

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (OMBUDSMAN
SCHEME) (FEES) REGULATIONS 2024

2024 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Bim Afolami, Economic Secretary to the Treasury, confirms that this Explanatory Memorandum meets the required standard.

2.2 Catherine McCloskey, Deputy Director for Financial Services Strategy at HM Treasury, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 William Geeson at HM Treasury (email: William.Geeson@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Financial Services and Markets Act 2000 (Ombudsman Scheme) (Fees) Regulations 2024 (the “Regulations”) allow the Financial Ombudsman Service (the “FOS”) to charge case fees to claims management companies (“CMCs”) and legal professionals (together, referred to below as “professional representatives”) bringing cases to the FOS on behalf of consumer complainants.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Scotland.

5. Policy Context

What is being done and why?

5.1 The FOS was established under the Financial Services and Markets Act 2000 (“FSMA 2000”) to provide for the proportionate, prompt and informal resolution of disputes between consumers and financial services firms as an alternative to the courts. The FOS offers a cost-free service for consumers, which is fundamental to its purpose.

5.2 To provide this cost-free service, the FOS is funded by a combination of an annual levy on both regulated financial services firms that fall within its compulsory jurisdiction, and those financial services firms that fall within its voluntary

jurisdiction, as well as case fees charged to respondent firms when complaints about that firm are dealt with by the FOS. A firm subject to a complaint must pay this case fee whether or not the complaint is upheld.

- 5.3 Consumers can complain directly to the FOS and the majority of consumers do not use professional representatives to support their complaints. However, some consumers use CMCs or legal professionals to bring claims to the FOS on their behalf. The FOS has reported that the fees charged to consumers by a professional representative can reduce a consumer's redress by as much as 30%, as a proportion of any award of compensation made by the FOS is usually paid to that representative in return for its services.¹
- 5.4 Under the current framework, the FOS is responsible for making rules on case fees but the legislative framework restricts the charging of fees to firms that are subject to complaints. This means that CMCs and legal professionals carrying out claims management activities cannot be charged for bringing cases to the FOS despite the fact that they gain an economic benefit from doing so.
- 5.5 While many professional representatives act responsibly, the FOS has informed HM Treasury that it sees a mixed picture of good and poor behaviour from CMCs and legal professionals. The FOS has also reported examples of professional representatives submitting large volumes of seemingly templated and poorly evidenced complaints, which impacts the FOS' ability to promptly resolve other consumer complaints.
- 5.6 The government also notes concerns that firms subject to complaints may feel pressured into settling claims early (before they are formally submitted to the FOS) where the level of redress being sought by the professional representative is less than the amount the firm would potentially be required to pay at the outcome of the case, as this reduces the overall cost to the firm.² These outcomes are not aligned with the purpose of the FOS.
- 5.7 This instrument enables the FOS to amend its rules to charge case fees to CMCs and legal professionals for bringing complaints, subject to its usual consultation processes.
- 5.8 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. It will therefore remain the case that the FOS cannot charge fees to consumers or charities.
- 5.9 The government engaged with officials in the Northern Ireland Executive when developing the policy which led to this instrument. The position of officials was that including Northern Ireland within the scope of the instrument would be disproportionate, as there is very little claims management activity in Northern Ireland. This reflects the approach taken by government in 2018 not to include Northern Ireland within the scope of the regulation of claims management activity under the Financial Guidance and Claims Act 2018.

What was the previous policy, how is this different?

- 5.10 Currently, the FOS can only charge case fees to respondents to a case, meaning firms who are subject to a complaint. This instrument enables the FOS to charge case fees to

¹ <https://www.financial-ombudsman.org.uk/files/324385/Financial-Ombudsman-Service-Plans-and-Budget-Consultation-2024-25.pdf>

² <https://www.financial-ombudsman.org.uk/files/320493/plans-and-budget-consultation-2022-23.pdf>

CMCs and legal professionals for bringing cases to the FOS on behalf of consumer complainants.

6. Legislative and Legal Context

How has the law changed?

