



Which?, 2 Marylebone Road, London, NW1 4DF

Date: 3 February 2021

Response to: Financial Ombudsman Service 'Our Plans and Budget 2021/22'

Consultation Response

Financial Ombudsman Service consultation on Our Plans and Budget 2021/22

The Financial Ombudsman Service continues to play an essential role in providing redress to consumers and in working with firms to improve the way they treat their customers. The significant rise in the number of general cases that you have handled in the first half of this year underlines the important role that you are playing, including in responding to the impact of the coronavirus pandemic on people's lives.

There are three key areas where we see harm for consumers that is likely to lead to significant levels of disputes between firms and their customers in the future:

1. Authorised push payment fraud

Which? continues to receive rising numbers of cases of fraud, many of which involve authorised push payments. During 2020, we received 62% more cases of fraud via the Which? Money Helpline than we did during 2019. While the introduction of the voluntary Contingent Reimbursement Model Code has helped some victims to receive better treatment by their bank or building society, and reimbursement rates have increased, Which? continues to be involved in many cases where the principles of the Code are not being applied fairly or consistently. We have been able to help some of these victims to overturn an original decision by their bank not to reimburse them. In other instances, we have suggested that individuals take their complaints to the FOS. You play a crucial role in providing fair outcomes for these victims. We welcome the approach that you have taken in holding firms to the commitments they have made under the Code and their wider responsibilities to their customers.

Many victims will understandably struggle to challenge the decisions of their bank or to take a complaint to the Financial Ombudsman Service at what can be a hugely distressing time. So it is crucially important that firms seek to provide fair outcomes in their initial decisions. We agree with the conclusion that you made last year, in response to the Payment Systems Regulator, that the Code's stated presumption in favour of reimbursement is in many cases being reversed by firms that have signed up to the Code. We also particularly support your guidance for firms to base their decisions on evidence rather than assertion, and to do more to evidence the effectiveness of their fraud warnings. To provide greater transparency of how firms are treating victims of APP fraud, the FOS should also publish data for each provider on the APP fraud cases that you receive.

2. Tailored support for mortgage and consumer credit customers impacted by coronavirus

As household budgets become stretched during the pandemic, we are concerned about the risk of an increasing reliance on forms of unsecured credit when aspects of the market may not be working well for consumers. Qualitative research from our partners at Blue Marble has found that for some people the pandemic has eroded savings buffers, prompting an increase in borrowing. We have also seen an increase in people using credit cards and store cards for grocery shopping, further indicating that some are struggling with their finances.

Which? has been very supportive of the payment deferrals that the FCA has worked with firms to introduce for mortgage and consumer credit customers. There has been a huge take-up by consumers, providing much needed temporary support for people's finances. Two-fifths (40%) of the people who reported taking at least one payment holiday in our survey say they could not have made all their payments without it. A further 40% said they could have made their payments, but with difficulty.

However, Which? is concerned about whether customers in need of further support after a payment deferral ends are always getting the tailored support that the FCA guidance intends. We have also raised concerns about the need for forbearance complaints to be resolved quickly to prevent unnecessary hardship. We have asked the FCA to consult on a temporary amendment to its rules so that complaints relating to forbearance are resolved quicker than eight weeks, in light of issues with lender capacity. We also believe that such a solution should be considered more permanently, given the significant risk of harm arising from such complaints.

3. Buy-now, pay-later

Unregulated buy-now, pay-later (BNPL) services that sit outside of the FOS' jurisdiction are becoming increasingly popular. According to the Woolard Review, the market trebled in size in 2020 and is expected to grow over the next few years. The pandemic has also impacted use, with a recent Which? survey finding that 16% of people have used BNPL because of the impact the pandemic has had on their finances.

There are early signs that BNPL products encourage overspending. Indeed, BNPL firms themselves market their products to retailers based on their ability to increase spending. We are concerned that the design of these products could cause harm as a result, with vulnerable consumers particularly at risk. There are also reports of considerable inconsistencies between products' impact on credit ratings, the imposition of late fees and the use of debt collection

agencies. It can be confusing for consumers to understand and navigate the differences between these products, which risks leaving potentially vulnerable consumers in a detrimental situation.

We therefore welcome the Woolard Review's recommendation that BNPL products that are currently exempt from regulation should be brought within the regulatory perimeter as a matter of urgency, and the government's and the FCA's commitments to make this happen. While we understand that most BNPL products currently outside of the FOS's remit, this remit should be extended along with regulation of the sector. Given the rapid growth in the use of these products and the concerns that we have set out, this could lead to a considerable number of cases being referred to the FOS under any future system.

In the interim it is important that the FOS helps to clearly communicate to consumers what BNPL products are not in their remit and what the alternatives are if BNPL users cannot turn to the FOS. If BNPL products are brought into the FOS's perimeter, the FOS should also work closely with firms and the FCA to ensure that changes to the perimeter are effectively communicated to consumers.

Future strategy

Which? broadly supports your strategic aims. To respond to people's ever more complex circumstances, it is right that you are seeking to invest to enhance your service and to build an organisation with the capabilities it needs for the future. We also support your aim to prevent complaints and unfairness arising. 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.

We believe there are two key challenges to consider with regards to improving the FOS's service:

- **Ensuring the service is widely accessible.** Which? 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. 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. This also includes maintaining a service that is free to consumers.
- **Providing redress more quickly.** Almost two thirds of cases have taken longer than six months to be resolved during the past year, and 11% of cases have taken more than a year to resolve. 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 individual consumers of waiting longer for their cases to be resolved. We would like to see the FOS set out 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. We also believe that the FOS can keep people better informed of the progress of their cases.

We do not have views on the proposed funding rates for 2021/22. We continue to support a funding system that provides a free service for consumers that provides good outcomes and high levels of service. We believe this should continue to include a case fee as well as industry levies. The case fee provides a strong incentive for firms to reduce the causes of complaints and to improve how they handle complaints. This is crucial for ensuring that service levels meet the needs of consumers within reasonable timeframes.

About Which?

Which? is the UK's consumer champion, here to make life simpler, fairer and safer for everyone. Our research gets to the heart of consumer issues, our advice is impartial, and our rigorous product tests lead to expert recommendations. We're the independent consumer voice that influences politicians and lawmakers, investigates, holds businesses to account and makes change happen. As an organisation we're not for profit and all for making consumers more powerful.

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