service. We do not believe there is anything additional that would improve consumer access to FOS, as the service is well signposted and utilised by financial services consumers.

This consultation includes comments on the merits of ADR as an alternative to court and highlights that a benefit of ADR is that it is 'less confrontational in nature than a court process and more easily allows for mediated settlements' and that the civil courts process 'is often more costly and time intensive'. The FCA has completed its first stage consultation on a [New Consumer Duty](#) and we await feedback and part two of the consultation later this year. The FCA consultation considers whether a private right of action (PROA) for breaches of FCA Principles is appropriate. AMI feels that if a PROA were to be introduced for breaches of FCA Principles, it could lead to consumers unnecessarily incurring court costs (if their claim is unsuccessful) when a free route to redress is available through FOS.

The introduction of a PROA attached to FCA Principles could cause significant harm to a vulnerable consumer if they are financially impacted by a decision to go through the courts. We vehemently oppose a PROA and have stated this strongly in our response to the FCA consultation. We wanted to use this as an opportunity to reinforce this view, given this consultation acknowledges and supports the advantages to consumers of ADR services over court action.

Q66. How can regulators and government balance the need to ensure timely redress for the consumer whilst allowing businesses the time to investigate complex complaints?

Government and regulators aim is for timely redress for the consumer; however, we feel this is more likely to be achieved in financial services by maintaining the current eight week timeframe than it is by halving it to four weeks. Firstly, some mortgage intermediary advice complaints can be complex and firms often require eight weeks to establish the full facts and to reach a fair and informed conclusion. If the current timeframe is reduced, complaints could be referred prematurely into FOS. Secondly, the wait times at FOS can vary drastically. Currently, the time taken for FOS to allocate a complaint handler on a mortgage complaint is around four months but it can take between nine and 12 months³.

The eight week timeframe likely reduces the number of complaints that are referred to FOS and we are concerned that a reduction to four weeks could unnecessarily increase the burden on the service. Both complex and non-complex cases could be referred into FOS unnecessarily. Due to the current wait times for a case handler to be allocated within FOS, a consumer could experience greater harm than if the complaint had remained within the firm for the full eight weeks.

In our view, the current eight week upper limit for financial services firms to resolve a complaint should be maintained. Financial services advice complaints can be complex and often require detailed review and analysis of multiple documentation, including telephone recordings between a customer and adviser or between an adviser and lender or insurer. It is resource and time intensive to establish the facts and compile details of the circumstances leading up to the complaint and mortgage intermediary firms want to ensure they are able to carry out this part of the process thoroughly and accurately.

Mortgage intermediary firms are committed to handling complaints promptly and fairly in line with their regulatory responsibilities. Where the full eight week timeframe may be required in some cases, this is only used for the purpose of ensuring a full appreciation and understanding of the circumstances and to inform a firm's final decision. Firms, like consumers, want to reach a speedy conclusion but not to the detriment of a full and thorough investigation.

In addition, mortgage intermediary firms are often reliant on third parties to supply information as part of the complaint. This can include but is not limited to a lender, insurer and/or the customer. This can delay the complaint handling process due to factors outside of a firm's control. With this in mind, four weeks is too short a timeframe and may lead to complaints unnecessarily being referred to FOS that could have been adequately handled and concluded at firm level.

We acknowledge the point highlighted in the Consumer Green Paper that the eight week period is no longer justified in an era of email and social media but would argue that digitalisation has not reduced the amount of documentation that mortgage intermediaries are required to produce and supply to customers. In fact, regulation introduced as a result of the Mortgage Market Review (MMR) lengthened the mortgage advice process and required more detailed information from customers, thus increasing the documentation that is held on file. Documentation that was produced and issued by a mortgage intermediary as part of historic mortgage advice process will form an integral part of a firm's investigation of a complaint.

Many mortgage intermediary firms operate under a network model, where they are the Principal firm and have Appointed Representatives (ARs) that act on their behalf. However, they as the regulated entity are responsible for the advice given by their ARs and therefore

³ <https://www.financial-ombudsman.org.uk/consumers/complaints-can-help/mortgages>

handle their complaints. This adds another layer into the complaint handling process that may not exist in other markets where ADR is mandatory and therefore ought to be given due consideration as part of consultation.

We do not agree there should be a blanket reduction in time limits for all ADRs. Financial services firms (this includes mortgage intermediary firms) should be exempt from a reduction in the timeframe to resolve complaints. This exemption should apply to all financial services complaints regardless of complexity.

