



Association of
Mortgage Intermediaries

Association of Mortgage Intermediaries' response to FOS plans and budget and future strategy consultation (2021/22)

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 welcome the inclusion of four funding options given the current and potential economic impact of coronavirus on firms but do not feel we can fully commit to one option without additional data supplied by FOS.

We continue to hold the view that FOS funding must reflect a firm's overturn rates and that a move away from a 'polluter pays' model is unfair on those firms that continue to focus on the correct consumer outcomes and prevent complaints from reaching the service. The FOS consultation calls for support from all to prevent complaints reaching the service in the first place. In our opinion, increasing the levy with a move towards a funding model that is projected in 2022/23 to exceed a 50:50 split does not act as an incentive for firms to support this aim. As stated in a previous AMI consultation response, a risk based funding model that is based on overturn rates would ensure that those firms using the service excessively contribute more and this continues to be our preference.

We strongly agree with the proposal to freeze the minimum levy and maintain the free case allowance. Maintaining 25 free cases will give mortgage intermediary firms the support to challenge frivolous claims (such as those relating to historic interest only mortgages brought on by CMCs) and results in a fairer and more balanced outcome for consumers.

There is however a lack of detail and transparency in several areas of this consultation. Our main concern is that whilst data is published on the percentage of complaints that are resolved within three, six, nine and 12 month periods, there is no data provided on the number of outstanding complaints in the pipeline (i.e. the overhang from previous years). Our opinion is that the publication of this data is necessary as part of annual consultation given that FOS 'hasn't made the headway it expected in reducing complaint waiting times'. We recognise that coronavirus has impacted this, however FOS stated in its 2020/21 plans and budget consultation that in 2019/20 it had seen higher waiting times than it had hoped, indicating that this has been a persistent issue for the last couple of years. The

Independent Assessor chose to make specific remarks in its 2019-2020 report around ‘the ongoing backlog the service has’, as well as comments on how complaints around timeliness have been ‘steadily increasing’.

AMI previously requested information on the backlog of cases, which FOS was unable to provide. Since this request, the Treasury Select Committee has published FOS’ response to a number of queries; one of which asked for numbers on the backlog of cases. It is noted that nearly 80% of the cases that are over two years old relate to an ongoing issue with a CMC, however this still leaves over 5,000 cases aged over two years. This is a figure which AMI feels is unacceptable, given FOS’ responsibility to conclude complaints quickly to allow both sides to move on.

It is disappointing that AMI has only had access to this data once published publicly on 29 January 2021 - the last working day before the FOS consultation deadline. Other stakeholders that could have benefitted from having sight of this data to help shape and inform their response may have already submitted their views.

The inability and reluctance to provide this data openly (and only once probed by the Treasury Select Committee) concerns us that a bigger problem has been masked and there is a lack of transparency. The data provided in the consultation, such as how FOS has resolved around 93% of the number of cases it had hoped to in the general casework section, focuses on internal targets and does not address the overhang of cases from previous years. FOS ought to publish annually within its consultation the number and percentages of complaints that are outstanding after six months, six months to one year, one year to two years, two to three years, three to four years, and four years plus. In the 2016/17 FOS consultation the age of complaints was presented this way for PPI, we assume given the volume of PPI complaints. As the impact of coronavirus on complaint volumes is unknown, it is once again necessary for FOS to provide this granularity of data.

FOS’ base case (scenario number one) includes a significant increase (26%) to the levy, it is therefore reasonable for this data to be provided by FOS annually to allow fee paying firms and stakeholders such as AMI to better understand and evaluate the FOS’ cost, management, and budget forecast.

FOS is underpinned by fairness and to do this must listen to both sides. We were disappointed to read comments made by the newly appointed independent assessor Gillian Guy in a FOS press release where she stated that she ‘will continue to champion the fair treatment of consumers and make sure their voices are heard’¹. We do not feel this is an appropriate statement for an impartial service like FOS to publish publicly. (As this was approved by FOS executive management and passed through their PR process it questions whether the service itself is impartial). Under the Financial Services and Markets Act (FSMA 2000), FOS as the operator of the scheme is obliged to resolve disputes ‘quickly and with minimum formality by an independent person’. Page two of the 2021/22 FOS plans and budget consultation also references how FOS is ‘independent and unbiased’. It is therefore fundamental that this independence is upheld and maintained by all those employed and appointed as representatives of FOS within all communications.

