



HM Treasury

Draft of The Financial Services and Markets Act 2000 (The Ombudsman Scheme) Regulations 2023

Policy Note

December 2023

Draft of The Financial
Services and Markets Act
2000 (The Ombudsman
Scheme) Regulations 2023

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Chapter 1

Context

1.1 Section 63 of the Financial Services and Markets Act 2023 (FSMA 2023) amends the Financial Services and Markets Act 2000 to give HM Treasury the power to make regulations to specify the description of persons that the Financial Ombudsman Service (FOS) is able to charge fees. HM Treasury is not able to exercise this power to enable the FOS to charge complainants, meaning that it will remain the case that consumers cannot be charged for bringing complaints to the FOS. At the moment, the FOS can only charge case fees to respondents to a case, meaning firms who are subject to a complaint.

1.2 As set out during the passage of FSMA 2023, HM Treasury intends to exercise this power to make regulations to allow the FOS to charge case fees to claims management companies (CMCs) and other relevant professional representatives bringing cases to the FOS on behalf of complainants.

1.3 In this way, if Parliament approves the instrument once laid, HM Treasury will set the scope of who the FOS **can** charge fees to. The FOS will be responsible for making decisions as to who is charged, within the scope of any such regulations, as well as the detailed case fee rules, such as the level of any fees charged.

1.4 The FOS is consulting on the introduction of case fees to CMCs and other relevant professional representatives as part of its Plans and Budget 2024-25, to enable it to begin charging fees in the next financial year, subject to a full consultation. Following feedback to the Plans and Budget 2024-25 consultation, the FOS will then publish a consultation paper on the detailed case fee rules and expects to start charging fees by the end of September 2024.

1.5 The government is publishing a draft of the proposed Statutory Instrument (SI) making the regulations, alongside this accompanying explanatory policy note, to provide further context to respondents to the FOS Plans and Budget consultation. The government will consider any comments on the drafting of the SI and its effectiveness at meeting the policy intent as described in this note.

Chapter 2

Purpose and Feedback

2.1 This note explains the policy background for the draft Financial Services and Markets Act 2000 (The Ombudsman Scheme) Regulations 2023, provides a summary of the policy intent, and sets out how the SI intends to achieve this intent.

2.2 HM Treasury intends to legislate following the FOS Plans and Budget 2023-24 consultation closing, and before the FOS makes any new charging rules following the consultation.

Responding to the FOS Plans and Budget Consultation

2.3 The FOS publishes its Plans and Budget 2024-25 on 6 December 2023 which closes for responses on 30 January 2024.

2.4 The consultation can be found at financial-ombudsman.org.uk which includes details of how to respond.

Comment on this SI

2.5 This is a draft of this SI, which is being published to support the FOS Plans and Budget Consultation 2024-25.

2.6 HM Treasury will consider comments on this draft SI that relate to its effectiveness at achieving the policy intent set out in chapter four of this policy note.

Chapter 3

Policy Background

3.1 The FOS was established under the Financial Services and Markets Act 2000 to provide for the proportionate, prompt and informal resolution of disputes between consumers and financial services firms. The FOS offers a cost-free service for consumers, which is fundamental to its purpose.

3.2 The FOS is funded by a combination of an annual levy on regulated firms falling within its compulsory jurisdiction, an annual levy of firms falling within its voluntary jurisdiction and case fees. Under the current framework, the FOS is responsible for setting its case fee rules and, under the legislative framework, it can only charge case fees to firms that are subject to complaints. This means that claims management companies (CMCs) and other relevant professional representatives carrying out claims management activities cannot be charged for bringing cases to the FOS.

3.3 The government has heard concerns that CMCs and other relevant legal professionals are able to ‘weaponise’ case fees charged by the FOS to pressure firms into settling claims before they formally become part of the FOS process. For example, firms have said they may decide to settle early where the level of redress being sought through the CMC claim is less than the amount the firm would be required to pay through case fees, regardless of whether the claim was upheld. The outcomes described are not aligned with the purpose of the FOS, which is to provide for the proportionate, prompt and informal resolution of disputes between consumers and financial services firms, as an alternative to the courts.

3.4 The FOS has informed HM Treasury that it sees a mixed picture of good and poor behaviour from CMCs and other relevant professional representatives. More than half of cases raised with FOS by CMCs and other relevant professional representatives are not upheld and FOS has reported examples of firms raising volumes of seemingly templated and poorly evidenced complaints with its service, which impact the FOS’ ability to help other customers as quickly as it would like.

3.5 This SI is intended to enable the FOS to amend its rules to charge case fees to CMCs and other relevant professional representatives for bringing complaints, subject to its usual consultation processes. The scope set by the SI is deliberately wide to ensure that the full range of claims management models can be effectively captured. The FOS will The SI also allows flexibility to amend this list via further regulations in future if different models emerge.

3.6 The government is clear that all consumers should be able to access the FOS free of charge and without the need of any CMC or other professional representative support. The FOS remaining a cost-free service for consumers is fundamental to its purpose. The draft regulations therefore do not include charities within the scope of who the FOS can charge fees to.

Chapter 4

Summary of the draft statutory instrument

4.1 The instrument is made under the power in paragraph 15 of Schedule 17 to the Financial Services and Markets Act 2000 (as amended by section 63 of FSMA 2023). It gives the FOS the ability to charge fees to FCA authorised persons carrying out regulated claims management activity as well as relevant legal professionals to this list.

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