Financial Ombudsman Service

Creating a funding model for the future

Feedback Statement

November 2022

Financial Ombudsman Service for small businesses

Claims Management Ombudsman
a Financial Ombudsman service

Contents

Executive Summary and Decision ... 2
Executive Summary ... 2
Summary of our proposals and next steps ... 3
Background ... 4
Our key funding principles ... 5
Options for a future funding structure 2023/24: updating the levy structure ... 7
Options for a future funding structure 2023/24: updating the case fee structure ... 9
Ideas for future funding beyond 2023/24 ... 16
Ideas we have considered but are not proposing to take forward ... 22
Annex – respondents to the Discussion Paper ... 24

Executive Summary and Decision

Executive Summary

In June 2022, we published a Discussion Paper 'Creating a funding model for the future', that set out options for possible changes to our funding model, including:

- changes we were considering for 2023/24,
- changes that would require additional thought, and
- changes that we had considered but did not think were feasible.

As the Discussion Paper highlighted, the Financial Ombudsman Service has retained the same funding model that was established when it was set up in 2000. Since then, we have seen dramatic changes in financial services, consumer expectations and behaviours, and in technology. These changes, coupled with the end of payment protection insurance (PPI) complaints, mean that the casework we receive now is more diverse and open to volatility, both in terms of the volume and type of complaints.

In 2021, we published our Action Plan for changing and improving (our Action Plan), which said that we would "consider revisions to the funding model to incentivise constructive behaviour in industry". In our June Discussion Paper, we set out some options we thought could help with this, and asked stakeholders to consider the options and comment.

The Discussion Paper was open for responses between 14 June and 5 August 2022. We received 58 responses from stakeholders. We are grateful to everyone who took the time to respond.

A list of organisations who responded and gave permission for their names to be published can be found in the Annex at the end of this document.

Summary of our proposals and next steps

1. We will consult in our 2023/24 Plans and Budget consultation on the following proposals:
    - Changing our compulsory jurisdiction (CJ) levy and voluntary jurisdiction (VJ) levy to recover fixed costs, i.e. costs that do not materially change with volume
    - Introducing a 12-month time limit for disputing case fees
    - Trialing changes to the group fee account arrangements mentioned in the Discussion Paper
2. We will continue to assess and improve our processes to enable differential case fees with a view to consulting in our 2024/25 Plans and Budget consultation on the following proposals:
    - Differential case fees by case stage and/or by product type – this will be based on modelling undertaken over the next 12 months
    - Charging an initial case fee at conversion
3. We will not move forward at all with these options:
    - Pursuing legislative changes to enable us to charge professional representatives
    - Charging businesses for delays due to non-compliance
    - Discounts for bulk closures
    - Charging case fees based on case complexity

We will also not be taking forward proposals that were already discounted in the Discussion Paper, such as charging more for upholds or by the size of the business.

The remainder of this document summarises the responses we received to each of the questions we asked, how this has impacted the direction of our thinking, and outlines proposed next steps. The feedback statement also highlights key themes and challenges raised. As well as the direct responses received, we have also included feedback we received during our wider engagement with stakeholders on this issue over the past few months.

Our next plan and budget consultation, in December 2022, will provide detailed information about the proposals we are taking forward next year and will ask stakeholders to respond on the specific plans during the consultation period, to ensure we have a broad understanding of views on the proposed changes.

Once the consultation closes, we will consider the feedback we have received and ask the Financial Conduct Authority (FCA) and our Board to approve a final budget for 2023/2024 by 31 March 2023.

The valuable responses we have received from respondents has made it very clear that we should continuously look to refine our funding model to ensure that we are recovering our costs in a fair and equitable way. We will therefore continue to look at alternative options and will consult on those that we believe will result in a fairer charging mechanism at the appropriate time.

Background

We looked at possible ways to evolve our funding model and considered what our service would look like after PPI complaints ended, in two consultations in 2019. In our annual plans and budget that year, we consulted on having a differentiated levy, with a risk-based element. In a separate 2019 Future Funding consultation, we looked at rebalancing our income from levies and case fees.

We decided not to take forward a risk-based levy, partly because the existing FCA levy was already a type of risk based levy. The levy individual businesses pay depends on which FCA industry block they are in and how many complaints we expect to get about those businesses. Other feedback from the 2019 Future Funding consultation showed support for changing our funding, with many respondents favouring a 'polluter pays' approach, where businesses who generate complaints should bear the costs of our service resolving them.

However, there were also mixed views on how to change our case fees; some respondents supported collecting case fees at the point we receive complaints, and varying fees according to outcome or complexity, and some supported removing them altogether.

We have continued to keep our funding under review, as part of our regular Plans and Budget consultation cycle. Last year's independent review of our service, undertaken by Oaklin Consulting in the summer of 2021, recommended that now was the time for a more detailed review of our funding model. As a pre-cursor to our June Discussion Paper, as part of our 2022/23 Plans and Budget consultation, we asked respondents for views on the options we may want to consider as part of this work.

Respondents generally supported a 'polluter pays' model to incentivise reducing complaints and believed that we should have a differentiated fee model (with various suggestions posed). There were strong feelings about charging professional representatives and the need for more transparency around our funding model.

The June 2022 Discussion Paper, which this feedback paper relates to, included the following options for discussion:

- Retaining one flat case fee for simplicity
- Changing and simplifying our CJ and VJ levies
- Differentiating case fees by product and/or stage
- Making an element of case fees payable upfront
- Changing group fee account arrangements for the eight largest financial business groups
- Additional changes around data publication and case fee disputes

The paper also highlighted options that would not be possible to implement in the short-term, including taking steps to enable us to charge professional representatives, charging case fees by complexity, charging firms for non-compliance and discounts for bulk resolutions. Finally, we outlined some changes that we had considered but discounted, such as charging by size of firm and removing 'free case' allowances.