In our response to last year’s funding consultation (2020/21) we stated that six weeks was an inadequate consultation time frame. We continue to hold this view and feel that FOS consultations should meet the Government’s ‘Code of Practice on Consultation’² of at least 12 weeks. This year the deadline for responses (31 January) falls on a weekend and considering public Christmas and New Year holidays, has resulted in only 30 working days for stakeholders to respond. This is an unacceptable time frame, especially as the impact of coronavirus has meant that many firms had employees that needed to use annual leave during the Christmas and New Year period before the new calendar year, as well as employees absent or placed on furlough to accommodate other commitments such as home schooling or caring responsibilities.

¹ <https://www.financial-ombudsman.org.uk/news-events/financial-ombudsman-services-board-appoints-new-independent-assessor>

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100807/file47158.pdf

Whilst it does not form part of this consultation, we are aware that in 2019/20 FOS made payments of compensation due to service failures totalling £151,995. This is effectively funded through fee paying firms who should not be responsible for FOS' shortcomings. Our view is that these funds should be deducted from any budgeted executive bonus pot, thereby meaning firms are not paying for management failures.

Questions

1. What's your view on our forecasts for future complaint volumes for: a) Our general casework? b) PPI?

We feel that the forecast for future complaint volumes for general casework is too low. Whilst firms in general have had time to embed remote working and have normalised operational procedures as much as possible, there is likely to be further complaints in certain casework areas as coronavirus continues to affect consumers and businesses.

Mortgage intermediary firms have adapted well to remote working and businesses have been able to continue largely uninterrupted even throughout national lockdowns. The FOS consultation was produced before many areas of the UK entered tighter tiered restrictions and another national lockdown. Whilst these restrictions do not have a negative impact on the firms that AMI represents as the housing market remains open, our view is that there will be further general casework complaints relating to insurance (travel and event insurance, particularly wedding cancellation) as events that have been re-scheduled for early-mid 2021 are likely to be postponed again. There is also a likelihood of an increase in complaints from consumers who are vulnerable or heavily indebted, which will grow if lockdown restrictions last longer than initially anticipated. Recent ONS data³ showed that by December 2020 more than 9 million people had to borrow more money because of the pandemic.

The impending end of the existing HTB scheme and SDLT reductions to end of March 2021 is placing considerable stress on the conveyancing sector. Consumers who fail to meet the deadline could generate considerable complaint volumes against, brokers, lenders and conveyancers.

We would expect the figure for general casework to be budgeted for at least the same as the 2020/21 latest forecast (180,000).

We do not feel we can comment on future PPI complaint volumes.

2. What's your perspective on complaint volumes and issues arising from Covid-19, including potential complaints about business lending?

On business lending, there will be many self-employed individuals and SMEs that will commence payment of interest on their bounce back loan and coronavirus business interruption loans (CBILS) during 2021 which could lead to an increase in complaints, as it may be the first time an individual has engaged with the lender since entering the loan agreement. In addition, a news report⁴ cited that there are around 150 CBILS where the interest rate exceeds 14.99% which could result in disputes and complaints referred to FOS.

Therefore, we feel the number of forecasted complaints for 2021/22 for SMEs (1,300) is unrealistic given that this is no higher than the 2020/21 forecasted figure.

We feel that following the result of the FCA business interruption (BI) insurance test case, FOS may wish to re-consider its figures for general casework complaint volumes ahead of publishing its finalised plans and budget. The FCA's recent 'Dear CEO' letter on the BI test case states that previously rejected

³<https://www.ons.gov.uk/peoplepopulationandcommunity/wellbeing/bulletins/personalandeconomicwellbeingintheuk/january2021>

⁴<https://www.yourmoney.com/credit-cards-loans/smes-face-double-the-permitted-interest-rate-under-the-business-interruption-loan-scheme/>

claims and complaints may now be valid and it is therefore reasonable to assume that increased complaint volumes at firm level would translate to an increase in complaint volumes at FOS level. The FCA letter also states that there could be wider implications of the Supreme Court decision on other types of perils and policies, with wedding insurance used as an example of a product that may have similar clauses. This could lead to an increase in complaints if policyholders disagree with an insurer's interpretation of the insurance contract terms based on this court judgment.

3. Do you have any insight into potential areas of complaint in our SME casework in particular?

Covered in question two.

4. Do you have any insight into potential areas of complaint in our CMC casework in particular?

No comment.

5. Are there any other issues or trends you think we should take into account as we plan for 2021/22?

As highlighted in our response to the 2020/21 consultation, historic interest only mortgages are an area of interest to CMCs. We expect this CMC activity to continue during 2021/22. We are also aware from discussions with PI providers that lifetime mortgages are a potential future area of interest for CMCs. This may be because it is an area on the FCA's regulatory agenda⁵ in H1 2021. CMCs may also be driven to assess other areas of advice now that the PPI complaints deadline has firmly passed.

