



## Appendix

Detailed response on HM Treasury Policy Paper *"New approach to ensure regulators and regulation support growth"*

1. Whether the framework in which the FOS operates has resulted in it acting, at times, as a quasi-regulator.

We would agree with this statement. The FOS has not aligned itself to the most prominent and recent objectives of the FCA. These are to better support businesses and support growth, by reducing regulation and moving to a more principled based method of regulation. An extract from a recent FCA press release explained the FCA plan as follows:

*"Reducing complexity of the FCA's rulebook could lower costs for firms, encourage innovation and help support the risk appetite needed to support growth, ultimately boosting international competitiveness and the economy over the long-term".*

However, if the FOS continues with its current practices, ordering firms to pay out large amounts of redress, then the FCA's attempts to boost risk appetite and growth will not make enough of a difference and the FOS will continue to act as the bottleneck, draining confidence and innovation for firms operating in the advice industry.

There is a growing complaints industry and culture within UK Financial Services. Claims Management Companies (CMCs), know how to present cases to the FOS, using the right words and phrases to receive compensation, whether there is a legitimate complaint or not. The FOS effectively acts as a cashpoint mechanism, transferring money from advice firms to the CMC companies. This cannot continue if the growth of the sector really is going to be properly supported by the FCA and wider regulatory system.

A practical example of the FOS not being aligned to the FCA

This concerns the latest mass redress event that our industry is suffering. Thousands of complaints are being received with customers claiming they have not been contacted for ongoing advice on their investments.





We have experience of just one case, where a customer complained that their adviser had not contacted them for a review. We could prove to the FOS that the customer had been contacted. We also explained that the customer owed money to the advice firm, for previously unpaid mortgage advice fees. This was probably why the customer ignored the calls for advice, for fear of being asked to pay the outstanding fees again. In this case the FOS said neither of those points could be considered. They then ordered full redress, plus 8% interest to be paid to the customer.

Based on the statements the FCA have made (such as on their website: "[Ongoing financial advice services](#)"<sup>1</sup>) about ongoing advice, the FOS approach now appears to differ substantially, from the more balanced and reasonable statements from the FCA, which included:

*"Where a firm has been ready, willing and able to provide suitability reviews, but a client has consciously declined the service in any given year, we consider it less likely that redress will need to be paid... We also recognise that there may be circumstances where firms have made reasonable and proportionate attempts to engage with clients to conduct suitability reviews without success".*

*"We generally expect that firms will need to have some engagement with their client in order to carry out a review. In these situations we expect redress to be less likely, however, a firm should have considered whether an ongoing service is in a client's best interest if they've persistently not engaged".*

Simon Walls, the FCA's Interim Executive Director of Markets, explained the likely outcome of the new ongoing advice rules, in an interview to Citywire as follows:

*"There will be no clarity added over time frames, with it up to individual firms to decide when and how it turns the fees off after a period. I think that would be a regrettable place to end up [mandating time frames for fees to be switched off in the event of no delivery], because of the way that I have described it. Whether it is one year, three or five years is really going to depend on the nature of the service".*

The FCA seems keen to move from having a very prescriptive approach, to a more principles-based approach, which is something the industry would welcome. However, if the FOS doesn't adapt in the same way, and carries on as a quasi-regulator, any positive moves the FCA makes will be undermined.

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<sup>1</sup> <https://www.fca.org.uk/publications/multi-firm-reviews/ongoing-financial-advice-services>





2. Whether the FOS is applying today's standards to actions that have taken place in the past.

Today's standards are designed to ensure that regulation is fair and proportionate and support innovation and growth too. The Prime Minister and Chancellor have called on regulators to make this change urgently. As illustrated above, this is reflected in the FCA's latest statements and future plans. However, our concern is that the FOS will continue to operate in isolation according to previous standards, which will continue to damage and undermine confidence for advice firms. We fear there will be mismatches due to the following reasons:

- During the PPI complaints period, a culture of ordering redress to most complaints was put in place. High numbers of complaints meant a standardised approach became necessary for the FOS to deal with the volumes received.
- A similar standardised approach has been adopted in relation to on-going advice complaints. This approach has been designed more to assist the FOS cope with high volumes of complaints, rather than to ensure the industry is fairly supported.
- Whilst very large FTSE 100 banks and insurance companies were paying redress for PPI, and those companies were able to afford it, many advisers who are being targeted for ongoing advice complaints are one-person firms. The redress ordered could be existential, leading to a mis-match in complainant expectations and the ability for companies to pay. This creates a real risk that HM Treasury will be forced to step in to provide compensation instead.
- Unless the FCA is able to get the FOS aligned to a "supporting growth" agenda, then the old practices will continue to stifle growth. This will continue to be a financial burden, keeping confidence and innovation at today's low levels.

The FOS is currently a central component in allowing a compensation culture to thrive, paid for by well-intentioned financial services firms. This originally stemmed from the PPI complaints. Now the compensation culture and CMC firms have refocused on the advice community, rather than on the big banks. Advice firms will need this threat to be removed, before a reasonable level of confidence can return.





### 3. The FOS practices that have grown up over time regarding compensation.

The FOS has a need to clear complaints as quickly as possible, to meet their targets. For speed and to achieve satisfaction for the complainant, a standardised approach seems to have been adopted. This mainly involves the firm concerned being ordered to pay out redress.

The firm, typically a big bank in the case of PPI, would be relatively unconcerned. Nobody would be personally penalised, and the bank had huge financial resources, enabling it to afford the redress. Today, the PPI approach to dealing with complaints is still in operation, but now it impacts less on big banks, and impacts more on small firms (including one-person advisers).

An unfair decision taken by an adjudicator today could be existential for a small firm. The FOS needs to make its decisions need to be fairer and more proportionate, as its decisions have a huge impact on people's lives as advisers. Few adviser firms have the capital resources of big banks.

No other types of business live with the threat that their lifeline and revenue from previous years could all be clawed back.

#### Other areas of negative impact created by the FOS

- The current approach makes obtaining competitive PII insurance very difficult. Many PII insurers are now saying their policies won't cover situations where advice fee redress is ordered to be repaid by the FOS. This puts the existence of firms (and access to advice for its customers) at considerable risk.
- We have heard of examples where firms receive complaints that should be defensible. However, firms would rather settle early with the complainant, as they know the approach of the FOS has changed with time and become unreasonable. In addition, the process would add more to the time and administrative costs incurred. When firms are reaching these conclusions, it shows there is a real imbalance in the system, at the expense of the industry.





- Further to the point above, if a firm disagrees with a FOS adjudicator, it next goes to an Ombudsman to provide a second opinion. However, the chance of an Ombudsman not agreeing with the adjudicator will be minimal. This creates a big disincentive to ask for an Ombudsman to give a second opinion.
- When an Ombudsman does disagree with a firm it is published on the Ombudsman Decisions part of their website, creating bad publicity. This is another reason for firms to decide to back down to the CMC or complainant at an early stage, even if they don't agree with the premise of the complaint.
- We would ask that HM Treasury, the FCA and the FOS do more to curtail the compensation culture that has been allowed to build up over the last 25 years. This is extremely damaging to financial services across the United Kingdom. Key questions are:
  - Why does the regulatory system allow a system of recurring mass redress events to be created?
  - Are we keen to have an advice industry, enabling citizens to make informed choices for their futures?
  - Can HM Treasury, the FCA and the FOS see that this encourages an unhealthy complaint culture to thrive? There are bad actors and CMC firms that don't have customers best interests at heart. They are only motivated by extracting money from our industry and, by extension, citizens who pay in the end – just as in the car insurance sector, where law-abiding citizens end up paying the cost of uninsured drivers and insurance fraud. The FOS is the body that provides them with the mechanism to do so.
- Advice firms won't want to be innovative in the United Kingdom, as the regulatory and FOS risk is currently too high. Recently the FCA sent a survey asking how we would intend to participate in the Advice/Guidance Boundary Review. We were compelled to make the point that we could not safely participate in any new methods of providing guidance, if it will fall the within the remit of the FOS. The unknown business risks would simply be too great. We expect other firms will reach the same logical conclusion.



