

Financial Ombudsman Service Consultation

Our future funding

Response from Citizens Advice Scotland

August 2019

Citizens Advice Scotland (CAS), our 59 member Citizen Advice Bureaux (CAB) and the Extra Help Unit, form Scotland's largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone.

In 2017-18 the Citizens Advice Service network helped over 295,100 clients in Scotland and dealt with almost 800,000 advice issues. With support from the network clients had financial gains of over £138 million and our self-help website Advice in Scotland received approximately 3.2 million page views.

Introduction

Citizens Advice Scotland (CAS) welcomes the opportunity to respond to the Financial Ombudsman Service's (FOS) consultation on future funding. We are very supportive of the work of the FOS and our advisers refer clients to it when they haven't been able to achieve a satisfactory outcome from a financial services complaint. We strongly agree with the principle that the service must remain free to complainants. We also agree with the FOS that it is important that the service is sustainable for the post PPI complaints landscape. We think there may be some complaint issues that could still tax the FOS in future, especially around affordability, although these are unlikely to be on the scale of PPI. In that context it is important that the FOS is adequately resourced to respond to any future work.

Questions

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 agree that there is unlikely to be another instance of "mass complaint" on the scale of PPI. Consequently the FOS is likely to be a smaller organisation in future and will have to be less dependent on case fees than it is now.

We note, however, that there are an increasing number of complaints being made to the FOS regarding unaffordable lending in the high cost short term credit market. We think the same kind of complaint could increasingly be made against guarantor and even mainstream lenders

as people become aware of the FOS view on unaffordable lending. We would not expect this to be on the scale of PPI, but significant nonetheless.

We detail a few examples below of the kinds of problems we are seeing with unaffordable lending.

A client found that his bank had offered him credit freely when he opened the account, without an adequate affordability assessment. He had fallen into overdraft due to low income and now his bank is threatening to withdraw services due to "the way he has managed the overdraft". The client suffers from mental ill health and needed help with benefits to increase his income.

Reported by an East of Scotland CAB

At the age of 21 a client agreed to be a guarantor for a friend on a £13,000 loan so his friend could adapt his home. They completed an online loan application with no apparent background checks on the guarantor. The client's friend has recently defaulted on the loan and the client has been sent a letter asking for the balance, approximately £10,500. The client is currently paying £395 a month to the guarantor lender and has had to take out a further loan with another firm to consolidate his debts. The client has contacted his friend who says he cannot afford to pay the loan and is applying for a trust deed.

Reported by an East of Scotland CAB

A client reports being pursued by a guarantor lender for a sum in the region of £3,000. The client and her partner are in receipt of benefits. The client was offered a top up loan on an existing loan which she could not afford to repay. She took the loan to clear rent arrears. The client is willing to pay back the lender but the issue is affordability. The lender has now taken her to court to recover the money and have rejected her offer of payment of £10 per month. The client was worried about sheriff officers coming to her home and arresting her if she does not attend the hearing.

Reported by a West of Scotland CAB

We are also cognisant of the fact that the majority of new vehicles are hired through PCP schemes. With sales taking place in a retail environment there may be issues again around affordability and the customer's over optimistic perceptions of their ability to afford the repayments. We are not seeing this in our case load yet, but if the UK experiences a downturn, for example post Brexit, this may become a more pressing issue.

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

We agree with the analysis in the consultation document that “the complexity of a complaint tends to be more about the circumstances of the customer or firms involved, or external factors such as questions of policy regulation or law that need resolving”. Similar to the experience of the FOS, our advisers are telling us anecdotally that their debt cases are becoming more complex and difficult to resolve. The issues they are grappling with include:

- Unaffordable lending, especially in guarantor situations where it is difficult to ascertain what advice was given to the various parties.
- Un-cooperative debt buyers purchasing debts, demanding unrealistic payments, and using the court system to enforce debts.
- The mis-selling of Protected Trust Deeds where lead generators have given incorrect information or under played the consequences of entering into an insolvency solution. Currently lead generators working on behalf of insolvency firms do not have to be FCA authorised, however we are calling for this to happen because of the detriment we have seen in this market.
- Last but not least, increasing issues with people having deficit budgets as a consequence of welfare reforms and changes in employment practices. Unsurprisingly this then impacts on the client’s ability to keep up with priority debts and payments like rent and council tax.

