

Horizon scanner

Complaints handling



RISK RATING

Potential impact



Legal risk	Next steps	Links
<p>COVID-19: Government Lending Schemes</p> <p>The substantial uptake of Government-backed COVID-19 loan schemes and continued economic pressure have started to give rise to a number of issues:</p> <p>(1) Increase in complaints. Complaints have already stemmed from businesses who were not eligible, whose applications were declined or where lending was delayed or suddenly restricted/closed.</p> <p>(2) Now that the first repayments for the CBILS and BBLS loan schemes have passed, there is a significant level of anticipated default which will lead to issues in forbearance, collections, recoveries and restructuring.</p>	<p>Firms should continue to be prepared for increased complaints activity, and increased scrutiny, particularly on fraud as the question of repayment of the loans arises. Firms may also be interested to review some case studies published by FOS illustrating how it resolves such complaints.</p> <p>On 3 March 2021, a new loan scheme (the Recovery Loan Scheme) was unveiled which offers loans from £25k to £10m up to the end of 2021, with the Government providing the lender with an 80% guarantee. The Scheme replaces the BBLS and CBILS.</p>	<p>ES briefing</p> <p>FCA update</p> <p>LSB Update</p> <p>FOS update</p>
<p>Proposal to shorten complaint response waiting times</p> <p>The Government has published a consultation document on reforming competition and consumer policy. Included in the paper is a proposal to shorten complaint waiting times in markets where alternative dispute resolution is mandatory. If taken forward, this could mean that firms would have four weeks (instead of eight) to deal with complaints before customers' FOS referral rights kick in. It is considered that it will incentivise firms to deal with problems promptly and allow referrals to FOS more quickly.</p>	<p>FOS is considering the proposal. The consultation closes on 1 October 2021. Firms may wish to consider providing a formal response.</p>	<p>Consultation document</p>
<p>Authorised push payment fraud (APP)</p> <p>Incidents of APP fraud have significantly increased. UK Finance estimates that £479m was lost to APP scams across 150,000 cases in 2020. In 2020/21, FOS received more than 18,000</p>	<p>Firms should review the LSB report and maintain a watching brief for the outcome of the Call for Input which is expected in Q3 2021. Initial responses suggest that the risk of APP scams is not evenly distributed amongst payment providers, and some respondents perceived that</p>	<p>ES Briefing</p> <p>LSB June 2021 Report</p> <p>LSB Call for Input</p> <p>LSB update</p>



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<p>complaints from victims of fraud and scams (about 40% involved authorised payment fraud (including APP)) and continues to uphold a high proportion.</p> <p>The Contingent Reimbursement Model Code (CRM) was introduced in 2019. The Lending Standards Board is the independent governing body of the CRM. In January 2021, the LSB published a full review of the CRM and has since issued a Call for Input (CP21/3) which closed on 26 May 2021. The LSB published a further report in June 2021 which concluded that there are systemic failings in the implementation of the reasonable basis for belief exceptions, with significant work required by the industry. Alongside the publication of the report, the LSB issued firm-specific reports and wrote to the chief executive of each of the signatory firms.</p> <p>Separately, in February 2021, the Payment Systems Regulator (PSR) published CP21/3, a call for views on APP scams, seeking feedback on three measures to help reduce losses. The PSR has also published calls for views on: (1) consumer protection in interbank payments (CP21/4); and (2) confirmation of payee (CP21/6).</p>	<p>the Code does not take account of more diverse business models. Further APP scams are continuing to evolve, for example, by using different mediums such as cryptocurrencies.</p> <p>As regards the PSR Calls for Views, all have closed and further news is awaited (follow-up is anticipated imminently).</p> <p>Firms may also wish to consider the impact of the <i>Philipps v Barclays Bank</i> decision, which confirmed that the Quincecare duty does not extend to circumstances where a customer knowingly and willingly instructs a payment, albeit as a result of a fraud. We understand that this decision has been appealed to the Court of Appeal – firms should keep a watching brief.</p>	<p>CP21/3</p> <p>CP21/4</p> <p>CP21/6</p> <p>ES Briefing: <i>Philipps v Barclays Bank</i></p>
<p>Debt Respite Scheme (Breathing Space) and Statutory Debt Repayment Plan (SDRP)</p> <p>The Debt Respite Scheme gives someone with 'problem debts' the right to legal protections from their creditors, including protection from enforcement action for 60 days and a suspension on interest and charges. There are also protections for those receiving mental health crisis treatment. The Regulations came into force on 4 May 2021 (with some exceptions). HMCTS</p>	<p>Firms should monitor use of the Breathing Space scheme. The Treasury has established that as many as 700,000 people could take advantage of the scheme in its first year of operation and we understand that debt advice organisations are experiencing significant resourcing problems in managing requests to the scheme (including numerous queries from creditors). Complaints may follow delays or Breathing Space rules not being properly applied. The Insolvency Service is</p>	<p>Regulations</p> <p>Government guidance</p> <p>ES Briefing</p>



