

<i>Meeting</i>	OLC	<i>Agenda Item No.</i>	9
		<i>Paper No.</i>	91.7
<i>Date of meeting</i>	17/10/2018	<i>Time required</i>	10 Minutes

<i>Title</i>	Claims Management Company transfer update
<i>Sponsor</i>	Rebecca Marsh, Chief Ombudsman and Steve Pearson, Senior Ombudsman
<i>Status</i>	OFFICIAL
<i>To be communicated to:</i>	Members and those in attendance

Executive summary
This report provides an update on the project dealing with the statutory transfer of CMC complaints from the Legal Ombudsman (LeO) to the Financial Ombudsman Service (FOS).
Recommendation/action required
Board is asked to NOTE the update.

Claims Management Complaints transfer update

1. Summary and Key Issues

The Financial Guidance and Claims Act will transfer the regulation of Claims Management Companies from the Claims Management Regulator to the Financial Conduct Authority (FCA), with second tier complaint handling will move from the OLC to the Financial Ombudsman Service (FOS).

The date of transfer is assumed to be Monday 1 April 2019. The Statutory Instrument required to effect the transfer will be laid in Parliament in October and is expected to be debated in late November 2018. This process is being managed by HM Treasury (HMT) lawyers. In order to achieve the 1 April date, the following key issues need resolution.

Key Issues:

- a. We need to draft a Transfer Scheme by 31 December 2018, which then needs to be approved by FOS, the FCA and the Ministry of Justice (MoJ).
- b. We need to commence work on the data transfer to FOS by 1 December 2018.
- c. A solution to the transfer costs issue needs to be reached by no later than 30 October 2018 (The issue of transfer costs needs to be resolved before work on a) and b) can start.)
- d. FOS to provide us with location information by 30 October 2018

2. OLC to FOS transfer

An internal Programme Board has been set up with cross functional membership. Steven Pearson, Senior Ombudsman, is the Senior Responsible Officer and Andrew Burford is the Ombudsman Project Lead.

On the date of transfer, all live and closed complaints will be transferred to FOS regardless of the status of the investigation at the time. We will transfer approximately 7,000 complaint files to FOS.

Transfer Costs:

We need to cover our upfront costs associated with the transfer, in particular costs associated with data transfer and preparation of the transfer scheme. However, we have no budget or ambit to use grant-in-aid for any purpose other than handling complaints.

FOS cannot levy the industry to refund the OLC these costs until after the date of transfer. Our position is that we cannot incur any substantive costs until we have a clear agreement and process in place to recover these costs. We are finalising all project costs and will submit these to FOS and the MoJ w/c 8 October 2018.

A proposal has been put forward that FOS are to bear the transfer costs on their books until the transfer has taken place. While HM Treasury consider this to be a viable solution, FOS do not. FOS are engaging with the National Audit Office about this to arrive at an acceptable solution.

Transfer Scheme:

We are required to write the transfer scheme which will formally set out how the transfer from the OLC to FOS will take place. This needs to be approved by FOS, the FCA and the MoJ. We will write it in consultation with these parties to make this process as smooth as possible. Due to the issue with transfer costs it has not been possible to formally commence this work.

A barrister who is able to draft the Transfer Scheme has been identified and is ready to start work. We await a response from FOS to a number of key questions before we can pass the matter to the barrister to commence drafting the transfer scheme (subject to the costs issue having been sorted). FOS are hoping to answer these in early October.

Data Transfer:

The indicative costs of the data transfer have been received and approved by Head of IT, albeit with some caveats given the limited information available about FOS' specific data requirements. Before any work on the data transfer can commence, the issue of the transfer costs needs to be resolved, and our final project costs need to be approved.

Due to a mandatory system upgrade, which will affect the old system, coupled with decommissioning work required, the work on the data transfer needs to have started by **no later than 1 December 2018** (ideally no later than 1 November 2018). All parties to the transfer project have been made aware that we cannot guarantee a 1 April 2019 transfer date if this deadline is not met.

Enforcement:

FOS do not enforce ombudsman final decisions of behalf of their customers. Following a number of discussions about this since September Board, the final policy position has been set out by HMT as follows:

- the OLC can continue to enforce any existing enforcement applications after transfer (those that have already been issued in the court pre-transfer), with costs to be funded by FOS; and
- the OLC cannot make any new enforcement applications post-transfer (in relation to a pre-transfer decision), and the complainant will have to do this under FOS rules (FMSA 2000).

We will be able to commence or conclude the vast majority of CMC-related enforcement before the transfer. For transparency, we will notify complainants from no later than 1 November 2018 that we are unable to commence new enforcement after 1 April 2019.

CMC Staff:

It has been agreed that the principles of TUPE will apply. While FOS initially indicated that they would be dealing with CMC complaints from their London office, they have subsequently indicated that there may be 'equivalent' roles at their Coventry office.

However, we are awaiting FOS to confirm the location as London or Coventry before we can take this matter further. Previously, FOS committed to providing a final decision on this 'by September/October'.

The timing of their decision is becoming critical if we are to absorb experienced CMC staff into the legal jurisdiction. FOS have confirmed that, by early October, they will either be able to confirm the location OR provide a likely timeframe in which a location can be confirmed.

3. Next steps

- We continue to participate in the transfer of regulation as part of the multi-organisational CMC Transfer Project Group, headed by HMT.
- We continue to contribute to discussions about the management of the CMC transfer costs with the various bodies involved. The parties accept that we cannot bear any cost of the transfer.
- We continue to engage with FOS on the Transfer Agreement and staff location issues. Regular teleconferences with the appropriate FOS staff have been arranged.
- We commence the data transfer work once (a) the transfer costs issues have been resolved , and (b) the costs of this work has been approved as part of the transfer costs solution