Our key funding principles

The June 2022 Discussion Paper set out our existing funding principles, which stakeholders had reaffirmed in our 2019 Future Funding consultation and suggested additional principles we believed our funding model should be governed by.

Our overall principles set out that we are:

- free to customers
- fair
- transparent

and that our costs are:

- broadly proportionate, with the businesses which generate the most work paying the most for our service
- easy to understand
- simple to administer for us and for firms
- sensitive to our operating environment
- sustainable over time
- create no incentive for our service to reach a particular outcome

In the June 2022 Discussion Paper, we set out proposals that our funding model should additionally:

- enable recovery of our total costs so we are not running a deficit
- better reflect our costs in handling different types of complaints
- encourage firms to adopt positive behaviour with consumers, follow our published guidance, and resolve complaints quickly and fairly
- be supported by data and evidence

What we asked

Q1: Do you agree with how we suggest building on our current principles and are there any other factors we should take into account?

Comments received

The response to this question was overwhelmingly supportive of the principles. Most respondents agreed that it is important to keep our service free for customers, that our funding should reflect our genuine costs and that the idea of 'polluter pays' should be central to our thinking.

However, a number of stakeholders felt that our ambition to "encourage firms to adopt positive behaviour with consumers" is either not something that the funding model should do, or is not something that was within our remit – instead it is the responsibility of the FCA, as the regulator.

We also received several suggestions about further principles that we could add. These were mainly around the need to ensure we are cost-effective and transparent about the costs we incur and the efficiencies we make. Some respondents also suggested that we should have a principle to disincentivise consumers and their representatives from misusing the service and its resources.

Our response and next steps

Following on from the independent Periodic Review in the summer of 2021, our December 2021 Action Plan set out our commitment to consider revisions to the funding model, to incentivise constructive behaviour in the industry, and ensure a financially sustainable future.

We considered the responses stating that the proposed principle “encourage firms to adopt positive behaviour with consumers” was outside of our remit. We believe that it is appropriate for our service to try to positively influence how firms behave in relation to consumers. However, in response to the feedback from stakeholders questioning if this is appropriate for the funding model, we have considered this further.

We intend to refine the proposed principle, to remove the reference to positive behaviour and now read as ‘encourage firms to follow our published guidance and decisions to resolve complaints quickly and fairly’.

We will be retaining all other principles and taking forward the other additional principles as written. We are not taking forward the additional principles suggested by some stakeholders. In terms of the desire to have a principle to address cost-effectiveness and transparency, we feel that these points are already addressed in our other principles, including our overall principles of fairness and transparency, as well as the principles for our costs to be proportionate.

On the point about the need to have a principle that disincentivises poor behaviour by consumers and representatives, we do not think that the funding model is the appropriate place to respond to this and that it could also fundamentally be at odds with the key tenet of our service being free to consumers. As addressed later in this paper, we have tools available to help us manage the behaviour of all those who use our service.

Options for a future funding structure 2023/24: updating the levy structure

This section of the Discussion Paper focused on possible changes we could make to the levy structure. All the options outlined were proposals we felt were realistic and right to implement for 2023/24.

What we asked

Q2: Do you agree with our option of changing the CJ levy to recover fixed overheads?

Q3: Do you agree with our proposal for simplifying the VJ levy?

Comments received

Respondents were significantly in favour of changing the CJ levy to recover fixed overheads, believing this change would create transparency, oversight and an understanding of the costs incurred, as well as what firms are paying for. There were some questions about what is included as a fixed cost. For example, whether some element of casework staffing costs should be included, because there will always be the need for a certain amount of casework staff and senior management.

Respondents were clear that they wanted further ongoing information about these costs, as this would also help ensure that the service continued to drive efficiencies and did not become complacent. There were questions about what the levy may be in the future as a result of this change, especially as there have been several recent levy increases, coupled with declining volumes and existing savings already made.

There were a small number of respondents that felt very strongly that this change does not move us towards the 'polluter pays' model, due to the current configuration of the FCA's fee blocks (which decide the levy costs of individual firms) and that these levy blocks need a dramatic overhaul to stop smaller firms from subsidising the larger firms.

There was much less feedback on changes to the VJ levy, possibly because it does not have a direct impact on many of those who responded. However, most respondents who answered agreed that it was right to reduce administrative costs and simplify processes. There were questions on whether this fully aligns with the 'polluter pays' model, as firms in the VJ do not contribute to fixed costs.

Our response and next steps

We are pleased to see strong levels of support for the proposed changes to the CJ and agree with respondents that these changes will create transparency and provide reassurance to industry on the costs we are incurring. Currently, the money that the FCA recovers through the CJ levy is used to pay a proportion of our total costs. The levy currently covers 44% and the rest (56%) is recovered by case fees. We consulted on the moving to a 50:50 split in 2019. However, due to the impact of the Covid-19 pandemic, this proposed change has not happened, and we have considered the appropriate percentage split each year as part of our Plans and Budget consultation.

This year, we intend to consult on proposals to change this approach and will seek to use the levy to cover our fixed costs, such as IT, property, and other support functions (HR, policy, communications). This would mean that the case fee will recover costs more closely related to the costs to resolve cases. As part of this proposal, the majority of salaries for casework colleagues will be recovered as part of the case fee, as our casework resource levels can move up and down depending on our case volumes.

