FOS consultation "Our 2021/22 plans and budget ”

Response from the Building Societies Association

Restricted
26 January 2021

Building Societies Association

Introduction

The Building Societies Association (BSA) represents all 43 UK building societies, as well as six credit unions. Building societies have total assets of nearly £430 billion and, together with their subsidiaries, hold residential mortgages over £335 billion, 23% of the total outstanding in the UK.

They hold over £295 billion of retail deposits, accounting for 18% of all such deposits in the UK. Building societies account for 39% of all cash ISA balances. They employ approximately 42,500 full and part time staff and operate through approximately 1,470 branches.

The BSA welcomes the opportunity to respond to the FOS's annual consultation on its plans and budget. While we remain supportive of its stated strategic priorities, we also remain concerned at the continued path to a fundamental change in how the service is funded.

Summary

The BSA remains supportive of the FCA's key strategic objectives of:

- Service enhancement.
- Preventing complaints and unfairness arising.
- Building an organisation with the capabilities it needs for the future.

That said, we also remain very concerned at the continued trajectory towards a 50:50 funding split between fees and levy, without that being undertaken alongside a fundamental reassessment and restructure of the FCA's compulsory jurisdiction levy for FOS. The current industry block arrangement grouping deposit acceptors, mortgage lenders and mortgage administrators into one block is not designed to achieve any risk-based differentiation and dis-incentivise behaviour resulting in poor customer outcomes.

While acknowledging that it is the FCA's role to reform the levy, ***we urge the FOS to proactively engage with the FCA in relation to altering the current construct of the FCA's fee blocks***. This will ensure that once the fundamental shift in how the FOS is funded has been completed, it meets the FOS's own principles. Namely, that how it is funded should be:

- Fair
- Broadly proportionate, and
- Not create perverse behaviours.

Without that parallel reform, we consider that continuing towards a 50:50 split:

- Represents a serious departure from the FOS's own funding principles.
- Would require building societies, and other firms, to subsidise the poor behaviour of others.
- Reduces the incentive on firms generating complaints to amend/adopt practices to ensure that less cases are referred to the FOS.

These outcomes are in the interests neither of consumers nor of the financial services sector as a whole.

Full Response

This section responds directly to the questions posed in the consultation.

Q1: What's your view on our forecasts for future complaints volumes for:

1. Our general casework
2. PPI?

The BSA agrees that there will be a shift in balance as PPI cases decrease in number. We note the significant increase in new general complaints being experienced in the current financial year (which look set to exceed budget by 35,000 (20%)), and the likelihood that that will continue into 2021/22 as the UK deals with the pandemic and its aftermath.

Against that backdrop, we fear that a 2021/22 budget for general complaints which is markedly less than the 180,000 projected in the current year may prove optimistic. As current measures to protect consumers roll off, and the economic impact of Covid-19 starts to bite both firms and consumers in earnest, it is foreseeable that more complaints may reach the FOS. Further, given ongoing court actions in relation to PPI, an increase in claims to FOS might be expected.

Q2: What's your perspective on complaints volumes and issues arising from Covid-19, including potential complaints about business lending?

As stated above, we see potential for covid-related cases to increase further, and agree that these are more likely to be associated with areas of vulnerability, such as financial hardship. While it might be expected that there is less likelihood of firms unexpectedly failing to meet the timeframes for responding to complaints, that may to some degree be offset by a rise in cases which are pandemic-related and which are more complex. This would reflect the FOS's own expectations of the cases that are likely to reach it.

We note the parallels that have been drawn in relation to the 2008 crisis, but it is also worth considering that dual regulated firms such as building societies are, perhaps to some extent as a result of that crisis, much better equipped to deal sympathetically and pragmatically with complaints relating to financial hardship or unaffordable lending, which may mean that any increase in complaints to FOS from these firms is lower than anticipated.Q3: Do you have any insight into potential areas of complaint in our SME casework in particular?

We are not in a position to comment meaningfully on this, although would expect that complaints in this area may also to increase as a result of the pandemic.

Q4: Do you have any insight into potential areas of complaint in our CMC casework in particular?

As we predicted in our response to the 2019 Consultation "Financial Ombudsman Service – our future funding", during 2021 many of our members have reported speculative Data Subject Access requests being submitted by CMC firms and legal firms which handle claims management work. These are in relation to mortgage lending, and many are founded on questionable, complex and unsubstantiated legal arguments. Despite that, as income from PPI dries up, we expect that this trend will continue and that that could in turn lead to additional complaints reaching the FOS.

We also note that the proliferation of legal firms advertising themselves to consumers as CMCs while retaining their corporate structure as an SRA or Bar Council registered entity makes it more difficult for consumers dissatisfied with their services to make a complaint as these firms are not under FOS' jurisdiction. Regulation of these firms needs to be consistent with other CMCs so that all CMC users have the same right to refer a complaint against a CMC to the FOS.

Q5: Are there any other issues or trends you think we should take into account as we plan for 2021/22?

