

Financial Ombudsman Service
Exchange Tower
London
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31st January 2023

Plans and Budget Consultation 2023/24 - ABCUL Response

To Whom it May Concern,

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 would like to take the opportunity of the annual plans and budget consultation to highlight an issue the FOS case fee structure presents specifically to the credit union sector. A proportion of credit unions are planning to significantly expand their provision of consumer credit in 2023 and beyond, primarily due to upcoming reform of the Credit Unions Act 1979. This response will address the risk posed by the current FOS case fee structure to these credit unions, and recommend protections that could be put in place to mitigate this risk.

As acknowledged in the plans and budget consultation paper, credit unions benefit from an exemption from paying FOS case fees related to their core business activity, which primarily consists of savings and loans. Credit unions are granted this exemption in recognition of credit union's social purpose and not-for-profit business model.

This exemption provides vital protection for the credit union sector from the significant cost implication of FOS cases. Though the majority of credit unions create little or no casework for the FOS each year, and would not exceed the free case allowance of three cases if the exemption was not in place, large credit unions may often exceed the three cases per year in proportion to their size.

The exemption from paying case fees under rule 5.5B.5 of the FCA FEES Handbook applies to complaints which relate to an activity for which credit unions only pay a minimum fee towards the FOS general levy. With the current fee structure for the FOS general levy, credit unions are only required to pay a minimum fee for the sector's industry block, meaning that they are not charged cases fees for core business. However, credit unions may be charged for a FOS case in specific circumstances.

Credit unions may also fall into the consumer credit industry block for the FOS general levy where they have consumer credit permission. Credit unions may seek consumer credit permission to offer a wider range of credit products, as the standard credit union unsecured loan has an exemption from consumer credit regulation. If a credit union has consumer credit permission and an annual income of more than £250,000 from consumer credit activity, they are required to pay a tariff based levy for this industry block and are therefore required to pay for FOS cases that relate to this activity.

At present, credit union consumer credit lending is mainly limited to borrower-lender supplier agreements. However, the range and scale of the credit union sector's consumer credit activity is due to expand significantly in 2023 and subsequent years. Reform of the Credit Unions Act 1979 is due in the second quarter this year via the Financial Services & Markets Bill due to be passed in the first half of 2023. This reform will allow credit unions to issue hire purchase agreements and conditional sale agreements - activities that will require consumer credit permission. In addition, a number of credit unions have been looking to start offering credit cards to their members in 2023-24, which is also a regulated credit activity.

The expansion into new consumer credit products is vital to improving the reach of the credit union sector: this new product offering will ensure credit unions are widely relevant in the current financial market and increase the amount of households that benefit from credit union membership. It is hoped that entry into the car finance and credit card markets will enable a gateway for many individuals to join the credit union movement, supporting the wider development of the sector in Britain.

However, these changes will mean that a subset of credit unions will rapidly expand the volume and value of their consumer credit activity, which will bring some credit unions above £250,000 income from consumer credit. As a result, these credit unions will be required to pay case fees for FOS cases related to consumer credit products.

The previous free case allowance of 25 cases per firm would have avoided the risk that case fees pose to credit unions expanding into consumer credit provision. But as credit unions rapidly expand the scale of consumer credit provision, it is likely that larger credit unions that offer these products will exceed the proposed allowance of 3 free cases. This frequency of FOS cases does not reflect on the conduct of these credit unions, as cases are often not upheld against the credit union.

In addition, we anticipate the introduction of the FCA's Consumer Duty will lead to a general increase in complaints cases against financial services firms, including credit unions. In contrast to the forecast made in the consultation paper, we are concerned that Duty will lead to more cases, as the Consumer Duty regulations will provide CMCs with a new basis to drive a surge of complaints against firms.

We are concerned around the financial risk that complaints and the associated case fees present to credit unions expanding their provision of consumer credit. With the case fee standing at £750, the financial impact of a few cases would be significant for a credit union. Large credit unions still operate on a not-for-profit basis, with profits made from running the credit union returned to its members via a dividend paid on savings. To indicate the significance of a FOS case fee to a credit union, a single £750 case fee is larger than the annual minimum fee a large credit union would pay for the cost of either FCA or PRA regulation. The potential financial impact of a £750 fee means that it is likely that credit unions facing a chargeable case will be forced to settle a complaint, even where the complaint unlikely to be upheld by the FOS.

Credit unions are awarded a number of concessions for regulatory fees and levies in recognition of their social contribution and the cost pressures they face, including their exemption from case fees for core business. We would urge that a further concession is made so that credit unions expanding their consumer credit offering are protected against the cost implication of ungrounded complaints. As a result, we would advocate for any of the following actions to be taken to support the credit union sector's development, through the protection from case fees associated with consumer credit related complaints:

1. The credit union exemption from paying case fees in rule 5.5B.5 of the FCA FEES Handbook is amended so that it extends to credit union consumer credit activity;
2. The current exemption under rule 5.5B.5 is maintained, but the free case allowance for credit unions is increased from the proposed allowance of three cases;
3. The current exemption under rule 5.5B.5 is maintained, but a concessionary case fee for credit unions is introduced for chargeable cases; or
4. The current exemption under rule 5.5B.5 is maintained, but a further rule is introduced to require that credit union cases are only chargeable where the complaint is upheld.

Any of these measures would protect credit unions that are looking to extend the benefits of credit union membership and services to a wider range of people through provision of affordable and inclusive consumer credit products.

Please get in touch at policy@abcul.org should you wish to discuss our response.

Yours faithfully,

Niamh Evans

Policy and Advocacy Manager, ABCUL