



FOS consultation on Our Future Funding

Response by the Intermediary Mortgage Lenders Association

August 2019

IMLA

IMLA is the representative trade body for mortgage lenders who lend wholly or predominantly through intermediaries. Our 42 members include banks, building societies and specialist lenders, including 19 of the 20 largest UK mortgage lenders responsible for £230bn of annual lending. IMLA provides a unique, democratic forum where intermediary lenders can work together with industry, regulators and government on initiatives to support a stable and inclusive mortgage market. We welcome this opportunity to comment on the proposals set out in the FOS's consultation paper *Our Future Funding*.

Summary of our views:

- We are surprised by the short period allowed for this consultation – just 6 weeks – during peak summer holiday season.
- We are also rather surprised that the FOS is looking to change the structure of its funding so soon after a very significant increase last year – from £24.5m in 2018/19 to £44.5m in 2019/2020. We recognise that the FOS anticipates a significant change to the volume, type and complexity of the cases it may be expected to deal with once the PPI deadline has passed – but given the uncertainties as to exactly what the make-up of its future work-load will be, now does not seem to be the right time to be proposing such wholesale changes. Surely it would be sensible to wait for a year to assess what the post-PPI workload is going to look like, and work out a proportionate and equitable formula at that point?
- Firms have traditionally accepted a considerable degree of “evening out” of FOS costs in the interests of simplicity and transparency. The general principle that has been accepted is that those firms which attract the most complaints should pay the most for the FOS – and will naturally pay the largest number of case fees, on top of their share of the industry levy. The current proposals, however, risk creating some considerable imbalances and unfairnesses for firms which are all together in the

same fee blocks. Whilst some of IMLA's members will also undertake non-mortgage-related business (as deposit-takers, for example), for many, their only complaints will be mortgage-related. As the consultation acknowledges (page 14) – one in three of all complaints referred that are not about PPI relate to consumer credit products and services. There has also been a big increase in the number of complaints about banking and fraud scams. Complaints about mortgages are well down the list in terms of volume. So a move towards a position where the levy covered 50% of the FOS's costs would disproportionately disadvantage mortgage lenders – and in particular smaller mortgage lenders – who were not implicated in the causes of complaints concerning non-mortgage business. Clearly the combination of levy and case fees helps to maintain an element of stability for the FOS, but a move from a 15%/85% split to “something nearer” 50%/50% seems very dramatic at a point when the FOS is itself so uncertain as to what its workload is going to look like going forward.

- Page 19 of the consultation rejects the suggestion that fees should be based on the complexity of the individual case - on the grounds that: *“protracted discussions about whether complaints are “complex” and how much they should cost, would involve a disproportionate level of resources.”* Surely the most straightforward approach would be to make a purely factual calculation based on the length of time taken by the FOS to resolve the case in question? Again, firms have traditionally been willing to accept a flat-rate case fee on the grounds that some cases are capable of being dealt with swiftly whilst others take much longer to resolve. But if firms which do not attract many - or even any – complaints which are referred to the FOS are nevertheless expected to pay a much higher industry levy as their “share” of the cost of funding the service – many will consider this to be inherently unfair.
- The reduction in number of “free” cases will also impact smaller firms particularly unfairly. As the consultation paper itself states (p20) - some will never have exceeded their allocation of “free” cases – and may continue to have none - but will still have been obliged to pay the levy in the past, and to pay it in future. They will have accepted that on the basis of the arguments that it is good for the industry to have a well-funded and effective dispute resolution service. But they will feel aggrieved if their contribution to the levy is significantly increased in order to achieve the suggested 50/50 split. The statement (on p21) that “it would still mean the smallest firms typically wouldn't pay any fees” is correct but takes *no* account of how much extra they would have to pay in industry levy – in relation to complaints for which they have no responsibility or culpability. Surely this cannot be fair? The consultation is silent on the actual amount of levy which firms are likely to be liable to pay – which in itself looks very odd – and feels, frankly, disingenuous.

Responses to your specific questions are set out below.