The definition of a “complex case” is subjective and would be impractical to define. Firms cannot judge and determine whether a case is “complex” at the outset of handling a complaint, as there are many factors to consider that may be unknown when the complaint is logged. For this reason, it would be challenging to treat customers fairly, as a firm could decide that one complaint is a “complex case” over another and prioritise resources accordingly. This could lead to a situation where, as the complaint develops, it becomes clear that perhaps it had been categorised as a “complex case” incorrectly. The current eight week timeframe, applicable to all cases, creates a level playing field. It is important to note that mortgage intermediary firms are already subject to the FCA’s guidance on the fair treatment of vulnerable customers and this will be taken into account by a firm as part of its complaint handling process.

We are concerned that FOS do not have the resources to sustain the likely increase in complaints resulting from a reduction in the complaint handling timeframe at firm level. If faced with increased complaint volumes, FOS may be forced to hire additional staff and could reflect this increased expenditure in the levy charged to firms and/or increase the case fee. Mortgage intermediary firms are facing increased regulatory costs and any increase to the FOS levy and/or case fee may could impact the cost of advice for consumers. For example, a firm may decide it has no option but to increase the advice fee charged to consumers.

Government also needs to consider that if more cases are referred to FOS as a result of halving the timeframe, firms will use up their 25 free cases more quickly (firms only have to pay FOS case fees from the 26th complaint). For mortgage networks, the number of free cases applies at Principal and not Appointed Representative level. If government proceeds with proposals, we would expect the number of free FOS cases allocated to each firm to be increased, as the number of free cases has historically been allocated based on an eight week timeframe. This is the type of detail that would have to be considered as part of an FCA and/or FOS consultation.

In our view, the current eight week timeframe spreads resource more evenly between firms and FOS and reduces the risk of one organisation being unfairly overburdened.

Q67. What changes could be made to the role of the ‘Competent Authority’ to improve overall ADR standards and provide sufficient oversight of ADR bodies?

We understand that the FCA is the Competent Authority for FOS and therefore FOS is accountable to the FCA.

The consultation proposes that all providers of consumer ADR are assessed and approved for their ability to provide an ADR service. This should apply at individual senior staff level (i.e. Ombudsman level) to ensure that the individual is competent and experienced in a specific area of expertise. Our view is that individuals at FOS should have core specialist areas that they do not diverge from, given the general complexity of financial products and advice.

We are supportive of proposals to improve oversight to monitor service standards. FCA should be equipped with powers to require FOS to be more transparent on complaint waiting times and to report back on progress. FOS provide an update as part of its annual plan and budget consultation but this in our view is too infrequent. It ought to provide more regular updates on

how it has reduced its backlog and reduced wait times on a quarterly basis. Both consumers and stakeholders (such as AMI and its member firms) would benefit from this.

A lengthy complaints process at FOS not only impacts consumers but also regulated firms. A delay in a final decision made at Ombudsman stage could impact a firm where FOS upholds the complaint and deems it appropriate for financial compensation to be paid, as 8% interest must be added to the calculation. We therefore strongly support that FOS be subject to a code of practice (if not already) and adherence closely monitored. We agree with the principle proposed by government that ADR services should report publicly on outcomes and whilst FOS does report annually, the granularity of detail supplied could be improved. For example, it should be required to annually provide details of the number of cases that are an “overhang” from the previous year.

We note the EU Directive on ADR encouraged the speedy resolution of complaints and aimed for ADR providers to give customers an answer to a complaint within 90 days. FOS continue to refer to the EU Directive and 90 days aim on its website⁴ and we therefore assume this is unaffected by Brexit. However, this target is clearly not being met by FOS, yet we feel it has been able to operate largely unchallenged by the FCA on its failure to meet this requirement. Consequently, there ought to be much more scrutiny applied by the FCA as FOS’ Competent Authority.

We agree with and support government proposals to strengthen the minimum service expectations of all ADR providers. We do not feel that FOS is meeting minimum service expectations from both a consumer and firm point of view. It is critical for FOS to deal with straightforward cases as promptly as possible, as one concerning implication of FOS taking longer to deal with complaints is that it risks elongating the time where poor firms are continuing to advise and sell. The build-up of cases sitting at FOS and related to the same firm makes it more likely that the firm will fail due to the number of cases. In our view, delays in case handling at FOS has contributed to more firms falling into failure and the subsequent impact on the FSCS and rising regulatory costs for our member firms.

Q68. What further changes could government make to the ADR Regulations to raise consumer and business confidence in ADR providers?

This is covered in our response to question 67.

⁴ <https://www.financial-ombudsman.org.uk/who-we-are/governance-funding/adr>