

Financial Ombudsman Service: strategic plans and budget for 2019/2020

30 January 2019



 Building
Societies
Association

Introduction

The BSA is pleased to respond to the consultation by the Financial Ombudsman Service on its strategic plans and budget for 2019/2020.

The BSA represents all 43 UK building societies, as well as four credit unions. Building societies are owned by their 25 million customers, or members, and operate to create value for them rather than generating profit for external shareholders.

Building societies have total assets of over £400 billion and, together with their subsidiaries, hold residential mortgages of over £315 billion, 23% of the total outstanding in the UK.

They hold almost £280 billion of retail deposits, accounting for 19% of all such deposits in the UK. They employ approximately 42,500 full and part-time staff and operate through approximately 1,470 branches.

Key points

Trends

We believe that, with the PPI complaints deadline approaching, the Financial Ombudsman Service should be ready for the possibility of blanket (bogus, incomplete, or poorly substantiated) claims from claims firms in *non*-PPI areas. The Service deals with complaints based on their individual circumstances, and therefore needs to continue to be prepared for blanket assertions from claims firms across a range of cases where the individual facts are at variance from the broad assertion.

It might also be necessary, depending on developments through horizon three to revisit previous suggestions that –

- there should be a *separate and formal* ‘mass complaints’ procedure, and/or
- (while, in the BSA’s view, the Service must always remain free of charge to individual consumers) that claims firms acting on behalf of complainants should have to pay, without recourse to their client, an additional case fee in respect of complaints that the Service rejected.

Funding model

The BSA strongly welcomes the proposal to keep the 25 “free” case fee model. While all firms contribute towards the general levy, “free” case fees continue to be consistent with the ‘polluter pays’ principle, which we support. We also support the plan to continue to keep the case fee frozen at £550.

The Financial Ombudsman Service is at a particularly uncertain time because PPI will tail off and we do not yet know how claims firms will react, and because the Service will soon take on two significant new areas of complaints; ie SMEs and CMCs. Therefore, it would make sense to retain the status quo (ie the Control option – a case fee 85% and a levy 15%) for at least another year.

Service focus

The Financial Ombudsman Service exists primarily to resolve complaints quickly and with a minimum of formality, based on what is fair and reasonable in the individual circumstances of the case. Therefore, while non-core activities (such as technical advice, engagement and insight sharing etc) are important and useful, we believe that the Service should never lose sight of its key role.

Questions

Horizon one – 2018/19

1. What's your perspective on the trends we've highlighted?

The trends highlighted under horizon one are what we would have expected. PPI complaints are naturally declining, but accompanied by a strong *Plevin* element and the possibility of a general spike as we approach the PPI deadline of 29 August 2019.

We note the comments on short-term credit, insurance and investment but, generally speaking, they are not core products for most of our members, who focus on mortgage lending and savings.

We welcome the work carried out by the Financial Ombudsman Service to improve its case handling capacity. Sensible arrangements, including the judicious use of contractors, has helped the Service maintain appropriate capacity despite various 'mass claim' issues that have arisen since its establishment.

2. Are there other trends you're seeing, or any insights you have, that you think we should take into account in our plans?

There has been a significant increase in data subject access requests from claims firms that, prior to the PPI deadline, are trawling for material in other areas. In our response to last year's consultation, we stated –

"Our members' main concern for 2017/18 was any return to high levels of false or incomplete PPI claims originated by certain claims management companies. So far, and despite the commencement of 2 years before the FCA's deadline for PPI-mis-selling complaints, there has been no surge of false / incomplete claims against building societies. We are grateful to the Financial Ombudsman Service, the Ministry of Justice Claims Management Regulation Unit and others who have worked with CMCs to educate them as to the standards expected of them."

We believe that the Financial Ombudsman Service should be ready for the possibility of blanket (bogus, incomplete, or poorly substantiated) claims from claims firms in *non*-PPI areas. We have strongly advised our members to inform the Service in the case of claims firms elevating groundless complaints. The Service deals with complaints based on their individual circumstances, and therefore needs to continue to be prepared for blanket assertions from claims firms across a range of cases where the individual facts are at variance from the broad assertion.

Our members will always deal in a prompt, lawful and compliant fashion with proper data subject access requests and legitimate complaints. However, the BSA will continue to have a zero tolerance approach to serial bogus or superficial communications from claims firms, which mislead and confuse consumers and unfairly use up the resources of firms and of the Financial Ombudsman Service.

If such practices arise, there is real scope for consumer detriment, disinformation and misunderstanding. We continue to monitor the matter and liaise with relevant

parties, including the Ministry of Justice, the FCA and the Solicitors Regulation Authority.