Question 1: Our planning assumptions reflect our expectation that our service will be smaller in the future, and that our overall cost to the sector will significantly fall. Are you

aware of anything that might affect this expectation – for example, issues that could create significant demand for our service?

We would caution against making dramatic changes to the structure of the funding for the service until (a) the PPI saga has finally closed and (b) more is known about the remaining volume and type of cases. Before PPI, mortgage endowments created a large volume of work – following which the FOS down-sized its staff considerably, only to find itself having to re-staff in order to meet the volume of PPI complaints. There is surely merit in avoiding another yo-yo effect by taking a little more time to reflect on future needs?

Question 2: Do you have any further insight into the different types of complexities apparent in complaints?

No

Question 3: a) To what extent do you support our wider work to help prevent complaints and encourage fairness? b) Do you have any further suggestions about what more we could do, or ideas for working together with us?

We fully support the work undertaken by the FOS – but in order to retain firms’ full support, the structure of funding needs to be seen to be clear, transparent and fair. The current proposals risk introducing considerable unfairness, which would disproportionately affect smaller firms, who are responsible for a very small proportion of complaints dealt with by the FOS.

Question 4: To complement the work we’ve already done to improve our efficiency, we’d welcome your ideas for how we could work in partnership to deliver additional savings in future. Do you have any suggestions?

As suggested above, we think it would be fairer if case fees reflected the actual amount of time taken to be resolved: it is already in firms’ interests to try to resolve cases before having to refer them to the FOS and, if they are so referred, to present the facts as clearly and concisely as possible so as to facilitate a speedy resolution. A cost-based approach to case fees would further encourage firms to work in partnership with the FOS to ensure efficient case handling.

Question 5: To what extent do you agree or disagree that our levy and case fee income should be rebalanced, so there’s a broadly 50:50 split?

We consider that a move from 15%/85% to 50%/50% is too much, too sudden and takes too little account of what the *actual* future case load is going to look like. It will disproportionately affect smaller firms which are not responsible for the vast majority of cases which FOS deals with – and which should, rightly, be paid for by the firms which are responsible.

Question 6: In refining our proposal, we carefully considered different funding options – including different types of risk-based models. Do you have any thoughts about

alternative approaches to overcoming the obstacles we identified, in ways that are consistent with our funding principles?

The consultation paper states that the FOS has “carefully considered different funding options – including different types of risk-based models” – but the paper itself appears to be silent on what options have been considered and rejected – and the reasons why. We accept that there may be objections to an over-engineered model which tries to assess the relative degrees of risk which might be attributed to different types of complaint - which is why we have suggested a much simpler approach – that of charging case fees which reflect the actual amount of time spent by the FOS in considering and resolving a complaint.

Question 7: a) To what extent do you agree or disagree with our proposal to reduce the “free” case threshold for non-group account fee firms from 25 to 10? b) To what extent do you agree or disagree with our proposal to reduce the “free” case threshold for groups within the group account fee arrangement from 125 to 50?

The reduction in “free” cases from 125 to 50 is unlikely to have any significant impact on larger firms whose groups already attract larger volumes of complaints: it may have little or no impact on very small firms who have either no or very few cases each year and therefore do not currently exceed the proposed new level of 10 cases. It is the impact of changing the balance of payment from 85% case fee/15% levy to 50%/50% case fee/levy which is going to have the major – and unfair - impact on smaller lenders.

Question 8: To what extent do you agree or disagree that we should look to maintain a level of reserves of six months’ operating income or higher?

We have no specific views on this.

Question 9: Do you have any comments about the timing for implementing any changes to our funding model that arise from this consultation?

As stated above – we are surprised by the short period of time allocated to this consultation and question the need to make such significant changes to the funding structure before the PPI saga has come to an end and there is a clearer picture of future caseloads and funding needs.

Question 10: Do you have any additional feedback about our future funding or the proposals presented here?

It does look very odd that the consultation makes no attempt to estimate how much firms would have to pay towards the increased industry levy – whilst making much of the fact that some would pay no case fees if they only attracted a very small number of complaints.