

Minutes – Board Meeting on 29 July 2024

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| Board attendees The Baroness Manzoor CBE, Chairman Jacob Abboud, Director Bill Castell, Director Nigel Fretwell, Director Shrinivas Honap, Director Sarah Lee, Director | Executive attendees Abby Thomas, CEO/Chief Ombudsman James Dipple-Johnstone, Deputy Chief Ombudsman |
| Other attendees Mark Sceeny, Head of Private Office Matthew Belcher, Casework Policy Initiatives Lead ('MB') | |

1. Introduction and approval of agenda

- 1.1. The meeting was called to order at 10am by The Lady Manzoor, Chairman.
- 1.2. The agenda was approved as presented.

2. Conflicts of interest

- 2.1. Nobody declared any conflict of interest.

3. Responses to the consultation on charging fees to professional representatives

- 3.1. The Chairman thanked the DCO and MB for a clear paper. The Board noted the DCO's summary. He explained that the Financial Ombudsman Service ('FOS') has listened carefully to all feedback and representations. The consultation yielded FOS's highest response rates for consultations ever; and the engagement feedback events were useful in the sharing of views and opinions. In summary, the responses to the consultation contain the following key themes:
 - There is broad support for a fee being introduced (18% agree with the proposed £250, with a further 50% citing this should be higher) but this is more weighted towards respondent firms and industry trade bodies. Professional representatives, making up 27%, strongly oppose a fee.
 - There is broad concern from all sectors that FOS should seek to mitigate impacts on vulnerable complainants/consumers and seek to ensure FOS does not disincentivise support for them.
 - There is broad support for a differentiated fee model (36% agree). There is also majority support for the concept of retaining a residual fee (37%).
 - There is broad support (all sectors at 39%) for FOS doing more to publicise the service, raise awareness, and make it easier for complainants to come directly free of charge.
 - There is broad feedback (weighted to representatives and advocates) that FOS should be mindful of not standing in the shoes of the regulators and that they should be doing more.

- 3.2. The Board noted that the DCO's paper also discussed measures to mitigate risks that had been identified by consultation respondents, such as the ban by the Financial Conduct Authority ('FCA') and Solicitors Regulation Authority ('SRA') on passing on the FOS fee to complainants, as the fee would be included in the regulatory cap on fees. The paper also proposed increasing the number of free cases per year from three (mooted in the consultation) to ten when the charging scheme starts (but subject to annual review) – to guard against obstacles to the raising of new or novel casework issues by representatives.
- 3.3. There had been no significant evidence or data put forward from the consultation showing an adverse impact on vulnerable customers. FOS's own data showed the risks were mitigated as follows:
- Reporting demonstrates that most vulnerable customers (92%) submit a complaint directly without professional representation.
 - In upheld cases, vulnerable customers who bring cases directly have higher average redress.
 - Based on the FCA's Financial Lives 2022 Survey, there is a mixed picture on the value provided by professional representatives in reference to those who are deemed to be vulnerable compared to those who are not.

4. Options and recommendation

- 4.1. The DCO's paper recommended Option A, which consists of the following – FOS will:
- a) implement a fee of £250 for professional representatives if a scheme is approved by the FCA and if the statutory instrument is made by Parliament.
 - b) charge this fee at the front-end of the process consistently between firms and representatives; so, FOS will send invoices on the same terms (both would be liable on conversion of the case). Regulated firms are used to payment later in the process (albeit the case fee is legally owed upon referral of the case, so this is consistent). Accordingly, FOS will consult in the 2025/26 Plan and Budget on bringing payment terms into alignment as per due process.
 - c) reduce the fee to £75 on resolution of the complaint if the professional representative achieves a favourable outcome for the complainant compared to the position reached at the final-response stage. A favourable outcome will be clearly defined in FOS's formal response to the consultation so that it would not include, for example, a minor change in position such as a letter of apology or token gesture.
 - d) reimburse the respondent firm's fee of £650 by the amount recovered from the professional representative, so FOS gains no financial advantage from the decisions made by ombudsmen.
 - e) offer ten free complaints for representatives each year (an increase from three per year as detailed in the consultation) to test any new areas of policy and to permit learning and the provision of further meritorious complaints; this mitigates concerns that some complaints may be disincentivised and also has the effect of excluding 89% of the regulated legal market from fees.
 - f) provide that, in exceptional circumstances, there is discretion to waive the fee (and an effective framework is established that applies to both firms and representatives, which will be brought to the October Board Meeting for approval). **Action: DCO.**
 - g) implement an enhanced programme of engagement to raise awareness of the

service, focusing particularly on vulnerable consumer groups to stress that the service is free and easy to use.

4.2. The other two options outlined in the paper (but not recommended by the DCO) were as follows:

- Option B – to charge £75 upfront and then increase to £250 at the end of the case if the complainant lost; and
- Option C – to retain the *status quo* and make no charge to professional representatives.

