

from **The Baroness Manzoor CBE**
Chairman of the Board

write to **Financial Ombudsman Service**
Exchange Tower London
E14 9SR

Ashley Alder, Chair
Financial Conduct Authority

By email only

8 October 2024

Dear Ashley,

Consultation on introducing a fee for Claims Management Companies ('CMCs') bringing cases to the Financial Ombudsman Service

I am writing further to our earlier conversations about our work to consider introducing a fee for CMCs bringing complaints to the Financial Ombudsman Service ('FOS'). As you will be aware, our consultation on this closed in July and we have now reviewed the feedback received from stakeholders. I wanted to share this with you and to update you on our proposed next steps.

The consultation responses

I enclose a full breakdown of the consultation responses. We were pleased with the level of engagement seen on this issue from CMCs (both SRA- and FCA-regulated), consumer groups, and respondent firms. We have received a good range of written response and we have also been able to speak with many stakeholders during the process.

The key points of feedback are as follows:

- There is majority support for our proposals to introduce a charge to make FOS's fee arrangement fairer by sharing costs across respondent firms and CMCs.
- There is a disagreement on the level of the fee that should be charged: respondent firms would like the full £650 case fee to be charged whereas CMCs would like no charge or a very low charge.
- There is broad support that FOS should retain a residual fee for every complaint in scope, payable by CMCs.

- There is agreement with the proposed charging mechanism, whereby if FOS does not determine the outcome of the complaint in favour of the complainant, the current £650 case fee payable by the respondent firm should be offset so that FOS does not have a vested financial interest based on the outcome of the complaint.
- There was a lack of compelling evidence and data submitted by consultees of potential adverse impact in relation to vulnerable consumers. Whereas there is objective and factual data which demonstrates these arguments are not accurate.
- That FOS should seek to ensure there is no disincentive not to bring cases directly to it and that there continues to be support for vulnerable consumers to advance their concerns to its free and easy-to-use service.
- There remains a desire for FOS to do more to raise awareness of its free service and the role it plays.
- CMCs reported that they would need sufficient time to prepare for the financial implications of the changes (in cash-flow terms, for example) and would need advance notice of any changes.

Our proposals

My Board has considered the feedback carefully, alongside further analyses and legal advice we have received on the proposals. Our decision is that, subject to the outcome of any Parliamentary consideration and approval of the enabling legislation, and, of course, your own deliberations and consent, we plan to:

- Make our fee arrangement fairer by advancing the option to implement a fee of £250 per case, reducing to £75 where the case is determined in favour of the complainant represented by the CMC.
- Avoid vested financial interest in the outcome of any individual complaint by reducing the fee payable by the respondent firm by £175 where the complaint is not successfully upheld against them. We would retain £75 in every case regardless of outcome as this broadly equates to the cost of setting the case up on our systems.
- Increase the free case limit from three to ten per financial year for each CMC, so they could test cases raising new issues and learn from them; with a view to this informing their own due diligence for subsequent cases of that type which they may wish to bring. This will mean that over 80% of the CMCs that currently refer cases to our service will not be in scope for a fee, and only the bigger firms will therefore be affected.
- Utilise fees gathered to improve our outreach and engagement to raise awareness of our service.
- Implement the arrangements as soon as possible, subject to Parliamentary and FCA stages (please see below), which we accept is now likely to be early 2025 to give sufficient time to prepare for the required changes.

As now, complainants coming to us directly, as well as charities and supporters (such as friends and families), would not be charged any fee. Also, as now, we would review the fee arrangement annually as part of our budget consultation and could amend it as appropriate, should that be necessary to address any issues that arise. We will also continue our work to make our service easy to use.

As well as the formal consultation feedback received, we have proactively sought evidence to help us understand the impact of any changes. We have been helped by materials from your teams and your flagship *Financial Lives* survey data sets, as well as discussions with prominent CMCs and their trade associations.

Our analyses of this material, together with our internal data and policy work, have given us reasonable assurance that there should not be a significant disincentive to the bringing of complaints or to the support provided to vulnerable consumers, as per the FCA's definition of vulnerability. For example, we have noted that:

- A significant portion of vulnerable consumers (92%) accessing our service come to us directly rather than via a CMC.
- For the past three financial years, those vulnerable consumers who come to us directly have higher average redress than those who come to us via a CMC.
- Over the same three-year period, complaints brought by CMCs have resulted in an outcome in favour of the consumer in only 22% of cases. This is a worse performance than that achieved by complainants who come direct to us, who achieve a better outcome in 32% of *all* cases (i.e. including those that are out of jurisdiction or dismissed without consideration of the merits under DISP 3.3.4).
- The proportion of CMC income derived from complaints that FOS determines is less than 5% of their revenues compared with the income they derive from complaints that are informally resolved upstream by respondent firms (or income from wider commercial activities such as personal-data trading or lead generation).

Accordingly, we consider it reasonable to conclude that vulnerable consumers will continue to have access to our easy-to-use service (and the enhancements we are making to our service in this matter will further help). Reasonable commercial entities should be able to minimise any impact of the fee on them by focussing their due diligence to advance meritorious cases with reasonable prospects of success.

Next steps

As we have discussed before, the recent General Election means that we are still awaiting the necessary secondary legislation to advance proposals. We understand that any next steps on the secondary legislation are unlikely to take place until late October or early November 2024.

I understand your Board has agreed to take a draft FEES instrument and papers for an 'in principle' decision in November, even if the secondary legislation is still not finalised at that time. Subject to the secondary legislation and your considerations, we could therefore be in position to apply a fee from early 2025.

In the meantime, we continue to advance time-critical enabling works to our systems, and we will include our decision in our planning for the 2025/26 Strategic Plans and Budget Consultation. We expect to publish this in December for the usual seven-week consultation to end in January 2025.

Our work with your team

As discussed in our meetings, my team has shared our developing approach with your team and has welcomed the information and feedback they have provided. We will continue to update you as matters progress.

I have sent a copy of this letter and its attachment to HM Treasury.

*with all good wishes,
Yours ever,
Zahida.*

**The Baroness Manzoor CBE
Chairman of the Board**

cc: HM Treasury