We understand and welcome the desire for ongoing transparency about our costs and our efficiency savings. We will provide additional information through the plan and budget consultation to continue to provide the necessary assurance.

On questions about the future levy, it is very difficult to predict what the levy will be, owing to existing economic challenges and the ongoing volatility in our casework. We will continue to consult on our budget yearly and share our forecasts and rationale with stakeholders, for them to consider and provide feedback.

In terms of the comments raising concerns about the FCA levy blocks, while we appreciate the importance of this issue to some stakeholders, the setting and allocation of the levy is a matter for the FCA to decide. We have shared with the FCA the feedback we have received.

Although we received less feedback about simplifying the VJ proposals, we are pleased to see respondents were generally supportive. We have decided to move further forward with it, by looking at the costs that should be recovered via the VJ levy. We will also look at options to simplify the methodology for calculating and collecting the levy while remaining mindful of the need for the costs associated with the VJ to be separately recovered. Further information will be provided in the plan and budget consultation.

Options for a future funding structure 2023/24: updating the case fee structure

This section of the Discussion Paper set out the changes to our case fee that we felt were feasible to consult on in our 2023/24 Plans and Budget.

What we asked – differentiated case fees

Q4: Should we retain our single, flat case fee or do you support a differentiated case fee model?

Q5: Do you agree that we should charge different case fees according to the stage the case has reached before it is resolved? Do you consider this would create any unhelpful incentives?

Q6: Do you agree that we should vary case fees according to the type of product the complaint relates to? If you agree, do you think we should also introduce fees that are chargeable according to case stage?

Comments received

These questions received the most substantial responses, showing the level of stakeholder interest in our case fees. We are addressing the feedback to questions four, five and six together, as they are closely linked.

Nearly all respondents supported differentiated case fees over the current flat fee structure for all complaints. There was acknowledgement that our current model is simple to understand and administer, but that respondents felt this model can be unfair, especially due to the differences in the type of cases we see, and the time taken to resolve them.

Although there was consensus for moving to a differentiated case fee model, there was significant variety in preferences and concerns as to what is viable, but no stand-out preferred alternative model. It was clear stakeholders felt our fees should be simple to understand and administer, and that an evidence-based rationale for our decision should be provided, as well as clear and detailed guidance for firms to help them make any necessary changes. Robust data and clear use of case categorisation were also highlighted as imperatives to making any changes work. Some respondents suggested that before we make any changes, we should undertake further modelling and run pilot schemes to provide us and stakeholders with further data as to how our proposals could work.

Respondents were clear that changes should be about cost recovery, rather than raising revenue. There were questions about the impact of the FCA's new Consumer Duty on our case volumes, with some respondents fearing that the duty would lead to an increase in complaints, especially those sent to us from professional representatives.

Charging a differentiated fee by case stage

In terms of specific proposals raised, over half of respondents felt that charging case fees based on the stage a case reaches was a good idea. The concept that a case costs more as it progresses was regarded as both logical and in line with the 'polluter pays' model. The objective and simple nature of this proposal was viewed positively by many respondents, and many felt that it would lead to better outcomes for consumers. A number of respondents also felt that this could build on the success of the 2021 temporary outcome code initiative, where we temporarily changed the way we reported cases that firms settled proactively, before a provisional assessment was reached.

Some respondents felt that charging by case stage could help reduce the number of case fee disputes due to firms thinking the case is out of jurisdiction or that the case was prematurely escalated to our service. Respondents believe adding new stages could help better identify these cases.

There were suggestions about specific amounts and ranges for the different stages. Other ideas from respondents included further early triage work to help identify types of cases.

Although charging fees linked to the case stage was a popular option, a range of concerns and challenges were raised. A key concern was that increasing the fee by stage would allow consumers and their representatives to 'weaponise' our case fee, given that firms have no say in a complainant's request for an Ombudsman's final decision. As well as potentially negatively affecting consumer and/or representative behaviour, respondents said that it could put barriers in place for firms to have an Ombudsman review a case, which is one of the fundamental tenets of our service. As such, this could lead to firms settling cases to avoid costs, rather than it being the right thing to do.

Respondents also suggested that charging by case stage could move away from 'polluter pays' as consumers will refer a case to an Ombudsman for a final decision if it is resolved in favour of the business. It could lead to more cases at this stage not being upheld (as the vast majority of ombudsman decisions agree with the findings from the initial assessment stage). This would mean the businesses who are not causing consumer harm end up paying more. There was also concern that it could create a perverse incentive for investigators to uphold cases as firms may be less likely than consumers to challenge cases.

Charging a differentiated fee based on product type

As well as charging by case stage, we also suggested case fees based on product type. This generated a mixed response with half of all respondents supportive of this model and a degree of opposition to the suggestion. Those who support this model felt that product type is a good proxy for complexity, as it is an objective method that is both simple to understand, implement and gather data on.

However, although nearly half of respondents were in favour of this model, there was widespread agreement from most respondents that 'simple' products could generate complex cases and vice-versa. This led to many respondents suggesting that if we took this proposal forward, we would need to have an additional level of categorisation to distinguish these cases and ensure appropriate charging.

Many respondents felt that alongside the type of product, size/cost of the product could and/or should also be considered. Specific products and services that were given as examples were certain types of short-term credit products, as well as broking services. Case fees generally significantly exceed the costs and profits for these products and can be a barrier to entry into the markets, often at cost to those who are more financially vulnerable. This was raised by a number of Community Development Finance Institutions (CDFIs) who felt that they should be exempt from paying case fees, mirroring the exemption that is currently provided to small credit unions.