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<p>has recently updated its guidance for creditors of a debt that has been placed into a Breathing Space.</p> <p>Separately, the SDRP will enable a person in problem debt to repay creditors to a manageable timetable, with legal protection from further action for the duration of their plan. The Government intends to implement the SDRP over a longer timeframe (2024).</p>	<p>being encouraged to work with creditors and debt advice providers to develop a fit for purpose electronic system to support the effective delivery of the scheme. Firms should review the HMCTS guidance as it covers the responsibilities of creditors, what the court will not do in a Breathing Space and when a Breathing Space ends.</p> <p>The SDRP is due to come into force before 1 May 2024. It is understood that draft regulations will be consulted on in early 2022 with the intention of laying down final regulations at the end of 2022. Firms should keep a watching brief.</p>	
<p>Business Banking Resolution Service (BBRS)</p> <p>The BBRS is a relatively new organisation set up to resolve disputes between businesses and their banks. The BBRS can look at two types of unresolved complaint under the contemporary scheme and the historic scheme.</p> <p>The BBRS has recently released its first quarterly insights report, providing information about its casework since its launch in February 2021. The BBRS has received about 595 registrations (the majority relates to historic disputes) and is actively working on over 350 cases. Appeals have been set up in two cases so far and the BBRS has commented that it is unable to progress some claims because of lack of required documentation from firms.</p> <p>Questions remain about how the service's offerings could affect the wider dispute resolution landscape. For example, it could lead to fewer business banking claims in the High Court or less complaints to FOS.</p>	<p>Firms to maintain a watching brief. The BBRS is braced to deal with a large number of complaints arising from COVID-19.</p> <p>The BBRS's next report is due in October 2021 and an annual report covering the BBRS's operations will be published in early 2022.</p> <p>Separately the BBRS has recently launched two liaison panels: independent and transparent councils, representing the participating banks and SME community. The panels create a two-way feedback loop between the BBRS and its stakeholders. The panels will be able to make recommendations to the BBRS, but do not have decision-making powers.</p>	<p>BBRS website</p> <p>BBRS press release</p> <p>BBRS quarterly insights</p> <p>ES Briefing</p>



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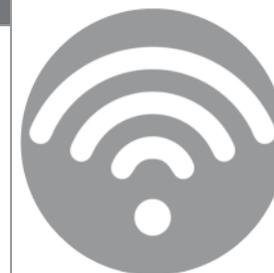


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<p>Irresponsible and unaffordable lending</p> <p>Irresponsible lending is an area that may lead to complaints and litigation (e.g. s.140A unfair relationship claims), particularly in the current economic climate. There is also a risk of regulatory action for firms that get it wrong. Whilst most relevant to high-cost short-term lending, increasingly complaints are being made about other products such as credit and store cards where credit limits are increased with limited further affordability checks being carried out.</p>	<p>Firms may wish to consider the recommendations made to the FCA Board in the unsecured credit market as set out in the Woolard Review. These include: regulation of unregulated buy-now, pay later; ensuring availability of debt advice services; improving the credit information market; review of rules around forbearance; and an increased focus on lenders meeting consumers needs' for as long as they hold the product.</p> <p>Firms may also be interested to review the recent High Court decision following the sanction hearing in respect of the Scheme of Arrangement proposed by Amigo Loans Limited (ALL). The scheme was principally intended to compromise the claims of customers and guarantors in respect of claims against ALL arising from unaffordable and unsustainable lending complaints and fees owed to the FOS for handling such complaints. ALL has confirmed it will not appeal the judgment. In contrast, a Scheme of Arrangement for Provident Personal Credit Limited was sanctioned recently. One key difference between the schemes was that ALL was proposing to continue to trade post-Scheme, whilst Provident was not.</p>	<p>FCA's findings</p> <p>ES Briefing</p> <p>Woolard Review</p> <p>ES Briefing - ALL Scheme of Arrangement</p> <p>FOS update re ALL</p> <p>FOS update re Provident</p>
<p>Independent review into the FOS</p> <p>The FOS Board has commissioned an independent external review of FOS's service. The review is focussed on ensuring that FOS can continue to meet the needs of its customers and is split into two areas: (1) Looking at the current operational effectiveness of the service; and (2) Considering how FOS must adapt to meet current and future challenges.</p>	<p>Independent reviews of FOS's service are undertaken periodically. This latest review is now underway and results are due to be published in Autumn 2021. Firms may wish to contribute to the review if they are contacted. Otherwise, firms should maintain a watching brief.</p>	<p>FOS review</p>