We agree with FOS' comments on how vulnerability of consumers is likely to drive complexity throughout the forthcoming year. However, the FCA is due to issue finalised vulnerability guidance in early 2021. This will improve consumer outcomes and the likelihood of vulnerability based cases reaching FOS, as the main aim is to ensure that the fair treatment of vulnerable consumers is properly embedded by firms in their culture, policies and processes.

The FCA is due to issue a Policy Statement in Q2 2021 on confirmed remedies following its GI pricing practices consultation (implementation four months thereafter) yet the FOS consultation does not reference this. As this large piece of competition work is designed to disrupt the GI market, it will make significant changes to the way renewals and new business are priced (home and motor insurance). FOS should be cognisant of the fact that this could lead to an increase in complaints as the changes are likely to be highly publicised within consumer facing media, with complaints more likely against insurers/product manufacturers as opposed to non-price setting intermediaries.

Open finance will continue to be important as interest and investment in this grows, increasing complaint complexity especially where liability may be blurred. FCA is due to issue a feedback statement in Q1 2021 following its open finance 'Call for Input' and FOS ought to consider any relevant comments made by the regulator in this statement when finalising its plans and budget.

6. What are your views on our plans to resource and develop our service?

We would expect the number of contractors to be reduced further in 2021/22, as we understand this was primarily used as a flexible recruitment tool when PPI case volumes were high and peaks and troughs in demand made it more difficult to predict resource needs. It is appreciated that FOS perhaps expected a smaller service in the future and coronavirus has curtailed this, however the budget for contractors at £40m (2021/22) is at a similar level as seen in 2017/18 when £41.6m⁶ was spent on contractors. Even with the uncertainty of the pandemic and the need for flexibility, £40m budgeted for contractors for 2021/22 seems high when compared to previous annual expenditure for this category.

⁵ <https://www.fca.org.uk/publication/correspondence/mortgage-intermediaries-portfolio-letter.pdf>

⁶ <https://www.financial-ombudsman.org.uk/files/2063/plan-and-budget-2019-20.pdf>

This is not adequately explained and we would welcome detail on the contracts that underlie this amount and the areas where this support is applied.

The consultation states that last year FOS recruited 400 investigators but continuing to recruit is not the answer to the challenge of meeting demand on its service. It seems that there is an over reliance on contractors for specialist expertise when there needs to be a shift towards ensuring that permanent staff are equipped with sufficient knowledge, skills, and training to carry out their work within core specialist areas. We were surprised to read in FOS' letter to the Treasury Select Committee dated 10 December 2020 that a large proportion of FOS' caseload can be handled by any of FOS' investigators once they have completed six months of training. Our view is that individuals should each have core specialist areas that they do not diverge from, given the general complexity of financial products and advice.

AMI is not convinced that an approach where cases are prioritised based on the urgency of the situation is the most sensible. On page two of the consultation FOS state that it was set up to resolve complaints 'fairly and reasonably, quickly, and with minimal formality'. Whilst we understand that there needs to be some degree of prioritisation when dealing with complaints, it cannot be fair that, through no fault of their own, consumers may be placed at the back of a queue when there is a need for a swift decision to be made to allow both sides to move on. A delay in a final decision made at Ombudsman stage could also 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. Our view is that the 8% interest charging timescale should pause once a case has reached FOS and re-start once a final Ombudsman decision has been declared. FOS state that it can award interest after the financial award has been calculated if there's an unreasonable delay in a firm settling a complaint following an ombudsman's decision, but this needs to work in both directions in instances where FOS has contributed to an unreasonable delay in reaching a conclusion.

Outstanding FOS complaints may also affect a mortgage intermediary's ability to secure renewal of PII at the most competitive terms in what is already a challenging market. FOS ought to appoint a dedicated team whose job is to focus solely on dealing with more historic complaints (such as those older than 12 months). If FOS held and published annual data on the age of complaints, as suggested by AMI, this would help to identify, prioritise and allocate resourcing needs more accurately.

We agree it is important for FOS to invest in support for vulnerable customers. AMI was concerned to read in the 2019-2020 Independent Assessor's Report that only a quarter of complaints involving vulnerable customers reviewed by the Assessor were found to be handled satisfactorily. It is understood that FOS is taking steps to address this, and we look forward to regular feedback on progress and tangible improvements. If there are any lessons learned or insights that FOS can share with firms on how the service itself has improved the handling of vulnerable customer complaints (particularly from FOS' 'Supporting our Customers' practice group) this would be greatly appreciated and would be of benefit to the wider financial services industry.

