

Financial Ombudsman Service
Exchange Tower
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5th August 2022

To Whom it May Concern,

Creating a Funding Model for the Future

We welcome the opportunity to respond to this consultation. ABCUL is the primary trade association representing credit unions in England, Scotland and Wales with around two thirds of credit unions in mainland Great Britain affiliated to the Association.

Credit unions are co-operative societies who provide financial services – primarily savings and loans facilities – to their member-owners. They are registered as Co-operative Societies under the Co-operatives and Community Benefit Societies Act 2014 and the Credit Unions Act 1979. As deposit-takers they are dual-regulated by the Prudential Regulation Authority and the Financial Conduct Authority.

Credit unions have since their inception in Britain in 1964 been closely associated with anti-poverty and financial inclusion. They tend to provide savings and loans facilities to those with limited or no access to financial services from mainstream providers, generally due to their low income and / or lack of a developed credit profile. They have been a central element of numerous government and philanthropic initiatives to extend financial inclusion and address the lack of adequate provision of affordable credit and secure savings facilities for large sections of the population. They are capped in the interest that they can charge at 42.6% APR under the Credit Union Act 1979 and provide credit in competition with high-cost lenders.

They are numerous, with over 250 credit unions active in Great Britain today with more than 1.4 million members and £2.3 billion in assets under management. They range from mid-sized businesses of up to 50 staff to small voluntary organisations.

Response to Consultation

We encourage the FOS to continue to assess the suitability and potential changes to its funding model. Before responding to the paper's proposals, it is important to provide context on how credit unions currently contribute to funding the FOS.

Credit unions have an industry block dedicated to the sector for the compulsory jurisdiction levy, for which they contribute a flat rate fee. Credit unions with consumer credit permission (which is not required for standard credit union loans but for specific types of lending they may offer) are also required to contribute to the levy via the credit-related regulated activities block.

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Credit unions have a bespoke exemption from paying case fees for core products and services, in recognition of their social impact. This exemption is essential to the success of sector, as credit unions operate on a not-for-profit basis and would be impacted greatly by the cost of the £750 case fee.

The exemption applies to all cases for which a complaint relates to an industry block that the credit union only pays a flat rate minimum fee. However, this means that credit unions with consumer credit permission can pay case fees for complaints on consumer credit lending. The upcoming legislative reform of the Credit Unions Act 1979 will enable credit unions to offer new products that require consumer credit permission. As a result, the frequency that credit unions pay for cases is likely to increase following the reform, if no changes are made to the current structure of the exemption.

We would like to highlight that the majority of credit unions do not contribute to the FOS caseload at all, and those that do tend to only pass on one or two cases to the FOS in any given year. However, some large credit unions will generate a number of cases annually.

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

We would support the proposed change to the Compulsory Jurisdiction levy, as we agree it would provide a more transparent and predictable mode of funding. However, our support for the proposal is conditional on the FOS having confidence that the levy will remain at the current level, allowing for any temporary increase. Regardless of any changes to the levy, the distribution between firms should continue to reflect the likelihood of firms contributing to the FOS caseload, to maintain the polluter pays principle.

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

We would support a differentiated case fee model to reflect the significant variation in complexity and cost associated with cases, provided that the FOS anticipates that the administrative burden of introducing case fee differentiation is proportionate.

Furthermore, we believe that a differentiated case fee model would create the potential to introduce a concessionary case fee for credit unions, in recognition of their social impact.

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?

Given the increased costs for cases that progress to further stages, we agree that it would be appropriate and sensible to charge fees according to the case stage the complaint has reached. However, the FOS would need to carry out close monitoring to ensure that fees would only cover costs at each stage and that there is no apparent incentive to further a case.

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?

We would agree with variation of case fees according to the type of product, if there is a substantially strong correlation between the costs incurred by case and the type of product it involves. However, we believe it would be essential that fees are varied by another indication of complexity, so that more complex products are not penalised where a complaints case is relatively straightforward to resolve. As such, we support the proposal to vary case fees according to both the product type and the case stage in conjunction.

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?

Given the level of bad debt impacting the FOS, we believe it is a worthwhile initiative to collect initial case fees, to at least encourage partial recovery of costs from firms who would not make any payment otherwise.

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?

We agree that a 12-month limit is a sufficient timeframe for firms to claim for overpaid fees.

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?

Yes, we would support the publication of this data for full transparency on the performance of the new fee structure.

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?

It should be highlighted that the FCA's upcoming Consumer Duty will create a new opportunity for CMCs to take advantage of consumers and drive a new wave of complaints cases. We therefore believe that action to prevent problematic behaviour from CMCs should be taken. Nevertheless, we would not encourage a charge for CMCs to be introduced unless the FOS can prevent this fee from being passed on to consumers.

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

We would not agree with the criteria to apply a supplementary fee as stated in the discussion paper. We believe the suggested criteria are too wide and could penalise firms that have made genuine administrative mistakes, rather than intentional non-compliance with the FOS's requests. If

such a fee were to be introduced, its application should be reserved for serious cases of non-compliance.

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

We agree with the decision to not take these four options forward. We strongly agree that the free case allowance should be maintained for non-group firms, as many of these firms will have been funding the FOS through the general levy whilst only contributing minimally to the caseload. We also agree that it is not viable to charge a higher case fee for cases upheld as this would likely create an incentive to uphold complaints.

Please get in touch should you wish to further discuss our consultation response.

Yours sincerely,

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