5. Discussion and approval

5.1. The Board noted that the options and recommendation were based on as much evidence and data as was available from FOS and relevant regulators such as the FCA and SRA. The proposed charging regime was about balancing all the risks and keeping the scheme under regular review as part of FOS's annual consultation on its plans and budget. The Board noted that the paper took account of all the feedback received from the consultation on charging fees to professional representatives, which had closed on 4 July 2024 with a record number of responses. The Board was reassured that the options and proposed recommendation were informed by the available data and feedback, and from listening to key stakeholders in round-table meetings.

5.2. The Board noted that the recommendation was for them to approve Option A, which was largely in line with the option proposed in the consultation, albeit amended to allow professional representatives ten free cases a year rather than three. The Board discussed and approved this change to mitigate against any potential risks of vulnerable consumers being excluded from the process and to maximise the opportunity for representatives to raise new or novel casework issues and demonstrated that the Board had taken into consideration the feedback from the consultation. The Board also noted that the working group had been liaising closely with the SRA over their inclusion of FOS fees in the cap on what their members could charge clients (similar to the arrangements for those Claims Management Companies regulated by the FCA). This would help ensure that FOS fees were not passed onto complainants, who should always be able to refer cases to FOS for free.

5.3. The Board noted the assurances from the DCO and CEO/CO in response to a number of questions they posed about the paper and proposals, including the following:

- The proposed fee of £250 was based on the front-end costs of deciding whether or not a complaint could be taken on and the costs of scaling up the service to deal with sudden volume increases in cases (which FOS sees in this area) – and it would be reviewed annually as part of FOS's budget consultation to ensure it was neither too high nor too low.
- While some respondents to the consultation had made the point that regulated firms would still be charged £475 even if they 'won' the case, there was still a benefit to them as they currently got no discount based on outcome. Moreover, FOS's initial funding model was that the regulated industry would pay so the scheme was free for complainants. Reallocating some of the costs to others who commercially benefitted was a bonus for regulated firms.
- The Board noted data was requested about the value (if any) added by professional representatives during consultation – for example, focused on their role in supporting vulnerable customers. No such evidence or hard data was

made available in consultation responses. Such data will probably improve as charging fees is implemented. However, the key point is that no respondent to the consultation provided persuasive data to demonstrate the value added. On the contrary, information from the FCA's survey of firms and FOS's own analyses indicated that FOS receives more cases from unrepresented vulnerable consumers who end up with better outcomes than the relatively few who are represented. Accordingly, the best data available at this point supports the charging of fees to help allocate FOS costs more fairly whilst ensuring full and free access to justice for everyone, including vulnerable people.

- The Board agreed that the Executive Team should ensure the best possible dataset and to agree what that should be so FOS can ensure that annual reviews and future decisions on charging-fees levels are as informed as possible. That data could be published so consumers have full information about how representatives perform (as they currently have for regulated firms). For example, it could include information about outcomes, at what stage of the process a case resolves, the level of awards, the compliance rates and actual payments, information on accessibility and vulnerability needs, etc.
 - The CEO/CO and DCO confirmed that the IT structure for implementing charging will be in place for the start date subject to external factors such as approval by the FCA and the statutory instrument being passed by the new Parliament.
- 5.4. There was a discussion about how many free cases (if any) should be allowed. The Board noted that starting with ten free cases per year enabled representatives to get used to the process and start to learn from FOS's casework – and it could later be reduced to, say, five or three cases, as had happened with regulated firms (who used to get ten free cases a few years ago but now only got three). The Board noted that having ten free cases would mean that about 81% of professional representatives would never be charged, so this would mean the scheme was focused on the bigger providers who were commercially benefiting the most from the regulatory regime and whose conduct was causing most of the problems that charging fees aimed to reduce (as set out in the consultation). The Board noted that there would be ten free cases only per year, irrespective of the number of issues raised through those cases. It was a matter for representatives to use their first ten free cases wisely. Having ten free cases should also protect smaller representatives (such as solicitor firms) who might need to use our service. The Board confirmed that the number of free cases and the level of the case fee would be reviewed annually as part of the usual budget consultation cycle.
- 5.5. With regard to the implementation timing of this, the Board noted that it was subject to external events and third parties. The statutory instrument had to be laid in Parliament by the new government and has also to be approved by the FCA. The DCO and MB will take forward preparation of a consultation response document by September 2024. **Action: DCO**
- 5.6. The Board noted the importance of continuing to engage with the wider community, especially vulnerable sectors – and the importance of emphasising in all communications that FOS is accessible and free to all complainants.
- 5.7. The Board noted that the DCO and MB would make a few minor changes to the data accompanying the paper to clarify certain facts that might be misunderstood by anyone who is not so familiar with the issues, e.g. whether a figure referred to all representatives or just a subset such as legal professionals, etc. Subject to that, the Board unanimously **approved** the recommendation in the paper to adopt Option A (see 4.1 above) and asked that the decision was communicated to all stakeholders at the earliest opportunity so they could plan and prepare.

6. AOB and next meeting

6.1. There was no other business.

6.2. The next Board Meeting is scheduled for **23 September 2024**.

7. Adjournment

7.1. The meeting was adjourned at 11.30am.