There were concerns from those who felt that due to the additional data needed to distinguish simple and complex complaints, this would lead to additional costs and burdens for firms and the

Financial Ombudsman Service. Many respondents also questioned if the Financial Ombudsman Service had accurate data at the level of granularity needed. There were also questions on whether this would align with 'polluter pays' and if it could lead to fewer firms operating in markets that generate higher case fees.

Use of multiple differentiated fee structures

We asked firms if we should charge by case stage/product alone, or if we should use these simultaneously. This received mixed views. Quite a few respondents felt that using both together could be more accurate and would create incentives to cooperate and resolve cases more quickly. However, many respondents also felt that using both together created complexities around forecasting, which could be difficult and confusing in practice, leading to increased questions and disputes around billing and, therefore, increased costs for all parties.

Our response and next steps

We have found the feedback very helpful in taking forward our thinking – and it is worth reflecting on the significant range of views we received. In response to concerns about incentives for the Financial Ombudsman Service it is important for us to restate that our vision, values and the funding principles (set out earlier in this document) are the drivers for our behaviour and we are careful to ensure that there are no financial incentives impacting individual case decisions. We have robust training, review, and quality assurance processes to monitor this.

We were not surprised to receive such strong feedback about differentiating our case fees, it reflects ongoing feedback from several stakeholders on this point. We think it is worth highlighting that while we acknowledge having a flat case fee is not without its challenges, many of which respondents have mentioned, the simplicity it brings should not be underestimated. Simplicity becomes even more important when looking at concerns raised by virtually all respondents about the challenges and potential complexities created by any of the proposed new models.

However, there is clear support for changing our case fees and most respondents are in favour of linking fees to our case stages. We have considered some of the challenges to this proposal, such as firms settling cases based on financial considerations, rather than what is the right outcome. However, it is the responsibility of firms to ensure that they are basing their resolutions on what is the right thing to do in each individual case, rather than other considerations.

While we currently do not see widespread evidence of our case fee being 'weaponised', we understand why it has been raised and agree to do all we can to mitigate these concerns. We also understand the main concern about charging by product stage, that 'simple' products can generate complex cases. Therefore, differentiation by product type alone may be too blunt a tool.

Over the next 12 months, we are transforming our casework toolling and supporting processes and will be able to ensure our data is more granular. This will enable us to differentiate cases and model different charging scenarios. Given the significant impact introducing a differential case fee would have for us and financial businesses, it is important that we get this right. As such, rather than consulting on differential case fees for 2023/24, we believe it would be prudent to spend the next 12 months modelling options for differentiated case fees.

Dependent on the outcome of our modelling and testing, we aim to consult on refined proposals as part of our plans and budget in December 2023/24 for potential implementation in the financial year 2024/25. This fits in with feedback from respondents about allowing time to provide more detailed plans and to run pilots.

We received several requests to create a new stage for out of jurisdiction complaints, with some firms stating that we regularly incorrectly charge for these cases. However, the reality is more complex than the feedback suggests. If it is apparent when we receive a complaint that a case is out of jurisdiction, then we will inform both parties that it is out of jurisdiction without charge – in line with the FEES section of the FCA Handbook, and the Glossary definition of a chargeable case.

If firms believe a case is clearly out of jurisdiction, they should state this before we begin any substantive work on it. This helps us identify such cases and automatically waive the case fee if we agree with the firm.

However, establishing whether a complaint is within jurisdiction is not always straightforward and, in such cases, we will need to investigate, with many of these cases going to an Ombudsman for a decision on jurisdiction. It is appropriate that these cases incur a case fee because the position was not apparent from the outset.

If firms think we have charged a fee for an out of jurisdiction case that should have been apparent to us, they can use our case fee dispute process, as also provided for in FEES 5.5B.27R (et seq.). We are implementing improved triage processes, which we hope will continue to improve how quickly and effectively we identify out of jurisdiction cases at the outset.

We are continuing to consider the request by CDFIs for an exemption for case fees, like that currently granted to credit unions. Such an exemption would require other levy payers to cover the cost of dealing with complaints against CDFIs. As a public body, we would consider granting an exemption if it was necessary to advance government policy, for example, improving credit options for low-income consumers. We are currently discussing this with the FCA and HM Treasury.

What we asked – group fee accounts

Q7: Do you agree with reducing the margin of 15% to 5% and removing the free case allowance in group fee account arrangements?

Comments received

We received feedback from both group fee account (the eight largest financial business groups) and non-group fee account firms on this question. Most respondents supported us reviewing this arrangement, as it has been in place for nearly 10 years without significant change. In addition, the end of PPI complaints and the change in financial services and consumer behaviour, as well as other factors, means the landscape is very different from when the arrangement began.

There was significant support, including from the group fee businesses, to remove their free case allowance because it provides minimal or no benefit due to their size and case volumes. However, three free cases could make a significant financial difference to smaller businesses.

In terms of the tolerance – where firms only pay more or receive a refund if their actual case volumes depart from the forecast outside of the current 15% margin – many felt it should be reduced or removed altogether, as it risks either over or undercharging, both of which are unfair and moves the service away from the ‘polluter pays’ model. There were suggestions of removing it in stages and keeping it under review, as it may be appropriate to reinstate it if we see increased volatility, such as another mass claims event similar to PPI.

Many respondents, including the group fee firms, thought that we should work closely with these firms to produce accurate and timely forecasts that can be collaborated on and agreed.