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<p>FCA ban on discretionary commission models – more complaints and litigation?</p> <p>Discretionary commission models which incentivise car dealers and brokers to raise customers’ financing costs have been banned since 28 January 2021. The ban has led to an increase in complaints regarding the use of such models in the past and may result in litigation.</p>	<p>A published decision from FOS on the topic is awaited.</p>	<p>ES Briefing PS20/8</p>
<p>Complaints trends</p> <p>Analysis of complaints data from FOS and the FCA helps to identify current and future complaints and litigation trends.</p> <p>FOS recently published its annual complaints data for 2020/21: (1) New complaints received increased by 2% (58% excluding PPI). The increase is due to more banking and credit product complaints (current accounts, unaffordable lending and home credit products). (2) There has been an increase in vulnerable customers which is a significant and growing percentage of the population (currently estimated to be 27.7 million).</p> <p>The FCA has also published its complaints data for H2 2020: (1) Firms received 26% less complaints than in 2020 H1 (the lowest levels since 2016 H2). The insurance and pure protection group saw the largest decrease (attributable to the decrease in PPI complaints). Excluding PPI, the volume of complaints increased by 3.3% compared to 2020 H1. (2) The most complained about products were current accounts (23%), PPI (12%), credit cards (11%), other general insurance products (11%) and motor and transport insurance (9%).</p>	<p>Firms may find it useful to review the complaints data to assess it against their own complaints and to help predict future areas for complaints/litigation.</p>	<p>FOS complaints data FCA complaints data</p>



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<p>FOS strategic priorities</p> <p>FOS has three strategic priorities for the next five years (to 2025): (1) enhancing its service; (2) preventing complaints and unfairness arising; and (3) building an organisation with the capabilities it needs for the future. FOS considers that too many complaints come to it to resolve and that there needs to be a greater focus on best practice in customer service, whilst at the same time ensuring customers have clarity about the products and services they use. FOS also considers that when complaints do arise, they need to be dealt with more effectively by the business at source. FOS has called on the FCA and firms to play their part.</p>	<p>Firms should consider their complaints policies and processes against FOS’s strategic priorities. Firms will note that Caroline Wayman has stepped down and FOS has a new interim CEO and Chief Ombudsman, Nausicaa Delfas. Ms Delfas has joined from the FCA, where she was the Executive Director International and Interim CEO. She has held different roles in enforcement, supervision, risk and policy and is a qualified lawyer.</p>	<p>FOS Annual Report FOS “Taking us to 2025” strategy FOS Strategic plans and budget</p>
<p>Rules extending SME access to FOS</p> <p>In 2019, the scope of FOS was extended to permit small and medium-sized enterprise access to FOS. The FCA had planned to start a post-implementation review of the rules, however it has decided to delay the review because COVID-19 has had a significant effect on SMEs and the full impact is not yet known.</p>	<p>Firms to maintain a watching brief. The FCA is due to reassess the position by April 2023 and will include upcoming developments with SME complaints within the scope of review. The FCA will also engage with FOS on its insights from current handling of SME complaints.</p>	<p>PS18/24 FCA update</p>
<p>Risk of discriminatory policies</p> <p>Discrimination claims can cause reputational damage and expense (damages can be unlimited). There is a risk of complaints of indirect discrimination against firms in respect of their dealings with customers (which could result in litigation). Recent developments such as those set out below could have implications for indirect discrimination claims:</p> <p>(1) Joint statement by the FCA and PSR stating they are committed to ensuring that cash remains available for those who need it.</p>	<p>Firms should keep a watching brief on complaints and litigated cases. Firms should also take time to review policies and procedures, to educate client-facing staff on indirect discrimination and how to spot it and to ensure that when a provision, criterion or practice is highlighted as being detrimental to those with a protected characteristic, to act swiftly and comprehensively.</p> <p>Firms should also take into account the ongoing work in relation to access to cash. The Government’s consultation closes on 23 September 2021, following which the</p>	<p>ES briefing FCA and PSR joint statement FCA and PSR update FCA speech: protecting access to cash and banking services HM Treasury Consultation PSR report Response from banks</p>



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<p>(2) HM Treasury consultation paper on access to cash which sets out the proposed approach to developing legislation to protect access to cash (it is proposed that the FCA be the lead regulator with new powers to support its role). A number of banks have responded</p> <p>(3) Report by the PSR following its second annual review of specific direction on protected ATMs, together with a paper setting out stakeholder responses to its calls for views. The direction remains in place until January 2022.</p>	<p>Government will provide a summary of responses and set out next steps for its work.</p> <p>As to the specific direction on protected ATMs, the PSR considers that it will likely need to apply beyond the January 2022 date. It is currently minded to issue a new direction when the current direction expires but plans to assess the evidence in detail over the summer. If the PSR decides that a new direction is required, it will consult on a draft later in 2021.</p>	



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