# FOS consultation "Our 2020/21 plans, budget and future strategy”

Supplementary response from the Building Societies Association

Restricted
18 February 2020

Building Societies Association

# Introduction

On 30 January 2020, the BSA submitted its initial response to the Financial Ombudsman Service (FOS) consultation "Our 2020/21 plans, budget and future strategy" (the "CP"). The BSA reserved its right to make further comments and seek further information, pending receipt of information due to be delivered by FOS under a Freedom of Information Act ("FOI") request, and which had not been received by the deadline for responses to the CP.

Further information has now been received from FOS and this supplementary response expands on the BSA's original response, which otherwise remains unchanged.

The Building Societies Association (BSA) represents all 43 UK building societies, as well as 6 credit unions. Building societies have total assets of £420 billion and, together with their subsidiaries, hold residential mortgages over £330 billion, 23% of the total outstanding in the UK. They hold over £290 billion of retail deposits, accounting for 19% of all such deposits in the UK. Building societies account for 38% of all cash ISA balances. They employ approximately 42,500 full and part-time staff and operate through approximately 1,470 branches.

# Supplementary Response

In our original response, we stated:

- Our concern that the proposal to move to a 60/40 split on case fees/levy for 2020/21 (from the current 85/15 split) followed by a 50/50 split at future point represented a serious departure from the from FOS' own funding principles.

- That our core concern, that the proposed new arrangement has not applied the principle of "polluter pays", remained unanswered.

We asked FOS to provide its own assessment of the business case for the 50:50 proposal and the cost impact on firms via a Freedom of Information Request. While some information was provided, information directly relevant to our request was not produced – our belief is that this is because no detailed cost impact analysis took place rather than any deliberate attempt by FOS to withhold data.

The limited information shared by FOS to address the BSA's Freedom of Information request does nothing to allay our concerns and leads us to conclude that:

(I) There is a notable lack of evidence that FOS's Board has adhered to its own principles in reaching its proposals. Board papers provided by FOS list the funding principles, yet show no indication of any assessment against them.

While FOS note that feedback to its December 2018 consultation was in support of proportionality and concerns for the polluter pays principle, no evidence has been provided that this concern was considered before proposals to change its existing funding model were finalised for consultation.

(II) It seems likely that the cost impact on individual sectors, such as the building society sector, may not have been fully considered, if at all. Such analysis is critical to ensuring fairness and proportionality. Statistics provided by FOS in relation to the building society sector demonstrate that an average of just 3.3% per year of new FOS complaints since 2008/09 relate to building societies. We have not seen nor been provided with any analysis that tested the fairness and proportionality of the impact of the 50:50 proposal against building societies' (or any other sector's) contribution to FOS's workload.

It follows that the proposals disregard, to any meaningful extent, FOS's own principles that funding should:

a. Be fair.
b. Be proportionate.
c. Not create bizarre behavioural incentives.

(III) They would have the effect of requiring building societies (and other firms) subsidising the poor practices of other market participants. As FOS itself states, it is "likely to see far higher volumes of [PPI] cases over the next 12 to 18 months" – it is wholly inequitable to expect firms with no involvement in systemic issues such as this to subsidise the firms responsible.

(IV) The proposals provide little if any incentive for those other participants to adopt practices that result in fewer complaints being made to FOS.

(V) Such outcomes are not in the interests of FOS itself or consumers of financial services.

# Conclusions

It is too early for FOS to make such a fundamental change to its fee charging arrangements. The BSA considers that the existing split of FOS's funding arrangements between case fees and levy should continue unchanged at least for the next financial year. The likely higher case numbers which FOS acknowledge are likely, primarily driven by continued PPI cases, will increase the level of case fee-related income and go some way towards addressing any impact that the continuation of current funding arrangements would have on 2020/21 operating plans.

Delaying any change will allow FOS the time and opportunity to undertake a full and detailed review of its future funding needs and (importantly) their impact on all sectors that use its services. This should ensure a more equitable funding arrangement which is:

- Demonstrably in line with FOS's own principles,
- Able to ensure fair and proportionate treatment of firms,
- Consistent with the principle that "polluter pays".

A fundamental reassessment and restructure of the compulsory jurisdiction levy for FOS is also needed as it no longer fits the reality of where complaint risks originate or FOS' intention that it should be risk-based. The current industry block arrangement grouping deposit acceptors, mortgage lenders and mortgage administrators into one block is too blunt an instrument to achieve any risk-based differentiation.

The BSA acknowledges that it is for the FCA to reform the levy, and it follows that a fresh approach to the levy should be taken alongside a fresh approach to FOS funding. As emphasised above and in our previous response, this is particularly so were FOS to go ahead with the proposal to increase the proportion of funding raised by the levy.

FOS has many years' worth of complaints data and the systems-capacity to support drawing up a risk-based levy. A review of the levy structure is long overdue: the 2019/20 budget saw a steep rise of £20 million, 82% over the previous year. Reasons given for the huge increase included: recovery of previous year's overspend, and a "scale up" to meet increasing demand and change in product mix. We pointed out at the time that many firms did not have SME customers. This is certainly the case for building societies. Had the levy been restructured our members would not have had to subsidise this sector.

The BSA's view is that it would be appropriate to decouple building societies from their current funding block and consider a more proportionate tariff for them, one that reflects their lower risks and complexity. Alternatively, 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.

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