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Response to: Financial Ombudsman Service 'Our 2020/21 plans and budget and future strategy'

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## Consultation Response

### Financial Ombudsman Service consultation on 'Our 2020/21 plans and budget and future strategy'

The Financial Ombudsman Service (FOS) continues to play an essential role in providing a route for people to seek redress when direct complaints to a company are not resolved. As people's circumstances and needs become ever more complex, it is more important than ever that the FOS seeks to evolve its services and how it provides them.

Which? therefore welcomes the wide-ranging consultation on your future strategy. We also welcome your research to understand how people's lives are changing, and how their needs for redress are changing too. Our own research has found that around a quarter of people (24%) think that they would need specialist skills or knowledge to be able to use an alternative dispute resolution or ombudsman scheme.<sup>1</sup> So a key challenge for the FOS in the future will be engaging people with significantly different and complicated circumstances, and making sure that its services are widely accessible.

Below we set out some key issues that the FOS should focus on as part of its current and future strategy. Which?'s main recommendation is that the future strategy should include ambitious targets for the next few years for reducing waiting times, focused on cases where people are in most need of swift redress. This is likely to require significant investment in staffing and systems.

#### Current outlook, plans and budget

##### *Authorised push payment scams*

Since the Contingent Reimbursement Model Code was launched in May 2019, Which? has continued to receive many cases from victims of authorised push payment (APP) scams that have been denied reimbursement by their bank, many of which have been sent unclear and potentially misleading letters about their bank's decision. We have been able to help consumers to challenge some of these decisions and some have been overturned by the firms involved. This suggests that the Code is not being consistently applied by firms. We have particular concerns about the way that firms are interpreting their obligations to provide 'effective warnings' and to consider whether the victim may have been vulnerable to the particular APP scam.

The FOS has a crucial role in reviewing complaints involving APP scams, so that victims are provided with the fair outcome that they are entitled to under the Code that many firms have signed up to. The FOS should also work closely with firms to improve how they deal with APP

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<sup>1</sup> Populus on behalf of Which? interviewed online 2,411 nationally representative UK adults. Fieldwork took place between 1–3 March 2017.

scams cases, so that victims do not have to go through a potentially lengthy and emotionally draining process to get a fair outcome. The FOS should therefore:

- quickly publish case study rulings that take into account the code;
- publish new guidance to improve how firms handle APP scams and to help consumers understand their rights and responsibilities when making push payments; and
- help firms to explain why they have made their decisions and to clearly inform victims of their right to take their complaint to the FOS.

While we are encouraging all banks and other payment providers to sign up to the voluntary code, only nine of more than 400 payment providers who offer Faster Payments have signed up, and only one additional firm has signed up since the code launched. As well as taking into account the law and rules, the FOS is able to take into account good practice in industry. This can include voluntary codes. Given the wide range of organisations that have helped to develop the new Contingent Reimbursement Model code, the FOS should apply the new code consistently to all cases of APP scams, regardless of whether the firms involved in a case have signed up to the code.

The FOS should also begin to regularly publish more detailed complaints data on different types of scams, including a breakdown of authorised and unauthorised push payments by individual firms. This will be crucially important in evaluating the effectiveness of the new Contingent Reimbursement Model code, and identifying issues with how firms are implementing it.

### ***Payment Protection Insurance***

Which? has recently completed research with users of our online payment protection insurance (PPI) claims tool, which shows that despite the August 2019 deadline for PPI claims a significant share of claimants have not received a decision on their claim. Many have not even had their claim acknowledged by their bank. We therefore expect complaints to continue to be made to the FOS for much longer than expected, so it is vital that the FOS continues to sufficiently resource PPI complaints-handling for as long as is necessary and seeks to work closely with banks to expedite cases.

### **Future strategy**

Which? agrees with your proposed three key strategic priorities, of enhancing your core service, preventing complaints and unfairness arising, and preparing for the future. Below we set out some key issues to consider when developing these strategic priorities.

### ***Providing redress more quickly***

Despite a fall in the FOS's backlog of longstanding cases, some types of complaints continue to take a considerable time to resolve. Your current guidance to customers is that it takes around four months to allocate most types of banking complaint to a case handler for review, and up to nine months for a victim of a scam. Neither is acceptable. Victims of scams will already have potentially had to wait eight weeks before they can take their complaint to the FOS, so it would be almost a year before they have even been passed to an independent reviewer, let alone reached the end of the process. These are people in some of the most vulnerable circumstances, having suffered emotionally and financially.

The FOS's future strategy should therefore include ambitious targets for the next few years for reducing waiting times, focused on cases where people are in most need of swift redress. This will require significant investment in staffing and systems. While the FOS's approach of working with firms on groupings of similar cases to agree a consistent approach can benefit consumers, this needs to be balanced against the impact on consumers of waiting months, and sometimes years, for their cases to be resolved. The FOS should also keep people better informed of the progress of their cases.

### ***Preventing complaints and unfairness arising***

Which? strongly agrees with the FOS building on its work with firms to prevent complaints and unfairness. This benefits both consumers and firms. For consumers, there are limits to a complaints-led system of enforcement, which require consumers to engage with what can be a daunting process. For firms, preventing issues arising can help them to better serve their customers, and to avoid damaging trust in their brand.

The FOS should ensure it is working closely with consumers and consumer groups in its prevention work. It should also work with new and existing firms that are developing business models and practices. Many emerging products and services share similar features to older products and services that have led to considerable detriment for consumers and significant numbers of complaints. So lessons can be learned early-on to address issues that we already know about. The FOS should also build on its work with the FCA, government and other public bodies to help inform wider enforcement work about areas of consumer detriment.

The way that industry funds the FOS's work is also crucially important for preventing complaints and unfairness. Last year, we called for the FOS's funding model to continue to include a case fee that firms are required to pay for every complaint that is made to the FOS, in response to your proposed future funding options. The case fee provides a strong incentive for firms to reduce the causes of complaints and to improve how they handle complaints. We welcomed your decision to continue with the case fee. We do not have comments on the proposed specific rates for the case fee and levies for 2020/21.

### **About Which?**

Which? is the largest consumer organisation in the UK with more than 1.3 million members and supporters. We operate as an independent, a-political, social enterprise working for all consumers. We are funded solely by our commercial ventures and receive no government money, public donations, or other fundraising income. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives, by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

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