A second unclear territory for 2019-20 is the introduction of the Contingent Reimbursement Model Code for authorised push payment fraud, and associated consumer protection systems such as Confirmation of Payee. We support the extension of Ombudsman powers to cover complaints against banks receiving APP fraud payments. However, implementing the Code is bound to result in increases in incomplete, or poorly substantiated reimbursement complaints – and quite possibly some fraudulent ones – while the new arrangements bed down.

We appreciate that the Service, as well as firms and the consumer, will be in a difficult position when required to provide fair adjudication where decisions made at regulator-level mean that some firms are unable to offer their customers the same protection – eg access to Confirmation of Payee – that most others can. The BSA continues to work with the relevant authorities on this matter.

3. What do you think about our projections for the volumes of complaints we'll see up to 31 March 2019?

As this is such a short-term horizon, we have no reason to doubt the projections.

Horizon two – 2019/2020 and forward to April 2021

4. What do you think about our projections for the volumes of complaints we'll receive and resolve in 2019/2020?

We note the important background comprising not only short/medium-term uncertainty regarding future complaint levels in key areas such as PPI and short-term lending, but also the two significant new areas of work; namely, adjudicating complaints by SME customers and complaints concerning claims management companies.

As already noted, we believe that the Service has shown admirable flexibility, including the use of contractor workforce and other arrangements, and welcome its acknowledgement that such flexibility is likely to continue to be important.

5. What are your views on the uncertainties we're facing in PPI and short-term lending?

We support the comments about PPI claims, including the factors carried over from last year's consultation. In the light of the PPI deadline and the numbers in previous years, 250,000 PPI new complaints seems to be a reasonable estimate. However, as the consultation rightly notes, there is no way to be certain at this stage.

6. What are your views on our plans for small and medium-sized enterprise (SME) jurisdiction?

This area is not generally relevant to BSA members but the proposed arrangements appear to the BSA to be sensible.

7. What are your views on our plans for our new claims management company (CMC) jurisdiction?

We agree that it is right for the Service to take appropriate steps to safeguard against potential conflicts of interest in handling complaints about CMCs, while also engaging with them in their complaint representative capacity. It makes sense, therefore, physically to separate the operations as proposed. We also support the transfer of case handling knowledge from the ombudsman service currently responsible. The other proposed arrangements also seem sensible.

While we support the proposal for a distinct identity for the Service's CMC work, it is naturally important to ensure equivalent and consistent standards for handling complaints regarding all sectors, including CMCs.

8. What are your views on our plans to develop our service in 2019/2020?

Noted, but no particular comments.

9. What are your views on our proposed funding arrangements for 2019/20, including increasing our levy?

The consultation notes that in last year's consultation, the Service explained that it did not think the time was right fundamentally to change its funding model. In response, the BSA stated –

“We accept that at some point there is a need for a more fundamental review of the Financial Ombudsman Service's funding structure to balance the likely loss of case fees as PPI complaints diminish against the likely reduction in overall caseload and the addition of CMCs to the pool of FCA regulated firms who provide funding. We assume that open banking service providers and providers of services to businesses larger than micro-enterprise that are not already contributors to the funding of FOS will also be integrated into any future funding model at some point.”

The latest consultation confirms that the Service still plans to keep the model unchanged and the BSA response would equally be consistent with the one we made last year.

The BSA strongly welcomes the proposal to keep the 25 “free” case fee model. While all firms contribute towards the general levy, “free” case fees continue to be consistent with the ‘polluter pays’ principle, which we support. We also support the plan to continue to keep the case fee frozen at £550.

The Ombudsman Service is taking on complaints for SMEs and CMCs, so we understand that the Service must raise considerable extra resource. However, an increase in the general levy from £20 million to £45 million seems steep in proportion to the Services' overall scope, especially as many regulated firms do not have SME customers. Nevertheless, without detailed insight into internal operations at the Service, and a breakdown of the detailed costs, it is difficult to comment further.

Horizon three – to 2025

10. How far do you think our guiding principles remain relevant as we look ahead?

We applaud and support the six principles set out under horizon three. We note how, as explained earlier in the chapter, the Service has been obliged to cope with mass claims (and, related to them, claims managers) – a phenomenon for which it was not established. The BSA believes that, in the main (ie apart from some inconsistencies in relation to pre-A Day endowment complaints), the Service has handled this very well. However, there could be new – and, perhaps, novel - challenges going forward (see above).

11. What are your views on the questions we've set out?

It is right that the Financial Ombudsman Service, in common with regulators, firms and others, should horizon scan how technological and societal changes could affect the way it runs its operation. The questions are, in our view, reasonable.

The Service exists primarily to resolve complaints quickly and with a minimum of formality, based on what is fair and reasonable in the individual circumstances of the case. Therefore, while non-core activities (such as technical advice, engagement and insight sharing etc) are important and useful, we believe that the Service should never lose sight of its key role.

