



15th March 2012

**JOINT RESPONSE BY THE PRACTITIONER PANEL AND SMALLER
BUSINESSES PRACTITIONER PANEL TO:**

**FINANCIAL OMBUDSMAN SERVICE PRELIMINARY CONSULTATION ON
MODERNISING CASE FEE ARRANGEMENTS FROM 2013**

The two Practitioner Panels of the Financial Services Authority (“the Panels”) welcome the latest consultation by the Financial Ombudsman Service on the charging of case fees. Overall, we support the objectives of the consultation and believe that this is a significant step in the right direction of ensuring that those who are responsible for the greater part of FOS’s costs contribute proportionately. The move to increase the number of free cases for small and medium sized firms is welcome, and will provide a great deal of comfort for these firms, for whom complaints are a significant cost and worry. We have provided our answers to the specific questions posed in the consultation below.

***What are your views on the overall approach that we set out in outline in this
consultation paper?***

The Panels are supportive overall of the suggested approach. We agree that, other things being equal, an individual firm’s fees should reflect the costs it brings to the FOS. We believe the approach as presented will go a long way towards achieving this.

Is the proposed threshold of 25 free cases too high or too low?

The Panels recognise that the majority of the FOS’s costs are incurred by larger businesses. As such, it is right that they also pay larger fees than smaller firms. For smaller firms, a complaint (even if unfounded) can cause the business to incur significant costs. Given the uncertain nature of complaints, this also further complicates budget planning for smaller firms. It is therefore preferable to aim for a system whereby smaller firms are relieved of unnecessary uncertainty and burden.

We believe that the proposed threshold of 25 free cases is likely to achieve this, and welcome this proposal. However, we would also suggest a review of the threshold after a

period of time (eg two years) to assess whether this level remains appropriate (ie whether this captures the right firm population.)

What further factors should we consider in thinking about this approach? For example, what should we take into account in assessing the use of our service by the major groups?

As stated above, the Panels are supportive of an approach which more closely aligns the costs a business imposes on the FOS with the fees that business pays. In terms of what should be taken into account in assessing the use of the service by major groups, we have included some thoughts below.

In terms of relating firm fees to outcomes, we are sympathetic to the FOS's view that this may affect perceptions of its neutrality. However, there are other factors which could be taken into consideration. The problem with these is that they are judgemental and difficult to assess objectively. For example, certain firms might have significantly more or less effective internal complaints handling than others. This impacts costs directly, as certain firms therefore refer a higher number of poor-quality cases to the FOS (that should in fact have been resolved in-house). There might also be differences between firms in relation to overall treatment of customers, which might be reflected in the fact that certain organisations have much lower uphold rates than others. Therefore, it could be argued that a model driven partly by a weighting of firm fees to a measure of the uphold rate would be preferable to a simple case volume measure, although in all these examples it is important that FOS considers the impact of these cost proposals on behaviours. Accordingly, FOS could consider placing greater external recognition and potentially financially "rewarding" firms which have been demonstrating good practices from an outcomes perspective.

We are further concerned that certain cases are significantly more complicated (and therefore costly) to resolve than others. We appreciate the FOS's view that the cost of a case is more dependent on the individual characteristics of the case and the behaviour of the involved parties, but nonetheless the type of product is also likely to play a role. For instance, the cost of looking into a tax exempt savings plan and a structured product are likely to be different. To the extent this does incur different costs, there may also be a case for differentiation in charging between different types of products (e.g. through a tariff system or a system based on the time FOS spent on a case).

We also believe that the method of charging major firms should still provide an incentive for the FOS to control its cost base. A system where firms pay additional fees should they exceed forecasts would therefore have to be carefully designed in order to provide the appropriate incentives for FOS to keep costs low. To this end, the Ombudsman should be encouraged to tie its charging structure not to the number of cases referred by a given large firm, but to a measure which more closely captures the amount of time and additional staff/other resource incurred as a result (this would also take into account the complexity of the case as above.)

Finally, industry as a whole continues to be concerned by the role played by certain Claims Management Companies ("CMCs") in bringing inappropriate complaints to the FOS. Our concern is not primarily that CMCs may increase the number of complaints launched per se, as every consumer should have a right to complain and be heard if they

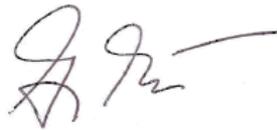
believe they have been treated unfairly. However, we have seen an increased number of cases where consumers are encouraged to complain in cases where they are unlikely to win or there is plainly no prima facie case. For instance, we have seen consumers encouraged to complain to banks where they appear to have had no account and have had no dealings. We would encourage the FOS to consider measures which discourage CMCs from this practice. Although we recognise that the FOS does not charge an individual firm directly for a vexatious claim, ultimately all of us pay for the time and effort the FOS has had to dedicate through the levy. Insofar possible, we would also be keen for the outcomes of cases brought by CMCs to be monitored. We will also continue to call for improved regulation in this space.

When should we aim to implement our new approach – April 2013 or a later date?

The Panels believe the approach should be implemented as soon as possible. We are supportive of the proposed April 2013 start date.



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