7. Do you have any feedback about our emerging plans under our strategy?

It is important for FOS to reduce waiting times and we are supportive of initiatives that improve efficiencies. The use of technology such as portals where consumers can upload documents and log-in to view the status of their complaint may help to create a smoother customer journey. This could be combined with a chat bot function that answers simple queries or provides an update, reducing the pressure placed on FOS from complainants chasing updates via email or telephone. AMI is fully supportive of FOS directing more resources towards improving its customer service and waiting times.

As highlighted previously in our response, we request that FOS provide more data to stakeholders on its performance. It is positive that the service will work to further improve the quality of data and the technology used to analyse it and we look forward to seeing if our recommendations on data are taken forward.

It is also important that regular data, intelligence and insight are shared between FOS and FSCS to highlight trends that could impact the volume of claims at FSCS. A delay in the resolution of complaints at FOS could negatively impact FSCS' ability to forecast claim volumes accurately and determine its annual levy as the age of this data may exceed 12 months.

In addition, where FOS has delays in dealing with significant complaints this risks elongating the time where poor firms are continuing to advise and sell. This also makes it more likely that the firm will fail due to the number of cases, rather than remedying their behaviours and their PII cover working as envisaged. We consider it likely that delays in case handling has contributed to more firms falling into failure then liability arising on other firms through the FSCS. FOS delays are likely to have contributed to the rise in FSCS compensation costs to nearly £1bn.

8. Are there areas where you'd like to work with us toward our ambition to prevent complaints and unfairness?

AMI continue to support FOS' insight work and we are pleased to see an increase in the frequency of 'Ombudsman News' publications, as we called for this in our 2020 consultation response. As a trade association we share details of this publication with our members and encourage FOS to continue to publish this regularly.

It would be helpful for FOS to publish more in depth insight reports. As suggested in AMI's response last year, a report on vulnerability would be of use to our member firms. Also, more sector specific blogs on current complaint trends (including where the frequency of certain claims has increased) would help to keep firms informed and encourage a proactive approach to complaint handling and the prevention of complaints. As a trade association we regularly review the FOS Ombudsman past decisions; this is a useful tool but unless a large sample of cases are reviewed in a single product area it can be difficult to spot trends.

We would like to interact more with FOS on Interest Only cases and we are keen to continue positive engagement and regular meetings throughout 2021 where we can share industry updates.

9. Do you have any other comments on our draft plans for 2021/22?

It would be useful for FOS to publish data annually on how long it takes for a case handler to be allocated to cases per financial product. We are aware that this information can be found on the individual financial products pages on the FOS website, but this should be included as part of the annual consultation and show a comparison to the preceding year.

Where average wait times for case allocation are provided on the website, it would be useful if this confirmed when this information was last updated and for FOS to commit to updating this data periodically (as a suggestion, every quarter would be reasonable). This data should be based on the average wait time, as we are concerned that the current FOS webpage for mortgage complaints states that it takes around four months for a case handler to be allocated but could take between nine and 12 months if the complaint is about a particular complex area⁷. The FSCS' page on claim timescales⁸ is a great example of a clear and more transparent approach which can help to better manage customer expectations.

The fact that some cases (mortgages as an example) can take between nine and 12 months to allocate a case handler also validates our concerns about the backlog of cases and the overhang from previous years. This is another reason why we feel FOS has a responsibility to publish data on the age of complaints as part of its annual consultation.

⁷ <https://www.financial-ombudsman.org.uk/consumers/complaints-can-help/mortgages>

⁸ <https://www.fscs.org.uk/how-we-work/claims-process/timescales/>

The most recent Independent Assessor's Report stated that FOS has taken steps to implement staff guidelines as to what is a reasonable amount of time to respond to customer correspondence and how often updates should be given at each stage of the customer's journey. These have subsequently been published in FOS' response of 22 January 2021 to the Treasury Select Committee letter, however we feel that these SLAs should be made public on the FOS website to manage customer expectations and allow stakeholders to compare year on year whether FOS is meeting these benchmarks.

Overall, if fee paying firms are going to be asked to contribute more to the levy then there needs to be progress on FOS' part to improve its service.

10. What are your views on the illustrative funding scenarios we set out? For example, how far do you support our base case, other scenarios or features of them? How far do you agree that price stability is important in future years, and that we should look to reduce the likelihood of in-year requests for funding?