A client reports issues with a guarantor loan taken out by her son. She believes the son may have given incorrect information about their circumstances and the lender used this information to grant the loan. She says she did not provide the income and expenditure information recorded by the guarantor lender for the original loan. The lender incorrectly calculated their disposable income as over £1,000 from a £1,500 total income, which includes disability benefits. The expenditure does not reflect their substantial care costs, or transport costs, even though both client and partner are severely disabled and have regular hospital and doctor visits. The income and expenditure completed by the loan company shows the client and her partner spending £25 per month on food and £5 per month on clothing.

The client also says she was not advised there was a risk to her home if her son defaulted on payment, nor that she would be liable for the payment if he failed to pay. She would have not agreed to these terms as she could not afford the repayment costs. The client maintains that she did not understand all the contents of the phone call from the lender and just wanted to get off the phone. She does not use the internet so could not have signed the loan agreement digitally as the lender maintains. She did not receive any copies of agreements via post to sign either.

Reported by a West of Scotland CAB

A client who is a single parent, suffers mental ill health, has now been served her 3rd court action for debt. All 3 creditors are 3rd party companies who have purchased her debts and made minimal attempts to engage and set up affordable repayment arrangements prior to attempting to recover the money through court.

The client's statements show she was trapped in a debt cycle, staying close to her limit, which increased from £250 to £1500 without her applying to do this. Increases often followed late payment or over limit charges and the bulk of transactions were either towards essential living costs or paying other debts. This indicates that the lender was aware the client was trapped and was using credit as income, but allowed the increases anyway with little regard to affordability. Payments made by the client were tokenistic and exceeded her interest charges only by a few pounds, giving her little prospect of clearing the balances. The client believes she made her creditors aware of her mental ill health.

Reported by an East of Scotland CAB

A client sought advice from his local bureau. He lived alone in a council property, had no assets, debts of around £25,000, he was unemployed and his only income was Universal Credit. He had granted a protected trust deed (PTD) two years previously to a high volume provider, while he was unemployed. At the time of granting the PTD, the trustee looked at his bank statement and saw a one-off payment of £150 from the client's sister to help him pay a bill. The trustee included this in his regular income in his statement of affairs to justify the PTD being suitable for him. He was now in arrears on his PTD contributions of around £1,000 and was struggling to pay. Because the client's only regular income was benefits, it was clear that a trust deed should never have been granted. The best solution for him was to ask the trustee to sequestrate him, or to discharge themselves as trustee so he could declare bankruptcy himself. This means the client has to go back to the start of a new process and has wasted the time since granting the PTD. If the client had been advised correctly at the outset, he could be two years into the bankruptcy process and much closer to re-establishing his financial health.

Reported by a bureau in the East of Scotland

3. a) To what extent do you support our wider work to help prevent complaints and encourage fairness?

We agree with this approach. We note from the PPI experience that some firms had in excess of 80% of their PPI complaint handling decisions overturned when they were considered by the FOS. Our own experience in other areas such as benefits is that people are unlikely to succeed with their first request for reconsideration of a decision, but if they appeal they are more likely than not to have the decision overturned. This is inherently unfair. So it is very important that firms show a duty of care towards consumers to prevent complaints and, where complaints do occur, to respond fairly the first time. Failure to do so undermines trust in financial services and places an extra burden on the FOS and advice agencies. Regrettably advice agencies in



Scotland have been receiving less funding for money advice year on year, which has impacted on the resources available to help people make complaints, so it is very important that firms make every effort to prevent complaints by improving their systems and processes to meet the expectations of their customers around fairness.

b) Do you have any further suggestions about what more we could do, or ideas for working together with us?

We would like to work more closely with the Financial Ombudsman Service but regrettably the capacity to do so is limited by resources and funding.

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?

Both the FCA and CMA have recently opened offices in Scotland, increasing their local presence and potentially benefitting from a reduction in London-based costs. Might the FOS consider this too?

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 agree with this approach. As the PPI case load winds down and fewer cases are likely to come through the system it makes sense to reduce the reliance on case fees which are paid in arrears, once the case is resolved. We also acknowledge the risk highlighted by the failures of the likes of Wonga and Curo that the FOS does not receive fees that it is due and therefore levy funding needs to be a greater part of the mix to ensure stability for the organisation.

We also think that increasing complexity is likely to delay payment of case fees given that it may take longer to unravel difficult complaints – again this would militate towards increasing income from the levy and relying less on case fees.

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?

No



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?

We have no comment on either of these proposals.

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 agree that increasing reserves from 3 months to 6 months is a sensible move in order to ensure that the ability of the FOS to operate, and especially to respond to a mass complaint, is not limited by funding problems.

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

No

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

No