Our response and next steps

It was helpful to get perspectives from both group fee account and non-group fee account firms and we are glad to receive a high level of support for these proposals. We agree that while the 15% margin was helpful when dealing with high PPI volumes, now that these types of complaints have stopped, that there is a risk of moving away from the 'polluter pays' principle many respondents felt strongly about. Therefore, we will be consulting on a proposal to reduce the margin to 5% and to remove the free case allowance for group fee account firms. We will review the success of this arrangement at the end of 2023/24.

We are keen to work closely with group fee account firms and other stakeholders, such as trade bodies and the FCA on improving forecasting. We are already in the process of setting up meetings and discussing how best to do this, thinking especially about what this means for group fee accounts and how volumes may change throughout the year. It is important to highlight just how vital stakeholder engagement is to our Plans and Budget consultation. The more information we receive from the firms who receive complaints, the more accurate and evidence-based our forecasting will be.

What we asked – initial fee at conversion

Q8: Do you agree that an initial fee at conversion will protect us and levy payers from the risk of not recovering costs for completed work?

Comments received

A significant number of respondents supported implementing this proposal. Views were that it would minimise losses, protect the service from debt and stop levy payers picking up an additional fee for harm that they had not caused – all in alignment with the 'polluter pays' model. There was agreement that firms in financial difficulty could delay resolving cases to avoid both our award and our case fee under the existing model. It was also acknowledged that the increased amount of bad debt and the work that accompanies this practice is a substantial drain on our resources.

Several respondents felt this could be a positive development as, if a case becomes protracted, upfront payment meant that at least part of the case fee was paid at the rate when the case started as opposed to the (often higher) case fee when the case is closed. Based on this rationale, a small number of respondents were in favour of the whole case fee being payable on conversion.

Although most respondents agreed with taking forward this proposal, there were a number of respondents who were against it. The main reasons cited were concerns that an initial charge would cause additional work and costs through increased invoices, risks of errors and an increased number of disputes. Several firms pointed out that current systems of recording led to errors, which would only increase with an additional charge. These concerns were raised by firms who were both for and against the proposal.

Firms were also concerned that this could add further complexity on top of other changes being made to case fees and that it was too much to make this change at the same time as other changes to the case fee. Some respondents were also sceptical as to how much of an impact this would really have on bad debt.

Finally, a number of firms felt that this could be a further way for CMCs (claims management companies) and other professional representatives to 'weaponise' our case fee against firms.

Our response and next steps

It was helpful to receive so many detailed answers to the question, giving us much to consider. Whilst we still think that this will be an effective tool against the risk of bad debt, and that the change, if implemented with a two stage case fee and a full charge up front, would mean that only around 20% of cases might end up with multiple bills, we do acknowledge and recognise concerns about the risk of errors and creating additional work for all parties.

As such, we propose not moving forward with this option for 2023/24 but will review its viability for the 2024/25 budget cycle. We hope some of the changes we intend on making over the next 12 months, including having more granular and accurate data, will mitigate some of the concerns raised by respondents.

What we asked – additional changes

Q9: Do you agree that a time limit of 12 months to claim for overpayment of fees provides firms with a sufficient opportunity to make any claim for repayment?

Q10: Do you agree that we should include the data that results from any new fee structure as part of the quarterly report we publish on our website?

Comments received

Over half of respondents commented on the proposal to limit case fee disputes to 12 months. From the responses we received, the vast majority were in favour of this proposal as they felt it was fair, appropriate, and proportionate. Some respondents suggested that it could be lowered in stages to 18 months, and then 12 months, to give firms time to adapt. Respondents highlighted that reducing the amount of time to raise a dispute while also changing existing charging structures could lead to problems and emphasised the need for clear invoices, accurate data, and prompt responses to queries.

Respondents raised two main concerns with this proposal. The first was that some respondents felt it was important for us to stay aligned with the FCA and others felt that a number of queries could become 'timed out' due to the timings of annual audits. One respondent felt that this would make it hard for firms to recover funds that belong to them that we have taken in error and that this does not link to principles of fair dealing and is more akin to limiting access to redress.

In terms of the proposal to publish data linked to any new fee structure, this was a relatively uncontroversial proposal that generated support from two-thirds of respondents. Those in favour felt that it will increase trust and transparency. Additional data could be used to help prevent or reduce complaints, as well as provide benchmarks for individual performance and help with general forecasting and identification of trends. Respondents who were not in favour questioned the benefit this would provide and wanted data changes to focus on reviewing and improving existing data and its presentation.

Our response and next steps

We have carefully considered responses to reducing case fee dispute time limits to 12 months and have found the feedback very helpful in reaching a view. We do not think that having different time limits to the FCA is a significant issue because these provisions are fundamentally separate issues. For us, this is specifically about individual case fee disputes, whereas for the FCA it's about the levy, and applies more broadly than just disputes, so the two are not comparable.

In relation to the number of disputes that may arise outside of that timeframe, our data shows that currently 85% of disputes are raised within 12 months. We believe this indicates that this change will have limited impact on firms.

Most respondents are in favour of us publishing more data. We agree that this will increase transparency, enable learning, and hopefully increase trust in the service and the data we produce. While comments about our broader data publication are outside of the scope of this publication, we have shared them with the relevant team, who are always considering how best to improve our data offerings.

We will take forward our proposals to consult on reducing the time limit to raise a dispute to 12 months. As we are proposing to defer changes to our case fee structure until 2024/25, we will reconsider the options for publishing additional data relating to the fee structure at that time.

Ideas for future funding beyond 2023/24

In this section of the Discussion Paper, we set out ideas for consideration that would not be feasible to implement for 2023/24, due to various complexities. We asked whether these suggestions should continue to be considered and worked on for future years.