We are grateful that this year FOS has presented four funding options to recognise the pressures and challenges firms face during this pandemic. However, it is concerning that in the 2022/23 projections a levy of £106m takes this above FOS' aim of moving towards a 50:50 split (54:46 split levy:case fee). We appreciate that the 2022/23 budget will be consulted on in the usual manner, but we would not expect the split to exceed 50:50 in any circumstances as this does not form part of FOS' strategic plans and is contrary to what has been discussed amongst stakeholders as part of previous consultations.

If we were to indicate our preferred funding scenario, it would be option three (maintain levy and increase case fee to £750). This would ensure that the levy remains static for firms for 2021/22, which is important as there is still uncertainty around economic conditions due to coronavirus. Furthermore, this would ensure that those firms using the service more heavily would contribute proportionately more and incentivise firms who continue to treat customers fairly and proactively prevent claims from reaching FOS to continue their efforts. It is important to stress that we can only support this funding option once FOS has committed and supplied the data on the overhang of cases that sit within the service.

We also feel that it is unnecessary for FOS to hold six months of reserves and three months is sufficient.

The consultation states that CMCs 'still refer substantial volumes of cases to [FOS]' service'. We feel there is a need for a joint consumer education piece (FOS, FCA and FSCS) through, for example, social media as well as a PR campaign to ensure that consumers are aware that they do not need to use the services of a third party to bring a complaint to FOS. We understand this information is referenced in a page on FOS' website but feel this should be made clearer to consumers. Recent FCA research showed that 57% of consumer survey respondents did not know they could have used the ombudsman service or FSCS instead of a CMC, demonstrating the need for collaboration to help improve consumer understanding.

We also feel that FOS should impose an additional levy on CMC's, given that the CMC business model means they act as an intermediary between a complainant and FOS and therefore rely heavily on FOS yet do not contribute through a case fee. FOS highlight in the consultation that the impact of the activity of CMCs on the volume of complaints referred is one factor which has driven complexity in its casework, and this – in conjunction with a consumer facing educational campaign - would be a way to control volumes and ensure that CMCs contribution to FOS funding is proportionate.

11. For voluntary jurisdiction participants, particularly those that are joining the FCA's Temporary Permissions Regime (TPR): what are your views on our proposal to raise funds through the voluntary jurisdiction levy and to leave the tariff rate for each industry block unchanged?

No comment.

12. Do you have any suggestions about further improving our efficiency, including suggestions for how you could work with us to do this?

We support plans for FOS to work more remotely to reduce premises expenditure. It is positive to see that there are no plans to relinquish all office space due to coronavirus and implement a permanent work from home structure. It is important that FOS can provide a service where its employees can make a proactive decision whether to work at home, in an office environment or a mixture of the two as this is likely to result in better consumer outcomes. There are individuals who may feel more supported in a face-to-face environment (when the current situation allows) and as financial services products can be complex, we would not want any working arrangements to be detrimental to the effective handling of a complaint and its outcome.

It is noted that there is a budgeted 17% reduction on property expenditure in 2021/22. FOS could further improve efficiency by setting up more hubs (like Coventry) outside of London or if employee sentiment is that they would prefer a mixture of remote and in office working, utilise hot desking work arrangements.

13. Do you have any other views on our proposed 2021/22 budget?

We are concerned that the FOS cost per case has increased steadily over recent years and is set to rise again by 9%. This is despite the forecast for 2021/22 that the expected FOS cost base will be £62.3m less than 2020/21 (£252.3m 2021/22 vs. £314.5m 2020/21). We continue to have concern over the long term sustainability of FOS and whether 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 ask for comments from the FOS Board on this point, as although we raised this as a query in our 2020 consultation response it was not addressed in any feedback statement.

Whilst not part of the consultation, we wanted to share our views on the current FOS award limit. Caroline Wayman made comments in the Treasury Select Committee meeting in November 2020 about how the number of cases impacted by the increase in the award limit was 'quite a small impact'. Sadly, our member firms do not share this same experience. AMI has been in correspondence with member firms on their professional indemnity insurance (PII) renewal and many PI insurance brokers have cited the increase in the FOS award limit to £350,000 as one of the reasons why premiums have increased and insurers have withdrawn from the mortgage intermediary PII market. We appreciate that the award limit was increased to protect consumers and ensure they are indemnified but if there are only a small number of cases in excess of the old limit, it does raise the question whether it was necessary to increase the award limit so radically when this continues to negatively affect fee paying firms and contributes to an all-round increase in regulatory costs. It also risks losing adviser capacity from the market as we warned prior to implementation.