12. Are there any other questions you think we need to ask, or any other developments you think we should take into account?

PPI was, of course, the largest ever retail mass-mis-selling and mass complaints issue. While there were of course some cases with unusual or specific facts, many comprised either –

- clear mis-selling (ie where the firm sold a PPI product that was inappropriate for the customer and the complaint was of course upheld) or
- non-sale cases (ie where the firm did not even sell the relevant product to the customer and the complaint was of course rejected).

With the PPI complaints deadline looming, the Service needs to be ready to deal with mass claims that do not necessarily reproduce that rather binary position. Some claims firms, in order to find replacement income streams after PPI, are likely to submit mass complaints or claims. Such claims or complaints might involve products actually sold by the firm in question, but with little or no regard to the individual circumstances of the case – a variation on the 'spray and pray' model that we have seen before.

There could be conduct rules implications for the claims firms concerned, but the Ombudsman would also need to be ready to determine relevant cases as frivolous or vexatious, and therefore not subject to a case fee. Therefore, a key question for the Service would be – *are we fully geared up to handle spurious or superficial mass complaints going forward?*

It might also be necessary, depending on developments through horizon three to revisit previous suggestions that –

- there should be a *separate and formal* ‘mass complaints’ procedure, and/or
- (while, in the BSA’s view, the Service must always remain free of charge to individual consumers) that claims firms acting on behalf of complainants should have to pay, without recourse to their client, an additional case fee in respect of complaints that the Service rejected.

13. What do you think about the next steps we’ve identified in developing our strategy?

Again, in common with many other organisations, it is right for the Service strategically to develop tools and techniques that will enhance its operations. The seven specified points all seem sensible but, again, we come back to the Service’s fundamental role and the importance on enhancing it, and the need to exercise caution about becoming distracted from it.

We naturally agree that it is right to engage with your own people, drawing from their experiences. Among other things, this means having faith in experienced staff members and casting the net widely when taking on new staff.

For example, there is a perception that, over the years, the Service has tended to favour lawyers and law graduates in general. This is understandable, given the adjudicatory nature of the Service (including the need to have regard to the law in making decisions) and lawyers’ analytical skills. However, relevant life, business and other experience are also key if the Service plans to draw further on the experience and expertise of staff members.

In terms of the steps relating to the outside world (stakeholders, experts, learning from others etc), we applaud the proposed steps, which we know are simply an extension of what the Service already does. We look forward to examining, and commenting upon, the strategic proposal when you publish it in late 2019. The BSA values its relationship with the Service and is always ready to engage appropriately.

14. Do you have any other feedback on our strategic approach?

No further comments, thank you.

Our future funding

15. What do you think about the funding options we’ve presented?

First, regarding the views on the Service’s funding in response to previous plans and budget consultations –

- The BSA completely rejects suggestions that customers should pay for complaints, whether upheld or not.
- As noted above, a case fee payable by claims firms (without recourse to their clients) whose complaints the Ombudsman rejects merits further consideration. Such an approach could deter frivolous or vexatious complaints or those lacking reasonable basis, but we appreciate that it would

need careful thought and safeguards against potential or perceived conflicts of interest.

- We agree with respondents who have suggested that your funding arrangements should not create perverse incentives, should not be overly complex, and should ensure that the Service is able to cover its fixed costs. Therefore, we disagree with some of the other suggestions because they could be contrary to some of these principles; for example, a sliding scale of charges for simpler/more complex complaints, separate charges for early resolution work etc, all of which would add complexity.
- We support the list of principles that the Service has developed for its future funding.

16. When do you think we should change our funding model?

The Financial Ombudsman Service is at a particularly uncertain time because PPI will tail off and we do not yet know how claims firms will react, and because the Service will soon take on two significant new areas of complaints - ie SMEs and CMCs.

Therefore, it would make sense to retain the status quo (ie the **Control option** – a case fee 85% and a levy 15%) for at least another year.

Option one (the 100% levy option) would be contrary to the polluter pays principle and, in our view, would be highly retrograde.

Option two (incorporating a 40% risk levy) could make sense in principle but, as noted in the consultation, there would be considerable difficulties in framing the risk basis of the levy. Similar considerations took place regarding compensation schemes and it proved to be too difficult to reach a practicable solution. However, it might be worth revisiting the possibility once the overall situation becomes clearer.

Option three (50% levy and 50% risk-based levy) would give rise to the difficulties outlined above in relation to option two and could, as the consultation suggests, lead to moral hazard in smaller firms.

By the end of 2019 (although we suspect that it will be a bit later), a clearer complaints picture might have emerged, informing the Service's decisions on funding.

17. Do you have any other views about our future funding?

None beyond those already set out in this response.

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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 £400 billion, and account for 23% of the UK mortgage market and 19% of the UK savings market.