What we asked – professional representatives

Q11: Do you have evidence to demonstrate problematic behaviours from CMCs and do you think a charge from the Financial Ombudsman Service would prevent them?

Comments received

Over half of respondents were in favour of charging case fees to CMCs and other professional representatives. Many of these respondents raised this point at various times, highlighting the very strong feelings this topic generates.

The key argument provided for charging professional representatives is that they generate huge numbers of 'templated' complaints that are generally without any merit. It is felt by firms that our case fee has been 'weaponised' and used as a 'bargaining chip' to get increased redress for consumers before they reach our service. It is also believed that there is no disincentive for professional representatives who behave irresponsibly, and so introducing a fee would stop spurious complaints and lead to genuine, better quality complaints.

Some respondents distinguished professional representatives from individual consumers by saying that as commercial entities who are regulated – either by the FCA or Solicitors Regulatory Authority (SRA) – these representatives are similar to firms and should also have to mirror the financial obligations of firms. Respondents from the CDFI sectors believed that professional representatives pose a significant risk to the future of their sector and vulnerable and low-income consumers.

The role of the regulators was mentioned, with some respondents suggesting that the FCA needs to do more to prevent poor behaviour by professional representatives. Some respondents thought that the FCA's new Consumer Duty is only likely to exacerbate the activities of professional representatives. Respondents also suggested that the FCA could use its rule-making power to prevent representatives passing any fee or charge on to consumers, either using its existing fee cap or new rules. A small number of respondents said more SRA firms are moving into financial services and used their responses to state that these also send meritless complaints, do not engage with the process, and make poor-quality submissions.

Respondents put forward ideas on how the proposals could work differently. For example, a smaller, more nominal fee could be charged, or that representatives should only have to pay a fee if we find in favour of the financial business. Others mentioned that a fee might not be needed if we were to be stricter with our 'frivolous and vexatious' test, which allows the service to dismiss cases without charge.

Part of our question asked for evidence of poor behaviour as, to date, much of the behaviour we have heard about from firms has been anecdotal and does not match our experience.

Only one firm provided us with data on the impact it felt professional representatives had on its complaints. The vast number of respondents either pointed to FCA publications that highlight specific examples of poor behaviour of professional representatives, or to statements made in the

independent Periodic Review of our service about the scope of professional representatives to bring high volumes of complaints.

Although there were strongly put arguments for charging representatives, we also received responses that were not in favour of us charging professional representatives. It was felt that introducing such a fee would fundamentally change the key principle of our service being free to use for consumers and that it would not be possible to stop any cost or fee being passed on to consumers. A number also felt that charging a fee was a regulatory intervention that was not for our service to make. Other respondents suggested that our service needed to do more to engage with the FCA on issues that we see with professional representatives, with some respondents questioning how many of the issues raised by firms were ones that we saw or if these issues mainly existed before our involvement in a complaint.

Our response and next steps

The Financial Ombudsman Service does not currently have the power to charge professional representatives. For us to do this, a change would need to be made to the Financial Services and Markets Act 2000. Seeking a change to primary legislation is often time-consuming and resource intensive and requires agreement from the government. For us to seek these changes, we would need robust evidence on the existence of systemic problems that cannot be resolved with existing tools.

Although we received extensive responses to this question from stakeholders, we did not receive any new evidence. Respondents pointed to previously published FCA policy statements that created interventions to address the harms highlighted. The anecdotal information shared does not reflect in the main what we currently see at our service.

Respondents pointed to the independent Periodic Review of our service that outlines the “ability to aggregate many similar classes into a batch and that does not always apply the same rigour to the assessment of complaint viability” and the subsequent recommendation to consider if a charge is relevant for CMCs. However, it is important to note that the review also highlights that many professional representatives have high uphold rates at the service, which suggests there were legitimate complaints that needed addressing, as well as the service having “stringent vetting processes with accompanying high rejection rates.”

It is worth mentioning that the behaviour of professional representatives towards firms before a complaint comes to our service is for the respective regulators to review and resolve. The FCA has highlighted that despite what we hear from firms, it gets limited complaints and evidence from firms about poor behaviour by professional representatives. Therefore, we encourage firms who experience these issues to share the information with the relevant regulator.

Where we as a service experience issues with professional representatives, we take a similar approach as we do with issues with regulated firms. This ranges from engaging directly with the representative in question to share our concerns, not investigating or charging for a case until we have the information we need, to dismissing cases as frivolous or vexatious if needed.

We have been working closely with the FCA since their regulation of CMCs began, and we will continue to do so. This has involved sharing data about CMCs and promptly sharing evidence when we do see poor practice. Over the years, we have seen a decrease in poor behaviour of professional representatives in the complaints referred to our service. Partly due to the changes in regulation, but also partly due to the work we have done in engaging with representatives and being clear about our expectations.

As the market has evolved, we are seeing more SRA-regulated firms in financial services. As we do with representatives regulated by the FCA, we also share information with the SRA if we think it is appropriate to do so. We continue to review and evolve our engagement with the SRA, and we encourage financial services firms to engage with the SRA if they have evidence of poor behaviour by SRA regulated firms.

If consumers have concerns about the behaviour of professional representatives, they can bring a complaint to us about FCA regulated representatives. Although we only consider complaints about FCA-regulated representatives, consumers can go to the Legal Ombudsman if they have concerns about a service provided by an SRA regulated representative.