We agree that it is likely that the complexity (and sensitivity) of cases that reach the service is likely to continue to grow. In particular, it is worth considering:

- The potential for complaints relating to fraud and scams to be even harder fought, especially as different participants adopt different approaches to the CRM Code. At the same time, some firms – including most building societies – will still be disadvantaged by being unable to apply the Code or offer Confirmation of Payee checks.
- Whether the FCA's planned consultation on Duty of Care, and other consumer-focussed activity, might drive up complaints levels.
- Whether the time taken to resolve complaints will increase alongside complexity. If that is the case, is it realistic to ask firms to deal with increasingly complex issues within current timeframes?
- The findings of the latest FCA financial resilience survey of FCA regulated firms show 4,000 firms across three key areas are deemed at risk. In time, if some or all of these firms fail, a knock-on effect will be felt on FOS resources.
- However, the FCA's plans to launch guidance on supporting vulnerable customers for all regulated firms in 2021 should reduce the level of complexity in complaints where vulnerability is a factor by providing common standards across the whole of financial services.

Q6: What are your views on our plans to resource and develop our service?

At principle level, plans to develop the service appear appropriate to allow it to meet its longer term strategic objectives of enhancing service, preventing complaints and detriment from arising and building an organisation with the capabilities it needs for the future.

We do, however, question:

- Whether that objective is suitable/achievable for a service such as the FOS which is in the main reactive.
- The effectiveness and clarity of FOS's overall resourcing and prioritisation strategy against a backdrop where members have experienced lengthy delays (12-18 months in some cases) and backlogs on matters referred to the service. Without a satisfactory explanation as to the reasons for continued delays which impact on both firms and consumers, we would have expected to see more detail on the FOS's plans to address this.

We note the sizeable reduction in the contractor workforce that is projected for 2021/22. Simply retaining contract resource does not appear to us to be sufficient on its own to address any underlying issues. We understand the need to retain capacity, flexibility and skill in a workforce whose activity is demand-driven. However, it would be useful to understand the FOS's longer-term view of the optimum split between contract and permanent employees and how it will measure success in this and (from a sustainability perspective) the transfer of technical skills to a permanent workforce.

It is worth considering what the FOS may learn from the benefits that the FSCS has realised through very effective management of its contractor workforce – see MELL consultation. It has attributed these to its continuing partnership Capita, entered into in 2018, and more recently its new contract with Deloitte as an additional partner to process more complex claims; projected 2021/22 handling costs are £7.4 million lower since it engaged Capita. Does the FOS have any plans to further review its own use of contractors, and what are FOS's plans for permanent staff in times of slack demand?

Q7: Do you have any feedback about our emerging plans under our strategy?

All of the priorities and cross-cutting areas identified appear logical. Linked to the point above, it will be imperative to understand how the FOS will measure success against these priorities and cross-cutting initiatives. We particularly welcome the emphasis on improving and enhancing the digital offering and on improved efficiency of processes.

Further investment by the FOS into systems which allow our members to exchange information digitally will be welcomed. Currently complaints investigation necessitates the disclosure of information in paper form, which is neither responsible nor wholly necessary. We would welcome further insight into potential investment of a portal for the disclosure of correspondence and supporting documentation. This would also help the efficiency on the movement and availability of documentation.

Q8: Are there areas where you'd like to work with us toward our ambition to prevent complaints and unfairness?

For our members, there are two key areas in which further work has the potential to prevent complaints and unfairness.

CMC activity: We acknowledge the important role that well run and responsible CMC firms, and law firms operating in this area, have in representing consumers. Many of our members are, however, concerned that activity identified as detrimental to consumers in the Brady report is continuing, and so working with industry and other regulators to ensure that behaviour that results in a poor outcome for consumers should lead to less likelihood of complaints arising and unfair outcomes for consumers.

As noted above, we would like to see a consistent complaint process for all types of CMC – including those who represent themselves as CMCs but choose to remain outside of CMC regulation. All CMC users should have a clear, consistent route to make complaints.

FCA Fee Blocks: In our response to the FOS's 2020/21 consultation on plans, budget and future strategy, we pointed out what our members perceive as the inherent unfairness of the current structure in light of the fees/levy proportion of FOS funding.

The changes to FOS funding arrangements that were implemented for 2020/21 mean that the FOS raised 30% of its income from the compulsory jurisdiction levy as opposed to 15% in 2019/20 and previous years. The general levy for 2020/21 has also risen to £83.9 million, up from £38 million in 2019/ 2020, itself an increase of 82% over the previous year. Taken as a whole, these changes have a huge impact on building societies. For the I001 industry block, which captures deposit acceptors and home finance providers and administrators, the current tariff base is £0.15594 per relevant account, more than double the previous year's £0.07095, itself up from £0.04388 in 2018/ 2019. One large society reports a 127% increase in its 2020/21 FOS levy.