- 6.1 This instrument is made under the power in paragraph 15(3) of Schedule 17 to FSMA 2000 (as amended by section 63 of the Financial Services and Markets Act 2023 (“the 2023 Act”), which enables the government to add to the list of persons whom the FOS can charge fees to. The amendment made by the 2023 Act expressly prohibits the power being exercised to include complainants within this list of persons.
- 6.2 Prior to the amendment made by the 2023 Act, the legislative framework only enabled the FOS to charge fees to respondents to a complaint. During the passage of the 2023 Act, the government expressed its intention to exercise this power to make regulations to allow the FOS to charge case fees to CMCs and legal professionals bringing cases to the FOS on behalf of complainants.
- 6.3 This instrument gives the FOS the ability to charge fees to persons authorised by the Financial Conduct Authority to carry out regulated claims management activity, and legal professionals in England, Wales and Scotland carrying out claims management activities.
- 6.4 As set out in FSMA 2000, it is for the FOS to make rules determining who, within the scope of these Regulations, is charged and the level of any such fees.

Why was this approach taken to change the law?

- 6.5 The range of persons who may be charged set by this instrument is intended to ensure that the full range of professional representatives currently carrying out claims management activity can be effectively captured. This approach may change if different professional representatives carrying out claims management activity emerge in future.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 The government published an illustrative draft of these Regulations and an accompanying policy note on 5 December 2023 to support a FOS consultation on the approach to charging fees and invited comments on the effectiveness of the draft Regulations at achieving the policy intent.³ The government has consulted the FOS on the drafting of the statutory instrument, as required by paragraph 15(6) of Schedule 17 to FSMA 2000, as amended by the 2023 Act. The government has also consulted relevant regulatory bodies, including the Financial Conduct Authority and Solicitors Regulation Authority and the Law Society of Scotland and considered all responses to the FOS consultation.
- 7.2 In anticipation of these changes, the FOS consulted on its approach to charging fees from 6 December 2023 to 31 January 2024, including who it intended to charge, the level of any fees charged and the stage at which any fees would be charged.⁴ As part

³ <https://www.gov.uk/government/publications/the-financial-services-and-markets-act-2000-the-ombudsman-scheme-regulations-2024-draft-si-and-policy-note>

⁴ <https://www.financial-ombudsman.org.uk/files/324385/Financial-Ombudsman-Service-Plans-and-Budget-Consultation-2024-25.pdf>

of this consultation, the FOS established roundtables with regulated firms, consumer groups and the claims management industry. The FOS has also engaged directly with the Financial Conduct Authority, the Solicitors Regulation Authority, the Law Society of England and Wales, the Law Society of Scotland, the Law Society of Northern Ireland and the Legal Ombudsman.

- 7.3 The FOS intends to consult further on the details of any potential fees introduced under this power before it makes any final fee rules and will be publishing its consultation paper shortly.

8. Applicable Guidance

- 8.1 It is not considered necessary for the government to issue guidance in relation to these Regulations. The FOS is responsible for making any rules as a result of these Regulations, and for issuing any guidance relating to those rules.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument as the power exercised under FSMA 2000 is purely permissive in that it does not *require* the FOS to introduce any fees. There are therefore no specific impacts resulting from this change.
- 9.2 The FOS consults annually on its approach to charging fees more generally in its Plans and Budget. There will therefore be no familiarisation costs for industry to make themselves aware of the possibility of a change, as they already need to consider this document.
- 9.3 The FOS will prepare an Impact Assessment for any changes it makes to its rules as a result of these Regulations.

Impact on businesses, charities and voluntary bodies

- 9.4 There is no impact on businesses (including small and micro businesses), charities or voluntary bodies from this instrument because the power exercised under FSMA 2000 is purely permissive in that it does not require the FOS to introduce any fees.
- 9.5 There is no impact on the public sector from this instrument.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 In accordance with the requirement in the Small Business, Enterprise and Employment Act 2015, a statutory review clause is included in regulation 4 of the instrument, which specifies that HM Treasury must carry out a review of the regulatory provision contained in the Regulations and publish a report setting out the conclusions of the review. The first report must be published on or before the expiration of a period of five years beginning with the date on which the Regulations come into force. This will enable HM Treasury to assess whether the Regulations continue to accurately capture any emerging models of claims management activity.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

“In my view the provisions of the Financial Services and Markets Act 2000 (Ombudsman Scheme) (Fees) Regulations 2024 are compatible with the Convention rights.”

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).