While we understand the point about the similarities between professional representatives and financial services firms, the fundamental difference is that the cases that come to us are ones that allege harm by the financial services firm to the consumer, whereas the professional representative is there to assist the consumer. Consumers do not need a professional representative to bring a complaint to our service, but we know that for some consumers this is the only way they feel comfortable raising a complaint. Charging a case fee, that could be passed onto them, could create further barriers for consumers and result in unfairness in access to justice.

We also share the concerns of some respondents that a fundamental principle of our service is being free to access for consumers and chipping away at any element of this could be damaging – and go against the core reason the Financial Ombudsman Service was set up.

For these reasons, we will not be asking the government to consider amending FSMA 2000 to give us the power to charge case fees to representatives of complainants. Nor will we continue to develop this option further. We will, however, continue to focus on engaging with professional representatives to develop constructive relationships, as well as working with the respective regulators to share information and insight. We would encourage firms to do the same.

What we asked – complexity

Q12: Would you like us to consider introducing differentiated fees based on case complexity in future? How should complexity be defined and how could fees based on complexity be applied most effectively?

Comments received

Many comments on charging case fees by complexity are interlinked with questions 4 and 6, so this section should be read alongside that section.

Many respondents outlined that charging case fees by complexity sounds like a good idea, as the more complex a case is, the more time and expert resource is needed. However, all respondents to this proposal, both for and against, agree that it would be challenging to implement it in practice, with the main reason being a lack of objective criteria that could be applied consistently and predictably.

Respondents illustrated this point by highlighting problems with seemingly objective criteria, as well as stating that a lack of industry definition also highlights how difficult this would be to do. They believe any changes in this area would likely result in confusion and increased and protracted case fee disputes that are time-consuming and costly to all parties.

Although respondents did not see a way to take this forward, they felt that there were other proxies, such as case stage and product type, which are discussed earlier in this paper, that are more helpful to use. Respondents felt that we should keep the issue of complexity under review as ongoing changes we are making to the service may help influence our thinking and help us find a way forward.

Our response and next steps

We agree with the responses we received, that this is an interesting idea. However, practical challenges and lack of consensus on criteria would currently prevent progress until an objective and clear model could be developed.

As such, we have decided that this is not an option that we will take forward now. We will continue to see how thinking evolves in relation to this and the funding model, and if a way forward is identified, we will re-engage with stakeholders on this issue.

What we asked – other options

Q13: Would you like us to consider offering discounts for cases resolved in batches in future, or do you think that fees based on the stage a complaint reaches would have the same impact? What would be an appropriate minimum and maximum number of complaints to form a batch?

Comments received

Regarding discounts for cases resolved in batches, many stakeholders had no view or wanted further information before providing an opinion. However, of those who did express a view, a number felt that it could be helpful in theory, but they couldn't see how it would apply to them. The limited circumstances where it seemed viable included a surge of cases caused by an external third party or an unexpected event, such as the pandemic. Some respondents felt it prudent to have a discount where cases are all very similar and could be resolved in bulk – but this was seen mainly as being helpful for the larger firms with high case volumes.

Respondents flagged the success of the recent temporary outcome code initiative, which focused on the reporting and recording of cases that were proactively settled and suggested that this should be extended.

There were a range of answers as to how many cases should be in a batch. A range of 2 (minimum) and 50 (maximum) were proposed.

However, a number of challenges were raised, even by those who supported, or were open to the proposal. Fundamentally, some respondents felt that this method was likely to benefit the biggest firms who generated the largest volume of complaints. This would be a move away from the 'polluter pays' principle by giving discounts to those who generate the most work or demonstrate the poorest practices. There were also concerns about the safeguards around the use of this mechanism and if it would stop cases being decided on their individual merit, which is a key tenet of the Financial Ombudsman Service.

Other concerns raised were that although this could be useful in certain circumstances, it should not be relied upon as a primary solution to operational issues and reducing volumes. There were also questions about how relevant this would be given the end of PPI complaints and cases relating to the pandemic. It could also contradict the principle of case fees being about recovering costs.

We received mixed views from respondents about whether these proposals generated similar outcomes to charging by case stage. From an operational point of view, some respondents questioned if the time taken to agree what constitutes a 'batch', identify cases, or ensure that safeguards around individual reviews are undertaken, would mean costs outweigh any potential benefits.

Our response and next steps

Historically, we have worked with often larger firms in areas of 'mass claims', such as PPI and Packaged Bank Accounts (PBA), to identify groups of cases that appear to be similar to find cost and time-effective ways to resolve cases (while balancing the fundamental need to ensure an individual review of each case). Given this, we thought it was worth exploring the appetite for, and viability of, rolling this out more widely.

However, it is clear from respondents, and our own experience, that bulk discounts work best in areas with higher volumes of cases with similar characteristics and that firms can realise operational savings from resolving cases in bulk. We also recognise that, while trying to find a way to make this discount available for all firms, it is likely the larger firms with more cases, often due to their market size, would benefit the most, which may not be consistent with the 'polluter pays' principle.

We received some positive feedback on the temporary outcome codes initiative. Although that project is outside the scope of this paper, the feedback has been shared with colleagues who are considering if any next steps can be taken.

Based on the feedback from respondents, we will not be pursuing this option. Instead, we will consider if other options, such as work based on the success of our 2021/22 temporary outcomes code initiative, will provide similar incentives without the same challenges and downsides.

What we asked – other options

Q14: Would you like us to introduce supplementary fees for firms which are uncooperative and how do you define 'uncooperative'?