We remain opposed to the continued move to a 50:50 split without a corresponding shift in the structure of the FCA fee blocks. Absent that, the move will lead, and is leading, to unfairness towards those firms that are treating their customers well and generating lower numbers of complaints. It will have a disproportionate effect on those firms, which will be in the unacceptable position of subsidising firms that are generating larger numbers of complaints, and is entirely at odds with the principle of "polluter pays". As far as building societies themselves are concerned, it is neither a proportionate nor a reasonable approach in the context of the mutual sector, which strives to put the interests of members first. Subsidising poor behaviour in other firms has a direct impact on our members' ability to provide value and benefit their own members. Equally as concerning, and as highlighted above, it appears to directly contradict the FOS's own principles.

We remain of the view that either:

- Building societies and other firms with low propensity to create complaints to FOS should be decoupled from their current funding block and a more proportionate tariff applied to them, reflecting their lower risks and complexity and , or
- A review of the levy should restructure that particular block into smaller blocks based on a combination of firms' size and the risk created by the levels of business they generate for FOS, with differentiated tariffs to reflect the scale of each group of firms' business activities and the complaints risk they pose.

We strongly urge the FOS to engage with the FCA to encourage a fundamental reassessment and restructure of the compulsory jurisdiction levy for FOS.

Sector Engagement: Some of our members have expressed a view that engagement from the FOS/FOS-led events appear to have reduced recently, albeit that that may be partly attributable to the impact of the pandemic. They would welcome the opportunity for more direct engagement with the FOS/ more FOS events to allow exchange of information/trends and allow for more effective triage of issues. It would be useful to understand more about the FOS's plans in this regard.

Q9: Do you have any other comments on our draft plans for 2021/22?

From a budget perspective, the consultation states that the levy vs case fee proportion will also help the FOS to build on their work to prevent complaints (for which they don't get fees, but which is in the interests of all firms in the way it helps to reduce the cost burden of complaints and protect consumer confidence). It is not immediately clear how that is the case now, could be established in the future especially given comments elsewhere in the consultation that there is a need to better understand the impact that the FOS's activity has on prevention of complaints.

This is a considerable change of emphasis and one which will be paid for by firms in the short and medium term at least. To help FOS and firms assess its effectiveness a pilot study that was shared with industry would have been/be useful.

Q10: 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?

Firstly, we reiterate that we are supportive in principle of the longer term plans to increase reserves to the level set out in the consultation and acknowledge the desire to move away from a situation where the service is effectively funded through a deficit to a model which is more sustainable.

That said, greater clarity on the case for stronger reserves (which all firms will have to pay for) would be helpful in the current economic environment and as set out above, in the absence of any change to FCA fee blocks, we are not supportive of any change in the funding mechanism that would increase the levy paid by our members.

In the consultation, it is clear that the service remains of the view that a 50:50 split between levy and fees is a good balance between the need for a resilient and sustainable service and they need to link business's contributions to their funding to the casework they generate for them. We understand that, but for the reasons outlined above, this results in a situations which is inherently unfair to firms that are not generating complaints for FOS to deal with. A proper balance will only be achieved through a fairer redistribution of the compulsory jurisdiction levy.

50:50 is a sharp climb from the immediate past. We cannot help but be concerned that in a few years FOS will argue that the levy percentage should rise again. FOS raised 30% of its income from the CJ levy in 2020/ 2021 rather than the 40% it had initially suggested in earlier proposals. In 2019/ 2020 and previous years, the percentage was 15%.

We welcome the proposal to retain current levels of cases below which no fees are charged. In relation to case fees themselves, there is a well set out rationale for increasing them, which we understand. However, we also consider that what amounts to another 15% increase on case fees may be considered to be excessive. Has the FOS considered stepping up to this over a period of a number of years? Adopting such an approach could allow the FOS to demonstrate improvement on the time it takes to resolve cases, and would thus give firms and consumers comfort that the increase in fees is instrumental in improving the service.

Q11: 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?

We are not in a position to comment on this.

Q12: Do you have any suggestions about further improving our efficiency, including suggestions for how you could work with us to do this?

No further comments.

Q13: Do you have any other views on our proposed 2021/22 budget?

No further comments.

By Elaine Morton
Head of Legal Conduct Risk and Compliance
elaine.morton@bsa.org.uk
02075205915

York House
23 Kingsway
London WC2B 6UJ

020 7520 5900
@BSABuildingSocs
www.bsa.org.uk

BSA EU Transparency Register No: 924933110421-64

www.bsa.org.uk

The Building Societies Association (BSA) is the voice of the UK's building societies and also represents a number of credit unions.

We fulfil two key roles. We provide our members with information to help them run their businesses. We also represent their interests to audiences including the Financial Conduct Authority, Prudential Regulation Authority and other regulators, the Government and Parliament, the Bank of England, the media and other opinion formers, and the general public.

Our members have total assets of over £420 billion, and account for 23% of the UK mortgage market and 19% of the UK savings market.