Comments received

Respondents to this question were divided almost equally in their views. Of the respondents who agree with this proposal, the feedback was that under a 'polluter pays' model, it is reasonable to charge additional fees if a firm's behaviour results in unnecessary use of the Financial Ombudsman Service. It was felt that it could drive a culture change within firms to work collaboratively with us to the benefit of all, including consumers.

There was also a consensus amongst many respondents (even those who disagreed with the proposal) that there are behaviours that could result in an additional charge, such as refusing to engage with the service, unreasonable delays, not sharing information and poor quality submissions. It was suggested that we could look at how the FCA defines cooperation when determining aggravating or mitigating factors for financial penalties, which would bring consistency. However, respondents felt that guidance and clarity was needed as to the boundaries, and that this should be used as a last response with steps taken beforehand.

However, the respondents who disagreed with this proposal felt it was outside of our remit and would become a punitive charge and is the role of the regulator. There were also concerns about misunderstandings and legitimate reasons for non-cooperation, including factors outside of firms' control such as the behaviour of third parties. Respondents who were against this proposal wanted the Financial Ombudsman Service to spend more resource working with the FCA to report non-compliance instead.

Our response and next steps

We felt this proposal was very finely balanced when setting it out for consideration in the Discussion Paper, so we were interested to see the division between respondents, and the reasons raised.

We currently put a lot of resources into engaging with firms, on individual cases and to proactively build relationships, especially if firms are having issues either operationally or struggling to understand an approach. We will try to work with firms to resolve issues together, as this will likely generate the best and quickest outcomes for all parties. Given the processes and teams already in place providing this support, we were not concerned about using this power over-zealously if we took this proposal forward.

However, we understand the discomfort of firms around us venturing into this space. We understand that it could be seen as a punitive fine and could damage our relationship with individual firms or wider industry sectors which could impact our ability to resolve cases in a timely and informal way. We already work closely with the FCA to share intelligence on business' behaviours that we do not think align with the spirit of the DISP rules, or the principles of treating customers fairly. As such, we do not intend to take forward this proposal and will continue to focus on building constructive relationships with businesses to avoid problems in the first place, as well as work with the FCA to share insight when we see inappropriate behaviours.

Ideas we have considered but are not proposing to take forward

In this section of the Discussion Paper, we set out some of the other ideas we received for changes to our funding model. Early consideration of these ideas had resulted in us discounting them as viable options – we asked for views on this early assessment.

What we asked

Q15: Do you agree that these options should not be taken forward or should we reconsider any of them – and if so, why?

Comments received

As set out in the Discussion Paper, we considered:

- Charging firms by size/volume;
- Removing all free cases;
- Charging higher fees for upholds; and
- Charging consumers for bad behaviour.

However, for the reasons set out in the Discussion Paper, we did not think these proposals were either practical or consistent with our principles. The vast majority of respondents agreed with us, although a very small number of respondents suggested we should further consider each option.

Some respondents felt charging by volume/size would fit with the 'polluter pays' approach and improve issues with the CJ levy.

In terms of removing all free cases, a few respondents felt that having a free case allowance goes against the 'polluter pays' principle and firms should pay for the harm they cause. One or two respondents felt the current free cases model needed revising as the system is unfair to networks. However, a number of respondents actively made it clear they wanted us to keep it or even increase free cases to PPI levels.

A number of respondents suggested charging more for upholds fits with 'polluter pays' and would incentivise the right behaviour. And several respondents felt that if we are considering charging firms for non-compliance, it would only be fair that we also charge consumers for similar behaviours.

Our response and next steps

It was interesting to understand the different perspectives on these principles and to challenge our thinking. However, we still believe that these options are not proportionate or appropriate for us to take forward; the cost and administrative burden of charging by size/volume would likely be disproportionate to the benefits.

While we are committed to a 'polluter pays' model, we think a small number of free cases is not overly burdensome to the rest of the industry and is especially helpful for small firms at a time when the economic outlook is so challenging.

We think it would be inappropriate to charge more for cases that are upheld in favour of the consumer, as this could lead to a perception that we have an incentive to uphold cases and would damage the trust and confidence of stakeholders.

Finally, we do not think charging consumers is appropriate, due to the fundamental principle of our service being free to consumers, and we have other tools, such as dismissal, that are more appropriate to use.

Annex – respondents to the Discussion Paper

Below is the list of respondents to the Discussion Paper who gave permission for their names to be shared:

Admiral
Aegon
AJ Bell
Amtrust Europe
Association of British Credit Unions Ltd
Association of British Insurers
Association of Financial Mutuals
Association of Mortgage Intermediaries
Auden
Aviva
Axa
Barclays
British Insurers Brokers Association
BMW
British Vehicle Rental and Leasing Association
Building Societies Association
Cardiff Pinnacle
Consumer Credit Trade Association
Consumer Redress Association
Covea Insurance
Fair for You Enterprise
Fair4All Finance
FCA Smaller Business Practitioner Panel
Financial Services Consumers Panel
Finance and Leasing Association
HSBC
Individual – KV
Innovate Finance
Interactive Investor
JBR Capital
L&G
Lancashire Community Finance
Lendology
Lloyds Banking Group
Lloyds Market Association
National Pawnbrokers Association
Nationwide
NCO Europe
NFU Mutual
One Call Insurance
Provident
Responsible Finance
Revolut
Sabre
Salad Money
Santander
Scotcash
Society of Lloyds
St James Place
Street UK
The Exeter
UK Finance
Vitality
Which
Yorkshire Building Society

Financial
Ombudsman
Service

Financial
Ombudsman
Service
for small businesses

Claims
Management
Ombudsman
a Financial Ombudsman service